

Decision 08-12-034 December 18, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Californian-American Water Company (U201W)
for an Order Authorizing (1) the Transfer of
Already-Incurred Costs for its Long-Term Water
Supply Solution for the Monterey District to Its
Special Request 1 Surcharge Balancing Account;
and (2) An Annual Review Process for the
Transfer of Pre-Construction Costs to the Special
Request 1 Surcharge Balancing Account.

Application 08-04-019
(Filed April 10, 2008)

DECISION APPROVING SETTLEMENT AGREEMENT

1. Summary

Today, we approve a comprehensive settlement agreement (Amended Settlement Agreement)¹ entered into by the California-American Water Company (Cal Am), the Division of Ratepayer Advocates (DRA) and the Monterey Peninsula Water Management District (MPWMD) (collectively "Settling Parties") for this proceeding.

Our approval of the Amended Settlement Agreement means that Cal Am is authorized to recover \$3,741,714, as compensation in full for all Coastal Water Project (Water Project) costs incurred through December 31, 2007. Cal Am will recover these costs from ratepayers through the Special Request 1 Surcharge (Surcharge 1) authorized by Decision (D.) 06-12-040. The Amended Settlement

Agreement adopted today does not affect Cal Am's ability to recover preconstruction costs incurred after December 31, 2007 and tracked in the memorandum account approved in D.03-09-022.

The Amended Settlement Agreement provides that:

1. Cal Am's requested recovery of \$3,888,831 is reduced by \$137,632, plus related interest of \$9,485 for disallowed costs.
2. Cal Am's Special Request 1 Surcharge Balancing Account (SRSBA) is reduced by \$185,893 for labor and labor related costs, which may be duplicative of authorized general rate case (GRC) expenses.
3. \$309,258.22 represents the full recovery of charges from ASR Systems, LLC (ASR Systems) for work performed through December 31, 2007.
4. Cal Am has provided DRA and MPWMD with certain identified vendor documents relating to the Water Project.
5. DRA and MPWMD have reviewed the vendor documents and determined that already-incurred costs Cal Am has sought for recovery are reasonable.
6. Cal Am will file a separate annual application to address preconstruction costs incurred for the Water Project, and other parties may serve responses or reports according to an agreed upon schedule.
7. Cal Am is required to file a justification for all costs associated with services rendered outside of the annual reporting period.²
8. Cal Am will file an annual application for preconstruction costs for 2008 and additional applications for preconstruction costs beyond 2008, if necessary.

¹ The Amended Settlement Agreement is attached as Attachment A.

² The annual reporting period is from January 1 to December 31.

9. Cal Am will provide with its annual applications certain documents³ regarding annual preconstruction costs.

Cal Am shall provide in its Class A Annual Report submitted by March 31 of each year an accounting for its Surcharge 1 including amounts collected from customers and total preconstruction costs charged for each reporting period.

2. Background

In D.06-12-040, the Commission authorized recovery of Water Project preconstruction costs incurred through 2005, and provided for review of Cal Am's engineering and environmental costs through 2005, and preconstruction costs for 2006 and 2007. In D.08-01-007⁴ the Commission authorized recovery of 2006 preconstruction costs by adopting a settlement agreement between Cal Am and DRA.

On April 10, 2008, Cal Am filed A.08-04-019 (Application) requesting approval of engineering and environmental costs, public outreach costs, legal fees and miscellaneous charges incurred in 2007, and interest related to these charges for the Water Project. Cal Am also requested that the Commission authorize transfer of \$3,888,830 of these costs from the authorized memorandum account to its SRSBA.

In A.08-04-019, Cal Am proposed to remove \$171,001 in labor and non-labor costs from the SRSBA, and also remove \$14,896 of interest. Cal Am also requested that the Commission implement an annual review process for Cal Am's preconstruction costs that would continue through the year in which the Commission issued a decision on a Certificate of Public Convenience and

³ Existing task order contracts will include a budget and a schedule.

⁴ Cal Am's Application (A.) 04-09-019.

Necessity. This proposal would not require Cal Am to file a new application each year for recovery of preconstruction costs; instead, Cal Am would submit annual reports to address the reasonableness of its preconstruction costs. The annual reports would be subject to review by the Commission and DRA. Cal Am proposed that the Commission would then approve the annual preconstruction costs included in the annual reports.⁵ Cal Am anticipates that the Water Project preconstruction costs will continue through 2009.⁶

MPWMD and DRA protested the Application on May 5 and May 16, 2008, respectively. Cal Am responded to these protests on May 27, 2008.

