

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)

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

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I. INTRODUCTION

Pursuant to Rule 13.11 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and the schedule Administrative Law Judges ("ALJ") Douglas Long and Linda Rochester established, the Division of Ratepayer Advocates ("DRA") respectfully submits this Reply Brief in Phase 2 of this proceeding. This Reply Brief will address the arguments made in California American Water Company's ("Cal Am") Opening Brief, filed August 31, 2012 regarding the contested issues of the Monterey County District Rate Design, the Water Revenue Adjustment Mechanism ("WRAM") and Modified Cost Balancing Account ("MCBA"), and the proposal to establish a WRAM/MCBA in Cal Am's Sacramento District. This Reply Brief will show that the Commission should deny: (1) Cal Am's request for changes to the rate design in Cal Am's Monterey County District; (2) Cal Am's proposal to shorten the amortization periods for existing WRAM/MCBA balances; and (3) Cal Am's request to implement a WRAM/MCBA in its Sacramento District. Cal Am bases several of its arguments upon factual inaccuracies or critical omissions and has failed to meet its fundamental burden to justify its requests.

II. RATE DESIGN FOR CALIFORNIA AMERICAN WATER'S MONTEREY COUNTY DISTRICT

A. Cal Am Fails to Show That Changes To The Rate Design Are Needed For Cal Am to Have a Reasonable Opportunity to Timely Recover Its Revenue Requirement.

Cal Am inaccurately mischaracterizes DRA's testimony and position when it claims that DRA's recommendation to not change the current rate design conflicts with DRA's statement that its proposal is not intended to result in Cal Am under collecting its revenue requirement:

DRA's consultant suggests that the 'existing rate structure with regard to groups of customers . . . in the design stay within [California American Water's] currently existing framework . . .' even though this same consultant later acknowledges that his proposal is not intended to result in

California American Water under collecting its revenue requirement.¹

To support this alleged conflict in DRA's position, Cal Am cites to its own testimony explaining that \$5 million of the total \$13 million under collection in its Monterey District in 2010 was "driven primarily by the poor allocation of consumption between the blocks of rate design."² Cal Am implies that DRA's recommendation to maintain the status quo for rate design in Cal Am's Monterey District also supports the poor allocation of consumption, which drove the \$5 million of the \$13 million under collection. In fact, DRA clarifies in its testimony that it agrees that in this general rate case the volume of water expected to be sold in each block should be updated in accordance with the latest volume figures shown in Attachment 7 and 8 to Cal Am's Exhibit 77.³ The allocation of consumption between the blocks is not rate design as Cal Am agreed itself during evidentiary hearings.⁴

B. Cal Am Has Not Provided Sufficient Evidence To Show That It Has Updated The Commercial Allotments Since The 1992 Study.

Cal Am attempts to refute DRA's claim that Cal Am did not update the 1992 Monterey Peninsula Water Management District Calculated Average Consumptions: Commercial Uses Study ("1992 Study")⁵ by citing to an analysis Cal Am's consultant, Tom Chestnut of A & N Technical Services performed.⁶ However, this analysis shows that rather than updating the non-residential water use factors, Cal Am's consultant

¹ Cal Am Opening Brief, p. 3.

² *Id.*

³ DRA Exh. 34, p. 40, lines 26-30.

⁴ RT. p. 1637:18-24 (Cal Am/Stephenson).

⁵ Cal Am Opening Brief, pp. 4-5.

⁶ CAW Exh. 51, Attachment 1, *Memorandum Re: Analysis of Non-Residential Water Use Factors*, dated April 20, 2010.

focuses on the following three tasks: (1) review of Cal Am’s practices for water use factor definition; (2) collecting and analyzing water consumption and permit data; and (3) developing and presenting recommendations on non-residential water use factors.⁷ Cal Am’s consultant ultimately recommends that the “existing definitions of Non-residential Water use Factors are not appropriate for use in a rate structure.”⁸ Moreover, Cal Am’s additional claim that it updated the 1992 Study again in response to “DRA’s consultant’s request”⁹ is also inaccurate since Cal Am did not provide an update and is therefore not included in the record. Thus, Cal Am has not met its burden establishing that it updated the 1992 Study.

