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

Application of California-American
Water Company (U210W) for Authorization
to Increase Its Revenues for Water Service
by \$55,771,300 or 18.71% in the year 2024,
by \$19,565,300 or 5.50% in the year 2025, and
by \$19,892,400 or 5.30% in the year 2026.

Application 22-07-001
(Filed July 1, 2022)

**OPENING BRIEF OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
ON THE SUBJECT OF WRAM/DECOUPLING**

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December 6, 2023

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I. INTRODUCTION

Pursuant to Rule 13.12 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure (Rules), the Monterey Peninsula Water Management District (MPWMD) files this Opening Brief on the Subject of WRAM/Decoupling in Application (A.) 22-07-001. Administrative Law Judge (ALJ) Jacob L. Rambo established that opening briefs on the WRAM/Decoupling issue are due on December 6, 2023, and reply briefs are due on January 9, 2024.

II. BACKGROUND/PROCEDURAL HISTORY

California-American Water Company (Cal-Am) filed its 2022 General Rate Case (GRC) with the Commission on July 1, 2022. Rates approved in this proceeding apply to the years 2024, 2025, and 2026.

Among the many special requests, Cal-Am sought a Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM) and Full Cost Balancing Accounts (FCBA) or Incremental Cost Balancing Accounts (ICBA) in Special Request (SR) Nos. 1 and 2.

A Prehearing Conference (PHC) was held September 12, 2022. Commissioner Genevieve Shiroma and ALJ Rambo conducted the hearing to confirm party status¹ and discuss the procedural schedule.

Cal-Am filed its 100-day update on October 10, 2022. This is the point at which the GRC schedule changed due to legislation² signed by the Governor on September 30, 2022, becoming effective January 1, 2023. Cal-Am requested an opportunity to amend its application and proceed with a bifurcated process to consider the decoupling issue separate from the other GRC requests. In a ruling issued on November 15, 2022, Cal-Am was authorized to file an updated application with supporting documentation and testimony comparing WRAM and M-WRAM. The Parties filed a Joint Statement on December 5, 2022, with a proposed revised procedural schedule.

Cal-Am filed the Updated Application on January 27, 2023. An ALJ Ruling was issued on March 23, 2023, modifying the schedule for the submission of testimony. The Public Advocates Office (Cal Advocates) served its report on April 13, 2023, and all other parties including MPWMD served testimony on April 20, 2023. Cal-Am served rebuttal testimony on May 25, 2023.

¹ Four parties made appearances at the prehearing conference: California-American Water Company (Cal-Am), Public Advocates Office (Cal Advocates), Monterey Peninsula Water Management District (MPWMD), and the City of Thousand Oaks. The number of parties increased to eight with the addition of the California Water Association (CWA), California Water Efficiency Partnership (CalWEP), National Association of Water Companies (NAWC), and Public Water Now (PWN).

² Senate Bill No. 1469 affects California water corporations with more than 10,000 service connections. Upon application in a General Rate Case (GRC), the Public Utilities Commission “shall consider, and may authorize, the implementation of a mechanism that separates the water corporation’s revenues and its water sales, commonly referred to as a ‘decoupling mechanism.’”

Public Participation Hearings (PPH) began April 11, 2023, and concluded May 2, 2023, with Monterey's hearing on April 25, 2023.

Mandatory Alternative Dispute Resolution (ADR) commenced May 24, 2023, with ADR neutrals ALJ Valerie U. Kao (lead) and ALJ Susan Lee. Four sessions were held with an announcement on September 28, 2023, that Cal-Am and Cal Advocates had reached a "high-level settlement."

The evidentiary hearing required four days of testimony that began October 5, 2023, and concluded October 2023.

III. DISCUSSION

A. Special Request No. 1: Authorization of a Water Resources Sustainability Plan (WRSP) or Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)

To understand why the Parties to this proceeding have addressed Cal-Am's Special Request (SR) No. 1, begin with Commission Rulemaking 17-06-024. That proceeding began June 29, 2017, with a Decision and Order on August 27, 2020.³ During this period, parties including Cal-Am and California Water Association⁴ (CWA) had opportunities to participate in five (5) joint workshops with the State Water Resources Control Board (SWRCB) that permitted comments and reply comments on each workshop's staff report.

³ D.20-08-047, *Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability*, Decision and Order, issued September 3, 2020.

⁴ California Water Association (CWA) is a party to this GRC proceeding with a focus on Special Request (SR) No. 1. CWA represents more than 90 water utilities regulated by the Commission in California.

After the 2020 decision, both Cal-Am and CWA filed Applications for Rehearing. An Order Denying Rehearing⁵ issued September 27, 2021, left Cal-Am and CWA with two options: file an appeal with the California Supreme Court or seek relief from the California Legislature. They proceeded with both. The appeal to the Supreme Court is still pending but the California Legislature provided some relief with Senate Bill No. 1469.⁶ The legislative action enabled Cal-Am to submit a revised application in January 2023 requiring an evaluation of a new WRAM proposal.

MPWMD may comment further in its reply brief on additional common outline topics but restricts its argument here to primarily address whether it is necessary to deviate from the Commission's prior determination in 2020 that using an M-WRAM mechanism is preferred to Cal-Am's current proposal for an "enhanced" WRAM that it labels WRSP.

1. Water Resources Sustainability Plan (WRSP)

Decision No. 20-08-047 Summary begins with the following statement, "This decision evaluates the sales forecasting processes used by water utilities and concludes that, after years as a pilot program, the Water Revenue Adjustment Mechanisms have proven to be ineffective in achieving its primary goal of conservation."⁷

The WRAM protects utilities from revenue shortfalls that occur when customers use less water. The assumption is that lower water use results from the tiered rate design because it is

⁵ D.21-09-047, *Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability*, Order Denying Rehearing of Decision 20-08-047, as Modified, issued September 27, 2021.

⁶ Pub. Resources Code §727.5. Section 727.5(d)(2)(A) was amended in 2022. It provides the Commission may authorize implementation of a decoupling mechanism that separates revenues and sales.

⁷ D.20-08-047, p. 2.

described as a “conservation” rate design. But the WRAM does not distinguish whether the lower water use comes from conservation programs or messaging or “drought, economic effects, or inaccurate sales forecast.”⁸

The argument is then made in this proceeding that WRAM utilities spend more on conservation messaging and programs than M-WRAM utilities.⁹ This is a false equivalent. Perhaps M-WRAM utilities were making capital investments to reduce system leaks or maybe their customers already were low users. Those are equally plausible possibilities.

Once water is priced on an inclining scale for increased usage, the law of demand applies – when the cost goes up, demand goes down. David Mitchell, Cal-Am’s expert witness on sales forecasting described it this way:

I don’t think that the rate design depends necessarily on knowing the motivations or thinkings of the customers, it relies primarily on the law of demand. And that’s a pretty simple law, but also the one that is most confirmed by empirical evidence in terms of – you know – in terms of economic theory. The one thing economists can really hang their hat on is the law of demand, which is a very simple law. It says that as price goes up, consumers, in general, will demand less of a good or service; and as the price goes down, they’ll demand more of the good or the service. And that’s been shown repeatedly through empirical study to be true for water service. I think at this point I would say it’s irrefutable empirically that that is the case.¹⁰

a. Essential Services Balancing Account (ESBA)

Please see Section III.A. 1 above.

⁸ *Id.*, p. 55.

⁹ CALAM-SWO-002A, p. 27:24-26 citing Keith Switzer Direct Testimony.

¹⁰ Reporter’s Transcript Volume 5 (5RT) 271:12 to 272:2 (CALAM/Mitchell).

b. Annual Consumption Adjustment Mechanism (ACAM) (Updated Special Request No. 3)

Annual Consumption Adjustment Mechanisms (ACAM) are intended to work with a WRAM/MCBA approach. If the Commission authorizes the WRSP, MPWMD objects to additional adjustments as proposed in Special Request No. 3.

If the Commission denies Cal-Am's WRSP, then the need for this mechanism is eliminated except for the collection of outstanding balances.

c. Amortization (Updated Special Request No. 14)

MPWMD offers no position on Special Request No. 14 at this time.

d. Rate Design

Sales forecasting remains problematic given complex rate designs. The disconnect for water customers of why it costs more when less water is used is not solved by Cal-Am's proposal. WRAM balances remain significant even with reductions over recent years and are another source of confusion when customers see these surcharges on their monthly bills. One should ask why customers are completely responsible for revenue shortfalls when the problem lies with the water utility's forecast over which ratepayers have no control. In this proceeding, Cal-Am proposes modifications to current rate structures by adding 4th and 5th tiers in some of its divisions. The complexity of these calculations can only add to sales forecasting errors.

