



## Cost of Service and Rate Design Citizen Advisory Committee Minutes

John Mundy, Chair  
Irene Henry, Vice Chair  
Clint Crowell, Committee Member  
Diane de Mailly, Committee Member  
Sarah LeClaire, Committee Member

Robert McCord, Committee Member  
Marty Melvin, Committee Member  
Don Mills, Committee Member  
Alejandro Robles, Committee Member

### REGULAR MEETING – NOVEMBER 16, 2011

The Cost of Service and Rate Design Citizen Advisory Committee met in special session in the Ventura Water Maintenance Yard, 336 Sanjon Road, Ventura, at 6:00 p.m.

#### ROLL CALL

PRESENT: Committee Members Crowell, de Mailly, LeClaire, McCord, Melvin, Mills, Robles and Vice Chair Henry.

ABSENT: Chair Mundy.

#### PUBLIC COMMENT

#### SPEAKER(S)

Member(s) of the public: Daniel Cormode.

NEW/CONTINUED BUSINESS – Approval of Minutes, Regular Meeting October 12, 2011 and Special Meeting October 26, 2011.

Call Motion and voice vote to Approve October 12th minutes:

AYES: Committee Members Crowell, de Mailly, LeClaire, McCord, Melvin, Mills, Robles and Vice Chair Henry.

NOES: None.

ABSTAIN: None.

ABSENT: Chair Mundy.

DRAFT

Vice Chair Henry declared the motion carried.

Call Motion and voice vote to Approve October 26th minutes:

AYES: Committee Members Crowell, de Mailly, LeClaire, McCord, Melvin, Mills, Robles and Vice Chair Henry.

NOES: None.

ABSTAIN: None.

ABSENT: Chair Mundy.

Vice Chair Henry declared the motion carried.

### **1. GENERAL MANAGER'S REPORT**

#### SPEAKER(S)

Staff: Ventura Water General Manager Epstein presented an oral presentation.

#### SPEAKER(S)

Member(s) of the public: None.

No formal action taken.

### **2. PUBLIC ART**

#### SPEAKER(S)

Staff: Denise Sindelar with Community Services presented a brief PowerPoint report on public art.

Member(s) None.

No formal action taken.

### **3. PRICING OBJECTIVE RESULTS FROM MEETING ON OCTOBER 27, 2011**

#### SPEAKER(S)

Staff: Ventura Water General Manager Epstein presented a brief oral presentation.

DRAFT

City Consultant(s): Sudhir Pardiwala, Vice President, Raftelis Financial Consultants, Inc., Hannah Phan, Raftelis Financial Consultants, Inc. presented a PowerPoint report.

Member(s) of the public: None.

No formal action taken.

#### **4. LONG TERM FINANCIAL PLANS**

##### **SPEAKER(S)**

Staff: Ventura Water General Manager Epstein presented a brief oral presentation.

City Consultant(s): Sudhir Pardiwala, Vice President, Raftelis Financial Consultants, Inc., Hannah Phan, Raftelis Financial Consultants, Inc. presented a PowerPoint report.

Member(s) of the public: None.

No formal action taken.

#### **5. ADJOURNMENT**

There being no further items to discuss, the meeting was adjourned at 8:05p.m.

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Sylvia T. Lopez  
Recording Secretary



# ADMINISTRATIVE REPORT

Date: December 8, 2011

Agenda Item No.: 2

Meeting Date: December 14, 2011

**To: COST OF SERVICE AND RATE DESIGN CITIZEN ADVISORY COMMITTEE**

**From: SHANA EPSTEIN, VENTURA WATER GENERAL MANAGER**

**Subject: CITY ATTORNEY'S OPINION REGARDING APPLICABILITY OF THE CITY'S PUBLIC ART PROGRAM**

## **RECOMMENDATION**

This item is for information purposes only.

## **SUMMARY**

As requested, attached is the City Attorney's opinion regarding applicability of the City's Public Art Program.

CITY OF VENTURA  
**CITY ATTORNEY**

December 8, 2011

To: Shana Epstein, General Manager, Ventura Water  
From: Ariel Calonne, City Attorney  
Subject: Applicability of the City's Public Art Program to Ventura Water Capital Improvement Projects

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### Question Presented

May the City lawfully impose its "2% for Public Art" program upon projects undertaken by Ventura Water?

### Short Answer

Yes. Public art charges pursuant to Chapter 4.610 of the San Buenaventura Municipal Code (the City's public art program) are lawful elements of the cost of service which may be constitutionally recovered from ratepayers by the City via Ventura Water's rates.

### Discussion

Under both the pre-Proposition 218 California Constitution and the common law of utility ratemaking, utility charges may not exceed the "reasonable" cost of providing the service in question. (*Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172, 1180-1181 ["reasonableness, then, is the beginning and end of the judicial inquiry."]; *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 234-235.) The post-Proposition 218 inquiry is similar:

The theme of these sections [of Proposition 218] is that fee or charge revenues may not exceed what it costs to provide fee or charge services. ***Of course, what it costs to provide such services includes all the required costs of providing service, short-term and long-term, including operation, maintenance, financial, and capital expenditures.*** The key is that the revenues derived from the fee or charge are required to provide the service, and may be used only for the service. In short, the section 6(b) fee or charge must reasonably represent the cost of providing service. (*Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.Ap..4<sup>th</sup> 637, 647-648; emphasis added.)

RE: Applicability of the City's Public Art Program to Ventura Water Capital Improvement Projects

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We look next to the Council's enabling powers to determine what the appropriate costs of service may include. City Charter Section 1406 authorizes the City Council to establish and operate municipal utilities:

Section 1406. Establishment of public utilities.

The City may establish, acquire, lease, and/or operate, or cease to operate and dispose of, public utilities and quasi-public utilities or any part thereof, at its own option ***in the manner provided by the laws now existing or hereafter enacted***, or by the majority vote of the registered qualified electors of the City in the manner provided by ordinance enacted by the Council by the affirmative vote of five members of such Council. All amendments of such ordinances shall require a like vote. (Emphasis added.)

Likewise, Charter Section 1210 requires the Council to review and adopt a five-year capital improvement program:

Section 1210. Capital improvement program.

The Manager shall prepare and submit to the Council a five-year capital improvement program at least three months prior to the final date for submission of the budget. The contents of the program shall include:

- (a) A clear general summary of its contents.
- (b) A list of all capital improvements which are proposed to be made during the next five fiscal years, with appropriate supporting information as to the necessity for such improvements.
- (c) Cost estimates, method of financing and recommended time schedules for each such improvement.
- (d) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

On or before the first day of April of each year, the Council shall hold a public hearing and adopt by resolution a capital improvement program, with or without amendments.

Finally, and most critically, the Council has exercised its charter-based powers to enact San Buenaventura Municipal Code Chapter 4.610 establishing the City's Public Art Program. That program carefully includes utility projects within the definition of "eligible capital improvement project." (SBMC, § 4.610.020.) The program specifically provides that "[a]s part of the annual capital improvement plan budget, the city council will

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appropriate within each project two percent of each eligible capital improvement project for public art." (SBMC, § 4.610.030 A.)

Taking these powers together, it is clear that the City Council, as the City's ratemaking authority, has determined that the public art program constitutes a reasonable cost of service for capital improvements attributable to Ventura Water. While we have found no case directly testing public art programs against California's evolving constitutional rate, fee and tax restrictions, it seems reasonable enough to require, essentially, that City utility improvements mitigate some of their impact on the public spaces of the community through public art improvements. We believe that a court would conclude that such expenditures are a reasonable cost of service for Ventura Water.



# ADMINISTRATIVE REPORT

Date: December 9, 2011

Agenda Item No.: 3 and 4

Meeting Date: December 14, 2011

**To: COST OF SERVICE AND RATE DESIGN CITIZEN ADVISORY COMMITTEE**

**From: SHANA EPSTEIN, VENTURA WATER GENERAL MANAGER**

**Subject: CUSTOMER IMPACT UTILIZING DIFFERENT RATE STRUCTURES AND LONG RANGE FINANCIAL PLAN**

## **RECOMMENDATION**

Staff recommends that the Committee determine which rate structures for water and wastewater utility enterprise funds should be pursued further in the cost of service and rate design study.

## **SUMMARY**

The consultant will present alternative capital financing mechanisms and the impacts on revenue adjustments. Additionally, the consultant will review several rate structures for water and wastewater and compare the impacts to different customer classifications. The information provided will help the Committee select a preferred rate structure that reflects the prioritized pricing objectives and common sense appeal.

## **DISCUSSION**

At the last meeting of the Committee, the Committee received and accepted the results of the pricing objectives workshop and a preliminary review of the financial plans for both utilities. The consultant will present the impacts of alternative debt financing schemes on the revenue adjustments needed. The consultant will present the impacts of alternative rate structures on customer classes. The Water Utility's pricing objectives resulted in investigating a modified three-tier rate structure and a hybrid rate structure that includes a modified three tiers plus a fourth tier. The Wastewater Utility's pricing objectives resulted in investigating a fixed and flow based rate structure where the flow may be determined two different ways.

On December 14, 2011, the consultant will conceptually show how different customer classes may be affected by selecting any of these new rate structures that reflect the prioritized pricing objectives. The Committee is encouraged to engage in a discussion of the elements of each rate structure and which one would best meet the goals of the pricing objectives and be accepted by the community.



Shana Epstein  
Ventura Water General Manager