

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California-American Water Company (U 210 W) for an order authorizing it to increase its rates for water service in its Los Angeles Division to increase revenues by \$1,354,500 or 7.56% in the year 2004, \$ 842,100 or 4.68% in the year 2005, and \$1,052,000 or 5.22% in 2006.

A.03-07-036

**REPLY COMMENTS OF THE OFFICE OF RATEPAYER
ADVOCATES ON THE CITY OF SAN MARINO'S COMMENTS ON
THE SETTLEMENT AGREEMENT**

Pursuant to Rule 51.4 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Office of Ratepayer Advocates ("ORA") files its reply to the City of San Marino's ("City") Comments on the California-American Water Company ("Cal-Am") and ORA February 23, 2004 Settlement Agreement. ORA's reply is limited to the single issue of the required attendance of certain ORA staff. ORA defers to Cal-Am to address the specific issues raised by the City.

**I. APPEARANCE OF ORA STAFF MR. ASLAM IS NOT
NECESSARY**

The City of San Marino requests that the Administrative Law Judge ("ALJ") issue an order compelling ORA staff, Mehboob Aslam, to appear at the April 27th and 28th hearings. The City states that Mr. Aslam's testimony is "expected to reveal that the Settlement Agreement was, as a whole and also with

respect to particular issues, not negotiated in the public interest.” (City Comments, p. 8.)

The City’s comments, however, appear to touch only lightly on two issues raised by Mr. Aslam in ORA’s January 9, 2004 Report. The first issue concerns Cal Am’s request for funding for projects approved in prior rate cases but never completed. With regard to the prior funding issue, the City’s comments state merely that the Commission should adopt ORA’s original position and deny Cal-Am’s requested rate increase for these projects. (*Id.* at p. 6.) The Commission can either accept the City’s request or it can accept the settlement that recognized the need to fund these projects. There is no need to require Mr. Aslam’s testimony on this issue. Mr. Aslam’s testimony does not discuss the need or lack of need for these projects but merely makes a recommendation based upon the fact that these projects had been approved in prior rate cases. It does not appear that the City would have any questions for Mr. Aslam on this issue because Mr. Aslam’s position is purely a philosophically based adjustment.

The second issue raised by the City that touched on Mr. Aslam’s testimony was concerns with the costs of Cal-Am’s Distribution Monitoring System. The City’s comments on this issue only asks that Cal-Am provide additional documentation to adequately respond to statements in ORA’s Report that the costs of this project have changed several times. Questions about the cost of the project and documentation available are more appropriately addressed to Cal Am witnesses.

Requiring the attendance of Mr. Aslam is unnecessary. Mr. Aslam’s testimony would, and must, be limited to his direct testimony. Mr. Aslam cannot testify to settlement discussions, work done in preparation for the settlement, or conversations about the settlement, as this information is protected attorney work product or attorney-client privilege information or protected by Rule 51.9 of the Commission’s Rules of Practice and Procedure. It appears from the City’s

comments that its cross examination will go toward this privileged or protected information and not towards the content of Mr. Aslam's testimony.

While ORA believes Mr. Aslam's attendance is unnecessary, it would not object to his appearance if the ALJ determines it would be useful and if questioning is limited to Mr. Aslam's testimony and not to the settlement process.¹ ORA requests that the ALJ require the City to state whether it is Mr. Aslam's testimony or the internal settlement process that the City seeks to question Mr. Aslam about. If it is in fact the testimony, then the ALJ can determine whether or not she believes Mr. Aslam's testimony is necessary. If the City seeks to ask questions on the later issue, ORA requests that the ALJ rule that that information is protected or privileged and not an appropriate area for cross examination.

II. CONCLUSION

ORA requests that the ALJ require the City to specify the area it seeks to cross-examine Mr. Aslam on to determine whether Mr. Aslam's appearance is necessary.

Respectfully submitted,

Monica McCrary
Staff Counsel

Attorney for the Office of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1288
Fax: (415) 703-2262

April 8, 2004

¹ ORA is prepared to present two ORA supervisors to testify to the Settlement Agreement.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document
REPLY COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON
THE CITY OF SAN MARINO'S COMMENTS ON THE SETTLEMENT
AGREEMENT in A.03-07-036.

A copy was served as follows:

[X] **BY E-MAIL:** I sent a true copy via e-mail to all known parties of record
who have provided e-mail addresses.

[X] **BY MAIL:** I sent a true copy via first-class mail to all known parties of
record.

Executed in San Francisco, California, on the 8th day of April, 2004.

Mae F. Dyson