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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W), California Water Service Company (U60W), Golden State Water Company (U133W), Park Water Company (U314W) and Apple Valley Ranchos Water Company (U346W) to Modify D.08-02-036, D.08-06-002, D.08-08-030, D.08-09-026, D.08-11-023, D.09-05-005, D.09-07-021, and D.10-06-038 regarding the Amortization of WRAM-related Accounts

A.10-09-017
(Filed September 20, 2010)

**MOTION OF CALIFORNIA-AMERICAN WATER COMPANY (U210W)
FOR THE PREPARATION OF A FINAL SCOPING MEMORANDUM**

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I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, California-American Water Company (U210W) (“California American Water”) respectfully submits this motion to require the preparation of a scoping memorandum (“scoping memo”) in the above-captioned proceeding. A scoping memo is necessary to enable California American Water to understand the precise scope of the issues that the Commission will address in this proceeding as distinct from related issues that the Commission is addressing in other active proceedings. It is necessary for the assigned Commissioner to define the scope of this proceeding in order to avoid conflicting or potentially inconsistent decisions in multiple proceedings.¹ Furthermore, the lack of a scoping memo in this

¹ For example, Application (A.) 10-07-007, California American Water’s state-wide general rate case (GRC) with rates effective January 1, 2012, is proposing modifications to the amortization period for the recovery of the Water Revenue Adjustment Mechanism (“WRAM”) balance. California American Water filed its request in its state-wide general rate case before it filed the expedited relief requested in this proceeding by the five utility applicants. However, the current

proceeding could hinder California American Water's ability to participate effectively in this and other proceedings.

California American Water also requests that the scoping memo refocus this proceeding on the nine specific and discrete issues raised in Application 10-09-017, which are narrower than those contained in the state-wide GRC proceeding. As discussed in more detail below, the scope of this proceeding appears to be ever expanding, ignoring the Applicants' request for expedited treatment as well as DRA's acquiescence in the limited issues it was to cover. The constantly expanding parameters unfairly harm both customers and the Applicants in this proceeding as well as the state-wide GRC. As described in various pleadings submitted throughout this proceeding, the longer the resolution of the issues in this proceeding is delayed, the greater the impact the under-collection of the WRAMs will have on customers, especially those customers in the Monterey County District. Furthermore, California American Water and its customers may be denied their due process rights to the extent the scope of the proceeding is not clearly defined and identified in this proceeding.

II. PROCEDURAL BACKGROUND

A. Application and Response

On September 20, 2010, California American Water, together with California Water Service Company (U60W), Golden State Water Company (U133W), Park Water Company (U314W) and Apple Valley Ranchos Water Company (U346W) (together, "Applicants"), filed this expedited application in an effort to modify informal processes for amortizing the Water Revenue Adjustment Mechanisms ("WRAMs") and the Modified Cost

schedule in the state-wide GRC proceeding provides for a decision by December 2011, so the WRAM-related issues can be resolved more quickly in that proceeding. Moreover, delaying a decision in this proceeding past 2011 would render moot any attempt to address the issues in the original Application.

Balancing Accounts (“MCBAs”). In particular, the Application addresses a financial accounting standard (EITF Issue No. 92-7) that only allows a regulated utility to “recognize” revenues in a fiscal year (e.g. 2009) if the regulatory process enables the utility to actually recover those revenues within 24 months of the end of that fiscal year (e.g. December 31, 2011). In light of this standard, the Applicants requested that the Commission resolve nine specific and discrete issues: (1) the amortization period, (2) the deadline for submitting the WRAM/MCBA report, (3) the deadline for requesting amortization, (4) the process for requesting amortization, (5) the “trigger” for requesting WRAM amortization, (6) the application of the surcharge or sucredit, (7) accounting for amortized amounts, (8), handling under-amortized or over-amortized amounts, and (9) additional amortization for outstanding WRAM revenues.

