



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application Of CALIFORNIA-AMERICAN WATER COMPANY (U-210-W), CALIFORNIA WATER SERVICE COMPANY (U-60-W), GOLDEN STATE WATER COMPANY (U-133-W), PARK WATER COMPANY (U-314-W) AND APPLE VALLEY RANCHOS WATER COMPANY (U-346-W) 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)

**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES'
TO CALIFORNIA AMERICAN WATER COMPANY'S MOTION TO
WITHDRAW WITH A RECOMMENDATION TO MODIFY THE
SCOPE OF THIS PROCEEDING TO ADDRESS A CHANGE TO
THE WATER REVENUE ADJUSTMENT MECHANISM FOR THE
MONTEREY DISTRICT**

I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and in response to Administrative Law Judge ("ALJ") Walwyn's direction at the June 20, 2011 Prehearing Conference ("PHC"), the Division of Ratepayer Advocates ("DRA") submits this response to California American Water Company's ("Cal Am") Motion to withdraw from Application ("A.") 10-09-017, and includes a

recommendation to modify the scope of this proceeding to address a change to the Water Revenue Adjustment Mechanism (“WRAM”) for the Monterey District.

II. BACKGROUND

During the June 20, 2011 PHC for A.10-09-017, ALJ Walwyn discussed the under-collection in the Monterey WRAM and suggested modifying the scope of this proceeding to address DRA’s proposal to discontinue the full WRAM and restore the pre-2009 Monterey-style WRAM in Cal Am’s Monterey District.¹ ALJ Walwyn clarified that initially this proceeding was filed under the assumption that review of the WRAM and the Modified Cost Balancing Account (“MCBA”) for each company was being done in each joint applicant’s General Rate Case (“GRC”), including Cal Am’s currently pending GRC proceeding, A.10-07-007.² However, because the June 20, 2011 PHC revealed that Cal Am’s WRAM/MCBA is not being reviewed in Cal Am’s pending GRC, ALJ Walwyn directed both DRA and Cal Am to submit filings to address where a change to the Monterey-style WRAM should be addressed.³

On June 23, 2011, Cal Am filed a motion requesting to withdraw from A.10-09-017. The reasons Cal Am provides to support its motion to withdraw are to avoid a conflicting scope with its pending GRC, that its pending GRC is the appropriate proceeding to address the WRAM balance issue in Monterey, and violation of its due process rights.

III. THE ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE SHOULD DENY CAL AM’S MOTION TO WITHDRAW FROM A.10-09-017

Cal Am’s motion includes some inaccurate statements and cites some inappropriate reasons to support its request to withdraw. First, Cal Am states that

¹ Reporter’s transcript, June 20, 2011, PHC-5, p. 191.

² Scoping memo p. 12 and Reporter’s transcript, June 20, 2011, PHC-5, p. 175.

³ Reporter’s transcript, June 20, 2011, PHC-5, pp. 175 and 192.

delayed resolution of this proceeding has resulted in a conflicting scope between the instant case and its pending GRC.⁴ However, Cal Am created this situation by joining the four other water utility applicants in A.10-09-017 and making overlapping requests⁵ in two separate proceedings (its current GRC, A.10-07-007 and this proceeding, A.10-09-017). Moreover, in its motion to withdraw --- that was filed just three days after the PHC-- Cal Am did not refer to the discussions during the June 20, 2011 PHC regarding limiting the scope of this proceeding to address only the Monterey District and ALJ Walwyn's further clarification that this issue is *not* being addressed in Cal Am's pending GRC.

Second, Cal Am states that the pending GRC is the appropriate proceeding to address the growing WRAM balance in its Monterey District.⁶ DRA disagrees with this statement and notes that the disparate impact on ratepayers in Monterey must be examined sooner rather than later. Once more, Cal Am ignores the discussions during the June 20, 2011 PHC, in particular, ALJ Walwyn's clarification that the WRAM balance issue in Monterey is *not* being reviewed in Cal Am's pending GRC, and that it may be necessary to re-scope this proceeding to ensure a timely review of this issue.⁷ ALJ Walwyn further acknowledged that the situation in Monterey with the WRAM is unique, that there is no upside to ratepayers, and that DRA has made a good argument to change the WRAM to a Monterey-style WRAM.⁸

Third, Cal Am states that expanding the scope of this proceeding to include issues that were specifically excluded from the scoping memo violates its due

⁴ California-American Water Company's (U210W) Motion to Withdraw from Application 10-09-017, June 23, 2011, p 5.

⁵ Cal Am makes an overlapping request in its pending GRC, A.10-07-007, Special Request #34 to amortize all balancing account balances in rates on an annual basis over a 12-month period.

⁶ California-American Water Company's (U210W) Motion to Withdraw from Application 10-09-017, June 23, 2011, p. 7

⁷ Reporter's transcript, June 20, 2011, PHC-5, p. 191-192.

⁸ Reporter's transcript, June 20, 2011, PHC-5, p. 182.

process rights. Yet again, Cal Am's argument is flawed and ignores the discussions during the June 20, 2011 PHC surrounding ALJ Walwyn's suggestion to modify the scope of this proceeding. ALJ Walwyn clarified that the initial scoping memo did not include the WRAM balance issue because the parties assumed it would be reviewed in the current GRC, however, because the June 20, 2011 PHC revealed that the problem remains and the issue is not in Cal Am's current GRC, both parties were asked to submit filings addressing whether they support modifying the scope to include only that limited issue.⁹ Furthermore, as also discussed during the June 20, 2011 PHC, Cal Am cannot argue in good faith that it will not have had an opportunity to properly litigate this issue given that it has been on notice since April 8th, 2011, when DRA filed its proposal to suspend the full WRAM and revert to the Monterey-style RAM.¹⁰ Also, if the Commissioner and ALJ Walwyn determine that re-scoping this proceeding is necessary, Cal Am would be afforded the opportunity to submit direct testimony and present evidence on this limited issue as folded into the schedule.¹¹

Cal Am's motion to withdraw from this proceeding should be denied. The pending GRC is not the appropriate proceeding to address the WRAM balance issue unique to Cal Am's Monterey District since hearings have been completed in Cal Am's GRC and opening briefs were submitted for most of the litigated issues. Thus, the case will be fully submitted for an ALJ proposed decision by August 8th, 2011. However, if the Commission required review of the WRAM balance issue in Cal Am's GRC, a provision to allow for a proper amount of time for DRA to conduct a further analysis on the issue, prepare additional discovery, and serve additional testimony would be necessary.

⁹ Reporter's transcript, June 20, 2011 PHC-5, p. 191.

¹⁰ Reporter's transcript, June 20, 2011 PHC-5, p. 191.

¹¹ Reporter's transcript, June 20, 2011 PHC-5, p. 190.

Moreover, if the Commission required consideration of any Monterey District rate design issues affecting the WRAM balance in the GRC, it would first need to provide guidance about which rate design issues must be resolved in a third phase of A.04-09-019.¹² Without modifying D.10-12-016, the Commission would need to adopt a Monterey rate design that is consistent with the agreement adopted by that decision. If this issue is included in the pending GRC, the Commission should require Cal Am to notify all parties in A.04-09-019 in case such parties wished to request party status.

IV. DRA SUPPORTS MODIFYING THE SCOPE OF THIS PROCEEDING TO ADDRESS THE CHANGE TO A MONTEREY-STYLE RAM

With it now clear that Cal Am's Monterey District WRAM is not being addressed in its current GRC proceeding, and that the next opportunity to review this issue may not be until 2015,¹³ DRA supports addressing the option of changing to a Monterey-style WRAM for Cal Am's Monterey District within the existing schedule established for A.10-09-017.

DRA submitted a similar proposal in its April 8th, 2011 filing, *“Recommendations To Address Under-Collections In The Water Revenue Adjustment Mechanism And Modified Cost Balancing Account Balances In California American Water Company's Monterey District.”* In that proposal, DRA limited the recommended change to the Monterey-style WRAM to the year 2011 with an expectation that either this proceeding, or Cal Am's current GRC proceeding, would provide a more permanent solution beginning on January 1, 2012. At the time DRA filed its recommendations on April 8th, the Commission had not yet ruled on Cal Am's motion in its current GRC proceeding (Application

¹² D.10-12-016, Finding of Fact 219 provides that, “Cost allocation and rate design will be addressed in Phase 3 of this proceeding and will be coordinated with Cal Am's next available GRC.”

¹³ Reporter's transcript, June 20, 2011, PHC-5, p. 191.

10-07-007) to file supplemental testimony on rate design in Monterey. On April 27, 2011, ALJ Rochester denied Cal Am's motion citing insufficient time in the proceeding to provide adequate notice and an opportunity for customers to be heard on the Monterey rate design issue.¹⁴

To ensure a timely review of Cal-Am's Monterey District WRAM, the scope of this proceeding should be modified to include this item with the other districts and joint applicants' current schedule for testimony, rebuttal, hearings, and briefs.

V. DISCUSSION

The unique circumstances in Monterey--that have been discussed widely throughout this proceeding¹⁵ --- have caused Cal Am's Monterey ratepayers to be disproportionately affected by the WRAM/MCBA. ALJ Walwyn has agreed, "there is clearly a disparate impact under this mechanism, different than any of the other districts or applicants."¹⁶ In the Settlement Agreement between DRA and Cal Am on Conservation Rate Design Issues implementing a Pilot Program on WRAM/MCBA and rate design ("Settlement"),¹⁷ modifications to the WRAM/MCBA are discussed in section III Pilot Program, A. Overview: section 3 which states:

3. The Parties agree that if implementation of the proposed Pilot Program results in a disparate impact on ratepayers or

¹⁴ Ruling by ALJ Rochester in A.10-07-007 filed April 27, 2011, "Administrative Law Judge's ruling granting in part and denying in part California American Water Company's motion to strike portions of Ralph Smith's testimony, denying the motion for leave to file supplemental testimony on rate design for the Monterey county district and seeking information from the applicant."

¹⁵ DRA's April 8th filing includes a listing of some of the unique characteristic of the Monterey District on pp. 9-10.

¹⁶ Reporter's transcript, June 20, 2011, PHC-5, p. 174.

¹⁷ D.09-07-021, Appendix A – Settlement Agreement Between the Division of Ratepayer Advocates and California-American Water Company on Conservation Rate Design Issues.

shareholders, the Parties will meet to discuss adjustments to the proposed Pilot Program.

DRA agrees with ALJ Walwyn that this is the proper proceeding to discuss adjustments to this Pilot Program and specifically the WRAM/MCBA in Cal Am's Monterey District.

At the June 20, 2011 PHC, Cal-Am rejected the proposal of addressing the Monterey-style WRAM in this proceeding because it is interrelated with rate design and the sales forecast.¹⁸ DRA noted in its April 8th filing that "any review of WRAM/MCBA in this proceeding should be coordinated with rate design issues, which are properly addressed in Phase III of the Costal Water Project ("CWP"), proceeding A.04-09-019." A comprehensive review of the WRAM/MCBA and Monterey rate design is still warranted and DRA supports addressing it in Phase III of the CWP, coordinating it with a Phase II of the current GRC proceeding,¹⁹ or in the next GRC. The Monterey-style WRAM, if implemented, will be an interim solution for the immediate issues of under-collection of the WRAM and to alleviate the disparate impact to ratepayers.

By including this issue in the current proceeding, details on how the Monterey-style WRAM may be implemented can be resolved along with resolution of the nine specific requests identified in the joint application. For example, in Issue 6 of the application the Applicants' propose to amortize an under-collection using a surcharge on the *quantity* charge and amortize an over-collection through a surcredit on the *service* charge.²⁰ The Applicants' proposed this modification at the suggestion of DRA in order to "avoid the appearance that a WRAM/MCBA credit balance is being refunded disproportionately to those

¹⁸ Reporter's transcript, June 20, 2011, PHC-5, p. 181.

¹⁹ This suggestion is consistent with the guidance in D.10-12-016, Finding of Fact 219, which provides that, "Cost allocation and rate design will be addressed in Phase 3 of this proceeding and will be coordinated with Cal Am's next available GRC."

²⁰ A.10-09-017 Application, pp. 22-23.

customers who waste water.”²¹ For Issue 6, the Commission may alternatively rule in having both an under-collection surcharge and an over-collection surcredit applied to the service charge. This could then either apply to all districts and applicants, or only to Cal Am’s Monterey District.

VI. CONCLUSION

With no assessment made of the Monterey rate design and/or the WRAM mechanism in Cal Am’s current GRC, and the clear disparate impact on Cal Am’s Monterey ratepayers, DRA strongly recommends that Cal-Am’s motion to withdraw be denied and supports addressing the Monterey District WRAM in this proceeding as a temporary solution until a comprehensive review is either addressed in Phase III of the CWP, coordinated with Phase II of the current GRC, or in the next GRC.

Respectfully submitted,

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²¹ A.10-09-017 Application, p. 23.