

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of California-American Water Company (U210W) for Authorization to increase its Revenues for Water Service by \$4,134,600 or 2.55% in the year 2011, by \$33,105,800 or 19.68% in the year 2012, by \$9,897,200 or 4.92% in the year 2013, and by \$10,874,600 or 5.16% in the year 2014.

And Related Matter.

Application 10-07-007
(Filed July 1, 2010)

Application 11-09-016
(Filed September 23, 2011)

**OPENING BRIEF
OF THE DIVISION OF RATEPAYER ADVOCATES
ADDRESSING PHASE 2 ISSUES**

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INTRODUCTION AND BACKGROUND

Pursuant to Rule 13.11 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and the schedule established by the assigned Administrative Law Judges ("ALJ") Douglas Long and Linda Rochester, the Division of Ratepayer Advocates ("DRA") respectfully submits its opening brief in Phase 2 of the General Rate Case ("GRC") of California-American Water Company's ("Cal Am") application for authority to increase its revenues for water service in each of its districts. DRA's opening brief addresses the remaining contested issues.

In Cal Am's original application, Cal Am requested authorization to increase its revenues for water service for all of its districts by 2.55% in the year 2011, 19.68% in the year 2012, 4.92% in the year 2013, and 5.16% in the year 2014. DRA, as well as other intervenors, filed protests to Cal Am's application, conducted discovery, and reached a partial settlement with Cal Am on certain issues. On December 12, 2011, the assigned Commissioner and ALJs issued the *Joint Revised Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judges* ("December 12 Scoping Memo") which set forth the scope, schedule, and need for hearings in Phase 2 of this proceeding.¹ The December 12 Scoping Memo also consolidated Application 11-09-016 (Cal Am's application for a moratorium in its Larkfield District) with this proceeding, denied without prejudice the motion by Cal Am, DRA, Natural Resources Defense Council ("NRDC"), and The Utility Reform Network ("TURN") to adopt a stipulation on rate design, addressed rate design for all six of Cal Am's districts, and addressed the Water Revenue Adjustment Mechanism and related accounts.²

Although the December 12 Scoping Memo denied the motion filed by Cal Am, DRA, NRDC, and TURN (collectively, hereafter referred to as "the Parties") to adopt a rate design stipulation, the Parties were provided an opportunity to develop a rate design

¹ December 12 Scoping Memo, pp. 1-2.

² *Id.*

settlement for all districts other than Monterey once a revenue requirement was determined.³ On June 7, 2012, the Commission adopted Decision (“D.”) 12-06-016 which set the revenue requirement for Cal Am’s six districts for 2011-2014. On July 19, 2012, the Parties submitted for the Commission’s consideration the, *Settlement Agreement Between California-American Water Company, the Division of Ratepayer Advocates, Natural Resources Defense Council, and The Utility Reform Network On Rate Design Issues* (“Rate Design Settlement Agreement”).

A full review and examination of the Water Revenue Adjustment Mechanism (“WRAM”) and Modified Cost Balancing Account (“MCBA”) mechanisms for each of Cal Am’s districts was reserved for Phase 2 of this proceeding. Because of this reservation, the record in Application (“A.”) 10-09-017 (the application filed by Cal Am and four other water utilities to modify decisions addressing amortization of their WRAM/MCBA accounts) as regards to Cal Am was incorporated into the record of this proceeding.⁴ In addition, because a full review of the WRAM/MCBA mechanisms was reserved for Phase 2 of this proceeding, the settlement between Cal Am and NRDC to establish a WRAM/MCBA for the Sacramento District (Cal Am’s Special Request #5) was not approved by the Commission and a separate timeline for filing supplemental testimony addressing Special Request #5 was established.⁵ In a July 6, 2012 e-mail, ALJ Rochester ruled that Cal Am’s supplemental testimony on Special Request #5 would be due on July 13, 2012; DRA’s and all other responsive supplemental testimony would be due on July 23, 2012, and Cal Am’s rebuttal testimony would be due July 30, 2012.⁶

Evidentiary hearings were held on July 31st and August 6th-7th, 2012 on the remaining contested issues: Monterey rate design and cost allocation, the WRAM/MCBA

³ *Id.* at 4-5.

⁴ December 12 Scoping Memo, p. 5.

⁵ D.12-06-016, pp. 34-35.

⁶ Email from ALJ Rochester to the Parties, sent Friday, July 6, 2012 on the *Timing re WRAM/MCBA supplemental testimony, responses and rebuttal.*

mechanisms, Special Request #5 – Establishing a WRAM/MCBA for the Sacramento District, and the Larkfield Moratorium. DRA’s opening brief addresses the remaining contested issues.

SUMMARY OF RECOMMENDATIONS

In accordance with Rule 13.11 of the Commission’s Rules of Practice and Procedure, DRA submits the following summary of key recommendations. The Commission should:

- Maintain the current residential, non-residential, and emergency conservation rate design in Cal Am’s Monterey district until Cal Am’s next general rate case cycle, scheduled for July 1, 2013 because Cal Am’s customers need to be properly noticed.
- Require Cal Am to send customer notices outlining the proposed rate design changes in its next general rate case filing, scheduled for July 1, 2013.
- Require Cal Am to provide bill impacts and address proposed changes in cost allocation across customer classes prior to implementation of a new non-residential rate design.
- Deny Cal Am’s request to consolidate non-residential rates and require Cal Am to implement a non-residential rate design that provides equity and fairness in the distribution of costs across Cal Am’s customer classes.
- Eliminate the annual true-up for the commercial customer class..
- Require Cal Am to comply with the same amortization schedules that were established for other Class A water utilities with WRAM/MCBA accounts.
- Adopt the Monterey-style WRAM in Cal Am’s Monterey district to reduce the high under-collections in Cal Am’s WRAM/MCBA accounts to mitigate rate shock to ratepayers.
- Find Cal Am’s request to earn an authorized cost of capital and for annual amortization for all balancing accounts outside the scope of this proceeding.
- Require further analysis of the contributing factors to the high WRAM/MCBA balances in Cal Am’s districts.
- Deny Cal Am’s request for a WRAM/MCBA in its Sacramento District.

BURDEN OF PROOF

Cal Am, as the Applicant in a General Rate Case (“GRC”) proceeding, bears the burden of proof to show that all charges demanded or received by any public utility must be “just and reasonable.”⁷ Existing rates are presumed to be reasonable and lawful, and a utility seeking to increase rates has “the burden of showing by clear and convincing evidence that it is entitled to such increase.”⁸ The standard for “clear and convincing evidence” is as follows:

Clear and convincing evidence must be clear, explicit, and unequivocal. It should be clear as to leave no substantial doubt, or sufficiently strong to demand the unhesitating assent of every reasonable mind. *Id.*

I. RATE DESIGN FOR CALIFORNIA AMERICAN WATER’S MONTEREY COUNTY DISTRICT

A. Rate Design For Residential Customers

1. Procedural Background On Cal Am’s Proposal For Residential Rate Design In Cal Am’s Monterey District.

Cal Am proposes to change residential rate design in its Monterey County District because it believes “it is necessary to achieve the goal of the conservation program in Monterey and to achieve a better equity in rates.”⁹ The basis of Cal Am’s request lies within its proposal to establish a Customer Class Conservation Base Rate (“Conservation Base Rate”). A Conservation Base Rate would be established for each proposed customer class (including residential, non-residential and other water utility customers) and for the residential class would set each tier at a fixed percentage of the Conservation Base Rate.¹⁰ Cal Am provided a table showing the number “\$0.4637” labeled as the

⁷ Public Utilities Code § 451.

⁸ *Re Pacific Gas & Electric Co.*, (2000) 4 Cal. PUC 3d 315. (Decision 00-02-046)

⁹ California American Water Company Exhibit (“CAW Exh.”) 77, p. 30, lines 19-21.

¹⁰ CAW Exh. 77, p. 29, lines 23, 27-28 and Attachment 8, p. 1.

“CCCBR” (the Conservation Base Rate) but did not provide a description of how it derived this number.¹¹ DRA calculated the Conservation Base Rate based on Cal Am’s table as follows: (tier 1 rate x forecasted consumption in tier 1) + (tier 2 rate x forecasted consumption in tier 2) + (tier 3 rate x forecasted consumption in tier 3) + (tier 4 rate x forecasted consumption in tier 4) + (tier 5 rate x forecasted consumption in tier 5) = quantity charge revenue requirement, where the tier 1 rate equals the Conservation Base Rate and the tier 2 through 5 rates are each a function of the Conservation Base Rate .

For residential customers, Cal Am proposes the following percentages of the Conservation Base Rate for each tier: Tier 1 = 100%; Tier 2 = 125%; Tier 3 = 400%; Tier 4 = 600%; Tier 5 = 1000%. It also proposes to unfix the first tier rate and; remove the limitation on the fifth tier rate that was implemented in Decision (“D.”) 09-07-021.¹² DRA is puzzled by Cal Am’s request to unfix the first tier rate. The Commission fixed this rate at \$2.7036 per 100 cubic feet.¹³ However, Cal Am reports that it is charging \$2.826 per 100 cubic feet in tier 1 currently.¹⁴

Cal Am’s proposal would remove “other water utility customers” (or “Sale-for-resale”) from the residential customer class and would develop a separate rate design for this group.¹⁵ The customer groups included in the new residential class would be single-family, multi-family, low-income and residential customers in Bishop and Hidden Hills.¹⁶ Residential customers in Bishop and Hidden Hills have the same rates and rate design as the main system residential customers. However, Bishop customers are on a transition plan until 2014 that would gradually move them from their previous rates and rate design

¹¹ CAW Exh. 77, Attachment 8, p. 1 (proposed rate design table).

¹² *Id.*

¹³ D.09-07-021, Appendix A, Section Iv.C.5.a.i. note 1.

¹⁴ CAW Exh. 77, Attachment 5, p.1.

¹⁵ *Id.* at pp. 38-39, lines 15-28:1-8, and Attachment 8, p. 3.

¹⁶ *Id.* at p. 29, lines 6-14.

to the same rates and rate design as the main system customers.¹⁷ Cal Am’s proposal includes using the same rate design for multi-residential customers as the residential customer classification; in particular, the proposal will eliminate the determination of the average number of customers per dwelling.¹⁸

Notwithstanding the proposed changes to residential rate design, Cal Am states that the \$9.89 monthly meter charge set under the proposed rate design is the same as the current \$9.89 monthly meter charge under the current rate design (assuming a revenue requirement of \$49.62 million).¹⁹ ²⁰ Cal Am further states that the service charge will be set to recover 15% of the fixed costs for the residential customer class under its proposal.²¹

2. Cal Am’s Proposed Changes to Residential Rate Design Do Not Provide Adequate Customer Notice or an Adequate Opportunity for Customer Opinions To Be Heard.

Cal Am compares its proposed residential rate design changes with its current residential rate design, as illustrated in Attachment 7 (current rate design) and Attachment 8 (proposed rate design) of Cal Am’s Exhibit 77.²² According to Cal Am, a customer’s base bill under its current residential rate design is \$42.19 per month, while a customer’s base bill under the proposed residential rate design would be \$45.24 per month, a 7.25% increase in the base bill under the assumed revenue requirement of

¹⁷ See D.09-07-021, Appendix A, “Settlement Agreement Between the Division of Ratepayer Advocates and California American Water Company on Conservation Rate Design Issues,” Section IV.D.2.

¹⁸ CAW Exh. 77, p. 29, lines 23-26.

¹⁹ *Id.* at p. 30, lines 5-17.

²⁰ Cal Am made this assumption because it submitted the rate design testimony on March 30, 2012 prior to the final revenue requirement decision in Phase 1. That decision ultimately adopted a revenue requirement for the Monterey County District of \$48,843,800, see D.12-06-016, p. 2.

²¹ CAW Exh. 77, Attachment 8, p. 1.

²² *Id.*

\$49.62 million.²³ Cal Am's bill comparison is flawed for two reasons. First, Attachment 7 (current rate design) of Cal Am's Exhibit 77 does not accurately reflect the current rate design of \$2.7036 per 100 cubic feet, as adopted in D.09-07-021.²⁴ Instead, Attachment 7 shows a tier 1 rate of \$3.40 per 100 cubic feet.²⁵ Second, the total quantity revenue used in Attachment 8 (proposed rate design) for the single family residential, Hidden Hills, Bishop, Low Income,²⁶ and multi-family customers of \$29,708,288 does not compare with \$26,503,877 shown in Attachment 7 (current rate design).²⁷ This is a difference of \$3,204,411 in quantity charge revenue requirement.

The monthly meter charge stays the same between current and proposed rate designs in Cal Am's Attachments 7 and 8. So, using the same number of customers, the meter charge revenue also stays the same between current and proposed rate designs. Thus, for the residential customer class, a different total revenue requirement is used under current and proposed rate designs in Cal Am's Attachments 7 and 8. This does not allow an accurate comparison of the rate design Cal Am is proposing with the current rate design.

Aside from the flawed bill comparison discussed above, Cal Am's comparisons shown in Attachment 8 (proposed rate design) illustrate the hypothetical standard rate design relative to Cal Am's proposed conservation rate design. Because Cal Am is not currently charging customers the standard uniform rate, as used in its hypothetical

²³ *Id.* at p. 30, lines 13-15, based upon data from Attachment 7 and 8.

²⁴ *See* D.09-07-021 Ordering Paragraph 28, Appendix A p. 8.

²⁵ CAW Exh. 77, Attachment 7.

²⁶ In CAW Exh. 77, Attachment 7 and 8, Cal Am refers to its Low Income program as "PAR" which stands for Program for Alternate Rates, which is the obsolete name for its current Low Income Ratepayer Assistance Program (See Cal Am's tariff schedule CA-LIRA).

²⁷ *See* Attachment 8 p. 2 showing the following "Total Revenue" in the right-most column of the table: Single Family \$20,674,262, PAR \$465,326, Multi-Family \$3,122,487, Bishop \$1,218,098, Hidden Hills \$1,023,704. Those add up to \$26,503,877.

Attachment 8, it does not accurately portray how its proposed new rate design will affect its customers.

Additionally, although Cal Am recognizes the need to inform customers and states, “As for noticing, customers need to be informed and given a reasonable opportunity to voice their opinions. California American Water must send customer notices about the proposed changes and meetings in April.”²⁸ Cal Am admits that while it has, “engaged the business community, little has been done to date to initiate discussions with residential groups.”²⁹ When asked during cross-examination how Cal Am intends to approach the residential groups to address the modifications that are being proposed for them, Cal Am’s witness, Mr. Dave Stephenson, testified:

A. I think the modifications proposed to residential group [sic] would be sent to them at some point in time through a notification of some type.³⁰

In spite of the fact that Cal Am acknowledges customer disclosure and noticing an important aspect of Phase 2 of this proceeding and declares it “must send customer notices about the proposed changes in April,” the April 2012 timeline has passed and customers still have not been given a notice of proposed rate increases. Given the importance of customer outreach, customer education, and customer notice of the proposed changes to customer’s bills and the fact that Cal Am has not provided its customers with notice of the bill impacts, customers have not been properly noticed as to how the proposed rate design changes could affect them. What’s more, Cal Am has also failed to provide an accurate bill comparison that portrays the impacts customers will experience assuming Cal Am’s proposed rate design changes.

²⁸ CAW Exh. 77, p. 43, lines 9-23, 27-28.

²⁹ *Id.* at lines 23-25.

³⁰ Reporter’s Transcript (“RT”) pp. 1561:16-1562:3 (Cal Am/Stephenson).

3. Cal Am's Proposed Changes To Residential Rate Design Are Premature And Cannot Be Implemented Until Cal Am Fully Addresses The Impacts Of The Rate Design.

DRA agrees with Cal Am on the importance of customer outreach and customer notification.³¹ Because Cal-Am has failed to properly notify its customers of its proposed rate increases, the current rate design for residential customers should be continued until the next general rate case proceeding in order for Cal Am to provide timely notice and to inform the Commission, DRA, and Cal Am's customers of the rate design changes and impacts such changes could have on residential groups. Furthermore, it would be premature for the Commission to adopt Cal Am's proposals at this time since Cal-Am itself estimates it will take approximately two-to-three months to implement the approved rate design changes and educate customers.³² As also stated during evidentiary hearings by the Independent Reclaimed Water Users Group ("IRWUG") and in support of the analysis by Overland Consulting on behalf of DRA, a closer, more refined look at Cal Am's rate design proposals must occur before the Commission adopts them.³³ Even accepting Cal Am's testimony that the proposed changes to rate design are not "drastic modifications on the residential group,"³⁴ the importance of customer notice is not diminished no matter how minor the bill impacts.

