

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



October 21, 2009

Draft Resolution W-4803
Agenda ID #8963

TO: All Interested Parties

Enclosed is draft Resolution W-4803 of the Division of Water and Audits. It will be on the Commission's November 20, 2009 agenda. The Commission may act then act on this resolution or it may postpone action until later.

When the Commission acts on a draft resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different resolution. Only when the Commission acts does the resolution become binding on the parties.

Parties to this matter may submit comments on this draft resolution. An original and two copies of the comments, with a certificate of service, should be submitted to:

Division of Water and Audits, Third Floor
Attention: Terence Shia
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Parties may submit comments on or before November 10, 2009. Parties may submit reply comments on or before November 17, 2009. The date of submission is the date the comments are received by the Division of Water and Audits. Parties must serve a copy of their comments on Golden State Water Company on the same date that the comments are submitted to the Division of Water and Audits.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft resolution, a table of authorities and appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on the factual, legal, or technical errors in the draft resolution, and shall make specific reference to the record or applicable law. Comments which fail to do so will be accorded no weight and are not to be submitted.

Persons interested in comments of parties may write to Terence Shia or telephone him at (415) 703-2213.

/s/RAMI S. KAHLON

Rami Kahlon, Director
Division of Water and Audits

Enclosures: Draft Resolution W-4803
Certificate of Service
Service List

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch

RESOLUTION NO. W-4803
November 20, 2009

R E S O L U T I O N

(RES. W-4803), THIS RESOLUTION APPROVES, WITH MODIFICATIONS, CALIFORNIA AMERICAN WATER COMPANY'S (Cal Am) PENDING ADVICE LETTERS (AL) 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W.

SUMMARY

This resolution approves, with modifications, Cal Am's pending Advice Letters 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W. All these ALs were filed pursuant to Standard Practice U-40-W, Instructions for Water Conservation and Rationing and Service Connection Moratoria, (SP 40)¹ and include requests to establish Tariff Schedule 14.1, Staged Water Conservation and Rationing Plan, (Schedule 14.1)² to address mandatory rationing that may be enforced if voluntary measures do not yield the necessary reduction in consumption. The governing water agencies³ that provide wholesale water to Cal Am, in response to the reduced allocation program from the Metropolitan Water District of Southern California (MWD), issued declarations to Cal Am that reduced its allocations to 15% below its 2004-2006 historical usage. Cal Am must then flow through this reduced allocation to its customers by determining its customers' current demands and

¹ SP 40 outlines the general procedure for utilities to request and implement Tariff Rule 14.1 and Schedule 14.1. Rule 14.1 is implemented in response to a utility's request for voluntary rationing from customers in order to reduce consumption. This may be accomplished by voluntary enforcement of water use restrictions.

² Schedule 14.1 is activated in response to a governing agency such as a water wholesaler or Metropolitan Water District declaring a water shortage and imposing mandatory rationing on a utility that may result in a reduction of customer water allocations based on a percentage of the customer's historical usage.

³ The governing water agencies are the 26 cities and water districts that comprise the membership of MWD.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

comparing these amounts to its total available water supply. Under Schedule 14.1, Cal Am must track the following in a memorandum account: (1) any additional revenues (in the form of volumetric penalties to customers for consumption over their allotments) generated from Schedule 14.1; (2) its incremental operating expenses incurred after the date Schedule 14.1 is activated; (3) any penalties paid to its water wholesalers; and (4) any additional revenues in the form of penalties paid by customers for violating water use restrictions.⁴

The Division of Ratepayer Advocates (DRA) protested AL's 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W. DRA raises concerns over the following issues:

1. Cal Am should resubmit requests for memorandum accounts to track the costs associated with Schedules 14.1 concurrent with AL requests to establish Schedules 14.1 for the memo account in the Los Angeles Service Areas of San Marino, Baldwin Hills, and Duarte and the Larkfield area.⁵
2. Cal Am has not met the five-prong test in establishing these memo accounts nor have they specified start and end dates.
3. Cal Am should not request recovery of the cost of implementing Tariff Rule 14.1 in these memo accounts.
4. Should Cal Am's requests to establish Schedules 14.1 filed as Tier 2 ALs and to activate Schedules 14.1 and more restrictive stages by means of Tier 1 ALs be permitted?
5. Cal Am should clarify the customer allocation process in how they are penalized, how that allocation will be determined, what the minimum ration will be, and how customers will be notified of their ration. Customers should also be allowed to "bank" water use from billing period to billing period.
6. Cal Am should clarify whether the Schedule 14.1 requests reflect the weighted average of the cutbacks based on the percentages of water available from each

⁴ Water use restrictions prohibit non-essential or unauthorized water usage by customers for such things as washing hard-surfaced areas which results in excess run-off and outside watering of vegetation during certain hours. Fines start at \$50 per instance at Stage 1 and 2 of Schedule 14.1 and increase incrementally by another \$50 with the activation of each higher stage.

⁵ AL's 800-W, 801-W, and 802-W were filed by Cal Am on September 2, 2009 to request establishment of Schedules 14.1 for its LA District subsystems: San Marino, Baldwin Hills, and Duarte.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

source, rather than passing through 100 percent of any particular source's shortage to ratepayers.

7. Cal Am should add a detailed appeal procedure to all of its Rule 14.1 and Schedule 14.1 requests including clearly defined criteria to address customer concerns that are likely to arise.

Although Cal Am originally filed the first of these AL's in early July, Cal Am was not in compliance with the procedure outlined in SP 40. The utility failed to hold public meetings in a timely fashion in between the date the AL's were filed and the requested effective dates. These meetings did not occur until the end of September through the middle of October. Also, Cal Am did not file its requests for Schedules 14.1 for its LA Districts until early September over two months after its requests for the associated memorandum accounts. These issues have delayed the process in validating these AL's. Thus, we resolve these matters as discussed below and order Cal Am to revise its tariffs as detailed in this Resolution.

BACKGROUND

Cal Am's LA Division serves approximately 27,200 customers in three physically separated subsystems: San Marino, Duarte, and Baldwin Hills. The district is served by wells and irrigation water utilizing Cal Am's groundwater rights and purchases from municipal wholesalers that are member agencies of MWD. Cal Am serves approximately 20,944 customers in its Coronado Service Area. All of the water supply for the Coronado District Customers is obtained from the City of San Diego, a member agency of the San Diego County Water Authority (SDWCA), which in turn is a member agency of MWD. Cal Am serves approximately 21,544 customers in its Village Service Area. All of the water supply for the Village District customers is obtained from Calleguas Municipal Water District (CMWD), which in turn is a member agency of MWD. Cal Am serves approximately 2,355 customers in its Larkfield District. Approximately half of the water supply for the Larkfield District is obtained from the Sonoma County Water Agency (SCWA).

Advice Letter Filings

AL's 766 & 774 were filed by Cal Am for its Village District on June 30, 2009 and July 2, 2009, respectively, in response to MWD implementing a reduced allocation program that would affect its member agencies, CMWD. CMWD supplies all of the water for the Village District customers. On April 14, 2009, MWD approved its reduced allocation plan, with an effective date of July 1, 2009. In the plan, MWD will limit supplies and impose penalty rates on member agencies for any water use above the target levels. As a result, MWD reduced CMWD's allocations for fiscal year 2009/2010 to 15% below CMWD's historical 2004-2006 average usage. In turn, CMWD has reduced Cal Am's

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

allocation based on MWD's reduction. With Cal Am's reduced allocation from CMWD, Village District Customers will have to reduce their usage from recent consumption levels in order for Cal Am to stay within CMWD's allocation. Additionally, CMWD is implementing the same penalty rate structure that MWD is imposing on its member

agencies. If Cal Am stays 15% or more below its historical average, there will be no penalty charges assessed to Cal Am. Cal Am's tariff contains a penalty rate structure for its customers that varies from its wholesalers.⁶

AL 774 was filed by Cal Am to request establishment of Schedule 14.1 while AL 766 was filed by Cal Am to request establishment of one memorandum account, the Village District Mandatory Conservation Rationing Implementation Memorandum Account (MEMCRIMA), which would track the following: (1) any additional revenues (in the form of volumetric penalties to customers for consumption over their allotments) generated from Schedule 14.1; (2) its incremental operating expenses incurred after the date Schedule 14.1 is activated; (3) any penalties paid to its water wholesalers; and (4) any additional revenues in the form of penalties paid by customers for violating water use restrictions.

AL 775 was filed by Cal Am on July 2, 2009 to request establishment of Schedule 14.1 for its Coronado District also in response to MWD's allocation program while AL 767 was filed by Cal Am on June 30, 2009 to request establishment of one memorandum account, the Coronado District Mandatory Conservation Rationing Implementation Memorandum Account (MEMCRIMA), which would track the same expenses as the other MEMCRIMA.

AL's 769, 770, and 771 were filed by Cal Am on June 30, 2009 to request establishment of memorandum accounts for its LA District subsystems: San Marino, Baldwin Hills, and Duarte. This Los Angeles District Mandatory Conservation Rationing Implementation Memorandum Account (MEMCRIMA) would track the same expenses as the other MEMCRIMA's except on a system-by-system basis.

AL 786 was filed by Cal Am on July 24, 2009 to request establishment of Schedule 14.1 for its Larkfield District while AL 773 was filed by Cal Am on July 2, 2009 to request establishment of one memorandum account, the Larkfield District Mandatory

⁶ Cal Am's customer penalty amounts differ from its water wholesaler by assessing monetary fines based on any violation for a customer's usage over their allocation and water use restrictions. For example, usages above 1Ccf and 100 ccf or greater are assigned the same penalty amount.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

Conservation Rationing Implementation Memorandum Account (MEMCRIMA), which would track the same expenses as the other MEMCRIMAs.

AL 784 was filed by Cal Am on July 24, 2009 to request establishment of Rule 14.1 for its Larkfield District while AL 772 was filed by Cal Am on July 2, 2009, to request

establishment of Rule 14.1 for its Southern California Districts, including Coronado, Village, and Los Angeles.

ALs 800-W, 801-W, and 802-W were filed by Cal Am on September 2, 2009 to request establishment of Schedules 14.1 for its LA District subsystems: San Marino, Baldwin Hills, and Duarte in response to MWD's allocation program.

DRA's Protests

On July 20, 2009, DRA filed protests to ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, and 775-W. In response to these AL's, DRA raised the following issues in its protest: (1) The relief requested in the advice letters would violate Commission Orders, D.90-08-055 and D.91-01-042, which state that rationing plans must be authorized by Commission resolution; (2) "The analysis, calculations, or data in the advice letter contain material error or omissions;" and (3) The relief requested in the advice letter is unreasonable.

On August 13, 2009, DRA filed protests to ALs 784-W and 786-W. In response to these ALs, DRA raised the following issues in its protest: (1) Change the tier filing of the Schedule 14.1 to a Tier 3; (2) "Add language to Section A.2 stating that the Tier 1 advice letter requesting activation of different stages of conservation and rationing will be filed with complete documentation of the reduction in water supply that has triggered the requested stage;" (3) Correct the material error in the calculation of customer allocation; (4) Require reductions in use that match the overall shortage in water supply; (5) "Specify the 'base period' that is used in calculating both the reduction in water supply for determining the stages and the reduction in customer usage for each stage;" and (6) Clarify that the penalties "reset" for each stage if a customer violates a restriction that was not listed in the previous stage.

On September 22, 2009, DRA filed protests to ALs 800-W, 801-W, and 802-W. In response to these ALs, DRA raised the following issues in its protest if DWA were to dispose of these ALs: (1) Cal Am should supplement ALs 800, 801, and 802 so that they are consistent with the corresponding Rule 14.1-SD; (2) Cal Am should address the unfair penalty situation; (3) Cal Am should hold public meetings that allow customers

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

to provide input to the rationing plan; and (4) These Tier 2 ALs should not be effective until authorized by a disposition or resolution.

Cal Am's Response

On July 28, 2009, Cal Am responded to each point of DRA's protest. Cal Am states that AL's 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, and 773-W are consistent with Commission precedent allowing Memorandum Account

treatment for conservation and rationing costs and meet the four-pronged test for Memorandum Accounts. The utility also asserted that DWA should authorize the advice letters effective as of the filing date arguing that SP 40 allows for utilities to file for establishment of a Schedule 14.1 through a Tier 2 AL under Section F - Mandatory Rationing. Finally, Cal Am alleges that DRA's claims fail to set forth reasonable or sufficient grounds for challenging Cal Am's ALs 772, 774, and 775 citing that Cal Am was merely complying with SP 40.

On August 3, 2009, Division of Water and Audits (DWA) suspended ALs 766-W, 767-W, 769-W, 770-W, 771-W, 773-W, 774-W, and 775-W and suspended AL 784-W and 786-W on September 24, 2009. On October 2, 2009, DWA suspended ALs 800-W, 801-W, and 802-W. Given the similarity of issues and for administrative efficiency, disposition of all these advice letters are addressed in this Resolution. Also on August 3, 2009, the DWA approved Advice Letter 772-W. Pursuant to Section 7.7.1 of General Order 96-B, the DRA requested Commission review on August 13, 2009, of the DWA's disposition of AL 772-W.

NOTICE AND PROTESTS

Cal Am gave public notice of the Water Conservation and Rationing Program for the Coronado, Larkfield, and Village Districts along with the LA Division sub-districts, San Marino, Duarte, and Baldwin Hills. All of the affected customers in Cal Am's Service Areas received notices in the mail about the Schedule 14.1 filings with the CPUC and the time and location for public meetings in its districts. Additionally, legal advertisements were placed in local newspapers in advance of the meetings. The public meetings informed customers of the background about Cal Am, the water shortage, and the impact of the proposed plan on customers. An outline was provided of Cal Am's Rule and Schedule 14.1 filing, including information about how customers can contact the Commission with comments. Cal Am also gave indoor and outdoor water efficiency tips and resources for more water conservation information. The utility also distributed free water conservation kits, kitchen and bathroom aerators, automatic shut-off nozzles, and brochures. Customers were also able to register to participate in Cal

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

Am's residential water survey program. A question and answer session followed Cal Am's presentation in order for customers to voice their concerns. The meeting minutes were then provided to DWA staff with customer comments and questions being noted.

