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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California Water Service Company (U60W) for Authority to Establish its Authorized Cost of Capital for the period from January 1, 2012 through December 31, 2014.

Application 11-05-001
(Filed May 2, 2011)

And Related Matters.

Application 11-05-002
Application 11-05-003
Application 11-05-004

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
RULING AND SCOPING MEMO**

1. Summary

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure, this ruling and scoping memo determines the procedural schedule (with a proposed submission date), the category of the proceeding, the issues to be addressed, the designated presiding officer, and the need for hearing.

2. Background

On May 2, 2011, these four Class A water companies filed applications for authority to establish their costs of capital for the 2012-2014 period. The simultaneous filing follows the procedure set in D.09-05-019, fixing a uniform cost of equity and individual costs of capital for Class A water companies. The proceeding was initially assigned to Administrative Law Judge (ALJ) Douglas Long. On May 10, 2011, California Water Service Company (Cal Water) filed a Motion for Reassignment. On May 20, 2011, that motion was granted and

ALJ Long was replaced by ALJ Melissa Semcer who scheduled evidentiary hearings to begin in September 2011 and created a related procedural timetable. On May 31, 2011 the Commission's Division of Ratepayer Advocates (DRA) filed a Motion for Reassignment of Peremptory Challenge to ALJ Semcer. On June 8, 2011, the motion was granted and the proceeding was re-assigned to ALJ Karl Bemesderfer.

On June 14, 2011 ALJ Bemesderfer held a prehearing conference at which the parties agreed, subject to the availability of a key DRA witness, on a procedural schedule that envisioned evidentiary hearings beginning October 10, 2011. DRA subsequently informed ALJ Bemesderfer and the other parties that its witness was not available at that time, but could testify the following week. All parties then agreed on a start date for evidentiary hearings of October 17, 2011.

The individual applications may be summed up as follows:

California Water Service Company's application requests that the Commission authorize: 1) a rate of return on rate base of 8.86% for the period from January 1, 2012 through December 31, 2014; 2) a return on common equity of 11.25%; 3) a capital structure of 46.1% long-term debt and 53.9% common stock; 4) continuance of the Water Cost of Capital Mechanism (WCCM) the Commission authorized in Decision 09-07-051; and 5) discontinuance of the Temporary Interest Rate Balancing Account (TIRBA).

San Jose Water Company's (San Jose) application requests that the Commission authorize: 1) adjusting its cost of capital to reflect San Jose's current forecast of its costs of common equity and long-term debt and its forecasted capital structure for the period January 1, 2012 through December 31, 2014; 2) adjusting its rates in accordance with the adopted cost of capital promptly

upon such adoption but in coordination with other rate adjustments required to be implemented at approximately the same time; and 3) continuance of the WCCM.

California-American Water Company's (Cal-Am) application requests confirmation that this application is dependent upon the Commission's decisions regarding two Special Requests made in its current general rate case (Application 10-07-007) related to the recovery of reasonable carrying costs associated with charges the Commission has already authorized, but Cal-Am has not yet been able to recover. Cal-Am requests the Commission to authorize: 1) a capital structure of 50.31% debt and 49.69% common equity if the Commission grants the Special Requests; 2) a capital structure of 37.84% debt and 62.16% common equity if the Commission *does not* grant the Special Requests; 3) a return on common equity of 11.5%; 4) an overall rate of return of 9.08% if the Commission grants the Special Requests; 5) an overall rate of return of 9.68% if the Commission *does not* grant the Special Requests; 6) discontinuance of TIRBA; and 7) continuance of the WCCM.

Golden State Water Company's (Golden State) application requests that the Commission authorize: 1) a rate of return on rate base of 9.49% for the 2012 test year, 9.52% for 2013 test year, and 9.55% for 2014 attrition year; 2) a capital structure of 44.4% long-term debt and 55.6% common equity; 3) a return on common equity of 11.5%; 4) a revenue increase for 2012 of \$6.2 million; and 5) continuance of the WCCM.

3. Categorization, Need for Hearings, *Ex Parte* Communications Rules, and Designation of Presiding Officer

In Resolution ALJ 176-3273, issued May 5, 2011, this proceeding was preliminarily categorized as ratesetting with evidentiary hearings required. We affirm the categorization and need for hearing.

Assigned Commissioner Mark Ferron designates ALJ Karl J. Bemederfer as the presiding officer in this proceeding. The Commission's *ex parte* communications rules applicable to this proceeding are set forth in Rules 8.1-8.5. These *ex parte* communication and reporting rules apply to all parties of record and, more broadly, to all persons with an interest in any substantive matter; the broad category of individuals subject to our *ex parte* communications rules is defined in Public Utilities Code Section 1701.1(c)(4) and Rule 8.1(d).

4. Scope of the Proceeding

In addition to the specific issues summarized above, this proceeding will also consider the effect of a Water Rate Adjustment Mechanism (WRAM) and the Modified Cost Balancing Account (MCBA) on the operations of the applicants. The Commission adopted these mechanisms as part of conservation rate design pilot programs for the applicants, and specifically stated that the goals of the WRAM/MCBA mechanisms are to:

1. Sever the relationship between sales and revenue in order to remove any disincentive to implement conservation rates and conservation programs;
2. Ensure cost savings are passed on to ratepayers; and
3. Reduce overall water consumption.

In each decision adopting the WRAM/MCBA mechanisms, the Commission stated these mechanisms would be closely monitored and reviewed in each applicant's general rate case and the risk consequences of the

mechanisms for Cal Water, San Jose, Cal Am, and Golden State should be evaluated in these consolidated cost of capital proceedings.

We will also address the cost of capital for these companies for the interim years between proceedings, which are currently on a three-year cycle.

5. Standard of Review

Applicants bear the burden of proof to show that the rates of return they request are just and reasonable and the related ratemaking mechanisms are fair. In order for the Commission to determine whether a settlement (should a settlement be proposed in this proceeding for any of the applicants) is in the public interest, the Commission must be convinced that settlement reflects a reasonable and thorough understanding of the applicable application, and that all of the underlying assumptions, analyses, and data are included in the record. This level of understanding and development of an adequate record are necessary to meet our requirements for approving any settlement.¹

6. Procedural Schedule

For this proceeding, we ask the intervening parties to coordinate and cooperate to avoid duplication of analysis and testimony. Our goals are to (1) significantly increase efficiency, and (2) effectively use the limited resources of all parties. We strongly urge the parties to jointly plan their analysis, avoid repetitive analysis, conduct joint analysis where feasible, and consider joint

¹ Rule 12.1(d): The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

presentations of witnesses and unified cross-examination of applicants. We base this proposal on the “lead counsel” concept in civil litigation.²

We set the following procedural schedule for this proceeding:

DRA testimony served..... August 31, 2011
Applicants’ rebuttal served..... September 18, 2011
Evidentiary Hearings.....October 17-19, 2011
Opening briefs filed November 2, 2011
Reply briefs filed..... November 9, 2011
Proposed decision issued December 16, 2011
Final Commission decision..... January 26, 2012

It is anticipated that this proceeding will conclude as set forth above. However, the assigned ALJ may modify this schedule as required to promote the efficient and fair resolution of the matter. In any event, this proceeding should be completed within 18 months of this scoping memo, as required by Public Utilities Code Section 1701.5.

The cost of capital witnesses for the four applicants will be cross-examined as a panel. Our intention is to have a simultaneous and focused examination of the four proposals, with the varied usage and results of financial models, as proposed by applicants, to determine recommendations for the return on equity, determinations of all measures of financial risk, and the appropriate capital structure. Intervenor witnesses, if more than one, will be examined as a separate second panel. Applicants must therefore take the necessary steps to ensure concurrent witness availability to comply with the adopted schedule. Applicants’ additional witnesses, those that do not sponsor model-based

² See Herr, *Annotated Manual for Complex Litigation*, Third 2003 at 36-153.

testimony, may be examined individually or in a second applicants' panel as determined by the ALJ before hearings begin.

7. Summary of Recommendations

Each intervenor serving testimony in this proceeding shall include a table summarizing its proposed recommendations with citations to its exhibits and work papers. The recommendations shall be listed in declining order of monetary impact. The table shall show in separate columns:

- (a) Sequential number of recommendation;
- (b) Short caption of recommendation;
- (c) Monetary impact, *e.g.*, total value of an adjustment or cost reallocation;
- (d) Exhibit page citation for the primary discussion of the recommendation; and
- (e) Exhibit page citation for the primary presentation of the monetary impact.

8. Briefs

To the fullest extent reasonably possible, parties shall use the same outline for briefs. This practice promotes understandability, consistency, and completeness. Parties should agree on a common outline for briefs before the conclusion of hearings, and shall bring any unresolved disputes to the attention of the Presiding Officer before the end of hearings. Parties shall update the summary of recommendations at the conclusion of hearings and include it as an attachment to the opening brief. This update should reflect: a summary of the party's position on each issue, further references as appropriate (*e.g.*, to exhibits, transcript pages) and any other information the party determines to be necessary and useful to present its position.

9. Final Oral Argument

A party in a ratesetting proceeding has the right to make a final oral argument before the Commission if the final oral argument is requested within the time and manner specified in the Scoping Memo or later ruling.³ Any party seeking to present a final oral argument shall file and serve a separate motion concurrent with its reply brief. The motion shall state the request, subject to be addressed, amount of time requested, recommended procedure and order of presentation, and anything else relevant to the motion. If more than one party is requesting a final oral argument, parties shall use their best efforts to present a joint motion, including a joint recommendation on procedure, order of presentation, and anything else relevant to the motion. A response to the motion may be filed within five days of the motion.

If a final determination is made that no hearing is required, Rule 13.13(b) shall cease to apply, along with the right to make a final oral argument.

10. Filing and Service of Documents, Party Status and Service List

The official service list for this proceeding is attached to this ruling and updates are maintained by the Commission's Process Office and accessible on our website at www.cpuc.ca.gov. Parties must file and serve all pleadings as set forth in Article 1 of the Commission's Rules of Practice and Procedure. Testimony must be served but not filed. Parties are encouraged to file electronically, pursuant to Rule 1.13, whenever possible as it speeds processing of the filings and allows them to be posted on the Commission's website. We will follow the electronic service protocols adopted by Rule 1.10 for all

³ Rule 13.13(b).

documents, whether formally filed or just served. This Rule allows for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, we require concurrent e-mail service to ALL persons on the service list, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request. The assigned Commissioner and ALJ should always be served a paper copy.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: A.11-05-001 *et al.* In addition, the party sending the e-mail should briefly describe the attached communication, for example, "Brief." Prior to serving any document, each party must ensure that it is using the up-to-date service list for A.11-05-001 *et al.* The list on the Commission's website meets that definition.

11. Discovery

We urge parties to work cooperatively to resolve any discovery issues. We expect parties to respond to data requests and other information requests in a timely fashion. Discovery disputes that cannot be cooperatively resolved should be brought to the presiding officer via a motion to compel discovery or similar pleading.

IT IS RULED that:

1. This proceeding is categorized as ratesetting and that category determination is appealable under the procedures set forth in Rule 7.6. *Ex parte* communications are permitted with restrictions, as set forth in Rules 8.2, 8.4, and 8.5, and are subject to the reporting requirements of Rule 8.3.

2. Evidentiary hearings are required.

3. Administrative Law Judge Karl J. Bemesderfer is the presiding officer.
4. The scope of this proceeding is to:
 - (a) determine a uniform cost of equity and individual costs of capital for California Water Service Company, San Jose Water Company, California-American Water Company, and Golden State Water Company for the period January 1, 2012 through December 1, 2014;
 - (b) consider the risk consequences of a Water Rate Adjustment Mechanism and the Modified Cost Balancing Account on the operations of each of the applicants; and
 - (c) address the costs of capital for these companies for the interim years between proceedings.
5. The hearing schedule and procedural process are as set forth in Section 6 of this ruling.

Dated September 13, 2011, at San Francisco, California.

/s/ MARK J. FERRON
Mark J. Ferron
Assigned Commissioner

/s/ KARL J. BEMESDERFER
Karl J. Bemesderfer
Administrative Law Judge