

WATER/RSK/JP5/TS2/llj

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch

RESOLUTION NO. W-4803
November 20, 2009

R E S O L U T I O N

(RES. W-4803), THIS RESOLUTION REQUIRES MODIFICATIONS TO CALIFORNIA AMERICAN WATER COMPANY'S (Cal Am) PENDING ADVICE LETTERS (AL) 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W.

SUMMARY

This resolution requires modifications to Cal Am's pending Advice Letters 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W. All these ALs were filed pursuant to Standard Practice U-40-W, Instructions for Water Conservation and Rationing and Service Connection Moratoria, (SP 40)¹ and include requests to establish Tariff Schedule 14.1, Staged Water Conservation and Rationing Plan, (Schedule 14.1)² to address mandatory rationing that may be enforced if voluntary measures do not yield the necessary reduction in consumption. The governing water agencies³ that provide wholesale water to Cal Am, in response to the reduced allocation program from the Metropolitan Water District of Southern California (MWD), issued declarations to Cal Am that reduced its allocations to 15% below its 2004-2006 historical usage.⁴ Cal Am must then flow through this reduced allocation to its customers by determining its customers' current demands and comparing these amounts to its total available water supply. In addition, Cal Am will track the following in a memorandum account: (1) any additional revenues (in the form

¹ SP 40 outlines the general procedure for utilities to request and implement Tariff Rule 14.1 and Schedule 14.1. Rule 14.1 is implemented in response to a utility's request for voluntary rationing from customers in order to reduce consumption. This may be accomplished by voluntary enforcement of water use restrictions.

² Schedule 14.1 is activated in response to a governing agency such as a water wholesaler or Metropolitan Water District declaring a water shortage and imposing mandatory rationing on a utility that may result in a reduction of customer water allocations based on a percentage of the customer's historical usage.

³ The governing water agencies are the 26 cities and water districts that comprise the membership of MWD.

⁴ Cal-Am's Larkfield District is receiving a reduced allocation from the Sonoma County Water Agency.

Cal Am/ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

of volumetric penalties to customers for consumption over their allotments) generated from Schedule 14.1; (2) its incremental operating expenses incurred in administering Schedule 14.1 after the date Schedule 14.1 is activated; (3) any penalties paid to its water wholesalers; and (4) any additional revenues in the form of penalties paid by customers for violating water use restrictions.⁵

The Division of Ratepayer Advocates (DRA) protested AL's 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W. DRA raises concerns over the following issues:

1. Cal Am should resubmit requests for memorandum accounts to track the costs associated with Schedules 14.1 concurrent with AL requests to establish Schedules 14.1 for the memo account in the Los Angeles Service Areas of San Marino, Baldwin Hills, and Duarte and the Larkfield area.⁶
2. Cal Am has not met the five-prong test in establishing these memo accounts nor have they specified start and end dates.
3. Cal Am should not request recovery of the cost of implementing Tariff Rule 14.1 in these memo accounts.
4. Should Cal Am's requests to establish Schedules 14.1 filed as Tier 2 ALs and to activate Schedules 14.1 and more restrictive stages by means of Tier 1 ALs be permitted?
5. Cal Am should clarify the customer allocation process in how they are penalized, how that allocation will be determined, what the minimum ration will be, and how customers will be notified of their ration. Customers should also be allowed to "bank" water use from billing period to billing period.
6. Cal Am should clarify whether the Schedule 14.1 requests reflect the weighted average of the cutbacks based on the percentages of water available from each source, rather than passing through 100 percent of any particular source's shortage to ratepayers.
7. Cal Am should add a detailed appeal procedure to all of its Rule 14.1 and Schedule 14.1 requests including clearly defined criteria to address customer concerns that are likely to arise.

⁵ Water use restrictions prohibit non-essential or unauthorized water usage by customers for such things as washing hard-surfaced areas which results in excess run-off and outside watering of vegetation during certain hours. Fines start at \$50 per instance at Stage 1 and 2 of Schedule 14.1 and increase incrementally by another \$50 with the activation of each higher stage.

⁶ AL's 800-W, 801-W, and 802-W were filed by Cal Am on September 2, 2009 to request establishment of Schedules 14.1 for its LA District subsystems: San Marino, Baldwin Hills, and Duarte.

Cal Am/ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JS5/TS2/jlj

Although Cal Am originally filed the first of these AL's in early July, Cal Am was not in compliance with the procedure outlined in SP 40. The utility failed to hold public meetings in a timely fashion in between the date the AL's were filed and the requested effective dates. These meetings did not occur until the end of September through the middle of October. Also, Cal Am did not file its requests for Schedules 14.1 for its LA Districts until early September over two months after its requests for the associated memorandum accounts. These issues have delayed the process in reviewing these AL's. Thus, we resolve these matters as discussed below and order Cal Am file new advice letters to revise its tariffs as detailed in this Resolution.

BACKGROUND

Cal Am's LA Division serves approximately 27,200 customers in three physically separated subsystems: San Marino, Duarte, and Baldwin Hills. The district is served by wells and irrigation water utilizing Cal Am's groundwater rights and purchases from municipal wholesalers that are member agencies of MWD. Cal Am serves approximately 20,944 customers in its Coronado Service Area. All of the water supply for the Coronado District Customers is obtained from the City of San Diego, a member agency of the San Diego County Water Authority (SDWCA), which in turn is a member agency of MWD. Cal Am serves approximately 21,544 customers in its Village Service Area. All of the water supply for the Village District customers is obtained from Calleguas Municipal Water District (CMWD), which in turn is a member agency of MWD. Cal Am serves approximately 2,355 customers in its Larkfield District. Approximately half of the water supply for the Larkfield District is obtained from the Sonoma County Water Agency (SCWA).

