

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of California-American Water Company (U210W) for Authorization to increase its Revenues for Water Service by \$4,134,600 or 2.55% in the year 2011, by \$33,105,800 or 19.68% in the year 2012, by \$9,897,200 or 4.92% in the year 2013, and by \$10,874,600 or 5.16% in the year 2014.

And Related Matter.

Application 10-07-007
(Filed July 1, 2010)

Application 11-09-016
(Filed September 23, 2011)

**OPENING BRIEF
OF THE DIVISION OF RATEPAYER ADVOCATES**

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I. INTRODUCTION

Pursuant to Rule 13.11 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and the direction of the assigned Administrative Law Judge ("ALJ") Linda Rochester, the Division of Ratepayer Advocates ("DRA") respectfully submits this Opening Brief in Phase 2 of the General Rate Case ("GRC") of California-American Water Company's ("Cal Am") application for authority to increase its revenues for water service in each of its districts.

In Cal Am's original application, Cal Am requested authorization to increase its revenues for water service by 2.55% in the year 2011, 19.68% in the year 2012, 4.92% in the year 2013, and 5.16% in the year 2014. DRA, as well as other intervenors, filed protests to Cal Am's application, conducted discovery, and even reached a partial settlement with Cal Am on certain issues. One of the issues settled pertained to Cal Am's Special Request #31 to eliminate the Dry Creek special facilities fee area, construction of the Walerga tank and booster station, the Walerga Special Facilities Fee ("SFF"), and recovery of the Placer County Water Agency ("PCWA") peaking charges.¹ On December 12, 2011, the Commission rejected the joint motion of the settling parties on the Walerga SFF issue.² DRA's opening brief solely addresses the issue of Cal Am's Special Request #31.

II. PROCEDURAL BACKGROUND

On July 1, 2010, Cal Am filed its GRC application ("A.")10-07-007, to seek authorization for a general increase in rates for water service in its Larkfield, Los Angeles County, Monterey County, Monterey Wastewater, Sacramento, San Diego County, and Ventura County District. In A.10-07-007, Cal Am requested "elimination of the Dry Creek Special Facilities Fee area and tariff, approval to include all plant, depreciation and

¹ DRA Exhibit ("Exh.") 33, p. 3, lines 4-8.

² See Joint Revised Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judges ("Revised Scoping Memo"), filed December 12, 2011, p. 4.

contributions related to the Dry Creek Special Facility Fee area in rate base for the Sacramento District, and sought authorization for a new Special Facility Fee applicable to all new customers in Placer County.”³ In response to Cal Am’s requests, DRA recommended that the Commission: (1) eliminate the Dry Creek special facilities fee area, (2) create a new special facilities area, (3) order Cal Am to construct the Walerga tank and booster station, (3) adopt a new special facilities fee of \$5,850, (4) deny Cal Am’s request for ratebase treatment of the costs of the Walerga tank and all associated facilities, (5) order Cal Am’s shareholders to fund any under-recovery of special facilities fees, and (6) pay the costs of all PCWA peaking charges.⁴

Cal Am, DRA, and The Utility Reform Network (“TURN”) reached settlement on these issues and filed a joint motion for adoption of a partial settlement agreement on July 28, 2011. The partial settlement agreement resolved issues related to modification of the existing Dry Creek special facilities area to include existing boundaries of Cal Am’s service territory area in Placer County and reset the previously established Walerga SFF of \$750 per equivalent dwelling unit (“EDU”) to \$6,000 per EDU.⁵ ALJ Rochester rejected the portion of the partial settlement agreement associated with the Walerga SFF issue and ordered review and analysis of the Walerga SFF issue to be included in Phase 2 of this proceeding in order to provide Towne Development of Sacramento, Inc., (“Towne”) an opportunity to participate.⁶ (Towne, a major developer of residential projects in the West Placer County area, had filed a motion to become a party in A.10-07-007 and requested a ruling reopening the comment period for submitting

³ CAW Exhibit (“Exh.”) 27, p. 39, lines 23-28.

