

Decision 23-03-048

March 29, 2023

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) to Obtain Approval of the Amended and Restated Water Purchase Agreement for the Pure Water Monterey Groundwater Replenishment Project, Update Supply and Demand Estimates for the Monterey Peninsula Water Supply Project, and Cost Recovery.

Application 21-11-024

ORDER DENYING REHEARING OF DECISION 22-12-001**I. INTRODUCTION**

In 1995 and 2009, the State Water Resources Control Board (SWRCB) issued cease-and-desist orders requiring California American Water (Cal-Am) to stop the unlawful diversion of water from the Carmel River in Monterey County.¹ (SWRCB Order WR 95-10 (Jul. 5, 1995); SWRCB Order WR 2009-0060 (October 20, 2009).) These SWRCB orders have triggered 28 years of efforts by Cal-Am and many other entities to provide alternatives to Carmel River water sources to Cal-Am's customers on the Monterey Peninsula.

The California Public Utilities Commission (Commission) adopted the Regional Desalination Project in 2010 in Decision (D.) 10-12-016² to address water shortage problems on the Monterey Peninsula. The 2010 Regional Desalination Project mainly consisted of: (1) a 10 million gallons per day (mgd) desalination plant owned,

¹ December 31, 2016 was deadline for compliance, which the SWRCB subsequently extended to December 31, 2021. (See SWRCB Order WR 2009-0060; SWRCB Order WR 2016-0016.)

² All citations to Commission decisions after July 2000 are to the official pdf versions which are available on the Commission's website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

operated, and maintained by the Marina Coast Water District (MCWD); (2) six source water wells owned, constructed, operated, and maintained by the Monterey County Water Resources Agency; and (3) an outfall for the return of brine to the sea to be owned, operated, and maintained by the Monterey Regional Water Pollution Control Authority, now operating as Monterey One Water (M1W). (D.10-12-016 at 58; D.22-12-001 at 4.) We considered a groundwater replenishment project at that time, but elected to not adopt it in our 2010 decision. (*Id.*)

The 2010 Regional Desalination Project was never built. In 2012, we revisited the 2010 Regional Desalination Project and determined that Cal-Am's withdrawal from that Project was justified given the insurmountable problems that were fatal to that Project and acknowledged that "we see no alternative but to move forward with ... the Monterey Peninsula Water Supply Project" instead to ensure reasonable water supply sources for the region. (D.12-07-008 at 19; D.22-12-001 at 4-5.)

As a result, in 2012, Cal-Am filed Application (A.) 12-04-019 for approval of the Monterey Peninsula Water Supply Project (MPWSP) to meet the water supply needs of Monterey Peninsula customers by 2016 from three sources: (1) aquifer storage and recovery (ASR); (2) groundwater replenishment; and (3) a desalination plant. Cal-Am proposed an either a 9.6 mgd desalination plant or a 6.4 mgd desalination plant paired with groundwater replenishment. (A.12-04-019 at 2; D.22-12-001 at 5.)

In 2016, we approved the groundwater replenishment component of the MPWSP called the Pure Water Monterey (PWM) Project. (D.16-09-021.) The PWM Project is operated by M1W and provides: (1) purified recycled water for recharge of a groundwater basin that serves as a drinking water supply; (2) purified recycled water for urban landscape irrigation within the MCWD service area; and (3) recycled water to augment the existing Castroville Seawater Intrusion Project's agricultural irrigation supply.³ (*Id.* at 2; see also D.22-12-001 at 5.)

³ It "also includes a drought reserve component to support use of the new supply for crop irrigation during dry years. M1W operates the wastewater treatment plant and sells the treated groundwater to Monterey Peninsula Water Management District (MPWMD). The

In 2018, the Commission issued a certificate of public convenience and necessity and approved a modified MPWSP, adopting a 6.4 mgd desalination plant with a groundwater replenishment component in D.18-09-017. (D.18-09-017 at 2.) We considered a proposal to expand the PWM Project adopted in D.16-09-021, but deferred approval of the Project in D.18-09-017 because at that time, the PWM Project was not yet a proven technology and it did not meet groundwater peak annual flow or peak day flow requirements for Cal-Am's water supply needs. (D.18-09-017 at 39-40.) However, we directed Cal-Am to study and report on the feasibility of the PWM Expansion Project and potential for entering into a related water purchase agreement by filing a Tier 2 Advice Letter (AL) within 180 days of the issuance of D.18-09-017. (*Id.* at 43.) Also, if the 6.4 mgd desalination plant was not expected to be completed by December 31, 2021, we allowed Cal-Am to file an application for approval of a water purchase agreement for an expansion to the PWM Project, for up to 2,250 AFY. (*Ibid.*) To date, the 6.4 mgd desalination plant has not been constructed.

In 2019, Cal-Am submitted AL 1231, as ordered in D.18-09-017, and reported that "the potential PWM expansion [was] still being developed and was not yet at a point where [Cal-Am] could determine whether it should be used." (AL 1231 at 2.) Cal-Am also stated that the authorized MPWSP desalination plant was proceeding according to schedule at that time and Cal-Am believed the desalination plant was

MPWMD was formed in 1978 pursuant to the Monterey Peninsula Water Management District Act, Water Code 118-1 to 118-901 to provide regional water supply planning within a 170 square mile area consisting primarily of the Monterey Peninsula and the Carmel Valley. MPWMD sells the treated water to municipal and public utilities, including Cal-Am. Under the Water Purchase Agreement (Original WPA) authorized by the Commission in 2016, M1W and MPWMD were contracted to supply 3,500 AFY of treated water to Cal-Am for a term of 30 years, at a first-year price of \$1,720/acre-feet (AF). The PWM Project was expected to begin operation in 2018.¹⁶ It began operation on February 7, 2020, delivering 990 AF in 2020 at a cost of \$ 2,442/AF¹⁷ with expectation to deliver 3,500 AF in 2021. Though the water deliveries during 2021 reached 300 AF/month at a cost of \$2,808,19 one of the wells used for groundwater extraction, ASR-1, became inactive in September 2021." (D.22-12-001 at 5-6.)

expected to come online prior to December 31, 2021. (*Ibid.*) At the same time, M1W worked to prepare the environmental document for the PWM Expansion Project, and on April 26, 2021, M1W certified the Supplemental Environmental Impact Report (SEIR) for the PWM Expansion Project. (D.22-12-001 at 8.)

