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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.

Application 12-04-019
(Filed April 23, 2012)

ADMINISTRATIVE LAW JUDGE'S RULING MEMORIALIZING E-MAIL RULING DATED MARCH 26, 2015 WITH RESPECT TO POTENTIAL VIOLATION OF COMMISSION RULE 12.6

This ruling memorializes, and places in the Commission's formal file, the following ruling served on the service list by electronic mail on March 26, 2015:

MARCH 26, 2015

TO: SERVICE LIST IN A.12-04-019

FROM: ADMINISTRATIVE LAW JUDGE GARY WEATHERFORD

SUBJECT: RULING ON POTENTIAL VIOLATION OF
COMMISSION RULE 12.6

This e-mail ruling will be memorialized at a later date in a formal ruling or decision.

By way of background: On July 31, 2013, Applicant Cal-Am, along with fifteen other parties, submitted to the Commission for its approval a Settlement Agreement, commonly known by the 16 Settling Parties and the Commission as "the Large Settlement." [1] That Settlement has not yet been approved by the Commission, and the Commission continues to evaluate its merits. While consideration of the Settlement is pending, therefore, any ongoing communications between the Settling Parties that fall within the ambit of the Settlement Agreement remain governed by Article 12 of the Commission's Rules of Practice and Procedure, concerning settlement discussions.

It has come to my attention that there is a reference in the March 19, 2015, Monterey County Weekly Blog to a draft motion by Cal-Am. According to the blog, Cal-Am circulated the draft motion to the Settling Parties on March 17, 2015. The blog characterizes that draft motion as: "just asking for permission from the PUC to file testimony by Nov.15, as part of a much larger filing, over the question of what to do with any Salinas Valley water that gets taken up into its desal process." The blog provides what purports to be an Internet link to the draft motion. I have neither opened that link nor read that draft motion, and do not plan to do so unless it becomes appropriate for enforcement purposes.

Rule 12.6 of the Commission's Rules of Practice and Procedure (Rules) provides:

"Rule 12.6 Confidentiality and Inadmissibility.

No discussion, admission, concession or offer to settle, whether oral or written, made during any negotiation on a settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission. Participating parties and their representatives shall hold such discussions, admissions, concessions, and offers to settle confidential and shall not disclose them outside the negotiations without the consent of the parties participating in the negotiations.

If a settlement is not adopted by the Commission, the terms of the proposed settlement is [sic] also inadmissible unless their admission is agreed to by all parties joining in the proposal."

Without any indication at this time that grounds exist here for the "consent of the parties" exception, it appears to me that the release of the draft motion to the blog may be a violation of the second sentence of Rule 12.6 by one or more of the Settling Parties. The Settling Parties are reminded that the Commission's Rules "...shall be liberally construed to secure just, speedy and inexpensive determination of the issues presented." (Rule 1.2)

Without additional information, I am unable to say definitively that Rule 12.6 was violated, or by whom. No party has yet brought to the Commission's attention any additional information concerning this potential violation; any party that has such information is invited to submit

it to Commission staff, who can then bring it to my attention if appropriate. The Commission takes potential violations of its rules seriously. The Settling Parties are hereby placed on notice (beyond the longstanding public availability of the text of the Rules online and in print) that any further apparent violations of Rule 12.6 confidentiality shall be investigated by staff and enforced, as appropriate and necessary. Additionally, parties harmed by potential violations of Rule 12.6 should bring information of those violations to the Commission's staff.

IT IS SO RULED.

Dated April 20, 2015, at San Francisco, California.

/s/ RICHARD SMITH for
Gary Weatherford
Administrative Law Judge