Advice Letter Filings

AL's 766 & 774 were filed by Cal Am for its Village District on June 30, 2009 and July 2, 2009, respectively, in response to MWD implementing a reduced allocation program that would affect its member agency, CMWD. CMWD supplies all of the water for the Village District customers. On April 14, 2009, MWD approved its reduced allocation plan, with an effective date of July 1, 2009. In the plan, MWD will limit supplies and impose penalty rates on member agencies for any water use above the target levels. As a result, MWD reduced CMWD's allocations for fiscal year 2009/2010 to 15% below CMWD's historical 2004-2006 average usage. In turn, CMWD has reduced Cal Am's allocation based on MWD's reduction. With Cal Am's reduced allocation from CMWD, Village District Customers will have to reduce their usage from recent consumption levels in order for Cal Am to stay within CMWD's allocation. If Cal Am stays 15% or more below its historical average, there will be no penalty charges assessed to Cal Am.

Cal Am/ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JSB/TS2/jlj

Cal Am's proposed tariff contains a penalty rate structure for its customers that varies from the penalty structure imposed on Cal Am by its wholesalers.⁷

AL 774 was filed by Cal Am to request establishment of Schedule 14.1 while AL 766 was filed by Cal Am to request establishment of one memorandum account, the Village District Mandatory Conservation Rationing Implementation Memorandum Account (MEMCRIMA), which would track the following: (1) any additional revenues (in the form of volumetric penalties to customers for consumption over their allotments) generated from Schedule 14.1; (2) its incremental operating expenses incurred in administering Schedule 14.1 after the date Schedule 14.1 is activated; (3) any penalties paid to its water wholesalers; and (4) any additional revenues in the form of penalties paid by customers for violating water use restrictions.

AL 775 was filed by Cal Am on July 2, 2009 to request establishment of Schedule 14.1 for its Coronado District also in response to MWD's allocation program while AL 767 was filed by Cal Am on June 30, 2009 to request establishment of one memorandum account, the Coronado District Mandatory Conservation Rationing Implementation Memorandum Account (MEMCRIMA), which would track the same expenses as the other MEMCRIMA.

ALs 769, 770, and 771 were filed by Cal Am on June 30, 2009 to request establishment of memorandum accounts for its LA District subsystems: San Marino, Baldwin Hills, and Duarte. This Los Angeles District Mandatory Conservation Rationing Implementation Memorandum Account (MEMCRIMA) would track the same expenses as the other MEMCRIMA's except on a system-by-system basis.

AL 786 was filed by Cal Am on July 24, 2009 to request establishment of Schedule 14.1 for its Larkfield District while AL 773 was filed by Cal Am on July 2, 2009 to request establishment of one memorandum account, the Larkfield District Mandatory Conservation Rationing Implementation Memorandum Account (MEMCRIMA), which would track the same expenses as the other MEMCRIMAs. The Larkfield District obtains approximately half of its water supply from SCWA. The State of California Water Resource Control Board (WRCB) has ordered SCWA to make a 25% reduction in diversions from the Russian River to its service area from June 15, 2009 through October 2, 2009 based on usage from a 2004 base year. In turn, SCWA has reduced Cal Am's

⁷ The penalties imposed by Cal Am's wholesalers increase as the volume of water in excess of its allocation increases. In contrast, Cal Am's proposed penalty would be the same for a customer using 1 ccf as for a customer using 100 ccf over its allocation.

Cal Am/ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

allocation based on WRCB's reduction. Cal Am will have to pay an additional 1.5 times the current rate for water usage in excess of its allocation. With Cal Am's reduced allocation from SCWA, Larkfield District Customers will have to reduce their usage from recent consumption levels in order for Cal Am to stay within SCWA's allocation.

AL 784 was filed by Cal Am on July 24, 2009 to request establishment of Rule 14.1 for its Larkfield District while AL 772 was filed by Cal Am on July 2, 2009, to request establishment of Rule 14.1 for its Southern California Districts, including Coronado, Village, and Los Angeles.

ALs 800-W, 801-W, and 802-W were filed by Cal Am on September 2, 2009 to request establishment of Schedules 14.1 for its LA District subsystems: San Marino, Baldwin Hills, and Duarte in response to MWD's allocation program.

DRA's Protests

On July 20, 2009, DRA filed protests to ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, and 775-W. In response to these AL's, DRA raised the following issues in its protest: (1) The relief requested in the advice letters would violate Commission Orders, D.90-08-055 and D.91-01-042, which state that rationing plans must be authorized by Commission resolution; (2) "The analysis, calculations, or data in the advice letter contain material error or omissions;" and (3) The relief requested in the advice letter is unreasonable.

On August 13, 2009, DRA filed protests to ALs 784-W and 786-W. In response to these ALs, DRA raised the following issues in its protest: (1) Change the tier filing of the Schedule 14.1 to a Tier 3; (2) "Add language to Section A.2 stating that the Tier 1 advice letter requesting activation of different stages of conservation and rationing will be filed with complete documentation of the reduction in water supply that has triggered the requested stage;" (3) Correct the material error in the calculation of customer allocation; (4) Require reductions in use that match the overall shortage in water supply; (5) "Specify the 'base period' that is used in calculating both the reduction in water supply for determining the stages and the reduction in customer usage for each stage;" and (6) Clarify that the penalties "reset" for each stage if a customer violates a restriction that was not listed in the previous stage.

On September 22, 2009, DRA filed protests to ALs 800-W, 801-W, and 802-W. In response to these ALs, DRA raised the following issues in its protest: (1) Cal Am should supplement ALs 800, 801, and 802 so that they are consistent with the corresponding Rule 14.1-SD; (2) Cal Am should address the unfair penalty situation; (3) Cal Am should hold public meetings that allow customers to provide input to the

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/ JB5/TS2/ jlj

rationing plan; and (4) These Tier 2 ALs should not be effective until authorized by a disposition or resolution.

Cal Am's Response

On July 28, 2009, Cal Am responded to each point of DRA's protest. Cal Am states that ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, and 773-W are consistent with Commission precedent allowing Memorandum Account treatment for conservation and rationing costs and meet the four-pronged test for Memorandum Accounts. The utility also asserted that DWA should authorize the advice letters effective as of the filing date arguing that SP 40 allows for utilities to file for establishment of a Schedule 14.1 through a Tier 2 AL under Section F - Mandatory Rationing. Finally, Cal Am alleges that DRA's claims fail to set forth reasonable or sufficient grounds for challenging Cal Am's ALs 772, 774, and 775 stating that Cal Am was merely complying with SP 40.

On August 3, 2009, Division of Water and Audits (DWA) suspended ALs 766-W, 767-W, 769-W, 770-W, 771-W, 773-W, 774-W, and 775-W and suspended AL 784-W and 786-W on September 24, 2009. On October 2, 2009, DWA suspended ALs 800-W, 801-W, and 802-W. Given the similarity of issues and for administrative efficiency, disposition of all these advice letters are addressed in this Resolution. Also on August 3, 2009, the DWA approved Advice Letter 772-W. Pursuant to Section 7.7.1 of General Order 96-B, the DRA requested Commission review on August 13, 2009, of the DWA's disposition of AL 772-W.

NOTICE AND PROTESTS

Cal Am sent out public notices of the Water Conservation and Rationing Program for the Village District on September 18, 2009 and for the Coronado, Larkfield, and the LA Division sub-districts, San Marino, Duarte, and Baldwin Hills on September 25, 2009. These mailings went out later than the original advice letter filings dated from early July and September. All of the affected customers in Cal Am's Service Areas received notices in the mail about the Schedule 14.1 filings with the CPUC and the time and location for public meetings in its districts. Additionally, legal advertisements were placed in local newspapers in advance of the meetings. The public meetings informed customers of the background about Cal Am, the water shortage, and the impact of the proposed plan on customers. An outline was provided of Cal Am's Rule and Schedule 14.1 filing, including information about how customers can contact the Commission with comments. Cal Am also gave indoor and outdoor water efficiency tips and resources for more water conservation information. The utility also distributed free water conservation kits, kitchen and bathroom aerators, automatic shut-off nozzles, and brochures. Customers were also able to register to participate in Cal Am's residential

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water survey program. A question and answer session followed Cal Am's presentation in order for customers to voice their concerns. The meeting minutes were then provided to DWA staff with customer comments and questions being noted.

In addition to DRA's protests, 9 letters in opposition were received from customers in regards to the above-mentioned advice letters. Many stated that the rationing program was unreasonable and unjust, since Cal Am was issuing penalties on a flat monetary basis while the penalties assessed by MWD, its member agencies, and SCWA are volumetric penalties, that is, multiples of existing quantity rates. These letters also reference the tough economic times and the customers' hardships from higher rates. A few also claimed that they did not understand why they should be "punished" with a surcharge when they have been conserving water in response to the drought.

DISCUSSION

We address DRA's concerns on the outstanding procedural and substantive issues that were raised in its protest. Our review of these issues raised by DRA is guided by Res. W-4781 (August 20, 2009) that authorized Schedules 14.1 and associated memorandum accounts for Golden State Water Company. The items we are requiring Cal Am to comply with are the following:

1. Establish potable water allocations, such as, for residential use, at a percentage of historical usage, with the corresponding billing periods of a non-drought year being the base. The base years shall be 2004-2006 as discussed in Res. W-4781 for the districts affected by MWD's reduction, and the base year shall be 2004 for the Larkfield District, which is affected by SCWA's reduction.
2. Establish an allocation of a percentage of historical usage, with the corresponding billing periods of a non-drought year being the base, for users of process water (water used to manufacture, alter, convert, clean, grow, heat, or cool a product, including water used in laundries and car wash facilities that recycle the water used). The base years shall be 2004-2006 as discussed in Res. W-4781 for the districts affected by MWD's reduction, and the base year shall be 2004 for the Larkfield District, which is affected by SCWA's reduction.
3. Establish a minimum allocation of a number of Ccf per month (one Ccf is one hundred cubic feet) for any customer regardless of historical usage.
4. Notify customers prior to activation of Schedules 14.1 and subsequently, on their billing statements information about a customer's water allocation in the Usage History section as shown in the table below. The "Current Allocation" refers to the

amount of water budgeted in CCF (hundred cubic feet) to meet an overall specified reduction for the current billing period. The “Above Allocation” is the amount of water used over the budget. The “Fine” is the penalty amount that the customer is being charged for exceeding its current allotment. The “Next Allocation” is the target for the next billing period. With this penalty system, customers of Cal Am would face volumetric penalties like the utility itself will confront.

TABLE 1

<i>Acct. #</i>	
<i>Your Water Budget (1 CCF = 748 gallons)</i>	
Current Allocation:	XX CCF
Above Allocation:	XX CCF
Fine:	\$_____
Next Allocation:	XX CCF

5. When filing to activate a Schedule 14.1, Cal Am should file a new Tier 1 advice letter that reflects the effect of reduced allocations from Metropolitan Water District’s member agencies and Sonoma County Water Agency on the supply for each District based on the total available water supplies (both purchases and Cal Am’s own pumped water), compared with customer usage demand adjusted for (i) conservation programs⁸, and (ii) adjustments to individual customer allotments due to appeals. Cal Am should also include all necessary documentation in its Tier 1 filings to activate Schedules 14.1 to allow a determination whether the proposed reductions are consistent with the above requirement.