On May 4, 2021, MPWMD filed a complaint, (C.) 21-05-005, before us, alleging that Cal-Am failed to ensure an adequate water supply to its customers on the Monterey Peninsula and requesting a Commission order requiring Cal-Am to enter into a water purchase agreement for the PWM Expansion Project. (C.21-05-005.) M1W, MPWMD, and Cal-Am eventually agreed on the terms for a water purchase agreement for the PWM Expansion Project in an Amended Water Purchase Agreement on September 22, 2021. (D.22-12-001 at 9, A.21-11-024 at 6.) In an October 26, 2021 Ruling, the assigned Administrative Law Judge (ALJ) in C.21-05-005 ordered Cal-Am to file an application for Commission consideration of the water purchase agreement within 30 days of the date of the ruling. (*Ibid.*)

In response, on November 29, 2021, Cal-Am filed A.21-11-024, for approval of the Amended and Restated water purchase agreement for the PWM Project expansion (Amended WPA). On March 3, 2022, we dismissed C.21-05-005 as moot. (D.22-03-038.) Application 21-11-024 involves the groundwater replenishment component of the MPWSP, which consists of two related projects: (1) the PWM Groundwater Replenishment Project (PWM Project) that we previously approved in D.16-09-021 and (2) 2,250 AFY expansion of the PWM Project (PWM Expansion Project), proposed in A.12-04-019, and not adopted in D.18-09-017.

In D.22-12-001 (Decision), we authorized Cal-Am to enter into the Amended WPA with the MPWD and M1W for the PWM Expansion Project. (D.22-12-001 at 2.) We also allowed Cal-Am to construct four Company-related facilities up to certain cost caps. (*Ibid.*) The Decision authorized Cal-Am to seek rate recovery for Company-related facilities costs up to the cost cap using a Tier 2 AL and to

request cost recovery for costs incurred above the cost caps through its next applicable general rate case filing. (*Ibid.*)

Cal-Am timely filed an application for rehearing of D.22-12-001 on December 30 2022. In its application for rehearing, Cal-Am contends that the Decision: (1) prevents Cal-Am from entering into the Amended WPA; (2) improperly limits and postpones recovery of reasonable costs for facilities that will be used and useful in providing service; and (3) erroneously reduces Cal-AM's Allowance for Funds Used During Construction (AFUDC) to a rate that was previously determined to be harmful.

The Public Advocates Office (Cal Advocates), Public Water Now, M1W, MCWD, MPWMD, and City of Marina filed timely responses to Cal-Am's application for rehearing of D.22-12-001, which we have reviewed and considered in addressing this application for rehearing. On March 15, 2023, Cal Advocates filed a Motion for Leave to File an Amended Response to Cal-Am's Application for Rehearing of the Decision (Motion). Cal-Am,⁴ M1W, MPWMD, Public Water Now, and City of Marina filed Responses to the Motion of Cal Advocates.

We have carefully considered Cal-Am's arguments and are of the opinion that the Decision should be modified. As modified, rehearing of D.22-12-001 should be denied.

II. DISCUSSION

A. **Cal-Am's Claim that the Decision prevents it from Entering into the Amended WPA Does Not Have Merit.**

Cal-Am states in its application for rehearing that it "cannot move forward with the Amended WPA because D.22-12-001 will cause the Company and its customers significant financial harm by preventing timely recovery of reasonable costs for facilities that will be used to obtain and distribute water from the PWM expansion and erroneously

⁴ Cal-Am filed a Response to Motion of Cal Advocates on the same day that Cal Advocates filed its Motion.

reducing the AFUDC rate, resulting in a multi-million-dollar downward adjustment.” (App. Rehg. at 8.)

Several parties to the proceeding filed comments on Cal-Am’s application for rehearing disputing Cal-Am’s claim that it cannot execute the Amended WPA now. M1W notes in its comments that “several years have now passed in which Cal-Am pursued, but did not complete, its CPUC approved desalination project.” (M1W Comments on App. Rehg. at 5.) M1W further observes: “The delay in developing the PWM Expansion has already resulted in increased costs for the PWM Expansion due to inflation, supply-chain issues and increased interest rates. Further delay in the execution of the WPA due to Cal-Am’s AFR on cost recovery issues will only exacerbate these problems.” (*Ibid.*) MPWMD asserts that Cal-Am did not meet the requirements of Rule 16.1 of the Commission’s Rules of Practice and Procedure, which outlines what parties must include in an application for rehearing. (MPWMD Comments on App. Rehg. at 2.)

Cal-Am claims that it stated in a 2021 memorandum of understanding that it “would only enter into the Amended WPA if the Commission approves California American Water’s recovery in rates of costs to be incurred for the facilities necessary for California American Water to obtain and use water from the PWM expansion.” (App. Rehg. at 6.) The Marina Coast Water District (MCWD) and the City of Marina raised the issue that Cal-Am relies on evidence not in the record to support its argument. (MCWD Comments on App. Rehg. at 7; City of Marina Comments on App. Rehg. at 8-9.) MCWD asserted:

CalAm improperly relies on an extra-record 2021 Memorandum of Understanding among it, MPWMD and Monterey One Water to support a demand for greater rate recovery for its new PWM Expansion facilities. Nowhere in the Application’s references to this Memorandum of Understanding does CalAm explain how the parties or the Commission were to understand, based on Application 21-11-024 and the record evidence, that CalAm’s ratemaking proposals were not proposals at all but a take-it-or-leave-it ultimatum from the utility that the utility would later seek to justify by relying on an extra-record agreement.

(Comments of MCWD on App. Rehg. at 7.)

We have an obligation to ensure that Cal-Am provides a safe and adequate water supply to its customers on the Monterey Peninsula. (See, e.g., Pub. Util. Code §§ 451, 761, and 762;⁵ see also City of Marina Comments on App. Rehg. at 5.) The SWRCB orders also provide that Cal-Am must stop diverting water from the Carmel River and must find other safe and reliable sources of water for its customers. (SWRCB Order WR 2009-0060; SWRCB Order WR 2016-0016.)

Cal-Am can move forward with the Amended WPA, but it has chosen not to at this time unless we grant some or all of the recovery it requests. As discussed below, the Decision does not contain legal error. Nevertheless, the Decision does contain some factual inaccuracies which should be corrected, and we make other modifications to the Decision, as discussed below.

B. Whether the Exclusion of Pro-Rated Costs for EW-3 and EW-4 is Based on Factual Errors and Constitutes Legal Error

Cal-Am claims that the Decision's reduction of cost caps for Extraction Well (EW)-3 and EW-4 is based on two factual errors. (App. Rehg. at 10.) First, Cal-Am contends that the Commission wrongly assumed that EW-3 and EW-4, as proposed in its application, are not the same wells as the aquifer storage and recovery (ASR) wells (ASR-5 and ASR-6) that we approved in D.10-12-016, and again in D.18-09-017. (*Ibid.*) Second, Cal-Am disagrees with the Decision's determination that D.18-09-017 rejected EW-3 and EW-4. (*Ibid.*) Cal-Am argues that "by excluding allocated costs from the cost caps for the parallel pipeline and extraction wells, the Commission postpones California American Water's opportunity to recover reasonable costs associated with facilities that will be used and useful in providing service to customers." (*Id.* at 14.) Finally, Cal-Am asserts that the Decision's discussion of a saturation adjustment is misguided. (*Id.* at 15-16.)

⁵ All statutory references are to the Public Utilities Code, unless otherwise noted.

1. The Record Does Not Support the Conclusion that EW-3 and EW-4 are the same as ASR-5 and ASR-6.

Cal-Am's claim that EW-3 and EW-4 are the same wells as ASR-5 and ASR-6 is not supported by the record of this proceeding. There are two places in the record where Cal-Am purportedly claimed that EW-3 and EW-4 are the same wells as ASR-5 and ASR-6. One place is in Cal-Am's Testimony of Ian Crooks. Table 1 regarding Cal-Am facilities included as part of that testimony states only: "Extraction Wells Nos. 3 & 4 and Pipelines (aka ASR 5 & 6)." (Testimony of Ian Crooks, CAW-01, at 24; App. Reh. at 11.)⁶ Cal-Am also points to a schematic it provided which referred to "Proposed Extraction Wells 3-4 (aka ASR 5-6, Fitch Park)." (*Id.* at Attachment E; App. Reh. at 11-12.)

In its comments on the Proposed Decision (PD), Cal-Am further elaborated on its argument that EW-3 and EW-4 are the same as ASR-5 and ASR-6:

Additionally, the PD describes EW-4 and EW-5 [sic]⁷ and as being "sited in the same location as wells ASR-5 and ASR-6, which were approved for the ASR project as part of the MPWSP." EW-4 and EW-5 [sic] wells are not just sited on the same location as ASR-5 and ASR-6 well, they are the same well facilities. This is similar to the Carmel Valley Pump Station. While the name and potential use of these facilities have evolved and expanded over time, the work that CAW did when the facilities were referred to as ASR-4 and ASR-5, and the costs it incurred for that work, are applicable to EW-4 and EW-5 [sic]. Notably, the PWM expansion SEIR makes use of the prior environmental review of ASR-5 and ASR-6 in its analysis for facilities necessary for PWM expansion, thus making these costs directly attributable to PWM expansion. When CAW puts EW-3 and EW-4 into service, CAW's customers will receive the benefit of the "design, planning, and environmental review" costs attributable to ASR-5 and ASR-6. The PD therefore errs in excluding these costs from the cost cap for EW-3 and EW-4.

⁶ This testimony was originally served on November 29, 2021, and a corrected version was served on December 21, 2021.

⁷ Cal-Am mistakenly refers to EW-3 and EW-4 as EW-4 and EW-5.

(Cal-Am Comments on PD at 8 (citations omitted).)

Cal-Am also references the Supplemental Environmental Impact Report for the Proposed Modifications to the Pure Water Monterey Groundwater Replenishment Project (SEIR) in its Comments on the PD. (App. Reh'g. at 13.) That same SEIR also states: "Some of the proposed CalAm Facilities are located at the same sites as components of the approved MPWSP, such as Extraction Wells 3 and 4, which are located at the same sites as the ASR-5 and ASR-6 wells in the MPWSP." (SEIR at 4-98.)⁸

Cal-Am did not elaborate further or provide any additional evidence to support its claim that EW-3 and EW-4 are the same as ASR-5 and ASR-6. ASR Wells and Extraction Wells serve different purposes and are not interchangeable. We did not approve extraction wells at the sites where ASR-5 and ASR-6 are located. Contrary to Cal-Am's argument, the SEIR makes it clear that EW-3 and EW-4 are not the same wells as ASR-5 and ASR-6:

Extraction Wells 3 and 4 would be located just to the east of General Jim Moore Boulevard, near the southeast corner of the intersection of General Jim Moore Boulevard and Ardennes Circle on U.S. Army-owned property in the Fitch Park neighborhood of the Ord Military Community. Extraction Wells 3 and 4 would be designed consistent with the Aquifer Storage and Recovery (ASR) Wells 5 and 6 as analyzed in previous environmental documentation prepared for the MPWSP; however, these wells would only include the capability to extract and treat groundwater, and would not include any above-ground facilities needed to enable injection.

(SEIR, Appendix K at 6 (emphasis added).) Thus, extraction wells and aquifer recovery and storage wells serve different purposes and are not interchangeable.

Rule 13.15(a) of the Commission's Rules of Practice and Procedure (Rules) states: "A proceeding shall stand submitted for decision by the Commission after the taking of evidence, the filing of briefs, and the presentation of oral argument as may have

⁸ Final-SEIR-Proposed-Modifications-PWM-GWR-Project-April-2020.pdf (purewatermonterey.org).

been prescribed.” Rule 14. 3(c) provides: “Comments shall focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight. Comments proposing specific changes to the proposed or alternate decision shall include supporting findings of fact and conclusions of law.” (Rule 14.3(c).) The proceeding was submitted for decision prior to Cal-Am filing comments on this issue in the PD. Comments on a proposed decision are not part of the record of a proceeding. Further, Cal-Am was unable to point to factual, legal, or technical errors in the PD with regard to this issue. Cal-Am does not provide sufficient evidence to show that EW-3 and EW-4 are the same as ASR-5 and ASR-6.

Some of the parties filed comments in support of the Decision on this issue. For example, MCWD observes:

If Extraction Wells 3 and 4 are the same as ASR Wells 5 and 6, as approved and certificated by the Commission in 2010 and again in 2018 (see Application p. 10, citing D.22-12-001), though not yet constructed, it begs the question of why CalAm sought a re-approval of the same infrastructure in this proceeding. As CalAm has explained elsewhere and as noted in its own Application, Pure Water Monterey (“PWM”) Expansion Wells 3 and 4 and ASR Wells 5 and 6 are not identical facilities, because the already-approved ASR wells would have provided both injection and extraction capacity for ASR, PWM and desalinated water, whereas the wells at issue here are proposed for extraction use in connection with the PWM Expansion.

(MCWD Comments on App. Reh'g. at 8.)

There is not sufficient evidence in the record to support Cal-Am’s claim that EW-3 and E-4 are the same wells as ASR-5 and ASR-6. Because Cal-Am did not meet its burden, there is no legal error as to this issue.

2. Cal-Am’s Argument that the Four Extraction Wells It Proposed in this Proceeding were not Rejected in a Prior Commission Decision.

Cal-Am also contends that we were incorrect in our statement that “all four extraction wells, were rejected by the Commission in D.18-09-017, and excluded from

the MPWSP prior to this application.” (App. Reh'g. at 10.) Cal-Am further claims that the Commission cannot cite to specific language in D.18-09-017 rejecting and excluding the extraction wells from the MPWSP and that there were no facilities proposed or rejected in connection with the PWM expansion in that proceeding. (*Ibid.*)

Decision 18-09-017 considered a proposed PWM expansion, and we elected not to adopt the expansion at that point in time. (D.18-09-017 at 39.) In choosing to decline to adopt the PWM expansion in that proceeding, A.12-04-019, we wrote:

The Commission supports the parties' efforts to explore expanding the PWM project. There are, however, many fundamental and threshold details that would need to be presented before the Commission could consider if PWM expansion could provide an affordable, specific, concrete, reliable, and permanent source of water for Cal-Am ratepayers. Further consideration of such efforts, if any, is not appropriate in this proceeding. This proceeding has been pending for over six years and it is timely to reach a decision on the instant application now.

(*Ibid.*) We also stated: “The evidence in the record in this proceeding is not sufficient to convince us that PWM expansion is a viable alternative at this point. Accordingly, there is no reason to consider further PWM expansion in this proceeding.” (*Id.* at 41.)

Decision 18-09-017 ordered Cal-Am to further inquire into the possibility of expanding the PWM Project, ordering: “Within 180 days of the date of this decision Cal-Am shall file a Tier 2 advice letter providing specific additional information and its assessment as to whether it intends to file an application with the Commission to pursue a Water Purchase Agreement (WPA) for additional water supply to be provided by a PWM expansion.” (*Id.* at 43; see also Ordering Paragraph (OP) 37 at 214.) In response to this directive in D.18-09-017, Cal-Am filed AL 1231, which stated that Cal-Am “does not intend to file an application seeking approval of a PWM expansion WPA at this time.” (AL 1231 at 1.) Cal-Am further stated in AL 231 that “The potential PWM expansion is still being developed and is not yet at a point where California American Water can determine whether it should be used to supply Monterey District customers[]” and “California American Water does not have all of the necessary information regarding the

sources of supply water, development costs, price of developed water, environmental effects, permitting requirements, water quality, sources of funding, and plans for related facilities.” (*Id.* at 2.) Cal-Am ultimately filed the instant application with the Commission to pursue an amended WPA for additional water supply to be provided by a PWM expansion.

Cal-Am is correct that D.18-09-017 does not specifically reject the four extraction wells at issue in this proceeding, EW-1, EW-2, EW-3, and EW-4. Although there is a possibility that these four extractions wells may have been included in the PWM Expansion Project that we considered in A.12-04-019 and elected not to adopt in D.18-09-017, the record in the current proceeding does not indicate whether these specific wells are part of the record of the prior iteration of the PWM Expansion Project. (See MCWD Comments on App. Rehg. at 8.) D.18-09-017 does not discuss extraction wells or any specifics of the PWM Expansion Project, and the Decision does not cite to specific language on this issue.

While this does not rise to the level of a legal error, to be accurate and clear, we will strike statements in the Decision indicating that D.18-09-017 specifically rejected the extraction wells at issue in this proceeding, and clarifying the reasoning as to why ratepayers should not bear the cost for the design and planning of wells ASR-5 and ASR-6, which were never built.

3. The Commission Did Not Commit Legal Error by Postponing Cal-Am’s Cost Recovery of Certain Facilities.

Cal-Am claims in its application for rehearing that “by excluding allocated costs from the cost caps for the parallel pipeline and extraction wells, the Commission postpones California American Water’s opportunity to recover reasonable costs associated with facilities that will be used and useful in providing service to customers. These costs will continue to accrue interest, increasing the eventual cost for customers.” (App. Rehg. at 13-14.) Decision 22-12-001 excluded these pro-rated costs from the cost caps for the Parallel Pipeline and the extraction wells, claiming that these facilities were

not contemplated as part of either the Regional Desalination Project or the MPWSP and stating that recovery in this proceeding should be limited only to “clearly attributable to the PWM Expansion Project.” (D.22-12-001 at 14-15.) Cal-Am claims that this limitation is unreasonable since the proposed facilities benefit its customers beyond its use of supplemental water from the PWM expansion. (App. Rehg. at 14-15.)

Cal-Am requests that we amend D.22-12-001 to be consistent with D.16-09-021, a decision issued in a prior proceeding, A.12-04-019, where we approved the Monterey Pipeline and pump station. (App. Rehg. at 13; D.16-09-021.) Cal-Am notes that in D.16-09-021, “the Commission found that it was reasonable to allocate a pro-rated portion of the engineering and environmental costs of the entire Cal-Am Facilities to the Monterey Pipeline and pump station.” (*Id.* at 14).

In determining the reasonableness of Cal-Am’s proposed revenue requirement under the cost cap for each Company-related facility, the Decision excluded costs not clearly related and connected to the PWM Expansion Project. (D.22-12-001 at 51.) Other costs that are clearly attributable to other projects, such as the Regional Desalination Project or the MPWSP, may be recovered for those projects. We have a duty to ratepayers to ensure that utilities do not recover costs for the same facility for different projects. As MPWMD states in its comments on Cal-Am’s application for rehearing, “[t]his is not an unreasonable limitation of cost recovery nor an unreasonable delay.” (MPWMD Comments on App. Rehg. at 3-4.) The Decision does not contain legal error on this issue.

The discussion in the Decision on the issue of postponing cost recovery of certain facilities mentions that D.18-07-019 rejected the four extraction wells and specifically rejected EW-3 and EW-4. (*Id.* at 54, 55.) As previously discussed, we will strike this language from the Decision.

4. Cal-Am May Serve Testimony to Justify Increasing the Cost Cap for EW-3 and EW-4

We find that Cal-Am has not met its burden in demonstrating that ASR-5 and ASR-6 are the same wells as EW-3 and EW-4. Further, we conclude that Cal-Am has not

shown that costs it incurred in the design, planning, permitting, and/or construction of ASR-5 and ASR-6 can and will be used for the design, planning, permitting, and/or construction of EW-3 and EW-4. For these reasons, we do not grant rehearing on the issue of the cost cap for EW-3 and EW-4 in this decision. However, we modify D.22-12-001 to give Cal-Am the opportunity to serve supplemental testimony, attaching any documentation, to demonstrate that ASR-5 and ASR-6 are the same wells as EW-3 and EW-4 and/or that work completed on the design, planning, permitting, and/or construction of ASR-5 and ASR-6 can and will be used for the design, planning, permitting, and/or construction of EW-3 and EW-4 in order to justify Cal-Am's requested \$41,018,272 cost cap. The schedule for serving supplemental testimony is as follows: Cal-Am may file supplemental testimony 21 days from the date of issuance of this decision; intervenors may file reply testimony 14 days from the due date of Cal-Am's supplemental testimony; and Cal-Am may file rebuttal testimony 7 days from the due date of the reply testimony of the intervenors. The assigned ALJ will set a briefing schedule and/or a date for hearings, if needed.

5. Saturation Adjustment

A saturation adjustment is "a type of rate base offset whereby the excess portions of an overbuilt utility plant or facility, financed or installed with equity capital, is excluded from rate base in determining the rates a utility can charge for service." (D.22-12-001 at 48, fn. 153, citations omitted.) The Decision contains a discussion about a saturation adjustment if Cal-Am's facilities are not "put into use as expected." (D.22-12-001 at 72.) However, a saturation adjustment was not discussed or adopted in the findings of fact, conclusions of law, or ordering paragraphs of the Decision.

Cal-Am states that a saturation adjustment is not applicable to Cal-Am or to the facilities at issue in this proceeding. (App. Rehg. at 16.) Cal-Am references Standard Practice (SP) U-3-SM, which addresses saturation adjustments and provides guidance to Commission staff in preparing results of operations reports for general rate increase cases

of Class B, C and D water companies or sewer companies. (SP U-3-SM at 2.)² It provides that a saturation adjustment also applies to Class A water utilities in circumstances where the Commission authorizes a Class A water utility to file for a general rate increase by advice letter instead of application. (*Ibid.*) As Cal-Am notes, SP U-3-SM It is not applicable to Cal-Am or the facilities at issue in this proceeding. (App. Rehg. at 16.)

Standard Practice U-3-SM states: “If the utility is new, often there will be installed facilities that are not yet used and useful. The facilities are removed from rates by use of a ‘saturation adjustment’.” (SP U-3-SM, Appendix B at 23.) As Cal-Am asserts, this project does not involve a new system with undeveloped lots or a small number of customers. (App. Rehg. at 16.) The facilities at issue in this proceeding “are tied to providing additional or supplemental source water supply for California American Water’s customers in the Monterey District and are needed to maximize the water supply provided under the Amended WPA and ASR, including optimizing transfers of other existing water supplies within California American Water’s system.” (*Id.* at 16-17, citing A.21-11-024 at 10.)

For these reasons, a saturation adjustment is not applicable to the facilities at issue in this proceeding. While a saturation adjustment was not ordered in the Decision, for the sake of clarity, we will strike the language from the Decision discussing the saturation adjustment.

C. Whether the Decision’s adopted AFUDC Constitutes Legal Error

A contested issue in this proceeding between Cal-Am and Cal Advocates is what AFUDC rate we should adopt for the Amended WPA. The Allowance for Funds Used During Construction (AFUDC) represents the cost of capital used to finance utility construction activity. Under an AFUDC, the cost of financing capital construction

² <https://docs.cpuc.ca.gov/published/REPORT/113896.htm>

projects is added to the cost of the asset. In the proceeding, Cal-Am proposed an AFUDC set at the rate of its actual costs:

Cal-Am calculates a total AFUDC of approximately \$7,741,935 based on its estimated revenue requirement for the four Company-related facilities. Cal-Am proposes to accrue AFUDC at the rate of its actual cost to fund construction, applying the actual cost to the net average monthly investment carried in the MPWSP Phase 1 Project Costs Memorandum Account. This includes \$7.4 million of short-term debt used to fund Cal-Am's MPWSP costs prior to October 2021. Cal-Am's actual cost of debt prior to October 2021 is reflected in its 7.61% rate of return, which consists of short-term and long-term debt and equity. Cal-Am's rate of return in 2022 and later years will be based on the rate of return adopted in the 2021 cost of capital proceeding (A.21-05-001).

(D.22-12-001 at 56.) Further, the equity portion of Cal-Am's proposed AFUDC rate is its full authorized return on equity. (Cal Advocate's Phase I Opening Brief at 14.)

The Decision rejected Cal-Am's proposal and instead adopted Cal Advocate's suggested AFUDC, which is Cal-Am's weighted average cost of debt as the AFUDC rate for the costs it has already incurred for the parallel pipeline and extraction wells, and for all the proposed facilities going forward. (D.22-12-001 at 56.) For the Carmel Valley Pump Station, we approved the AFUDC previously authorized by the Commission for this project in D.10-12-016 and D.18-09-017 until the issuance of D.22-12-001, at which point the weighted average cost of debt AFUDC rates apply. (*Id.* at 59.)

Cal-Am claims an extensive impact from our application of the weighted average cost of debt as the AFUDC rate for the costs already incurred for the parallel pipeline and extraction wells in D.22-12-001. Cal-Am asserts that it:

Will have to restate its AFUDC from the beginning of 2011 to remove the return on equity portion of AFUDC that the Company has capitalized for these facilities, and instead use of the weighted average cost of debt rate for capitalized interest. All capitalized plant for these facilities for the period 2011 through completion of

construction, which ranges from 2023 to 2025, will be based on California American Water's weighted average cost of debt. As discussed above, this will result in a multi-million dollar write off to California American Water's balance sheet. This will also change California American Water's capital structure, which will need to be addressed in the currently pending cost of capital proceeding (A.21-05-001). The substantial financial harm caused by the Commission's legal and factual errors regarding AFUDC for the facilities necessary to obtain and distribute water from the PWM expansion is one the reasons that California American Water cannot move forward with the Amended WPA.

(App. Rehg. at 19, citations omitted).)

