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Subject: **Protest of the Office of Ratepayer Advocates (ORA) of San Jose Water Company (SJWC) Advice Letters 472 and 473 (Requests to Implement Rule 14.1 and Schedule 14.1, related to SJWC's Water Shortage Contingency Plan)**

INTRODUCTION

Pursuant to General Order 96-B of the California Public Utilities Commission (Commission), the Office of Ratepayer Advocates (ORA) hereby protests San Jose Water Company's (SJWC) Advice Letters 472 and 473 (AL 472 and 473). In AL 472, SJWC seeks Commission approval to implement modifications to its Rule 14.1. In AL 473, SJWC requests Commission authority to add Schedule 14.1: Water Shortages Contingency Plan with Staged Mandatory Reductions and Drought Surcharges (Schedule 14.1) to SJWC's authorized tariffs and to implement Stage 3 of that tariff. ORA protests the approval of AL 472 and 473 and recommends that the Commission reject these advice letters on the following grounds pursuant to General Order 96-B, General Rule 7.4.2(6):

- AL 472 and AL 473 requests relief that is neither just nor reasonable, in violation of California Public Utilities Code Section 728.¹ The proposed water allocations and

¹ Cal. Pub. Util. Code § 728: "Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in connection with any service, product, or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful,

surcharges for usage above the allocations are discriminatory in that they are unjustifiably applied to only residential and “landscape services” customers. Additionally, “water-dependent businesses” would be inexplicably exempted from the proposed Stage 3 restrictions on water waste. Finally, surcharges collected exclusively from residential and “landscape services” customers would be used to offset costs that would have been the responsibility of all customer classes.

The Commission should direct SJWC to amend its Rule 14.1 and Schedule 14.1 filing to extend its restrictions to all customers and to incorporate a Monthly Drought Allocation and Drought Surcharge program that more equitably distributes the responsibility of conservation and the monetary burdens of the failure to conserve across all of its customer classes.

BACKGROUND

On February 28, 2014, the Commission adopted Resolution W-4976, Drought Procedures for Water Conservation, Rationing, and Service Connection Moratoria. This resolution required all Class A and Class B water utilities with an existing Rule 14.1 to activate these Rules.

Accordingly, SJWC activated its existing Rule 14.1 on March 21, 2014.² In light of continuing drought conditions, the SWRCB adopted Emergency Regulations for Statewide Water Conservation on March 17, 2015. On April 1, 2015, before the SWRCB regulations went into effect, Governor Edmond G. Brown Jr. issued Executive Order B-29-15 (EO), mandating a 25 percent reduction in statewide potable water consumption through February 28, 2016 and ordering that all 2014 and 2015 Emergency Regulations remain in full effect.³

Subsequently, on April 9, 2015, the Commission adopted Resolution W-5034, requiring “[a]ll Class A and B utilities [to] add Schedule 14.1 to their tariffs, as soon as practicable, by filing a Tier 2 advice letter[.]” in order to achieve the Governor’s mandated 25 percent reduction (from 2013 levels) in statewide water consumption.⁴ Schedule 14.1 may incorporate rate structures and other pricing mechanisms as well as mandatory penalties in order to achieve required reductions.

unjust, unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force.”

² AL 472 at 2.

³ EO B-29-15 requires a statewide decrease in consumption of 25 percent from 2013 levels; SWRCB regulations divided water utilities into tiers, increasing or decreasing the required percentage reduction for certain utilities based on historic relative per capita usage. Under SWRCB regulations, SJWC is required to decrease production by 25 percent. However, due to locally imposed restrictions, particularly Santa Clara Valley Water District’s (SCVWD) 30 percent reduction goal, SJWC has adopted a 30 percent reduction goal. SCVWD is SJWC’s wholesale provider.

⁴ Issued April 1, 2015.

Resolution W-5034 reiterates the SWRCB's Emergency Regulation for Statewide Water Conservation and adds additional Emergency Restrictions proposed by the SWRCB in response to the Governor's EO. The SWRCB finalized these proposed Emergency Restrictions effectuating the Governor's EO in its Emergency Water Conservation Regulations,⁵ adopted on May 5, 2015 and going into effect on May 18, 2015.

In AL 472, SJWC requests authority to revise its existing Rule 14.1 "to reflect the example Rule 14.1 included in [Resolution W-4976] as well as to more closely match the drought restrictions of local government agencies. SJWC requests that the revised Rule 14.1 become effective on June 15, 2015."

In AL 473, SJWC requests authority to add Schedule 14.1 to its tariffs, and to implement Stage 3 of that Schedule. SJWC's proposed Schedule 14.1 reiterates the prohibitions described in SJWC's proposed Rule 14.1, and describes an enforcement mechanism utilizing written warnings and flow restrictors. Schedule 14.1 further calls for absolute reductions in residential and "landscape service" customer consumptions, to be enforced by a Drought Surcharge. SJWC aims to reduce overall potable consumption by 30 percent from 2013 levels. SJWC requests that AL 473 go into effect on June 15, 2015.

