



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED
11-07-16
04:59 PM

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.

Application 15-07-019
(Filed July 14, 2015)

**COMMENTS OF CALIFORNIA-AMERICAN WATER COMPANY
ON THE PROPOSED DECISION
OF ADMINISTRATIVE LAW JUDGE WEATHERFORD**

Sarah Leeper
California-American Water Company
555 Montgomery Street, Suite 816
San Francisco, CA 94111
(415) 863-2960
sarah.leeper@amwater.com

Lori Anne Dolqueist
Nossaman LLP
50 California Street, 34th Floor
San Francisco, CA 94111
(415) 438-7221
ldolqueist@nossaman.com

Attorneys for Applicant California-American Water Company

November 7, 2016

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. AMORTIZATION OF PRE-2015 WRAM/MCBA BALANCES	2
A. The PD Correctly Rejected ORA’s Extreme Proposals.....	2
B. The PD’s WRAM/MCBA Interest Rate Unlawfully Penalizes Cal-Am	3
III. PENALTY PHASE.....	6
A. The PD Does Not Meet the Applicable Standard of Proof.....	6
B. There is No Explicit Verification or Audit Requirement.....	7
C. Industry Standard Practice Does Not Include Additional Audits or Verification	8
D. Where the Commission Has Required Audit or Verification of Customer Provided Information, It Has Done So Explicitly.....	9
E. The Commission Should Modify the PD to Delete the Penalty Phase	10
IV. ANNUAL CONSUMPTION ADJUSTMENT MECHANISM	10
V. WATER DIVISION.....	11
A. Responsiveness	11
B. Accounting of LIRA Revenues.....	11
VI. CLARIFICATION AND IMPLEMENTATION	12
A. Balance to Be Recovered	12
B. Recovery of Future WRAM/MCBA Balances	13
C. Timing.....	13
VII. CONCLUSION.....	13

TABLE OF AUTHORITIES

Page(s)

STATUTES

Pub. Util. Code §739.1(h).....10

CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS & RESOLUTIONS

D.03-01-087, *Investigation on the Commission’s own motion into the operations, practices, and conduct of Qwest Communications Corporation (Qwest), U-5335-C and its wholly owned subsidiary, LCI International Telecommunications Corporation, Order Denying Rehearing of Decision No. 02-10-059, p. 8*.....7

D.04-09-062, *Investigation on the Commission’s own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities, Opinion Ordering Penalties and Reparations, p. 13*.....7

D.08-05-036, *Application of California-American Water Company (U210W) for an Interest Rate of 8.33% for Allowance for Funds Used During Construction (AFUDC) for its San Clemente Dam Memorandum, Decision Determining Carry Costs for Memorandum Account*.....6

D.11-09-039, *Application of California American Water Company (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates, Decision Regarding California-American Water Company’s Petition to Modify Decision -6-12-040*.....6

D.08-10-019, *Application of California-American Water Company (U210W) for an Interest Rate of 8.33% for Allowance for Funds Used During Construction (AFUDC) for its San Clemente Dam Memorandum, Order Denying Rehearing of Decision (D.) 08-05-036, p. 5*.....6

D.12-04-048, *Application of California-American Water Company (U210W), California Water Service Company (U60W), Golden State Water Company (U133W), Park Water Company (U314W) and Apple Valley Ranchos Water Company (U346W) to Modify D.08-02-036, D.08 06-002, D.08-08-030, D.08-09-026, D.08 11 023, D.09-05-005, D.09-07-021, and D.10 06-038 regarding the Amortization of WRAM-related Accounts, Decision Addressing Amortization of Water Revenue Adjustment Mechanism Related Accounts and Granting in Part Modification to Decision (D.) 08-02-036, D.08-08-030, D.08-09-026, and D.09-05-005, p. 17*.....5

D.12-08-044, <i>Application of Southern California Edison Company (U338E) for Approval of its 2012 2014 California Alternate Rates for Energy (CARE) and Energy Savings Assistance Programs and Budgets, Decision On Large Investor-Owned Utilities' 2012-2014</i>	10
D.89-07-062, <i>Investigation on the Commission's own motion with the Senate Bill 997 and realign residential rates, including baseline rates, of California energy utilities, Ordering Paragraph 24 (July 19, 1989)</i>	9
Resolution E-3586, <i>Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company Requests Approval for the 1999 California Alternative Rates for Energy and the Low Income Energy Efficiency Programs</i>	10
 OTHER AUTHORITIES	
Financial Accounting Standards Board, Accounting Standards Codification 980.....	4

SUMMARY

The *Proposed Decision of Administrative Law Judge Weatherford* (“PD”) addresses recovery of the Monterey District pre-2015 undercollections currently tracked in the Water Revenue Adjustment Mechanism (“WRAM”)/Modified Cost Balancing Account (“MCBA”), adopts a new conservation rate design for the Monterey District, and modifies Rule 14.1.1 to include more efficient conservation and rationing rules. Although there is some language that should be clarified to avoid confusion, California-American Water Company (“Cal-Am”) generally supports the PD, which rejects the radical proposals from the Office of Ratepayer Advocates (“ORA”) to disallow recovery of a significant portion of the WRAM/MCBA balance and deny any interest on the remainder during the amortization period. Nonetheless, the PD contains several significant legal and factual errors:

- The PD’s adoption of a short-term 90-day commercial paper interest rate for the five-year amortization of the WRAM/MCBA is confiscatory, unsupported by the record, and disconnected from financial reality. It is not commensurate with the period of recovery and fails to compensate Cal-Am for the costs associated with delayed recovery.
- The PD and a subsequent ruling raise issues related to Cal-Am and the Water Division, even though the parties have not had a chance to address them previously in this proceeding. These issues do not belong in the PD or final decision.
- There is no need for a second “penalty phase” of this proceeding. Cal-Am reasonably administered its allotment-based tariffs according to the plain language of the Commission decisions and industry practice. The PD’s retroactive application of an implied audit requirement is contradicted by the record and contrary to law.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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.

Application 15-07-019
(Filed July 14, 2015)

**COMMENTS OF CALIFORNIA-AMERICAN WATER COMPANY
ON THE PROPOSED DECISION
OF ADMINISTRATIVE LAW JUDGE WEATHERFORD**

I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), California-American Water Company (“Cal-Am”) hereby files its comments on the *Proposed Decision of Administrative Law Judge Weatherford*, issued October 18, 2016 (“PD”). The PD addresses recovery of the Monterey District undercollections currently tracked in the Water Revenue Adjustment Mechanism (“WRAM”)/Modified Cost Balancing Account (“MCBA”), rate design, and revisions to Rule 14.1.1. Generally, Cal-Am supports the PD, which correctly authorizes recovery of the pre-2015 WRAM/MCBA balance, adopts a new conservation rate design for the Monterey District, and modifies Rule 14.1.1 to allow for easier and more efficient implementation of conservation and rationing rules.

The PD, does however, contain a few significant factual and legal errors. Several findings and conclusions are unsupported by the record and contrary to applicable law, including the use of the 90-day commercial paper rate for the five-year amortization of the WRAM/MCBA balance and the assertion that it is probable that Cal-Am failed to properly administer its tariffs. Additionally, the Commission should clarify the PD with respect to certain issues and directives in order to avoid confusion during implementation. Cal-Am has included as Attachment 1 to these comments proposed findings of fact, conclusions of law and ordering paragraphs supporting its suggested changes to the PD.

II. AMORTIZATION OF PRE-2015 WRAM/MCBA BALANCES

A. The PD Correctly Rejected ORA's Extreme Proposals

The PD correctly recognized, “Treatment of the WRAM/MCBA balance is the most controversial and complex portion of this proceeding.”¹ The size of the uncollected WRAM/MCBA Monterey District balance is the result of the highly inverted rate design that was necessary to ensure compliance with State Water Resources Control Board (“SWRCB”) orders to drastically reduce use of water from the Carmel River and with the Seaside Groundwater Basin adjudication. The historic drought experienced in California in recent years also exacerbated WRAM undercollections.

The Office of Ratepayer Advocates (“ORA”) recommended that the Commission disallow recovery \$17.39 of the pre-2015 WRAM balances, claiming that this undercollection was attributable to Cal-Am’s alleged mismanagement of the Monterey District residential household allotments.² ORA also recommended an adjustment to the Unaccounted for Water (“UAW”) reward calculation.³

The Commission properly rejected ORA’s drastic reduction. With respect to the allotments, the PD noted:

The difference between authorized and actual revenues is the result of sales, not allotments, as long as the allotments used for determining authorized revenues match the allotments included with revenues actually received. This is the case whether or not allotments are perfectly managed and 100 percent.⁴

Cal-Am applauds the PD for rejecting ORA’s illogical and one-sided calculations, which appear to be designed to penalize Cal-Am and prevent recovery of authorized fixed costs, rather than a vigorous review of the WRAM/MCBA balance. The PD also properly rejected ORA’s claims of data manipulation with respect to the UAW calculation.⁵ The PD correctly concludes that the existing advice letter process provides sufficient protection to customers and that there is no reason to impose the added cost and administrative burden of application filings for future WRAM recovery.⁶ Finally, the PD

¹ PD, p. 11.

