STATE OF CALIFORNIA ARNOLD SCHWARZENEGG

PUBLIC UTILITIES COMMISSION
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FILED
07-25-06
01:23 PM

July 25, 2006

Agenda ID #5855
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 05-08-006 et al.

This is the draft decision of Administrative Law Judge (ALJ) McVicar. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

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

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure," accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages.

Comments must be filed with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 2.3 and 2.3.1. Electronic copies of comments should be sent to ALJ McVicar at jcm@cpuc.ca.gov. All parties must serve hard copies on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail or other expeditious methods of service. The current service list for this proceeding is available on the Commission's web site, www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ McVICAR** (Mailed 7/25/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California Water Service Company (U60W) for an Order Authorizing it to Increase Rates Charged for Water Service in the Antelope Valley District by $437,218 or 36.94% in Fiscal 2006-2007, by $145,000 or 8.94% in Fiscal 2007-2008, and $145,000 or 8.21% in Fiscal 2008-2009.	Application 05-08-006 (Filed August 8, 2005)
And Related Matters.	Application 05-08-007 Application 05-08-008 Application 05-08-009 Application 05-08-010 Application 05-08-011 Application 05-08-012 Application 05-08-013 (Filed August 8, 2005)

OPINION GRANTING INTERIM RATE RELIEF

Summary

This decision grants California Water Service Company (CalWater) interim rates for eight districts with pending 2006/2007 test year general rate cases, effective on July 20, 2006, pursuant to Public Utilities Code Section 455.2. Because we cannot find that CalWater's showing in the proceeding supports rate increases that are at least equal to the rate of inflation for four of the eight districts in this proceeding, and because multiple billing adjustments in a short

period may cause unnecessary customer confusion, the rates currently in effect are designated as the interim rates. When the Commission adopts final rates in CalWater's pending general rate proceeding, the interim rates for these eight districts will be adjusted upward or downward back to their effective date and any under- or overcollection recovered or refunded accordingly.

Background

The Commission's Rate Case Plan for Class A Water Utilities calls for CalWater to file proposed applications for one-third of its 24 California water districts on May 1 of each year, with formal applications to follow on July 1. This proceeding addresses test year 2006/2007 and escalation years 2007/2008 and 2008/2009 for eight districts: Antelope Valley, Bear Gulch, Dominguez-South Bay, Hermosa-Redondo, Kern River Valley, Marysville, Palos Verdes, and Redwood Valley.[1]

During preliminary discussions with the Commission's Division of Ratepayer Advocates (DRA) last year, DRA informed CalWater that it did not have the resources to begin processing its rate applications on the expected schedule. Accordingly, CalWater and DRA jointly asked the Commission's Executive Director to grant a delay until June 6, 2005 to file the proposed applications. That authorization was granted, the proposed applications were filed on June 6, and the formal applications were filed on August 8.

Following a prehearing conference, the Assigned Commissioner issued a scoping memo on September 26, 2005 compressing the schedule to allow for a

[1] Redwood Valley district consists in turn of three separate ratemaking areas: Lucerne, Redwood Valley Unified, and Coast Springs.

timely Commission decision in June 2006. Over the subsequent months, the assigned Administrative Law Judge (ALJ) made several modifications affecting the schedule at the request of either DRA, CalWater, or both.[2] The consolidated proceeding record was submitted for decision on March 9, 2006, and absent additional delays, a proposed decision would likely have been presented to the Commission at its June 29, 2006 meeting.

For reasons discussed in part below, the Commission did not adopt a final decision on these eight consolidated applications by the first day of the first test year, July 1, 2006. On July 6, 2006, CalWater filed its Motion to Set Effective Date for Interim Rates Pursuant to Section 455.2 of the Public Utilities Code. CalWater seeks a Commission order authorizing it to file tariffs effective on the date of the motion increasing rates in all eight general rate case districts by the rate of inflation, or, in the alternative, establishing its present rates as the interim rates. In either case, the interim rates would be subject to retroactive adjustment back to their effective date based on the final adopted rates.

