

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



FILED

12-10-10
04:59 PM

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.

Application 10-09-017

(Filed September 20, 2010)

**RESPONSE OF JOINT APPLICANTS REGARDING THE APPLICABILITY
OF PUBLIC UTILITIES CODE SECTION 454(a) TO THIS APPLICATION**

NOSSAMAN LLP

Martin A. Mattes
Mari R. Lane

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

Attorneys for JOINT APPLICANTS,
California-American Water Company,
California Water Service Company,
Golden State Water Company, Park Water
Company, and Apple Valley Ranchos Water
Company

December 10, 2010

**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.

Application 10-09-017

(Filed September 20, 2010)

**RESPONSE OF JOINT APPLICANTS REGARDING THE APPLICABILITY
OF PUBLIC UTILITIES CODE SECTION 454(a) TO THIS APPLICATION**

I. INTRODUCTION

Pursuant to the December 3, 2010 request of Administrative Law Judge (“ALJ”) Christine Walwyn for additional information, Applicants in the above-captioned proceeding¹ respectfully submit this response regarding the inapplicability of the customer notice provisions contained in California Public Utilities (“PU”) Code Section 454(a), and the inadvisability of using the Commission’s discretion to apply those provisions to this Application in the name of “due process.”

II. THE COMMISSION SHOULD NOT APPLY THE CUSTOMER NOTICE REQUIREMENT OF PUBLIC UTILITIES CODE SECTION 454(a).

During the A.10-09-017 prehearing conference held on December 3, 2010, ALJ Walwyn suggested that Applicants may be subject to the customer notice requirements

¹ “Joint Applicants” refers to California-American Water Company, California Water Service Company, Golden State Water Company, Park Water Company and Apple Valley Ranchos Water Company.

contained in Section 454(a) of the Public Utilities Code.² Neither Commission precedent nor public policy support requiring customer notice of this Application.

Applicants contend that Section 454(a) customer notice is not a requirement for this Application for two reasons. First, Applicants are not proposing a “change” in rates, but are requesting clarification of Commission policy with respect to the collection of revenue requirements that have already been approved by the Commission. Second, Section 454(a) contemplates customer notice of a utility’s request for a company-wide review and accompanying rate changes, which is absent here. Furthermore, soliciting customer involvement in this proceeding through individual customer notice does not further substantive due process and would likely undermine the Commission’s previous determinations that conservation rates and the related decoupling mechanisms are in the public interest.

A. Imposing a Customer Notice Requirement at This Time is Not in the Public Interest.

Applicants are requesting a policy change that will have different bill impacts depending on the aggregate sales in each ratemaking unit with the WRAM/MCBA mechanism. While the Applicants have submitted data about the impacts of uncollected revenues in 2008-09 because of the need for imminent Commission action regarding those revenues, the heart of the Application is a policy decision about the proper implementation of the intended WRAM/MCBA mechanism. Focusing on the 2008-09 revenues for customer notice purposes, or worse, for the purpose of rendering a Commission decision, would be short-sighted.

The nature of the WRAM/MCBA mechanism, and indeed the stated goal of the mechanism, is equity: “Parties agree that the desired outcome and purpose of using WRAMs and MCBA is to ensure that the utility and ratepayers are proportionally affected when

² All subsequent statutory references shall be to the Public Utilities Code, unless otherwise provided.

conservation rates are implemented.”³ It is not only possible, but entirely likely that, with sales forecasts that more closely reflect customers’ conservation habits and changing factors like the shift of the economy out of the current recession, net WRAM/MCBA amounts could in the future yield customer surcredits, rather than surcharges. Thus, notice of a specific “rate increase” request based solely on 2008-09 revenues would be misleading, and future rate impacts are simply indeterminate.

However, failing to modify Commission policy now with regard to the fundamental concern raised in the Application – that the extensive amortization periods currently allowed for WRAM/MCBA accounts do not stabilize specific company revenues in the manner explicitly desired by the Commission, but could in fact have a *de*-stabilizing effect due to the serious danger of financial restatement – would ultimately be a failure of one of the Commission’s most vaunted accomplishments in water policy: being the first state to decouple water sales from water revenues as a means of promoting water conservation.

Implementing customer notice of policy modifications to the WRAM/MCBA mechanism also leads to a practical problem. Applicants are seeking changes in regulatory accounting policy that are highly technical and challenging even to those accustomed to regulatory arcana. While the bill increases resulting from additional or higher surcharges are readily understandable, the mix of policy goals, district- and company-specific variations in data, and the limitations imposed by regulatory procedures and financial accounting standards are not. Thus, inviting customers to weigh in on the Application’s technical proposals, which are essentially tweaks to a previously-adopted regulatory mechanism, would, frankly, create an illusion of due process without the substance. Substantive due process requires informed involvement, and inviting public comment on higher surcharges, outside of the full context of the decoupling initiatives that the Commission has already investigated and adopted would be a

³ Amended Settlement Agreement between The Utility Reform Network, the Division of Ratepayer Advocates, and California Water Service Company (June 15, 2007), at 10 (Section IX(2)). This statement is mirrored in the settlements for several Applicants.

triumph of process over substance. Focusing customer notice on the specific requests in the Application would be misguided if the result is a referendum on water decoupling that casts the Applicants as the villains.

In sum, once the Commission has clarified the underlying rules governing the filing of advice letters to collect fixed balances over different periods, the Commission should allow Applicants to comply with the notice requirements specific to advice letters contained in General Order 96-B, rather than imposing a customer notice requirement at the outset that is of dubious value to customers themselves.

B. Applicants Do Not Request Commission Authorization for a “Change” In Rates That Would Trigger The Customer Notice Requirements of Section 454(a).

Public Utilities Code Section 454(a) requires a Commission-regulated utility to provide customer notice of “an application to change any rate, other than a change reflecting and passing through to customers only new costs to the corporation which do not result in changes in revenue allocation, for the services or commodities furnished by it”⁴

In D.88-04-077, the Commission authorized Pacific Bell (“PacBell”) to file an advice letter allowing it to remove a “pay-per-call” charge from a residential subscriber’s bills for a “976” call, essentially at the expense of the provider of the “976” service, who was considered to be an “information provider” (“IP”) customer of the telephone company.⁵ PacBell was allowed to

⁴ ALJ Walwyn suggested that the customer notice provisions contained in Public Utility Code 454(a) would apply because the Application proposes “rate increases due to revenue changes.” For purposes of clarifying the record, Applicants note that this paraphrase of the statute misstates the conditions that trigger the customer notice requirements. Moreover, it is inaccurate to state that the filing of this Application was necessitated by “revenue changes.” Applicants request clarification of Commission policy with respect to revenue adjustments that have already been adopted by the Commission.

⁵ “When a caller makes a 976 call, the utility bills and collects a charge for the call. The utility remits to the IP a portion of the charge. If, for example, the cost of the 976 call is \$ 2.00, the utility remits to the IP \$ 1.30, and the utility retains \$ 0.70. In certain circumstances, the caller may receive an adjustment (refund) from the utility for a certain call. If the caller receives an adjustment, the utility will charge a certain amount back to the IP. The chargeback is typically in the form of a debit against future remittances to the IP. Under a “full chargeback” policy, the utility will debit the IP the entire amount refunded to the caller. Using a \$ 2.00 call as an example, the utility will initially remit \$ 1.30 to the IP; if the call is refunded, the utility will debit the IP \$ 2.00.” D.91-10-043, 1991 Cal. PUC LEXIS 698, at *1, fn. 1.

“charge back” to the 976 IP customer the full amount billed to the residential subscriber, even though a portion embedded in that amount was PacBell’s own fee for the transaction. Lottery Hotline, a 976 IP customer, filed an Application for Rehearing on the grounds that the Commission’s adoption of this “full chargeback” policy amounted to a “rate increase” to the IP customer in violation of Section 454 because Lottery Hotline (and similarly-situated IP customers) had not been given notice of the rate increase.

