



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
California-American Water Company
(U210W) for an Order Authorizing the
Collection and Remittance of the Monterey
Peninsula Water Management District User
Fee.

Application 10-01-012
(Filed January 5, 2010)

SCOPING MEMO AND RULING OF THE ASSIGNED COMMISSIONER

Pursuant to Rule 7.3(a) of the Commission's Rules of Practice and Procedure, this ruling sets forth the procedural schedule, confirms categorization as ratesetting, assigns a presiding officer, and addresses the scope of the proceeding.

1. Background

On August 22, 2011, California-American Water Company (Cal-Am) filed and served its amended application seeking Commission authorization to:

1. Collect a surcharge on Cal-Am's Monterey district customers to fund the Carmel River Mitigation Program performed by the District;
2. Collect a surcharge on Cal-Am's Monterey district customers to fund the District's Phase 1 Aquifer Storage and Recovery Facilities; and
3. Establish a memorandum account to track Cal-Am's Phase 2 Aquifer Storage and Recovery Facilities.

Cal-Am requested that the amended application be categorized as ratesetting, with evidentiary hearings required.

The Division of Ratepayer Advocates (DRA) protested the amended application, preliminarily identifying issues with the District's proposed budgets and Cal-Am's proposed ratemaking. DRA did not rule out the possibility that evidentiary hearings would be necessary.

The District also protested the amended application. In its protest, the District agreed that it would implement the Carmel River Mitigation Program as proposed by Cal-Am, if approved by the Commission. The District, however, challenged the Commission's jurisdiction to review the costs and scope of the Mitigation Program, and contended that the District's own statutory authority gave the District the right to require Cal-Am to collect a user fee from Monterey District customers and remit the collections to the District. The District incorporated by reference the jurisdictional and legal arguments it had set forth in its rehearing application for Decision (D.) 11-03-035, which focus on the District's statutory authority to impose the user fee.

On October 14, 2011, the District filed its Petition for Modification of D.11-03-035. The petition contended that the settlement agreement rejected by the Commission in D.11-03-035 should instead be approved. The petition stated that the District has statutory authority to lawfully impose a user fee, and that the Commission should modify D.11-03-035 to allow Cal-Am to resume collecting the fee for the District.¹

In the petition, District also revealed that on May 26, 2011, it had adopted a resolution ordering Cal-Am to collect and remit the user fee. In response, Cal-Am filed on July 21, 2011, a Petition for Writ of Mandate and Complaint for

¹ Petition to Modify at 25.

Declaratory and Injunctive Relief against the District, captioned *California-American Water Company v. Monterey Peninsula Water Management District*, Monterey County Superior Court Case No. M113336.

The petition also included a copy of the Interim Implementation Agreement for 2011-2012 Carmel River Mitigation Program between Cal-Am and the District which provided for Cal-Am to fund the mitigation program for 2012. Cal-Am is recording these costs in a memorandum account, for recovery from its ratepayers.

On February 8, 2012, the assigned Administrative Law Judge (ALJ) convened a prehearing conference and the parties gave status updates on the pending litigation, the Carmel River Mitigation Program, and the Aquifer Storage and Recovery Project. Cal-Am and the District reported that a case management conference before the Monterey Superior Court was scheduled for March in the user fee lawsuit referenced above. Cal-Am and the District also reported that they had entered into an interim agreement to fund the portions of the District's Carmel River Mitigation Program that are Cal-Am's contingent responsibility, with annual costs for Cal-Am of \$1.6 million. Cal-Am also reported that Phase 2 of the Aquifer Storage and Recovery Project, which consists of constructing a second well at the Seaside Middle School site, which is well number 4 for the overall project, was scheduled for completion in 2013. In response to questioning from the assigned ALJ, Cal-Am indicated that moving up the projected in-service date to 2012 was likely feasible but would incur additional costs.

