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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.

Application 10-09-017  
(Filed September 20, 2010)

**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**

This application was submitted on September 20, 2011 by California-American Water Company (Cal-Am), California Water Service Company (Cal-Water), Golden State Water Company (Golden State), Park Water Company (Park) and Apple Valley Ranchos Water Company (Apple Valley), together

designated as “applicants”. Applicants request modification of decisions adopting the conservation-related balancing accounts that decouple revenues from water sales – the Water Revenue Adjustment Mechanisms and the Modified Cost Balancing Accounts (WRAM/MCBA), as well as other Commission processes related to amortizing these balancing accounts. The WRAM/MCBA decisions are: Decisions (D.) 08-02-036, 08-06-002, 08-08-030, 08-09-026, 08-11-023, 09-05-005, and 10-06-038.

There are nine specific requests set forth in the application. The first request, a proposal to shorten the existing amortization schedule, is the primary focus of the application. In each of the WRAM/MCBA decisions shown in the caption of this proceeding, the Commission adopted an annual advice letter filing process to recover or refund the WRAM/MCBA balances but did not address the amortization period over which the balances should be recovered/refunded. Therefore, the Commission’s Division of Water and Audits has applied the amortization period adopted by the Commission in D.03-06-072, a generic proceeding on procedures for water utilities’ offset rate increases and balancing accounts (Rulemaking 01-12-009); this amortization schedule is also reflected in Water Division’s Standard Practice U-27W.

Applicants assert that it has recently become clear to them that a financial accounting standard, generally known as Emerging Issues Task Force Issue No. 92-7 (EITF 92-7) of the Financial Accounting Standards Board (FASB) may preclude applicants from recognizing their largest WRAM/MCBA undercollection as current (rather than deferred) revenue unless the Commission

shortens the amortization schedule for these balances.<sup>1</sup> Applicants request expedited treatment of this application in order to avoid a potential need to restate their 2009 and 2010 financial statements.

Prior to the December 3, 2010 prehearing conference (PHC), applicants were requested to provide their actual WRAM/MCBA balances for 2008 and 2009, as well as an estimate of 2010 balances. Each applicant's WRAM/MCBA balances for these periods, by district, is presented in Appendix A to this ruling.<sup>2</sup>

Also at the first PHC, a discussion was held on whether customers should have been provided notice of this application under Rule 3.2 of the Commission's Rules of Practice and Procedure (Rule 3.2). Parties were granted an opportunity to brief the applicability of Rule 3.2, following which a ruling was issued on December 20, 2010 affirming the need for notice and directing applicants to comply with the requirement as soon as possible. On May 4, 2011, pursuant to Rule 3.2(d), Apple Valley, Cal-Water, Golden State and Park submitted proof of customer notice. Cal-Am submitted its compliance filing on May 23, 2011.

While waiting for customer notice to be completed, applicants prepared additional data for review addressing possible causes of the high

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<sup>1</sup> EITF 92-7, codified as Accounting Standards Codification 980-605-25, is currently under review for proposed elimination in FASB's June 24, 2010 Exposure Draft. Comments have been received on the Exposure Draft, and the effective date of any revised standard is estimated to be in the 2014-2015 timeframe. *See* November 22, 2010 Administrative Law Judge (ALJ) Ruling and the November 29, 2010 Prehearing Conference Statement of Golden State at 2-3.

<sup>2</sup> These summaries have been updated to reflect the final 2009 and 2010 balances, as submitted in applicants' advice letter filings, rather than the initial estimates provided in January 2011.

WRAM/MCBA balances, options for dealing with the balances, and why adopted safeguards had not alerted the Commission to this issue sooner.

On January 24 and February 17, 2011, additional PHCs were held to discuss the data identified above, and on April 15, the applicants submitted the requested material. Due to the very high WRAM/MCBA balances in Cal-Am's Monterey District, and Cal-Am's projection that high balances would continue to accumulate throughout 2011, consideration was given to taking immediate action for this district. Cal-Am and the Commission's Division of Ratepayer Advocates (DRA) submitted proposals for separately addressing the Monterey District, and a PHC was scheduled for April 25, 2011 to discuss this.

On April 22, 2011, Cal-Am filed a motion requesting the preparation of a final scoping memo and all parties responded to the motion on May 9, 2011.

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

In Resolution ALJ 176-3262, issued October 14, 2010, this proceeding was preliminarily categorized as rate-setting with no need for evidentiary hearings. We affirm the categorization.<sup>3</sup>

Based on DRA's request for an opportunity to submit testimony on the limited scope it proposes for review here, we find that there are disputed material facts at issue and, therefore, evidentiary hearings are necessary. Pursuant to Rule 7.5, an Assigned Commissioner's Ruling on this change in the preliminary determination on the need for hearing will be placed on the Commission's Consent Agenda for approval.

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<sup>3</sup> This scoping memo, only as to the category, is appealable under the procedures set forth in Rule 7.6.

The primary areas of disputed fact that have arisen in this proceeding are:

- whether failure to grant the relief requested in the application will have a significant impact on the financial health of applicants;
- whether failure to grant the relief requested will have a chilling effect on conservation efforts of the utilities;
- whether the operation of the WRAM/MCBA mechanisms have had a disproportionate effect on ratepayers, and especially low-income ratepayers;
- whether there has been compliance with Commission decisions on the WRAM/MCBA; and
- whether California's municipal water districts and investor-owned energy utilities have experienced similar revenue shortfalls and rate impacts since 2008.

Assigned Commissioner Michael R. Peevey designates ALJ Christine M. Walwyn 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**

##### **4.1. Discussion of the WRAM/MCBA Mechanisms**

In setting the scope of this proceeding, we first look to the Commission's intent in adopting the WRAM/MCBA mechanisms. The Commission adopted the 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.<sup>4</sup>

In each decision adopting the WRAM/MCBA mechanisms, the Commission stated these mechanisms were part of pilot conservation rate design programs and would be closely monitored and reviewed in the following general rate case (GRC) proceedings, with the need for refinements considered based on the measurement and evaluation of residential and commercial consumption data and the demand response that occurs within each customer class and service area. In addition to this safeguard, one of the earlier WRAM/MCBA mechanisms contained additional provisions. In D.08-06-002, for Cal-Am's Los Angeles District, the Commission stated:

- The conservation rate design being proposed is expected to have a measurable but not substantial impact on sales during the Pilot Program. (Finding of Fact 16);
- The Settlement provides for adjustments to the Pilot Program if a disparate impact on ratepayers or shareholders occurs. The parties should meet to discuss adjustments and then either jointly or individually file a petition to modify this decision. (Finding of Fact 17);
- Given the expected modest balancing account impacts, the safeguard provisions of the settlement, and the limited time period of the Pilot Program, we find it reasonable to adopt the proposed WRAM and MCBA mechanisms. (Conclusion of Law 4);

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<sup>4</sup> See D.08-02-036 at 25, and the underlying settlement agreements of the other WRAM/MCBA decisions.

- Cal-Am shall include in its next GRC filing a discussion of the feasibility, as well as the costs and benefits, of revenue adjustment mechanisms that are focused solely on conservation impacts. (Ordering Paragraph 7).<sup>5</sup>

Cal-Am implemented the Los Angeles District pilot program on August 1, 2008. In the next GRC, it signed a settlement with DRA to extend the pilot conservation rate design program and full review of the pilot until the 2010 GRC. In the pending 2010 GRC, both Cal-Am and DRA recommend that the Commission again delay a review, and instead open a new rulemaking to assess all conservation rate design pilot programs.<sup>6</sup>

The existing WRAM/MCBA balances, through 2010, by each applicant and ratemaking district, are attached to this ruling at Appendix A and the estimated balances for 2011 are attached at Appendix B.

The full WRAM/MCBA mechanisms were first implemented in 2008 and 2009. For 2008 and 2009, Appendix A shows that as of the March 2010 advice letters requesting surcharge recovery, 18 of the 36 ratemaking districts had undercollected revenues that exceeded 5%, seven of these 18 districts had undercollections that exceeded 10%, and one district of the seven had an undercollection that exceeded 20%. For the following year, the March 2011 advice letter filings show that of the 37 districts with WRAM/MCBA mechanisms, 32 had undercollected their 2010 revenues by over 5%, 11 of the 32

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<sup>5</sup> See D.08-06-002, issued June 16, 2008 at 22-26.

<sup>6</sup> See Cal-Am and DRA February 10, 2011 submissions regarding compliance with D.08-06-002.

had undercollected revenues that exceeded 10%, and five of the 11 had undercollected revenues that exceeded 20%<sup>7</sup>.

Similar to the Los Angeles District experience, there has been no comprehensive review of the WRAM/MCBA mechanisms in any of the applicants' GRCs since adoption of the pilot programs, nor has there been a discussion of the accumulating large WRAM/MCBA undercollections.<sup>8</sup> We note that the electric utilities' revenue adjustment mechanisms, the model for adoption of the WRAM/MCBA mechanisms, do not show undercollections as dramatic as the water utilities do.<sup>9</sup>

The Commission intended the WRAM/MCBA mechanisms to protect the applicants from decreasing sales due to the adopted conservation rate designs and utility sponsored conservation programs. All parties agree that the large undercollections represent more than these factors, but there is limited data available to identify and quantify the causes. Other contributing causes suggested by the parties for further analysis are the drought conditions in recent years, the economic recession in California, and inaccurate sales forecasting.

In reviewing the large undercollections, special attention focused on Cal-Am's Monterey District. The Monterey District has had tiered conservation rates for approximately 15 years combined with a limited WRAM mechanism

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<sup>7</sup> We also include in Appendix A Cal-Am's disclosure in its May 27, 2011 Advice Letter #904 filing that Ambler Park, a separate system and WRAM/MCBA mechanism within the Monterey District, has a 77.32% undercollection.

<sup>8</sup> See January 24, 2011 PHC transcript at 58-78.

<sup>9</sup> At the January 24 PHC, a discussion was held regarding why energy revenue adjustment mechanisms were not reporting any undercollections over 10%. (Transcript at 48.)

known as the Monterey-style WRAM that allowed recovery of only the revenue undercollection directly attributable to the adopted conservation rate design.<sup>10</sup> As part of a settlement in the last GRC, Cal-Am was granted a full WRAM/MCBA. Under the full mechanism, Cal-Am projects an undercollection of 27.3% of 2010 annual revenue and a continuing undercollection of over 30% of its adopted revenue requirement throughout 2011.

## **4.2. Parties' Positions**

### **4.2.1. Cal-Am's WRAM for the Monterey District**

To address the large undercollection, Cal-Am requests an immediate 35% surcharge to quantity rates in its Monterey District, in addition to a surcharge for 2010 undercollections. It states it is amenable to additional notice via a separate mailer to its Monterey District customers prior to implementation of the 35% surcharge.

DRA recommends that the Commission reject Cal-Am's proposed accelerated surcharge and instead revert to the former Monterey-style WRAM and the previously existing purchased power cost balancing account for the rest of 2011, while the Commission considers longer term options in the current GRC proceeding, Application (A.) 10-07-007, and the rate design phase of the Coastal Water Project proceeding, A.04-09-019. DRA asserts that the unique circumstances in the Monterey District, which include limits on authorized water production, a recent Commission moratorium on new water hook-ups for the

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<sup>10</sup> The Monterey-style WRAM is not a revenue decoupling mechanism as such, it is rather a revenue adjustment mechanism that allows the utility to true-up the revenue it actually recovers under its conservation rate design with the revenue it would have

*Footnote continued on next page*

district, and the pendency of large new capital projects, create circumstances that result in such a disparate rate impact on customers that an immediate adjustment is needed. While DRA expresses concerns with the high undercollections in several of Cal-Am's other districts, it finds the Monterey District unique in that Cal-Am needs no additional incentives to support conservation and there is no symmetrical benefit possible from a WRAM/MCBA mechanism for customers.<sup>11</sup>

DRA recommends that the Commission address Monterey District issues separately from those of the other districts. Cal Water, Golden State, Park, and Apple Valley agree with this recommendation.

#### **4.2.2. WRAMs for Other Districts**

In its April 22 motion, Cal-Am recommends that the Commission limit itself to the nine specific proposals of applicants and not consider the rate impacts of these proposals here.<sup>12</sup>

DRA takes issue with several parts of Cal-Am's motion, and presents its own proposal for either a limited or comprehensive scope for this proceeding.

DRA indicates that it would prefer a limited review be undertaken here, one that focuses on (1) the nine issues identified in the application, which

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collected if it had an equivalent uniform rate design at actual sales levels. (See DRA's April 8, 2011 response at 9.)

<sup>11</sup> Supporting DRA's assertion that there is no opportunity for sales to be above the adopted sales forecast is Cal-Am's statement at the April 25 PHC that the Commission adopted the utility's Cal-Am's recommended sales forecast for 2010 and 2011 and this forecast is just slightly below the maximum level Cal-Am is allowed to produce, as set by the State Water Resource Control Board and the Seaside Basin watermaster. (Transcript at 131.)

<sup>12</sup> Motion at 9.

includes the amortization of recorded WRAM/MCBA balances to date, (2) applicants' compliance with WRAM/MCBA decisions, including safeguards, and (3) an evaluation of the questions and topics identified at the PHCs and in the filings to date. DRA asserts that if it can defer its responses to some of the analysis submitted by applicants on April 15th to a later comprehensive proceeding, it is can submit testimony within 90 days.

While DRA recommends a limited scope, it also states that based on the substantial 2010 WRAM/MCBA undercollections many of the districts show in Appendix A, as well as other information presented in this proceeding, the Commission needs to take a comprehensive look at the WRAM/MCBA mechanisms. DRA would prefer a comprehensive review be done in a generic proceeding that would allow all Class A water utilities, as well as other interested parties, to participate.

Cal Water, Golden State, Park, and Apple Valley support maintaining the focus of this proceeding on the nine items requested in the application as well as DRA's identified limited scope. Their proposed schedule would provide DRA 90 days to complete its testimony and would provide for a final decision by the end of 2011. They also support DRA's proposal for a separate industry-wide proceeding on the WRAM/MCBA mechanisms.

#### **4.2.3. Request for Immediate Interim Surcharge**

In the April 15 submission, Applicants also request an ALJ ruling to allow them to immediately implement an additional surcharge to recover those 2008, 2009, and 2010 WRAM/MCBA amounts that will not otherwise be recovered consistent with EITF 92-7. While applicants agree that they can change to FIFO accounting under their own authority, all expect they will still need to restate

their 2010 financial statements if the applications' requested relief is not granted, and all expect to disclose this risk in their financial statements.<sup>13</sup>

#### **4.3. Adopted Scope**

We agree with Cal-Water, Golden State, Apple Valley, Park, and DRA on the limited scope we should adopt here, as well as the bifurcation of the issues raised for Cal-Am's Monterey District. We exclude from the scope the applicants' request for immediate interim authority via ALJ ruling for rate surcharge. The Commission has not delegated to the ALJ the authority to approve a surcharge. In addition, we do not find a need for an interim decision because in our review of Cal-Am's, Cal-Water's, and Golden State's Security and Exchange Commission's (SEC) 10-K annual reports for 2010 and 10-Q First Quarter 2011, we found no disclosure by these applicants of the possible need to restate their 2010 financial statements.<sup>14</sup>

We agree with all parties that the Commission needs to undertake further review of the WRAM/MCBA mechanisms in other proceedings. DRA and four of the applicants' recommend a further review be undertaken in a generic proceeding. The Commission's conservation rulemaking is concluded and staffing resources may delay opening a new rulemaking. However, there are open general rate case proceedings for several of the applicants. Therefore, to timely review the WRAM/MCBA mechanisms further, a review should be done in each applicant's GRC and the risk consequences of the mechanisms should be

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<sup>13</sup> See discussion at January 24, 2011 PHC Transcript at 43-49.

<sup>14</sup> Apple Valley and Park are privately held and, therefore, not subject to SEC filing requirements.

evaluated in the recently consolidated cost of cost of capital proceeding for Cal-Am, Cal-Water, Golden State, and San Jose Water Company.

For Cal-Am's Monterey District, we agree with Cal-Am that considering DRA's proposal to revert to a Monterey-style WRAM/MCBA would require hearings and lead to a very limited implementation period for 2011. Therefore, we will limit our scope here to addressing the amortization period for 2010 and 2011 balances.

Based on our discussion above, the scope of this proceeding is bifurcated into two areas:

1. Quickly address the extraordinarily high 2010 and 2011 WRAM/MCBA balances in Cal-Am's Monterey District, especially in light of the unique characteristics of that district, and specify the procedural forum and timetable to address longer-term options;
2. Resolve the nine specific requests identified in the application, and do this in light of the data submitted by applicants on the WRAM/MCBA balances incurred to date and estimated for 2011 (Appendices A and B to this ruling). Include an examination of whether the high volatility experienced in some districts comports with the Commission's expectations in adopting the mechanisms, including our stated conservation objectives and the safeguards articulated in D.08-06-002 and other decisions. Also analyze the volatility of the WRAM/MCBA mechanism in light of the data presented by the applicants in their April 15, 2011 filing, unless DRA specifically reserves an area of analysis for later, more comprehensive review.

## **5. Procedural Schedule**

We set the following procedural schedule for this proceeding:

**5.1. Monterey District**

On June 13, 2011, Cal-Am and DRA should inform the Commission of any disputed issues of material fact requiring evidentiary hearing.

A PHC will be held on June 20, 2011 at 2:00 p.m. in San Francisco to set an expedited schedule.

**5.2. All Other Districts and Applicants**

- DRA testimony served.....August 31, 2011
- Applicants rebuttal served..... September 18, 2011
- Evidentiary Hearings.....September 28 - 30, 2011
- Opening briefs filed .....October 7, 2011
- Reply briefs filed.....October 14, 2011
- Proposed decision issued .....November 15, 2011
- Final Commission decision..... December 15, 2011

Parties requesting final oral argument before the Commission under Rule 13.13 must include that request in their opening brief.

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

**6. 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](http://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. More information about electronic filing is available at <http://www.cpuc.ca.gov/PUC/efiling>. We will follow the electronic service protocols adopted by Rule 1.10 for all 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.10-09-017. In addition, the party sending the e-mail should briefly describe the attached communication; for example, Brief. Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list for A.10-09-017. The list on the Commission's website meets that definition. Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov). 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.

**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. This is a change to the preliminary determination and, therefore, an assigned Commissioner's ruling shall be placed on the Commission's Consent Agenda for approval of this change.

3. Administrative Law Judge Christine M. Walwyn is the presiding officer.

4. The scope of this proceeding is to:

- 1) Quickly address the extraordinarily high 2010 and 2011 WRAM/MCBA balances in Cal-Am's Monterey District, especially in light of the unique characteristics of that district, and specify the procedural forum and timetable to address longer-term options;
- 2) Resolve the nine specific requests identified in the application, and do this in light of the data submitted by applicants on the WRAM/MCBA balances incurred to date and estimated for 2011 (Appendices A and B to this ruling). Include an examination of whether the high volatility experienced in some districts comports with the Commission's expectations in adopting the mechanisms, including our stated conservation objectives and the safeguards articulated in D.08-06-002 and other decisions. Also analyze the volatility of the WRAM/MCBA mechanism in light of the data presented by the applicants in their April 15, 2011 filing, unless DRA specifically reserves an area of analysis for later, more comprehensive review.

5. The hearing schedule and procedural process are as set forth in Section 5 of this ruling.

Dated June 8, 2011, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner

/s/ CHRISTINE M. WALWYN

Christine M. Walwyn  
Administrative Law Judge