

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Application of California-American Water Company (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates.

A.04-09-019  
(Filed September 20, 2004;  
Amended July 14, 2005)

**COMMENTS OF CALIFORNIA-AMERICAN WATER COMPANY ON THE  
PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE WEATHERFORD**

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July 2, 2012

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## **EXECUTIVE SUMMARY**

California-American Water Company (“California American Water” or “the Company”) greatly appreciates Administrative Law Judge Gary Weatherford’s recognition that the Regional Desalination Project is no longer a viable or reasonable long-term solution to the water supply issues facing the Company’s Monterey County District. Indeed, the conclusion of this particular proceeding will mitigate additional costs which customers will ultimately shoulder.

California American Water requests that the California Public Utilities Commission clarify the following items, which will be discussed in greater detail in the comments included below:

- The date that California American Water withdrew its support from the Regional Desalination Project was January 18, 2012 – not January 17, 2012, as stated in the Proposed Decision.
- The January 18, 2012 cut-off applies solely to costs incurred for the California American Water-only facilities, as authorized in Decision 10-12-016.

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**COMMENTS OF CALIFORNIA-AMERICAN WATER COMPANY ON THE  
PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE WEATHERFORD**

Pursuant to Article 14 of the Rules and Practice of Procedure of the California Public Utilities Commission (“Commission”), California-American Water Company (“California American Water” or “the Company”) hereby submits its comments on the *Proposed Decision Granting Motion to Withdraw Petition to Modify Decision 10-12-016 and Closing Proceedings*, mailed June 12, 2012 (“Proposed Decision”). California American Water greatly appreciates the thoughtful effort undertaken by assigned Administrative Law Judge (“ALJ”) Gary Weatherford to craft the Proposed Decision. The Proposed Decision appropriately finds that it would be unreasonable for the Commission to force California American Water to pursue the Regional Desalination Project in light of the circumstances, and recognizes California American Water’s commitment to find a long-term solution to the water supply issues facing its Monterey County District, as evidenced by the filing of Application (“A.”) 12-04-019.<sup>1</sup> The Proposed Decision also correctly states that the “the jurisdiction to resolve claims or causes of action under the [Water Purchase Agreement] appears to lie with the judiciary rather than the Commission.”<sup>2</sup>

Closing this proceeding will mitigate additional Regional Desalination Project costs and avoid unnecessary litigation costs for which customers will ultimately be responsible.

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<sup>1</sup> See Proposed Decision, pp. 18-19.

<sup>2</sup> *Id.* at 2, fn. 1.

As discussed below and as set forth in Appendix A, California American Water respectfully requests that a few items in the Proposed Decision be clarified to avoid future confusion and delay.

**I. ISSUES TO BE CLARIFIED**

**A. Date California American Water Publicly Withdrew Its Support for the Regional Desalination Project**

As an initial matter, California American Water requests that the Commission correct the reference to the date California American Water withdrew its support from the Regional Desalination Project. California American Water publicly announced that it was withdrawing its support for the Regional Desalination Project in its *Mediation Update*, filed January 18, 2012.<sup>3</sup> The Proposed Decision incorrectly states that California American Water withdrew its support on January 17, 2012. As described below in more detail, the Proposed Decision uses this date as a cut-off for recovery of certain costs related to the California American Water-only facilities.<sup>4</sup> California American Water requests clarification of the Proposed Decision so that it is clear that the Company publicly withdrew its support for the Regional Desalination Project on January 18, 2012.

**B. Recovery of Reasonable and Necessary Costs Incurred After January 18, 2012.**

California American Water requests that the Commission clarify that the January 2012 cut-off applies solely to costs for the California American Water-only facilities, authorized by the Commission in D.10-12-016. Although California American Water believes that the Proposed Decision indicates this intention, the current language could possibly be used in the future to bar California American Water from recovering other Regional Desalination Project-related costs incurred after January 18, 2012. The Proposed Decision clearly allows California American Water to file an application and seek recovery of certain costs related to the Regional Desalination Project;<sup>5</sup> however, the Proposed Decision includes a cut-off date for recovery of

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<sup>3</sup> See *California-American Water Company Compliance Filing – Mediation Update*, January 18, 2012, p. 1.

<sup>4</sup> Proposed Decision, pp. 2, 12, 24.

<sup>5</sup> *Id.* at 2 (The Proposed Decision states that: “[T]he Division of Water and Audits should continue processing all

certain costs related to the California American Water-only facilities.<sup>6</sup> To avoid unnecessary confusion, the Proposed Decision should be revised so that it is clear that the Commission has not precluded California American Water from seeking recovery of litigation and other project-related costs which are necessary and unavoidable.<sup>7</sup>

California American Water should not be denied the opportunity to seek recovery of all Regional Desalination Project-related costs, including but not limited to costs related to the January 24, 2012 prehearing conference and subsequent compliance filings, unwinding costs, as well as disputed costs stemming from the various Regional Desalination Project agreements. To the extent that the parties are able to reach a settlement through mediation or in the unfortunate situation that court litigation is initiated, California American Water will incur costs related to the Regional Desalination Project for some time.<sup>8</sup> Indeed, the Proposed Decision encourages the parties to continue to carry on discussions in order to determine which disputed costs relating to the Water Purchase Agreement and Reimbursement Agreement can be settled and which costs should be litigated.<sup>9</sup> The Proposed Decision indicates that certain contractual dispute issues are appropriate for the courts to decide and as such, it is unlikely that the Commission will resolve such disputes. These litigation and other project-related costs are necessary and unavoidable costs, and to the extent that they are reasonable, and necessary, California American Water should be able to recover them. Failure to allow recovery of these costs contradicts the Commission's "strong public policy favoring settlement of disputes"<sup>10</sup> and unfairly penalizes

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currently unprocessed Advice Letters dealing with rate base offsets for Cal-Am only facilities discussed in D.10-12-016. Cal-Am should not claim any costs incurred after . . . its withdrawal from the Regional Desalination Project.”)

<sup>6</sup> Proposed Decision, pp. 2, 12, 24.

<sup>7</sup> On May 15, 2012, the Company filed Advice Letter 944 which included certain costs for California American Water-only facilities incurred after it announced its withdrawal of support for the Regional Desalination Project. Once the Decision becomes final, California American Water will modify Advice Letter 944 to remove these costs. The remaining costs incurred for the California American Water-only facilities, prior to January 18, 2012, shall be recovered via Advice Letter 944.

<sup>8</sup> On June 28, 2012, the Marina Coast Water District served a claim on the Monterey County Water Resources Agency and the County of Monterey alleging that both entities failed to honor commitments made pursuant to the agreements related to the Regional Desalination Project.

<sup>9</sup> See Proposed Decision, p. 20.

<sup>10</sup> D.05-03-022, *Application of Southern California Edison Company (U 339 E) for Authority to, Among Other Things, Increase Its Authorized Revenues for Electric Service in 2003, and to Reflect that Increase in Rates; Investigation on the Commission's Own Motion Into the Rates, Operations, Practices, Service and Facilities of*

California American Water. Therefore, to avoid future disputes, the Commission should clarify that the January 2012 cut-off does not apply to such costs.

## II. CONCLUSION

The Proposed Decision accurately concludes that the Regional Desalination Project that the Commission approved in D.10-12-016 “has no reasonable prospect of achieving its goals” and that “there is simply too much uncertainty associated with the Regional Desalination Project to force Cal-Am to pursue that project further.”<sup>11</sup> Customers stand to benefit significantly from the Proposed Decision’s finding on this matter. With the minor modifications discussed above and set forth in Appendix A, California American Water supports the Proposed Decision as an effective and efficient step in transitioning from the now-defunct Regional Desalination Project to California American Water’s proposed Monterey Peninsula Water Supply Project.

July 2, 2012

Respectfully submitted,

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*Southern California Edison Company*, 2005 Cal. PUC LEXIS 126, \*8; *see e.g.* D.06-06-067, *Application of Southern California Edison Company (U 338-E) to Establish Marginal Costs, Allocate Revenues, and Design Rates*, 2006 Cal. PUC LEXIS 221, \*20; D.08-01-043, *In the matter of the Application of the Golden State Water Company (U133W) for an Order Authorizing it to Increase Rates for Water Service by \$ 2,812,100 or 32.61% in 2008; by -\$ 178,700 or -1.51% in 2009; and by \$ 109,900 or 0.92% in 2010 in its Arden Cordova Customer Service Area*, 2008 Cal. PUC LEXIS 37, \*100.

<sup>11</sup> Proposed Decision, p. 19

# Appendix A

### **Findings of Fact and Conclusions of Law**

California-American Water Company does not have any proposed changes to the Proposed Decision's *Findings of Facts* and *Conclusions of Law*.

### **Ordering Paragraph**

2. California-American Water Company shall file a new application to the extent that there are disputed costs related to the Reimbursement Agreement or the Line of Credit under the Water Purchase Agreement. However, the Division of Water and Audits should continue processing all currently unprocessed Advice Letters dealing with rate base offsets for California-American Water Company only facilities discussed in Decision 10-12-016. California-American Water Company should not claim any costs incurred for the California American Water-only facilities after January 17 ~~17~~ 18, 2012, the date California-American Water Company announced its withdrawal from the Regional Desalination Project, in connection with the authorization in Decision 10-12-016.