In the limited rehearing on the subject of notice, PacBell argued that Section 454 was not applicable to this change in the chargeback policy to IP customers. The Commission disagreed, noting that “the Commission in prior decisions in this proceeding [that were not appealed and were now final] has treated determinations regarding how much the adjusted 976 call should be charged back to the IPs as a rate increase.”⁶ Thus, the telephone utilities were obligated, when seeking a change related to the “chargeback” to IP customers for 976 calls, to notify those IP customers of the proposed “rate increase.” The Commission determined that such notice was not afforded and suspended the advice letter that authorized the full chargeback policy.

Unlike the facts of the “976” proceeding, the Commission has made no determination that setting procedures to amortize balancing accounts like the WRAM/MCBA accounts constitutes a “rate increase.” Furthermore, during the proceeding in which most of the Applicants’ WRAM/MCBA mechanisms were adopted, I.07-01-022 *et seq.*, neither the adoptions of new conservation-oriented rates, nor the development of the WRAM/MCBA mechanism, were considered to be “rate increases” triggering the need for customer notice pursuant to Section 454(a). The Commission and the parties clearly recognized the importance of customer notice and education regarding the new tiered rate design and conservation initiatives, particularly the low-income customers, as evidenced by the adoption of “customer education and outreach”

⁶ *Id.*, at *9-10.

sections in several settlements.⁷ Nevertheless, there is no indication that either the Commission or the parties, which included a diverse group of consumer advocates, believed that individual customer notice of the complex, rate-related conservation initiatives under consideration was required, or even advisable, for due process.

Perhaps more fundamental to the question of whether Commission precedent supports treating Applicants' requests as a "change" in rates, however, is the lack of any similarity to PacBell's attempt to modify the "chargeback" policy. By seeking the ability to apply a "full" chargeback as a debit against customer accounts for "976" charges, PacBell requested a fundamental change in its prices charged to IP customers. This Application does not attempt to revisit the adoption of the WRAM/MCBA mechanism and tiered conservation rates, which could arguably be considered a fundamental change in the prices charged to customers. Instead, Applicants are only requesting that the Commission specifically address the special nature of these WRAM/MCBA accounts, and the financial accounting imperatives, in the context of the timing by which Applicants may collect their respective revenue requirements - revenue requirements that have already been approved by the Commission in properly-noticed general rate cases.

C. Applicants Do Not Request a Company-Wide Review That Would Trigger The Customer Notice Requirements of Section 454(a).

In D.06-04-073, the Commission approved a settlement agreement to resolve an application filed by Fruitridge Vista Water Company ("Fruitridge Vista") seeking a moratorium on new service. The settlement agreement provided for a "comprehensive package of water system and supply solutions" totaling some \$12 million, a portion of which was to be funded by

⁷ See, e.g., Settlement Agreement between the Division of Ratepayer Advocates and Park Water Company on WRAM and Conservation Rate Design Issues (June 15, 2007) at 7 (Section 11); Settlement Agreement between the Division of Ratepayer Advocates and Suburban Water Systems on WRAM and Conservation Rate Design Issues (April 24, 2007) at 9-10 (Section 9); Settlement between Suburban Water Systems and Disability Rights Advocates, National Consumer Law Center, Latino Issues Forum, and The Utility Reform Network on Customer Education, Outreach, Data Collection and Reporting (August 10, 2007) at 3-6 (Section 3).

ratepayers. In D.06-09-040, the Commission considered an application for rehearing of D.06-04-073 filed on various grounds, including that the Commission failed to provide adequate due process for Fruitridge Vista's customers because the utility did not provide its customer with notice of the proposed rate increase in accordance with Section 454(a).

The Commission rejected this contention and noted that Section 454(a) "applies when a utility files an application for approval of GRC and provides specific timing and content requirements for the notice." The Commission stated that "those notice requirements are geared to the typical 12 to 18-month proceeding timeline for applications which review utility operations and expenses on a company-wide basis."⁸ The Commission stated that the notice periods prescribed by Section 454(a) "were not applicable [in the instant case] because D.06-04-073 does not grant a rate increase reflecting a company-wide review."⁹ Instead, the Commission likened the rate increases authorized for the purposes of purchasing water and constructing infrastructure to the types of costs specifically exempted by the statute from the notice requirements.¹⁰

Similarly here, Applicants are not seeking Commission approval of an application which requests a company-wide review of utility operations and expenses. Applicants have already requested and gained Commission approval, in each of their respective WRAM/MCBA decisions, to implement the WRAM/MCBA mechanism by which revenues are decoupled from water sales. This Application is a request for Commission guidance regarding the informal processes for amortizing those conservation-related balancing accounts. This is a clean-up measure that seeks only to clarify Commission policy so that the Applicants' approved conservation-oriented rate design settlements may be implemented consistently and without the

⁸ D.06.09.040, 2006 Cal. PUC LEXIS 345, at *24 [emphasis added].

