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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates

A.12-04-019
(Filed May 24, 2013)

**SETTLING PARTIES' JOINT COMMENTS ON RULING REQUESTING
COMMENTS ON SURCHARGE OPTIONS AND PROPOSALS**

Pursuant to the Assigned Commissioner ruling, Joined by a Co-Assigned Administrative Law Judge (“ALJ”) ruling on Friday, May 2, 2014, the Office of Ratepayer Advocates, California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, and Planning and Conservation League Foundation (collectively, “Joint Commenting Parties”)¹ submit these joint comments on that ruling.

I. INTRODUCTION

The May 2, 2014 ruling requesting comments on surcharge options and proposals (“Surcharge Option Ruling”) provides that Surcharge 2 would be instituted at 15% of customer bills on July 1, 2014, would double to 30% when Surcharge 1 expires, and would finally increase to 45% in January 2015 until the desalination plant is put into service.² The Ruling also confirms the denial, without prejudice, of the Joint Motion to

¹ Counsel signing this document has authority from all Joint Commenting Parties to do so. Rule 1.8(d) of the Commission’s Rules of Practice and Procedure.

² Surcharge Option Ruling, at 1 (it appears that the precise date may be missing from the January 2015 institution of the 45% surcharge).

Reduce the Special Request 1 Surcharge (“Joint Motion on Surcharges”), filed on Friday, March 14, 2014.³

The Joint Commenting Parties appreciate the efforts of the Division of Water and Audits (“DWA”) in developing the surcharge proposals.

The Joint Commenting Parties, however, nonetheless oppose the surcharge proposals developed by DWA that are memorialized in the Surcharge Option Ruling, and urge the California Public Utilities Commission (“Commission”) to adopt the surcharge option proposed by the Joint Commenting Parties in the Joint Motion on Surcharges. The Joint Commenting Parties therefore request reconsideration of their Joint Motion on Surcharges.

II. ANALYSIS

A. **The Surcharge Option Ruling’s Collection of Surcharge 2 Prior to Commission Issuance of a Certificate of Convenience and Public Necessity Amounts to a *De Facto* Rejection and Modification of the Settlement Agreement.**

A settlement has been submitted for the Commission’s consideration that proposes a Long Term Water Supply Project (“LTWSP”) for the Monterey Peninsula and rate recovery for that project. Thus far the Commission has not ruled on the merits of the settlement, and the Commission has not issued a Certificate of Convenience and Public Necessity (“CPCN”) for the proposed project.

The Surcharge Option Ruling references three different proposed approaches to handling Surcharge 1 and Surcharge 2, but specifically requests comment on the third option that appears in the appendix.⁴ The Joint Commenting Parties oppose this approach for several reasons. It is inconsistent with the settlement that is pending before the Commission, and as a result, if accepted, would amount to a *de facto* rejection and

³ Surcharge Option Ruling, at 2.

⁴ The option that would institute Surcharge 2 in July 2014 at 15%.

modification of part of the settlement.⁵ DWA’s proposal to begin collecting Surcharge 2 from California-American Water Company’s customers for a project before a CPCN is issued would modify key components of the Settlement Agreement. And, unlike the Settlement Agreement, DWA’s approach provides no indication of how the collected money—ratepayer dollars intended for a project that still awaits Commission decision, environmental impact review, and other pre-construction matters—should be accounted for or used.

Two other options are presented in Appendix 1; however, these additional options are not discussed in the text of the Surcharge Option Ruling. The first option in Appendix 1 would keep Surcharge 1 at 15% until it naturally expires when the remaining balance is paid. This Option would not establish Surcharge 2 until April 2015. Thus, this option reflects the *status quo*, with Surcharge 1 expiring when the remaining balance is paid and Surcharge 2 would begin sometime in 2015, presumably after the CPCN is issued and after the Commission approves the project.

The second option in Appendix 1 appears to have been derived from an estimation of the approach from the Joint Motion on Surcharges, with Surcharge 1 diminishing to 4.5% of customer bills in July 2014 and Surcharge 2 beginning in April 2015, with subsequent Surcharge 2 increases. It is unclear whether this option is intended to reflect the agreement of the parties from the Joint Motion on Surcharges. If it is intended to reflect that agreement, and incorporates the Joint Commenting Parties’ triggers and

⁵ *Settlement Agreement of California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, Division of Ratepayer Advocates, LandWatch Monterey County, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, Planning and Conservation League Foundation, Salinas Valley Water Coalition, Sierra Club, and Surfrider Foundation* (“Settlement Agreement”), at §12. It is “Attachment A” to the Settling Parties’ Motion to Approve Settlement Agreement, filed in A.12-04-019 on July 31, 2013. All parties to the Settlement Agreement signed onto the Joint Motion on Surcharges except LandWatch, Monterey County, Monterey County Farm Bureau, Monterey Regional Water Pollution Control Agency, Salinas Valley Water Coalition, Sierra Club, and Surfrider Foundation, who stated they did not join that motion because it went beyond the scope of their involvement in the proceeding.

limitations from the Joint Motion on Surcharges, then that would be the option that the Joint Commenting Parties support. The Joint Commenting Parties would only support this option if Surcharge 2 is triggered according to the mechanisms described in the Joint Motion on Surcharges.

In fact, none of the three proposals describe the mechanisms for implementing the Surcharges nor do they detail the amount Surcharges will be adjusted. Instead, they present only a time-based schedule.

The third option, DWA's proposal, is described in some detail in the Surcharge Option Ruling. The Ruling is silent on the details of how to implement the other two options. As discussed in these comments, the Joint Commenting Parties consider DWA's option unacceptable.

As indicated in the Joint Motion on Surcharges, the Joint Commenting Parties support lowering Surcharge 1 from 15% to 4.5% of customer bills to allow for a smooth transition in rates.⁶

B. DWA's Proposed Surcharge Options Upset the Delicate Balance of the Parties' and Public's Interest

The Joint Parties' settlement was developed through a series of lengthy meetings that carefully balanced the parties' interests, as well as the public's interest. The proposed treatment of the surcharges in the Joint Motion on Surcharges further reflects that careful balancing and diligent cooperation. The Joint Motion on Surcharges proposes an approach that 1) smooths rate changes, 2) allows California-American Water Company to recover preconstruction costs in a timely manner, and 3) reflects a limitation on the additional costs that may be recovered through Surcharge 1.⁷

Adoption of an 11th-hour DWA proposal on surcharges, developed without the cooperative input of the parties, upsets that balance and will ill-serve Cal-Am's Monterey ratepayers. If DWA's proposal is adopted it may force the parties—who have worked

⁶ Joint Motion on Surcharges, at 3.

⁷ No additional costs, aside from those currently pending before the Commission in A.12-10-003 and A.13-05-017 could be recovered through Surcharge 1. Joint Motion on Surcharges, at 4.

diligently to achieve a mutually-agreeable settlement—to re-evaluate their posture rather than move forward, confident that they have developed a proposal that will resolve a decade long struggle to develop a project that will provide a long-term water supply for the Monterey Peninsula.

The Joint Commenting Parties are further concerned that instituting a surcharge for this project before the project itself is approved by the Commission will fuel concerns expressed by some members of the public that this project will not be carefully considered. The Joint Commenting Parties support the project, and hope to gain Commission approval of it, but needlessly contributing to the concerns of constituents of some of the parties to the settlement may disrupt the participation of those parties.

Finally, the Ruling on Surcharge Options misstates the proposed equity investment in the project, indicating that, “Cal Am’s fixed equity investment of the project is capped at 27% of the value of the total project costs for the desal plant and the CAW-only facilities.”⁸ This statement is inconsistent with and reflects an inaccurate understanding of the parties’ settlement.⁹ The equity structure is listed as one of “[t]he essential factors taken into account by the staff” in developing the surcharge options.¹⁰

The first option, if it reflects the *status quo*, is much closer to the parties’ delicate balance of interests than the third option.

C. DWA’s Proposals Violate Commission Decisions

As recited in the Joint Motion on Surcharges, the Commission previously decided that Surcharge 2 cannot be implemented until a CPCN is issued.¹¹ Surcharge 2 has not been reinstated.¹² The Ruling on Surcharge Options is not the appropriate vehicle for reinstating Surcharge 2. Any change to existing Commission decisions on Surcharge 2

⁸ Ruling on Surcharge Options, at 3.

⁹ See Settling Parties’ Motion to Approve Settlement Agreement, filed in A.12-04-019 on July 31, 2013, at 9; Settlement Agreement, at §11.

¹⁰ Ruling on Surcharge Options, at 3.

¹¹ D.06-12-040, at 38, Ordering Paragraph (“OP”) 2.

¹² See Joint Motion on Surcharges, at 3 (*citing* Application 12-04-019, at 16-17).

should be rendered via a Commission decision, rather than through a Ruling Requesting Comments on Surcharge Options and Proposals.¹³

In light of prior decisions, the third option presented by DWA, which starts Surcharge 2 in less than two months,¹⁴ is plainly inconsistent with existing Commission decisions.

The Joint Motion on Surcharges is consistent with Commission decisions. The first option, if it is a reflection of the *status quo*, is also consistent with Commission decisions.

III. CONCLUSION

The Joint Commenting Parties do not support the surcharge proposals created by DWA. Those proposals do not protect ratepayers if this project fail to move forward, would fund a project that the Commission has not yet approved and that lacks a CPCN, (in violation of D.06-12-040), do not limit the funds that can be added to Surcharge 1, and upset the balance of the parties' interests and the public's interest. The proposals also appear to reflect an erroneous understanding of the Settlement Agreement's capital structure. Accordingly, the Joint Commenting Parties respectfully request rejection of the surcharge proposals and reconsideration of their Joint Motion on Surcharges, which reflects the approach to surcharges that they have agreed upon that will move this project forward.

¹³ See Public Utilities Code § 311(d).

¹⁴ The schedule shows Surcharge 2 starting in July 2014.

Respectfully submitted,

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