Discussion

Section 455.2 allows Class A water utilities such as CalWater to request an inflation-indexed interim rate increase in the event a water general rate case is not completed by the first day of the first test year in the application, in this case, by July 1, 2006.

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[2] The ALJ also granted CalWater authority on October 21, 2005 to amend its Kern River Valley district and Redwood Valley district applications (Application 05-08-010 and Application 05-08-013) with the understanding that the proceeding schedule would not thereby be extended.

The Commission has set criteria[3] for interim rate relief under Section 455.2, requiring that:

- the utility demonstrate that it has made a substantial showing in its application supporting a rate increase at least equal to the rate of inflation;
- the Commission determine whether interim relief is in the public interest; and
- the presiding officer's decision address whether the delay in completing the GRC proceeding is due to actions by the water corporation and, if so, the presiding officer's decision shall specify the utility's actions that caused the delay and shall include a proposed effective date for interim or final rates.

On the first criterion, CalWater states in its motion that the U.S. Bureau of Labor Statistics U.S. Cities CPI-U stood at 4.2% for the 12 months ending May 2006. CalWater did make showings in its applications in support of rate increases in excess of 4.2% for every district except one (Dominguez-South Bay). Subsequently, however, CalWater also entered into a settlement with DRA that addresses most of the contested components in its summary of earnings for each district,[4] and on July 21, 2006 the ALJ filed his proposed decision recommending we adopt the settlement and grant test year 2006/2007 increases below 4.2% for four of the eight districts. Thus, we cannot confidently find that CalWater's

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[3] Decision (D.) 04-06-018 (June 9, 2004).

[4] The significant exceptions are the parties' plant in service differences in the Coast Springs area of Redwood Valley district and the return on equity determination for all eight districts.

showing, taken as a whole, supports rate increases for those four districts that are at least equal to the rate of inflation.

We next turn to the third criterion, the cause for any delays, before returning to address the public interest.

CalWater's motion points to three primary factors as causes of significant delay in the proceeding: its delayed application filings, multiparty settlement negotiations, and post-submission deliberations.

CalWater's motion explains that its 39-day delay in filing the formal application was at the behest of DRA due to staffing considerations, and was approved by the Commission's Executive director. We accept that explanation. The Assigned Commissioner's scoping memo set a schedule that accommodated CalWater's later filing date and, absent any other delays, would have produced a decision on time. While an on-time filing might have led to an on-time decision, the late filing was not a CalWater-caused source of delay.

There were three proposed partial settlements filed in this proceeding. The Commission through its Water Action Plan encourages parties to explore settlements and stipulations.[5] Accordingly, both the ALJ in two prehearing conferences (one held specifically for that purpose) and after, and the Assigned Commissioner in his scoping memo, urged the parties to discuss their differences and arrive at commonly agreed-upon positions wherever possible, and to do so well in advance of the evidentiary hearings. The Commission's Rate Case Plan

[5] "[T]he Commission may encourage parties to seek negotiated resolution of issues as early as possible in a case, including prior to the filing of prepared testimony, to lower the burden of regulation on all participants." (Water Action Plan, December 15, 2005, page 20).

also anticipates such discussions by providing additional time for what it terms "Formal Settlement Negotiations" beginning the week after the utility serves its rebuttal testimony.

The first settlement proposed a Rate Support Fund and was filed on March 2, the last permissible date under the Commission's Rules of Practice and Procedure, Rule 51.2.[6] That all-party settlement was timely and cannot be said to have caused delay.

The second proposed settlement (referred to in the ALJ's proposed decision as the stipulation on remaining issues) addressed most of the summary of earnings and related issues and provided the Rate Case Plan-mandated comparison exhibit. Although it was tendered on March 9, one week after the normal deadline, and only accepted for filing pursuant to an ALJ's ruling, the assigned ALJ did not consider that a significant factor contributing to delay in the proceeding because the settlement was complete and could be acted upon.