In order for Cal Am to properly notify its customer to ensure they understand its proposals and with a reasonable amount of time to suggest modifications, Cal Am should make a detailed proposal in its next GRC, scheduled for July 1, 2013, which includes the costs associated with the rate design proposals and provides a more refined look at the rate design proposals. This will allow the Commission, Cal Am's customers, and DRA

³¹ DRA Exh. 34, p. 55, lines 25-26.

³² CAW Exh. 77, pp. 44-45, lines 4-9; *See also*, DRA Exh. 34, p. 55, lines 10-29.

³³ RT p. 1606:16-22 (Statement of Mr. Lowrey, Counsel for IRWUG).

³⁴ RT p. 1562:3-9 (Cal Am/Stephenson).

to determine what the impacts of the rate design changes will be. Until then, Cal Am has not presented a compelling enough argument to modify the current residential rate design.³⁵

B. Rate Design for Non-Residential Customers

1. Background On Cal Am’s Proposal For Non-Residential Rate Design In Cal Am’s Monterey District.

For its non-residential customers, Cal Am proposes to consolidate the following “non-residential” customer classes: Commercial, Public Authority, Industrial, Dedicated Irrigation, Non-Potable Use (golf course customers when using potable water for emergency use), Special Use or Hydrant Meter, Miscellaneous, Ryan Ranch, Bishop and Hidden Hills.^{36 37} Cal Am asserts that its proposal to consolidate most non-residential customer classes into one grouping is for billing purposes only.³⁸ Cal Am’s other specific changes include: eliminating the current allocation tiered rate design (except for non-potable golf course customers when using potable water for emergency use), eliminating the annual true-up process, and setting three categories of uniform rates.³⁹

Cal Am’s proposal to establish a Conservation Base Rate for the non-residential customer class is a different Conservation Base Rate than was calculated for the residential customer class.⁴⁰ Cal Am proposes to split the non-residential customers into three categories and set a uniform rate for each category as a percentage of the Conservation Base Rate as follows: Category 1 = 100%; Category 2 = 175%, and

³⁵ DRA Exh. 34, p. 55, lines 7-9.

³⁶ CAW Exh. 77, p. 31, lines 10-18

³⁷ In the Bishop and Hidden Hills areas, the proposal should include only the non-residential customers since Cal Am’s proposal includes residential customers from these subsystems in the residential customer class. (See CAW Exh. 77, p. 29, lines 10-11.)

³⁸ CAW Exh. 80, p. 6, line 20.

³⁹ CAW Exh. 77, p. 32, lines 7-8.

⁴⁰ *Id.* at Attachment 8, p.2.

Category 3 = 300%.⁴¹ Cal Am's proposes a Conservation Base Rate of \$4.659 per 100 cubic feet.⁴² Cal Am provides a table showing this number and labels it the "CCCB" (Conservation Base Rate) but does not provide a description of how it derived this number. DRA's calculation of the Conservation Base Rate based on Cal Am's table is the following: (category 1 rate x forecasted consumption in category 1) + (category 2 rate x forecasted consumption in category 2) + (category 3 rate x forecasted consumption in category 3) = quantity charge revenue requirement for the non-residential customer class, where the category 1 rate equals the Conservation Base Rate and the category 2 and 3 rates are each a function of the Conservation Base Rate.

2. Cal Am fails to provide specific proposals for the potable use golf course, special use/hydrant meter and miscellaneous customer classes.

Using Cal Am's definition of "non-residential" customer classes, golf courses (potable use) would be excluded from the non-residential class and Special Use/Hydrant Meter and Miscellaneous use would be added to the non-residential class.⁴³ Currently, potable use golf courses have an allotment and are billed at the same rates and three-tiered rate design as commercial customers.⁴⁴ Cal Am does not specify what its proposal is for the rate design for potable use golf courses, nor has it presented any support for moving away from the current tiered rate, which uses an allotment for potable use golf courses based on best management practices.⁴⁵

⁴¹ *Id.* at p. 32, lines 10-11. The Category 3 300% has been modified to reflect the correction made by Mr. Stephenson during evidentiary hearings. (*See* RT p. 1577:14 to 1578:27.)

⁴² CAW Exh. 77, Attachment 8, p. 2.

⁴³ CAW Exh. 77, p. 31 lists special use or hydrant meter and miscellaneous customers as included in Cal Am's proposed consolidated non-residential customer class but does not list potable golf courses as being included in the proposed consolidated non-residential customer class. This is compared to the current non-residential customer classes listed in D.09-07-021, Appendix A, Section V.A. as "commercial, industrial, public authority, golf courses (potable use), golf courses (non-potable – Visciano tank), and dedicated irrigation meter customer classes."

⁴⁴ D.09-07-021, Appendix A, Section V.F.

⁴⁵ CAW Exh. 77, p. 5, line 17 – 18.

For Miscellaneous customers, Cal Am does not specify what the current or proposed rate design is other than to say that Miscellaneous customers would be included in the non-residential customer class under the proposed rate design. Furthermore, comparing the current rate design with the proposed rate design for Special Use/Hydrant Meter Customers shows that the current rate is set at 200% of the base rate,⁴⁶ while the proposed rate design would raise these customers' rates by the overall percentage increase in the Monterey district,⁴⁷ which is 16.96%.⁴⁸ Again, Cal Am provides no justification for this proposed change. These proposals should be developed and presented in Cal Am's next general rate case filing, scheduled for July 1, 2013, to allow the Commission to weigh the costs and benefits to customers of the rate design proposals. Only then will customers be provided with equity and fairness.

3. Cal Am Should Comply With Its Previous Commitment To Improve The Allotment Data.

The Monterey Peninsula Water Management District ("Water Management District") commercial allotments that are currently in place for non-residential customers are not accurate and have not been updated since 1991.⁴⁹ As DRA stated during cross-examination, in accordance with the rate design settlement, "the intent of the settlement was that they [the allotments] were to have been updated and there would have been more precise allotments or audits in lieu of allotments."⁵⁰ In fact, Cal-Am has been aware of the problems with the non-residential allotments since the last GRC when Cal Am agreed to update its allotments.⁵¹ Until Cal Am complies with the process agreed to in the previous GRC settlement, it is premature to abandon the determination of

⁴⁶ D.09-07-021, Appendix A, Section XIII.

⁴⁷ CAW Exh. 77, p. 39, lines 26 – 28.

⁴⁸ D.12-06-016, p. 2.

⁴⁹ RT. pp.1715:3-1716:6 (DRA/Lubow).

⁵⁰ *Id.*

⁵¹ D.09-07-021, Appendix A, Section V.D.

allotments.⁵² Cal Am should develop accurate allotment data for its non-residential customers based upon audits based upon best management practices.

4. Cal Am Has Not Shown Its Distribution Of Costs Across Cal Am's Customer Classes Provides Equity And Fairness.

Cal Am's proposed rate design would allocate 27% of Cal Am's revenue requirement to the non-residential customer class.⁵³ This corresponds to the non-residential customers using nearly 32% of total water use in the Monterey County district.⁵⁴ This is a substantial portion of Cal Am's overall revenues for the district and this underscores the importance of creating a rate design that provides equity and fairness in the distribution of costs across Cal Am's customer base, and that fairly considers the impact that the new rate design can have on the level of water conservation.

In order to implement an equitable rate design Cal Am should explain its proposed changes in cost allocation across customer classes. Additionally, in order to fairly consider the impacts of the new rate design, Cal Am should provide accurate and easy to understand bill impacts prior to implementing non-residential rate design.

Cal Am claims that it provides a comparison of the non-residential rate design at proposed rate design and current rate design at an assumed revenue requirement.⁵⁵ However, Cal Am's comparison is flawed for similar reasons as detailed above in the

⁵² DRA Exh. 34, pp. 44- 45, lines 23-28.

⁵³ See CAW Exh. 77, Attachment 8, pp. 1-3, revenues for Commercial, Public Authority, Industrial, Dedicated Irrigation, Golf Courses, miscellaneous, Construction and Ryan Ranch shown on p. 2. DRA arrived at this percentage by taking the revenue for these non-residential classes, divided by total revenues including residential, shown on p. 1, and other water utility customers, shown on p. 3. $\$13,186,013 / (\$13,186,013 + \$34,978,030 + \$125,324) = 0.273$.

⁵⁴ See CAW Exh. 77, Attachment 8, pp. 1-3, consumption (10cfs) for Commercial, Public Authority, Industrial, Dedicated Irrigation, Golf Courses, Miscellaneous, Construction and Ryan Ranch shown on p. 2. DRA arrived at this percentage by taking the consumption for these non-residential classes, divided by total consumption (10 cfs) including residential, shown on p. 1, and other water utility customers, shown on p. 3. $14,900,853 / (14,900,853 + 31,703,761 + 163,386) = 0.319$.

⁵⁵ CAW Exh. 77, p. 35, lines 16 -21.

residential section of this brief. Specifically, the total revenue requirement used in Attachment 8 (proposed rate design) for the Commercial, Public Authority, Industrial, Dedicated Irrigation, Golf, Miscellaneous, Construction and Ryan Ranch customer classes of \$13,186,013⁵⁶ does not compare with the \$16,408,845 shown in Attachment 7 (current rate design).⁵⁷ This is a difference of \$3,222,832 in the revenue requirement. This means that the revenue requirement Cal Am uses for non-residential customers under the current rate design is \$3,222,832 more than under the proposed rate design.

As discussed above, the amount of quantity revenue for residential customers is \$3,204,411 less under the current rate design. However, for non-residential customers, the revenue is \$3,222,832 more under the current rate design. So, it follows that a portion of the difference in the bills Cal Am shows in its testimony is due to the changing cost allocation across customer classes under the current and proposed rate designs. However, Cal Am does not explain any proposed changes in cost allocation.

Also, because of the change in the revenue requirement for the non-residential customer class, bill comparisons between current and proposed rate designs cannot be used to infer the impacts of Cal Am's proposed change in rate design. This is because much of the reduction in the sample customer's bill between the current rate design of \$689.89 and the proposed rate design of \$485.71⁵⁸ is explained by the apparent reduction in the revenue requirement for non-residential customers. Cal Am states that Attachment 7 and 8 each assume the same revenue requirement of \$49.62 million.⁵⁹ However, meter

⁵⁶ Quantity revenue shown in Attachment 8 is \$10,184,680, and meter revenue shown in Attachment 8 is \$3,001,333, which adds to \$13,186,013.

⁵⁷ See CAW Exh. 77, Attachment 7 showing the following "Total Revenue" in the right-most column of the table: Commercial \$10,112,317. Public Authority \$1,611,641, Industrial \$2,171,529, Dedicated Irrigation \$256,383, Golf \$323,681, Miscellaneous \$33,438, Construction \$0 and Ryan Ranch \$399,189. Those add up to \$14,908,178 for the quantity revenue. Meter revenue at current rate design is half the meter revenue shown in Attachment 8 at the proposed rate design (half of \$3,001,333 equals \$1,500,667). Quantity revenue and meter revenue add to \$16,408,845.

⁵⁸ *Id.* at lines 24 – 25.

⁵⁹ CAW Exh. 77, p. 30, lines 5-6.

charge revenue is not shown in Attachment 7, so there is no way to verify that the same revenue requirement is used in Attachment 7 at the current rate design and in Attachment 8 at the proposed rate design.

5. Cal Am’s Proposal To Establish A Uniform Rate Design For Non-Residential Customers Is Contrary To The Commission’s Conservation-Oriented Policy.

Cal Am proposes uniform rates for non-residential customers where each customer is billed in one of three categories depending on their level of compliance with the Water Management District’s Ordinances, Rules and Regulations.^{60 61} The proper place for the Commission to consider if it will allow Cal-Am to use the Water Management District’s Ordinance 141 for the rate design for non-residential customers, is in the Cal Am’s next GRC filing, scheduled for filing July 1, 2013. A full consideration of this proposal at that time will allow the Commission to see if there are new ordinances that Cal Am should reflect for billing purposes to help ensure that the Water Management District’s best management practices and Cal Am’s billing practices align.

Given the Cease and Desist Order adopted by the State Water Resources Control Board and the Seaside Adjudication Decision,⁶² the Commission needs to consider whether moving away from a tiered rate design toward a uniform rate design for non-residential customers is appropriate at this time for the Monterey district. The Water Management District appropriately raises concerns with Cal Am’s proposal and specifically addresses Special Use customers, the need for hydrant use, and the use of

⁶⁰ CAW Exh. 77, p. 49, lines 1 – 5, and p. 32, lines 23 through p. 33, line 8.

⁶¹ See CAW Exh. 77, Attachment 9, *Final Ordinance No. 141, An Ordinance of the Board of Directors of the Monterey Peninsula Water Management District Amending and Revising Regulation XIV – Water Conservation—To Update and Clarify Language and Add Non-Residential and Landscape Water Efficiency Requirements*, Effective January 1, 2010, pp. 1-2. The Water Management District’s Regulation XIV regarding water conservation is made up of Rules 140 and 142 through 154.61.

⁶² MPWMD Exh. 4, pp. 4-5, lines 22 -9.

potable trucked water at a non-tiered rate.⁶³ In addition to those concerns expressed by the Water Management District, the overarching concern with Cal Am's proposal to move away from tiered rates toward uniform rates is that pursuant to The Water Conservation Act of 2009 and the Commission's Water Action Plan, the Commission has encouraged utilities to move in the direction of conservation-oriented tiered rate designs to encourage water savings.

In the Monterey County District, which has one of the greatest needs to conserve and where non-residential customers make up about 32% of the usage, it is counter-productive to move away from a tiered rate design in favor of a uniform rate design. Furthermore, it would be unfair to have a uniform rate design for non-residential customers and have tiered rates for residential customers. Residential customers pay much higher penalty rates for inefficient use of water under Cal Am's proposal. To illustrate, residential customers' Block 5 rate is \$46.369 per 100 cubic feet, whereas the top Category 3 rate for non-residential customers is \$16.308 per 100 cubic feet for inefficient usage. This Block 5 residential rate is 284% of the non-residential Category 3 rate. The top Category 3 rate of \$16.308 per 100 cubic feet is lower than even the Block 3 rate for residential customers, which is \$18.548.⁶⁴

While it is true non-residential customers would pay a higher meter rate of \$19.77/month for a meter of 5/8 inch, compared to residential customers who would pay \$9.89/month, this is a small difference relative to the massive differences in the quantity rates that could lead to huge bill discrepancies between an inefficient residential user and an inefficient non-residential user when the total usage is taken into account.

⁶³ *Id.* at 13, lines 16-26.

⁶⁴ CAW Exh. 77, Attachment 8, pp. 2-3.

6. Cal Am's Self-Reported Surveys are Insufficient and Could Lead to Incorrect Rates and Cost Allocation.

Cal Am's proposed method of using survey responses from 855 non-residential customers to extrapolate the level of consumption for 3,700 customers in each of the three proposed rate categories (Category 1 through 3)⁶⁵ is inadequate and will provide estimates of future consumption that cannot be relied upon. 855 customers represent less than 25% of all of Cal-Am's customers in these three rate categories.⁶⁶ Thus Cal Am has used a relatively small sample that may yield an inaccurate forecast of future water use by these customer groups. It is important that Cal Am accurately forecast sales for non-residential customers to prevent the Commission from adopting rates that fail to yield an appropriate revenue requirement from each customer class. .

In addition, to the extent that this non-residential usage data is used to determine the proposed change in cost allocation between Cal Am's present and proposed rate designs across customer class cost allocations may be inaccurate and not reflect Cal-Am's customers' actual water use. .

C. Alternatives to California American Water's Rate Design Proposals

1. Cal Am Should Make A Detailed Proposal In Its Next GRC To Allow Adequate Time For Customer Notice And Outreach Regarding Its Rate Design Proposals.

Cal Am asserts that in order to ensure customers understand the rate design proposals it should have sent customer notices about the proposed changes and meetings in April, 2012.⁶⁷ Cal Am estimates another two to three months is needed to implement the approved changes, educate customers, do an in-depth survey of non-residential

⁶⁵ CAW Exh. 77, p. 36, line 8 – 12.

⁶⁶ DRA Exh. 34, p. 46, lines 6-10.

⁶⁷ CAW Exh. 77, p. 43, lines 27-28.

customers, and transfer multi-residential customers to the residential billing platform.⁶⁸ Cal Am also alleges that because of the new billing system implementation scheduled for the 2nd and 3rd quarters of 2012, rate design changes proposed after January 1, 2013 may have to be delayed.⁶⁹ In fact, the January 1, 2013 deadline is already challenging for Cal Am.⁷⁰

Given that it is now August 2012, the April 2012 timeline has passed and it would be premature for Cal Am to inform its customers about the rate design changes, since the final adopted rate design will not be known until November 2012 under the current schedule.⁷¹ It is also possible that a final decision could be delayed beyond January 1, 2013.⁷² Furthermore, as described earlier in this brief, Cal Am would need to develop materials that accurately show bill impacts resulting from the rate design changes and explain any cost allocation changes. This would allow customers to understand the impacts of Cal Am's proposed changes on customers' bills. Producing these materials, and fleshing-out Cal Am's rate design and cost allocation proposals will take some time and would be best addressed by the Commission in Cal-Am's next GRC that is scheduled to be filed on July 1, 2013.

D. Emergency Conservation Rates

Cal Am currently has an emergency conservation rate design for emergency water supply shortage situations. The current emergency conservation rate design is based upon the current conservation rate design with specified percentage increases in residential rates in tier 4 and 5 and specified percentage increases in non-residential rate in tiers 2

⁶⁸ *Id.* at p. 45, lines 7-13.

⁶⁹ *Id.* at lines 18-28.

⁷⁰ *Id.* at p. 45, line 28 and p. 46, line 1.

⁷¹ DRA Exh. 34, p. 53, lines 8-29.

⁷² *Id.*

and 3, as well as other changes during emergencies.⁷³ Cal Am proposes to change its emergency conservation rate design to make it conform with Cal Am's proposed conservation rate designs. Under Cal Am's proposed emergency conservation rate design, there are specified percentage increases from the proposed Conservation Base Rate for both residential and non-residential customers.⁷⁴

Cal Am alleges that the current rate design limits usage in the fourth and fifth residential tiers, and in the second and third non-residential tiers, making it "difficult to conclude that rate increases in these tiers would be beneficial."⁷⁵ Cal Am also alleges that changes to the emergency conservation rate design are necessary since the proposed changes for non-residential customers will make the current emergency conservation rates unworkable.⁷⁶

No changes to the emergency conservation rate design should be made until Cal Am develops accurate allotment data for its existing non-residential rate design in order to project more accurately the need to reduce consumption in each respective tier. Furthermore, Cal Am's proposal for emergency conservation rate design for non-residential customers relies on a small sample size used in forecasting consumption for these customers. Therefore, Cal Am should provide more accurate and complete data before proposing changes for emergency conservation rate design.

⁷³ CAW Exh. 77, pp. 21-22, lines 23-3.

⁷⁴ CAW Exh. 77, pp. 41-42: p. 41, lines 4-8, lines 20-21, p. 42, lines 9 – 14.

⁷⁵ CAW Exh. 77, page 22 at lines 4-6.

⁷⁶ CAW Exh. 77, page 40 at line 28 to page 41 at lines 1-2.

II. WATER REVENUE ADJUSTMENT MECHANISM/MODIFIED COST BALANCING ACCOUNT ISSUES

A. Amortization Of The WRAM/MCBA

1. Procedural Background of the Water Revenue Adjustment Mechanism/Modified Cost Balancing Account Issues for Cal Am.

Cal Am was one of the original applicants in A.10-09-017, the application filed by Class A water utilities with WRAM and MCBA to modify the amortization of the WRAM-and MCBA accounts. On June 23, 2011, Cal Am filed a motion to withdraw from the WRAM-amortization proceeding.⁷⁷ The Commission, in D.12-04-048 granted Cal Am’s motion to withdraw from the WRAM-amortization proceeding to avoid conflict with the proposals made in the instant general rate case proceeding.⁷⁸ In the December 12 Scoping Memo, the ALJ ruled that the record in the A.10-09-017 pertaining to Cal Am would be incorporated into the record for this proceeding, including Phase 2, in order to provide an opportunity for a closer examination of the WRAM/MCBA mechanisms, consistent with the June 8, 2011 Scoping Memo in A.10-09-017.⁷⁹

Additionally, the December 12 Scoping Memo noted other issues related to Cal Am and its WRAM/MCBA mechanisms. In particular, the December 12 Scoping Memo noted that the Commission granted Cal Am individual district WRAM/MCBAs as part of settlements and in each case, the WRAM/MCBA mechanisms were part of a pilot program in which “the effects were to be reviewed in those districts’ next general rate case.”⁸⁰ The December 12 Scoping Memo also raised the issue of whether Cal Am

⁷⁷ CAW Exh. 75, p. 4, lines 18-21.

⁷⁸ D.12-04-048, p. 2, Ordering Paragraph 1.

⁷⁹ See December 12 Scoping Memo, p. 5, also referring to the June 8, 2011 Scoping Memo in A.10-09-017, which found that the Commission should undertake further review of the WRAM/MCBA mechanisms in each utility’s general rate case.

⁸⁰ December 12 Scoping Memo, pp. 5-6.

complied with the WRAM/MCBA safeguard provisions adopted in D.08-06-002.⁸¹ The December 12 Scoping Memo further identified what a full review of the WRAM/MCBA accounts should include and what issues should be addressed.⁸² This opening brief will address those following questions under sub-heading *C. Other WRAM/MCBA Issues*, except for those questions addressing the Monterey-style WRAM (addressed in sub-heading *B. Monterey-Style WRAM*” below).

2. The Commission Should Authorize The Same Amortization Schedules and Procedures For Cal Am That Were Established For Other Class A Utilities With WRAM/MCBA Accounts To Provide Equity And Fairness To Cal Am’s Customers.

Cal Am’s authorization for amortization of WRAM/MCBA account over- or under-collections should be consistent with the amortization schedules set forth in D.12-04-048, the Commission’s decision in the WRAM-amortization proceeding (A.10-09-017). As discussed in section “C. Other WRAM/MCBA issues” below, Cal Am’s Special Request #34 to annually amortize Cal Am’s balancing accounts including WRAM/MCBA in rates over 12 months is outside of the scope of this proceeding. Only the following pertinent questions from the December 12 Scoping Memo should be addressed:

- “How should the WRAM/MCBA balances for the various districts be amortized/recovered?
- Should the amortization rules be different for a district, such as Monterey, that has extremely high account balances? If so, how?
- How should the Commission’s resolution of requested changes to amortization rules in A.10-09-17 be applied to Cal Am?”⁸³

⁸¹ *Id.* at p. 6, footnote 3.

⁸² *Id.* at pp. 7-8.

⁸³ December 12 Scoping Memo, p. 8.

When the December 12, 2011 Scoping Memo was issued in Phase 2, Cal Am had not yet submitted its testimony in this phase and the Commission had not yet issued D.12-04-048. D.12-04-048 provides direction regarding the amortization time periods and other amortization procedures for the WRAM/MCBA accounts of other Class A water utilities. Cal Am makes several arguments for why the Commission should authorize Cal Am a 12-month amortization period for the WRAM and MCBA. Nevertheless, Cal Am has not provided any evidence showing that it is any different than the other Class A water utilities with WRAM/MCBA accounts and therefore should be treated differently. Thus, there is no evidence to justify the use of different time periods or procedures for amortization of Cal Am’s WRAM/MCBA accounts. Cal Am’s authorization for amortization of WRAM/MCBA account over- or under-collections should be consistent with the amortization schedules set forth in D.12-04-048.

Cal Am alleges that increased frequency and a shorter collection period for WRAM/MCBA under-collections would prevent intergenerational inequity from occurring because it would “more closely match the recovery of the balance with the causation of the balance.”⁸⁴ Cal Am further explained that aside from recovery in the balance sheet and the company’s credit ratings, “equity for customers and the company” was a major driver for recommending amortization of under-collections on a 12-month basis.⁸⁵ Cal Am’s argument that increased frequency and a shorter collection period for WRAM/MCBA is flawed. Cal Am fails to consider the point made during evidentiary hearings that rapid amortization of under-collections will further exacerbate the problem of rate shock for customers.⁸⁶ In fact, when asked whether this was true, Cal Am’s witness, Mr. Vilbert testified:

⁸⁴ CAW Exh. 75, p. 31, lines 8-14.

⁸⁵ RT pp. 1767:8-1769:17 (Cal Am/Stephenson and Linam).

⁸⁶ RT pp. 1774:19-26 (Statement by ALJ Long).

