

PROPOSED RESOLUTION

Resolution W-5255
WD

Agenda ID #21312 (Rev.2)
Item #6, 3/14, 1130

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION W-5255
March 16, 2023

RESOLUTION

(RES. W-5255), CALIFORNIA WATER SERVICE COMPANY
(CAL WATER), ORDER AFFIRMING WATER DIVISION'S
DISPOSITION REJECTING CAL WATER'S ADVICE
LETTER NO. 2445, PROPOSAL OF AN ARREARAGE
MANAGEMENT PLAN.

SUMMARY

This Resolution affirms on review the rejection without prejudice of California Water Service's (Cal Water) Advice Letter (AL) No. 2445, regarding the request to establish an Arrearage Management Plan (AMP). Cal Water may seek authorization of an AMP program from the Commission by filing a formal application for this specific request.

BACKGROUND

At the start of the COVID-19 pandemic in March 2020, a moratorium on water disconnections was imposed through the Governor's Executive Order N-28-20. All water utilities in California were prohibited from shutting off water to customers for non-payment of bills. The initial expiration date of the moratorium was September 30, 2021 but was later extended to December 31, 2021.¹ The Commission further extended the moratorium for its regulated water utilities to February 1, 2022 by Decision (D.) 21-07-029.

¹ Enacted by Senate Bill 155.

PROPOSED RESOLUTION

Resolution W-5255
WD

March 16, 2023 (Rev. 2)

On February 11, 2021, the Commission issued Resolution (Res.) M-4849, ordering its regulated water utilities to file transition plans to prepare customers for the expiration of the Emergency Customer Protections, which included the water disconnection moratorium. Cal Water complied with this Resolution by filing AL 2407 on April 1, 2021, to establish transition plans for its customers.

Cal Water in AL 2407 also proposed to establish an AMP program. The Public Advocates Office (Cal Advocates) protested AL 2407, claiming that Cal Water omitted information needed to evaluate an AMP program and that cost recovery of AMP through the CAP Balancing Account would be improper. After discussion with Water Division, Cal Water's request for an AMP program was removed in the supplemental filing AL 2407-A, submitted on June 24, 2021, and approved on June 28, 2021.

On March 11, 2022, Cal Water submitted AL 2445 requesting to implement an AMP program for customers enrolled in Cal Water's low-income Customer Assistance Program (CAP). Since the water disconnection moratorium expired by the time of filing, Cal Water stated that the purpose of its proposed AMP program was to prevent disconnections due to nonpayment. Cal Water's proposed AMP program would be a modified version of the energy utilities' AMP program² and would offer debt forgiveness to qualified CAP customers for a period of up to 12 months. Cal Water proposed that debt forgiveness be equal to the amount paid by the customer on their overdue debt. The forgiven debt and costs to implement AMP would be tracked in the existing CAP Balancing Account and recovered through the existing CAP surcharge.

On March 30, 2022, Cal Advocates submitted a protest letter to AL 2445. This protest, similar to Cal Advocates' protest of AL 2407, contends that tracking costs in the CAP Balancing Account should not be allowed as the Commission has yet to prescribe cost-recovery of AMP programs for water utilities.

On April 11, 2022, Cal Water provided a response to Cal Advocates' protest, stating that Cal Water's AMP program is modeled after the Commission approved AMP program for energy utilities which allows recovery through balancing accounts. In response, Cal Advocates noted that Resolution M-4849 makes clear that the Commission is not authorizing recovery of expenses related to transition plans through the advice letter process outlined in the resolution.

² Approved in Decision 20-06-003 and Resolution E-5114.

PROPOSED RESOLUTION

Resolution W-5255
WD

March 16, 2023 (Rev. 2)

On July 15, 2022, Water Division rejected without prejudice AL 2445 and advised Cal Water to file a formal application. Water Division stated that a formal proceeding, not the advice letter process, is the appropriate mechanism to discuss and review plans for managing customer arrearages. Water Division also stated that customer protections are in place from existing legislation which prohibit disconnections to customers who are currently on payment plans.

