BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

FILED
6-24-15
04:59 PM

In the Matter of the Application of Apple Valley Ranchos Water Company (U 346 W) for Authority to Increase Rates Charged for Water Service by $3,127,463 or 14.88% in 2015, $2,056,455 or 8.48% in 2016, and $2,160,731 or 8.19% in 2017.	Application No. 14-01-002 (Filed January 2, 2014)

E

H

H

Jason M. Ackerman, Esq.
Best Best & Krieger LLP
3390 University Avenue, 5th Floor
Riverside, CA 92501
Telephone: (951) 686-1450
Facsimile: (951) 686-3083
E-mail: jason.ackerman@bbklaw.com

Attorneys for TOWN OF APPLE VALLEY

June 24, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Application of Apple Valley Ranchos Water Company (U 346 W) for Authority to Increase Rates Charged for Water Service by $3,127,463 or 14.88% in 2015, $2,056,455 or 8.48% in 2016, and $2,160,731 or 8.19% in 2017.	Application No. 14-01-002 (Filed January 2, 2014)

Pursuant to the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Rule 12.2 and the Assigned Commissioner's Ruling Amending Scope and Schedule, dated June 19, 2015, the Town of Apple Valley (Town) respectfully submits these comments on the Amendment to Settlement Agreement Between Apple Valley Ranchos Water Company and the Office of Ratepayer Advocates (Amended Settlement Agreement).

I. BACKGROUND

The Town is a municipality, formed under the laws of the State of California, and it provides municipal services to individuals and businesses located within its jurisdictional boundaries. The Town is located within the service area of the Apple Valley Ranchos Water Company (AVR) and the Town, itself, is a substantial ratepayer.

Between 2003 and 2013, AVR requested rate increases of 112 percent, a 177 percent total factoring compounded requests. The Commission granted a 71 percent increase during this time period, or 96 percent compounded. The average customer's water bill has nearly doubled in that time. In its most recent application, AVR requested an increase of approximately 34 percent. The level of increases weigh heavily on ratepayers in the Town of Apple Valley, and on the Town itself. The increases are unsustainable. Moreover, the Town continues to appeal to the

fairness and equity of the Commission to create, and start moving down, a path of rate relief for AVR ratepayers.

The motion to approve the Amended Settlement Agreement should be denied because it is unreasonable in light of the record, and it is not in the public interest. The settled expenditures for main replacements far exceed historical average expenditures at a time when AVR has already invested significant amounts of money into the system. In recent years, AVR ignored Commission-authorized main replacement amounts that AVR agreed to in other settlement agreements, and ratepayers are currently bearing the financial burden of those excesses. Also, ratepayers can reasonably anticipate the imposition of additional, substantial surcharges in light of the mandatory usage reductions required by Commission Resolution No. W-5041. The most reasonable and prudent course to protect the interest of ratepayers is to deny the motion to approve the Amended Settlement Agreement and delay significant main replacement expenditures until AVR's next general rate case.

II. THE AMENDED SETTLEMENT AGREEMENT FAILS TO MEET THE SETTLEMENT CRITERIA UNDER RULE 12.1(d)

The Amended Settlement Agreement does not meet all of the standards for approval by the Commission identified in Rule 12.1(d), which provides the following:

> The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

For the reasons set forth below, the Amended Settlement Agreement is unreasonable and not in the public interest, and therefore fails to meet the settlement criteria under Rule 12.1(d).

A. The Amended Settlement Agreement is Unreasonable and Is Not in the Public Interest Because it Substantially Increases Main Replacement Expenditures Above Historical Levels

The Amended Settlement Agreement should be denied because the settled amounts far exceed historical main replacement expenditures. The Amended Settlement Agreement amounts for 2014-2016 are $3,637,248, $4,095,036, and $4,610,396 for each respective year. Indeed, AVR acknowledged that it exceeded the 2014 amount by recording $5,127,614 on main

replacements.[1] As pointed out in the proposed decision, the recorded 5-year average for main replacements is $1.6 million per year.[2] The Amended Settlement Agreement is a significant departure from the historical average.

AVR Witness Rick Dalton blamed low recorded expenditures for 2009 and 2010 on special circumstances that included the poor economy and the inability of AVR's ownership to secure funds pay for infrastructure improvements.[3] However, Mr. Dalton acknowledged that AVR more than doubled the main replacement amount agreed to by AVR and the Office of Ratepayer Advocates (ORA) in a settlement agreement that was authorized by the Commission.[4] The aggressive investment coincides with the acquisition of AVR's parent company by a wholly owned subsidiary affiliated with the Carlyle Group, an international private equity holding group.

Some of the Town's residents believe the aggressive investment in main replacement projects, starting in 2011, are due to a concerted and systematic effort to increase the rate base upon which AVR and its affiliated companies can recover a rate of return. AVR disputes this contention. But putting that debate aside, the investment has occurred and AVR has booked its investment to plant. Those investments will ultimately work their way into rates. If the Commission grants the motion approving the Amended Settlement Agreement, it necessitates corresponding rate increases to ensure a fair, just and reasonable rate of return to AVR. Therefore, the Commission should deny the Amended Settlement Agreement because it is unreasonable and not in the public interest, and ratepayers need at least temporary relief on rates.

