

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: ACTIONS RELATED TO SAN JOSE
WATER COMPANY

DATE: October 3, 2017

Approved

D. D. S. L.

Date

10/13/17

RECOMMENDATION

1. Accept staff report responding to questions laid out in Item (a) in the Clerk's transmittal memo titled "*Actions Related to San Jose Water Company*" on August 31, 2017.
2. Provide direction to staff on options for how the City can take a greater role in advocating to the California Public Utilities Commission on behalf of the City and customers of San Jose Water Company.

OUTCOME

Approval of these recommendations will allow staff to continue efforts in allocating resources in support of expanding the City of San José's oversight and involvement in San Jose Water Company water rates.

BACKGROUND

San Jose Water Company (SJWC) is one of the three local water retailers serving residents and businesses in the City of San José. SJWC is regulated by the California Public Utilities Commission (CPUC), and water rates are set by the CPUC. Water rates have been increasing due to several factors including the cost of wholesale water, decreased usage, and capital investments needed to ensure safe, high quality, and reliable water service.

On August 23, 2017, the Rules and Open Government Committee accepted Councilmember Rocha's memo titled "*San Jose Water Company*" and recommended that the City Council direct the City Manager to provide data on City of San José's costs for water service and to evaluate potential options, if any, for how the City can represent its citizens in regards to water rates.

On September 11, 2017, during Orders of the Day, the City Council deferred this item to October 24, 2017 to allow further time in answering the questions identified in Item (a) in the Clerk's

August 31, 2017 transmittal memo titled “*Actions Related to San Jose Water Company*,” and return with options for the City of San José in representing the interests of San José residents concerning San Jose Water Company (SJWC) rate increases.

ANALYSIS

The Clerk’s August 31, 2017 transmittal memo identified several questions regarding City of San José’s costs for water service, shown below. The following information was obtained with the support from multiple City departments, including the Departments of Public Works, Parks, Recreation and Neighborhood Services, and Finance, and with the proactive assistance of San Jose Water Company.

1) *Research and present to Council a summary of the City of San José’s payments to San Jose Water Company for water service for the last 6 years (2012-2016).*

a. *The total number of San José residents who receive water services from San Jose Water Company.*

Although the total number of residents may vary, SJWC is the water service provider for 80% of the City of San José, or approximately 800,000 residents.

b. *The amount the City of San José pays for water service from San Jose Water Company monthly and annually.*

The following table represents total and average monthly payments made by the City to SJWC from 2012-2016. Please see Attachment A for individual monthly payments per year.

	TOTAL	AVERAGE MONTHLY
2012	\$3,776,290	\$314,691
2013	\$4,321,573	\$360,131
2014	\$4,064,544	\$338,712
2015	\$4,745,822	\$395,485
2016	\$6,118,943	\$509,912

c. *The total increase in cost for water service from San Jose Water Company.*

The total increase in the amount the City paid for water service from 2012 to 2016 is 62%. During this same time period, the rates for non-residential water service increased by an adjusted total of 66.86%.

- d. *The total amount paid in drought surcharges.*

Drought surcharges were implemented in June 2015. Between June 2015 and December 2016, the City of San José paid \$508,941.05 in drought surcharges.

- e. *A list of all rate changes from San Jose Water Company with the associated purpose for the rate change.*

Please see Attachment B for list of all rate changes and associated purpose.

- f. *An estimate of the total refund the City of San José may receive as proposed in San Jose Water Company's Advice Letter #510 to the California Public Utilities Commission (CPUC).*

Through Advice Letter #510, due to an error in billing, SJWC requested the ability to reimburse customers for the last three years. When the CPUC approved increases to SJWC readiness to serve charges ("meter fees"), increases were to commence on January of that particular calendar year. However, most SJWC billing periods did not start with January 1st, but instead spanned both calendar years. As a result, when SJWC implemented the increases, customers were inappropriately charged the increased meter fees in December of the previous year. The CPUC rejected Advice Letter #510, and the CPUC is currently reviewing this issue under a formal complaint filed by a number of customers. The formal complaint process will determine what if any restitution is required, and SJWC should follow the guidance provided by the CPUC to provide such restitution to all impacted ratepayers. In addition to the retroactive billing, the formal complaint alleges that the SJWC "double billed" for a ready to serve charge. Upon decision and direction from CPUC, potential refunds may be calculated.

SJWC, in connection with Advice Letter #510, estimated it overcharged a total amount of \$1,794,439.00 from the time period of January 1, 2014 to December 31, 2016, an average of less than \$5.70 per residential customer with a 3/4-inch meter. The City of San José's Department of Parks, Recreation and Neighborhood Services, the department with the majority of SJWC accounts, estimated that its department would be refunded approximately \$20,000.00 under the former Advice Letter #510. However, SJWC is in the best position to estimate the amount it over charged as it has the appropriate records. This issue will be litigated in the formal complaint.

- g. *An estimate of the total refund the City of San José would receive due to the meter credit proposed in Advice Letter #510 as calculated from when the City of San José account was first started.*

The City of San José does not maintain records from when accounts were first started. Although this information may be available from SJWC's billing system, it would require development of specialized reports to generate the requested information. Upon guidance by the CPUC regarding the term of a potential refund, staff will request SJWC provide an estimate of meter credit calculated from when the City account was first started.

- 2) *Evaluate based on the information above, the scale and scope of the situation, and whether the City of San José should take a more proactive role in representing the interests of the San Jose residents concerning San Jose Company rate increases. If appropriate, the City Manager should consider if there are ways for the City to become more engaged in the CPUC protest and response, formal complaint process, or any investigations that would allow us to represent the interests of San Jose residents and ensure their concerns are heard.*

Current Rate Dispute: The Office of Ratepayer Advocates (ORA) within the CPUC represents the consumers in scrutinizing the cost of service of the largest investor-owned water companies, including SJWC. The ORA stated that the issues in Advice Letter 510 parallel those presented to the Commission in the formal complaint, and "both matters should be consolidated within the scope of a formal investigation." (June 23, 2017 Letter). The ORA would represent the consumers in those proceedings. As to formal Complaint, the City of San José could file a motion to intervene into that CPUC proceeding as a party, or file its own complaint and seek consolidation. The City Attorney's Office represents the City, but it does not formally represent other consumers, who may also benefit from a ruling. In response to the San Bruno Pipeline failure, effective January 1, 2017, an "eligible local government entity" may intervene in an action and receive compensation and costs when there has been a "catastrophic loss" as a result of the utility's infrastructure. This does not apply to general rate increases or disputes.

Future Rate Increases: As described within the Public Utilities Code, an Investor Owned (private) water retailer may request approval from the CPUC to increase a variety of fees and charges that will be listed on residential bills. SJWC rate changes are achieved through Cost of Capital and General Rate increases. In addition, SJWC can increase rates through Advice Letters and other mechanisms. Advice Letters seek CPUC's authorization to make changes in tariff schedules applicable to SJWC service area, including but not limited to: rate base offsets for improvement projects; recover funds such as to offset the increase in purchased water and ground water charges from Santa Clara Valley Water District; Water Shortage Contingency Plan with Staged Mandatory Reductions and Drought Surcharges; Water Conservation Memorandum Account; Water Revenue Adjustment Mechanisms; fund pilot programs (such as the Advanced Metering Infrastructure pilot study); establish a School Lead Testing Memorandum Account, or to implement additional charges to fund programs, such as the Water Rate Assistance Program; repayment of a Safe Drinking Water State Revolving Fund loan, or to amortize the over and under-collection of rates; and the creation of a new affiliate (SJW Group became a wholly owned subsidiary of SJW Corp.). The process for

engaging the CPUC for each type of increase or Advice Letter varies per the Public Utilities Code.

There are several ways for a consumer, such as the City, to become involved in a CUPC proceeding. The consumer can become involved through informal participation, by attending and expressing views at meetings, or by providing written informal comments. A consumer can also participate formally if the requirements to become a "party" are met.

As an example, the next scheduled SJWC request for CPUC approval to increase general rates for water service over present levels is January 2019. The General Rate Case will be from January 1, 2019 through December 31, 2022. In this example, per the CPUC Rules of Practice and Procedures (California Code of Regulations Title 20, Division 1, Chapter 1) to participate in proceedings, such as the General Rate Case, a person may become a party to a proceeding by one of the following means: filing an application, petition, or complaint; filing a protest or response to an application or petition, or comments in response to a rulemaking; making an oral motion to become a party at prehearing conference or hearing; or filing motion to become a party.

In addition, for any evidentiary hearing, the CPUC shall give notice not less than 10 days before the date of the hearing. When a water utility files an application to increase any rate, the utility shall give notice of hearing, not less than five nor more than 30 days before the date of the hearing. Any party may file its response of the presiding officer's decision within 30 days of the date the decision is served. CPUC shall vote on rate setting not later than 60 days after the issuance of a proposed or draft decision. Most applications to the CPUC are in the form of Advice Letters. Advice Letters may be used to establish memorandum accounts, requests to implement fees and/or charges, and increase rates to retroactively recover lower than anticipated revenue and increases in costs.

Advice Letters allow for anyone to respond to or protest. A response or protest must be made in writing or by electronic mail and must be received by the CPUC Tariff Unit, Water Division and SJWC Regulatory Affairs within 20 days of the date the advice letter is filed. The advice letter process does not provide for any responses, protests or comments, except for the utility's reply, after the 20-day comment period. Public notice of this filing is not required.

Impact of Santa Clara Valley Water District (SCVWD) Wholesale Rate Increases: As previously stated, SJWC routinely increases the cost of water service to offset the increase in purchased water and ground water charges from SCVWD. Increases to SCVWD wholesale rates since 2012 are shown in Attachment B. Furthermore, it is estimated that SCVWD wholesale rates will continue to increase over the next 10 years. As a result, in 2 years, the City's cost for purchasing water will increase by 7% or \$428,000.00. In 4 years, the City's cost for purchasing water from SJWC will increase by 14%, or \$850,000.00, from 2016. In 6 years, solely due to the increase wholesale water rates, the cost for purchasing from SJWC will increase by 21%, or \$1.3 million compared to 2016.

Variable Levels of Involvement: During consideration of options to engage the CPUC during an application approval process, it became apparent that the range of options and costs may vary significantly depending upon the level of involvement and scope of work. For example, involvement in a single Advice Letter or application for a rate change requires significantly less resources than involvement in ALL applications to the CPUC that increase cost for water service. The following items provide a general overview of expanding levels of involvement and approximate cost.

- 1) Monitor all applications to the CPUC that will result in an increase to the cost of water service. Perform a brief analysis and provide a recommendation for response or further action. This is minimal level of effort, estimated at 0.5 FTE or procuring services of a consultant, estimated at \$50,000 per year.
- 2) Monitor all applications, review financial data, calculations, and methodology provided to support an increase in water service cost, and potentially submit response and/or protest letters to the CPUC. This expanded level of effort will require staff participation in multiple disciplines, and is estimated to require a total of 1.0 FTE and/or approximately \$100,000.00 in consultant services per year, primarily in legal and accounting support.
- 3) Monitor all applications, complete legal and analytical review of applications to CPUC for increased water service, actively participate in CPUC proceedings, advocate perspectives that benefit San Jose to the CPUC Office of Ratepayer Advocacy, and intervene in CPUC proceedings, as determined by a case-by-case evaluation. This level of involvement would require significant resources, estimated at approximately \$500,000.00 per year in consultant services, and/or 2.0 total FTE.
- 4) Identify options for legislative changes to the benefit of the City of San José, San José residents, and businesses. This level of involvement would require assigning or procuring resources to develop and recommend potential legislative options for further Council discussion. In addition, this effort would require procurement of a lobbyist and assignment of approximately 4.0 FTE to prepare documents and material to support a legislative change. This level of involvement is undefined and current estimate is approximately \$1.0M in staff and consultant costs.

NOTE: All costs and staffing levels are approximate. Once an exact scope of work and preferred level of involvement is determined, more accurate anticipated costs may be estimated.

Options for Consideration

Based upon the complexity of the information above, it may be beneficial for the City of San José to take a more proactive role in representing the interests of San José residents. Below are some options for Council consideration:

1. Issue a Request for Qualifications

The City of San José may wish to enlist a Consultant to review proposed SJWC General Rate Increases, applications Cost of Capital Return increases, and Advice Letters, and make recommendations based on their assessment. Alternatively, or in addition, the City may wish to engage the services of a lobbyist, specifically to focus on CPUC proceedings, including water.

2. Annual Study Session

The City of San José may request that SJWC attend annual Council study sessions to provide information on CPUC guidelines and procedures, along with anticipated increases to general rates and fees and/or charges.

EVALUATION AND FOLLOW-UP

Upon further City Council discussion and direction, staff may return with specific recommendations to support a greater role in advocating to the California Public Utilities Commission.

PUBLIC OUTREACH

This memorandum will be posted on the City's website as part of the October 24, 2017 City Council agenda.

COORDINATION

This memo was coordinated with the City Attorney's Office, the City Manager's Office of Intergovernmental Relations, and the Departments of Public Works, Parks, Recreation and Neighborhood Services, and Finance.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

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CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/
KERRIE ROMANOW
Director, Environmental Services

For questions, please contact Jeff Provenzano, Deputy Director, at (408) 277-3671.

