

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of  
Golden State Water Company (U133W)  
for a Certificate of Public Convenience  
and Necessity to Construct and Operate  
a Water System in Sutter County,  
California; and to establish Rates for  
Public Utility Water Service in Sutter  
County, California.

Application 08-08-022  
(Filed August 29, 2008)

**MOTION  
OF THE DIVISION OF RATEPAYER ADVOCATES  
TO DISMISS APPLICATION 08-08-022**

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January 4, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Application of Golden State Water Company (U133W) for a Certificate of Public Convenience and Necessity to Construct and Operate a Water System in Sutter County, California; and to establish Rates for Public Utility Water Service in Sutter County, California.

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**I. INTRODUCTION**

Pursuant to Rule 11.2 the Division of Ratepayer Advocates ("DRA") hereby moves to dismiss Application 08-08-022 without prejudice because of the applicant's seeming inability to present a concrete proposal for Commission review, the sequence of delays that the applicant has sought to defer bringing this application to hearing, the staleness of the information presented in Golden State Water Co.'s ("GSWC") Application for a Certificate of Public Convenience and Necessity ("CPCN") ("Application") and the inappropriate attempt by Sutter County and GSWC to link the CPCN in this case to Commission approval of the acquisition of the Robbins Water System from Sutter County while expecting its Rancho Cordova captive ratepayers to pay for the cost of necessary upgrades to the Robbins system.

**II. BACKGROUND/PROCEDURAL HISTORY**

GSWC initially applied for a CPCN for the Sutter Pointe area of Sutter County in 2006. Because the application remained more of a concept than a concrete proposal, GSWC eventually withdrew this application and subsequently submitted

Application 08-08-022 in late August of 2008. DRA filed a timely protest at that time that delineated the many deficiencies of GSWC's revised application and noted that the application did not comply with the requirements of Rule 3.1. To a large extent the deficiencies noted in DRA's protest remain uncorrected and demonstrate the inadequacy of the information currently before the Commission.

Despite these deficiencies, DRA has conducted discovery, devoted substantial staff and attorney time, and has prepared written testimony for the first phase of this proceeding. This testimony was served on September 24, 2009, over 15 months ago. Instead of proceeding to hearing, or curing the deficiencies noted in DRA's protest, GSWC has instead sought seven separate delays in bringing this matter to hearing. GSWC's initial request for delay was issued on October 9, 2009, and this was followed by additional requests on November 20, 2009, January 19, 2010, February 8, 2010, April 1, 2010, July 1, 2010 and September 3, 2010.

Viewed charitably, GSWC's requests for delay can be seen as a benign effort on its part to present a comprehensive settlement for the Commission's consideration to obviate the need for hearings in this case. Given the protracted delays in this case, GSWC's prospects of presenting such a "comprehensive settlement" for Commission review appear to have diminished with the passage of time. Consider GSWC's counsel's April 1, 2010 e-mail note to Judge Kim (that DRA assumes was not intended as an April Fools canard) wherein he represented "I am pleased to report the settlement discussions are proceeding well." Since it is already early 2011, this optimistic assessment has been proven to be inaccurate. DRA has no grounds to doubt GSWC's sincerity in making the above-quoted representation, however, events have proven GSWC's optimism about the prospects of settling this case have been unrealistic and inaccurate.

At this juncture, DRA sees no reason to continue to presume that A.08-08-022 is a viable application. Thus far, aside from promises of progress, DRA has seen little evidence that the parties in this proceeding are anywhere near settling the issues raised by this application. Because of GSWC's and Sutter County's attempt to link approval of a "settlement" to GSWC's willingness to take over the Robbins System – a non-contiguous

service territory that has no causal connection to Sutter Pointe whatsoever, DRA will likely oppose whatever “settlement” GSWC manages to cadge together before the hearings now scheduled for late January.

In view of this situation, DRA requests that Application 08-08-022 be dismissed without prejudice so that GSWC would be in a position to re-file its application when it has a genuine, viable proposal to present to the Commission. DRA recognizes that it along with the other parties in this case have devoted considerable time and effort into this proceeding already. However, the idea of “settling” this case remains more of a concept than a reality today. The Commission has no obligation to indulge utility whims and wishful thinking regarding a CPCN application. Unfortunately ‘settling’ this case appears to be far more difficult and complicated than GSWC anticipated when it submitted A.08-08-022.