B. The Amended Settlement Agreement is Unreasonable and is Not in the Public Interest Because AVR has Already Over-Invested in Main Replacements

Granting the Amended Settlement Agreement rewards AVR for non-transparent behavior. In D.12-09-004, the Commission adopted a partial settlement between AVR and ORA and

---

[1] Response to Administrative Law Judge's Ruling by Apple Valley Ranchos Water Company (U 346 W), filed January 15, 2015, at p. 1.
[2] Proposed Decision Adopting the 2015, 2016, and 2017 Revenue Requirements for Apple Valley Ranchos Water Company, dated April 1, 2015, p. 16.
[3] Reporter's Transcript, Vol. 4, pp. 366:10-367:1.
[4] Id. at p. 367:2-11.

authorized a total of $3,633,952 to be spent on main replacement in 2011, 2012 and 2013.[5] AVR then proceeded to record main replacement expenditures of $7,361,470 for that period, doubling the amount authorized by the Commission.[6] As stated above, AVR also exceeded its authorized total in 2014, recording an additional $5,127,614 in main replacement expenditures.

AVR profits off of these unauthorized expenditures. AVR's witness Mr. Leigh Jordan testified that the overages were booked to plant and in subsequent applications AVR seeks a return on the investments.[7] He said that AVR provides minimum data requirements to ORA that point out projects that were undertaken but that were not authorized, or any projects for which the costs were significantly over what was estimated in the last decision.[8] However, Mr. Jordan agreed that even though in 2013 the main replacement settlement amount was $1.5 million and actual expenditures were $3.2 million, there is no record in this proceeding which shows what was or was not actually authorized for that year.[9]

The process for moving unauthorized projects into plant is non-transparent to the Town and other ratepayers. Instead of granting approval of the Amended Settlement Agreement, AVR's authorized expenditure should be based on AVR five-year average of $1.6 million, escalated for inflation, and under no circumstances should be more than AVR's recorded main replacement costs for 2012-2014, as identified in the Proposed Decision. Moreover, AVR should be required to establish a memorandum account to record expenses in excess of the authorization, with the ability to seek reimbursement at a later time for expenditures established as reasonable both in terms of replacement rate and replacement costs on a per foot basis on the mains. Unless AVR and ORA are willing to agree to these reasonable terms, the Amended Settlement Agreement should be denied.

---

[5] Settlement Agreement attached as Attachment A to D.12-09-004, at p. 25.
[6] Exhibit O-1 at 8-29.
[7] Reporter's Transcript, Vol. 4, pp. 385:25-386:15.
[8] Id. at pp. 387:24-388:2.
[9] Id. at 391:1-8.

C. The Amended Settlement Agreement Is Unreasonable and Is Not in the Public Interest Because AVR Ratepayers Will Likely Pay Significant Surcharges As a Result of Commission Resolution No. W-5041

On April 1, 2015, Governor Brown issued Executive Order B-29-15 (Executive Order). The Executive Order imposes a 25 percent mandatory water reduction in urban areas and it is implemented by the State Water Resources Control Board (State Board).[10] The Executive Order recommended that the Commission consider similar reductions for Commission-regulated water utilities. In response to the Executive Order, the Commission issued Resolution W-5041 directing Commission-regulated water utilities to comply with the State Board's emergency water use regulations. AVR has undertaken efforts to comply with Resolution No. W-5041.

The motion to approve the Amended Settlement Agreement should be denied because of the uncertain bill impacts associated with Resolution No. W-5041 compliance. One might assume that bills will be lower if AVR customers reduce water usage in compliance with Resolution W-5041 because they will consume less water. However, the formula is complicated by the Water Revenue Adjustment Mechanism, which will require ratepayers to pay a surcharge to ensure that AVR receives its authorized revenue requirement. The matter is further complicated by the penalties AVR may impose on customers that cannot comply with the mandatory reduction requirements. By granting the motion to approve the Amended Settlement Agreement, the Commission will likely exacerbate adverse bill impacts. Therefore, the motion should be denied.

III. CONCLUSION

Based on the foregoing, the Town respectfully requests that the Commission deny the motion to approve the Amended Settlement Agreement because it is unreasonable and not in the public interest.

[10] Governor's Executive Order B-29-15, issued April 1, 2015.

DATED: June 24, 2015

Respectfully submitted,

/s/ JASON M. ACKERMAN

JASON M. ACKERMAN
Attorneys for Town of Apple Valley

Best Best & Krieger LLP
3390 University Avenue, 5th Floor
Riverside, CA 92501
Telephone: (951) 686-1450
Facsimile: (951) 686-3083
E-mail: jason.ackerman@bbklaw.com