6. Cal Am should add a note in Section C – Stages of Mandatory Conservation and Rationing of its Schedules 14.1 stating, “Activation of the specific stage and amount of reduction will be determined by the total available water supplies (both purchases and Cal Am’s own pumped water), compared with customer usage demand (i) adjusted for conservation programs, and (ii) adjustments to individual customer allotments due to appeals.

7. Cal Am should file new Tier 1 advice letters to revise its currently filed Advice Letters to provide for customer penalty charges for usage above their

⁸ The utility should adjust allocations to reflect reduced demand due to conservation programs that have been implemented during and after the historical base period.

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allocations to be billed on a billing period basis following the example set forth in Res. W-4781 that charges customers a volumetric penalty rate, that is, a multiple⁹ of the quantity rate. These penalty amounts shall be tracked in the Mandatory Conservation Rationing Implementation Memorandum Accounts along with any penalty charges that the water wholesaler imposes on Cal Am for exceeding its allocation.

8. Cal Am should include language in Section 4. "Disposition" of the Preliminary Statements of its Mandatory Conservation Rationing Implementation Memorandum Accounts stating that Cal Am shall stop booking costs to the memo accounts once the drought is over and all costs have been incurred and recorded. Requested amortization of memo account balances shall be considered in Cal Am's next GRC or other formal proceeding.
9. Cal Am should include language in the Special Conditions Section of its Tariff Schedule 14.1 stating that customer penalty charges for usage above their allocations will be billed on a billing period basis starting no earlier than the date of the Tier 1 activation advice letter filing for that customer service area.

Next, we address DRA's concerns with the following issues in Cal Am's filings:

1. *Cal Am should resubmit requests for memorandum accounts to track the costs associated with Schedules 14.1 concurrent with AL requests to establish Schedules 14.1, since Cal Am only filed AL's for these memo accounts in the Los Angeles Service Areas of San Marino, Baldwin Hills, and Duarte and the Larkfield area.*

Cal Am has submitted the AL's to request establishment of Schedules 14.1 for the Los Angeles Districts on September 2, 2009 through ALs 800-W, 801-W, and 802-W. Cal Am will still need to file new Tier 1 advice letters to comply with the mandates required by this Resolution.

2. *Cal Am has not met the five-prong test in establishing these memo accounts nor have they specified start and end dates.*

⁹ For example, GSWC charges 1.5 times the Tier 2 quantity rate on its Region II Residential Customers for usage over allocation up to 15% above allocation and 2 times the Tier 2 quantity rate for usage over allocation by more than 15%. This would lead to a total charge of 2.5 times and 3 times the current quantity rates, respectively, as the penalty rate is in addition to the quantity rate.

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Cal Am utilized the five-prong test of reasonableness in requesting this memo account by stating the following: (1) Cal Am has no control over MWD's reaction to either the California drought condition or its proposed plan for rationing; (2) Cal Am's last general rate cases for these districts were filed prior to MWD's plans for rationing; (3) MWD's allocation plan has an effective date of July 1, 2009, while Cal Am's next general case for all of its districts is scheduled to be filed in 2010; (4) Cal Am believes that the amount of money involved is of a substantial nature; and (5) Cal Am believes this memorandum account has ratepayer benefits because its customers will benefit from conserving water supplies for the future or until natural replenishment can occur.

We will review the establishment of these memorandum accounts using the five-prong test¹⁰ we have used in past decisions dealing with establishment of memorandum accounts.¹¹ Here, we will address each of these criteria in relation to Cal Am's AL filings:

- i. The expense is caused by an event of an exceptional nature that is not under the utility's control. The drought in California is in its third year and has affected Cal Am's water wholesalers by limiting the total amount of water available to be purchased. We agree with Cal Am that the reduced allotments of water from its wholesalers are not under Cal Am's control.
- ii. The expense cannot have been reasonably foreseen in the utility's last General Rate Case (GRC). Cal Am's last GRC in 2007 for these districts forecasted available water supplies with no indication of rationing, since its water wholesalers did not provide Cal Am with any evidence that this would occur in the near future. MWD's water rationing program and penalty provisions were not known until April 2009, well after Cal Am's latest rate case.
- iii. The expense will occur before the utility's next scheduled rate case. Cal Am's next general rate case for all of its districts is scheduled to be filed in 2010, which would occur well past the effectiveness of rationing and limiting customer's water usage. Customers' rationing response and the resulting penalties, if any, as well as Cal Am's operating and administrative costs of implementing Schedule 14.1 will occur before Cal Am's next scheduled rate case.

¹⁰ See for example Res. W-4534 (2005).

¹¹ See for example Res. W-4276 (2001) and D.08-03-020 (2008).

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iv. The expense is of a substantial nature in the amount of money involved. The amounts recorded in each memo account may well reach 2% of projected operating costs considering they include the following: (1) its incremental operating expenses incurred in administering Schedule 14.1 after the date Schedule 14.1 is activated and (2) any penalties paid by Cal Am to water wholesalers. We have looked to the 2% of projected operating costs as a threshold representing a substantial expense.¹² Cal Am will track penalty amounts for customer usages over their allocations, along with penalties related to water use restrictions. Administering these penalties and establishing the billing methods required to track these penalties could cause Cal Am to exceed the necessary 2% threshold. Given this, we believe the substantial financial prong is satisfied.

v. The ratepayers will benefit by the memorandum account treatment adopted. Customers using water over their allotments will be paying penalties into this memo account that will (i) offset penalties Cal Am may receive from its wholesaler; as well as (ii) potentially offsetting some or all incremental operating expenses resulting from the implementation of Schedule 14.1, if penalty amounts collected from customers exceed any penalty amounts that Cal Am would have to pay its wholesaler.¹³ Thus, ratepayers who stay within their allotments can benefit from not being responsible for the amounts offset.

