

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of California-American  
Water Company (U210W) for  
Authorization to Modify Conservation  
and Rationing Rules, Rate Design, and  
Other Related Issues for the Monterey  
District.

A. 15-07-019  
(Filed July 14, 2015)

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES  
ON THE PROPOSED SETTLEMENT AGREEMENT OF  
CALIFORNIA-AMERICAN WATER COMPANY AND  
MONTEREY PENINSULA WATER MANAGEMENT**

**I. INTRODUCTION**

Pursuant to Rule 12.2 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure (“Rules”), the Office of Ratepayer Advocates (“ORA”) files comments on the proposed settlement agreement which was signed by California-American Water Company (“Cal Am”) and the Monterey Peninsula Water Management District (“MPWMD”) (together, the “Settling Parties”), served on June 17, 2016. ORA’s comments are timely filed pursuant to *Administrative Law Judge Gary Weatherford’s Ruling Setting Aside Submission* (“Ruling”) issued on June 22, 2016.<sup>1</sup>

Rule 12.4 states that “[t]he Commission may reject a proposed settlement whenever it determines that the settlement is not in the public interest....” The

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<sup>1</sup> The Ruling set a deadline of 14 days from the date of the Ruling to file comments on the settlement.

Commission must reject the proposed settlement agreement because it does not serve the public interest and is not supported by the record in this proceeding. ORA makes the following comments regarding the proposed settlement agreement:

- (1) The settling parties do not represent the reasonable range of interests affected as they are water purveyors and neither party to the settlement represents ratepayers;
- (2) The proposed Annual Consumption True-Up Pilot Program (“consumption adjustment mechanism” or “CAM”) must be rejected for the following reasons:
  - (a) Cal Am’s rate design contributed to the Water Revenue Adjustment Mechanism (“WRAM”) balance. Since the rate design has been modified, it would be premature to adopt a CAM,
  - (b) The CAM would result in single issue ratemaking<sup>2</sup> and sends mixed signals to ratepayers that discourages conservation,
  - (c) The Commission has not yet reviewed California Water Service Company’s (“CWS”) Sales Reconciliation Mechanism (“SRM”) as required by Decision (“D.”) 15-04-007,
  - (d) The Commission currently has an open Rulemaking (“R.”) proceeding (R.11-11-008) in which true-up mechanisms will be addressed, and
  - (e) Cal Am should not be allowed to adjust rates based on consumption data via advice letter filings when its background demonstrates that it provides conflicting consumption data and incomplete data request responses.
- (3) The proposed settlement agreement’s modifications to Rule 14.1.1 requires additional modifications to require that adequate notice be

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<sup>2</sup> Ibid at p. 3-9.

provided to the Commission when conservation rates are adjusted from Level 1 to Level 2 in Stage 3.<sup>3</sup>

## **II. THE PARTIES TO THE SETTLEMENT DO NOT REPRESENT RATEPAYER INTERESTS**

The settlement agreement was signed by Cal Am and MPWMD which are water purveyors and do not represent ratepayer interests in this proceeding. Neither ORA nor the intervenors representing the Monterey ratepayers in this proceeding were parties to the proposed settlement agreement. The proposed settlement agreement fails to address ratepayer concerns regarding the cost of service and adequate oversight of rate adjustments. Therefore, the proposed settlement is not “fairly representative of affected interests”<sup>4</sup> as the Settling Parties assert and must be rejected as it does not serve the public interest.

## **III. THE CAM MUST BE REJECTED BECAUSE IT VIOLATES COMMISSION POLICY AND DECISION, AND CAL AM’S CONSUMPTION DATA MUST BE HIGHLY SCRUTINIZED PRIOR TO ADJUSTING RATES**

### **A. The CAM is unnecessary because Cal Am’s Rate Design Contributed to the WRAM balance and has been modified to address the rate design flaws**

The high WRAM balance resulted from Cal Am’s allotment rate design and lack of management oversight of the allotment system. These flaws have been addressed in ORA’s rate design proposal in this proceeding. Therefore, the CAM is unnecessary. The Settling Parties assert that by proposing the CAM the “Parties seek a reliable and timely process for adjusting rates annually that will increase the likelihood that conservation

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<sup>3</sup> ORA Exhibit 104 at p. vi.

