Decision 24-04-012 April 18, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California Water Service Company (U60W) to Modify the Scope of its PFAS Memorandum Account to Include Capital Costs and Provide for Periodic Rate Base Adjustments.	Application 23-09-002

DECISION DISMISSING WITHOUT PREJUDICE CALIFORNIA WATER SERVICE COMPANY'S REQUEST TO MODIFY THE SCOPE OF ITS PFAS MEMORANDUM ACCOUNT TO INCLUDE CAPITAL COSTS AND PROVIDE FOR PERIODIC RATE BASE ADJUSTMENTS

Summary

This decision dismisses, without prejudice, the request of California Water Service Company to modify the scope of its to modify the scope of its Polyfluoroalkyl Substances Memorandum Account to include capital costs and request periodic rate base adjustments through a Tier 2 Advice Letter. This decision closes the proceeding.

1. Background

On September 5, 2023, California Water Service Company (Cal Water) filed Application (A.)23-09-002 requesting Commission approval to modify the scope of its Polyfluoroalkyl Substances (PFAS) Memorandum Account to include capital costs and provide for periodic rate base adjustments. Specifically, Cal Water noted that its system may require improvements to comply with federal drinking water regulations for PFAS and requested that the associated

capital costs be tracked in its PFAS Memorandum Account. Cal Water proposed that approval of any capital costs tracked in Cal Water's PFAS Memorandum Account would be subject to future review by the Commission. Cal Water requested that the review of the rate base offsets for its PFAS capital projects be reviewed via Tier 2 Advice Letters, pursuant to General Order 96-B, Water Industry Rule 7.3.3(8)(ii).[1]

The Public Advocates Office of the California Public Utilities Commission (Cal Advocates) filed a timely protest on October 5, 2023. Cal Water replied to Cal Advocates' protest on October 13, 2023.

A prehearing conference (PHC) was held on January 12, 2024, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. During the PHC, Cal Advocates raised an oral motion requesting the Commission deny Cal Water's application, because it would result in ratemaking that has not yet been thoroughly approved by the Commission. Cal Advocates suggested that because the projected capital projects necessary to comply with Federal PFAS regulations have not yet been defined, it is impossible for the Commission and parties to review them for reasonableness. Cal Advocates argued that the Federal PFAS regulations had not yet been adopted at the time Cal Water filed A.23-09-002, so the potential capital projects necessary for compliance could not be predicted.[2] Finally, Cal Advocates stated the estimated capital costs would be better reviewed in Cal Water's 2024 General Rate Case (GRC) application, which is due in July 2024.[3]

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[1] A.23-09-002 at 1-4.

[2] The Federal PFAS regulations were issued on April 10, 2024.

[3] A.23-09-002 PHC Transcript at 13.

2. Factual Background

Cal Water requested to expand the types of costs tracked in its existing PFAS Memorandum Account because it anticipated those would exceed the costs approved in its 2021 GRC. Separately Cal Water requested to implement incremental customer rate increases associated with expenses and capital costs related to its PFAS compliance projects through Tier 2 Advice Letter which would only be subject to Water Division staff and A.23-09-002 party review.

Cal Water responded in writing to Cal Advocates' oral motion on February 2, 2024. It argued that its request to track capital costs in an existing memorandum (memo) account "is reasonable and consistent within standard ratemaking practices."

Cal Water's existing PFAS memo account was not created to track capital costs. As defined in its Advice Letter 2376-A pursuant to Resolution W-5226,

> 1. The purpose of the Polyfluoroalkyl Substances Memorandum Account (PFAS MA) is to track incremental expenses that are not otherwise covered in Cal Water's revenue requirement in order to comply with the regulatory standards set by the State Water Resources Control Board to detect, monitor, report, and remediate per- and polyfluoroalkyl substances (PFAS) (such as perfluorooctanoic (PFOA) and perfluorooctanesulfonic acid (PFOS)) in drinking water.
> 2. Applicability
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> The entries in the PFAS MA may include the following:
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> Costs for laboratory testing and monitoring, chemical and operating costs for treatment, customer / public notifications, special studies related to treatment options, and alternate water sources.[4]

[4] CPUC Sheet No. 12313-W, submitted August 27, 2020, and effective as of March 4, 2020.

Advice Letter 2376-A, which supplemented Cal Water's initial filing of Advice Letter 2376, specifically removed Cal Water's initial request to track capital carrying costs in its PFAS memo account.[5]

Cal Advocates responded to Cal Water's response to its oral motion to dismiss A.23-09-002 on February 8, 2024, which was admitted into the record via a February 15, 2024, ALJ ruling. Cal Advocates specifically noted that (1) it communicated its intention to advocate for the dismissal of A.23-09-002 to Cal Water on January 10, 2024, and (2) there are no existing regulatory compliance deadlines to support Cal Water's request to track capital costs in memorandum accounts instead of waiting to include capital costs in Cal Water's forthcoming 2024 GRC application.

3. Discussion

There are two issues currently before the Commission in A.23-09-002:

1) Whether Cal Water met its burden to present evidence sufficient to make a prima facie case for tracking capital costs in its existing PFAS memorandum account that was specifically created to track expenses related to PFAS regulatory compliance.[6]
2) Whether Cal Water should be authorized to request periodic rate offsets through a Tier 2 Advice Letter for Water Division

As clearly noted in the Commission's Division of Water and Audit's Standard Practice U-27-W, a memorandum (memo) account is:

> "an accounting device that, after approval by the Commission or upon statutory notice, may be used by a utility to record various expenses it incurs. The utility may later seek authorization from the Commission to recover the recorded amounts by passing them on to consumers in rates. The

[5] Advice Letter 2376-A at 1.

[6] A.23-09-002 at 2.

> establishment of a memo account does not guarantee that the utility will recoup the tracked amount, but a utility is precluded from recovering amounts not booked to a memo account. Memo accounts allow the Commission to consider recovery of utility expenses that have occurred in the past without incurring retroactive ratemaking."[7]

As the Applicant, Cal Water has the burden of proof to show that its requested relief is just and reasonable. Cal Water has failed to meet its burden to show that tracking capital costs in its existing PFAS memorandum account that was specifically created to track expenses related to PFAS regulatory compliance is just and reasonable. Cal Water did not define any specific projects or suggest any budget amount that could be directly attributed to compliance with the Federal PFAS standards. Should capital costs be tracked in Cal Water's existing PFAS memo account, the Commission and interested parties would have no way to judge their reasonableness because the proposed projects and their associated capital costs have not been identified.

Separately, Cal Water requested authorization to recover expense and capital costs tracked in its PFAS memo account via a Tier 2 Advice Letter.[8] General Order 96-B, Water Industry Rule 7.3.3(8) mandates that rate base offset requests be submitted via a Track 3 Advice Letter unless:

i. The rate base offset was already approved through a prior decision or resolution;
ii. The project scope is consistent with what the Commission approved; and
iii. The Commission's approval included a budget cap and the rate base offset request is at or below the budget cap.[9]

[7] Resolution W-5226, Ordering Paragraph 3.

[8] A.23-09-002 at 1, 4, and 9-11.

[9] General Order 96-B, Water Industry Rule 7.3.3(8).

In this instance, Cal Water's existing PFAS memo account does not track capital costs or carrying costs related to capital projects. Cal Water suggested that recovery of its rate base offset could fall under Water Industry Rule 7.3.3(8)(ii) above.[10] As previously noted, rate base offset cost recovery requests require a Tier 3 Advice Letter unless the Commission has already approved a budget or spending cap related to a specific project. Cal Water did not provide a project scope for the Commission or parties to review in A.23-09-002 so its rate base offset requests could not be compared be with any approved project scope, nor could the Commission or parties determine whether spending on those projects to be at or below a specific Commission-approved budget cap.

After considering A.23-09-002, Cal Advocates' protest, Cal Water's response to Cal Advocates' protest, discussion at the prehearing conference, Cal Water's filing addressing Cal Advocates oral motion to dismiss, and Cal Advocates' filing in response to Cal Water's response, we dismiss this application without prejudice.

Cal Water is already required to file detailed information about prospective capital costs associated with its State and Federal PFAS compliance projects in its 2024 GRC due in July 2024. Cal Water's existing PFAS memo account was created to track expenses associated with:

> "incremental expenses that are not otherwise covered in Cal Water's revenue requirement, to comply with the regulatory standards set by the State Water Resources Control Board (state board or SWRCB), to detect, monitor, report and remediate per- and PFAS in drinking water."[11]

[10] A.23-09-002 at 1-4.

[11] Advice Letter 2376-A at 1.

The capital costs associated with projects necessary to meet any new PFAS regulations were not considered when the Commission approved Cal Water's existing PFAS memo account.

Separately, any requests for amortization associated with expenses tracked in Cal Water's PFAS memo account should be submitted through a Tier 3 Advice Letter, given the Commission's existing rules and regulations described above.

Finally, Cal Water can request approval of its forecasted capital costs necessary to comply with California and Federal PFAS regulations for Commission review in its next GRC, or in a separate application that includes more details about the projects and their associated costs. The capital costs associated with projects Cal Water foresees as necessary for PFAS compliance have not yet been formally estimated before the Commission. Our staff and interested parties would not be able to adequately review them in this proceeding or evaluate their reasonableness if they are recorded in the existing PFAS memo account.

Cal Water's PFAS memo account remains limited to tracking expenses associated with specific compliance activities that were previously authorized in Resolution W-5226 and Advice Letter 2376-A. Cal Water may provide information about what projected system improvement projects it expects will be necessary, and their estimated costs, for Commission and party review in its next GRC filing.

4. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b)

requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

No party submitted public comments on A.23-09-002 as of the mailing of this proposed decision.

5. Conclusion

Cal Water's PFAS memo account, as created in Resolution W-5226 and authorized in California Public Utilities Sheet No. 12313-W, is specifically intended to track and seek recovery of expenses. Cal Water has failed to meet its burden to show that tracking capital costs in a memorandum account created solely for expenses is just and reasonable. Dismissal of this application is occurring without prejudice and Cal Water can request recovery of estimated capital costs associated with projects necessary to meet PFAS regulatory compliance in its next GRC or in a separate application that includes more specific cost information about the projects necessary for PFAS compliance.

Cal Water should continue to track authorized expenses in its existing PFAS memo account and request any rate base offsets associated with that memo account through a Tier 3 Advice Letter.

6. Procedural Matters

This decision affirms all rulings made by the Administrative Law Judge (ALJ) and assigned Commissioner in this proceeding. All motions not ruled on are deemed denied.

7. Comments on Proposed Decision

The proposed decision of ALJ Carolyn Sisto was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments on the Proposed Decision were filed by Cal Water on April 4, 2024, and Cal Advocates filed reply comments on April 9, 2024.

8. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Carolyn Sisto is the assigned ALJ in this proceeding.

Findings of Fact

1. Cal Water requested to amend its PFAS memorandum account to track capital costs for projects to comply with state and federal water quality requirements.
2. Resolution W-5226 authorized Cal Water to track expenses related to State PFAS regulatory compliance in a specific memorandum account.
3. Advice Letter 2376-A specifically excluded capital carrying costs from Cal Water's PFAS memo account.
4. The capital projects Cal Water anticipates will be necessary to comply with Federal PFAS regulations were not defined in A.23-09-002.
5. Capital costs associated with PFAS compliance projects were not authorized in the Commission's approval of Advice Letter 2376-A.
6. The Federal PFAS compliance requirements were adopted on April 10, 2024.
7. General Order 96-B, Water Industry Rule 7.3.3(8) requires rate base offsets to be processed through Tier 3 Advice Letters and Resolutions, which require full Commission approval.
8. Amortization of Cal Water's existing PFAS memorandum account falls under General Order 96-B, Water Industry Rule 7.3.3(7).

Conclusions of Law

1. As the Applicant Cal Water has the burden of proof to show that its requested relief is just and reasonable.

2. Cal Water's PFAS memorandum account was specifically designed to track expenses related to laboratory testing and monitoring, chemical and operating costs for treatment, customer / public notifications, special studies related to treatment options, and alternate water sources necessary to meet the California State Water Resources Control Board's regulations, pursuant to Resolution W-5226 and Advice Letter 2376-A.

3. Cal Water has not met its burden of proof to show that tracking capital costs in its PFAS memorandum account is just and reasonable.

4. Forecasted capital projects, and the associated costs, that Cal Water expects to be necessary for compliance with PFAS water quality requirements should be requested in Cal Water's next GRC or in a separate application.

5. Amortization of Cal Water's existing PFAS memo account should be requested and processed as a Tier 3 Advice Letter, pursuant to General Order 96-B, Water Industry Rule 7.3.3(7), and Standard Practice U-27-W.

O R D E R

IT IS ORDERED that:

1. Application 23-09-002 is dismissed without prejudice.

2. Application 23-09-002 is closed.

This order is effective today.

Dated April 18, 2024, at Sacramento, California.

ALICE REYNOLDS
President
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

Commissioner Matthew Baker recused himself from this agenda item and was not part of the quorum in its consideration.