⁹ *Id.*

¹⁰ Section 454(a) provides that customer notice is required in the case of an application to change any rate "other than a change reflecting and passing through to customers only new costs to the corporation which do not result in changes in revenue allocation."

detrimental impacts detailed at length in the Application.¹¹ Therefore, the customer notice required by Section 454(a) does not apply.

II. CONCLUSION

For the reasons discussed above, Applicants urge the Commission to conclude that this Application is not subject to the customer notice requirements of Public Utilities Code Section 454(a).

Respectfully submitted,

NOSSAMAN LLP

Martin A. Mattes
Mari R. Lane

By /S/ MARI R. LANE
Mari R. Lane

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

Attorneys for JOINT APPLICANTS,
California-American Water Company,
California Water Service Company,
Golden State Water Company, Park Water
Company, and Apple Valley Ranchos Water
Company

December 10, 2010

¹¹ A.10-09-017, at 3-9.

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

**PROCEEDING: A1009017 - CALIFORNIA-AMERICAN
FILER: APPLE VALLEY RANCHOS WATER COMPANY
LAST CHANGED: DECEMBER 9, 2010**

Parties

EDWARD N. JACKSON
PARK WATER COMPANY
9750 WASHBURN ROAD
DOWNEY, CA 90241
FOR: PARK WATER COMPANY

LEIGH K. JORDAN
APPLE VALLEY RANCHOS WATER COMPANY
PO BOX 7002
DOWNEY, CA 90241
FOR: APPLE VALLEY RANCHOS WATER CO

KEITH SWITZER
VP - REGULATORY AFFAIRS
GOLDEN STATE WATER COMPANY
630 EAST FOOTHILL BOULEVARD
SAN DIMAS, CA 91773
FOR: GOLDEN STATE WATER COMPANY

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

THOMAS F. SMEGAL
VP - REGULATORY MATTERS
CALIFORNIA WATER SERVICE COMPANY
1720 NORTH FIRST STREET
SAN JOSE, CA 95112
FOR: CALIFORNIA WATER SERVICE COMPANY

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

Information Only

GREG MILLEMAN
VP - ADMIN
VALENCIA WATER COMPANY
24631 AVENUE ROCKEFELLER
VALENCIA, CA 91355

DANIEL A. DELL'OSA
SAN GABRIEL VALLEY WATER COMPANY
11142 GARVEY AVE., PO BOX 6010
EL MONTE, CA 91733-2425

JOHN GARON
GOLDEN STATE WATER COMPANY
630 E. FOOTHILL BLVD
SAN DIMAS, CA 91773-9016

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

I ADCOCK
ALISAL WATER CORPORATION
249 WILLIAMS RD.
SALINAS, CA 93905

TIMOTHY S. GUSTER
GENERAL COUNSEL
GREAT OAKS WATER COMPANY
PO BOX 23490
SAN JOSE, CA 95153

PALLE JENSEN
DIRECTOR, REGULATORY AFFAIRS
SAN JOSE WATER COMPANY
374 WEST SANTA CLARA ST.
SAN JOSE, CA 95196

DAVID E. MORSE
217 F STREET, NO. 53
DAVIS, CA 95616

MARI R. LANE
NOSSAMAN LLP
50 CALIFORNIA, #3400
SAN FRANCISCO, CA 94111

State Service

CHRISTINE M. WALWYN
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5008
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LISA BILIR
CALIF PUBLIC UTILITIES COMMISSION
WATER BRANCH
ROOM 4208
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MICHAEL J. GALVIN
CALIF PUBLIC UTILITIES COMMISSION
UTILITY AUDIT, FINANCE & COMPLIANCE BRAN
AREA 3-C
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214