Given our determination that Cal Am has met all five prongs for establishing a memorandum account, we authorize Cal Am to establish conservation memorandum accounts to track the following: (1) any additional revenues (in the form of volumetric penalties to customers for consumption over their allotments) generated from Schedule 14.1; (2) its incremental operating expenses incurred in administering Schedule 14.1 after the date Schedule 14.1 is activated; (3) any penalties paid to its water wholesalers; and (4) any additional revenues in the form of penalties paid by customers for violations of water use restrictions. Cal Am shall stop booking costs to the memo accounts once the drought is over and all costs have been incurred and recorded. Requested amortization of memo account balances shall be considered in Cal Am's next GRC or other formal proceeding.

3. *Cal Am should not request recovery of the cost of implementing Tariff Rule 14.1 in these memo accounts.*

¹² See D.02-07-011 at p. 7.

¹³ This could occur if overall customer conservation efforts offset in whole or in part usage over historical allotments by some customers.

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We agree with DRA that Cal Am should not seek recovery for the costs to implement Tariff Rule 14.1, the voluntary conservation program. Cal Am has provided no estimate regarding the cost of implementing Rule 14.1 and already has been implementing Rule 14.1, previously approved in its Southern California districts, since March 2009, without the need to track additional costs in a memorandum account. We have not previously adopted nor authorized a memorandum account for voluntary conservation programs and will maintain that practice here. Operating costs of administering the mandatory conservation program of Tariff Schedule 14.1 pursuant to this Resolution will be covered under the memo accounts we authorize here, consistent with the authorization granted to GSWC in Resolution W-4781. Operating costs of administering the voluntary conservation program of Tariff Rule 14.1 are *not* covered under the memo accounts we authorize here.

4. *Should Cal Am's requests to establish Schedules 14.1 filed as Tier 2 ALs and to activate Schedules 14.1 via Tier 1 ALs be permitted?*

We need not reach the procedural questions raised by DRA as this Resolution authorizes Cal Am's tariffs with specified revisions. Requesting an activation of Schedule 14.1 or a change in a rationing stage¹⁴ should require only a Tier 1 AL as the utility would be flowing through the changes mandated from the governing agency or a reduced availability of water from the utility's own supplies. Since the rationing stages required to activate Schedule 14.1 are reviewed through the Tier 2 AL process establishing Schedule 14.1, DWA, DRA, and other interested parties have the ability to review and address the Schedule 14.1 requirements. Once these requirements have been addressed, the utility should be able to request activation of individual rationing stages through a Tier 1 advice letter. DWA still retains the option of rejecting a Tier 1 AL should deficiencies with a utility's activation of Schedule 14.1 occur. We approve the Tier 1 advice letter process for activating rationing stages in a Schedule 14.1. These are time-sensitive decisions whose review and approval can be done by staff on a ministerial basis. Cal Am will need to file new Tier 1 Advice Letter to activate Schedules 14.1 in any of the districts where activation is needed. When activating Schedule 14.1 for the first time or activating a higher rationing stage, Cal Am shall notice the affected customers and highlight changes in water use restrictions associated with the activation of the rationing stage. Given this notice, customer warnings will not reset when each stage is activated.

¹⁴ Each successive rationing stage is activated once the water supply to the utility is reduced by 5%, consequently leading to a reduction of 5% in customer allocations and a higher fine for a water use violation.

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5. *Cal Am should clarify the customer allocation process in how they are penalized, how that allocation will be determined, what the minimum allocation will be, and how customers will be notified of their allocation. Customers should also be allowed to “bank” water use from billing period to billing period.*

We agree with DRA that Cal Am needs to be more thorough in describing how it will establish water allocations for its customers, what the minimum allocation will be, how customers are to be penalized, and how customers will be notified of their allocation. We have adopted requirements from Res. W-4781, outlined above, to facilitate Cal Am’s achievement of these goals.

In regards to the “banking” issue, DRA commented on draft resolution W-4781 stating that there could be unintended negative consequences of an annual penalty structure for customers. For example, changing the utility’s billing system to implement a “banking” system rather than assessing penalties on a billing period could be costly. DRA also stated that there could be a potential “rate shock” for a customer that accumulates penalties through each billing period and is assessed a large penalty at the end of twelve months. Given these customer concerns associated with a program of banking differences between allocated and actual water usage, we will adopt penalty amounts calculated and paid on a billing period basis. Cal Am shall file advice letters revising its tariff sheets to explicitly provide for penalty amounts to customers that are calculated on a billing period basis for usages above their allotments, following the example set forth in Resolution W-4781 that charges customers a penalty rate that is a multiple of the current quantity rate. These penalty amounts paid by the customers to Cal Am shall be tracked in the Mandatory Conservation Rationing Implementation Memorandum Accounts along with any penalty charges that the water wholesaler imposes on Cal Am for exceeding its allocation.

6. *Cal Am should clarify whether the Schedule 14.1 requests reflect the weighted average of the cutbacks based on the percentages of water available from each source, rather than passing through 100 percent of any particular source’s shortage to ratepayers.*

We concur with DRA that Cal Am should explain in detail the percentage of water available from each of its sources and flow through this percentage accurately to its customers as we have adopted this methodology in Resolution W-4781 for Golden State Water Company (GSWC). We have adopted provisions above requiring California American Water Company to file new Tier 1 advice letters to reflect that the reduced allocations from Metropolitan Water District’s member agencies and Sonoma County Water Agency on the supply for each District based on the total available water supplies (both purchases and Cal American Water Company’s own

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/ JB5/ TS2/ jlj

pumped water), compared with customer usage demand adjusted for:

(i) conservation programs, and (ii) adjustments to individual customer allotments due to appeals. Cal Am should also include all necessary documentation in its Tier 1 filings to activate Schedules 14.1 to allow a determination whether the proposed reductions are consistent with this requirement.

7. *Cal Am should add a detailed appeal procedure to all of its Rule 14.1 and Schedule 14.1 requests including clearly defined criteria to address customer concerns that are likely to arise.*

Cal Am shall implement an appeal process similar to the procedure GSWC established in its Schedule 14.1 filings. Cal Am shall adopt an appeal form analogous to GSWC's to allow customers to explain the need for any variance from their proposed allocations. Cal Am shall also adopt a review process comparable to GSWC's in order to fully evaluate a customer's need in relation to its allocation.¹⁵

Because of the numerous changes as described above to the proposals contained in Cal Am's Advice Letters 766-W, 767-W, 769-W, 770-W, 771-W, 773-W, 774-W, 775-W, 786-W, 800-W, 801-W, and 802-W, we will reject these Advice Letters and order Cal Am to file new Tier 1 Advice Letters. However, we approve Advice Letters 772-W and 784-W as filed.

COMMENTS

Public Utilities Code Section 311(g) (1) provides that resolutions must generally be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, the draft resolution was mailed for comment on October 21, 2009 to parties on the service lists attached to the ALs and to the 9 customers who submitted letters in opposition. Comments were received from California Water Association (CWA) on November 10, 2009 and Cal Am on November 12, 2009; no reply comments were received. In its comments, CWA expressed its concerns over the five-prong test to determine the circumstances in which a memorandum account is appropriate. It specifically questioned the use of the 2% threshold to measure a substantial expense to be tracked in prong 4. We have used the 2% threshold as a benchmark for the substantive test in establishing a memorandum

¹⁵ GSWC's appeal process accounts for an increase in number of residents in a household; a medical condition that requires the use of additional water; unnecessary or undue hardship such as job loss; or any emergency condition affecting the health, sanitation, or safety of the customer.

Cal Am/ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

account. CWA is unpersuasive that the 2% threshold should be modified or eliminated. In its comments, Cal Am opposes the implementation of individual customer allocations based on historical usage; adjustment of each district's conservation program based on the make-up of its water supply and wholesaler; and the implementation of bi-monthly penalties in districts that currently use or are transitioning to monthly billing. Cal Am's opposition towards these requirements cites its lack of technical and administrative competence to meet these requirements. However, the utility has had sufficient warning of impending allocations stemming from discussions with water wholesalers that began in 2008 concerning the state of drought. Cal Am has had ample time to develop an allocation program based on its historical records of customers. In terms of fairness and equity, a flat-rate monetary penalty is potentially unduly discriminatory. Under Cal Am's proposal, a customer using one Ccf over its allocation is subject to the same fine as a customer using one hundred Ccfs over its allocation. Cal Am should have the ability to determine its actual purchased water costs and quantities from its wholesalers as it is required to provide this information in its annual reports and GRC applications. The calculation of individual customer allocations should then reflect the necessary reductions Cal Am needs to achieve from its customers to meet the reduced allocation from its wholesalers. For Cal Am's comment regarding bi-monthly billing penalties for districts that use monthly billing, we have made the appropriate changes in this Resolution to reflect that penalties should be based on the billing periods used by each district.

FINDINGS AND CONCLUSIONS

1. California American Water Company filed Advice Letters No. 766-W & 774-W for its Village District on June 30, 2009 and July 2, 2009, respectively; Advice Letters 767-W & 775-W for its Coronado District on June 30, 2009 and July 2, 2009, respectively; Advice Letters 769-W, 770-W & 771-W on June 30, 2009 and 800-W, 801-W, and 802-W on September 2, 2009 for its LA Division's subsystems, San Marino, Baldwin Hills, and Duarte; Advice Letter 772-W for its Southern California Districts on July 2, 2009; and Advice Letters 773-W, 784-W & 786-W for its Larkfield District on July 2, 2009.
2. The Division of Ratepayer Advocates filed protests on July 20, 2009, to Advice Letter Nos. 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, and 775-W; on August 13, 2009 to Advice Letters 784-W and 786-W; and on September 22, 2009 to Advice Letters 800-W, 801-W, and 802-W. Among the concerns raised in its protests, the Division of Ratepayer Advocates questioned the validity of the procedure for approving Schedule 14.1 filings and the associated memorandum accounts.

Cal Am/ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

3. California American Water Company filed a reply to each of the protests to Advice Letters 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, and 775-W on July 28, 2009.
4. On August 3, 2009, the Division of Water and Audits approved Advice Letter 772-W.
5. Pursuant to Section 7.7.1 of General Order 96-B, on August 13, 2009 the Division of Ratepayer Advocates requested Commission review of the Division of Water and Audits disposition of Advice Letter 772-W.
6. The Division of Water and Audits suspended California American Water Company's Advice Letters 766-W, 767-W, 769-W, 770-W, 771-W, 773-W, 774-W, and 775-W on August 3, 2009; Advice Letters 784-W and 786-W on September 24, 2009; and Advice Letters 800-W, 801-W, and 802-W on October 2, 2009.
7. Requesting activation or a change in a rationing stage follows from changes mandated from the governing agency or a reduced availability of water from the utility's own supplies.
8. Activations of rationing stages in Schedules 14.1 are time-sensitive decisions whose review and approval can be done by staff on a ministerial basis.
9. When activating Schedule 14.1 for the first time or activating higher rationing stages, California American Water Company should notice the affected customers and highlight changes in water use restrictions associated with the activation of the rationing stage.
10. California American Water Company's rationing allocation methodology for its customers of potable water, such as for residential use, should be based on a 15% reduction below historic 2004-2006 for potable water usage in its districts receiving water from MWD and a 25% reduction below historic 2004 usage in its district receiving water from SCWA.
11. California American Water Company should establish an allocation of a percentage of historical usage, with the corresponding billing periods of a non-drought year being the base, for users of process water. The base years should be 2004-2006 as discussed in Res. W-4781 for the districts affected by MWD's reduction, and the base year should be 2004 for the Larkfield District, which is affected by SCWA's reduction.

Cal Am/ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

12. California American Water Company should establish a minimum allocation of a number of Ccf per month (one Ccf is one hundred cubic feet) for any customer regardless of historical usage.
13. Penalties by California American Water Company's water wholesalers are calculated on a twelve-month basis.
14. California American Water Company's proposed penalty implementation for its customers is based on assessing a flat rate monetary penalty upon violation of water use restrictions including non-essential water use and usage above a customer's allocation.
15. California American Water Company's proposed flat-rate monetary penalty is potentially unduly discriminatory.
16. A volumetric penalty rate that is a multiplier based on existing quantity rates is reasonable.
17. An annual penalty allocation will impose costs to program California American Water Company's billing system.
18. An annual penalty allocation may result in rate shock.
19. Penalties for each billing period, rather than an annual penalty for exceeding allocations should be employed.
20. Establishment of the Mandatory Conservation Rationing Implementation Memorandum Accounts requested by California American Water Company was reviewed using the five-prong test previously used by the Commission.
21. Establishment of the Mandatory Conservation Rationing Implementation Memorandum Accounts satisfies all five prongs of the test.
22. California American Water Company has no control over MWD's reaction to either the California drought condition or its proposed plan for rationing.
23. California American Water Company's last general rate cases for these districts were filed prior to MWD's plans for rationing; MWD's allocation plan has an effective date of July 1, 2009, while Cal Am's next general case for all of its districts is scheduled to be filed in 2010.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/ JB5/ TS2/ jlj

24. California American Water Company will track penalty amounts in the form of customer usages over their allocations along with penalties related to water use restrictions. Administering these penalties and establishing the billing methods required to track these penalties may increase Cal Am's costs above the 2% substantive threshold for establishment of a memorandum account.
25. Establishment of these memorandum accounts has ratepayer benefits because ratepayers who stay within their allotments can benefit from not being responsible for the penalties Cal-Am has to pay its suppliers for going over its allocation, to the extent that Cal-Am's customer penalties offset the supplier penalties.
26. We agree with DRA that Cal Am should not seek recovery for the costs to implement Tariff Rule 14.1, the voluntary conservation program. Cal Am has provided no estimate regarding the cost of implementing Rule 14.1 and already has been implementing Rule 14.1, previously approved in its Southern California districts, since March 2009, without the need to track additional costs in a memorandum account. We have not previously adopted nor authorized a memorandum account for voluntary conservation programs and will maintain that practice here.
27. California American Water Company's various Districts rely on differing percentages of water supplied from Metropolitan Water District of Southern California's member agencies and by Sonoma County Water Agency.
28. California American Water Company's establishment of Tariff Schedule 14.1 is in response to reduced water allocation allotments imposed by the Metropolitan Water District of Southern California on its member agencies and by Sonoma County Water Agency. The member agencies pass the reduced water allocation allotments on to California American Water Company.
29. California American Water Company will need to file new Tier 1 Advice Letter to activate Schedules 14.1 in any of the districts where activation is needed. The Tier 1 Advice Letters ordered to be filed in this Resolution do not in and of themselves activate any schedules.
30. In filing new Tier 1 advice letters to activate Schedules 14.1, California American Water Company should reflect the reduced allocations from Metropolitan Water District's member agencies and Sonoma County Water Agency on the supply for each District based on the total available water supplies (both purchases and Cal American Water Company's own pumped water), compared with customer usage demand adjusted for: (i) conservation programs and (ii) adjustments to individual

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

customer allotments due to appeals. California American Water Company should also include all necessary documentation in its Tier 1 filings to activate Schedules 14.1 to allow a determination whether the proposed reductions are consistent with the above requirement.

31. California American Water Company should add a note in Section C - Stages of Mandatory Conservation and Rationing of its Schedules 14.1 stating, "Activation of the specific stage and amount of reduction will be determined by the total available water supplies (both purchases and Cal Am's own pumped water), compared with customer usage demand adjusted for (i) conservation programs and (ii) adjustments to individual customer allotments due to appeals.
32. California American Water Company should file new Tier 1 Advice Letters to revise the rejected Advice Letters 774-W, 775-W, 786-W, 800-W, 801-W, and 802-W to provide for penalty amounts to customers that are calculated on usages above their billing period allotments following the example set forth in Res. W-4781 that charges customers a volumetric penalty rate that is a multiple of the current quantity rate. These penalty amounts shall be tracked in the Mandatory Conservation Rationing Implementation Memorandum Accounts along with the penalty charges that the water wholesaler imposes on California American Water Company for exceeding its allocation.
33. California American Water Company should include language in Section 4. "Disposition" of the Preliminary Statements of its Mandatory Conservation Rationing Implementation Memorandum Accounts stating that California American Water Company shall stop booking costs to the memo accounts once the drought is over and all costs have been incurred and recorded. Requested amortization of memo account balances shall be considered in Cal Am's next GRC or other formal proceeding.
34. California American Water Company should include language in the Special Conditions Section of its Tariff Schedule 14.1 stating that customer penalty charges for usage above their allocations will be calculated and billed on a billing period basis starting no earlier than the date of the Tier 1 activation advice letter filing for that district and that customers will be charged a volumetric penalty rate that is a multiple of the current quantity rate.
35. California American Water Company should include on its billing statements information about a customer's water allocation.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

36. California American Water Company should implement an appeal process similar to the procedure Golden State Water Company established in its Schedule 14.1 filings. California American Water Company should adopt an appeal form analogous to Golden State Water Company's to allow customers to explain the need for any variance from their proposed allocations. California American Water Company should also adopt a review process comparable to Golden State Water Company's in order to fully evaluate a customer's need in relation to its allocation.

