



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

06-15-10
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Application of California-American Water Company)
(U 210 W) for Authorization to increase its)
Revenues for Water Service in its Larkfield District)
by \$648,100 or 23.38% in the year 2010; and by)
\$140,200 or 4.07% in the year 2011; and to increase)
its Revenues for Water Service in its Los Angeles)
District by \$7,886,200 or 41.29% in the year 2010;)
and \$1,100,000 or 4.09% in the year 2011; and to)
increase its Revenues for Water Service in its)
Sacramento District by \$17,537,800 or 51.29% in)
the year 2010; and by \$5,339,800 or 10.25% in the)
year 2011.)
_____)

Application 09-01-013
(Filed January 23, 2009)

**NOTICE OF EX-PARTE COMMUNICATION
BY CALIFORNIA WATER ASSOCIATION**

California Water Association (CWA) submits this Notice in accordance with Rule 8.3 of the California Public Utilities Commission’s (CPUC or Commission) Rules of Practice and Procedure. While CWA is not a party to this proceeding, Applicant California American Water Company (California American Water) is a member of CWA, and this notice is filed in the interest of full disclosure and because its contents are relevant to all CPUC-regulated water companies.

CWA representatives John K. Hawks, Executive Director of CWA, and Thomas F. Smegal, Chair of CWA’s Regulatory Committee, met in person with Laura L. Krannawitter, Advisor to Commissioner Bohn and Amy C. Yip-Kikugawa, Legal Advisor to Commissioner Bohn. Joining by teleconference were CWA Regulatory Committee Members Jenny A. Darney-Lane, John Garon and David P. Stephenson, and CWA Regulatory Counsel Martin A. Mattes of Nossaman LLP. The meeting took place beginning at 10:00 a.m. in Moraga, CA, on Friday, June 11, 2010, and lasted for approximately one hour.

CWA representatives spoke of their concern over the regulatory treatment of the deduction for federal income tax (FIT) purposes of the California Corporation Franchise Tax (CCFT), the conflicting policy positions on this issue taken by the Division of Ratepayer Advocates (DRA) in pending general rate cases for both California American Water and Golden State Water Company (Golden State Water), and the adoption of the conflicting DRA positions in the Proposed Decisions (PDs) for Application 09-01-013 (issued on May 25, 2010 and now pending before the

Commission) and for Application 08-07-010 (issued on November 17, 2009, withdrawn on December 17, 2009, and now awaiting reissuance).

Specifically, CWA representatives explained that in Application 09-01-013, DRA proposed that California American Water's current year's CCFT, as opposed to the prior year's CCFT, be used as the deduction for arriving at the Test Years estimated FIT. In contrast, DRA advocated in Application 08-07-010 that Golden State Water should follow Commission practice and precedent and use the 2009 CCFT expense for computing Golden State Water's FIT for Test Year 2010. CWA further pointed out that DRA, in Application 08-07-010, actually advocated a variation of the methodology for estimating prior year CCFT, rather than the accepted Commission practice, established in D. 84-05-036, 15CPUC2nd 42, *Investigation into the Commission's Own Motion into the Method to be Utilized by the Commission to Establish the Proper Level of Income Tax Expense for Ratemaking Purposes of Public Utilities and Other Regulated Entities*, and in Decision 89-11-058, 33 CPUC2d 495, *Investigation Into Methods to Be Utilized by the Commission to Establish the Proper Level of Expense for Ratemaking Purposes for Public Utilities and Other Regulated Entities Due to the Changes Resulting From the 1986 Tax Reform Act*. Also, CWA pointed out that both Southern California Edison and DRA followed this "prior year" procedure in Edison's Test Year 2009 GRC (A.07-11-011), and that Pacific Gas and Electric Company (PG&E) and DRA are following this procedure in PG&E's current general rate case for Test Year 2011.

CWA noted that, in Application 08-07-010, DRA's variation of the prior year's estimate of CCFT for the Test Year FIT involved the use of escalation year filings to discern a different prior year CCFT estimate. CWA noted that this methodology had not been tested for accuracy in forecasting prior year CCFT, since it is based on adopted numbers from even older decisions.

CWA representatives distributed the relevant portion of DRA's Opening Briefs in Application 08-07-010 and Application 09-01-013, as well as D.89-11-058. All three documents are attached to this filing, as well.

CWA representatives further expressed concern over the language on pp. 40-41 of the PD in Application 09-01-013, where ALJ Rochester relied on DRA's contention that "changes made in September 2000 to the California Revenue & Taxation Code allow more timely and accurate calculations of the [CCFT] deduction," on which DRA based its recommendation that the CCFT deduction be based on the current year. CWA representatives distributed a 2003 Internal Revenue Service ruling (Rev. Rul. 2003-90, I.R.B. 2003-33, 353, 2003-2 C.B. 353, July 15, 2003), also

attached to this filing, which, CWA stated, interprets and clarifies the effect of the September 2000 California Revenue & Taxation Code changes on the deductibility of CCFT for FIT purposes. It states: “The IRS has ruled that, for tax years beginning on or after January 1, 2000, a taxpayer that uses an accrual method of accounting incurs a liability for California franchise tax for federal income tax purposes in the tax year following the tax year in which the California franchise tax is incurred under the Cal. Rev. & Tax. Code, as amended.”