Cal-Am argues that we erred in adopting a weighted average cost of debt AFUDC rate in the Decision for several reasons as discussed here. (*Ibid.*)

1. Whether D.18-09-017 Rejected the Facilities at Issue in the Decision.

Cal-Am states that the Commission "attempts to justify its reduction in the AFUDC rate for the costs already incurred for these facilities by claiming that it considered and rejected these facilities in D.18-09-017 and therefore, the AFUDC treatment adopted in that decision does not apply." (*Ibid.*) As previously discussed, Cal-Am is correct that D.18-09-017 did not contain a discussion about rejecting the facilities at issue in the Decision. Rather, D.18-09-017 included language stating that we did not have enough information to adopt at PWM Expansion Project at that time. (D.18-09-017 at 39.)

2. Whether Extraction Wells 3 and 4 Deserve the Same AFUDC Treatment as the Carmel Valley Pump Station.

Cal-Am notes that the Decision adopted the AFUDC previously authorized by the Commission for this project in D.10-12-016 and D.18-09-017 for the Carmel Valley Pump Station (formerly named the Valley Greens Pump Station) until the issuance of D.22-12-001, at which point the weighted average cost of debt AFUDC rate would apply. Cal-Am argues that if we do not amend the Decision and adopt its proposed

AFUDC, EW-3 and EW-4 should receive the same AFUDC treatment as the Carmel Valley Pump Station because it claims that EW-3 and EW-4 are the same wells as ASR-5 and ASR-6, which, like the Carmel Valley Pump Station, were approved in D.18-09-017.

As previously discussed, Cal-Am did not meet its burden to demonstrate that EW-3 and EW-4 are the same wells as ASR-5 and ASR-6. Therefore, Cal-Am's argument that EW-3 and EW-4 should receive the same AFUDC treatment as the Carmel Valley Pump Station is without merit.

3. Whether the Decision's Analysis on the AFUDC is Consistent with its Holding on the AFUDC.

Cal-Am argues that the AFUDC adopted in the Decision also constitutes legal error because our determination on the AFUDC is not consistent with our analysis in the Decision. (App. Rehg. at 20.) According to Cal-Am, the discussion in the Decision contradicts our adopted AFUDC rate. The Decision states that typically, the Commission has viewed "long-term, capital-intensive, or projects needing environmental review as higher risk, and has historically authorized an AFUDC rate at the utility's rate of return to reflect the risks or actual projected costs of the project." (D.22-12-001 at 58.) However, the Decision notes that "[i]f it can be shown that actual carrying costs are less than the authorized rate of return, (i.e., closer to the cost of debt), the Commission has, at times, adjusted the AFUDC to the cost of debt." (*Ibid.*; see also D.03-09-022.) In the Decision, we concluded that under the facts of the case, an AFUDC rate at Cal-Am's weighted average cost-of-debt is appropriate. We reasoned:

We have reviewed the PWM Expansion Project and find that length of the project, the capital-intensive nature of the project, and the multitude of pending environmental permits warrant use of an AFUDC rate at the weighted average cost-of-debt Cal-Am incurred. The PWM Expansion Project is expected to take an additional two to three years to complete, exceeding the one-year average for short-term projects. The PWM Expansion Project is also capital intensive, necessitating an estimated \$49,086,577 million in additional funding to construct or complete four extraction wells, a chemical treatment facility, a pump station, a 36-inch pipeline, and associated piping. Finally, water quality permits have proven to be a significant risk to

the success of the PWM Project and may continue to pose risks to the operation of the PWM Expansion Project. However, we do not include the equity component of Cal-Am's request in order to further incentivize timely completion of the PWM Expansion Project. Granting recovery at the weighted-average-cost-of-debt strikes a balance between Cal-Am's assumed risk for the project and ratepayer protections in the event that construction is unduly delayed. Accordingly, we authorize an AFUDC at the weighted average cost of-debt Cal-Am incurred over the course of the PWM Expansion Project for the EW-1/EW-2 facility, the EW-3/EW-4 facility, and the Parallel Pipeline.

(D.22-12-001 at 58-59.) Thus, while Cal-Am is correct that its proposed AFUDC is consistent with prior Commission practice, we also have the authority and the record evidence to support the adoption of the AFUDC rate in the Decision.

4. Whether Commission Precedent Supports the AFUDC Adopted in the Decision.

Cal-Am claims that two decisions cited by the Commission in D.22-12-001 do not support the AFUDC that the Commission adopted. (*Id.* at 20-22.) Cal-Am asserts that based on the precedent cited by the Commission, its AFUDC should be set at its authorized rate of return or actual carrying costs. (*Id.* at 22.) Specifically, Cal-Am argues that we misread D.03-09-022 and D.08-05-026 in its AFUDC analysis in D.22-12-001, and included a lengthy analysis of those decisions, both involving Cal-Am.

In D.08-05-036, we addressed the AFUDC rate for seismic safety costs that Cal-Am tracked in its San Clemente Dam memorandum account. According to Cal-Am, “[t]he Commission also reached two important legal conclusions. First, ‘Where possible, we want to match the regulatory carrying costs with the actual costs incurred.’ Second, ‘Setting the AFUDC rate below the actual current cost is harmful.’” (App. Rehg. at 21, citing D.08-05-026 at 16, COLs 2, 3.) We ultimately adopted an AFUDC set at Cal-Am's authorized rate of return for the San Clemente Dam memorandum account in D.08-05-036 because “[a]uthorizing a carrying cost less than that would not reflect the risks or actual project costs.” (App. Rehg. at 22, citing D.08-05-036 at 9.)

Decision 08-05-036 examined a prior Commission decision involving AFUDC for a Cal-Am project, D.03-09-022. In D.03-09-022, we adopted an AFUDC rate for Cal-Am’s Coastal Water Project (a predecessor to the current MPWSP). In that decision, we stated that the costs for the project would accrue interest at the 90-day commercial paper rate because it was unclear at that time “when (or whether) any plant construction will commence.” (App. Rehg. at 22, citing D.03-09-022, at 22.) In D.08-05-035, we distinguished Cal-Am’s Coastal Water Project addressed in D.03-09-022 from Cal-Am’s San Clemente Dam seismic safety project, stating in D.08-05-036: “At the time of the decision [D.03-09-022], the Company had not yet begun physical construction, the environmental review process had not begun, and there were questions regarding whether the project would ever be undertaken. We do not find its results applicable here.” (D.08-05-036 at 12.)