<sup>4</sup> See Motion For Adoption of Settlement Agreement at p. 2.

rates will collect the annual authorized revenue requirement....”<sup>5</sup> This is the purpose of the WRAM,<sup>6</sup> and the Settling Parties have not demonstrated that the WRAM does not serve its intended purpose, nor do they propose that the WRAM be discontinued should the CAM be implemented. Therefore, since the WRAM already affords the utility the opportunity to collect its annual authorized revenue requirement, the CAM is unnecessary.

The record in this proceeding demonstrates that Cal Am’s mismanagement of its allotment rate design has prevented the timely recovery of the revenue requirement and contributed to the existing WRAM balance,<sup>7</sup> but has not demonstrated that the WRAM itself hinders timely adjustment of rates nor hinders the collection of Cal Am’s authorized revenue requirement. Since the record demonstrates that Cal Am’s rate design is the underlying cause of the existing WRAM balance, the parties to the proceeding have proposed modifications to Cal Am’s rate design.<sup>8</sup> ORA’s proposed rate design realigns cost recovery with consumption and balances cost recovery with the need to conserve in Monterey.<sup>9</sup> As a result, the Commission should adopt ORA’s proposed rate design and should not implement the CAM or any “true-up” mechanisms. Absent data showing that the rate design changes that will be adopted in this proceeding did not rectify the problems caused by the allotment rate design, the Commission would act prematurely

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<sup>5</sup> See Motion For Adoption of Settlement Agreement, Exhibit 1 at p. 4.

<sup>6</sup> See D.09-07-021 at p. 56: the purpose of the WRAM which was authorized by the Commission in D.09-07-021 in order to ensure “...that Cal-Am will recover all its fixed and variable costs regardless of the amount of water billed. The purpose of this mechanism is to decouple Cal-Am’s revenue from water sales and to thereby remove any financial disincentives created by aggressive water conservation programs.”

<sup>7</sup> See ORA Exhibit 104 at p. 1-2 and Cal Am Exhibit 2, Direct Testimony of Sherrene Chew at p. 10.

<sup>8</sup> See Ibid at pp. 1-2 through 1-25 for ORA’s proposed rate design.

<sup>9</sup> Ibid at p. 1-25.

and contrary to the record if it were to adopt the CAM. Therefore, the CAM must be rejected.

**B. The CAM Results in Single Issue Ratemaking.**

Decision 09-07-021 makes it clear that the purpose of the WRAM is to ensure that Cal-Am will recover all of its *fixed* and *variable costs* regardless of the amount of water billed.<sup>10</sup> The WRAM was not intended to solely allow the company to recover its authorized revenue requirement. While Public Utilities (“Pub. Util.”) Code Section 727.5(a) states:

In establishing rates for water service, the commission shall consider, and may establish, separate charges for costs associated with customer service, facilities, variable operating costs, including fixed and variable costs associated with supplying the water, or other components of the water service provided to water users.

The CAM however proposes to adjust rates solely based on consumption without taking into account Cal Am’s fixed and variable costs or the other factors presented in Pub. Util. Code § 727.5(a). Therefore, the CAM results in single-issue ratemaking because it does not consider all inputs (revenues) and outputs (costs) when adjusting rates.<sup>11</sup>

**C. The CAM Creates Disparate Effects Across Customer Classes.**

The proposed CAM creates disparate effects across customer classes. ORA provided an example of the inequities in treatment of customer classes inherent in the CAM in its opposition to the Motion:

For example, the first page of Appendix B to the proposed settlement provides the CAM adjustment example where recorded consumption is less than adopted. The example conveniently provides identical scenarios where low-usage

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<sup>10</sup> See D.09-07-021 at p. 56.

<sup>11</sup> Ibid at p. 3-9.

residential customers (Tier 1) use 5% less than adopted, just like the 5% less than adopted used by a Division 1 Non-Residential Customer. Pages 3 and 4 of Appendix B show the disparate rate impacts of the same decline in usage for these two classes of customers. Comparing the top and bottom tables on page 3 shows that the Tier 1 rate for residential customers goes from \$0.5128 to \$0.5656 per 10cfs for a rate increase of 10.3% while comparing the two tables on page 4 shows that the Division 1 rate for non-residential or commercial customers goes from \$0.6813 to \$0.7271—an increase of just 6.7%. Similar comparisons using the examples in the proposed settlement can be made showing that the same level of reduced consumption triggers larger rate increases for residential versus commercial customers.<sup>12</sup>

Pub. Util. Code § 727.5(a) requires that rates be preceded by an analysis of all inputs (revenues) and outputs (costs), not just one factor. The proposed CAM as demonstrated in the proposed settlement only amplifies the importance of reviewing the rate components comprehensively so that automatic rate adjustment mechanisms are not allowed to create the situation where identical changes in consumption result in disparate impacts to different customer classes.<sup>13</sup>

**D. The CAM Could Encourage Customers to Increase Consumption at a Time when Conservation is Imperative.**

The Commission should reject the CAM because it could encourage ratepayers to increase consumption at a time when the Monterey District is in need of increased conservation efforts from its residents. For example, the proposed CAM demonstrates that when consumption declines, rates would increase. However, when consumption increases, the CAM would decrease rates. Therefore, customers would have no incentive

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<sup>12</sup> ORA Opposition to the Motion at pp. 3-4.

<sup>13</sup> Ibid at p. 4.

to conserve because increasing consumption would actually reduce their bills while increasing conservation increases their bills.<sup>14</sup> This again demonstrates the need to analyze all inputs prior to making rate adjustments to ensure that ratepayers receive the right conservation signals. The CAM focuses only on revenue collection and does not align with the need to conserve water in the Monterey District. ORA's proposed standardized inclining block rate design maintains strong conservation-oriented price signals and promotes revenue stability.<sup>15</sup> Therefore, the Commission should the Commission adopt ORA's proposed rate design, and reject the proposed CAM.

**E. The Commission has not Reviewed CWS' SRM Pilot Program as Required by D.15-04-007**

Decision 15-04-007 states that the Commission would not authorize any further pilot programs until it has reviewed CWS' SRM pilot program.<sup>16</sup> As a result, the proposed settlement seeks to circumvent the Commission's Decision in proposing to adopt the CAM. In D.15-04-007, the Commission cautioned that authorizing further pilot programs before a review of CWS' SRM pilot program could lead to flawed designs and unintended consequences being replicated in other pilot programs.<sup>17</sup> This concern is still prevalent as the Commission has not yet reviewed CWS' SRM pilot program. Furthermore, ORA's review of CWS' SRM pilot program demonstrated the following results:

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<sup>14</sup> ORA Exhibit 104 at p. 3-4.

<sup>15</sup> Ibid at p. 1-2.

<sup>16</sup> D.15-04-007 at p. 21.

<sup>17</sup> Ibid.

- 1) The drought SRM pilot, during the first six months of implementation, increased WRAM balances on a company-wide basis.<sup>18</sup>
- 2) In aggregate, the reduction to WRAM balances is greater without an SRM adjustment.<sup>19</sup>
- 3) From available data, it is clear that Cal Water's claim of the drought SRM pilot sending correct pricing signaling is not only unsubstantiated but incorrect.<sup>20</sup>

These results further demonstrate that the Commission should not authorize any additional pilot programs until it has conducted its own review of Cal Water's SRM pilot program and conducted additional studies in order to determine the feasibility of "true-up" mechanisms.

**F. Proposals for True-Up Pilot Programs Should Not Be Considered until the Commission has issued a Final Decision in R.11-11-008**

The Commission is currently reviewing the WRAM and "true-up" mechanisms in R.11-11-008,<sup>21</sup> which is an industry-wide proceeding. It would be premature for the Commission to authorize a CAM in this proceeding when an industry-wide proceeding is currently underway and could conflict with any decisions made in this proceeding regarding the CAM. As a result, the best course of action is to resolve any proposals regarding "true-up" mechanisms in the industry-wide proceeding R.11-11-008 to avoid potential conflicts.

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<sup>18</sup> ORA's Report on Sales and Rate Design, Cal Water Application 15-07-015, pp. 40-56; *See also* ORA Reply Brief at p. 14.