Also, CWA representatives expressed concern that the PD in Application 09-01-013 relied in part (page 41) on a global settlement between San Jose Water Company (San Jose Water) and DRA, which included adoption of DRA’s California Corporate Franchise Tax calculation methodology. CWA representatives noted that, as a settlement, the San Jose Water decision did not have precedential value for future decisions.

Finally, California American Water expressed its desire it did not want this issue to disrupt the current timetable for the California American Water PD, nor have it postponed from its first appearance on the Commission’s Open Meeting Agenda. Rather, California American Water requested that the treatment of the CCFT, as stated in the PD and expected to be adopted in the Commission decision in Application 09-01-013, be affirmatively described as not precedential for future Class A water company decisions and that other water companies should continue using the accepted prior-year CCFT deduction practice from D.84-05-036 and D.89-11-058 until such time that they are proven to be no longer valid.

In accordance with Rule 1.10, CWA is serving this notice electronically on all parties to the proceeding today.

Respectfully submitted,

/s/ Mari R. Lane

MARI R. LANE

Nossaman LLP
50 California Street, 34th Floor
San Francisco, CA 94111
Tel: (415) 398-3600
Fax: (415) 398-2438
e-mail: mlane@nossaman.com

Attorneys for CALIFORNIA WATER ASSOCIATION

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CALIFORNIA PUBLIC UTILITIES COMMISSION

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**PROCEEDING: A0901013 - CALIFORNIA-AMERICAN
FILER: CALIFORNIA-AMERICAN WATER COMPANY
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Parties

B. TILDEN KIM
RICHARDS WATSON & GERSHON
355 S. GRAND AVENUE, 40TH FLOOR
LOS ANGELES, CA 90071
FOR: CITY OF SAN MARINO

WILLIAM M. MARTICORENA
RUTAN & TUCKER, LLP
611 ANTON BLVD., 14TH FLOOR
COSTA MESA, CA 92626-1931
FOR: CITY OF DUARTE

SELINA SHEK
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DIVISION OF RATEPAYER ADVOCATES

DAVID P. STEPHENSON
CALIFORNIA-AMERICAN WATER COMPANY
4701 BELOIT DRIVE
SACRAMENTO, CA 95838
FOR: CALIFORNIA-AMERICAN WATER COMPANY

CARY S. REISMAN
CITY OF BRADBURY
2800 28TH STREET, SUITE 315
SANTA MONICA, CA 90405
FOR: CITY OF BRADBURY

PAUL ANGELOPULO
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

JAMES M. BOULER
MARK WEST AREA COMMUNITY SERVS COMM
133 ETON COURT
SANTA ROSA, CA 95403
FOR: MARK WEST AREA COMMUNITY

Information Only

ALBERT LEE
39 EAST COLORADO BLVD.
ARCADIA, CA 91006

KENT TURNER
PRESIDENT
CALIFORNIA AMERICAN WATER COMPANY
303 H STREET, SUITE 250
CHULA VISTA, CA 91910

ROBERT G. MACLEAN
PRESIDENT
CALIFORNIA AMERICAN WATER COMPANY
1033 B AVENUE, SUITE 200
CORONADO, CA 92118

ROB JOYNER
433 E. ALTERN STREET
MONROVIA, CA 91016

CARRIE GLEESON
CALIFORNIA AMERICAN WATER
1033 B AVENUE, SUITE 200
CORONADO, CA 92118

DEBORAH SHEFLER
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105

LORI ANNE DOLQUEIST, ESQ
ATTORNEY AT LAW
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER, 30TH FL.
SAN FRANCISCO, CA 94111

SARAH E. LEEPER, ESQ.
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER, 30TH FLOOR
SAN FRANCISCO, CA 94111

TRAVIS RITCHIE
MANATT, PHELPS & PHILLIPS, LLC
1 EMBARCADERO CENTER, 30TH FLOOR
SAN FRANCISCO, CA 94111

DAN M. CASWELL
5076 KNOLLWOOD COURT
SANTA ROSA, CA 95403

DIANE BENNION
5239 VISTA GRANDE DRIVE
SANTA ROSA, CA 95403

GAIL ALFORD
5420 CORBETT CIRCLE
SANTA ROSA, CA 95403

HARRY DELOPE
5209 OLD REDWOOD HIGHWAY
SANTA ROSA, CA 95403

CHUCK MCPHERSON
LEAP SOLUTIONS GROUP, LLC
1275 4TH STREET, NO. 130
SANTA ROSA, CA 95404

WALT SHANNON
8356 AUBERRY DRIVE
SACRAMENTO, CA 95828

State Service

FRED CURRY
DIV OF WATER AND AUDITS
WATER AND SEWER ADVISORY BRANCH
ROOM 3106
SF, CA 00000

DARRYL J. GRUEN
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JOYCE STEINGASS
CALIF PUBLIC UTILITIES COMMISSION
WATER BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LINDA ROCHESTER
CALIF PUBLIC UTILITIES COMMISSION
DIV OF ADMINISTRATIVE LAW JUDGES
ROOM 5024
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

NIHAR SHAH
CALIF PUBLIC UTILITIES COMMISSION
WATER BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

STEVEN KOTZ
CALIF PUBLIC UTILITIES COMMISSION
DIV OF ADMINISTRATIVE LAW JUDGES
AREA
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214