In addition to DRA's protests, 6 letters in opposition were received from customers in regards to the above-mentioned advice letters. Many stated that the rationing program was unreasonable and unjust, since Cal Am was issuing penalties on a flat monetary scale compared to the penalties assessed by MWD and its member agencies on quantity rate basis. These letters also reference the tough economic times and the customers' current hardships of higher rates. A few also claimed that they did not understand why

they should be "punished" with a surcharge when they have been conserving water in response to the drought. Others disagreed with Cal Am's authorized rate of return being "guaranteed" through these rate recovery mechanisms.

DISCUSSION

We address DRA's concerns on the outstanding procedural and substantive issues that were raised in its protest. Our review of these issues raised by DRA is guided by Res. W-4781 (August 20, 2009) that authorized Schedules 14.1 and associated memorandum accounts for Golden State Water Company. This resolution establishes requirements to be included in Schedule 14.1 filings as stated in Section F - "Mandatory Rationing" in SP 40. The items we are requiring Cal Am to comply with are the following:

- 1) Establish customer water allocations at a percentage of historical usage with the corresponding billing periods of a non-drought year being the base. The base years shall be 2004-2006 as discussed in Res. W-4781.
- 2) Establish an allocation of a percentage of historical usage with the corresponding billing periods of a non-drought year being the base for consumption for users of process water (water used to manufacture, alter, convert, clean, grow, heat, or cool a product, including water used in laundries and car wash facilities that recycle the water used).
- 3) Establish a minimum allocation of a number of Ccf per month (one Ccf is one hundred cubic feet) for any customer regardless of historical usage.
- 4) Notice of the Tier 2 advice letter for establishing Schedule 14.1 and associated public participation hearing shall be provided to customers under General Order (GO) 96-B rules. Meeting minutes and customer comments from these public hearings shall be provided to the DWA.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

- 5) Cal Am should comply with all requirements Sections 350-358 of the California Water Code.
- 6) Cal Am should file new Tier 1 advice letters to revise ALs 774-W, 775-W, 786-W, 800-W, 801-W, and 802-W to reflect the effect of reduced allocations from Metropolitan Water District's member agencies and Sonoma County Water Agency on the supply for each District based on the total available water supplies (both purchases and Cal Am's own pumped water), compared with customer usage demand adjusted for (i) conservation programs, and (ii) adjustments to individual customer allotments due to appeals. Cal Am should also include all necessary documentation in its Tier 1 filings to activate Schedules 14.1 to allow a determination whether the proposed reductions are consistent with the above requirement.
- 7) Cal Am should add a note in Section C – Stages of Mandatory Conservation and Rationing of its Schedules 14.1 stating, "Activation of the specific stage and amount of reduction will be determined by the total available water supplies (both purchases and Cal Am's own pumped water), compared with customer usage demand (i) adjusted for conservation programs, and (ii) adjustments to individual customer allotments due to appeals.
- 8) Cal Am should supplement its currently filed Advice Letters to provide for customer penalty charges for usage above their allocations to be billed on a bi-monthly basis following the example set forth in Res. W-4781 that charges customers a penalty rate based on their current quantity rates. These penalty amounts shall be tracked in the Mandatory Conservation Rationing Implementation Memorandum Accounts along with the penalty charges that the water wholesaler imposes on Cal Am for exceeding its allocation.
- 9) Cal Am should include language in Section 4. "Disposition" of the Preliminary Statements of its Mandatory Conservation Rationing Implementation Memorandum Accounts stating that Cal Am shall stop booking costs to the memo accounts once the drought is over and all costs have been incurred and recorded. Requested amortization of memo account balances shall be considered in Cal Am's next GRC or other formal proceeding.
- 10) Cal Am should include language in the Special Conditions Section of its Tariff Schedule 14.1 stating that customer penalty charges for usage above their allocations will be billed on a bi-monthly basis starting no earlier than the date of the Tier 1 activation advice letter filing for that customer service area.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

Next, we address DRA's concerns with the following issues in Cal Am's filings:

1. *Cal Am should resubmit requests for memorandum accounts to track the costs associated with Schedules 14.1 concurrent with AL requests to establish Schedules 14.1, since Cal Am only filed AL's for these memo accounts in the Los Angeles Service Areas of San Marino, Baldwin Hills, and Duarte and the Larkfield area.*

Cal Am has submitted the AL's to request establishment of Schedules 14.1 for the Los Angeles Districts on September 2, 2009 through ALs 800-W, 801-W, and 802-W. Cal Am will still need to supplement this AL to comply with the mandates required as stated above in this Resolution.

2. *Cal Am has not met the five-prong test in establishing these memo accounts nor have they specified start and end dates.*

Cal Am utilized the five-prong test of reasonableness in requesting this memo account by stating the following: (1) Cal Am has no control over MWD's reaction to either the California drought condition or its proposed plan for rationing; (2) Cal Am's last general rate cases for these districts were filed prior to MWD's plans for rationing; (3) MWD's allocation plan has an effective date of July 1, 2009, while Cal Am's next general case for all of its districts is scheduled to be filed in 2010; (4) Cal Am believes that the amount of money involved is of a substantial nature; and (5) Cal Am believes this memorandum account has ratepayer benefits because its customers will benefit from conserving water supplies for the future or until natural replenishment can occur.

We will review the establishment of these memorandum accounts using the five-prong test⁷ we have used in past decisions dealing with establishment of memorandum accounts.⁸ Here, we will address each of these criteria in relation to Cal Am's AL filings:

- i. The expense is caused by an event of an exceptional nature that is not under the utility's control. The drought in California is in its third year and has affected Cal Am's water wholesalers by limiting the total amount of water available to be

⁷ See for example Res. W-4534 (2005).

⁸ See for example Res. W-4276 (2001) and D.08-03-020 (2008).

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

purchased. We agree with Cal Am that the reduced allotments of water from its wholesalers are not under Cal Am's control.

ii. The expense cannot have been reasonably foreseen in the utility's last General Rate Case (GRC) and the expense will occur before the utility's next scheduled rate case. Cal Am's last GRC in 2007 for these districts forecasted available water supplies with no indication of rationing, since its water wholesalers did not provide Cal Am with any evidence that this would occur in the near future. MWD's water rationing program and penalty provisions was not known until April 2009, well after Cal Am's latest rate case.

iii. The expense will occur before the utility's next scheduled rate case. Cal Am's next general rate case for all of its districts is scheduled to be filed in 2010, which would occur well past the effectiveness of rationing and limiting customer's water

usage. Customers' rationing response and the resulting penalties, if any, as well as Cal Am's operating and administrative costs of implementing Schedule 14.1 will occur before Cal Am's next scheduled rate case.

iv. The expense is of a substantial nature in the amount of money involved. The amounts recorded in each memo account may well reach 2% of projected operating costs considering they include the following: (1) its incremental operating expenses incurred after the date Schedule 14.1 is activated and (2) any penalties paid by Cal Am to water wholesalers. We have looked to the 2% of projected operating costs as a threshold representing a substantial expense.⁹ Given this, we believe the substantial financial prong is satisfied.

v. The ratepayers will benefit by the memorandum account treatment adopted. Ratepayers benefit in that those who have conserved water in the past and continue to do so will not be subject to penalties tracked in the memo accounts. Customers using water over their allotments will be paying penalties into this memo account that will offset penalties Cal Am may receive from its wholesaler, as well as potentially offsetting some or all incremental operating expenses resulting from the implementation of Schedule 14.1 if penalty amounts collected from customers exceed penalty amounts that Cal Am would be subject to from its wholesaler.¹⁰

⁹ See D.02-07-011 at p. 7.

¹⁰ This could occur if overall customer conservation efforts offset in whole or in part usage over historical allotments by some customers.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

Finally, all customers will benefit from water conservation efforts that work to ensure future supply availability.

Given our determination that Cal Am has met all five prongs for establishing a memorandum account, we authorize Cal Am to establish conservation memorandum accounts to track the following: (1) any additional revenues (in the form of volumetric penalties to customers for consumption over their allotments) generated from Schedule 14.1; (2) its incremental operating expenses incurred after the date Schedule 14.1 is activated; (3) any penalties paid to its water wholesalers; and (4) any additional revenues in the form of penalties paid by customers for violations of water use restrictions. Cal Am shall stop booking costs to the memo accounts once the drought is over and all costs have been incurred and recorded. Requested amortization of memo account balances shall be considered in Cal Am's next GRC or other formal proceeding.

3. *Cal Am should not request recovery of the cost of implementing Tariff Rule 14.1 in these memo accounts.*

We agree with DRA that Cal Am should not seek recovery for the costs to implement Tariff Rule 14.1, the voluntary conservation program begun in March 2009. Operating costs of administering the mandatory conservation program pursuant to this Resolution will be covered under the memo accounts we authorize here.

4. *Should Cal Am's requests to establish Schedules 14.1 filed as Tier 2 ALs and to activate Schedules 14.1 via Tier 1 ALs be permitted?*

We need not reach the procedural questions raised by DRA as this Resolution authorizes Cal Am's tariffs with specified revisions. Moreover, it would be best to provide an expeditious process for staff to approve these advice letters which, because they deal with imminent drought situations, are time sensitive. We have directed DWA to draft a revised SP 40 for our approval. DWA may consult with others as it believes desirable in the process of drafting these revisions, but in any event shall publish for public comment a draft resolution approving the revised SP 40.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

Requesting an activation of Schedule 14.1 or a change in a rationing stage¹¹ should require only a Tier 1 AL as the utility would be flowing through the changes mandated from the governing agency or a reduced availability of water from the utility's own supplies. Since the rationing stages required to activate Schedule 14.1 are reviewed through the Tier 2 AL process establishing Schedule 14.1, DWA, DRA, and other interested parties have the ability to review and address the Schedule 14.1 requirements. Once these requirements have been addressed, the utility should be able to request activation of individual rationing stages through a Tier 1 advice letter. DWA still retains the option of rejecting a Tier 1 AL should deficiencies with a utility's activation of Schedule 14.1 occur. We approve the Tier 1 advice letter process for activating rationing stages in a Schedule 14.1. These are time-sensitive decisions whose review and approval can be done by staff on a ministerial basis.

5. *Cal Am should clarify the customer allocation process in how they are penalized, how that allocation will be determined, what the minimum allocation will be, and how*

customers will be notified of their allocation. Customers should also be allowed to "bank" water use from billing period to billing period.

We agree with DRA that Cal Am needs to be more thorough in describing how it will establish water allocations for its customers, what the minimum allocation will be, how customers are to be penalized, and how customers will be notified of their allocation. We have adopted requirements from SP 40 outlined above to facilitate Cal Am's achievement of these requirements.

In regards to the "banking" issue, DRA commented in draft resolution W-4781 stating that there could be unintended negative consequences of an annual penalty structure for customers. For example, changing Cal Am's billing system to implement a "banking" system rather than assessing penalties on a bi-monthly billing period would be costly. DRA also states that there could be a potential "rate shock" for a customer that accumulates penalties through each billing period and is assessed a large penalty at the end of twelve months. Given these customer concerns associated with a program of banking differences between allocated and actual water usage, we will adopt penalty amounts calculated and paid on a bi-

¹¹ Each successive rationing stage is activated once the water supply to the utility is reduced by 5%, consequently leading to a reduction of 5% in customer allocation and a higher fine for a water use violation.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

monthly billing period. Cal Am shall file advice letters revising its tariff sheets to explicitly provide for penalty amounts to customers that are calculated on usages on a bi-monthly billing period basis above their annual allotments following the example set forth in Resolution W-4781 that charges customers a penalty rate based on their current quantity rates. These penalty amounts paid by the customers to Cal Am shall be tracked in the Mandatory Conservation Rationing Implementation Memorandum Accounts along with the penalty charges that the water wholesaler imposes on Cal Am for exceeding its allocation.

6. *Cal Am should clarify whether the Schedule 14.1 requests reflect the weighted average of the cutbacks based on the percentages of water available from each source, rather than passing through 100 percent of any particular source's shortage to ratepayers.*

We concur with DRA that Cal Am should explain in detail the percentage of water available from each of its sources and flow through this percentage accurately to its customers as we have adopted this methodology in Resolution W-4781 for Golden State Water Company (GSWC). California American Water Company should file new Tier 1 advice letters to revise Advice Letter Nos. 774-W, 775-W, 786-W, 800-W, 801-W, and 802-W to reflect the reduced allocations from Metropolitan Water District's member agencies and Sonoma County Water Agency on the supply for each District based on the total available water supplies (both purchases and Cal American Water Company's own pumped water), compared with customer usage demand adjusted for: (i) conservation programs, and (ii) adjustments to individual customer allotments due to appeals. Cal Am should also include all necessary documentation in its Tier 1 filings to activate Schedules 14.1 to allow a determination whether the proposed reductions are consistent with the above requirement.

7. *Cal Am should add a detailed appeal procedure to all of its Rule 14.1 and Schedule 14.1 requests including clearly defined criteria to address customer concerns that are likely to arise.*

Cal Am shall implement an appeal process similar to the procedure GSWC established in its Schedule 14.1 filings. Cal Am shall adopt an appeal form analogous to GSWC's to allow customers to explain any variance from their proposed allocation. Cal Am shall also adopt a review process comparable to GSWC in order to fully document a customer's need in relation to their allocation.

COMMENTS

Public Utilities Code Section 311(g) (1) provides that resolutions must generally be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, the draft resolution was mailed on October 21,

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

2009 to parties based on the service lists attached to the ALs for comments. Comments were received from _____ on _____; replies were received from _____ on _____.

FINDINGS AND CONCLUSIONS

1. California American Water Company filed Advice Letters No. 766-W & 774-W for its Village District on June 30, 2009 and July 2, 2009; Advice Letters 767-W & 775-W for its Coronado District on June 30, 2009 and July 2, 2009, respectively; Advice Letters 769-W, 770-W & 771-W and 800-W, 801-W, and 802-W for its LA Division's subsystems, San Marino, Baldwin Hills, and Duarte on June 30, 2009 and September 2, 2009, respectively; Advice Letter 772-W for its Southern California Districts on July 2, 2009; and Advice Letters 773-W, 784-W & 786-W for its Larkfield District on July 2, 2009.
2. The Division of Ratepayer Advocates filed protests on July 20, 2009, to Advice Letter Nos. 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, and 775-W; on August 13, 2009 to Advice Letters 784-W and 786-W; and on September 22, 2009 to Advice Letters 800-W, 801-W, and 802-W. Among the concerns raised in its protests, the Division of Ratepayer Advocates questioned the validity of the procedure for approving Schedule 14.1 filings and the associated memorandum accounts.
3. California American Water Company filed a reply for each of the protests to Advice Letters 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, and 775-W on July 28, 2009.
4. On August 3, 2009, the Division of Water and Audits approved Advice Letter 772-W.
5. Pursuant to Section 7.7.1 of General Order 96-B, the Division of Ratepayer Advocates requested Commission review on August 13, 2009 of the Division of Water and Audits disposition of Advice Letter 772-W.
6. The Division of Water and Audits suspended California American Water Company's Advice Letters 766-W, 767-W, 769-W, 770-W, 771-W, 773-W, 774-W, and 775-W on August 3, 2009; Advice Letters 784-W and 786-W on September 24, 2009; and Advice Letters 800-W, 801-W, and 802-W on October 2, 2009.
7. Requesting activation or a change in a rationing stage follows from changes mandated from the governing agency or a reduced availability of water from the utility's own supplies.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

8. Activations of rationing stages in Schedules 14.1 are time-sensitive decisions whose review and approval can be done by staff on a ministerial basis.
9. California American Water Company's rationing allocation methodology for its customers, based on a 15% reduction below historic 2004-2006 water usage, follows the allocation methodology implemented by its water wholesalers.
10. Penalties by California American Water Company's water wholesalers are calculated on a twelve-month basis.
11. California American Water Company's penalty implementation for its customers is based on a billing period allocation.
12. An annual penalty allocation will impose costs to program California American Water Company's billing system.
13. An annual penalty allocation may result in rate shock.
14. Establishment of the Mandatory Conservation Rationing Implementation Memorandum Accounts requested by California American Water Company was reviewed using the five-prong test previously used by the Commission.
15. Establishment of the Mandatory Conservation Rationing Implementation Memorandum Accounts satisfies all five prongs of the test.
16. California American Water Company's various Districts rely on differing percentages of water supplied from Metropolitan Water District of Southern California's member agencies and Sonoma County Water Agency.
17. California American Water Company's establishment of Tariff Schedule 14.1 is in response to reduced water allocation allotments imposed by the Metropolitan Water District of Southern California on its member agencies and Sonoma County Water Agency. The member agencies pass the reduced water allocation allotments to California American Water Company.
18. California American Water Company's activation of Tariff Schedule 14.1 is in response to reduced water allocation allotments from member agencies of the

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

Metropolitan Water District of Southern California and Sonoma County Water Agency.

19. California American Water Company should file new Tier 1 advice letters to revise Advice Letters 774-W, 775-W, 786-W, 800-W, 801-W, and 802-W to reflect the reduced allocations from Metropolitan Water District's member agencies and Sonoma County Water Agency on the supply for each District based on the total available water supplies (both purchases and Cal American Water Company's own pumped water), compared with customer usage demand adjusted for: (i) conservation programs and (ii) adjustments to individual customer allotments due to appeals. California American Water Company should also include all necessary documentation in its Tier 1 filings to activate Schedules 14.1 to allow a determination whether the proposed reductions are consistent with the above requirement.
20. California American Water Company should add a note in Section C – Stages of Mandatory Conservation and Rationing of its Schedules 14.1 stating, "Activation of the specific stage and amount of reduction will be determined by the total available water supplies (both purchases and Cal Am's own pumped water), compared with customer usage demand adjusted for (i) conservation programs and (ii) adjustments to individual customer allotments due to appeals.
21. California American Water Company should file new Tier 1 Advice Letters to revise Advice Letters 774-W, 775-W, 786-W, 800-W, 801-W, and 802-W to provide for penalty amounts to customers that are calculated on usages above their billing period allotments following the example set forth in Res. W-4781 that charges customers a penalty rate based on their current quantity rates. These penalty amounts shall be tracked in the Mandatory Conservation Rationing Implementation Memorandum Accounts along with the penalty charges that the water wholesaler imposes on California American Water Company for exceeding its allocation.
22. California American Water Company should include language in Section 4. "Disposition" of the Preliminary Statements of its Mandatory Conservation Rationing Implementation Memorandum Accounts stating that California American Water Company shall stop booking costs to the memo accounts once the drought is over and all costs have been incurred and recorded. Requested amortization of memo account balances shall be considered in Cal Am's next GRC or other formal proceeding.
23. California American Water Company should include language in the Special Conditions Section of its Tariff Schedule 14.1 stating that customer penalty charges

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

for usage above their allocations will be calculated and billed on a bi-monthly basis starting no earlier than the date of the Tier 1 activation advice letter filing for that district following the example set forth in Res. W-4781 that charges customers a penalty rate based on their current quantity rates.

THEREFORE IT IS ORDERED THAT:

1. California American Water Company may seek recovery of amounts recorded in its Mandatory Conservation Rationing Implementation Memorandum Accounts in its next general rate case filing or other formal proceeding.
2.
 - a. California American Water Company shall file Tier 1 advice letters to revise its Tariff Schedules 14.1 to include language in the Special Conditions Section stating that the penalty amounts to customers are based on usages above their allotments calculated on a bi-monthly billing-period basis.
 - b. California American Water Company shall file Tier 1 advice letters to state in its tariffs that the penalties described in part a. of this Ordering Paragraph are applied to usage starting no earlier than the date of the Tier 1 activation advice letter filing for that district or a later date specified in the tariff.
3.
 - a. California American Water Company shall file Tier 1 advice letters to add a note in Section C – Stages of Mandatory Conservation and Rationing of its Schedules 14.1 stating, “Activation of a specific rationing stage will be determined for each Customer Service Area based on the total available water supplies (both purchases and California American Water Company’s own pumped water), compared with customer usage demand adjusted for (i) conservation programs and (ii) adjustments to individual customer allotments due to appeals.”
 - b. California American Water Company shall include all necessary documentation in its Tier 1 filings to activate Schedules 14.1 to allow a determination whether the proposed reductions are consistent with part (a) of this ordering paragraph.
4. California American Water Company shall file Tier 1 advice letters to revise the tariff language for its Mandatory Conservation Rationing Implementation Memorandum Accounts to expressly state that these memorandum accounts track the following: (1) any additional revenues (in the form of volumetric penalties from

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

its customers for consumption over their allocations) generated from Schedule 14.1; (2) its incremental operating expenses incurred after the date Schedule 14.1 is activated; (3) any penalties paid to its water wholesalers; and (4) any additional revenues in the form of penalties paid by customers for violating water use restrictions.

5. California American Water Company shall file Tier 1 advice letters to include language in Section 4 “Disposition” of the Preliminary Statements of its Mandatory Conservation Rationing Implementation Memorandum Accounts stating that (i) Cal Am shall stop booking costs to the memo accounts once the drought is over and all costs have been incurred and recorded; and (ii) requested amortization of memo account balances shall be considered in California American Water Company’s next GRC or other formal proceeding.
6. The tariff schedules attached to Advice Letters 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W, 784-W, 786-W, 800-W, 801-W, and 802-W are approved with the modifications described in Ordering Paragraphs 1-5, effective as of the date of this Resolution.
7. The Tier 1 advice letter(s) required to be filed by this Resolution shall be filed within 10 days of the date of this Resolution. California American Water Company may combine the required tariff revisions into one or more advice letters.

Cal Am/ ALs 766-W, 767-W, 769-W, 770-W, 771-W, 772-W, 773-W, 774-W, 775-W,
784-W, 786-W, 800-W, 801-W, and 802-W/RSK/JB5/TS2/jlj

8. 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 November 20, 2009; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

CERTIFICATE OF SERVICE

I certify that I have by mail served a true copy of Resolution W-4803 on all parties in these filings or their attorneys as shown on the attached list.

Dated October 21, 2009, San Francisco, California.

/s/ Josie L. Jones
JOSIE L. JONES

Parties should notify the Division of Water and Audits, Public Utilities Commission, 505 Van Ness Avenue, Room 3106, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number of the service list on which your name appears.

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