The "Law of Demand" as articulated above by Cal-Am's witness David Mitchell is fundamental to rate design. The assumption that WRAM promotes conservation is easily refuted.

A proper price signal can provide a basic amount of water at a low quantity rate¹¹ while promoting conservation by increasing the cost for high water use.

Perhaps it is time to overhaul current rate design practices and focus on the primary mission of providing quality water for basic human needs at the lowest possible cost and fewer additional tiers that send the price signal that water conservation is the way of life in California. For example, the Commission has responded to drought events and could establish permanent triggers so that if certain events occur, accounts are automatically established to record the revenue impacts. Concerns about affordability for low-income customers are addressed in a variety of programs and funding sources. Water rate design should reward low-use customers while providing appropriate price signals that clearly show how using more water costs more.

2. Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)

The Monterey-Style WRAM dates from 1996.¹² Following a 1995 order from the SWRCB, Cal-Am required new measures to control consumption due to its reduced Monterey water supply. The solution was the M-WRAM because it afforded Cal-Am protection from the reduced revenues resulting from a highly tiered rate structure when compared to a uniform or flat rate.

The Decision No. 20-08-047 Summary concludes, “This decision therefore identifies other benefits the Water Revenue Adjustment Mechanisms provide that are better achieved through the

¹¹ Cal Advocates previously suggested that Tier 1 breakpoints be linked to either projected essential use quantities or assumed indoor water usage. See D.20-08-047, pp.37-38.

¹² D.96-12-005, *Application of the California-American Water Company (U210W) for Authority to Increase Rates in Its Monterey Division by \$2.16 million (11.2%) in 1997, \$479,400 (2.46%) in 1998, and \$442,900 (2.02%) in 1999.*

Monterey-Style Water Revenue Adjustment Mechanisms and requires water utilities to propose Monterey-Style Water Revenue Adjustment Mechanisms in future general rate cases.”¹³

a. Full Cost Balancing Account (FCBA)/Incremental Cost Balancing Account (ICBA) (Special Request No. 2)

MPWMD offers no position on Special Request No. 2 at this time.

b. Annual Consumption Adjustment Mechanism (ACAM) (Special Request No. 3)

Please see Section III.A.1. b above.

c. Amortization (Special Request No. 14)

MPWMD offers no position on Special Request No. 14 at this time.

d. Rate Design

As has been previously stated by Cal Advocates in D.20-08-047, “...forecast variance is inevitable in rate-of-return regulation, but that the impact on water utilities has been muted as the result of the WRAM decoupling mechanism in California.”¹⁴ In contrast, the use of the Monterey-style WRAM places the sales risk on the water utilities, not the ratepayers. MPWMD supports an M-WRAM mechanism, preferably with a new name.

B. Comparison of Impacts of WRSP and M-WRAM

MPWMD reserves comment on the impacts of WRSP and M-WRAM in its reply brief.

¹³ D.20-08-047, p. 2.

¹⁴ *Id.*, p. 30.

IV. CONCLUSION

Ratepayers experience too many rate increases. The GRC alone causes three rate changes which are further compounded by WRAM surcharges and other offsets from authorized advice letters or emergency authorizations. Cal-Am customers still do not understand why using less water costs them more, a situation that may intensify with the requested increased meter charge.

The Commission concluded in 2020 that the “WRAM/MCBA transfers risk for utility operations from shareholders to ratepayers, eliminates the incentives to efficiently manage water production expenses, and eliminates the incentive to accurately forecast sales in a GRC.”¹⁵ The Commission should make a similar determination in the instant proceeding and approve an M-WRAM mechanism, preferably renamed to avoid confusion.¹⁶

Dated: December 6, 2023

Respectfully submitted,

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¹⁵*Id.*, p. 53.

¹⁶ CALAD-RR-001, Public Advocates Office Prepared Testimony of Richard Rauschmeier, Report on Recommendations on Cal Am’s Special Request #1, dated April 13, 2023 (Rauschmeier Report).