² Exh. 104, *Office of Ratepayer Advocates, Report and Recommendations on Application 15-07-019* (“ORA Report”), pp. 1-11 – 1-12.

³ *Id.*, p. 2-8.

⁴ PD, p. 18.

⁵ *Id.*, p. 20.

⁶ PD, p. 35.

appropriately characterized many of the proposals of Public Water Now and Regulatory Liaisons (“PWN/RL”) as unjustified, illogical and inconsistent with Commission practice and policy.

B. The PD’s WRAM/MCBA Interest Rate Unlawfully Penalizes Cal-Am

The PD rejects Cal-Am’s proposal to recover the pre-2015 WRAM/MCBA balance over a twenty-year period and instead adopts a five-year amortization schedule.⁷ While Cal-Am understands the preference for a shorter amortization period, the PD errs in applying the 90-day commercial paper rate to the unrecovered WRAM/MCBA balance. As discussed in more detail below, application of the 90-day commercial paper rate is confiscatory, is not supported by the record, and unfairly penalizes Cal-Am and its customers.

The PD properly rejects ORA’s misinformed recommendation that Cal-Am be denied any interest on the unrecovered pre-2015 WRAM/MCBA balance. In doing so, the PD recognizes the time value of money, one of the fundamental concepts of finance and pillars of fair utility regulation.⁸ The PD also claims that the interest rate it proposes is “commensurate with the period of recovery and compensates Cal-Am for the costs associated with delayed recovery.”⁹ The record does not support this claim.

The PD claims, “Applicant says it is funding the WRAM balance with long-term debt and equity. There are less expensive sources to fund this balance.”¹⁰ The PD fails, however, to provide any citation to the record identifying these allegedly less expensive sources. California American Water is certainly not aware of any entity that would fund a balance at the 90-day commercial paper rate for a period of approximately 1,826 days. In essence, the PD is instructing Cal-Am to somehow finance the unrecovered pre-2015 WRAM/MCB balance at a below-market rate.

The *only* information in the record regarding available interest rates was provided by Cal-Am. The PD’s claim that Cal-Am testified at the public participation hearing (“PPH”) “that it has borrowed \$35 million of the current under-collection at 5.25 percent from American Water Capital Corporation” is inaccurate.¹¹ While American Water Capital Corporation (“AWCC”) issued \$35 million in debt at 5.25% for Cal-Am in 2010, the unrecovered balances are funded with a mix of debt and equity, as

⁷ *Id.*, p. 25.

⁸ *Id.*, p. 26.

⁹ *Id.*, p. 29.

¹⁰ *Id.*, p. 27.

¹¹ PD, p. 9; *see* Reporter’s Transcript (“RT”) 290-293 (CAW/Linam).

authorized in our cost of capital proceeding.¹² As Cal-Am explained in response to a request from the assigned Administrative Law Judge, the current weighted pre-tax cost of capital rate for under-recovered memorandum and balancing accounts, including the Monterey WRAM/MCBA, is 8.13%.¹³ The current interest rate for American Water Capital Corp's indicative private placement pricing levels (for a debt less than \$250 million as of September 9, 2016), inclusive of issuance costs, would be 2.1% for a five year financing period.¹⁴ Based on the current level of unrecovered memorandum and balancing account balances, Cal-Am does not have sufficient short-term debt available under its Board authorization to fund the pre-2015 unrecovered WRAM/MCBA balances.¹⁵

Upon receipt of the PD, Cal-Am began discussions with AWCC and accounting personnel about what would happen if the PD were adopted unchanged with the 90-day commercial paper rate applied to the five-year amortization. If, based on the unique circumstances created by this decision, Cal-Am and AWCC had to finance a five-year note for the pre-2015 WRAM/MCBA balances,¹⁶ they would almost certainly not be able to recover costs, since, based on available market data, the interest rate would be higher than the 90-day commercial paper rate.¹⁷ Based on generally accepted accounting principles, the difference between the 90-day commercial paper rate and the interest rate that could actually be obtained would likely be a write-off. While utilities are allowed to defer incurred costs as regulatory assets on the balance sheet under generally accepted accounting principles,¹⁸ utilities must assess probability of collection of the associated regulatory asset. Given that the 90-day commercial paper rate is lower than the five-year debt rate the utility may actually incur, the difference would result in an interest cost in excess of what would be recovered. An estimate of the difference would be considered an impairment and the asset would be written down to the net realizable value. As shown in Attachment 2, Cal-Am

¹² RT 293:18-19 (CAW/Linam).

¹³ *Response to Administrative Law Judge's Ruling for Additional Information*, September 9, 2016 ("Response"), p. 7.

¹⁴ Response, pp. 6-7.

¹⁵ In the Response, Cal-Am explained that as of August 2016 it had approximately \$114 million in unrecovered memorandum and balancing account balances. Response, p. 7. Most of these balances earn the 90-day commercial paper rate. The amount of Cal-Am's short-term debt authorized by its Board is not sufficient to fund the pre-2015 WRAM/MCB balance.

¹⁶ Neither Cal-Am nor AWCC make it a practice to separately fund regulatory assets such as the pre-2015 WRAM/MCBA balances.

¹⁷ See Response, pp. 6-7.

¹⁸ See Financial Accounting Standards Board, Accounting Standards Codification 980.

estimates a write-off of approximately \$1 million.¹⁹ If the Commission adopts this PD without modifications, it would be confiscatory and constitute an unlawful taking.

The PD relies on two inadequate sources of support for its use of the 90-day commercial paper rate for the five-year amortization of the pre-2015 WRAM balances. First, the PD cites to D.12-04-048.²⁰ Although water utilities in that proceeding accurately noted that a 90-day commercial paper rate does not compensate them for the multi-year delay in recovering balances,²¹ the Commission did *not* address that issue in D.12-04-048. Instead, the Commission simply stated that if a WRAM balance has “an amortization period beyond 36 months, the remaining balance should be addressed in the next GRC.”²²

In addition to the dubious citation to D.12-04-048, the PD states that it is persuaded to use the 90-day commercial paper rate based on the recommendation of the Monterey Peninsula Water Management District (“MPWMD”) General Manager, citing his “extensive professional experience.”²³ The recommendation, however, was made in the context of recovery in “as short a period as possible,”²⁴ not necessarily the five-year period in the PD. Additionally, the MPWMD testimony does not provide *any* evidence that a short-term commercial paper rate would be available to fund a long-term (five-year) amortization. MPWMD’s recommended short-term interest rate appears to be based more on politics than financial reality.

As the Commission has noted, “there are no explicit statutory guidelines for our decisions regarding interest rates, and we have broad flexibility in reviewing the facts of a particular situation and

¹⁹ The difference in interest is \$1,262,550 based on a current balance left to collect, using a mortgage style of amortization and current rates.

²⁰ PD, p. 28, citing D.12-04-048, *Application of California-American Water Company (U210W), California Water Service Company (U60W), Golden State Water Company (U133W), Park Water Company (U314W) and Apple Valley Ranchos Water Company (U346W) to Modify D.08-02-036, D.08 06-002, D.08-08-030, D.08-09-026, D.08 11 023, D.09-05-005, D.09-07-021, and D.10 06-038 regarding the Amortization of WRAM-related Accounts*, Decision Addressing Amortization of Water Revenue Adjustment Mechanism Related Accounts and Granting in Part Modification to Decision (D.) 08-02-036, D.08-08-030, D.08-09-026, and D.09-05-005, p. 17.

²¹ D.12-04-048, 19.

²² D.12-04-048, p. 17.

²³ PD, p. 28.

²⁴ Exhibit 202, *Supplemental Testimony of David Stoldt*, p. 6. Mr. Stoldt also recommends that recovery be completed before the MPWSP costs are added to the revenue requirement.

broad discretion to make appropriate findings of fact and conclusions of law.”²⁵ Indeed, the Commission has on multiple occasions approved higher interest rates based on the size of the balance and the period for recovery.²⁶ There is absolutely no evidence to support the 90-day commercial paper rate in the record. Indeed, the relevant evidence in the record indicates that application of the 90-day commercial paper rate will undoubtedly result in an unjustified loss for Cal-Am. The PD is, in effect, recommending a million-dollar plus penalty to be imposed on Cal-Am. Cal-Am urges the Commission to modify the PD to adopt an interest rate on the unrecovered WRAM/MCBA balance that is truly proportionate to the amortization period and compensates Cal-Am for the costs associated with delayed recovery.

III. PENALTY PHASE

Although the PD properly rejected ORA’s argument that the management of the Monterey District residential allotments affected the WRAM undercollection, it incorrectly claims that it is “probable” that Cal-Am did not “reasonably administer” its tariffs by “failing to audit customer allotments or take other appropriate actions to ensure the accuracy of allotments.”²⁷ The PD recommends that the proceeding remain open to examine whether or not Cal-Am should be penalized for failure to reasonably administer its tariffs and, if so, to recommend a penalty.²⁸

A. The PD Does Not Meet the Applicable Standard of Proof

A determination that a violation is “probable” is not sufficient to move to a penalty phase, as the PD recommends. The PD has not established that California American failed to comply with the Commission requirement to reasonably administer its tariff. “The Commission requires that violations

²⁵ D.08-10-019, *Application of California-American Water Company (U210W) for an Interest Rate of 8.33% for Allowance for Funds Used During Construction (AFUDC) for its San Clemente Dam Memorandum*, Order Denying Rehearing of Decision (D.) 08-05-036, p. 5.

²⁶ See e.g., D.08-05-036, *Application of California-American Water Company (U210W) for an Interest Rate of 8.33% for Allowance for Funds Used During Construction (AFUDC) for its San Clemente Dam Memorandum*, Decision Determining Carry Costs for Memorandum Account; D.11-09-039, *Application of California American Water Company (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates*, Decision Regarding California-American Water Company’s Petition to Modify Decision 06-12-040.

²⁷ PD, p. 81.

²⁸ *Id.*, p. 86.

of the Public Utilities Code or other Commission requirements be proved by preponderance of the evidence.”²⁹ The entity claiming that a violation has occurred has the burden of proof.³⁰

The PD claims that the reasonable administration of the Monterey District residential allotment tariff included an implicit requirement to verify and/or audit customer-provided allotment information.³¹ The PD, however, fails to prove by the preponderance of the evidence that reasonable administration of the tariff required additional verification or audit of customer-provided information. Indeed, finding that such an implicit requirement exists is contrary to law, industry practice and Commission policies.

B. There is No Explicit Verification or Audit Requirement

In its 1999 Monterey District general rate case (“GRC”) Cal-Am proposed a per capita rate design where each customer would have an allocation based on specific factors (number of residents in household, size of lot, number of large animals, etc.) to be implemented if certain water consumption conditions were met.³² These conditions were met in 2002, and the per capita rate design has been in effect, with certain modifications, ever since. The allotment process codified in MPWMD Ordinance 92 and Rule 170 recognizes the complimentary responsibilities of Cal-Am and MPWMD.³³

To establish the customer allotments, and as directed by Ordinance 92, Cal-Am conducted a confidential survey to determine “the number of permanent residents in each dwelling unit and the lot size of each residential site with permitted water service; types and uses and amount of water use on non-residential sites; and the number of user and types of use(s) served by each water meter.”³⁴ Subsequently, this information has been obtained from customers as they sign up for water service. To verify this information, Cal-Am sends out an annual survey to customers seeking updated information if any circumstances have changed.³⁵

²⁹ D.03-01-087, *Investigation on the Commission’s own motion into the operations, practices, and conduct of Qwest Communications Corporation (Qwest), U-5335-C and its wholly owned subsidiary, LCI International Telecommunications Corporation*, Order Denying Rehearing of Decision No. 02-10-059, p. 8, fn. 5 (citing Communications Telesystems International (CTS), D.97-10-063, Finding of Fact 11)

³⁰ D.04-09-062, *Investigation on the Commission’s own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities*, Opinion Ordering Penalties and Reparations, p. 13.

³¹ PD, pp. 82-85.

³² Exh. 13, *Rebuttal Testimony of David P. Stephenson* (“Stephenson Rebuttal”), p. 8.

³³ See Exh. 13, Stephenson Rebuttal, Attachments 1-2.

³⁴ Exh. 13, Stephenson Rebuttal, Attachment 1, Ordinance 92, Section 8.A.1.

³⁵ Exh. 12, *Rebuttal Testimony of Eric J. Sabolsice* (“Sabolsice Rebuttal”), p. 2.