⁴ DRA Exh. 33, p. 1, lines 8-14.

⁵ See Joint Motion for the Adoption of Partial Settlement Agreement Between the Division of Ratepayer Advocates, The Utility Reform Network, and California-American Water Company on Revenue Requirement Issues in the General Rate Case; Partial Settlement Agreement, p. 260, filed July 28, 2012. See also, Appendix 2.

⁶ Revised Scoping Memo, p. 4.

comments on the partial settlement agreement between DRA, Cal Am, and TURN.⁷) The assigned Commissioner and the ALJ's Revised Scoping Memo and ruling granted Towne's motion for party status, denied Towne's motion to reopen the Phase 1 comment period, rejected the partial settlement agreement on the Walerga SFF issue, and included the Walerga SFF issue in Phase 2 of this proceeding.⁸

The scope and schedule for Phase 2 of this proceeding included addressing rate design for all six Cal Am districts, review of the Water Revenue Adjustment Mechanism ("WRAM") and Modified Cost Balancing Accounts ("MCBA"), and review of the Sacramento District Walerga SFF, with a separate schedule for testimony, hearings, and briefs on the Walerga SFF issue.⁹ Review of the Walerga SFF issue included a review of all costs associated with the Walerga project and the calculation of the new per unit (EDU) fee.¹⁰ Since filing its original requests in A.10-07-007, Cal Am submitted supplemental direct testimony outlining its revised requests with regard to the Walerga SFF.¹¹ Towne and DRA also filed supplemental direct testimony addressing the Walerga SFF. Evidentiary hearings on the Walerga SFF were held on April 3, 2012. Given that a separate schedule has been established to address Cal Am's rate design, review of the WRAM and MCBA, this opening brief focuses only on Cal Am's Special Request #31.

III. SUMMARY OF RECOMMENDATIONS

In accordance with Rule 13.11 of the Commission's Rules of Practice and Procedure, DRA submits the following summary of recommendations:

⁷ See Motion by Towne Development of Sacramento, Inc. to Become a Party; Motion by Towne Development of Sacramento, Inc. for Ruling Re-Opening Comment Period for Proposed Settlement, filed September 14, 2011.

⁸ Revised Scoping Memo, p. 2-4.

⁹ Revised Scoping Memo, pp. 1-5.

¹⁰ Ibid. at p. 8.

¹¹ CAW Exh. 71, p. 6-7, lines 1-20.

- The Commission should allow Cal Am to eliminate the Dry Creek SFF and tariff because it is no longer reasonable.
- The Commission should authorize a new SFF applicable to new customers in Placer County that will benefit from these facilities.
- The Commission should order Cal Am to complete construction of the Walerga Tank and booster station.
- Until the Walerga Tank and booster station are used and useful for utility service, the Commission should disallow any future peaking charges that Cal Am begins incurring from January 1, 2012.
- The Commission should allow Cal Am's recovery of an amount not to exceed \$797,913 from the purchased water account for the Sacramento District related to PCWA peaking charges from 2005-2010.

IV. DISPUTED ITEMS

DRA's only remaining disputed issue that is discussed in this Opening Brief concerns Cal Am's revised requests related to the Walerga SFF as set forth in the supplemental testimony of Jeffrey M. Dana and F. Mark Schubert, P.E. As DRA stated in its supplemental direct testimony, submitted March 9, 2012, DRA does not oppose Cal Am's revised requests with regard to the Walerga SFF as those requests are consistent with DRA's original positions and incorporate to a great extent the proposed settlement that DRA had previously endorsed.¹²

A. DRA Conducted Extensive Review and Analysis of Cal Am's Special Request #31 to Eliminate the Dry Creek SFF Area and Authorize a New SFF.

Contrary to what Towne purported to show during cross-examination, DRA did conduct a comprehensive review of the costs of the special facilities that were at issue during Phase 1 of this proceeding.¹³ During its cross-examination of DRA witness Patrick Hoglund, counsel for Towne purported to show that DRA had not done any analysis of its own with respect to the Walerga SFF issue, but instead relied on Cal Am

¹² DRA Exh. 33, p. 2, lines 12-22.

for the numbers of the projected EDUs that would occur,¹⁴ the cost of the facilities¹⁵, the proper size of the facilities,¹⁶ projected usage levels,¹⁷ and that DRA did not talk to other developers in the area¹⁸ or other planning agencies.¹⁹ This examination is misleading. DRA did in fact conduct a detailed review of the original documents supporting Cal Am's application, as well as, the testimony and data provided by other parties during Phase 1 of this proceeding. Additionally, DRA reviewed the supplemental testimonies submitted in Phase 2 of the proceeding,²⁰ including the analysis presented by Towne.

It should also be noted that DRA does not have the burden of proof in this proceeding. Cal Am has the burden of proof. DRA reviewed and analyzed Cal-Am's application and found that the terms Cal Am proposed to settle on with DRA and other parties were reasonable. Further, it was not only DRA that found the evidence in this proceeding sufficient to support the terms of the settlement, but other parties did as well (such as TURN and the National Resources Defense Council ("NRDC")). In fact, TURN and NRDC did not see the need to participate in this supplemental phase of the same issues and subject themselves to Towne's cross-examination. Conducting the kind of independent analysis that Towne feels DRA should have conducted solely for the purpose of this supplemental aspect of the proceeding would be an unnecessary exercise that would add nothing of value to this case.

¹³ Reporter's Transcript ("RT"), pp. 1466-1467:24-1.

¹⁴ RT, p. 1463:5-12.

¹⁵ RT, pp. 1463:18-1464:8.

¹⁶ RT, p. 1464:16-28.

¹⁷ RT, p. 1465:8-10.

¹⁸ RT, p. 1463:2-4.

¹⁹ RT, p. 1465:12-18.

²⁰ RT, p. 1463:10-12.

B. The Issues Towne Has Raised in Phase 2 of This Proceeding Do Not Negate DRA’s Recommendations That are Consistent with its Position During Settlement.

During this proceeding and subsequent to the Revised Scoping Memo establishing a Phase 2, Cal Am revised its specific requests with regard to the Dry Creek SFF in Phase 2 of A.10-07-007.²¹ Cal Am’s revised requests and proposals are similar to the settlement that Cal Am, DRA, and other parties (including TURN and NRDC) originally reached in this proceeding.²² DRA finds that these adjustments raise the following outstanding issues with respect to the Dry Creek facilities fee area: (1) the number of new customers on an EDU basis used to determine the Walerga SFF; (2) project costs associated with the Walerga SFF investments; (3) the SFF boundary area; (4) creation of the Special Facilities Business Unit; and (5) Cal Am’s recovery of peaking charges. DRA endorses all of Cal Am’s revised requests as they integrate much of the proposed settlement which DRA had previously endorsed.²³

1. Cal Am’s revised estimate of 2,551 EDUs as the potential base of new customers is reasonable.

In its supplemental testimony, Cal Am clarifies the revised number of EDUs to be used for the Walerga Project and affected by the revised Dry Creek service area boundary as 2,551 EDUs.²⁴ On the other hand, Towne identifies the total of potential customers in Dry Creek East area as 3,793 EDUs.²⁵ DRA agrees with Cal Am’s revised estimate of 2,551 EDUs is an accurate potential estimate of the number of its new customers. Towne’s claim that Cal Am’s EDU count is understated by 1,242 EDUs because it fails

²¹ CAW Exh. 71, pp. 5-7

²² CAW Exh. 71, p. 8, lines 3-8.

²³ DRA Exh. 33, p. 2, lines 16-22.

²⁴ CAW Exh. 72, p. 4, lines 10-17.

²⁵ Exh. TD-1, p. 4, lines 14-28.

to account for the total represented EDUs within the Riolo Vineyards Specific Plan²⁶ should be afforded no weight.

First, Cal Am correctly points out in its Rebuttal Testimony of Jeffrey M. Dana on the Dry Creek Special Facilities Fee, submitted March 16, 2012, “there is no guarantee that California American Water will serve more than the 107 EDUs within the Riolo Vineyards Specific Plan . . . there is no guarantee that the 1,242 EDUs in the Riolo Vineyards Specific Plan will be California American Water customers.”²⁷ Second, it appears no formal agreement to serve the development has been entered with Cal Am. During cross-examination of Mr. Giberson, Towne’s witness, Mr. Giberson testified that although the Riolo Vineyards Specific Plan and public records indicate that Cal Am will be the retail purveyor for that project, “at this point, the developer is waiting for an improved economy in order to be able to begin construction.”²⁸ When asked whether a formal agreement to serve the development had been entered with Cal Am, Mr. Giberson indicated his uncertainty stating, “I don’t know if there is a line extension agreement that’s been offered and accepted.”²⁹ Furthermore, although Mr. Giberson testified that during Towne’s due diligence a copy of the Riolo Vineyards Specific Plan was provided to a Cal Am representative,³⁰ Cal Am confirmed that it had no recollection of being provided a copy of the Riolo Vineyards Specific Plan and requested a copy.³¹ Given the uncertainty of development in the Riolo Vineyards, Cal Am’s revised estimate of 2,551 EDUs is reasonable since it “capture[s] the local economic factors and anticipated

²⁶ Ibid.

²⁷ CAW Exh. 73, p. 4, lines 14-22.

²⁸ RT, p. 1497:3-1498:4.

²⁹ RT, p. 1498: 5-11.

³⁰ RT, pp. 1512:28-1513:15.

³¹ RT, p. 1514:2-5.

development”³² in the SFF boundary area. There is no reason to use a larger number of EDUs at this time.

2. DRA agrees with Cal Am’s revised project costs and supports recovery of project costs consistent with Decision 02-06-054.

Cal Am has revised and reduced its total project cost estimates from \$28 million to \$12.25 million.³³ DRA supports Cal Am’s request to recover the revised project costs since it incorporates many of the elements of the partial settlement agreement between Cal Am, DRA, and TURN³⁴ and it reflects “lower unit costs for installed transmission mains and fewer segments of transmission main to be installed.”³⁵ However, DRA reiterates its recommendation that any project cost which Cal Am seeks to recover beyond those estimated, should be recovered pursuant to Cal Am’s Main Extension Rule 15 (hereinafter, referred to as “Cal Am’s Rule 15”)and the Commission’s findings in Decision (“D.”) 02-06-054.³⁶ Per Cal Am’s Main Extension Rule 15, “developers must advance or contribute the full costs of main extensions and supporting special facilities required to serve their planned development.”³⁷ Both DRA and Cal Am agree that new facilities intended to support new growth should be paid for by new growth.³⁸

One of the revisions to Cal Am’s project cost estimates includes modification of the cost estimate for the 16-inch pipeline planned for Vineyard Road.³⁹ In the Opening Direct Testimony of Ken Giberson, PE LS, on Behalf of Towne Development of

³² DRA Exh. 33, p. 11, lines 6-7.

³³ Ibid. at 9, lines 21-23.

³⁴ Ibid.

³⁵ Ibid. at 11, 23-26. Ibid. at 11,

³⁶ D.02-06-054, Opinion Approving Special Facilities Fee, June 27, 2002.

³⁷ D.02-06-054, p. 2.

³⁸ See CAW Exh. 74, p. 4, lines 21-27; DRA Exh. 33, p. 12, lines 1-3.

³⁹ CAW Exh. 74, p. 3, lines 5-14.

Sacramento, Inc., Towne recommended corrections to the assumed special facilities investments.⁴⁰ Cal Am agreed with Towne’s corrections to reflect a modified unit cost of \$200 per foot for the 6,500 feet of 16-inch diameter pipeline for Vineyard Road.⁴¹ This revision adjusted the total estimated cost from \$2.6 million to \$1.3 million for the 16-inch diameter pipeline planned for Vineyard Road, and reduced the total estimated cost for the Walerga tank, booster station and associated pipelines to \$10.950 million.⁴²

Although Cal Am agreed with Towne’s first correction to the cost estimate for a 16-inch pipeline for Vineyard Road, Cal Am does not agree with Towne’s second correction to resize the 24-inch pipeline at PFE road,⁴³ nor does DRA. Towne’s second correction to the special facilities investments involves re-sizing the 24-inch diameter transmission main in PFE Road to a 16-inch pipeline.⁴⁴ As Cal Am stated in the rebuttal testimony of Mark Schubert, the 24-inch transmission main proposed along PFE Road is necessary to ensure the “West Placer service area continues to receive adequate and reliable water service.”⁴⁵ Resizing the 24-inch main to a 16-inch main would render the West Placer service area customers vulnerable in the event of an outage and would run contrary to Cal Am’s Main Extension Rule 15 that developers, including Towne, pay for adequately sized infrastructure and supporting facilities required to serve their planned developments.⁴⁶

⁴⁰ Exh. TD-1, pp. 2-4.

⁴¹ Ibid.

⁴² CAW Exh. 74, p. 3, lines 9-14; p. 11, lines 1-18

⁴³ CAW Exh. 74, p. 3, lines 17-25.

⁴⁴ Exh. TD-1, p 3, lines 13-17.

⁴⁵ CAW Exh. 74, pp. 3-4, lines 15-28.

⁴⁶ See D.02-06-054, citing Cal Am’s currently applicable Main Extension Rule 15, p. 2.

3. Cal Am’s revised SFF boundary area accurately reflects the current local economic factors and anticipated development in West Placer.

The revised Dry Creek service area boundary properly incorporates all of Cal Am’s service area in West Placer County that would be impacted by the proposed revised SFF.⁴⁷ As explained by Cal Am in its Supplemental Direct Testimony of Jeffrey Dana and Mark Schubert, “further consideration of the current economic climate and other factors” prompted Cal Am to make adjustments to the Dry Creek service area that would be affected by the proposed revised SFF.⁴⁸ DRA concurs with Cal Am’s conclusion that current local economic factors and the delay of anticipated development in the West Placer county area calls for a reduced number of EDUs in the service area boundary. Cal Am’s revised SFF boundary area is reflective of the changes that have occurred in West Placer County. As Mr. Schubert testified during hearings, since Cal Am performed the 2008 Comprehensive Planning Study in the West Placer service area, development has stalled and has not proceeded as Cal Am originally projected.⁴⁹ Considering the drop in customer demand and the concomitant delay in anticipated development, Cal Am reexamined its request, factored in these changes, and condensed down the service area boundary affected by the SFF.⁵⁰ Based on the knowledge that it had, Cal Am’s revised request excluding the majority of land parcels west of Walerga Road and the majority of Riolo Vineyards (with the exception of the initial planned 107 EDUs in Riolo Vineyards)⁵¹ is reasonable.

⁴⁷ CAW Exh. 71, p. 9; CAW Exh. 72, p. 3.

⁴⁸ CAW Exh. 72, p. 3, lines 21-27.

⁴⁹ RT, p. 1385:12 – 28.

⁵⁰ RT, pp. 1385: 12 – 1386:5

⁵¹ Ibid. at 3-4, lines 21-8

4. The Commission should grant Cal Am’s proposal to create a Special Facilities Business Unit to account for project costs and SFF received.

DRA supports the creation of the Special Facilities Business Unit because it guarantees that current Sacramento ratepayers will not pay for facilities intended to support new development.⁵² In applying Cal Am’s Rule 15 and authorizing Cal Am to establish a SFF for developers in the Dry Creek area of West Placer County,⁵³ D.02-06-054 ordered that the costs for new facilities intended to support new growth should be advanced by those new growth customers who require special facilities to serve their planned developments. Ordering Paragraph 4 of D.02-06-054 states: “Plant constructed with the facilities fees, and the associated rate base components, are to be reduced from rate base for ratemaking purposes.”⁵⁴ Ordering Paragraph 5 states: “Cal Am shall hold ratepayers harmless from the consequences of this order by assuming any ratemaking risk its proposed Dry Creek developer special facilities fee may cause should development in the Dry creek area be delayed.”⁵⁵

Creating a Special Facilities Business Unit to account for project costs and SFF received will ensure that any costs associated with these facilities will not affect Cal Am’s Sacramento District’s ratebase or revenue requirement.⁵⁶ DRA endorsed Cal Am’s original application to establish a SFF in the Dry Creek area, however, conditioned that endorsement on Cal Am assuming the risk of any delayed developments.⁵⁷ DRA’s primary concern was that Cal Am’s Sacramento’s ratepayers be held harmless in the event that development should stall. DRA reiterated this concern in its direct testimony,

⁵² DRA Exh. 33, p. 10, lines 1-12.

⁵³ D.02-06-054

⁵⁴ Ibid at 7.

⁵⁵ Ibid.

⁵⁶ DRA Exh. 33, p. 12, lines 7-12.

submitted January 21, 2011, during Phase 1 of this proceeding.⁵⁸ The Special Facilities Business Unit addresses DRA’s concerns since ratepayers will be held harmless from the risks associated with the proposed fee and any delayed development that may ensue.

5. DRA does not oppose Cal Am’s request for authority to recover \$797,913 in PCWA peaking charges from the purchased water account.

Per DRA’s audit of the purchased water account, DRA agrees that Cal Am’s revised request to recover \$797,913 in PCWA peaking charges (instead of the \$1,390,089 in peaking charges from 2005 – 2010 that Cal Am originally proposed) reasonably reflects the peaking charges at the authorized cost per unit of production in 2011. Cal Am’s revised proposal to recover \$797,913 in peaking charges also endorses terms of the original filed settlement, which disallowed Cal Am recovery of any future peaking charges incurred after January 1, 2012.⁵⁹

As Mr. Hoglund testified during hearings, DRA’s position is that the “least cost possible for service”⁶⁰ and the most cost-effective project should be considered when determining whether the Commission should authorize a SFF to avoid customers from incurring peaking charges.⁶¹ Mr. Hoglund further testified, “we [DRA] wouldn’t recommend a project to avoid peaking charges that were a considerably greater cost than the peaking charges themselves.”⁶² In fact, even if there is no new development and the Walerga tank is not built, Cal Am will continue to incur peaking charges at the rate that

⁵⁷ D.02-06-054, p. 4.

⁵⁸ DRA Exh. 11, p. 4-4 – 4-5, lines 24-12.

⁵⁹ CAW Exh. 71, p. 8, lines 10-24.

⁶⁰ RT., p. 1467:27 – 1468:6.

⁶¹ RT., p. 1467:7 – 1468:10.

⁶² RT., p. 1467:21 – 1468:10

they are incurred today.⁶³ This is due to the Cal Am and PCWA agreement, which set certain levels of usage and assessed peaking charges on Cal Am when Cal Am reaches levels above the authorized usage.⁶⁴ Thus, in order to avoid incurring additional peaking charges, the Commission should approve construction of the Walerga tank and booster station project so that Cal Am can maintain its commitment with PCWA to eliminate its need to peak off the PCWA system by 2012. Cal Am shall be allowed recovery of no more than \$797,913 in PCWA peaking charges and the Commission should disallow any future peaking charges that Cal Am begins incurring January 1, 2012.

V. CONCLUSION

For all the reasons noted above, DRA respectfully recommends that the Commission adopt DRA's recommendations with regard to the Dry Creek fee and tariff, project costs associated with the Walerga tank and booster station, and recovery of PCWA peaking charges.

Respectfully submitted,

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⁶³ RT, p. 1451:21 – 1452: 8.

⁶⁴ RT, p. 1450:27 – 1451:10.