<sup>19</sup> *Ibid* at p. 43.

<sup>20</sup> *Ibid* at p. 53.

<sup>21</sup> ORA Exhibit 104 at p. 3-10.

### **G. Cal Am's Consumption Data Must Be Scrutinized for Accuracy Prior to Adjusting Rates**

The record in this proceeding demonstrates that Cal Am has provided inconsistent consumption data on numerous occasions.<sup>22</sup> Therefore, the Commission cannot allow Cal Am to adjust rates using the CAM based on the prior year's consumption data when Cal Am has demonstrated that it has a practice of delaying the recording of consumption data and then utilizing that data to its benefit.<sup>23</sup> The record in this proceeding also demonstrates that Cal Am has also failed to provide records in a timely manner and on occasion has provided incomplete data.<sup>24</sup> These examples demonstrate that the Commission must closely scrutinize Cal Am's data prior to granting any rate adjustments. Therefore, the Commission must require that Cal Am make all requests for rate adjustments via formal application or general rate case proceeding rather than through the advice letter process proposed for the CAM.

### **IV. PROPOSED RULE 14.1.1 REQUIRES FURTHER MODIFICATIONS TO REQUIRE TIER 2 ADVICE LETTER FILINGS WHEN INCREASING CONSERVATION RATES IN STAGE 3 FROM LEVEL 1 TO LEVEL 2**

The proposed settlement's proposed modifications to Rule 14.1.1 requires further modifications to ensure that the Commission is adequately notified in the event that Cal Am increases conservation rates in Stage 3 from Level 1 to Level 2. The proposed modifications to Rule 14.1.1 requires Cal Am to file a Tier 2 Advice Letter when Stage 3 conservation rates are activated. However, review of Appendix E (Proposed Rule 14.1.1) and Appendix F (Proposed Schedule 14.1.1) of the proposed settlement agreement

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<sup>22</sup> Ibid at p. 3-8.

<sup>23</sup> Cal Am Exhibit 3, Rebuttal Testimony of Sherene Chew at p. 14.

<sup>24</sup> ORA Opening Brief at pp. 8-9.

reveals that Cal Am would have the ability to increase conservation rates from Level 1 to Level 2 in Stage 3 without providing notice to the Commission. Thus, Monterey consumers would be subject to rate increases without the knowledge or oversight of the Commission.

**V. THE PROPOSED SETTLEMENT AGREEMENT IS NOT IN THE PUBLIC INTEREST AND IS CONTRARY TO COMMISSION POLICY, DECISIONS, AND STATUTES**

The Commission must reject the proposed settlement agreement because it is not in the public interest and is contrary to Commission policy, decisions, and statutes. Also, the proposed settlement agreement is not supported by the record and is therefore unreasonable in light of the record in this proceeding.

The proposed settlement is not in the public interest as the CAM would discourage conservation when the Monterey District is in need of increased conservation efforts. In D.15-04-007, the Commission cautioned that these types of pilot programs should not be implemented until the Commission has completed its review of CWS' SRM pilot program. Pub. Util. Code § 727.5 discourages single issue ratemaking and requires that the Commission consider all relevant factors rather than a single factor. Cal Am's analysis provided in support of the CAM is speculative and fails to account for several important factors such as a utility's overall financial performance, expenses, capital spending, and other sources of revenue, etc.<sup>25</sup> Therefore, the proposed CAM is against Commission policy, decision, and statutes.

The proposed modifications to Rule 14.1.1 are inadequate as they do not require that Cal Am notify the Commission when Stage 3 conservation rates are changed from Level 1 to Level 2. No utility should be allowed to adjust rates without providing notification to the Commission or without Commission approval. Therefore, the

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<sup>25</sup> ORA Opening Brief at pp. 11-12. *See also* EH Transcript vol.3 at pp.458-460.

Commission must require that Cal Am File a Tier 2 Advice Letter when adjusting conservation rates in Stage 3 from Level 1 to Level 2.

## **VI. CONCLUSION**

For the reasons stated herein, the Commission must reject the proposed Settlement Agreement.

Respectfully submitted,

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