THE COMMISSION SHOULD REJECT SJWC'S PROPOSED SCHEDULE 14.1

ORA recognizes that undertaking a 30 percent reduction in potable water consumption will necessarily entail difficult choices and actions on the part of consumers. The current drought situation in California necessitates the strict priority of essential water use over discretionary use, such as outdoor landscaping. However, as public comment gathered at SJWC's public meeting on these advice letters, recent media coverage, and ORA's own analysis indicates, SJWC has not satisfied its burden in ensuring that its proposal reasonably assigns responsibility for these reductions equitably across all classes of its water consumers.

The Commission should reject AL 472 and AL 473 as they unreasonably differentiate between residential and other customer classes in establishing water allocations and unfairly place monetary burdens for failures to reduce consumption, beyond cessation of "waste," on residential and "landscape services" customers only. For this reason, ORA recommends that the Commission direct SJWC to amend its Rule 14.1 and Schedule 14.1 filing to include Monthly Drought Allocations and Drought Surcharges for all of its customer classes.

⁵ 23 CCR §§ 863-866.

SWRCB regulations and the Governor’s Executive Order do not exempt commercial and industrial users from the statewide mandatory reduction. In fact, EO B-29-15 requires the SWRCB to impose restrictions requiring such customer classes to “implement water efficiency measures.”⁶ Further, Commission Resolution W-5034 “invites bold proposals and expects to receive schedules that include provisions for, but not limited to . . . restriction on water use for the top residential, commercial and industrial users[.]” SJWC’s proposed Schedule 14.1, however, entirely fails to include such provisions for commercial customers, unless such customers are using water in a wasteful or non-essential manner, as described by SJWC’s Rule 14.1. While SJWC’s Rule 14.1 adopts the SWRCB’s broad prohibitions on “wasteful” activities (which extend to residential and commercial customers alike), SJWC’s primary conservation enforcement mechanisms, Monthly Drought Allocations and Drought Surcharges, are discriminatory in that they unjustifiably apply only to residential and “landscape services” customers. Thus, while residential customers are required to curtail consumption even on those activities which are not “wasteful,” commercial customers have no similar incentive to maximize conservation.

SJWC’s Water Shortage Contingency Plan Proposals

SJWC’s Monthly Drought Allocation restriction limits residential customers to a monthly use allocation ostensibly equal to 70 percent of 2013⁷ Average Monthly Residential Usage.

Residential Allocation Plan		
2013 Base Year	2013 Average Monthly Residential Usage (CCF)	Monthly Drought Allocation (CCF)
Jan	10	9
Feb	9	9
Mar	9	9
Apr ⁸	11	9
May	14	10
June	16	11
July	19	13
Aug	19	13
Sep	19	13

⁶ EO B-29-15, §5.

⁷ 2013 consumption is used as a baseline against which SJWC measures reductions. “Since the Governor’s declaration of a drought emergency on January 17, 2014, both the Governor and the State Water Resources Control Board have consistently referenced water use reductions using a 2013 baseline.” AL 473 at 4, n.2.

⁸ SJWC notes that they are imposing allocations which, at minimum, allow for 55 gallons per capita per day for a four-person household. The allocations for January through April are not full 30 percent reductions because they allow for this minimum allocation. AL 473 at 4.

Oct	17	12
Nov	17	12
Dec	14	10
Total	174	130
% Reduction from Total		25.3%

Similarly, SJWC proposes Monthly Drought Allocation limits on “identified landscape services,” “based on the individual landscape customer’s monthly usage during the base year 2013 less the reduction percentage required [(30 percent)].”⁹

SJWC proposes that each CCF used by either a residential or “landscape services” customer in excess of its Monthly Drought Allocation shall carry a Drought Surcharge of \$3.5634 per CCF (equivalent to SJWC’s currently-effective uniform rate). Each CCF used by either a residential or landscape services customer in excess of the applicable 2013 Average Monthly Usage will carry a Drought Surcharge of \$7.1268, or twice the currently-effective uniform rate. “SJWC chose the uniform rate as the basis for the Drought Surcharge because it has basis within SJWC’s existing tariffs and because it is high enough to encourage water use reductions.”¹⁰ Each surcharge will be applied on top of the applicable base tariffed rate, based on customer class and consumption level.

Analysis and Recommendation

The Monthly Drought Allocation and Drought Surcharge mechanism is unjust, unreasonable, and discriminatory as only residential and “landscape services” customers will be penalized with costly surcharges for not achieving required reductions. SJWC’s residential customers have consistently consumed roughly 60 percent of SJWC’s annual potable water production, while business, industrial, public authority, resale, and “other” customers consume roughly 40 percent of SJWC’s total potable water deliveries.¹¹ The Monthly Drought Allocation and Surcharge

⁹ AL 473 at 5.

¹⁰ AL 473 at 5.

