

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
07-09-12
04:59 PM

In the Matter of the 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.

Application 04-09-019
(Filed on September 20, 2004)

**REPLY COMMENTS OF
THE DIVISION OF RATEPAYER ADVOCATES
TO THE PROPOSED DECISION IN APPLICATION 04-09-019**

I. INTRODUCTION

Pursuant to Rule 14.3(d), the Division of Ratepayer Advocates (“DRA”) submits these reply comments to Administrative Judge Weatherford’s Proposed Decision (“PD”) granting withdrawal of California American Water’s (“Cal Am”) petition to modify Decision (“D.”) 10-12-016 and closing Application (“A”) 04-09-019. On June 12, 2012, ALJ Weatherford issued a PD granting Cal Am’s request to withdraw its petition to modify D.10-12-016 and closing the proceeding. On July 2, 2012, Cal Am, MCWD and MCWRA filed comments to the PD. DRA’s reply comments will be limited to addressing those comments.

II. STATUS OF THE REGIONAL DESALINATION PROJECT

The PD states that it is unreasonable for Cal Am to continue pursuing the Regional Desalination Project (“RDP”), given the uncertainty surrounding the California Environmental Quality Act (“CEQA”), the lack of a concrete financing plan, and remaining permitting issues. (Conclusion of Law “COL” 2). Cal Am supports this finding in its comments and emphasizes its effort at securing a new water supply for the

Monterey Peninsula (Cal Am's Opening Comments, p 1). However, Marina Coast Water District ("MCWD") recommends a finding that the RDP is no longer going forward solely because Cal Am withdrew its support from the project (MCWD's Opening Comments, p. 2).

DRA disagrees with MCWD's recommended modification. The PD correctly finds that the RDP seems unlikely to achieve its goals and that it is reasonable to continue with Cal Am's new application (PD, p. 19). In its comments, MCWD states that "the record unequivocally demonstrates that the sole reason the RDP is not going forward is that Cal-Am concluded it would not support the project due to Monterey County Water Resources Agency ("MCWRA")'s statements". MCWD misrepresents the record. In the same compliance filing MCWD discusses above, Cal Am lists seven terms that, if met, could allow the company to support the RDP. Those terms include financing, permitting, test wells, and other factors. Because no plans currently exist to resolve these unresolved questions, Cal Am filed a new application (Cal Am Compliance Filing, filed March 1, 2012, p. 6). Thus while MCWRA did state that the WPA is void due to conflict of interest charges, the RDP is no longer feasible on additional grounds, namely that the parties to the WPA have been unable to resolve issues regarding important elements of the project in a timely manner.

DRA also supports the consideration of the Monterey Peninsula Water Supply Project ("MPWSP") as a new water solution for the Monterey region, in that it appears to be the sole viable project at this time in light of the looming 2017 deadline of the Cease and Desist Order ("CDO") from the State Water Resources Control Board ("SWRCB").

III. CONTRACTUAL CLAIMS AND DISPUTES

ALJ Weatherford's PD notes that the jurisdiction to resolve claims and disputes over contractual obligations lies with the judiciary (PD, p. 2). MCWD recommends the PD be modified to require Cal Am and the RPD parties to honor their contractual obligations (MCWD Opening Comments, pp. 4-5.) DRA supports the PD and opposes MCWD's proposed modification. It is inappropriate to delay the selection of a new water

supply for Cal Am's Monterey ratepayers in order to address what are likely to be intractable disputes over a now-defunct project.

IV. COST CLAIM DEADLINE

In its comments, Cal Am requests that the final decision modify the date the company withdrew its support from the RDP. Cal Am contends that it publicly announced its withdrawal of support in its *Compliance Filing – Mediation Update* that was filed on January 18, 2012 (Cal Am's Opening Comments, p. 2).