The record evidence in this proceeding demonstrates that the allotment process has not *ever* included a requirement that Cal-Am audit customer-provided allotment information. Cal-Am’s tariff, specifically, MO-1, sets forth the rules and policies, as approved by the Commission, for the allotment process. The tariff does not include any provision requiring Cal-Am to audit customer-provided information.³⁶ By contrast, MPWMD Ordinance 92 and Rule 170 grant MPWMD explicit authority to require customers to provide verification of the number of residents per household and explicit authority to audit survey data.³⁷ Furthermore, as the MPWMD General Manager testified, MPWMD has “the power to invoke penalties for misrepresentation” of the number of people living in a household on the Cal-Am survey.³⁸ It is a misdemeanor.³⁹

C. Industry Standard Practice Does Not Include Additional Audits or Verification

Although there is not, and has never been, any *explicit* requirement that Cal-Am audit customer allotment information, the PD concludes that there was an *implicit* requirement that Cal-Am do so in order to reasonably administer its tariffs. This finding is contrary to the factual evidence in the record, which shows that industry standard practice does not include such audits.

Ann Bui, Black & Veatch Managing Director and water industry expert, provided testimony regarding budget-based rate structures (of which Cal-Am’s Monterey District is one). Ms. Bui explained that most budget-based rate structures use information on lot size, population and other factors to determine general water budgets or allotments, and then use customer-provided information (number of people per household, medical conditions, livestock, etc.) to create customer-specific variance allotments, if necessary.⁴⁰ The customer-specific information is verified by sending out annual surveys asking for updated information due to changed circumstances.⁴¹

Ms. Bui confirmed that this process – using annual surveys asking for updated information to “verify” customer-provided information – is the water industry standard practice.⁴² Water utilities

³⁶ Exh. 13, Stephenson Rebuttal, Attachment 3.

³⁷ Exh. 13, Stephenson Rebuttal, Attachments 1-2.

³⁸ RT 566:24-25 (Stoldt/MPWMD).

³⁹ RT 566:25-26 (Stoldt/MPWMD).

⁴⁰ See RT 506:2-508:10 (Bui/CAW). Water utilities often use GIS and assessor’s information to develop water budgets, but this information is used to calculate averages to establish initial budgets, not specific customer allotments. RT 524:7-12, 525:1-17 (Bui/CAW)

⁴¹ RT 526:7-11 (Bui/CAW).

⁴² RT 508:24-26 (Bui/CAW).

generally do not impose penalties for failure to report a change in household size.⁴³ There is no requirement or expectation that the customer-provided information will be subject to further audit.

Ms. Bui explained:

For people who have variance, typically what happens that they'll ask you to verify that every year type of thing because it's a variance request and that condition may or may not continue on a long-term basis. *That's about the extent of it with respect to household characteristics.*⁴⁴

The record shows that Cal-Am's current process of "verifying" customer allotment information through annual surveys is in keeping with industry standard practice. Since industry standard practice does not include additional audits, the record does not support the PD's finding that there was an implicit audit requirement applicable to Cal-Am.

D. Where the Commission Has Required Audit or Verification of Customer Provided Information, It Has Done So Explicitly

Moreover, as a legal matter, where the Commission has required audits similar of customer-provided information it has done so *explicitly*.

For example, the electric utilities in California implement the California Alternate Rates for Energy ("CARE") program, which provides low-income customers that are enrolled in the CARE program to receive a discount on their electric bill. When the CARE program was first established by the Commission, the Commission included an explicit grant of authority for utilities to verify customer-provided information "either randomly or where there is reason to believe that a false declaration has been made."⁴⁵ This grant of authority to verify customer information in the CARE program has been explicit from the beginning of the program. It is important to note, however, that verification by the utility was initially voluntary, not required. Claiming that audits of customer information were required of Cal-Am when they were voluntary for the similar customer-provided information in energy programs makes no sense.

Additionally, where the Commission has expected verification of customer-provided information in the CARE program, it has also been explicit in ordering it. In 1999, the Commission directed certain electric utilities to "incorporate random post-enrollment verification, along with reasoned judgment, to

⁴³ RT 521:12-17 (Bui/CAW).

⁴⁴ RT 507:3-9 (Bui/CAW) (emphasis provided).

⁴⁵ D.89-07-062, *Investigation on the Commission's own motion with the Senate Bill 997 and realign residential rates, including baseline rates, of California energy utilities*, Ordering Paragraph 24 (July 19, 1989).

weed out potential abusers.”⁴⁶ The Commission subsequently ordered certain electric utilities to conduct post-enrollment audits of customer information for customers whose electricity usage exceeds 400 percent of baseline usage.⁴⁷ Thus, for the CARE program, even when verification of customer-provided information was voluntary, it was still explicitly discussed. When the Commission began to require auditing and verification of customer information, it again did so explicitly, through decisions and resolutions.