A prehearing conference (PHC) was held on June 9, 2008, and the Parties agreed to hold evidentiary hearings beginning August 27, 2008, followed by the filing of briefs in September and October 2008. At the PHC, Parties also agreed to meet in mediation in an attempt to resolve their disputes. An Assigned Commissioner's Ruling and Scoping Memo was issued on June 16, 2008.

On July 10, 2008, DRA served its Audit Report on California American Water Company's Coastal Water Project 2007 Preconstruction Costs,⁷ and on July 17, 2008, MPWMD served its testimony.⁸ On August 8, 2008, Cal Am served rebuttal testimony.⁹ Parties attended a mediation meeting on August 29, 2008, and on September 12, 2008, submitted a settlement agreement (the September Settlement Agreement).

⁵ Exhibit 3, pp.11-13.

⁶ *Id.*

⁷ *See*, Exhibit 6.

⁸ *See*, Exhibit 7.

⁹ *See*, Exhibits 4 and 5.

On September 29, 2008, an evidentiary hearing was held to review the September Settlement Agreement. At the hearing, the Assigned Administrative Law Judge (ALJ) asked how the September Settlement Agreement responded to D.06-12-040 and D.08-01-007, which requested DRA to determine whether Cal Am's 2007 preconstruction costs are reasonable. After some discussion, a representative for DRA stated that DRA found 2007 preconstruction costs reasonable.¹⁰

Following the evidentiary hearing, the ALJ requested that Parties modify the September Settlement Agreement for two issues.¹¹ First, parties were asked to delete the provision requesting that the Application remain open for the purposes of future preconstruction cost filings. Second, parties were asked to include a provision for reporting to the Commission the amounts included in the SRSBA, the amounts which have been collected from customers, and an estimate of when the SRSBA might be reduced to a zero balance.

On October 31, 2008, Settling Parties filed a Joint Motion for Adoption of Amended Settlement Agreement between the Settling Parties and a Motion to Waive Comment Period on Settlement Agreement.

3. Amended Settlement Agreement

The Settling Parties agree on all the disputed issues in the Application including:

3.1. Transfer of Preconstruction Costs to the SRSBA

1. Settling parties agree that the Commission should authorize Cal Am to transfer \$3,741,714 of 2007

¹⁰ TR 16.

¹¹ See, ALJ e-mail dated October 20, 2008 (ALJ e-mail file).

preconstruction costs incurred for the Water Project to the SRSBA.

2. Settling Parties agree that Cal Am's total request for recovery of \$3,888,831 should be reduced by \$137,632, plus associated interest of \$9,485, or a total reduction of \$147,117.
3. Settling Parties agree that \$309,258.22 represents Cal Am's full recovery of charges from ASR Systems, LLC (ASR Sysrems) for work that ASR Systems performed through December 31, 2007, and that Cal Am will not seek further recovery of any additional ASR System charges for services through December 31, 2007, for the Water Project.
4. Settling Parties agree that the Commission should authorize Cal Am to remove \$185,893 in labor, labor overhead and related costs incurred through December 31, 2006 for the Water Project that Cal Am identified as possibly duplicative of authorized GRC expenses.
5. Settling parties agree that Cal Am has provided certain preconstruction cost documents to DRA and MPWMD, and that DRA and MPWMD have found the already-incurred costs which Cal Am has sought for recovery are reasonable.

3.2. Annual Report Procedure an Reporting Requirements

1. Cal Am will file a separate annual application for pre-construction costs incurred for the Water Project to be recovered through Surcharge 1 that reflects costs incurred in the prior year from January 1 through December 31 (the Reporting Period).
2. DRA will submit its report on the reasonableness of Cal Am's costs on or before December 15 of each year. Intervenor may submit testimony 15 days after DRA submits its report. Cal Am may submit rebuttal

testimony no later than 45 days after DRA submits its report.

3. Cal Am must justify all costs for services rendered outside of the Reporting Period. Absent such justification costs for services rendered outside of the Reporting Period will not be recoverable by Cal Am.
4. Cal Am will file an application for recovery of 2008 and beyond pre-construction costs eligible for Surcharge 1 recovery.
5. Cal Am shall provide certain contract and other documents with its applications.
6. Cal Am shall provide a budget and schedule with each task order contract.
7. Cal Am shall provide in its Class A Annual Report submitted by March 31 of each year an accounting for its Surcharge 1 including amounts collected from customers and total pre-construction costs charged for each reporting period.

4. Discussion

Settling Parties urge the Commission to adopt the Settlement Agreement pursuant to Rule 12.1(d)¹² and find that it is “reasonable in light of the whole record, consistent with the law, and in the public interest.”

4.1. The Amended Settlement Agreement is Reasonable in Light of the Whole Record

The Amended Settlement Agreement was reached after opposing parties were able to assess the strengths and weaknesses of their respective cases. The Amended Settlement Agreement represents a reasonable resolution of the dispute between Cal Am, DRA and MPWMD regarding Water Project

¹² All references to Rules are to the Commission’s Rules of Practice and Procedure unless otherwise noted.

preconstruction costs. The Settling Parties have agreed to reduce Cal Am's request by \$137,632 in disallowances, plus \$9,485 in related interest. Settling Parties have also removed from Cal Am's SRSBA \$185,893 in labor and related costs incurred through December 31, 2006, that may be duplicative of GRC expenses. Furthermore, as the Settling Parties point out DRA reviewed the extensive amount of documents reflecting Cal Am's 2007 costs and found them reasonable. Finally, Settling Parties have agreed on the full recovery of charges from ASR Systems for services through December 31, 2007, for the Water Project thus resolving an additional dispute.

The Amended Settlement Agreement also addresses Cal Am's production of documentation supporting preconstruction costs in this proceeding, and Cal Am's inclusion of documentation supporting preconstruction costs in future applications for Water Project preconstruction costs. Production of these documents will reasonably assist parties in assessing Water Project costs and increase efficiency.

In addition, the Amended Settlement Agreement proposes a schedule for the filing of future applications and the submittal of reports and testimony by other parties. This schedule is a reasonable provision for resolving future applications as it provides a timeline for certain events and actions by Cal Am and other parties.

Finally, the Amended Settlement Agreement proposes a method to report an accounting of the preconstruction amounts collected from ratepayers, and the status of the SRSBA. This reporting method is a reasonable approach to provide information to the Commission and others regarding Water Project preconstruction costs.

4.2. The Settlement Agreement is Consistent with the Law

Settling Parties contend that the 2007 preconstruction costs set forth in the Amended Settlement Agreement were reasonably and properly incurred in the pursuit of a long-term water supply solution to satisfy directives to Cal Am contained in State Water Resources Control Board Order 95-10.

The Amended Settlement Agreement also complies with Commission decisions addressing Water Project preconstruction costs. Furthermore, as required by the Commission's Rules, Settling Parties properly noticed and held a settlement meeting, assisted by an ALJ mediator, on August 29, 2008.

4.3. The Amended Settlement Agreement is in the Public Interest

Settling Parties agree that resolving this matter is in the public interest because it will avoid potentially costly litigation. Should the proceeding continue to full evidentiary hearings and litigation on the merits to address the costs incurred by Cal Am for the Water Project through 2007, all parties would need to invest additional time and resources.

The public interest is further served since the Amended Settlement Agreement proposes a reasonable schedule for future applications to address Water Project preconstruction costs. This element reduces the procedural uncertainty of future applications and increases the efficiency of staff resources.

Also, the Amended Settlement Agreement is in the public interest because it will provide Cal Am with customer contributions useful for establishing a reliable water service, and will mitigate the rate impact of a long-term water supply solution on Monterey District customers.

Finally, we note that the Settling Parties comprise all of the active parties in A.08-04-019, and we do not know of any parties who contest the

Amended Settlement Agreement. Thus, the Amended Settlement Agreement commands the unanimous sponsorship of all active parties in this proceeding, who fairly represent the interests affected by the Amended Settlement Agreement. We find that the evidentiary record contains sufficient information for us to judge the reasonableness of the Amended Settlement Agreement and for us to discharge any future regulatory obligations with respect to this matter. Thus, the proposed Amended Settlement Agreement is consistent with the criteria for all-party settlements set forth in D.92-12-019 (46 CPUC2d 538).

5. Proposed Schedule for Future Applications

The Amended Settlement Agreement which we adopt proposes that DRA's report be submitted on or before December 15 of each year, or approximately 9 months after the filing of a Cal Am application.¹³ In adopting this provision, we note that Pub. Util. Code § 1701.5(a) requires that the Commission resolve ratesetting matters within 18 months of the issuing of a scoping memo. In order that the scoping memo in a future proceeding consider any recommendations in DRA's report, the scoping memo for a future application under this provision will not be issued prior to the submitting of DRA's report. Consequently, Commission resolution of a future application may not be completed until significantly after the filing of an application.

6. Conclusion

For all of the foregoing reasons, we grant the Settling Parties' Motion and adopt the Amended Settlement Agreement as proposed.

¹³ See, Attachment A, Section III (B.), p. 3.

7. Comments on Proposed Decision

Rule 14.6(b) provides that comments may be waived in proceedings where all the parties to the proceeding so stipulate. As Settling Parties, who comprise all the parties to this proceeding, have so stipulated and as we are adopting the Amended Settlement Agreement as proposed by Settling Parties, comments are waived.

8. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Bruce DeBerry is the assigned ALJ in this proceeding.

Findings of Fact

1. D.06-12-040 authorizes Cal Am to recover preconstruction costs for the Water Project through the Surcharge 1 commencing January 1, 2007.
2. As detailed in the Amended Settlement Agreement, Settling Parties agree that Cal Am should be allowed to recover \$3,741,714 in 2007 preconstruction costs, and this amount constitutes the entirety of Cal Am's preconstruction costs through December 31, 2007.
3. Settling Parties agree that \$309,258.22 represents the full recovery of ASR System charges for work performed through December 31, 2007.
4. Cal Am has provided certain vendor identified Water Project documents to DRA and MPWMD.
5. DRA has determined that the already incurred 2007 preconstruction costs are reasonable.
6. Nothing in the Amended Settlement Agreement affects Cal Am's ability to recover preconstruction costs incurred for the Water Project after December 31, 2007, and tracked in the memorandum account approved in D.03-09-022.

Conclusions of Law

1. Cal Am should be authorized to recover \$3,741,714, as compensation in full for all Water Project preconstruction costs incurred through December 31, 2007. These costs should be recovered from ratepayers through the Surcharge 1 authorized by D.06-12-040.
2. The Amended Settlement Agreement between Cal Am, DRA and MPWMD is reasonable, consistent with the law, and in the public interest and should be approved.
3. This decision should be effective today so that the Amended Settlement Agreement may be implemented expeditiously.
4. A.08-04-019 should be closed.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The Amended Settlement Agreement between California-American Water Company (Cal Am), the Division of Ratepayer Advocates (DRA), and the Monterey Peninsula Water Management District (MPWMD), attached to this decision as Attachment A, is approved without modification.
2. Cal Am is authorized to recover \$3,741,714, as compensation in full for all Coastal Water Project (Water Project) preconstruction costs incurred through December 31, 2007, using the Special Request 1 Surcharge (Surcharge 1) authorized by Decision (D.) 06-12-040.
3. Cal Am is authorized to transfer \$3,741,714 of costs incurred for the Water Project through December 31, 2007 from the authorized memorandum account to the Surcharge 1 cost recovery balancing account (SRSBA).

4. Cal Am shall remove \$185,893 in labor, labor overhead and related costs incurred through December 31, 2007, from its SRSBA.

5. Cal Am shall provide to DRA and MPWMD vendor documents to the extent that such documents exist as agreed to in the Amended Settlement Agreement.

6. Cal Am shall continue the annual reporting process adopted in D.06-12-040. Cal Am may file annual applications to address preconstruction costs according to the agreed upon schedule as detailed in the Amended Settlement Agreement. These annual applications shall include the documentation agreed upon in the Amended Settlement Agreement, and a budget and schedule for each existing task order contract.

7. Cal Am shall provide in a separate section of its annual applications justification for recovery of any preconstruction costs which occur outside of the annual reporting period (January 1 to December 31 yearly).

8. Cal Am shall provide in its Class A Annual Report to the Commission an accounting of the amounts collected from customers and the total costs charged to the memorandum account for its Surcharge 1 as detailed in the Amended Settlement Agreement.

9. Application 08-04-019 is closed.

This order is effective today.

Dated December 18, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners