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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)

ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING CONDITIONALLY GRANTING JOINT MOTION FOR A SEPARATE PHASE 2 DECISION AND SETTING HEARING

Summary

The Joint Motion for a separate Phase 2 decision is conditionally granted as provided herein. The condition is that the proposed supplemental and rebuttal testimony must address the issues and concerns identified in this Ruling. A hearing is set for 9:30 a.m. on May 26 and May 27, 2016 in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California to receive evidence and permit cross-examination on disputed issues of material fact.

1. Background

By Ruling dated November 17, 2015, a schedule was set to complete the record for Phases 1 and 2. The adopted schedule kept the two phases on parallel tracks, with the expectation that the California Public Utilities Commission (Commission) would issue one decision addressing all issues. The Ruling recognized the possibility of a separate Phase 2 decision and stated that, if a

separate Phase 2 decision became reasonable and necessary, parties should file a motion seeking that separate decision.

Evidentiary hearings were held on Phase 1 and Phase 2 issues from April 11 through 15, 2016. On April 18, 2016, eighteen parties filed a Joint Motion for a Separate Phase 2 Decision.[1] The Joint Motion requests that the Commission address three issues in that decision: (1) the Water Purchase Agreement (WPA) between California-American Water Company (Cal-Am or applicant), Monterey Peninsula Water Management District (MPWMD or District), and Monterey Regional Water Pollution Control Agency (MRWPCA or Agency); (2) applicant's construction of the Monterey pipeline and pump station in advance of the decision on the Certificate of Public Convenience and Necessity for the Monterey Peninsula Water Supply Project (MPWSP); and (3) financing and ratemaking related to the Monterey pipeline and pump station facilities.

Joint Parties state that there is already information in the record regarding the WPA, the Monterey pipeline, and related cost recovery. Nonetheless, they say they recognize that it may be necessary to provide supplemental testimony to ensure a full and complete record. They propose a one-day hearing on the supplemental testimony to address disputed issues of fact, if any. Joint Parties propose a schedule starting with the service of proposed supplemental testimony on May 9, 2016, and one day of evidentiary hearing during the week of May 23, 2016.

[1] All parties signed the Joint Motion with the exception of: Water Plus; Geoscience Support Services, Inc.; California Unions for Reliable Energy; Latino Water-Use Coalition-Monterey Peninsula; Latino Seaside Merchants Association; and Communidad en Accion.

By Ruling dated April 20, 2016, the time to file responses to the Joint Motion was shortened. On April 20, 2016, a response in opposition to the Joint Motion was filed by Water Plus.

2. Discussion

2.1. Conditional Grant of Joint Motion

The Joint Motion makes a reasonable case for the Commission's consideration of a separate Phase 2 decision. The schedule for the final Environmental Impact Report (EIR) and Environmental Impact Statement has been necessarily extended, thereby delaying the Commission's final determination on the MPWSP. Nonetheless, the need for water in the Cal-Am Monterey service area has not diminished. A separate Phase 2 decision might allow Cal-Am to take advantage of two alternative water sources before operation of the MPWSP (if the MPWSP is eventually approved and built): (a) the Pure Water Monterey Groundwater Replenishment Project (GWR) and (b) maximum use of existing aquifer storage and recovery facilities. MPWMD and MRWPCA are clear that the GWR is not a viable project absent a WPA with Cal-Am. The GWR EIR has been certified by the lead agency, and is no longer subject to legal challenge. The GWR is ready to be built, and may be provide product water by 2018. It is reasonable for the Commission to consider the WPA and related matters now.

Water Plus, on the other hand, fails to make a compelling case that the motion should be denied. Water Plus asserts that the price of GWR water may be exorbitant, and concludes that the GWR must not be considered separately from desalination. Water Plus states that a wiser course of action is for the State Water Resources Control Board (SWRCB) to extend the Cease-and-Desist Order (CDO) deadline which, Water Plus contends, will happen because the SWRCB is

not unreasonable. Water Plus argues that this extension will allow all three of the currently competitive water supply projects to run their course, with the most competitive project ultimately prevailing.

To the contrary, the impact on the Carmel River and its ecosystem is not insignificant. Even if the SWRCB extends the CDO deadline, the Commission, along with all involved government and public agencies, must work efficiently and diligently to address both water supply and environmental matters without unreasonable delay. The GWR and WPA have the potential to address water supply and environmental concerns in the near future. The cost of GWR water will be taken into account in a Phase 2 decision. Phase 1 will continue to consider all aspects of the MPWSP. Consideration of the GWR and WPA will not prevent continuing consideration of all competitive water supply projects.

Water Plus asserts that there is no need to accelerate the development of the Monterey pipeline since, according to Water Plus, the GWR will be unreliable, will be excessively costly, will provide water that is dangerous to the public, and is unlikely to go forward. To the contrary, substantial testimony heard the week of April 11, 2016 disputes these claims by Water Plus. The Commission will eventually make a decision, if and as necessary, on the merits of the claims made by Water Plus and the opposing positions. To the extent the Monterey pipeline is related to the GWR and the WPA, however, it is timely and responsible to consider the Monterey pipeline now.

Water Plus asserts alternatives to the Monterey pipeline must be considered, such as a pipeline joining lakes Nacimiento and San Antonio (producing about 10,000 acre-feet per year, according to Water Plus). To the contrary, the Monterey pipeline was considered in the GWR EIR, and assessment of this alternative, if feasible, would have taken place within that EIR. The cost

competitiveness, potential timeline, and other elements of this alternative, if relevant, can be presented by Water Plus in the supplemental testimony discussed below.

Finally, Water Plus asserts that a dispute remains over whether the Monterey pipeline should be owned by Cal-Am, or be part of the GWR (and owned by MPWMD and/or MRWPCA). Ownership was addressed at the hearing the week of April 11, 2016. It can be further addressed in the supplemental testimony to be served according to the adopted schedule below. The question of ownership, however, does not require that the Commission consider Phases 1 and 2 in one decision. Rather, a Phase 2 decision can be considered separately from Phase 1 independent of the question of who owns the Monterey pipeline.

Therefore, the Joint Motion should be granted subject to the following condition. The condition is necessary because issues and concerns remain that might not otherwise be addressed. The condition is that, in addition to anything parties will present, the proposed supplemental and rebuttal testimony of applicant, District, and Agency shall, and other parties may, address certain issues and proposals. These issues and proposals are stated below.

2.2. Requests and Concerns

On April 8, 2016, the assigned Commissioner and Administrative Law Judge filed a Ruling. The Ruling requested data and expressed concerns regarding the proposed GWR and a draft WPA (dated January 14, 2016). The Ruling required written responses within 10 days of the date of the Ruling by applicant, District and Agency, and permitted others to file responses on the same date. Further, the Ruling permitted the filing of replies to the responses by all parties within 15 days of the date of the Ruling.

A panel composed of applicant, District, and Agency testified at the hearing on April 13, 2016 in response to the data requests and concerns. Applicant and others stated that they would file a joint motion for a separate Phase 2 decision, including the possibility of supplemental testimony. Because the panel's testimony was transcribed, the dates for written responses to the data requests and concerns, plus replies to responses, were suspended pending further consideration of the joint motion.

The proposal in the Joint Motion for supplemental testimony provides an opportunity for applicant, District, and Agency to respond to the requests and concerns in the April 8, 2016 Ruling in a structured and focused presentation, with necessary corrections and updates, if any. Therefore, in addition to anything else contained therein, the supplemental testimony of applicant, District, and Agency will provide full responses to the April 8, 2016 Ruling.[2] Similarly, other parties may address the requests and concerns in their proposed supplemental testimony (an important element of the Ruling not yet accomplished). Moreover, within the scope of rebuttal, all parties may address the requests and concerns in their proposed rebuttal testimony.

2.3. Revised WPA

The panel on April 13, 2016 addressed concerns identified by the assigned Commissioner and Administrative Law Judge with respect to the January 14, 2016 draft WPA. The Commission understands that applicant, District, and Agency intend to modify the January 14, 2016 draft WPA to address those concerns. The supplemental testimony must contain a revised WPA to address

[2] If there are no corrections or updates, and no need to further structure and focus the answers, the supplemental testimony can refer to the transcribed testimony.

the Commission's concerns to the fullest extent applicant, District, and Agency are able to do so. Applicant, District, and Agency are further directed to consider and address the following proposals and issues.

2.4. Cost Cap at Point of Indifference

The testimony thus far establishes that a WPA price above $1,325 per acre foot (AF) results in a cost premium to Cal-Am ratepayers compared to the cost of the larger desalination plant. (Exhibit CA-40, December 15, 2015 Supplemental Testimony of Svindland at 7.) The testimony of some advocates shows there are benefits to the smaller desalination plant that justify this premium, but that the benefits do not accrue exclusively to Cal-Am ratepayers, and the benefits realized by Cal-Am ratepayers may not offset the premium paid solely by these ratepayers. (Exhibit DRA-17, Rebuttal Testimony of Rose at 6, footnote 21.) In this light, applicant, District, and Agency must consider and address the feasibility, reasonable, and potential for a soft cost cap of $1,325 per AF in the revised WPA. This would make Cal-Am ratepayers initially indifferent between the two projects, but provide a reasonable opportunity for Cal-Am to request cost recovery above the soft cost cap upon a compelling showing.

2.5. Higher Cost Cap with Offsetting Benefits

District and Agency must consider and address the inclusion in a revised WPA of offsetting benefits for Cal-Am ratepayers in the later years of the agreement if a soft cap above $1,325 per AF remains in the revised draft WPA. For example, District and Agency may be able to provide Cal-Am the amount of water specified in the WPA (e.g., 3,500 AF per year) at a reduced price in later years (e.g., years 15-30) to offset the premiums in the earlier years. Alternatively, District and Agency may be able to provide an additional increment of water (e.g., provide an increment above 3,500 AF per year) at a reduced price to

Cal-Am in later years (e.g., years 15-30) to offset the premiums in the earlier years.

2.6. Access to Books and Records

The testimony shows that Commission access to District and Agency books and records will be the same as provided to the public and parties appearing before the District and Agency. This would largely involve posting of substantial amounts of information on the District and Agency websites in advance of Board meetings to adopt new annual budgets. It would also require the submission of a Public Record Act (PRA) request for more information. (*See* Panel Testimony, April 13, 2016 at Reporter's Transcript pp. 2675, 2686-87, 2692.) District and Agency are asked to consider and address a streamlined approach for Commission access to District and Agency books and records, without the requirement to submit PRA requests or other formal process.

2.7. EIR Addendum

The Joint Motion says that: "MPWMD and MRWPCA as necessary will prepare an EIR addendum to address the Monterey pump station." (Joint Motion at 4, footnote 5.) The proposed supplemental testimony must provide updated information on whether or not an EIR addendum is necessary (e.g., has the decision been made; if the decision has not yet been made, what factors will govern the making of that decision, and when will that decision be made). If an EIR addendum has not been ruled out (but may later be determined to be necessary), the proposed supplemental testimony must state the steps that are involved in preparing an EIR addendum, the projected timeline for completing the EIR addendum, and anything else reasonably necessary for the Commission to make an informed decision regarding the EIR addendum and how it relates to

both the issues presented for the Commission's Phase 2 decision, and the timeline requested by Joint Parties for the Commission decision.

2.8. References in the Record

Joint Parties state that the record already contains information on the Monterey pipeline, plus applicant's proposals for financing and ratemaking treatment related to the Monterey pipeline and pump station facilities. The proposed supplemental testimony must cite to the relevant prior record, but must on its own provide all reasonable and necessary information for the Commission to reach its decision on the three issues presented in the Joint Motion for the Phase 2 decision (i.e., WPA; Monterey pipeline and pump station facilities; financing and ratemaking).

2.9. Ownership of Monterey Pipeline

Applicant, District, and Agency should address options for who should own the Monterey pipeline. Each entity should explain who they recommend be the owner (or owners) and why.

2.10. Cross-Subsidy

The panel on April 13, 2016 testified that GWR costs will be reasonably and fairly allocated now and over the life of the project between project beneficiaries (i.e., Cal-Am ratepayers and agricultural customers). (Reporter's Transcript (RT) at 2720 to 2738.) Allocation of costs between customers is not necessarily easy and non-controversial, however, as shown by decades of disputes between and among customers before the Commission. This was acknowledged by witness Stoldt who testified: "So there is no easy way to say, huh, what is the split." (RT at 2725.) One specific example might be that 71% of pipeline costs for a pipeline to be built by another water agency (to provide

water to two golf courses and the local University) will be paid by Cal-Am ratepayers, with 29% paid by the other water district. (RT at 2723-4.)

Given the complexities and controversies in performing cost allocation, the District and Agency must provide any further explanation or assurances known at this time to show how costs will be reasonably and fairly allocated so Cal-Am ratepayers are not burdened with paying excessive costs not only now but also over the life of the WPA. Cal-Am must explain the actions it proposes to take to ensure that no more than a just and reasonable share of costs are allocated to its ratepayers not only now but also over the life of the WPA.

2.11. Adopted Schedule

In addition to subjects Joint Parties are already intending to address, the schedule proposed in the Joint Motion should allow adequate time for applicant, District, Agency, and others to consider the issues and proposals identified in this Ruling. The schedule proposed in the Joint Motion is adopted, with the provision for a second day for hearing, to be used only if necessary. The adopted schedule is:

ADOPTED SCHEDULE

DATE	ITEM
May 9, 2016	Serve Proposed Supplemental Testimony
May 19, 2016	Serve Proposed Rebuttal Testimony
May 26-27, 2016	Hearing and/or Settlement: Starting at 9:30 am on May 26, 2016 in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California (continued to May 27 only if and as needed)
June 1, 2016	Opening Briefs and/or Comments on Settlement
June 8, 2016	Reply Briefs and/or Reply Comments on Settlement
July 2016	Proposed Decision
August 18, 2016	Target for Commission Decision

IT IS RULED that that April 18, 2016 Joint Motion is granted on the condition that California-American Water Company, Monterey Peninsula Water Management District, and Monterey Regional Water Pollution Control Agency shall, and other parties may, address in supplemental and rebuttal testimony the issues and proposals identified in the body of this Ruling. The schedule stated in the body of this ruling is adopted.

Dated April 25, 2016, at San Francisco, California.

/s/ RICHARD SMITH for
Gary Weatherford
Administrative Law Judge

/s/ CATHERINE J.K. SANDOVAL
Catherine J.K. Sandoval
Assigned Commissioner