C. Cal Am Cannot Meet Its Burden To Justify Continuing A WRAM/MCBA In Its Monterey County District.

Cal Am’s argument that the Monterey-style WRAM is “problematic when mandatory rationing or conservation measures are imposed” is unsubstantiated. Cal Am fails to mention that during emergency rationing or conservation, the Commission *has* implemented the Emergency WRAM that was in place in Monterey when the Monterey-style WRAM was in effect.¹⁰ Additionally, Cal Am’s second assertion that the Monterey-style WRAM failed in San Jose Water Company “because it did not capture consumption shortfalls or increases”¹¹ is also unsound. To support its argument, Cal Am cites to the Commission’s Resolution W-4885, *San Jose Water Company (SJWC). Order Authorizing Surcharges To Recover \$5,740,078, Or An Increase Of 2.62% In Annual Metered Revenue, For Lost Revenues Due To Mandatory Conservation.*¹² Contrary to

⁷ *Id.*

⁸ *Id.* at Attachment 1, p. 20.

⁹ Cal Am Opening Brief, pp. 4-5.

¹⁰ D.09-07-021, Attachment A, p. 18.

¹¹ Cal Am Opening Brief, p. 10.

¹² *Id.* at p. 10, footnote 45.

Cal Am's claim, the Commission did not state in Resolution W-4885 that San Jose Water Company's Monterey-style WRAM failed because "it did not capture consumption shortfalls or increases."

Cal Am also incorrectly claims that DRA's recommendation to return to a Monterey-style WRAM "ignores the fact that California American Water's aggressive conservation efforts in the Monterey County District, including more sharply tiered conservation rates and other measures, have led to decreased consumption below the government mandated limits."¹³ Cal Am's argument is erroneous. The fact that Cal Am's customers have gone further than necessary in reducing consumption does not justify retaining a full decoupling WRAM/MCBA in Cal Am's Monterey District. One of the goals of the WRAM/MCBA is to remove any disincentives for Cal Am to implement conservation rates and conservation programs.¹⁴ The unexpected reductions in consumption were due to a variety of factors other than conservation, such as significant changes in economic conditions, weather, and price increases.¹⁵ Cal Am's argument that it needs a WRAM/MCBA to adjust for the difficulty in predicting consumption also does not comport with the WRAM/MCBA mechanism's goal.

Cal Am makes one final woeful attempt to support its argument that the Monterey-style WRAM would be problematic for Cal Am's Monterey District. On page 10 of its Opening Brief, Cal Am introduces a new argument, for the first time and not supported by any facts in the record, that the reason why the Monterey-style WRAM did not have significant over collections prior to 2006 was because it was protected with a "cushion"

¹³ Cal Am Opening Brief, p. 11.

¹⁴ D.09-07-021, Attachment A, p. 16. (D.09-07-021 lists the other two goals of the WRAM/MCBA, which are to ensure cost savings resulting from conservation are passed on to ratepayers and to reduce overall water consumption by California American Water ratepayers.)

¹⁵ DRA Exh. 34, pp. 11, 18-19, and 21.

that was removed in 2006.¹⁶ Cal Am describes this “cushion” as a Monterey-style WRAM being “coupled with a rate design that was deliberately set to over-collect to offset the potential effect on consumption.”¹⁷ Cal Am further argues that DRA recommends the Monterey-style WRAM be implemented without this “cushion” that made the Monterey-style WRAM work in the past. Cal Am makes this argument without any substantiation on the record. Cal Am inaccurately cites to its testimony to support this argument, but the argument is not contained in the record. Thus, Cal Am cannot introduce a new argument without including any supporting testimony, information, or analysis necessary to support it; this is deficient for Cal Am to meet its burden of proof.

D. Cal Am Erroneously Asserts That Reverting To A Monterey-Style WRAM In Its Monterey County District Is Punitive.

Cal Am’s assertion that DRA’s recommendation to revert to a Monterey-style WRAM would threaten Cal Am’s ability to recover its authorized revenue requirement is erroneous. DRA supports Cal Am having the opportunity to timely recover its revenue requirement. DRA’s recommendation for an alternative revenue adjustment mechanism is not a punitive mechanism; it is a balancing account that ensures Cal Am will recover the same revenue under a tiered, conservation rate design as it would have under a uniform rate design. In further support of a full decoupling WRAM/MCBA, Cal Am also incorrectly cites to the Commission’s 2010 Water Action Plan as a source of authority to make the argument that the Commission has “embraced decoupling for water companies.”¹⁸ This argument lacks merit. Although the 2010 Water Action Plan demonstrates the Commission’s general goals for investor owned water utilities, it is not

¹⁶ Cal Am Opening Brief, p. 10.

¹⁷ *Id.*

¹⁸ Cal Am Opening Brief, p. 13.

intended as a source of authority to make Commission policy, but rather lays out the Commission’s policy priorities for consideration.

While it is true the Commission has “embraced decoupling” in that it has adopted settlements implementing WRAM/MCBA for some investor owned water utilities, the Commission has maintained the Monterey-style WRAM in other instances.¹⁹ More recently, however, the Commission has expressed concern that the WRAM/MCBA mechanisms are not working as intended, for reasons that are not clear.²⁰

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

A. Cal Am’s Claim That Longer Amortization Periods Will Financially Harm Cal Am So That It Cannot Promote Conservation Is Inaccurate.

Cal Am claims that longer amortization periods and carrying WRAM/MCBA balances for an extended period of time creates a financial burden for the company and creates a disincentive to promote conservation.²¹ Cal Am’s claim is inaccurate. In making this argument in its Opening Brief, Cal Am omits the fact that it testified to during hearings – that even with longer amortization periods, the company [Cal Am] will still be made whole since it can recover the amount in a different period.²²

B. Cal Am’s Claim That Annual Consumption Forecast Updates Will Prevent High WRAM/MCBA Balances Is Unsupported.

On pages 13 and 19 of its Opening Brief, Cal Am proposes that the Commission adopt a process for annual consumption forecast updates to prevent such high WRAM/MCBA balances in the future. However, Cal Am has provided no supporting

¹⁹ See D.10-04-031 and D.10-11-034.

²⁰ D.12-04-048, p. 3.

²¹ Cal Am Opening Brief, p. 8.

²² RT pp. 1793:19 – 1794:14 (Cal Am/Linam).

data analysis of its proposal to show that the annual consumption forecast updates would prevent or mitigate the high WRAM/MCBA account balances. In fact, it is possible that Cal Am's proposals may lead to less reliable sales estimates, and that more frequent adjustments will lead to more volatile rates.²³ Specifically, on page 19 of its Opening Brief, Cal Am recommends that the process for more frequent forecasting consists of "annual adjustments at the time of each annual advice letter step increase," and that it follow the example of the energy utilities.²⁴ Cal Am's proposal fails to consider that changing the process of developing and adopting a sales forecast would necessitate a change to the Rate Case Plan, Decision 07-05-062.²⁵ Therefore, contrary to Cal Am's proposal, it is not appropriate to make this change in this proceeding.

C. Cal Am's Assertion That Problems With The Sales Forecasts And The New Committee Method Are To Blame For The High WRAM/MCBA Balances Is Disingenuous.

Cal Am cites as the "key factor" in the high WRAM/MCBA balances, the "disparity between the adopted consumption forecasts and the actual level of consumption" with the disparity due in large part to "problems with the forecasts themselves."²⁶ Cal Am goes on to further state that the New Committee Method "does not take into account any effects of reduced consumption due to expanded conservation programs or the inverted block rates simultaneously implemented with the WRAM/MCBAs," and cites to instances where the New Committee Method led to adopted consumption estimates that were higher than previous years.²⁷ Cal Am alleges

²³ DRA Exh. 34, p. 28, lines 26-31.

²⁴ Cal Am Opening Brief, p. 19.

²⁵ DRA Exh. 34, p. 28, lines 20-22. *See also*, CAW Exh. 75, p. 30, lines 20-23.

²⁶ Cal Am Opening Brief, p. 14.

²⁷ *Id.*

that implementation of tiered rates and increases in other conservation measures were concurrent with adopted consumption estimates that were higher than previous years.²⁸

Cal Am's argument lacks credibility. Cal Am cites to example rate cases where the sales forecast issue was settled, which does not support its argument. These examples do not illustrate a problem with the New Committee Method, instead these examples illustrate that parties agreed in settlement to numbers that were higher than previous years. Additionally, two of Cal Am's examples cite to "instances" that were prior to the implementation of tiered rates and WRAM/MCBAs. For example, D.08-05-018 for the Larkfield district, and D.08-03-022 for the San Diego district, are decisions that were adopted prior to the implementation of tiered rates and WRAM/MCBA. It was six to eight months later, respectively, in D.08-11-023, when the Commission adopted tiered rates and WRAM/MCBA for these two districts. Therefore, the implementation of tiered rates and WRAM/MCBA was not concurrent with the adoption of sales forecasts in these districts.

In addition to citing problems with the sales forecasts and New Committee Method, Cal Am goes one step further and recommends the Commission discontinue use of the New Committee Method "until the Commission can determine how to incorporate *more variables into the regression mix.*"²⁹ Cal Am's argument is flawed. Cal Am claims that the New Committee Method only takes into account temperature and rainfall variables.³⁰ However, Cal Am fails to take into account that *time* is also a variable in the regression analysis as described in the Rate Case Plan, D.07-05-062.³¹ Contrary to Cal

²⁸ *Id.*

²⁹ *Id.* at p. 18 (emphasis added).

³⁰ *Id.* at p. 18.

³¹ The Supplement to Standard Practice No. U-25 is referenced in the Rate Case Plan, D.07-05-062 and describes how Class A Water Companies should forecast consumption per customer.

Am's claims, the Commission has provided guidance on how to incorporate a key variable – time – into the regression mix.³²

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

Cal Am's Opening Brief in Phase 2 of this proceeding reiterates some of the same arguments it made in Phase 1 of this proceeding regarding establishing a WRAM/MCBA in its Sacramento District. DRA has previously addressed and responded to these arguments in its Phase 1 Opening and Reply Briefs. Therefore, DRA will not repeat those arguments here.

A. Cal Am's Arguments Supporting A WRAM/MCBA In Its Sacramento District Are Inaccurate.

Cal Am argues that a WRAM/MCBA in its Sacramento District “would avoid penalizing California American Water for its aggressive and commendable acceleration of the meter installation program in the Sacramento District, as well as its shift to recovering a larger portion of the fixed costs in the volumetric costs [sic].”³³ Cal Am's argument implies that without a WRAM/MCBA in its Sacramento District, Cal Am would be penalized for installing meters at a faster pace than required. Cal Am's argument is inaccurate. Cal Am and DRA agreed that Cal Am should be allowed its requested amount of \$12,557,000 to meter its customers in rate base, which Cal Am agrees is sufficient to finish its conversion of all non-metered water service connections.³⁴ Thus, the \$12,557,000 amount included in rate base provides significant

³² See D.07-05-062, Appendix A, Rate Case Plan and Minimum Data Requirements for Class A Water Utilities General Rate Applications, p. A-23, footnote 4.

³³ Cal Am Opening Brief, p. 21.

³⁴ A.10-07-007, *Partial Settlement Agreement Between the Division of Ratepayer Advocates, The Utility Reform Network and California-American Water Company On Revenue Requirement Issues*, filed July 28, 2011, pp. 225-226.

financial incentive for Cal Am to accelerate its metering program. Moreover, the shift to recovering a larger portion of fixed costs in the volumetric rates is not a penalty because Cal Am agreed to it as part of a settlement agreement.³⁵

Cal Am's assertion that the proposed WRAM/MCBA in its Sacramento District and the adopted WRAM/MCBA's in its other districts "does not benefit California American Water at the expense of its customers"³⁶ is also flawed because Cal Am has provided insufficient evidence to support this claim. Cal Am's argument seems to rely on DRA's consultant's testimony made during hearings that the WRAM "is not a one-sided mechanism."³⁷ Cal Am mischaracterizes DRA's testimony. DRA's consultant's testimony was in response to a cross-examination question requesting the reasons and justification for continuing the existing WRAM/MCBA mechanisms through the next rate case cycle for all of Cal Am's districts, except the Monterey District.³⁸ DRA's consultant did not testify regarding Cal Am's benefits and costs of establishing a new WRAM/MCBA in its Sacramento District, which Cal Am seems to falsely presume.

Cal Am's second argument supporting a WRAM/MCBA in its Sacramento District is also inaccurate and should be afforded no weight. Although Cal Am recognizes that decisions adopting settlements are not binding precedent, Cal Am cites to the Commission approved settlement establishing a WRAM/MCBA for Golden State Water Company's Arden Cordova District as an example where a WRAM/MCBA was established in a district where metered rates were being implemented and where there are no tiered rates.³⁹ As Cal Am also stated in its Opening Brief, the Commission's adoption of settlement agreements does not create a "rule" or establish requirements for the

³⁵ RT pp. 1851:28 – 1852:5 (DRA/Shia).

³⁶ Cal Am Opening Brief, p. 22.

³⁷ *Id.* at pp. 21-22.

³⁸ RT p. 1810: lines 11-27 (DRA/Lubow). *See also*, DRA Exh. 34, p. 51, lines 33-34.

³⁹ Cal Am Opening Brief, pp. 22-23.

implementation of WRAM/MCBAs.⁴⁰ Thus, a WRAM/MCBA in Golden State Water Company's Arden Cordova District in no way justifies establishing a WRAM/MCBA in Cal Am's Sacramento District, whether the districts share similarities or not. Cal Am has not provided sufficient evidence to meet its burden to justify establishing a WRAM/MCBA in its Sacramento District.

V. CONCLUSION

For all the reasons stated above, the Commission should deny Cal Am's proposals including changes to its residential and non-residential rate design in its Monterey County District, its proposal for amortization of WRAM/MCBA balances including updating consumption forecasts, and its proposal for establishing a WRAM/MCBA in its Sacramento District because of the numerous factual inaccuracies in its argument and because Cal Am fails to meet its burden to justify these requests.

Respectfully submitted,

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⁴⁰ *Id.* at 22.