Decision 22-12-001 contains footnotes citing to D.08-05-036, but does not include any discussion of this decision. (D.22-12-001 at 58, fns 186-189.) The Decision briefly discusses D.03-09-022, but does not include an in-depth analysis of this decision. (*Id.* at 58.) As discussed below, given the flexibility we have in adopting an AFUDC, we did not commit legal error in adopting an AFUDC different than what Cal-Am proposed. Furthermore, Public Utilities Code section 1708 states:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

(Pub. Util. Code § 1708.)

Ultimately for the Commission’s consideration here, Cal-Am’s assertion that we committed legal error as to this issue is not supported. We have the discretion to determine which methodology to apply when determining AFUDC rates. (D.08-10-019 at 7.) There are “no explicit statutory guidelines” for our decisions regarding interest rates and we have “broad flexibility in reviewing the facts of a particular situation” and

“broad discretion.” (D.95-03-021 at 12.) We properly exercised our discretion, under the facts of the case, when we set the AFUDC rate at the weighted average cost of debt that Cal-Am incurred, and removing the equity component of the AFUDC rate in D.22-12-001. Furthermore, pursuant to Public Utilities Code section 1708, we may amend a prior order of the Commission, so long as we provide notice and an opportunity to be heard.

The Decision adequately explains the Commission’s reason for removing the equity component of the AFUDC rate, stating that the purpose of the chosen AFUDC rate is “to further incentivize timely completion of the PWM Expansion Project.” (D.22-12-001 at 59.) We also properly conclude that the “length of the project, the capital-intensive nature of the project, and the multitude of pending environmental permits warrant use of an AFUDC rate at the weighted average cost-of-debt Cal-Am incurred.” (*Ibid.*) We appropriately balance “Cal-Am’s assumed risk for the project and ratepayer protections.” (*Ibid.*)

Cal Advocates advocated for an AFUDC rate lower than Cal-Am’s proposal. In support of its proposed AFUDC rate, Cal Advocates reasoned:

The equity portion of Cal Am’s AFUDC rate is unfair to ratepayers. Acting as a substitute for competition, the Commission must prevent monopoly utilities from collecting from captive ratepayers amounts that would not be tolerated in a competitive environment. In a competitive environment, a business is allowed to capitalize interest during construction, but that interest cannot include profits allocable to shareholders. Because Cal Am’s proposed AFUDC rate includes an equity component, it includes a profit allocable to shareholders.

(Cal Advocates Phase I Opening Brief at 14-15, citations omitted; see also Cal Advocates Comments on App. Rehg. at 3-5.) The Decision provides a rational basis for adopting the AFUDC rate for Cal-Am’s facilities based on record evidence and prior Commission decisions.

However, because we found in the Decision that Cal-Am’s proposed facilities are long-term in nature, capital intensive, and require a multitude of

environmental permits, adopting an AFUDC for Cal-Am at its rate of return or actual cost to finance the Project is also supported by the record of this proceeding. Decision 18-07-019, issued in A.12-04-019, Cal-Am's application for approval of the Monterey Water Supply Project, followed a different approach to the AFUDC rate than the Decision. In D.18-07-019, the Commission adopted an AFUDC rate recovery at the "actual cost of funds Cal-Am uses to fund the project." (See D.18-09-017 at 144-145, 186, Finding of Fact (FOF) 150.) Although the Decision is not legally erroneous, we choose to be consistent with what we adopted in D.18-07-019, and modify the Decision to adopt Cal-Am's proposed AFUDC rate at the actual cost of construction.

III. REQUEST FOR ORAL ARGUMENT

Cal-Am requested oral argument in its application for rehearing. (App. Reh. at 28.) Several parties opposed Cal-Am's request for Oral Argument. (City of Marina Comments on App. Reh. at 16; MCWD Comments on App. Reh. at 11; MPWMD Comments on App. Reh. at 7; Cal Advocates Comments on App. Reh. at 6.) Rule 16.3 states that:

a request for oral argument should explain how oral argument will materially assist the Commission in resolving the application, and demonstrate that the application raises issues of major significance for the Commission because the challenged order or decision: (1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation; (2) changes or refines existing Commission precedent; (3) presents legal issues of exceptional controversy, complexity, or public importance; and/or (4) raises questions of first impression that are likely to have significant precedential impact. These criteria are not exclusive. The Commission has complete discretion to determine the appropriateness of oral argument in any particular matter.

(Rule 16.3.) We do not find that oral argument is necessary or warranted as it would not materially assist us in resolving this case.

IV. CONCLUSION

For these reasons, we modify D.22-12-001, and deny rehearing, as modified. We also deny the request for oral argument, since no good cause has been shown to grant this request. Rehearing of D.22-12-001, as modified, is denied.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.22-12-001, as modified, is denied.
2. The request for oral argument is denied.
3. The Header for Section 7.3 in the Table of Contents is hereby modified to read as follows: “Setting the AFUDC Rate.”
4. The Header for Section 9.7 in the Table of Contents is deleted.
5. Page 2, second paragraph, add new third sentence to read as follows: “This decision adopts an Allowance for Funds Used During Construction (AFUDC) rate at Cal-Am’s actual cost to fund construction.”
6. Page 45, top of page, lines 2-3 is hereby modified to read as follows: “(3) the AFUDC should be set at the rate of Cal-Am’s actual cost to fund construction, as discussed in Section 7.3.”
7. Page 48, Footnote 153 is deleted.
8. Page 54, first sentence of the second full paragraph is hereby modified to read as follows: “Turning to the two extraction well facilities, we first note that the Commission did not approve the PWM Expansion Project in D.18-09-017 and excluded the PWM Expansion Project from the MPWSP prior to this application.”
9. Pages 54-55, the last paragraph beginning on page 54 and continuing to Page 55, is hereby modified to read as follows: “Turning to the EW-3/EW-4 facility, we note that wells EW-3 and EW-4 are sited in the same location as wells ASR-5 and ASR-6, which were approved for the ASR project as part of the MPWSP. Cal-Am argues that ASR-5 and ASR-6 are the same wells as extraction wells EW-3 and EW-4.¹⁰ We have not seen sufficient evidence demonstrating that ASR-5 and ASR-6 are the same as EW-3

¹⁰ Cal-Am Opening Comments on the Proposed Decision at 8.

and EW-4. ASR-5 and ASR-6 were never built and therefore, ratepayers never received the benefit of their use as part of the ASR program. Also, the EW-3/EW-4 facility is still in the permitting and design phase, and the adopted budget should reflect this early stage of project development. Accordingly, at this time, we find it appropriate to exclude the 51% of common actuals for the MPWSP through 2021 allocated to the EW-3/EW-4 facility, reducing the cost cap by \$10,797,064, from \$41,018,000 to \$30,220,960, as reasonable. However, we will give Cal-AM the opportunity to serve supplemental testimony in this proceeding, attaching any documentation, to demonstrate that (a) ASR-5 and ASR-6 are the same wells as EW-3 and EW-4 and/or (b) the design, planning, permitting, or construction originally performed for ASR-5 and ASR-6 can and will be used for EW-3 and EW-4 in order to justify Cal-Am's requested \$41,018,272 cost cap. We will also give intervenors 14 days to file rebuttal testimony. We will follow the schedule below to serve testimony:

- Cal-AM Supplemental Testimony due: 21 days from the issuance date of this decision.
- Intervenor Reply Testimony due: 14 days after Supplemental Testimony is due.
- Cal-Am Rebuttal Testimony due: 7 days after Intervenor Reply Testimony is due.
- The assigned Administrative Law Judge will set a briefing schedule and/or a date for evidentiary hearings, if needed."

10. Top of Page 56, Header 7.3 is hereby modified to read as follows: "Setting the AFUDC Rate."

11. Page 56, last full paragraph, first sentence is hereby amended to read as follows: "This decision adopts the AFUDC at the rate of Cal-Am's actual cost to fund construction, applying the actual cost to the net average monthly investment carried in the MPWSP Phase 1 Project Costs Memorandum Account."

12. Page 58, last paragraph, first sentence is hereby amended to read as follows: "We have reviewed the PWM Expansion Project and find that length of the project, the capital-intensive nature of the project, and the multitude of pending environmental permits warrant use of an AFUDC rate at Cal-Am's actual cost to fund

construction, applying the actual cost to the net average monthly investment carried in the MPWSP Phase 1 Project Costs Memorandum Account.”

13. Page 59, first paragraph, beginning at line 7, remove the following two sentences: “However, we do not include the equity component of Cal-Am’s request in order to further incentivize timely completion of the PWM Expansion Project. Granting recovery at the weighted-average-cost-of-debt strikes a balance between Cal-Am’s assumed risk for the project and ratepayer protections in the event that construction is unduly delayed.”

14. Page 59, first paragraph, last sentence is hereby amended to read as follows: “Accordingly, we authorize an AFUDC at the rate of Cal-Am’s actual cost to fund construction Cal-AM incurred over the course of the PWM Expansion Project for the EW-1/EW-2 facility, the EW-3/EW-4 facility, and the Parallel Pipeline.”

15. Pages 59-60, the last sentence beginning at the end of page 59, is hereby amended to read as follows: “From the effective date of D.18-09-017 to the present and through the effective date of this Decision, Cal-Am may recover the AFUDC rate at the actual cost of funds used to fund the Project.” (Original footnote remains.)

16. Page 66, add the following three sentences to the end of first full paragraph: “Nevertheless, we are persuaded by Cal-Am’s arguments regarding consistent allocation of AFUDC. We revise the proposed decision and adopt an AFUDC rate at Cal-Am’s actual cost of construction. Therefore, Cal-Am’s concerns about retroactive ratemaking are moot.”

17. Pages 66-67, second full paragraph starting on page 66, and ending on page 67, is hereby modified to read as follows: “This decision recognizes that the Valley Greens Pump Station, approved by the Commission in D.10-12-016, authorizes an AFUDC recovery at an initial rate of four percent that Cal-Am may true-up to reflect actual carrying costs, from the effective date of D.10-12-016 to the effective date of D.18-09-017. Based on Cal-Am’s ability to true up its rates to the actual carrying costs, this decision is amended for consistency with prior precedent and allows recovery for all

costs related to the PWM Expansion Project at the actual cost of construction.” (Original footnote remains.)

18. Pages 71-72, Section 9.7, “Use of a Saturation Adjustment,” is deleted in its entirety.

19. Page 82, Finding of Fact 59 is hereby modified to read as follows: “The Commission did not approve the PWM Expansion Project in D.18-09-017 and excluded the PWM Expansion from the MPWSP prior to this application.”

20. Page 85, Conclusion of Law 17 is hereby modified to read as follows: “A cost cap of \$30,220,960 for the EW-3/EW-4 facility is reasonable. Cal-Am may serve supplemental testimony in the proceeding and attach documentation demonstrating that (a) ASR-5 and ASR-6 are the same as EW-3 and EW-4 and/or (b) work it previously completed on ASR-5 and ASR-6 is or will be used to design and construct EW-3 and EW-4 to justify a higher cost cap up to its requested cost cap of \$41,018,272. Cal-Am may serve supplemental testimony within 21 days of the date of issuance of this decision; Intervenor Reply Testimony is due 14 days after Supplemental Testimony is due. Cal-Am’s Rebuttal Testimony is due 7 days after Intervenor Reply Testimony is due. The assigned administrative law judge will set a briefing schedule and/or a date for evidentiary hearings, if needed.”

21. Page 86, Conclusion of Law 21 is hereby modified to read as follows: “The actual cost to fund construction should be used to calculate the AFUDC for the EW-1/EW-2 facility, the EW-3/EW-4 facility, and the Parallel Pipeline.”

22. Page 86, Conclusions of Law 22 and 23 are deleted.

23. Page 89, Ordering Paragraph 11, subsection 2, is hereby modified to read as follows: “(2) \$30,220,960 for extraction wells EW-3 and EW-4 and related piping, unless Cal-Am demonstrates by serving supplemental testimony in this proceeding within 21 days of the issuance date of this decision that a higher number is justified up to its requested cost cap of \$41,018,272 because ASR-5 and ASR-6 are the same wells as EW-3 and EW-4 and/or work done for ASR-5 and ASR-6 is or will be used to design, plan, permit and/or construct EW-3 and EW-4. Intervenor will have the opportunity to serve

reply testimony, and Cal-Am may serve rebuttal testimony according to the schedule set forth in this decision. The assigned administrative law judge will set a briefing schedule and/or a date for evidentiary hearings, if needed.”

23. This proceeding, A.21-11-024, remains open.

This order is effective today.

Dated March 29, 2023 at San Francisco, California.

ALICE REYNOLDS

President

GENEVIEVE SHIROMA

DARCIE L. HOUCK

JOHN REYNOLDS

Commissioners

Commissioner Karen Douglas, being
necessarily absent, did not participate.