The Division of Ratepayer Advocates (“DRA”) filed its response to the Application on October 27, 2010. In its Response, DRA stated that it “generally does not oppose the proposals” set forth in the Application.² DRA also agreed with the Applicants that evidentiary hearings would not be necessary since it was unlikely that there would be material issues of fact in dispute.³

B. First Prehearing Conference

The initial prehearing conference was held on December 3, 2010. In advance of the conference, the assigned Administrative Law Judge (ALJ) directed each of the Applicants to serve information regarding their current quantity rate charge, the 2009 WRAM/MCBA balance, the estimated 2010 WRAM/MCBA balance, (3) estimated 2011 surcharges, and (4) Financial Accounting Standards Board’s Exposure Draft on proposed updates to Revenue Recognition

² *DRA Response*, p. 2.

³ *Application* at p. 29, *DRA Response* at p. 6.

(Topic 605).⁴ At the prehearing conference, DRA and the Applicants discussed their concerns with delaying the recovery of the WRAM/MCBA balances. The ALJ also identified several areas where she believed more information was necessary.

C. Second Prehearing Conference

A second prehearing conference was held on January 24, 2011. The Applicants filed prehearing conference statements on January 12, 2011, addressing seven questions raised by the ALJ at the December prehearing conference. DRA filed its response to the statements on January 18, 2011. Although DRA appeared to back away from its initial agreement on certain issues, DRA was amenable to allowing the utility applicants to move forward with a surcharge to address projected certain shortfalls in revenue collection.⁵ At the January 24, 2011 prehearing conference, in response to a query from DRA, the ALJ addressed the issue of the scope of this proceeding:

Well, again we don't have a scoping memo. I would think all we're doing here is addressing what the request is, to accelerate the amortization.⁶

and

But if you want to change the amortization and accelerate the recoveries, that's all I'm looking at.⁷

The ALJ also indicated that she believed that changes or adjustments to the WRAM were outside

⁴ *Administrative Law Judge's Ruling Setting Prehearing Conference and Requesting Additional Information*, November 22, 2010.

⁵ In fact, in that response, DRA stated that "Because any delay in recovery will result in higher surcharges to ratepayers, DRA does not oppose an Interim Order via ALJ Ruling or Commission Decision allowing the applicants to implement a surcharge via advice letter to recover projected 2008 and 2009 shortfalls after the first-in-first-out treatment by the end of 2011." (*DRA Response to PHC Statements*, p. 3). DRA went on to offer that it would work with the utility applicants to develop a settlement for Commission consideration if the Commission preferred an interim decision.

⁶ Reporter's Transcript ("RT") 85:12-15 (Walwyn).

⁷ RT 86:3-5 (Walwyn).

the scope of this proceeding.⁸ Indeed, California American Water at this point believes that the requested changes to the amortization period for the WRAM are more germane for California American Water's state-wide GRC.

D. Third Prehearing Conference

A third prehearing conference was held on February 17, 2011. As directed by the ALJ, the Applicants had filed on February 10, 2011 a prehearing conference statement proposing a structure for additional data. Despite the statements at the previous prehearing conference, at the February 17, 2011 prehearing conference, the ALJ proposed to broaden the scope of this proceeding by including issues specific to California American Water's Monterey district.⁹ California American Water explained that the issues in Monterey were being addressed in two other proceedings, the 2010 general rate case (A.10-07-007) and the Coastal Water Project (A.04-09-019).¹⁰ However, because the 2010 GRC will not be in effect until January 1, 2012 and Phase III of the Coastal Water Project proceeding has been delayed, California American Water agreed to work with DRA to propose an interim solution limited to addressing only the continuing under-collection of the 2011 revenues. California American Water further stated that it was willing to consider efforts to address the growing 2011 Monterey WRAM balance in this proceeding as long as these efforts did not deal with future rate designs or apply beyond 2012.¹¹ These issues appropriately belong in the state-wide GRC as well as Phase 3 of the Coastal Water Project.

⁸ RT 85:22-23 (Walwyn).

⁹ RT 96:5-11 (Walwyn).

¹⁰ RT 93:22-27; 94:4-15; 97:8-22 (Stephenson/CAW); 96:12-22 (Leeper/CAW).

¹¹ RT 98:22-26 (Stephenson/CAW).