DRA disagrees. The date of January 17, 2012 included in the PD is correct. Various filings by Cal Am indicate January 17 as the date it publicly announced its withdrawal of support from the RDP, including the new application for approval of the MPWSP (A.12-04-019, page 5) and Cal Am's Compliance Filing on March 1, 2012 (Status Report of California-American Water Company, p. 3). Based on these resources, DRA recommends that the final decision retain January 17, 2012 as the cut-off date for incurred costs in this proceeding.

V. RECOVERY OF COSTS

MCWRA and Cal Am request a clarification on the recovery of costs incurred after January 17, 2012 (MCWRA's Opening Comments, p. 1; Cal Am's Opening Comments, p. 2¹). Both parties believe that the PD's current language can be interpreted as disallowing Cal Am to seek recovery for unavoidable, indispensable costs to resolve issues and disputes. Both parties also contend that the final decision disposing of A.04-09-019 should specify that Cal Am should not claim any costs related only to Cal Am Only Facilities after January 17, 2012².

The PD is correct as currently stated. January 17, 2012 should be the cut-off date to claim *all* costs related to the RDP. Cal Am may seek recovery of costs related to resolving disputes and claims; however, all such costs should be reviewed by the

¹ As stated above, Cal Am asserts that the cut-off date should be January 18, 2012.

² *Id.*

Commission under the aegis of a new application by Cal Am for cost recovery of these expenses. All unavoidable, future costs related to a project that is no longer viable should be subject to thorough reasonableness review and should not be recoverable through a cost recovery mechanism that was approved in a now closed proceeding. A new application process dealing with these costs can protect Cal Am's ratepayers from bearing the risks of lengthy litigations. With this consideration, DRA agrees with the PD ordering Cal Am to file a separate application to "deal with disputed and undisputed costs, and associated cost recovery, relative to A.04-09-019" (PD, p. 2).

VI. MCWD AND AG LAND TRUST LAWSUIT

MCWD believes that it should continue its efforts in defending the existing EIR for the Coastal Water Project in the Ag Land Trust Lawsuit. MCWD contends that an outcome in favor of the MCWD from the lawsuit will validate the existing EIR for the MPWSP and it will therefore benefit Cal Am's ratepayers. In addition, MCWD asserts that its efforts will also confirm the Commission's jurisdiction over public utility projects. MCWD requests that if the Commission agrees with MCWD, the PD should clearly indicate its support (MCWD's Opening Comments, p. 3).

DRA disagrees. While the urgency of securing a new water supply for the Monterey region is undeniable, A.12-04-019 appears to be only still-viable solution on the horizon and the only path forward at this time. Efforts devoted to resurrecting, or disputing the cost allocation of, a now defunct project are counterproductive. Instead the Commission should focus its efforts into the evaluation of the MPWSP. It is possible to go forward with Cal Am's new application independent of MCWA's lawsuit. As noted above, January 17, 2012, should be the cut off date for all costs related to the RPD. The final decision should support the termination of all actions related to the RDP, including further pursuit of this lawsuit, however, the PD should acknowledge Cal-Am's need to settle disputes and resolve claims.

VII. CONCLUSION

DRA supports the efforts to move forward with the new project, MPWSP, and the closure of proceeding A.04-09-019 because the RDP is no longer viable due to its unresolved CEQA, financing and permitting issues. DRA fully agrees with the PD that it is not within Commission's jurisdiction to resolve contractual claims and disputes among parties of the RDP. All A.04-09-019 expenses should be terminated after January 17, 2012. If Cal Am incurs additional RDP expenses after that date, requests for reimbursement of those expenditures should be reviewed in a new application, and not under the cost recovery mechanism approved in A.04-09-019. Time is of the essence to secure a new water supply for Cal Am's ratepayers in the Monterey Peninsula and it is appropriate to implement measures to attain that goal.

Respectfully submitted,

/s/ ALLISON BROWN

Allison Brown
Staff Counsel

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-5462
Fax: (415) 703-2262

July 9, 2012