REQUEST FOR REVIEW

By letter, submitted on July 25, 2022, in accordance with Section 7.6.3 of General Order (GO) 96-B, Cal Water requested Commission review of Water Division's disposition of AL 2445. The appeal states that Water Division erred in rejecting Cal Water's proposed AMP program for the following reasons:

1. The energy utilities' AMP programs, which Cal Water has modeled after, have already been reviewed and approved by the Commission. Cal Water is requesting similar treatment consistent with GO 96-B, Water Industry Rule 8.2.
2. A resolution for the Commission to consider policy matters should have been prepared instead of a disposition letter rejecting AL 2445.
3. Cal Water's proposed AMP program does not change rates or establish new ratemaking accounts.
4. The immediate need for arrearage relief is likely to be unmet due to the expected length of a formal proceeding.

DISCUSSION

Advice Letter Process

GO 96-B General Rule 5.1 states that the purpose of the advice letter process is to provide "a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions." Cal Water's proposed AMP program raises important policy questions that are not suitable for an advice letter process.

The first policy question posed for Commission consideration addresses the management of bill arrearages by the water utilities. Before the pandemic, water

PROPOSED RESOLUTION

Resolution W-5255
WD

March 16, 2023 (Rev. 2)

utilities had options to handle arrearages by offering customers alternative payment plans and payment extensions, and as a last resort, disconnecting customers. During the pandemic, with the water disconnection moratorium in effect, water utilities were unable to shut off water as a means to encourage bill payments. In order to recover unpaid arrearages, water utilities tracked arrearages in their Catastrophic Event Memorandum Accounts³ for future recovery. With the moratorium ended, water utilities resorted to past practices to resolve arrearages, including bill payment extensions, alternative bill payment options, and as a last resort, customer disconnection. However, as a result of the pandemic, customer arrearages have increased beyond normal.⁴ The policy question of how water utilities should handle the increase in customer arrearages is a subject in the Water Low-Income Rulemaking (R.) 17-06-024. Similarly, an AMP program to manage arrearages should also be discussed and reviewed in a formal proceeding.

The second policy question posed for Commission consideration involves determining whether increasing rates for one subset of customers is an appropriate method to provide rate relief to another subset of customers. Cal Water's proposal to include the AMP program recovery into the CAP program needs further discussion and analysis not suitable for an advice letter process with ministerial review. While Cal Water's proposal does not establish new rates or ratemaking accounts, it alters the existing CAP balancing account to now include the additional costs for providing both low-income bill assistance and bill arrearage assistance. This proposal will result in an increase of CAP surcharges levied on Cal Water's non-Cap customers to fund both the CAP and AMP.

The third policy question posed for Commission consideration is the effect of approval of Cal Water's AMP program for other regulated water utilities. If Water Division were to approve Cal Water's proposed AMP program, GO 96-B Water Industry Rule 8.2 could provide that other water utilities request similar treatment. With customer arrearages differing from utility to utility, a formal proceeding is needed to provide a comprehensive review to determine the most consistent procedure to adopt AMP

³ As directed by the Commission in the Executive Director's March 17, 2020, letter to regulated water utilities.

⁴ The arrearage total as percent of annual revenue for all Class As at the end of February 2022 was 4.1% compared to 2019 average of 1.3% (R.17-06-024 Water Division Summary of the Latest Statistical Reports from the Class A Water Utility Companies Including Reporting Through February 2022).

PROPOSED RESOLUTION

Resolution W-5255
WD

March 16, 2023 (Rev. 2)

programs across all regulated water utilities rather than a ministerial review through the advice letter process.

With regards to Cal Water's argument that a resolution should have been issued to reject AL 2445 instead of a disposition letter, GO 96-B General Rule 7.6.1 states:

"An advice letter is subject to disposition by the reviewing Industry Division whenever such disposition would be a "ministerial" act, as that term is used regarding advice letter review and disposition... In addition, the Industry Division will... reject without prejudice an advice letter whose disposition would require an evidentiary hearing or otherwise require review in a formal proceeding."

Water Division's rejection without prejudice of AL 2445 is ministerial as a formal proceeding should be required to review and authorize Cal Water's proposed AMP program.

Request for Similar Treatment

Contrary to Cal Water's claim, the request for similar treatment under G.O. 96-B Water Industry Rule does not apply to AL 2445. GO 96-B Water Industry Rule 8.2 states that an advice letter:

"shall demonstrate that the Utility submitting the advice letter is similarly situated in all material respects, and is requesting the same relief and relying on the same justification as in the cited order(s)."

Cal Water failed to demonstrate how Cal Water, a water utility, is similarly situated in all material respects to the energy utilities. Furthermore, Cal Water's proposed AMP program differs significantly from the AMP programs approved for the energy utilities. Unlike the energy program, Cal Water's AMP does not provide full arrearage forgiveness after a specified payment amount has been met. The energy utilities' AMP do not track and recover costs in their low-income balancing account.⁵

⁵ Costs are tracked in the Public Purpose Program.

PROPOSED RESOLUTION

Resolution W-5255
WD

March 16, 2023 (Rev. 2)

A formal proceeding was developed to review and authorize the AMP programs for energy utilities. The same ratemaking treatment and review should be applied for water utility AMP programs.

Customer Protections

Arrearage relief is an important protection to provide relief to customers for unpaid water bills. In 2021, Assembly Bill 148 (Chapter 115, Statutes of 2021), formally established the California Water and Wastewater Arrearage Payment Program (CWWAPP) within the State Water Resources Control Board (Board), enumerating the program's requirements for water and wastewater system participation to distribute arrearage relief. Through the CWWAPP, the Board provided over \$300 million statewide to water utilities to cover customer arrearages incurred during the pandemic. The customers of the regulated water utilities, including Cal Water specifically received a total of \$54.8 million in arrearage relief from this program. Furthermore, the Department of Community Services and Development established the Low-Income Household Water Assistance Program (LIHWAP) which will provide \$116 million arrearage relief statewide for qualified low-income customers, including Cal Water customers, to assist with arrearages. LIHWAP payments began in June 2022 and will continue through August 2023. Consequently, depending on how LIHWAP payments are distributed to affected low-income customers, it is uncertain that Cal Water's AMP is needed at this time.

While arrearage relief allows customers to better manage unpaid bills to avoid disconnections, it does not completely prevent disconnections. Similarly, this is true for Cal Water's proposed AMP program. Cal Water customers would still be subject to disconnections for nonpayment even if they are enrolled in AMP. Cal Water's AMP simply provides an arrearage relief opportunity for a certain subset of customers and would not eliminate disconnections as customers must continue making payments to address arrearages.

Disconnections during the pandemic were halted with the water disconnection moratorium. Although the moratorium ended in February 2022, California law provides water customers added protection from disconnection. Specifically, the Water

PROPOSED RESOLUTION

Resolution W-5255
WD

March 16, 2023 (Rev. 2)

Shutoff Protection Act, codified in Health and Safety Code sections 116900 *et seq.*, requires public water systems with more than 200 service connections utilities to offer alternative payment plans before disconnecting customers.⁶

In addition, the California Water and Wastewater Arrearage Payment Program, codified in Health and Safety Code section 116773.4, provides reimbursements to community water systems for arrearages and revenue shortfalls resulting from unpaid bills during the COVID-19 pandemic bill relief period, and requires funding to be allocated relief to customers. It also prohibits community water system from discontinuing water service to customers due to nonpayment of past-due bills for customers participating in repayment plans, unless they miss the enrollment deadline or defaults on the payment plan.⁷

Consistent with these requirements, Cal Water stated that it “intends to continue to offer payment arrangements and payment extensions once the disconnection moratorium is lifted.”⁸ Based on Water Division’s review of Cal Water’s transition plan provided for in AL 2407-A, Cal Water made extensive efforts to properly notify customers of the expiration of the water disconnection moratorium and moved to place customers on alternative payment plans.

Consequently, customers qualifying for Cal Water’s proposed AMP program are protected from water service disconnection through existing legislation and state policies.

⁶ The Water Shutoff Protection Act, codified in Health and Safety Code sections 116900 *et seq.*, was enacted by SB 998 (2018).