E. Interim Filings

Following the third prehearing conference, on February 22, 2011, California American Water filed a report on its efforts to work with DRA to develop a mechanism to immediately address the WRAM undercollection in California American Water's Monterey County District. California American Water proposed a 35% surcharge in its Monterey County District main system to reduce the growing WRAM undercollection.¹² On April 8, 2011, California American Water and DRA, as directed by the ALJ, submitted concurrent compliance filings (California American Water's fifth) with their recommendations for addressing the Monterey County District WRAM undercollection. California American Water maintained its position that at 35% surcharge is the preferable mechanism.¹³ In DRA's response, it proposed further analysis of numerous proposals that would make it difficult, if not impossible, to implement a solution by the end of 2011.

F. Fourth and Fifth Prehearing Conferences

In addition to the three prehearing conferences that have already been held in this proceeding, a fourth has been scheduled for June 7, 2011 and a fifth was recently added for April 25, 2011 to discuss issues specific to California American Water's Monterey County District.¹⁴

III. A SCOPING MEMORANDUM IS REQUIRED FOR THIS PROCEEDING

A. The Commission's Rules Require a Scoping Memo

At the February 17, 2011 prehearing conference, the assigned ALJ mistakenly

¹² *Compliance Filing of California-American Water Company (U-210-W)*, February 22, 2010.

¹³ *Compliance Filing of California-American Water Company (U-210-W)*, April 8, 2011.

¹⁴ *See Administrative Law Judge's Ruling Setting A Prehearing Conference For April 25, 2011 To Address Undercollections In The Water Revenue Adjustment Mechanism And Modified Cost Balancing Account Balances In California-American Water Company's Monterey District*, April 13, 2011.

stated that a scoping memo is not necessary for this proceeding.¹⁵ Actually, under the Commission's Rules, once a prehearing conference has been held, "the assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and issues to be addressed."¹⁶ In a case where it has been determined that no hearing is necessary, the assigned Commissioner has the discretion not to issue a scoping memo only if: (1) no timely protest, answer, or response is filed (in a proceeding initiated by application, complaint, or order instituting investigation) or no timely request for a hearing is filed (in any proceeding initiated by Commission order).¹⁷ As noted above, DRA timely filed its response to the Application on October 27, 2011. Therefore, although the parties agree that there is no need for evidentiary hearings, DRA's Response triggered the requirement for a scoping memo.

B. The Scoping Memo is Long Overdue

The Application was filed seven months ago. At that time, the Applicants requested expedited consideration of the Application, and urged the Commission to adopt a final decision on these discrete issues on or before December 16, 2010.¹⁸ Since then, there have been three prehearing conferences with two more scheduled into June 2011. California American Water has submitted two prehearing conference statements and five compliance filings. Scoping memos have already been issued in proceedings regarding applications filed at roughly the same time.¹⁹ A scoping memo for this proceeding is long overdue and its delay impacts adversely other pending proceedings affecting California American Water and its customers.

¹⁵ RT 91:27-92:2 (Walwyn).

¹⁶ CPUC Rule 7.3(a) (emphasis added).

¹⁷ CPUC Rule 7.3(b).

¹⁸ *Application*, p. 29.

¹⁹ See A.10-09-018, *Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo*, December 23, 2010; A.10-09-019, *Scoping Memo and Ruling of the Assigned*

C. The Scope of this Proceeding Must be Clarified

As Rule 7.3(a) notes, the purpose of a scoping memo is “to determine the schedule (with projected submission date) and issues to be addressed.” Clarity regarding both of these is sorely lacking in this proceeding. At each prehearing conference, the scope of the issues raised in the proceeding has been expanded and the schedule delayed. This lack of clarity has hindered California American Water’s effectiveness in the related state-wide GRC and Coastal Water Project proceedings. As discussed above, the issue of how to avoid under-collections of revenues booked to the Monterey WRAM incurred after 2011 is being addressed in A.10-07-007, the state-wide GRC. Allowing consideration of proposals relating to this issue in this proceeding directly conflicts with the scope of A.10-07-007. This conflict could prevent California American Water from effectively participating in settlement negotiations scheduled over the next several weeks dealing with this issue.

DRA has also recognized the potential overlap of issues and, in fact, it asserts that California American Water’s requested surcharge implicates issues in two other proceedings. According to DRA, there are overlapping issues currently in this proceeding, along with California American Water’s pending state-wide general rate case and Phase III of the Coastal Water Project.

The significant delay in this proceeding has already harmed California American Water and the other utility Applicants. The absence of any final scoping memorandum unfairly places California American Water in the position of dealing with the same issue in multiple proceedings. Neither the Commission nor California American Water has the resources to conduct open-ended and unfocused proceedings. The issuance of a final scoping memorandum reasonably limiting the scope of this proceeding will help ensure that the Commission can

Commissioner, March 8, 2011.

conduct and conclude this application in a fair and expeditious manner while examining the other WRAM issues in both the state-wide GRC and Phase III of the Coastal Water Project.

IV. THE SCOPING MEMO SHOULD LIMIT THE ISSUES AND PROVIDE FOR A TIMELY DECISION

A. The Proceeding Should Focus on the Issues in the Application

As discussed above, the Applicants have submitted numerous filings in response to the ALJ's request for more information. California American Water does not oppose addressing the rate impacts that may be caused by the Applicants' proposals, but those issues should be addressed in other more relevant proceedings. However, in its February 22, 2011 and April 8, 2011 compliance filings, DRA proposed a number of options for addressing the 2011 WRAM/MCBA that go far beyond the limited scope of 2011 under-collections. In particular, DRA proposed to completely discontinue the Monterey WRAM/MCBA and rate design adopted in D.09-07-021. California American Water is not opposed to considering these issues in the proper venues.

There is no reason, however, to address these expanded issues in this limited proceeding. California American Water's general rate case (A.10-07-07) is the appropriate venue to address how to avoid the undercollection of WRAM revenues beyond 2011. Expanding the scope of this proceeding to include an analysis of DRA's proposals to address under-collections of the Monterey WRAM beyond 2011 is inappropriate for many reasons. Specifically, it will lead to an inefficient use of company, DRA and Commission resources, confuse customers and interveners who are expecting the issue to be addressed in the GRC proceeding, and increase the likelihood of conflicting Commission decisions on the issue.

Moreover, this proceeding is not the appropriate vehicle for conducting a referendum on the WRAM and MCBA, which would involve hotly contested issues of material

facts that would require evidentiary hearings and briefing. Indeed, should the Commission decide to revisit broader issues relating to the WRAM/MCBA, DRA recommended that these be addressed in the existing Conservation OII 07-01-002 as a new phase or in a subsequent proceeding.²⁰ It appears that even DRA agrees that such issues are more appropriate for another proceeding, not this proceeding.

B. Expansion of the Issues Will Prevent a Timely Decision

Furthermore, by including consideration of DRA's proposal to discontinue the WRAM/MCBA in this proceeding, the schedule will be further delayed as this issue involves disputed issues of fact that would require evidentiary hearings and briefing. The assigned ALJ indicated that the goal for the June 7, 2011 prehearing conference is to determine "at that point if we have a complete record."²¹ Assuming the record is complete and ready for submission on June 7, 2011, the assigned Administrative Law Judge will have until September 7, 2011 to issue a proposed decision.²² This means that the Commission will likely not issue a decision in this proceeding until mid-October at the earliest. Considering the current timeline, it does not make sense to continue expanding the scope of this proceeding. However, the addition of issues involving disputed facts would not allow a decision in this case in 2011. The current schedule provides for a decision in the general rate case (A.10-07-007) by December 2011, so the WRAM-related issues can be resolved more quickly in that proceeding. Moreover, delaying a decision in this proceeding past 2011 would render moot any attempt to address the request to mitigate the under-collection of the WRAM in 2011.²³

²⁰ *Division of Ratepayer Advocates' Recommendations to Address Undercollections in the Water Revenue Adjustment Mechanism and Modified Cost Balancing Account Balances in California American Water Company's Monterey District*, April 8, 2011, p. 7.

²¹ RT 119:16-17 (Walwyn).

²² CPUC Rule 14.2.

²³ Delaying a decision in this proceeding past 2011 would also harm water utilities by forcing