At the prehearing conference, the parties agreed that due to the urgent need for additional water supply in Cal-Am's Monterey district, Cal-Am should investigate the potential for moving up the projected in-service date for Phase 2

and file and serve a statement showing the forecasted cost for the accelerated construction. Cal-Am agreed to meet and confer with DRA regarding the revised costs. Also in that statement, Cal-Am agreed to provide an accounting and proposed recovery mechanism for the interim mitigation program costs. The parties agreed that any further procedural steps would also be requested in that filing.

On February 24, 2012, Cal-Am filed and served its revised costs for an expedited Phase 2, showing a 20% increase in labor costs, which brought the total estimated costs to \$4.7 million from \$4.2 million. This amount also includes a 20% project contingency, as well as 12% overheads for the project. Cal-Am will be contracting with the District to construct the well. Cal-Am proposed that the costs be recorded in a memorandum account as incurred, and when the project is completed, moved to base rates with a Tier 2 advice letter up to the cap of \$4.7 million.²

DRA reviewed the projected costs and supported the proposed ratemaking for Phase 2.

Cal-Am's filing did not include DRA's position on the mitigation program costs or the proposed surcharge. No party requested further procedural steps, so the issues of the Aquifer Storage Phase 2 and the mitigation program funding required from Cal-Am were submitted for resolution by the Commission. Cal-Am also reported that on February 23, 2012, the District's Board of Directors

² Cal-Am would be required to obtain Commission authorization for any costs above the cap either with a Tier 3 advice letter or in a general rate case.

authorized a rate study that is a precursor to placing a new tax on parcels within the District to generate additional revenue for the District.

The presiding officer has mailed a proposed decision authorizing Cal-Am to create the Aquifer Storage and Recovery Project Phase 2 memorandum account in which to record the reasonable costs for adding Well 4 to the Project on an expedited basis and, when completed, to move the costs so recorded to rate base with a Tier 2 advice letter. The proposed decision also authorizes Cal-Am to enter into an agreement with the District to fund Carmel River mitigation measures required by the State Water Resources Control Board Order 95-10, where Cal-Am is responsible for the measures, should the District cease to perform them. A surcharge is authorized to recover these costs on an on-going basis.

2. Scope and Schedule of this Proceeding

As set forth above, the issues related to Phase 2 of the Aquifer Storage and Recovery project, along with Cal-Am's funding for certain components of the District's Carmel River Mitigation Program have been submitted for Commission consideration and are the subject of a proposed decision. The issues regarding the District's user fee are pending in Monterey Superior Court. Accordingly, all outstanding issues in this proceeding are apparently being addressed here or in Superior Court.

I conclude, therefore, that no further proceedings are necessary and that this proceeding should be closed.

Parties may file and serve comments on my conclusion no later than April 30, 2012, and reply comments no later than May 4, 2012. Pursuant to Pub. Util. Code § 1701.5, this proceeding should be resolved within 18 months of this Scoping Memo.

3. Category of Proceeding and Need for Hearing

This ruling confirms that this proceeding remains categorized as ratesetting, but hearings with cross-examination may not be required.

4. Assignment of the Presiding Officer

If further proceedings are required, ALJ Maribeth A. Bushey will be the presiding officer.

5. Ex Parte Rules

Article 8 of the Commission's Rules of Practice and Procedure applies to all communications with decisionmakers and advisors regarding the issues in this proceeding. This proceeding is categorized as ratesetting and Rules 8.2 and 8.3 restrict *ex parte* communications under certain circumstances and require reporting.

IT IS RULED that:

1. All issues within the scope of this proceeding either have been submitted for resolution by the Commission or are pending before the Monterey County Superior Court. Consequently, this proceeding should be closed with the issuance of the Commission's final decision on the issues submitted.

2. Parties may file and serve comments no later than April 30, 2012, and reply comments no later than May 4, 2012, on the conclusion in Ruling Paragraph 1 above.

3. The presiding officer will be Administrative Law Judge Maribeth A. Bushey, if further proceedings are needed.

4. This ruling confirms that this proceeding is ratesetting and hearings may not be necessary.

5. Ex parte communications are restricted by Rule 8.2 and 8.3 of the Commission's Rules of Practice and Procedure.

Dated April 16, 2012, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner