



# ORA

Office of Ratepayer Advocates  
California Public Utilities Commission

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**JOSEPH P. COMO**  
Acting Director

June 26, 2015

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Subject: Request for Review of Disposition of San Jose Water Company Advice Letters 472 and 473

Dear Mr. Kahlon:

In accordance with General Order (“GO”) 96-B, the Office of Ratepayer Advocates (“ORA”) hereby seeks California Public Utilities Commission (“CPUC”) review of the Division of Water and Audit’s (“DWA”) June 17, 2015 Disposition of San Jose Water Company (“SJWC”) Advice Letter (“AL”) 473. DWA’s approval of Advice Letter Nos. 472<sup>1</sup> and 473 is flawed and does not present reasonable grounds for approving SJWC’s requests.

On May 11, 2015, SJWC filed AL Nos. 472 and 473, requesting authorization to implement modifications to their Rule 14.1, to add a proposed Schedule 14.1 to its authorized tariffs and to activate Stage 3 of that tariff. On June 6, 2015, ORA properly filed a protest with DWA regarding SJWC AL Nos. 472 and 473, pursuant to GO 96-B General Rule 7.4.1.

While DWA notified SJWC of the disposition of these ALs sometime in the previous week and allowed AL Nos. 472 and 473 to go into effect on June 15, 2015, DWA did not notify ORA of its disposition of the ALs until June 17, 2015. DWA’s disposition approved SJWC’s requests as submitted.<sup>2</sup> Upon review of this disposition letter, ORA here requests

<sup>1</sup> At the writing of this Request for Review, DWA has not yet issued disposition of AL 472. AL 472 implements modifications to SJWC Rule 14.1. Rule 14.1 does not contain the details of the Monthly Drought Allocation and Drought Surcharge program that are the subject of ORA’s opposition to SJWC; it does, however, note that a Schedule 14.1 may be implemented in certain circumstances. DWA cannot fix the flaws of Schedule 14.1 in its disposition of AL 472. Thus, ORA here protests those aspects of AL 472’s Rule 14.1 which would activate the Schedule 14.1 ORA argues is unlawful, unreasonable, discriminatory and preferential.

<sup>2</sup> SJWC filed certain amendments to AL Nos. 472 and 473 on June 9, 2015. While one amendment alleviates ORA’s concern that, as written, SJWC’s Rule 14.1 water waste prohibitions would not apply to “water dependent businesses” until SJWC implemented Stage 4 of that Rule, the amendments do not address ORA’s primary concern regarding the fundamental fairness of SJWC’s Monthly Drought Allocation and Drought Surcharge programs.

for Commission review of DWA's approval of SJWC's AL Nos. 472 and 473, pursuant to GO 96-B, General Rule 7.7.1. ORA sets forth specifically the grounds on which it considers DWA's disposition of SJWC's advice letters to be unlawful and erroneous.

#### **GENERAL RULE 7.7.1 REVIEW OF INDUSTRY DIVISION DISPOSITION**

According to General Rule 7.7.1, any person who has filed a protest of an advice letter may request Commission review of an Industry Division disposition of that advice letter. With this letter, ORA files its request for Commission review of DWA's disposition of SJWC's AL Nos. 472 and 473, within 10 days after the issuance of the disposition as required by GO 96-B General Rule 7.7.1.

Consistent with General Rule 7.7.1, DWA must prepare and place on the Commission's meeting agenda a proposed resolution, served on ORA and all others on whom the request for review was served. Pending Commission action on the proposed resolution, SJWC's AL Nos. 472 and 473 will continue in effect as approved by DWA. The Commission has received over a 1,000 customer protests opposing SJWC Schedule 14.1, and many of these same customers have also requested a review of DWA's disposition of AL Nos. 472 and 473. Due to the urgency of this matter and potential customer impacts, the Commission should require that DWA issue a proposed resolution as soon as possible.

#### **BACKGROUND**

SJWC's AL 472 and 473 request authorization to implement modifications to their Rule 14.1, to add Schedule 14.1 to its authorized tariffs, and to activate Stage 3 of that tariff. SJWC issued these requests in order to comply with Commission Resolution W-5034 Ordering Water Utility Compliance with the State Water Resources Control Board's Resolution No. 2015-0015 Adopting a New 2015 Emergency Regulation for Statewide Urban Water Conservation and Re-Adopting the 2014 Emergency Regulation as Codified in the California Code of Regulations, Title 23, Sections 863, 864, and 865.

ORA's protest focused on those aspects of SJWC's Rule 14.1 and Schedule 14.1 implementing a Monthly Drought Allocation and Drought Surcharge program, which apply only to residential customers and "landscape services" customers. As detailed in its protest, these programs unjustifiably and unreasonably discriminate against residential customers, putting on them the burden of required reductions and the financial repercussions of the failure to do so.

## DWA DISPOSITION LETTER

DWA's June 17, 2015 Disposition Letter(s) approved SJWC's AL Nos. 472 and 473 without providing justification for the approval. The Disposition Letter failed to address the concerns of protestants, including ORA, or even to acknowledge that numerous protests<sup>3</sup> had been filed. General Order 96-B, General Rule 7.6.1 requires, in pertinent part:

The Industry Division will review each advice letter filed with it, *together with any timely protests, responses, and replies*. If the Industry Division, in light of such review, concludes that the advice letter is subject to disposition under this rule [. . .] the Industry Division will report its disposition at the Commission's Internet site. [Emphasis added.]

DWA's Disposition Letter gives no indication that such a review took place.

## DISCUSSION

While the disposition of these advice letters may be "ministerial acts," appropriate for DWA discretion, DWA is bound by General Order 96-B to determine whether the advice letters are within the scope of what has been authorized by statute or Commission order.<sup>4</sup> Commission Resolution W-5034 required the addition of Schedule 14.1 to all Class A water utilities' tariffs. However, the provisions of each utility's Schedule 14.1 must comport with governing statutes, including Cal. Pub. Util. Code §728's prohibition on unjust, unreasonable, discriminatory, or preferential rates.

As noted in ORA's June 1, 2015 Protest, the proposed Monthly Drought Allocation and Drought surcharge program in SJWC's Schedule 14.1 unjustifiably applies only to residential and an unidentified number of "landscape services" customers' water use. Further, these surcharges collected exclusively from residential and "landscape services" customers would be used to offset costs incurred by all customer classes.

SJWC stated that one rationale for not applying the Monthly Allocation and Drought Surcharge program to commercial industrial classes is the notion that, as for-profit entities, these customers have already implemented cost-saving efficiency measures.<sup>5</sup> To impose requirements that businesses reduce consumption further would inhibit economic growth, SJWC continues.<sup>6</sup> SJWC has presented no evidence supporting this conclusion, nor have they presented evidence contradicting the proposition that imposing surcharges on

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<sup>3</sup> According to DWA Director Rami Kahlon, more than 1,000 people contacted the CPUC to protest the Advice Letters, asserting that the proposed rules are unfair. Paul Rodgers, *State consumer agency calls San Jose water restrictions unfair, plans to fight them*, SAN JOSE MERCURY NEWS, June 16, 2015, available at [http://www.mercurynews.com/drought/ci\\_28325771/california-drought-state-consumer-agency-calls-san-jose](http://www.mercurynews.com/drought/ci_28325771/california-drought-state-consumer-agency-calls-san-jose).

<sup>4</sup> General Order 96-B, General Rule 7.6.1.

<sup>5</sup> See SJWC Letter to DWA, Re: Response to Protests of San Jose Water Company's Advice Letters Nos. 472 and 473, dated June 5, 2015, at 5.

<sup>6</sup> Id.

residential customers could also inhibit economic growth, should residents fail to meet reduction requirements that would be less burdensome were they spread across all customers.

SJWC admits that its “Water Conservation Specialists are actively engaging with all customers . . . in an effort to help customers reduce water use,”<sup>7</sup> though only single-family residents and an undetermined number of “landscape services” customers are penalized for the failure to reduce water use. SJWC’s defense that the Rule 14.1 prohibitions on waste apply to all customers classes is irrelevant; residential users may have to decrease use that *is not wasteful*, but rather is productive, in order to achieve required reductions. In violation of PUC Code Section 728, SJWC grants unlawful, preferential rates by not requiring businesses to do the same.

Finally, and without substantiation, SJWC notes that “any major revisions to SJWC’s proposed program would be no small matter with SJWC’s billing system. Major changes could take weeks, if not months, to implement. Compliance with the water use restrictions adopted by the State Water Resources Control Board and the CPUC in Resolution W-5041 is effective June 1, 2015.”<sup>8</sup> It is apparent that DWA feels this same sense of urgency, as it has allowed an AL to have an effective date earlier than the written notice of the disposition was issued.

In its Resolution W-5034, however, the Commission does not impose a deadline for activation of Schedule 14.1, but rather requires the Schedules to be implemented as soon as practicable. Finally, ORA notes that, in April, 2015, before the implementation of the Monthly Drought Allocation and Drought Surcharge program, SJWC customers reduced consumption by 25.3 percent from 2013 levels for the corresponding month.<sup>9</sup> Activation of the Monthly Drought Allocation and Drought Surcharge program clearly need not be rushed in order for SJWC customers to comply with SWRCB mandates, and indeed, necessitates more thorough and thoughtful review in order to comply with the statutory mandate of §728.

## CONCLUSION

For all of the above reasons, ORA requests DWA follow the requirements of Order 96-B, General Rule 7.7.1 and submit a resolution for action by the Commission with respect to its approval of San Jose Water Company’s Advice Letter Nos. 472 and 473.

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<sup>7</sup> Id. at 6

<sup>8</sup> Id.

<sup>9</sup> SWRCB DRINC Portal, <https://drinc.ca.gov/dnn/Applications/UrbanWaterR-GPCD.aspx>, select San Jose Water Company from the drop-down menu. Last visited June 18, 2015.

Respectfully Submitted,

/s/ Danilo E. Sanchez

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