

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



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Application of California-American Water
Company (U210W) for an Order Authorizing
Recovery of Costs for the Lease of the Sand
City Desalination Facility and Associated
Operating and Maintenance Costs.

Application 10-04-019
(Filed April 12, 2010)

**CALIFORNIA-AMERICAN WATER COMPANY RESPONSE TO DIVISION OF
RATEPAYER ADVOCATES MOTION TO STRIKE PORTIONS OF THE
TESTIMONY OF CALIFORNIA-AMERICAN WATER COMPANY AND THE CITY
OF SAND CITY**

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Dated: April 27, 2012

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

Application of California-American Water Company (U210W) for an Order Authorizing Recovery of Costs for the Lease of the Sand City Desalination Facility and Associated Operating and Maintenance Costs.

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I. INTRODUCTION

Pursuant to Rule 11.1 (e) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), California-American Water Company (“California American Water”) responds to the *Motion of the Division of Ratepayer Advocates to Strike Portions of the Testimony of California-American Water Company and the City of Sand City* (“Motion to Strike”). As set forth in this response, the Commission should not strike any of California American Water’s and the City of Sand City’s (“the City”) rebuttal testimony as it would violate the parties’ due process rights. However, if any of the rebuttal testimony is stricken, the Division of Ratepayer Advocates’ (“DRA”) March 16, 2012 *Prepared Testimony of Mehboob Aslam* (“March 16th Prepared Testimony”) should also be stricken.

II. DUE PROCESS REQUIRES THAT THE COMMISSION DENY DRA'S MOTION TO STRIKE.

Depriving California American Water and the City the opportunity to respond to the allegations in the March 16th Prepared Testimony would be a violation of the parties' due process rights.¹ As described in the rebuttal testimony of Mr. Jeffrey M. Dana and Mr. Eric J. Sabolsice, the March 16th Prepared Testimony is inaccurate and contested. Striking California American Water's and the City's rebuttal testimony would be unfair and contrary to Commission practice as parties should be given the opportunity to respond to assertions made by opposing parties.² In proceedings before the Commission, utilities bear the burden of proof to show that their requested rates are "just and reasonable and the related ratemaking mechanisms are fair."³ In particular, due process requires that the party with the burden of proof, in this case the utility applicant, has the opportunity to respond to the contentions of DRA.

In this case, the rebuttal testimony of California American Water and the City show that the March 16th Prepared Testimony has limited value and fails to address the appropriate price of water purchased from the Sand City Desalination Plant. Indeed, DRA's March 16th Prepared Testimony ignores the fact that the Amended Scoping Memo re-opened the record for the limited purpose of addressing the appropriate price of purchased water. If the DRA March 16th Prepared Testimony is admitted into the record, California American Water and the City must be afforded the opportunity to respond to assertions made in DRA's March 16th Prepared Testimony.

¹ Cal. Const. art. I, § 7(a) (According to the California State Constitution, a person "may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.").

² *Administrative Law Judge's Ruling Deny Motion of DRA to Strike Rebuttal Testimony, Order Instituting Rulemaking to Revise Commission General Order No. 95 Pursuant to D.05-01-030*, filed Feb. 15, 2006 (The ALJ denied DRA's motion to strike reasoning that the rebuttal testimony was responding to assertions made by DRA's witness.).

³ See D.11-03-039, p. 1; D.10-05-008, p. 1; D.07-03-013, p. 2.

**III. DRA’S REQUEST TO STRIKE CALIFORNIA AMERICAN WATER’S
REBUTTAL TESTIMONY RUNS CONTRARY TO THE COMMISSION’S
POLICY**

The Commission should not strike any of California American Water’s rebuttal testimony referencing the March 16th Prepared Testimony as it provides the Commission with a fully developed record. If the Commission grants the Motion to Strike and admits into the record DRA’s March 16th Prepared Testimony, the Commission will have an incomplete and inaccurate record, particularly since DRA’s testimony includes allegations which even DRA admits are no longer relevant.⁴ California American Water and the City both demonstrate in their rebuttal testimony that DRA’s March 16th Prepared Testimony is irrelevant and should be given no evidentiary weight, especially for the limited purpose for which the proceeding has been re-opened.

Except in exceptional circumstances, the Commission’s practice is to admit testimony into the record and allow the presiding officer to determine the amount of weight that it should be afforded.⁵ Decision (“D.”) 07-10-034 affirms an administrative law judge’s (“ALJ”) rejection of DRA’s motion strike because allowing the rebuttal testimony into the record did not prejudice DRA greatly and that “the preferable course was to follow the Commission’s usual practice of admitting the testimony . . .”⁶

Allowing the portions of California American Water’s rebuttal testimony to remain in the record does not prejudice DRA. Moreover, DRA does not even argue that admitting the rebuttal

⁴ Email from Ms. Allison Brown, Counsel to DRA, to A.10-04-019 Email Service List (March 30, 2012, 15:49 PDT) (In the email Ms. Brown states that, “the March 2 direct testimony of Richard Rauschmeier represents DRA’s current position. The March 16 testimony was filed in compliance with the Commissioner’s Scoping Ruling allowing DRA to complete the record.”).

⁵ D.07-10-034, pp. 57-58.

⁶ Id. at 58.

testimony prejudices it. Rather, DRA appears to interpret the ruling to allow it to make new factual assertions that cannot be challenged.⁷ However, other language in the Amended Scoping Memo appears to give the parties the opportunity to submit rebuttal testimony that responds to all items filed and served by March 16, 2012.⁸ Thus, it is unclear that DRA's interpretation of the Amended Scoping Memo is correct and that the Amended Scoping Memo somehow prohibits the parties from responding to assertions made in DRA's March 16, 2012 filing.

California American Water's and the City's rebuttal testimony merely respond to assertions made by DRA. If the Commission includes DRA's superseded and outdated testimony in the record, it should include in the record California American Water's and the City's rebuttal testimony for the Commission to make a fully informed decision. Granting DRA's Motion to Strike is unnecessary and could harm the Commission's ability to make a fully informed decision.

Again, if the Commission grants the Motion to Strike, it should strike the March 16th Prepared Testimony in its entirety. The March 16th Prepared Testimony should be stricken as it is irrelevant and unnecessary to make a determination on the appropriate price of purchased water through the Sand City Desalination Plant lease.

IV. CONCLUSION

The Commission should deny DRA's Motion to Strike as it is contrary to Commission practices and violates California American Water's and the City's due process by depriving them of the opportunity to respond to DRA's inaccurate statements. If the Commission prefers to have

⁷ Motion to Strike, p. 1 (DRA argues that portions of both California American Water's and the City's rebuttal testimony should be stricken from the record because they are "outside the scope of the rebuttal authorized in Ruling Paragraph 4" of the February, 3, 2012 *Amended Scoping Memo Setting Aside Submission and Reopening Record for Evidentiary Presentations* ("Amended Scoping Memo")).

⁸ Amended Scoping Memo, p. 2 ("Each party's presentation must be filed and served no later than March 16, 2012. Responses may be filed and served no later than March 30, 2012.").

a full and extensive record, the Motion to Strike should be rejected. Alternatively, if any of the rebuttal testimony is stricken, DRA's March 16th Prepared Testimony should be stricken.

April 27, 2012

Respectfully submitted,

By: /s/ Sarah E. Leeper

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Attorney for Applicant

California-American Water Company