⁷ The California Water and Wastewater Arrearage Payment Program, codified in Health and Safety Code section 116773.4, was enacted in AB 148 (2021). It was amended by SB 155 (2021) to extend restrictions on discontinuing service to all community water systems whether or not they received funding under the program.

⁸ Cal Water Advice Letter 2407-A page 5.

PROPOSED RESOLUTION

Resolution W-5255
WD

March 16, 2023 (Rev. 2)

AFFORDABILITY

In February 2019, the Commission adopted an Environmental and Social Justice Action Plan (ESJ Action Plan) to serve as a roadmap to expand public inclusion in Commission decision-making processes to targeted communities across California. The ESJ Action Plan establishes a series of goals related to health and safety, consumer protections, program benefits, environmental issues, and enforcement in all the sectors the Commission regulates. On April 7, 2022, the Commission adopted Version 2.0 of the Plan to guide its decisions and to demonstrate that its broad regulatory authority continues to advance equity throughout the state.

This Resolution affirms Water Division's rejection without prejudice of Cal Water's request to implement an AMP program. As no action is authorized in this Resolution, the questions of affordability, and the applicability of Version 2.0 of the Commission's ESJ Action Plan with Cal Water's proposed AMP program should be resolved in a formal proceeding, and not through the Commission's advice letter/resolution process.

COMMENTS

Public Utilities Code section 311(g)(1) requires that a proposed resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution.

Comments were received by California Water Service Company on March 2, 2023. The Affordability Section above has been amended in response to Cal Water's comments on its proposed AMP program and the Commission's ESJ Action Plan. In all other respects, this resolution is unchanged from what was circulated for public comment.

FINDINGS AND CONCLUSIONS

1. California Water Service's (Cal Water's) proposed Arrearage Management Plan (AMP) program raises policy questions not suitable for an advice letter process.
2. Water Division's disposition letter rejecting without prejudice AL 2445 is in accordance with GO 96-B General Rule 7.6.1.

PROPOSED RESOLUTION

Resolution W-5255
WD

March 16, 2023 (Rev. 2)

3. Cal Water's proposed AMP program through the advice letter process is different from the AMP programs approved for the energy utilities through a formal proceeding.
4. Customer Water Disconnections during the COVID-19 pandemic were halted with the water disconnection moratorium imposed through the Governor's Executive Order N-28-20.
5. Although the water disconnection moratorium ended in February 2022, California law, through SB 998, provides water customers added protection from disconnection.
6. Health and Safety Code section 116900 et seq. requires water utilities to offer alternative payment plans to customers with unpaid bills before disconnecting them, and prohibits water utilities from disconnecting customers who are on alternative payment plans.
7. Health and Safety Code section 116773.4 prohibits community water system from discontinuing water service to customers due to nonpayment of past-due bills for customers participating in repayment plans, unless they miss the enrollment deadline or defaults on the payment plan.
8. Consistent with the Water Shutoff Protection Act, Cal Water made extensive efforts to properly notify customers of the expiration of the water disconnection moratorium and moved to place customers on alternative payment plans.
9. Water customers qualifying for Cal Water's proposed AMP program are protected from water service disconnection through existing legislation and state policies currently in place.

PROPOSED RESOLUTION

Resolution W-5255
WD

March 16, 2023 (Rev. 2)

THEREFORE, IT IS ORDERED THAT:

1. Water Division's rejection without prejudice of Cal Water's Advice Letter 2445 is affirmed.

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 March 16, 2023; the following Commissioners voting favorably thereon:

RACHEL PETERSON
Executive Director

PROPOSED RESOLUTION

Resolution W-5255
WD

March 16, 2023 (Rev. 2)

CALIFORNIA WATER SERVICE COMPANY SERVICE LIST

Natalie Wales

Nwales@calwater.com

Rami Kahlon

Rkahlon@calwater.com

Syreeta Gibbs

syreeta.gibbs@cpuc.ca.gov

Zaved Sarkar

Zaved.Sarkar@cpuc.ca.gov

Richard Rauschmeier

richard.rauschmeier@cpuc.ca.gov

PAO

publicadvocatesoffice@cpuc.ca.gov

Cal Water Service Lists for all Class A Districts