In short, it is time to stop wasting DRA’s, the Commission’s and other the parties’ time on this application. A new application with updated information will provide all interested parties an opportunity to develop a complete record on which the Commission can render an informed decision. Therefore the application should be dismissed without prejudice.

### **III. DRA HAS ACTED IN GOOD FAITH REGARDING A.08-08-022**

DRA has met repeatedly with GSWC about this application. In those meetings, DRA has expressed its concerns about the lack of a final water transfer agreement in the CPCN application, the effort of Sutter County to hold approval of this CPCN hostage on the agreement of GSWC to assume ownership of the Robbins Water System, which needs expensive upgrades to meet state water quality standards and which GSWC proposes to have its captive Rancho Cordova customers subsidize (and later its Sutter Pointe customers). It is also worth noting (and provides additional evidence that this application remains inchoate) that GSWC had had to repeatedly seek the indulgence of a non-party to this case, the Natomas Mutual Water Company, regarding these delays.

DRA is aware that it has not previously objected to GSWC’s requests for delay. However, in not raising objections previously, DRA had the understanding that a

breakthrough in negotiations was imminent. This no longer appears to be the case, and GSWC and Sutter County have made the prospect of approval of any possible settlement more problematic by their attempt to link the disposition of the Robbins Water System to the instant application.

#### **IV. APPLICATION 08-08-022 IS NOT A PRIORITY**

At this point, it can be fairly stated that GSWC is seeking to certificate a concept - an inchoate idea--not a water system, as evidenced by the repeated delays in bringing this project to hearing. GSWC and a group of real estate developers are hoping to be able to develop a new residential and commercial community in what is now agricultural land. If the project were successful the former would have a new service territory with significant growth potential and the latter would be in the position to earn substantial profits. While economic conditions and development patterns in 2006 suggested that Sutter Pointe was not far from becoming a reality, since 2008, the economy has undergone a serious recession and remains in a damaged condition. The demand for new residential construction has essentially evaporated and experts don't see a recovery until 2014.<sup>1</sup> Thus this CPCN application—while never an urgent matter—should not be considered a priority at this time.

#### **V. THE INFORMATION IN A.08-08-022 IS ALREADY STALE**

GSWC prepared A.08-08-022 during the first six to seven months of 2008 – and possibly earlier since some of the information in the application appears to have been prepared for its initial foray into this endeavor in 2006. It is now early 2011. Not only have economic conditions changed dramatically, so too has the market for residential real estate in the Sacramento vicinity. Nonetheless, GSWC has not modified any of the information in its Application, despite ample opportunities to do so. The Commission should not be expected to review information that is (at best) nearly three years old and

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<sup>1</sup> See [http://www.msnbc.msn.com/id/40553009/ns/business-real\\_estate/](http://www.msnbc.msn.com/id/40553009/ns/business-real_estate/)

may be of a half-a-decade ago vintage and use this stale data as the basis of a permanent certificate of public convenience and necessity.

## **VI. CONCLUSION**

It is time for the Commission to recognize GSWC's protracted "settlement" is simply an exercise in whimsy and wishful thinking on GSWC's part. Application 08-08-022 should be dismissed without prejudice. Far too many of the Commission's and other parties' resources have already been devoted to the pursuit of an uncertain project. It is time to call a halt to this charade so that the Commission does not continue to be distracted by GSWC's efforts to certify a concept. The Commission should not indulge GSWC's fond hopes to become a water purveyor for Sutter Pointe. When GSWC has a genuine proposal to present that does not involve protracted delays and continual indulgences by other parties it should submit a new application that contains updated information and realistic dates when events will transpire.

Respectfully submitted,

/s/ **JASON ZELLER**

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January 4, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES TO DISMISS APPLICATION 08-08-022**” to the official service list in Application 08-08-022 by using the following service:

**E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

**U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on January 4, 2011, at San Francisco, California.

/s/ NELLY SARMIENTO

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Nelly Sarmiento

**SERVICE LIST**  
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