THEREFORE IT IS ORDERED THAT:

1.
 - a. California American Water Company shall file new Tier 1 advice letters to revise its Tariff Schedules 14.1 to include language in the Special Conditions Section stating that the penalty amounts to customers are based on usages above their allotments calculated on a billing-period basis and that customers will be charged a volumetric penalty rate that is a multiple of the current quantity rate. For example, GSWC charges 1.5 times the Tier 2 quantity rate on its Region II Residential Customers for usage over allocation up to 15% above allocation and 2 times the Tier 2 quantity rate for usage over allocation by more than 15%. This would lead to a total charge of 2.5 times and 3 times the current quantity rates, respectively, as the penalty rate is in addition to the quantity rate.
 - b. California American Water Company shall file new Tier 1 advice letters to state in its tariffs that the penalties described in part a. of this Ordering Paragraph are applied to usage starting no earlier than the date of the Tier 1 activation advice letter filing for that district or a later date specified in the tariff.
 - c. California American Water Company shall file new Tier 1 advice letters to revise its Tariff Schedules 14.1 to establish penalties consistent with part a. of this Ordering Paragraph, following the example set forth in Res. W-4781.

2.
 - a. California American Water Company shall file new Tier 1 advice letters to add a note in Section C – Stages of Mandatory Conservation and Rationing of its Schedules 14.1 stating, “Activation of a specific rationing stage will be determined for each Customer Service Area based on the total available water supplies (both purchases and California American Water Company's own pumped water), compared with customer usage demand adjusted for (i) conservation programs and (ii) adjustments to individual customer allotments due to appeals.”

Cal Am/ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

- b. California American Water Company shall include all necessary documentation in its Tier 1 filings to activate Schedules 14.1 to allow a determination whether the proposed reductions are consistent with part (a) of this ordering paragraph.
3. California American Water Company shall file new Tier 1 advice letters to revise the tariff language for its Mandatory Conservation Rationing Implementation Memorandum Accounts to expressly state that these memorandum accounts track the following: (1) any additional revenues (in the form of volumetric penalties from its customers for consumption over their allocations) generated from Schedule 14.1; (2) its incremental operating expenses incurred in administering Schedule 14.1 after the date Schedule 14.1 is activated; (3) any penalties paid to its water wholesalers; and (4) any additional revenues in the form of penalties paid by customers for violating water use restrictions.
4. California American Water Company shall file new Tier 1 advice letters to include language in Section 4 "Disposition" of the Preliminary Statements of its Mandatory Conservation Rationing Implementation Memorandum Accounts stating that (i) Cal Am shall stop booking costs to the memo accounts once the drought is over and all costs have been incurred and recorded; and (ii) requested amortization of memo account balances shall be considered in California American Water Company's next GRC or other formal proceeding.
5. California American Water Company's rationing allocation methodology for its customers of potable water, such as for residential use, shall be based on a 15% reduction below historic 2004-2006 potable water usage for its districts receiving water from MWD and a 25% reduction below historic 2004 usage for its district receiving water from SCWA
6. California American Water Company shall establish an allocation of a percentage of historical usage, with the corresponding billing periods of a non-drought year being the base, for consumption for users of process water. The base years shall be 2004-2006 for the districts affected by MWD's reduction, and the base year shall be 2004 for the Larkfield District, which is affected by SCWA's reduction.
7. California American Water Company shall establish a minimum allocation of a number of Ccf per month for any customer regardless of historical usage.

Cal Am/ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

8. California American Water Company shall include on its billing statements information about a customer's water allocation, following the example shown in Table 1 above.
9. When activating Schedule 14.1 for the first time or activating higher rationing stages, California American Water Company should notice the affected customers and highlight changes in water use restrictions associated with the activation of the rationing stage.
10. California American Water Company shall implement an appeal process similar to the procedure Golden State Water Company established in its Schedule 14.1 filings. California American Water Company shall adopt an appeal form analogous to Golden State Water Company's to allow customers to explain the need for any variance from their proposed allocations. California American Water Company shall also adopt a review process comparable to Golden State Water Company's in order to fully evaluate a customer's need in relation to its allocation.
11. To the extent that modifications to California American Water Company's Schedules 14.1 and Mandatory Conservation Rationing Implementation Memorandum Accounts are not required by the preceding paragraphs, California American Water Company shall file new Tier 1 advice letters that incorporate the remaining language from its proposed Schedules 14.1 and Mandatory Conservation Rationing Implementation Memorandum Accounts.
12. The tariff schedules attached to Advice Letters 766-W, 767-W, 769-W, 770-W, 771-W, 773-W, 774-W, 775-W, 786-W, 800-W, 801-W, and 802-W shall be superseded by the new Tier 1 advice letter filings described in Ordering Paragraphs 1-10, effective as of the date of this Resolution.
13. Advice Letters 772-W and 784-W shall be approved as filed.
14. Advice Letters 766-W, 767-W, 769-W, 770-W, 771-W, 773-W, 774-W, 775-W, 786-W, 800-W, 801-W, and 802-W shall be rejected.
15. The Tier 1 advice letter(s) required to be filed by this Resolution shall be filed within 20 days of the date of this Resolution. California American Water Company may combine the required tariff revisions into one or more advice letters.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

16. 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 held on November 20, 2009; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

Paul Clanon
Executive Director

MICHAEL R. PEEVEY
President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners