

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



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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

A.12-04-019
(Filed April 23, 2012)

**MOTION OF CALIFORNIA-AMERICAN WATER COMPANY (U210W) TO DENY
MARINA COAST WATER DISTRICT PARTY STATUS**

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May 11, 2012

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I. INTRODUCTION

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), California-American Water Company (“California American Water”) hereby files this motion to deny party status to Marina Coast Water District (“MCWD”).¹ As discussed in more detail below, MCWD has not shown that its interests are relevant to this proceeding or that the issues it intends to raise are reasonably pertinent to the issues the Commission will be addressing. California American Water also requests that the deadline for responding to MCWD’s April 30, 2012 Motion to Dismiss be postponed until after a ruling has been issued regarding MCWD’s party status.

II. MCWD’S INTERESTS AND ISSUES ARE NOT RELEVANT TO THIS PROCEEDING

Pursuant to Commission Rule 1.4(b), an entity interested in becoming a party must (1) disclose its interests in the proceeding and (2) state the factual and legal contentions it intends to make and show that the contentions will be reasonably pertinent to the issues in the proceeding. With respect to the first requirement, MCWD states that it is interested in California

¹ MCWD filed a Motion for Leave to Intervene in this proceeding on April 30, 2012. California American Water files the current motion, as opposed to a response to MCWD’s motion, because it is asking for affirmative relief with respect to the postponement of the deadline and to give parties other than MCWD an opportunity to respond to the issues raised herein.

American Water’s “contractual obligations to [MCWD] in connection with the RDP [Regional Desalination Project] approved by the Commission.”² However, California American Water’s alleged contractual obligations to MCWD are not at issue in this proceeding. The issue in this proceeding is whether the Monterey Peninsula Water Supply Project is a reasonable and prudent solution to the water supply constraints in California American Water’s Monterey County District. To the extent that the Commission decides to consider contractual disputes related to the Regional Desalination Project,³ it should be done in the proceeding in which the Regional Desalination Project was approved, A.04-09-019.

Interest in how a contractual obligation will affect a proceeding is not sufficient for party status.⁴ Additionally, in the PG&E San Bruno proceeding (I.12-01-007), a motion for party status was recently denied because the moving party failed to show the linkage between her interests and the matters at issue in the proceeding.⁵ MCWD’s stated interest in this proceeding lies solely in alleged contractual obligations related to the Regional Desalination Project, and it has similarly failed to show the linkage between its interests and the matters that are at issue in the current proceeding. Therefore, MCWD should be denied party status.

With respect to the second requirement, MCWD does not specifically identify any legal or factual contentions that it intends to make, let alone show that such contentions are “reasonably pertinent” to this proceeding. MCWD’s Motion to Dismiss, however, shows that MCWD is merely seeking another venue in which to repeat its claims regarding the Regional Desalination Project. MCWD has given no indication that it will be evaluating the merits of the Monterey Peninsula Water Supply Project, which is the purpose of this proceeding. Failure to

² Motion for Leave to Intervene, p. 1.

³ As described in further detail in the *Status Report of California-American Water Company*, filed on March 12, 2012 in A.04-09-019, California American Water terminated the Water Purchase Agreement and related agreements on September 28, 2011. As noted in *California-American Water’s Withdrawal of its Petition for Clarification and Modification of D.10-12-016*, the A.04-09-019 proceeding should be remain open to address recovery of any remaining costs from the Regional Desalination Project.

⁴ A. 10-06-003, *Administrative Law Judge’s Ruling Denying Motion for Party Status Filed By County Sanitation District No. 2 of Los Angeles County*, p. 2.

⁵ I.12-01-007, *Administrative Law Judge’s Ruling on Motion of Ruth Hendricks for Party Status and Motion of Pacific Gas and Electric Company to Strike Testimony*, p. 2.

identify legal or factual contentions, or failure to show how they are pertinent, is sufficient grounds to deny party status.⁶ Since MCWD failed to identify any relevant legal or factual contentions that it intends to make, it should be denied party status.

III. MCWD'S PARTICIPATION WILL NOT BENEFIT THIS PROCEEDING

As California American Water noted in its application, the State Water Resources Control Board ("SWRCB") has ordered it to implement a solution to the long-term water supply shortage in the Monterey County District by the end of 2016. In its application, California American Water proposed a procedural schedule that will provide sufficient time for interested parties and the Commission to review the Monterey Peninsula Water Supply Project, while still allowing California American Water to meet the SWRCB deadline. Time is of the essence, however, and the potential for delay due to MCWD's attempts to raise irrelevant issues is significant.

It appears that MCWD is seeking to participate in this proceeding solely to advance its litigation position – not to examine the merits of the Monterey Peninsula Water Supply Project. Indeed, the proposed Monterey Peninsula Water Supply Project will not even serve customers within the MCWD service territory. California American Water is concerned that MCWD is merely running up large legal bills for which it will try to seek recovery from California American Water's customers. To that end, California American Water recently sent a letter to MCWD (attached as Appendix A) informing MCWD that the expenditure of any additional money to advance the Regional Desalination Project is a waste and that California American Water will not support MCWD in any effort to recover such costs from California American Water's customers or shareholders. California American Water also noted that MCWD's continuing efforts to litigate the issues surrounding the Regional Desalination Project, including filings at the Commission, are inconsistent with MCWD's obligation to mitigate damages.

⁶ A.09-08-008, *Administrative Law Judge's Ruling Denying Without Prejudice the Motion for Party Status Filed by Wild Goose Storage, LLC*, p. 2.

In the ruling in I.12-01-007 discussed above, party status was denied for failure to show a “valuable contribution” and because granting party status would “add complexity and delay to an already complex proceeding.”⁷ Similarly, MCWD has not shown that it would make a valuable contribution to this proceeding and its involvement would add complexity and delay, two things that California American Water and its customers cannot afford in light of the looming SWRCB deadline.

IV. RESPONSE TO MOTION TO DISMISS

California American Water requests that the deadline to respond to MCWD’s Motion to Dismiss be postponed until a ruling has been issued on MCWD’s party status. If MCWD is denied party status – as it should be – the Motion to Dismiss will, of course, be moot. If MCWD is granted party status, despite its failure to meet the Commission’s criteria and its potential to derail the proceeding, then the deadline to respond to the Motion to Dismiss should be at least 15 days after the ruling on party status.

V. CONCLUSION

MCWD has failed to make the required showing justifying it be granted party status. As discussed above, the purpose of the proceeding is to determine whether the Monterey Peninsula Water Supply Project is a reasonable and prudent solution to the Monterey County District’s water supply problems. California American Water believes that MCWD has no interest in evaluating the Monterey Peninsula Water Supply Project on its merits, but is simply seeking to advance its own agenda, to the detriment of the truly interested parties, the Commission, California American Water, and its customers. MCWD’s participation in this proceeding will only serve to cause confusion and delay and thus MCWD should be denied party status.

⁷ I.12-01-007, *Administrative Law Judge’s Ruling on Motion of Ruth Hendricks for Party Status and Motion of Pacific Gas and Electric Company to Strike Testimony*, p. 3 (quoting PG&E).

May 11, 2012

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Lori Anne Dolqueist

Lori Anne Dolqueist

Attorneys for Applicant
California-American Water Company

Appendix A



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May 8, 2012

BY UPS OVERNIGHT DELIVERY

Dan Burns
President
Marina Coast Water District
11 Reservation Road
Marina, CA 93933

Re: ***Marina Coast Water District v. Superior Court, Court of Appeal Case No. H038167***

Dear Mr. Burns:

In regard to the above-referenced case, California American Water ("CAW") understands that Marina Coast Water District ("MCWD") has filed a writ petition in the Court of Appeal seeking to overturn the ruling of the Monterey County Superior Court that MCWD must serve as lead agency for the Regional Desalination Project's ("RDP") Environmental Impact Report.

As you know, on September 28, 2011 CAW terminated the Water Purchase Agreement ("WPA") and related agreements relating to the RDP. Accordingly, the litigation regarding the appropriate lead agency for the RDP is no longer at issue. Please be advised that CAW contends that the expenditure of any additional money to advance the RDP is a waste of MCWD ratepayer funds and CAW will not support MCWD in any effort to recover from CAW's customers or shareholders MCWD's costs to prosecute the above-referenced writ petition.

Moreover, CAW questions many of the tactics MCWD has employed recently regarding the RDP and the terminated WPA. To the extent that MCWD believes CAW did not have cause to terminate the WPA, MCWD has an obligation to mitigate its damages. MCWD's continuing efforts to litigate the issues surrounding the RDP, including its filings at the California Public Utilities Commission, the writ petition in the 6th District Court of Appeal (including

expenditures to secure *amicus* briefs) and related activities are inconsistent with MCWD's obligation to mitigate any such damages.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'A. Cerasuolo', enclosed within a hand-drawn oval.

Anthony J. Cerasuolo
Vice President, Legal – Operations
California American Water

cc (by electronic mail only):

Lloyd Lowrey, Jr., District Counsel, MCWD
Jim Heitzman, General Manager, MCWD
Charles McKee, Monterey County Counsel
Joe Como, Division of Ratepayer Advocates, CPUC
Danilo Sanchez, Division of Ratepayer Advocates, CPUC
Sarah Leeper, Vice President, Legal – Regulatory, CAW