¹¹ Information from SJWC’s Application to Increase Rates, GRC TY 2016, Workpaper CH-07B, WP 7-01B:

Year	2009	2010	2011	2012	2013	2014
Residential Use (KCCF)	33,872	32,048	32,168	34,505	35,020	31,211
Total Potable Use (KCCF)	56,322	53,499	53,354	56,770	58,138	52,682
Res. % of Total Potable Use	60.14%	59.90%	60.29%	60.78%	60.24%	59.24%

mechanism's focus on residential and "landscape services" customers invites questions of the proposal's fairness and efficacy.

SJWC's Monthly Drought Allocation proposal is intended to target those customers with discretionary use in the form of outdoor landscaping, as the SWRCB's "focus is primarily on immediate reductions in outdoor water use."¹² However, residential customers will have to achieve allocation targets regardless of whether their consumption is primarily outdoors or indoors or they will face significant surcharges. Meanwhile, commercial customers (which include multi-unit dwellings) will only have to make those reductions determined to be "wasteful" as established by the SWRCB's Emergency Water Conservation Regulations and included in SJWC's Rule 14.1. The penalty for violation of these restrictions is not an **automatic** and accumulating surcharge, but rather a written warning, followed by the application of a flow-restricting device **should successive violations be observed** by SJWC. The prohibitions on waste provide no incentive for commercial entities to find ways to boost efficiency in indoor use or to curtail more discretionary usage.

Notably, the above prohibitions on waste and subsequent penalties for violations are also applicable to residential and landscape customers. SJWC fails to identify why the limitations on non-essential use (and the subsequent penalty for failure to comply) is adequate for achieving sufficient reductions from business and industrial customer classes, but not adequate for achieving sufficient reductions from residential customers.

SJWC stated at the public meeting held on May 28, 2015 that the Monthly Drought Allocation applied to many business customers by virtue of its extension to "landscape services" customers and so commercial customers would have the same incentives to reduce outdoor use as residential consumers. "Landscape services" customers are defined by SJWC as "a separately identifiable service for a non-residential customer (usually business or industrial) that is used primarily for landscape irrigation."¹³ While the inclusion of these services is a step in the right direction, SJWC has provided insufficient evidence to substantiate the efficacy and equity of this arrangement. It is unclear what percentage of commercial customers actually have separately identifiable "landscape services" or what percent of total potable consumption these customers represent. As residential customers represent only roughly 60 percent of total potable consumption, more than their 30 percent reduction target will be required for SJWC to achieve its overall goal. It is unclear that the application of the Monthly Drought Allocation to "landscape services" customers presents a significant enough incentive to SJWC's entire commercial class to shoulder their fair share of the required reductions in consumption.

¹² SWRCB Resolution No. 2015-0032, May 5, 2015.

¹³ SJWC Response to ORA Data Request EO2-001, question 3.

Further, given that, by definition, 100 percent of these “landscape service” customers’ consumption is for outdoor, discretionary use, it would increase the efficacy of the program and be likely more equitable for these customers to be required to reduce consumption by a *greater* amount than residential consumers, many of whom will have to make reductions regardless of whether their use is for outdoor purposes.

Finally, SJWC’s Rule 14.1 explicitly exempts commercial nurseries, golf courses, or other water-dependent businesses from its prohibitions on waste until Stage 4 of Schedule 14.1 is activated or until “specifically required by SJWC or a governing jurisdiction.” (As noted above, AL 473 requests authority to activate Stage 3). While a number of these customers have already converted to recycled water use, which is not restricted by Rule 14.1 or Schedule 14.1 in any way, this fact simply reinforces that the restrictions should apply to these consumers immediately, in order to encourage heavy users that have not yet converted to recycled water, but have the ability to do so, to do so and to encourage prevention of waste in others who cannot. SJWC’s proposal falls short in fairly applying restrictions, even when to do so would increase not only the equity of the program but also its potential impact on conservation totals.

A final point underscores the inequity of SJWC’s proposal. As proposed by SJWC, monies collected from any applied surcharges on residential usage are to be deposited in SJWC’s Mandatory Conservation Water Revenue Adjustment Mechanism account. Funds in this account are used as directed by the Commission to offset revenues lost as a result of increased conservation and expenditures made in support of conservation programs. Under SJWC’s proposal, drought surcharges would be collected exclusively from residential and “landscape services” customers but used to offset costs that would have been applicable to all customer classes.

The discussion above highlights ORA’s concerns regarding the efficacy and fairness of SJWC’s proposal. It is unclear how SJWC’s proposal will be effective without more equitably distributing the cost burden across all customer classes. It is fundamentally unreasonable to require only residential consumers who do not meet pre-determined allocation targets to pay more while other customer classes (who are responsible for roughly 40 percent of SJWC’s total potable consumption) are largely immune from similar restrictions or consequences.

CONCLUSION

For the above reasons, SJWC’s AL 472 and 473 should be rejected and SJWC should be required to present a more equitable proposal that is responsive to both the Governor’s Executive Order and the needs of all customer classes served.

Please submit all questions concerning this protest to Eileen Odell at Eileen.Odell@cpuc.ca.gov or (415) 703-3026.

Respectfully Submitted,
/s/ Danilo Sanchez

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