Attachments

ATTACHMENT A

Monthly and Annual Water Service

Jan-12	\$200,737
Feb-12	\$44,169
Mar-12	\$292,218
Apr-12	\$162,401
May-12	\$295,090
Jun-12	\$453,422
Jul-12	\$559,117
Aug-12	\$511,269
Sep-12	\$474,377
Oct-12	\$375,347
Nov-12	\$275,782
Dec-12	\$132,362

Jan-13	\$182,793
Feb-13	\$49,648
Mar-13	\$158,007
Apr-13	\$389,697
May-13	\$477,113
Jun-13	\$520,196
Jul-13	\$566,997
Aug-13	\$516,461
Sep-13	\$518,028
Oct-13	\$407,557
Nov-13	\$340,846
Dec-13	\$194,230

Jan-14	\$235,383
Feb-14	\$37,074
Mar-14	\$191,036
Apr-14	\$351,059
May-14	\$386,919
Jun-14	\$493,782
Jul-14	\$542,783
Aug-14	\$483,824
Sep-14	\$465,018
Oct-14	\$401,939
Nov-14	\$291,269
Dec-14	\$184,457

Jan-15	\$215,428
Feb-15	\$51,037
Mar-15	\$215,078
Apr-15	\$453,473
May-15	\$349,573
Jun-15	\$451,085
Jul-15	\$577,617
Aug-15	\$617,116
Sep-15	\$605,250
Oct-15	\$608,724
Nov-15	\$367,207
Dec-15	\$234,234

Jan-16	\$230,679
Feb-16	\$211,884
Mar-16	\$197,258
Apr-16	\$246,737
May-16	\$369,246
Jun-16	\$606,637
Jul-16	\$885,459
Aug-16	\$933,916
Sep-16	\$919,544
Oct-16	\$810,874
Nov-16	\$421,354
Dec-16	\$285,356

TOTAL **\$3,776,290**

**Average
Monthly** **\$314,691**

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Monthly** **\$314,691**

TOTAL **\$4,745,822**

**Average
Monthly** **\$395,485**

TOTAL **\$6,118,943**

**Average
Monthly** **\$509,912**

ATTACHEMENT B

YEAR	DATE	ADVICE LETTER	INCREASE	DESCRIPTION
2012	1-Jan	434-B	4.53%	2012 Attrition filing
2012	14-Jun	438	0.23%	Rate Base Offset - AL projects Needles Station
2012	1-Jul	439-B	3.00%	SCVWD offset
2012	1-Sep	443	<u>-0.93%</u>	COC Rate Reduction
			6.83%	
2013	1-Jul	450	3.21%	SCVWD offset
2013	15-Nov	454	<u>1.54%</u>	Increase WRAP surcharge
			4.75%	
2014	1-Jul	461-A	3.60%	SCVWD offset
2014	21-Jul	457	0.05%	Montevina WTP Offset
2014	14-Aug	463A	9.81%	2013 Rate increase
2014	29-Sep	464-A	5.20%	2014 Escalation Increase
2014	29-Sep	465-B	<u>5.73%</u>	GRC Tru up (3-year limit; reimplementation filing expected)
			24.34%	
2015	1-Jan	467-A	2.94%	2015 Attrition filing
2015	6-May	471	0.69%	GRC Tru up Re-hearing
2015	1-Jul	474	6.44%	SCVWD offset
2015	20-Sep	476	0.09%	Montevina Offset-2014
2015	9-Dec	477	<u>1.43%</u>	MCRAMA 2014 (No Longer Collected 12/9/16)
			11.59%	
2016	15-Jan	481	0.86%	Reimplement BA surcharge
2016	30-Mar	483-A	0.55%	Montevina Offset - 2015
2016	22-Apr	486	2.55%	WCMA 2015 (No Longer Collected 4/26/17)
2016	14-Jun	488/489	8.60%	2016 Rates GRC + Montevina Recalc
2016	1-Jul	490	6.72%	SCVWD offset
2016	9-Jul	492-A	<u>2.90%</u>	2016 GRC Tru up (No Longer Collected 9/15/17)
			22.18%	
2017	1-Jan	498/500	3.83%	2017 Attrition filing
2017	20-Mar	506	1.51%	Montevina Offset - 2016
2017	1-Jun	508-B	3.30%	Reimplement 2014 & 2015 MCRAMA/WCMA (No Longer Collected)
2017	1-Jul	509-A	<u>3.46%</u>	SCVWD offset
			12.10%	

TOTAL ADJUSTED

ONGOING RATE INCREASE: **66.86%**

Note: Total excludes increases that are no longer collected