A: I think the short answer is, it has that effect. If the rate increase is large enough, you're going to have a powerful effect on consumption.⁸⁷

Cal Am raises points that the Commission has already taken into account when those points were raised by the other Class A water utilities in A.10-09-017. For example, the Commission considered intergenerational equity issues when it made its determination of the appropriate amortization periods for WRAM/MCBA for the other Class A water utilities in D.12-04-048.⁸⁸ Thus, Cal Am's argument lacks merit. In fact, D.12-04-048 also addressed Cal Am's five other related requests made in Phase 2 of this proceeding.⁸⁹ The same procedures adopted for the other Class A water utilities in D.12-04-048 should be adopted for Cal Am's Los Angeles, Larkfield, San Diego, and Ventura districts. Cal Am has not raised any factors distinguishing itself from the other Class A water utilities that would make the amortization time periods and procedures from D.12-04-048 not applicable to Cal Am. Having the same amortization procedures for Cal Am that exist for the other Class A water utilities would be more equitable and increase administrative efficiency of implementing the procedures. Cal Am should simply be required to follow the amortization time periods and all other findings of fact, conclusions of law, and ordering paragraphs in D.12-04-048.

Finally, Cal Am's further request to accelerate recovery of 2009, 2010 and 2011 balances should be denied because it would be unfair and inequitable to Cal Am's customers. In D.12-04-048, the Commission denied accelerated recovery of the other Class A water utilities' prior year WRAM/MCBA balances due to the high bill impacts that would result.⁹⁰ In D.12-04-048, the Commission agreed with DRA that the other applicants' (the other Class A water utilities) request for accelerated amortization of 2010

⁸⁷ RT pp. 1774:27-1775:3 (Cal Am/Vilbert).

⁸⁸ D.12-04-048, pp. 3 – 4.

⁸⁹ CAW Exh. 76, pp. 8-11, lines 5 through 10.

⁹⁰ D.12-04-048, pp. 30-32 and Ordering Paragraph 8.

WRAM/MCBA balances “should not be approved due to the high rate impact that would occur in 2012 in some districts.”⁹¹ The same concerns apply here and therefore Cal Am’s request should be denied. Causing rate shock for customers by no means creates equity or fairness to Cal Am’s customers.

In order to provide equity and fairness to its customers, Cal Am should follow the amortization schedule set forth in Appendix A of D.12-04-048, which would set a cap on total net WRAM/MCBA surcharges of 10% of the last authorized revenue requirement to be effective the first test year of Cal Am’s next GRC to be filed July 1, 2013.

B. Monterey-Style WRAM

1. Cal Am should use the Monterey-style WRAM in its Monterey District because it would reduce the high under-collections in the WRAM/MCBA accounts.

One of the questions raised in the December 12 Scoping Memo and reserved for review in this Phase 2 is whether use of the Monterey-style WRAM would have prevented the high WRAM/MCBA balances.⁹² During the thirteen years in which Cal Am used the Monterey-style WRAM in the Monterey District,⁹³ customers’ consumption remained below regulatory limits.⁹⁴ Cal Am agrees that the Monterey-style WRAM would in most cases reduce the current under-collections accumulating in the WRAM/MCBA accounts.⁹⁵ Cal Am does not calculate what effects employing a Monterey-style WRAM instead of the WRAM/MCBA would have had on the cumulative

⁹¹ *Id.* at p. 32.

⁹² December 12 Scoping Memo, p. 7.

⁹³ D.96-12-005 implemented the Monterey-style WRAM, and D.09-07-021 implemented the WRAM/MCBA.

⁹⁴ A.10-09-017, *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*, filed April 8, 2011, p. 13, Section B.

⁹⁵ CAW Exh. 75, p. 22, lines 15-20.

WRAM/MCBA balances in its Monterey district because it claims such a calculation cannot be accurately produced.⁹⁶ Nevertheless, Cal Am provides what it terms an “inaccurate” calculation illustrating the effects on the WRAM/MCBA balances of employing the Monterey-style WRAM versus the WRAM/MCBA in its Monterey district.⁹⁷

DRA agrees with Cal Am that it is not possible to make an “accurate” calculation illustrating the effects on the WRAM/MCBA balances when using the Monterey-style WRAM versus the WRAM/MCBA because there are too many variables that would have to be defined.⁹⁸ However, Cal Am’s illustrative example shows that the WRAM/MCBA under-collected balance would be approximately \$3.5 million less than the 2011 WRAM/MCBA reported balance of \$13.351 million if Cal Am were to employ the Monterey-style WRAM.⁹⁹ Although illustrative, this example shows that using the Monterey-style WRAM would have the positive effect of reducing the excessively high balances in the WRAM/MCBA account.

2. The Monterey-style WRAM would result in less of a rate shock to customers since it only captures the difference in revenues attributable to rate structure differences.

As DRA indicated in its *Recommendations to Address Undercollections in Cal Am’s Monterey District*, filed in A.10-09-017, filed April 8, 2011, “the Monterey-style WRAM would result in a less of a ‘rate shock’ for customers relative to the WRAM/MCBA while maintaining an incentive to customers to conserve because the

⁹⁶ *Id.* at p. 23, lines 4-9.

⁹⁷ *Id.* at lines 17-28.

⁹⁸ *Id.* at lines 9-11.

⁹⁹ *Id.* at lines 17-28.

Monterey-style WRAM does not adjust for differences in quantities sold.”¹⁰⁰ Unlike the WRAM/MCBA mechanism, “The Monterey-style WRAM would capture the difference in revenues attributable to rate structure differences, but not due to changes in consumption.”¹⁰¹ Various factors such as economy, weather, and drought are captured in the WRAM/MCBA not just conservation rates, which goes against the intent of the WRAM/MCBA mechanisms. The intent of the WRAM/MCBA mechanisms were “to remove any disincentives for the utility by allowing it to be made whole for the loss of sales and revenues due to conservation efforts.”¹⁰²

3. Cal Am’s Monterey District Unique Circumstances Render A WRAM/MCBA Unnecessary To Provide An Incentive To Cal Am To Support Water Conservation.

Cal Am’s Monterey District is under severe supply restrictions, including the Cease and Desist Order, the Seaside Adjudication Decision,¹⁰³ and a water moratorium ordered by the State Water Resources Control Board.¹⁰⁴ Also, Cal Am will be required to cover the substantial costs that will come in the near future to pay for the new water supply project.¹⁰⁵ These costs are in addition to the 16.96% increase authorized in Phase 1,¹⁰⁶ the 15.78% San Clemente Dam surcharge authorized in D.12-06-040,¹⁰⁷ the

¹⁰⁰ A.10-09-017, *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*, p. 12.

¹⁰¹ DRA Exh. 34, p. 15, lines 3-5.

¹⁰² *Id.* at p. 18, lines 21-23.

¹⁰³ MPWMD Exh. 4, pp. 6-7, lines 26-2.

¹⁰⁴ *See* Decision 11-03-048, Ordering Paragraph 1, which directs Cal Am to acknowledge in its tariff a water moratorium in its Monterey District ordered by the State Water Resources Control Board.

¹⁰⁵ A.12-04-048, Application of California-American Water Company For Approval of The Monterey Peninsula Water Supply Project And Authorization to Recover All Present And Future Costs in Rates (Cost estimates range from \$320-\$367 million)

¹⁰⁶ Decision 12-06-016, p. 2.

cumulative WRAM/MCBA net balance from 2010, and 2011 amounting to 56.28% of actual revenue,¹⁰⁸ and other increases that have already been authorized such as the surcharges authorized in D.12-06-016 for the amortization of various memorandum and balancing accounts from the pre-2007, 2008 through 2009 balances in the Monterey-style WRAM and interim true-up balancing account.

While in the long-term water conservation should not lead to higher bills, the Monterey district is unique in that further water conservation is not going to lead to long-term reductions in costs. This results in ratepayers paying for the fixed costs of the new water supply, regardless of how much they conserve. Furthermore, in light of the moratorium, there will not be any new customers in the near future to share these additional costs.¹⁰⁹

4. Cal Am's Monterey District Ratepayers Are Disproportionately Impacted By The WRAM/MCBA.

Because of the unique circumstances in Monterey, ratepayers in Cal Am's Monterey district are being disproportionately impacted by the WRAM/MCBA. DRA elucidated the economic factors affecting the Monterey district and how these factors are being captured in the WRAM/MCBA, even though this was not the intent of the pilot programs:

[T]he economic downturn has significantly affected the Monterey County. 'Shut off for non-pay' service orders rose from 387 in 2007 to 2,673 in 2009. Additionally, low-income program participation has increased from 2.77% of the total customers served to 3.51% of the total customers served, and

¹⁰⁷ Decision 12-06-040, Appendix 2, Balancing Account Amortization and Customer Surcharge, Table 2.1.

¹⁰⁸ DRA Exhibit 34, p. 10, Table LE-2.

¹⁰⁹ A.10-09-017, *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*, p. 9.

the number of foreclosures increased dramatically in 2008 and 2009 relative to 2007. The effect of these economic changes is being captured in the WRAM/MCBA. This type of protection goes well beyond a key goal of the WRAM/MCBA pilot program -- to remove any disincentive for Cal Am to implement conservation rates and conservation programs. The Commission should preserve the balance of risk between ratepayers and shareholders by ensuring any revenue decoupling or revenue adjustment mechanism properly apportions risk between ratepayers and shareholders. Unfortunately the existing WRAM/MCBA mechanism fails to meet that test.¹¹⁰

The MCBA in Cal Am's Monterey District tracks only purchased power amounts and not pump taxes or purchased water expenses.¹¹¹ This is different from the MCBA's in Cal Am's other districts, such as the Los Angeles District, that capture purchased water amounts as well. The MCBA in Cal Am's Monterey district tracked relatively low amounts during 2010. These low purchased power amounts in the Monterey district in 2010 amounted to \$247,091, whereas the WRAM under-collection balance was \$11,543,043.¹¹²

This magnitude of difference contributes to a high overall WRAM/MCBA net balance. Thus, although the parties envisioned that the utility and ratepayers would be proportionally affected when conservation rates were implemented,¹¹³ instead the WRAM under-collections dwarf any amounts tracked in the MCBA and this contributes to large surcharges for customers. Additionally, Cal Am has stated that there is no

¹¹⁰ A.10-09-017, *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*, filed April 8, 2011, , p. 10.

¹¹¹ D.09-07-021, Appendix A, Section VIII.D and Section XIV.B.2.

¹¹² DRA Exh. 34, p. 10, footnote 14.

¹¹³ D.09-07-021, Appendix A, Section XIX.B

opportunity for sales to be above the adopted sales forecast.¹¹⁴ This means that there is no possibility of a symmetrical benefit from a WRAM/MCBA mechanism for customers.

A Monterey-style WRAM assures that Cal Am would not financially benefit or lose as a result of having tiered rates by truing up quantity revenues to what the company would have collected under an equivalent uniform quantity rate. As noted above, this worked well for thirteen years without problems. The Commission should reinstate the Monterey-style WRAM instead of the WRAM/MCBA in Monterey to limit further injury to ratepayers.

C. Other WRAM/MCBA issues

1. Cal Am's Request To Earn An Authorized Cost of Capital and for Annual For All Balancing Accounts Is Outside the Scope of This Proceeding.

Cal Am's Special Request #4 to earn its authorized weighted average cost of capital on all deferred balances in excess of its \$33 million short-term debt limit was made in Phase 1 of this proceeding.¹¹⁵ In its Phase 2 testimony, Cal Am acknowledged that Special Request #4 "will be handled within the scope of the Phase 1 proposed GRC decision expected shortly."¹¹⁶ The Commission issued its final GRC decision for Phase 1, Decision 12-06-016, wherein it denied Special Request #4 in Conclusions of Law 53 and 54:

"53. Cal-Am's request to earn rate of return on all deferred balances is not reasonable.

¹¹⁴ At the April 25, 2011 PHC in A.10-09-017, Cal Am stated that the Commission adopted 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. (See Reporter's Transcript, PHC-4, p. 131, lines 2-13.) See also, A.10-09-017 Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo, 6/8/11, p. 10, footnote 11 citing the Reporter's Transcript, p. 131.

¹¹⁵ CAW Exh. 15, p. 9, lines 9-11

¹¹⁶ CAW Exh. 76, p. 3, lines 3 – 4.

54. Cal-Am’s request to earn rate of return on all deferred balances should be denied.”¹¹⁷

For this reason, Cal Am’s discussion of its recommendation for the Commission to allow Cal Am to earn the “authorized carry cost rate”¹¹⁸ should be disregarded. The Commission has already disposed of this issue in D.12-06-016.

Similarly, Cal Am’s Special Request #34 to annually amortize all of its balancing accounts in rates over 12 months was made in Phase 1 of this proceeding.¹¹⁹ However, in its Reply Brief filed in Phase 1 of this proceeding, Cal revised its request to apply only to the WRAM/MCBA balancing accounts and requested a maximum 18-month amortization instead of the 12-month period originally requested.¹²⁰ Moreover, in D.12-06-016, the Commission denied “Cal Am’s request to amortize balancing accounts in rates on an annual basis.”¹²¹ Yet, even after withdrawing the request to amortize all balancing accounts and the Commission’s decision denying this request, Cal Am takes another stab at this request in Phase 2.¹²² Cal Am mistakenly argues that this request was neither addressed nor denied in D.12-06-016 and that Special Request #34 was deferred to Phase 2 of the proceeding.¹²³ There is nothing in the record to support Cal Am’s assertion that Special Request #34 was deferred to Phase 2. The Commission should disregard this request as it is outside of the scope of this Phase 2 proceeding.

¹¹⁷ D.12-06-016, Conclusions of Law 53 and 54.

¹¹⁸ CAW Exh. 81, p. 32, line 2.

¹¹⁹ CAW Exh. 15, p. 13, lines 4-8.

¹²⁰ A.10-07-007, *Reply Brief of California-American Water Company*, July 15, 2011, p. 44, citing footnote 113 referencing CAW Exh. 43, Linam Rebuttal, pp. 12-13.

¹²¹ D.12-06-016, Conclusion of Law 60.

¹²² CAW Exh. 76, pp. 3-8, lines 25 - 3.

¹²³ CAW Exh. 81, pp. 37-38, lines 24 through 8.

2. Contributing Factors Including Sales Forecasting Methods, Rate Design, Economic Conditions, Weather, And Other Unknown Factors To The High WRAM/MCBA Balances In Cal Am's Districts Warrant Continued Analysis.

The causes of the extremely high levels of WRAM/MCBA balances in several of Cal Am's districts are unknown. DRA has established that sales forecasting methods, rate design, significant changes in economic conditions, temperature, precipitation, drought, price-elasticity of demand and other factors could contribute to the reduction in consumption, and hence the high balances, and that some of the under-collections tracked in the WRAM/MCBA net balances are unrelated to increased conservation due to tiered rate designs.¹²⁴ DRA has not quantified the portion of the reduced consumption that is related to tiered rate designs. However, the reductions in consumption are attributable to a wide variety of factors and cannot solely be attributed to the forecast methods used.¹²⁵ Sales forecasting could not have prevented the high WRAM/MCBA balances because there are many contributing factors that have led to less sales than actually forecast. In fact, Cal Am agrees that several different factors have led to less sales than actually forecast¹²⁶ and that we are still learning to understand customer reactions to rates, tiered rate design and conservation programs, which will allow better forecasts in the future.¹²⁷

Because of the varying factors, some of which are unknown, that contribute to the excessively high WRAM/MCBA balances in some of Cal Am's districts, Cal Am should provide specific analysis and data collection in its next GRC in accordance with Ordering Paragraph 4 of D.12-04-048.¹²⁸ A more rigorous review of the WRAM/MCBA

¹²⁴ DRA Exh. 34, p. 11, lines 22-31.

¹²⁵ DRA Exh. 34, p. 12, lines 1-4.

¹²⁶ RT pp. 1769:27-1771:16 (Cal Am/Stephenson).

¹²⁷ RT p. 1783:6-12 (Cal Am/Stephenson).

¹²⁸ D.12-04-048, Ordering Paragraph 4.

mechanisms, alternatives to the mechanisms, sales forecasting, which for example should provide a comparison of consumption data with actual sales forecasts, will inform the Commission's decision-making.

3. Cal Am, DRA, and Interested Parties Should Meet To Comply with the safeguard provisions adopted in D.08-06-002 related to the WRAM/MCBA mechanisms.

In discussing the scope for the WRAM/MCBA mechanisms in Phase 2, the December 12 Scoping Memo specified that the WRAM/MCBA mechanisms were part of a pilot program and the effects were to be reviewed in each of Cal Am's districts' next general rate case.¹²⁹ The Scoping Memo also stated, "[t]hese reviews have not taken place and the current substantial under-collections for 2010 and 2011 require that this be quickly undertaken here."¹³⁰ The Scoping Memo also specified a further issue for review "whether Cal Am complied with the safeguard provisions related to the WRAM/MCBA adopted in D.08-06-022[sic]."¹³¹ The first safeguard provisions is outlined in D.08-06-002, Ordering Paragraph 11:

In consultation with DRA and other interested parties, Cal-Am shall develop a comprehensive monitoring and data collection system for use in analyzing customer response to the proposed conservation rates and conservation program. Cal-Am shall schedule a meeting every four to six months to discuss with interested parties the results of the customer response data it is tracking and whether there should be any changes in conservation outreach programs in response to the results.

In its compliance filing in A.10-09-017, regarding compliance with D.08-06-002, Cal Am stated that it only had two months of data available when it submitted its 2009 Los

¹²⁹ December 12 Scoping Memo, pp. 5-6.

¹³⁰ *Id.*

¹³¹ *Id.* at p. 6, footnote 3.

Angeles GRC, and in that GRC adequately performing the evaluations requires the conservation rates to be in place for at least one year. ¹³² Cal Am also raised the fact that DRA and other interested parties discussed the WRAM/MCBA in the 2009 Los Angeles GRC proceeding and came to an agreement in settlement and that settlement was adopted in D.10-06-038.¹³³

DRA also submitted a response regarding compliance with Decision 08-06-002.¹³⁴ In its response, DRA cited Cal Am's statement made in in A.10-07-007 regarding compliance with D.08-06-002, "These meetings are scheduled for August to October 2010."¹³⁵ DRA's response stressed that it did not receive documentation of a comprehensive monitoring and data collection system to analyze customer response to the conservation rates and programs, and pointed out that Cal Am stated that internal meetings had taken place and that additional meetings would be held.¹³⁶

There is no evidence that Cal Am scheduled a meeting every four to six months with interested parties to discuss the results of the customer response data it is tracking and whether there should be any changes in conservation outreach programs in response to the results. Other than the safeguard provisions outlined in D.08-06-002 Ordering Paragraph 11, the primary safeguard requires parties to meet to discuss adjustments to the pilot program if there is a disparate impact on ratepayers or shareholders.¹³⁷ Parties may also jointly or individually file a petition to modify D.08-06-002.¹³⁸ D.08-06-002 further

¹³² A.10-09-017, Compliance Filing of Cal Am, February 10, 2011, pp. 1-2.

¹³³ *Id.* at p. 2.

¹³⁴ A.10-09-017, Response of the Division of Ratepayer Advocates Regarding Compliance with Decision 08-06-002, February 10, 2011.

¹³⁵ *Id.* at pp. 5-8.

¹³⁶ *Id.* at p. 12.

¹³⁷ D.08-06-002, Finding of Fact 17.

¹³⁸ *Id.*

specifies that a disparate impact would be a substantial economic downturn in one or more of the Los Angeles service areas that causes a significant decrease in revenues.¹³⁹

The parties did not have a specific meeting to discuss adjustments to the WRAM/MCBA, however, as Cal Am pointed out, parties engaged in settlement discussions and testimony in the Los Angeles District general rate cases. No party jointly or individually filed a petition to modify D.08-06-002. To comply with the directives in D.08-06-002, Cal Am, DRA, and other interested parties should meet to discuss: (1) the customer response data Cal Am is tracking, (2) whether there should be any changes in conservation outreach programs in response to the results, and (3) adjustments to the WRAM/MCBA in advance of Cal Am's next GRC filing in July 2013.

III. WATER REVENUE ADJUSTMENT MECHANISM/MODIFIED COST BALANCING ACCOUNT IN CALIFORNIA AMERICAN WATER'S SACRAMENTO DISTRICT

1. Procedural Background

DRA filed its Opening and Reply Briefs regarding Cal Am's request for a WRAM/MCBA in Sacramento in Phase 1 of this proceeding on July 25, 2011 and August 8, 2011, respectively. In the final Phase 1 decision, D.12-06-016, the Commission addressed Cal Am's request and rejected the settlement between Cal Am and NRDC stating:

We find that establishing a WRAM/MCBA in the Sacramento District prior to full metering and implementation of tiered rates is not warranted. The conditions that merit a WRAM/MCBA are not present. More importantly, we are conducting a full review of the WRAM/MCBA mechanisms in Phase 2 of this proceeding and it would be premature to establish one in the Sacramento District prior to the full review. Therefore, we do not approve the settlement on

¹³⁹ D.08-06-002, Finding of Fact 18.

Special Request #5, but refer the issue to Phase 2 of this proceeding.¹⁴⁰

DRA's positions on the Sacramento WRAM/MCBA remain the same as articulated in DRA's Opening and Reply Briefs submitted in Phase 1. Only the new information presented in Phase 2 and in light of the review of the WRAM/MCBA mechanisms in this Phase deserve discussion.

2. Cal Am does not demonstrate that shifting fixed cost recovery and meter conversion increases volatility in consumption, and any increased volatility does not justify a WRAM/MCBA.

Cal Am argues that it recovers only 25 percent of the fixed costs in Sacramento through the service charge and recovers the rest through the volumetric rate.¹⁴¹ Cal Am states that this shift is a feature of conservation and destabilizes revenue recovery and leads to losses in consumption.¹⁴² However, a shift of revenue to the volumetric charge is not the same as tiered rates and does not justify a WRAM/MCBA. Also, Cal Am has not met its burden of proof that meter conversion increases consumption volatility. In fact, the opposite is true, meter conversion could decrease consumption volatility as customers become aware of their actual usage and consumption patterns stabilize.¹⁴³

There are many factors other than meter conversion and shifting fixed cost recovery that could lead to volatility in consumption, such as the economy and drought.¹⁴⁴ Cal Am has provided no justification why meter conversion and shifting fixed cost recovery outweighs these other factors in justifying a WRAM/MCBA and has not shown that meter conversion increases consumption volatility.

¹⁴⁰ D.12-06-016, p.35.

¹⁴¹ CAW Exh. 79, p. 6, line 27

¹⁴² CAW Exh. 79, p. 6, line 19 – p. 7, line 23.

¹⁴³ RT p. 1852: 17 – 27 (DRA/Shia).

¹⁴⁴ *Id.*

3. Since the Commission has Established that Meter Conversion is Not the Same as Implementing Tiered Conservation Rates, Accelerated Meter Conversion is Not a Reason to Authorize a WRAM/MCBA in Sacramento.

Cal Am’s supplemental testimony presents new data regarding its accelerated meter conversion program.¹⁴⁵ However, in D.12-06-016, the Commission found that meter conversion is not the same as implementing tiered conservation rates.¹⁴⁶ The Commission also established that the WRAM/MCBA should not be established prior to full metering and implementation of tiered rates.¹⁴⁷ Thus, the acceleration of meter conversions is not the same as implementing tiered conservation rates and does not warrant a WRAM/MCBA.

4. The Commission should complete its review of the WRAM/MCBA pilot programs before authorizing a new WRAM/MCBA for Sacramento

In assessing the performance of the existing pilot programs, the Commission has “found that the mechanisms are not working as intended, for reasons that are not clear.”¹⁴⁸ Prior to creating another WRAM/MCBA pilot program that can result in unintended and unresolved impacts upon Cal Am’s customers in Sacramento, a more thorough investigation of WRAM/MCBA is required and Cal Am should be required to comply with D.12-04-048 requiring a more rigorous review.¹⁴⁹

Review of WRAM/MCBA in this Phase 2 proceeding demonstrates that more data collection and analysis is needed to provide conclusive results regarding the high balances recorded in the WRAM/MCBA pilot programs in other districts. Furthermore,

¹⁴⁵ CAW Exh. 79, p.4, line18 through p. 6 line 17.

¹⁴⁶ Finding of Fact 28 states “Converting from flat to metered rates is not the same as implementing tiered conservation rates.”

¹⁴⁷ D.12-06-016, p. 35, Finding of Fact 28.

¹⁴⁸ D.12-04-048, p.3.

¹⁴⁹ D.12-04-048, Ordering Paragraph 4 and Conclusion of Law 5.

absent the implantation of tiered rates, there is no justification for a WRAM/MCBA. Therefore, it is premature to implement a WRAM/MBCA for Cal Am's Sacramento District.

IV. MORATORIUM FOR CALIFORNIA AMERICAN WATER'S LARKFIELD DISTRICT

DRA has remained neutral in the Larkfield Moratorium issue and therefore will not brief this issue.

V. CONCLUSION

For all the reasons stated above, DRA respectfully recommends that the Commission adopt DRA's recommendations with regard to residential and non-residential rate design in Cal Am's Monterey District and DRA's recommendations with regard to the WRAM/MCBA mechanisms in all of Cal Am's districts, including the Sacramento District.

Respectfully submitted,

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