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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)

**OPENING COMMENTS OF THE  
OFFICE OF RATEPAYER ADVOCATES**

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Pursuant to Rule 14.3 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) submits these opening comments on Administrative Law Judge (ALJ) Gary Weatherford’s proposed decision.

ORA agrees with the proposed decision granting California American Water Company (“Cal Am”) authority to enter into the Water Purchase Agreement for Ground Water Replenishment Project (GWR) water. However, ORA does not support the proposed decision granting Cal Am authority for the expedited construction of the Monterey Pipeline and Pump Station. The record does not provide sufficient support for the authorization to build these facilities on an expedited basis. However, if the Commission does grant authority for the expedited construction of these facilities, the proposed decision should be revised to ensure that language regarding “used and useful” facilities is consistent with the law and with Commission precedent.

**I. MONTEREY PIPELINE AND PUMP STATION**

The proposed decision grants Cal Am authority for the expedited construction of the Monterey Pipeline and Pump Station, finding that “the preponderance of record evidence shows that the Monterey Pipeline and Pump Station are necessary (independent of the proposed desalination plant) to maximize the use of water from the GWR and

Aquifer Storage and Recovery Project (ASR).”<sup>1</sup> However, granting such authority would constitute legal error because the record does not provide sufficient support to build these facilities on an expedited basis. The record evidence is not sufficient to support the approval of over \$50 million in infrastructure at this time. Given the tremendous impact of the \$50 million in infrastructure on the ratepayers in the Monterey District, the Commission should require a clear and convincing record showing that the facilities are necessary on an expedited basis, not merely a preponderance of record evidence.

As discussed in ORA’s testimony and briefs, the record demonstrates that the expedited construction of these facilities is not appropriate because: (1) Cal Am’s existing infrastructure can accommodate extraction of GWR water, and the injection and extraction of ASR water, (2) Cal Am has not demonstrated the independent need for these facilities, separate from the desalination plant and (3) the final design of the desalination plant and the design details of the facilities necessary to support that project are uncertain pending the completion of a final Environmental Impact Report (EIR).

In particular, ORA’s argument to wait until there is more certainty regarding the final design of the the desalination plant is supported by language in the proposed decision. The proposed decision indicates “[t]he desalination may or may not ever be built[.]”<sup>2</sup> However, “[t]he 36-inch pipeline is designed and sized to accommodate water from the Pure Water Monterey Project, the ASR Project, and the desalination project[.]”<sup>3</sup> Even assuming the proposed decision’s finding that the Monterey Pipeline is needed without the desalination plant,<sup>4</sup> the final design, sizing, and cost of this pipeline would likely be substantially different if it will not also serve the desalination plant. Incorrectly designed or sized facilities present unnecessary and hence unreasonable burden to the ratepayers who ultimately pay for those facilities.

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<sup>1</sup> Proposed Decision, p. 22.

<sup>2</sup> Proposed Decision, p. 25.

<sup>3</sup> Ex. JE-2, Joint Supplemental Testimony, p. 16 (emphasis added).

<sup>4</sup> Proposed Decision, p. 25.

The possibility cited in the proposed decision that the desalination facility may never be built, as well as other potential questions on sizing of the desalination plant if it is built, support ORA's position that the prudent approach is to wait to construct the Monterey Pipeline and Pump Station until more certainty exists regarding the design of the desalination plant. Attachment A provides ORA's suggested revisions to the proposed decision's ordering paragraphs.

## **II. FINANCING AND RATEMAKING**

As discussed above, ORA does not agree that the record supports the expedited construction of the Monterey Pipeline and Pump Station. However, if the Commission does grant such authority in the proposed decision, the language regarding financing and ratemaking should be revised to ensure the proposed decision's language on "used and useful" is consistent with the law and Commission precedent.

The proposed decision authorizes Cal Am to file two separate Tier 2 advice letters, with the initial advice letter recovering costs for the Monterey Pipeline and Pump Station through March 30, 2017.<sup>5</sup> The proposed decision indicates that the initial advice letter would reflect recovery of the used and useful portions of the facilities.<sup>6</sup> The proposed decision then states: "Used and useful is pipeline and pump station costs spent on construction up to March 30, 2017."<sup>7</sup>

ORA is concerned that the proposed decision's definition of "used and useful" may include construction costs of partially built facilities. ORA is unsure how a portion of a pipeline or a partially constructed pump station could be of use to ratepayers prior to the completion of those facilities.

Furthermore, the proposed decision's definition of "used and useful" is inconsistent with Public Utilities Code Section 701.10(a) and Commission precedent that indicates "that utility property be actually in use and providing service in order to be in

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<sup>5</sup> Proposed Decision, p. 41.

<sup>6</sup> Id.

<sup>7</sup> Id.

the utility’s ratebase.”<sup>8</sup> The proposed decision’s definition is also inconsistent with later language in the proposed decision regarding “the principle of ratepayers paying the costs of the facilities they use[.]”<sup>9</sup>

The proposed decision includes a footnote citing D.06-12-040 to support its definition of “used and useful”. However, that decision is distinguishable from this proposed decision because the costs at issue there were the **preconstruction costs** for the Coastal Water Project, not all of the construction costs, as is the case in this proposed decision.<sup>10</sup>

Therefore, if the Commission does grant authority for the expedited construction of the Monterey Pipeline and Pump Station, the language in the proposed decision and in the ordering paragraphs regarding “used and useful” should be clarified to indicate that only the costs of portions of the Monterey Pipeline and Pump Station that are “used and useful” and actually providing service to customers can be recovered in the initial Advice Letter filing and included in ratebase. Attachment B provides a revision to Ordering Paragraph 7 that clarifies this issue.

### **III. ADDITIONAL RECOMMENDED CORRECTIONS TO THE PROPOSED DECISION**

The proposed decision incorrectly states ORA’s position by indicating that ORA argued that “...existing infrastructure is sufficient to **maximize** use of water from GWR and ASR[.]”<sup>11</sup> ORA’s position was that Cal Am’s existing infrastructure could accommodate GWR water and the injection and extraction of ASR Project water.<sup>12</sup> ORA did not argue that existing infrastructure could “maximize” use of water from GWR and

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<sup>8</sup> *LNG Cost Recovery* (1984) [D.84-09-089] 16 Cal.P.U.C.2d 205, 228; Public Utilities Code Section 701.10(a) directs the Commission to, “[p]rovide revenues and earnings sufficient to afford the utility an opportunity to earn a reasonable return on its used and useful investment....”

<sup>9</sup> Proposed Decision, p. 41.

<sup>10</sup> D.06-12-040, p. 21.

<sup>11</sup> Proposed Decision, p. 24 (emphasis added) citing ORA Rebuttal Testimony, pp. 7-8.

<sup>12</sup> ORA Rebuttal Testimony, pp. 7-8.

ASR.<sup>13</sup> Therefore, the proposed decision should be revised to include ORA’s correct argument.

#### IV. CONCLUSION

For the reasons discussed above, the Commission should revise the proposed decision to deny authorization for the expedited construction of the Monterey Pipeline and Pump Station at this time because the record does not support authority for such expedited construction. The record supports waiting to construct the Monterey Pipeline and Pump Station until more certainty exists regarding the design of the desalination plant. Attachment A provides suggested changes to ordering paragraphs that reflect this recommendation.

However, if the Commission does grant authority for construction now, ratepayers should only be responsible for the costs of such infrastructure that is fully used and “used and useful”. Attachment B provides a revision to Ordering Paragraph 7 that clarifies this issue.

Respectfully yours,

/s/ MARCELO POIRER

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<sup>13</sup> The proposed decision seems to be using the language in the opening brief of the Joint Parties that incorrectly states ORA’s position (Joint Parties opening brief, p. 32).

## ATTACHMENT A

### PRIMARY RECOMMENDATION: PROPOSED CHANGES TO ORDERING PARAGRAPHS<sup>14</sup>

#### Ordering Paragraphs

~~3. California American Water Company is authorized to upgrade the existing Hilby Avenue Pump Station and construct and operate the Monterey pipeline that was evaluated in the Environmental Impact Report prepared for the Pure Water Monterey Groundwater Replenishment Project as the "Alternative Monterey Pipeline."~~

~~4. Construction of the pipeline and pump station is conditioned on compliance by California American Water Company with the Mitigation Monitoring and Reporting Program contained in Appendix E.~~

~~5. Within 30 days after completion of the pipeline, and the pump station, California American Water Company shall notify the Division of Water by letter that those facilities are used and useful.~~

~~6. The authorization to build the pipeline and pump station is subject to a cost cap of \$46.5 million for the pipeline, and \$3.8 million for the pump station. If actual costs exceed either cap, California American Water Company is authorized to file a Tier 3 advice letter to seek additional recovery.~~

~~7. California American Water Company (Cal Am) is authorized to make two separate Tier 2 advice letter filings to place the costs of the pipeline and pump station into rates. Cal Am shall file the first Tier 2 advice letter by April 30, 2017 to cover costs for the pipeline and pump station through March 30, 2017, reflecting the recovery of actual costs for the used and useful portions of the facilities to date. Costs for the used and useful portions are the actual reasonable expenditures spent on construction. Cal Am shall include a showing of reasonableness with its advice letter. Cal Am shall file the second Tier 2 advice letter within 90 days after the pipeline and pump station are completed and fully in service, and shall include a showing of reasonableness with its advice letter.~~

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<sup>14</sup> Additions are underlined and text that should be deleted is shown with ~~strikethrough~~.

~~8. California American Water Company (Cal Am) shall track in a separate section of the its facilities memorandum account: (a) the costs of the pipeline and pump station (including allowance for funds used during construction), (b) a pro-rated portion of the engineering and environmental costs of the entire Cal-Am facilities, (c) and any portion of the pipeline or pump station placed in service prior to the Commission approving the costs to be included in plant in service and recovered in base rates.~~

## ATTACHMENT B<sup>15</sup>

### ALTERNATIVE RECOMMENDATION: PROPOSED CHANGES TO ORDERING PARAGRAPHS<sup>16</sup>

#### Ordering Paragraphs

7. California-American Water Company (Cal-Am) is authorized to make two separate Tier 2 advice letter filings to place the costs of the pipeline and pump station into rates. Cal-Am shall file the first Tier 2 advice letter by April 30, 2017 to cover costs for the pipeline and pump station through March 30, 2017, reflecting the recovery of actual costs for the used and useful portions of the facilities to date, consistent with PU Code Section 701.10(a). Costs for the used and useful portions are the actual reasonable expenditures spent on construction of the portion of the facilities actually serving ratepayers. Cal-Am shall include a showing of reasonableness with its advice letter. Cal-Am shall file the second Tier 2 advice letter within 90 days after the pipeline and pump station are completed and fully in service, and shall include a showing of reasonableness with its advice letter.

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<sup>15</sup> Attachment A provides ORA's primary recommendation. If the changes suggested in Attachment A are not adopted by the Commission, ORA recommends adopting the changes suggested in Attachment B.

<sup>16</sup> Additions are underlined and text that should be deleted is shown with ~~strikethrough~~.