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WATER/RSK/FLC/JB5/SRW/jlj

AGENDA ITEM #8383

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch**

**RESOLUTION NO. W-4755
April 16, 2009**

R E S O L U T I O N

(RES. W- 4755), CALIFORNIA-AMERICAN WATER COMPANY (Cal-Am). ORDER REJECTING A RATE BASE OFFSET INCREASE IN RATES PRODUCING ADDITIONAL GROSS ANNUAL REVENUES OF \$705,789 OR 2.07 % AND REJECTING TARIFF SHEETS ATTACHED TO ADVICE LETTER 720-W.

SUMMARY

By Advice Letter (AL) 720-W filed on January 18, 2009, Cal-Am requests a revenue increase of \$705,789, or 2.07%, to provide a return on the addition to its rate base of \$5,933,444 for three capital projects: (1) Suburban Water Supply and Distribution System (Suburban System); (2) Jackson Highway Well and Booster Station (Jackson Well); and (3) Cook Riolo Tank and Booster Station (Cook Riolo Tank) (together, Three Projects).

This resolution rejects the addition to rate base of \$5,933,444 and the revenue increase of \$737,430 because the requested plant to be added to rate base has not been placed in service, is not used and useful and the corresponding revenue requirement is not in the public interest.

BACKGROUND

Cal-Am provides water service to approximately 58,800 residential, industrial, and private fire service customers in its Sacramento District in California.

Cal-Am filed AL 720-W to request approval of a rate base increase for plant additions included in the Settlement Agreement between the Division of Ratepayers Advocates (DRA) and Cal-Am (Settlement Agreement) approved in D.08-05-018.

Pursuant to General Order 96-B, WATER INDUSTRY RULES, Industry Rule 7.3.3 provides for Rate Base Offset to be filed by a Tier 3 advice letter, which "is generally disposed of by Commission resolution pursuant to General Rule 7.6.2."

DISCUSSION

The Division of Water and Audits (DWA) reviewed the Three Projects proposed for inclusion into rate base. DWA confirmed that: (1) the Three Projects are included in the list of authorized projects in D.08-05-018; (2) the requested cost recovery of the Three Projects did not exceed the amount agreed to in the Settlement Agreement; and (3) based on discussions with Cal-Am staff the Three Projects are not in service and are not used and useful.

The Settlement Agreement approved in D.08-05-018 provided for filing rate base offset advice letters for dollars spent in years 2007, 2008, 2009, and 2010 for the Three Projects. The Settlement Agreement is silent on the matter of whether the Three Projects should be used and useful before being placed into rate base. However, in approving the Settlement Agreement, the Commission found it "consistent with the law." (D.08-05-018, *mimeo.*, Conclusion of Law 1.)

Used and Useful Principle

The Public Utilities Code (PU Code) makes numerous references to the principle that utility plant is to be used and useful before being permitted rate base treatment. (See generally, PU Code Sections 701.10(a), 727.5(e), 790(b) & 790(e), and 454.8 as to electric and gas corporations.)

There is also a long history in Commission decisions that for a utility capital investment to be recovered in rates it must be used and useful. The Commission has determined that facilities under construction, but not completed, should not be included in rate base as it does not add to the value of property devoted to the public use. (See e.g., *City of San Jose v. Pacific Tel. & Tel. Co.*, R.R.C. 720 (1913) and *Southern Cal. Tel. Co.*, R.R.C. 721 (1924).)

More recently with regard to water utilities, the Commission has not permitted rate base treatment unless a plant is determined to be used and useful. (See e.g., *Del Oro Water Company*, D.05-07-021 (2005), *mimeo.*, p.8 and Ordering Paragraph 8; *Del Oro Water Company*, D.05-01-047 (2005), *mimeo.*, p.12 and Ordering Paragraph 8; and *Southern California Water Company*, D.04-08-053 (2004), *mimeo.*, p. 10 as it relates to the removal from rate base of facilities that are no longer used and useful.)

If the point was missed on Cal Am in these decisions, the Commission in its discussion of the extraordinary recovery in rates for Cal-Am's abandoned Carmel River Dam in its Monterey District general rate case stated

The Commission's general principle is to only allow recovery in rates of the reasonable and prudently incurred costs for investments that are found to be *used and useful* in providing service to ratepayers. (emphasis added) (D.06-11-050, *mimeo.*, p. 51.)

Later in this same decision, in approving advice letter filings for rate base offsets to recover specified plant investments, the Commission ordered

Cal-Am is authorized to file advice letters seeking Commission authorization for rate offsets in the Monterey District for the following capital projects when each has been *completed and placed in service*, no earlier than the year indicated and at costs not to exceed those indicated: . . . (emphasis added) (D.06-11-050, *mimeo.*, Ordering Paragraph 5, p. 108.)

DWA was unable to locate any record evidence indicating that, in the Commission's approval of the Settlement Agreement in D.08-05-018, it was authorizing the rate base treatment of utility plant that was not used and useful. The Commission's expectation in concluding that the Settlement Agreement is "consistent with the law," is that rate base treatment would only be accorded to used and useful plant. As such, Cal-Am's Advice Letter 720-W must be rejected as inconsistent with D.08-05-018 and the Commission's general principle that rate base treatment is accorded to plant determined to be used and useful.

NOTICE AND PROTESTS

Public notice is not required because notice was completed by Cal-Am at the time of its general rate case proceeding Application 07-01-038. In compliance with General Rule 4.3 of General Order 96-B, a copy of this advice letter was mailed to all interested and affected parties as detailed in Cal-Am Advice Letter No. 720. The DWA received no protests against the rate base adjustment or the projected rate increase related to the rate base adjustment.

COMPLIANCE

Cal-Am has no outstanding compliance orders. There are no Commission orders requiring system improvements. The utility has been filing annual reports as required.

COMMENTS

This is an uncontested matter in which the decision rejects the relief requested. This proceeding is subject to the public review and notice comment exclusion pursuant to Public Utilities Code 311(g) (3).

FINDINGS

1. The requested increase in rate base of \$5,933,444 has not been placed in service, is not used and useful, and should be rejected.
2. The resulting annual revenue requirement increase of \$705,789 or 2.07% is not in the public interest and should be rejected.
3. The Commission finds, after investigation by the Division of Water and Audits, that the rate base increase and the resulting rate increase should be rejected.
4. California-American Water Company C.P.U.C. Sheet Nos. 4942-W (Schedule SAC-1, General Metered Service); 4943-W (Schedule SAC-1-LIRA, Low Income Ratepayer Assistance Program); 4944-W (Schedule SAC-2R, Residential Flat Rate Service); 4945-W (Schedule SAC-2R-LIRA, Residential Flat Rate Service); 4946-W (Schedule SAC-4, Private Fire Protection Service); 4947-W (Table of Contents); and 4948-W [(Table of Contents, (continued))] should be marked as rejected and these tariff sheet numbers should not be reused.
5. This is an uncontested matter subject to the public notice comment exclusion provided in Public Utilities Code 311(g) (3).

THEREFORE IT IS ORDERED THAT:

1. California-American Water Company Advice Letter 720-W is rejected.
2. California-American Water Company C.P.U.C. Sheet Nos. 4942-W (Schedule SAC-1, General Metered Service); 4943-W (Schedule SAC-1-LIRA, Low Income Ratepayer Assistance Program); 4944-W (Schedule SAC-2R, Residential Flat Rate Service); 4945-W (Schedule SAC-2R-LIRA, Residential Flat Rate Service); 4946-W (Schedule SAC-4, Private Fire Protection Service); 4947-W (Table of Contents); and 4948-W [(Table of Contents, (continued))] are marked as rejected and these tariff sheet numbers are not to be reused.

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Resolution W-4755
Cal-Am/ AL 720/RSK/FLC/JB5/SRW/jlj

April 16, 2009

3. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California on April 16, 2009, with the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director