The PD does not provide any examples where the Commission has found an implicit requirement to verify or audit customer-provided information. Whereas the prior Commission practice with respect to verifying and auditing customer information has been to require it only upon explicit authority and direction, the PD now finds a “probable” violation based on an *implied* audit requirement. This is a legal error.

E. The Commission Should Modify the PD to Delete the Penalty Phase

The PD has failed to establish by a preponderance of the evidence that Cal-Am has violated the Commission requirement to reasonably administer its tariffs. Therefore, there is no need for a second phase to determine whether the Commission should impose penalties. The Commission should modify the PD accordingly.

IV. ANNUAL CONSUMPTION ADJUSTMENT MECHANISM

As part of its efforts to enhance revenue stability and avoid future large undercollections, Cal-Am proposed a pilot program in Monterey to true up the consumption level for residential customers on an annual basis. Although the PD rejected the proposed annual consumption true-up mechanisms offered by Cal-Am and in the settlement between Cal-Am and MPWMD, it correctly recognized the need for a mechanism to improve revenue stability.

We agree with applicant that sales in the Monterey District will probably continue to decline and, without an [adjustment mechanism], applicant will likely continue to

⁴⁶ Resolution E-3586, *Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company Requests Approval for the 1999 California Alternative Rates for Energy and the Low Income Energy Efficiency Programs*, Ordering Paragraph 1 (January 20, 1999).

⁴⁷ D.12-08-044, *Application of Southern California Edison Company (U338E) for Approval of its 2012-2014 California Alternate Rates for Energy (CARE) and Energy Savings Assistance Programs and Budgets*, Decision On Large Investor-Owned Utilities' 2012-2014 Energy Savings Assistance (ESA) (Formerly Referred to as Low Income Energy Efficiency or LIEE) and California Alternate Rates for Energy (CARE) Applications. California State Senate Bill No. 1207 explicitly granted electrical corporations authority to “require proof of income eligibility for those CARE program participants whose electricity usage, in any monthly or other billing period, exceeds 400 percent of baseline usage.” Pub. Util. Code §739.1(h).

experience unstable revenues and applicant's customers are almost certain to face large future WRAM balances.⁴⁸

Cal-Am welcomes the opportunity to propose an improved consumption true-up mechanism in the next phase of this proceeding. Cal-Am will carefully consider the guidance provided in the PD in developing a mechanism that will provide stability and moderation in future WRAM balances.

V. WATER DIVISION

A. Responsiveness

Cal-Am is troubled by the tone of the PD's discussion of responsiveness to Water Division requests.⁴⁹ In particular, the PD's recommendation that the maximum amount under law should be the default for any Water Division citation against Cal-Am does not seem warranted based on the record of this proceeding. The PD does not cite to any example from the record of Cal-Am failing to respond to Water Division requests in a timely manner. Cal-Am is not aware of any issues with its responsiveness to Water Division requests. After the PD was issued, Cal-Am approached the Water Division to discuss this issue. The representatives of the Water Division stated that they were unaware of any problems.

Similarly, the issue of whether any future violations by Cal-Am should default to the highest penalty is being raised for the first time in the Proposed Decision. The Commission has a well-established process for determining the amount of penalties imposed upon utilities for violations of Commission requirements. The Proposed Decision appears to be trying to circumvent this process. This is an important legal and due process issue. Addressing this in the first time in the Proposed Decision, with no evidence in the record and no opportunity for Cal-Am to respond or brief the issue, is a legal error.

It is always Cal-Am's intent to comply fully with all Commission requirements and to respond to requests for information in a timely manner. Cal-Am is aware of the Commission's authority to impose penalties. The language in the PD implies some sort of unspecified wrongdoing by Cal-Am. Given the lack of any evidence of such wrongdoing, this Commission should strike this entire discussion.

B. Accounting of LIRA Revenues

On October 27, 2016, the assigned Administrative Law Judge issued a ruling identifying a potential accounting issue regarding the revenues from customers in the low-income ratepayer assistance

⁴⁸ PD, p. 65.

⁴⁹ *Id.*, pp. 36-37.

(“LIRA”) program. The Ruling raised the possibility of addressing this issue in a subsequent phase of this proceeding.⁵⁰

Staff believes the 2015 under-collected WRAM balances are overstated because authorized revenues account for customers in the low income ratepayer assistance program (LIRA) while actual recorded revenues do not. This same issue may have occurred in the 2013 and 2014 WRAM/MCBA advice letters.⁵¹

Cal-Am had multiple meetings with the Water Division the week of October 30, 2016. Cal-Am was able to demonstrate to the Water Division’s satisfaction that the WRAM balances are *not* overstated. Thus, there is no need to address this issue in a subsequent phase of this proceeding. Cal-Am is concerned, however, that the Ruling appears to accept the possibility of overstatement even though the parties had not yet had an opportunity to respond.

VI. CLARIFICATION AND IMPLEMENTATION

The PD adopts significant changes to the Monterey District rate design and provides for recovery of substantial WRAM/MCBA balances. Cal-Am hopes to implement the new rate design and begin recovery in a timely and efficient manner.

A. Balance to Be Recovered

The PD uses various phrases to refer to the WRAM/MCBA balance it is authorizing Cal-Am to recover. For example, the PD refers to “\$39.8 million of WRAM/MCBA balances through 2014.”⁵² It also refers to “recovery of the 2013 and 2014 WRAM/MCBA balance.”⁵³ The \$39.8 million balance as includes unrecovered WRAM/MCBA balances from before 2013. Additionally, since the surcharges were reinstated in March 2016,⁵⁴ some of the \$39.8 million balance has been recovered. To avoid ambiguity, Cal-Am requests that the PD clarify that once those surcharges have ended the collections will be applied to the \$39.8 million balance and clarify that the unrecovered WRAM/MCBA balance through 2014 includes pre-2013 amounts.

⁵⁰ *Administrative Law Judge’s Ruling Regarding Accounting of LIRA Revenues in 2013 and 2014 WRAM/MCBA*, October 27, 2016 (“LIRA Ruling”).

⁵¹ LIRA Ruling, p. 1.

⁵² PD, p. 13.

⁵³ PD, p. 88, Finding of Fact 16.

⁵⁴ *Assigned Commissioner’s Ruling Granting Motion to Reinstate Surcharge*, March 2, 2016.

B. Recovery of Future WRAM/MCBA Balances

The PD directs Cal-Am to amortize “future WRAM balances for residential customers at a uniform rate on each unit of water for all sales,” including Tier 1.⁵⁵ Once Cal-Am modifies its billing system to implement the rate design changes set forth in the PD, this is the only way it will be able to amortize WRAM balances.⁵⁶ It will only be able to amortize the WRAM balances based on the new rate design; it cannot run both the new rate design and the old allotment based rate design at the same time. Therefore, Cal-Am requests that the Commission to modify the PD to clarify that “future WRAM balances” are any WRAM balances amortized after the rate design changes have been implemented.

C. Timing

The PD directs Cal-Am to file an advice letter to implement the rate design changes adopted in Phase II of this proceeding within 30 days of a final decision.⁵⁷ These changes are significant and include removing the current allotment-based rate design and replacing it with a standard tiered residential rate design, modifying the standard meter ratios, changing the percentage of recovery through the monthly service charge, and reducing the number of residential rate tiers. In order to implement the changes ordered by the Commission, Cal-Am will have to modify its billing system parameters and to run test bills and analyze those bills for errors, so that any issues are corrected before they result in incorrect customer bills. Cal-Am will work with the Water Division to ensure timely implementation of the new rate design.

VII. CONCLUSION

As discussed above, Cal-Am supports the PD’s authorization of recovery of the pre-2015 WRAM/MCBA balance and its adoption of a new rate design that will encourage conservation, support revenue stability and prepare the company to comply with existing and future water reductions. However, Cal-Am urges the Commission to modify the PD as discussed above and in Attachment 1 in order to correct the factual and legal errors with respect to the PD’s application of the 90-day commercial paper rate for the WRAM balance and its assertion that it is probable that Cal-Am failed to properly administer its tariffs and to provide clarity to avoid confusion and delay during implementation.

⁵⁵ PD, p. 94, Ordering Paragraph 9.

⁵⁶ Any current Monterey District surcharges based on the customer allotment rate design will also be adjusted to reflect the new rate design.

⁵⁷ PD, p. 98, Ordering Paragraph 3.

November 7, 2016

Respectfully submitted,

By: /s/ Lori Anne Dolqueist

Lori Anne Dolqueist

Attorney for Applicant
California-American Water Company