The third settlement (referred to as the WRAM stipulation) was also late-tendered and accepted for filing with the second by the ALJ's ruling. It addressed a proposed new revenue adjustment mechanism and an increasing block rate design to be implemented in all eight districts. The ALJ's proposed decision explains his conclusion that this settlement was incomplete and did not provide the Commission with sufficient information to discharge its regulatory obligations. Most importantly, while the settling parties, CalWater and DRA, acknowledged that more information was needed (i.e., rate design criteria

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[6] Rule 51.2 provides, "Parties to a Commission proceeding may propose a stipulation or settlement for adoption by the Commission… within 30 days after the last day of hearing."

intended to define the parties' agreed-to increasing block rate structure), they were unable to meet their written commitment to provide that information for the record by a date they chose, and then did not follow through with their subsequent commitment to file a motion proposing a new timetable for moving the proceeding forward.

As we have noted above, we encourage parties in water general rate proceedings to propose negotiated outcomes that serve the interests of both utilities and their customers. CalWater states that the parties worked diligently and collaboratively toward developing a joint utility-DRA approach that would address the Commission's interest in promoting water conservation and decoupling revenues from sales volumes. We believe that to be the case and commend them for their efforts. At the same time, however, CalWater acknowledges that the Commission's post-submission deliberations over its proposed settlement with DRA on these topics may be lengthy and may contribute to a delay in issuing the final decision. That has certainly been the case; the additional delay attributable to our deliberations over the WRAM stipulation has been due at least as much to their unmet commitments to finalize their proposal for the record as it has been to the complexity of the two important issues it addresses. Nonetheless, we can neither quantify the resulting delay and apportion it between the two settling parties,[7] nor are we inclined to do so. We conclude that CalWater should not be held responsible for any delay related to the WRAM stipulation or our subsequent deliberations pertaining to it.

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[7] Under Commission Rule 51.9, settlement discussions are confidential and may not be disclosed outside the negotiations without the consent of the participating parties.

As CalWater points out, the Legislature in enacting Section 455.2 has determined that it is in the public interest for the Commission to issue its final decision by the beginning of the first test year. Where that is not possible, it is in the public interest to authorize interim rates at the beginning of the test year, or on a different effective date if the delay is attributable to actions of the utility. Accordingly, we find it is in the public interest to grant CalWater's request to establish interim rates pending our decision on final rates for test year 2006/2007. We address next the effective date for those interim rates.

CalWater cites three previous decisions under which it has been granted interim rate relief under Section 455.2. In none of those was the interim rate relief made effective retroactively in the manner CalWater seeks today. In D.03-04-033, it was granted interim rate relief effective on the effective date of the interim decision (April 10, 2003 for a calendar 2003 test year). In D.03-10-072, it was granted interim relief effective on the expected date of Commission approval under the then-existing rate case plan or the effective date of the interim decision, whichever would be later. In D.04-09-038 (as modified by D.05-03-002), the Commission affirmed a March 2004 ALJ ruling finding that CalWater's general rate proceeding was not expected to be completed within the time specified by the rate case plan and authorizing interim rate relief effective on July 1st of the calendar 2004 test year (*i.e.*, prospectively from the time of the authorizing ruling).

In implementing the Rate Case Plan, the Commission concluded that, "Requests for interim rate relief should be made by motion of the utility applicant. The Presiding Officer will then prepare a decision for the

Commission's consideration."[8] CalWater's motion for interim relief was filed on July 6, 2006. Through CalWater's action in filing its motion on that date, the earliest possible opportunity for the Commission to consider a decision granting interim rates would have been at its meeting of July 20. Thus, we will make CalWater's interim rates effective on July 20, 2006, the earliest date the Commission could have acted to grant CalWater's motion.

Under Section 455.2(b), "The commission may authorize a lesser increase in interim rates if the commission finds the rates to be in the public interest." Customers' billings will eventually be adjusted to collect the difference between whatever level of interim rates we grant today and our final adopted rates, so the interim rate level we set will affect the timing of CalWater's revenues but not their overall amount. As we noted earlier, we cannot find that CalWater's showing, taken as a whole, supports rate increases that are at least equal to the rate of inflation for four of the eight districts in this proceeding. Because this decision may be considered at the same time as an order adopting final rates, it is also possible that our interim rates will be in effect for a short period. An interim rate increase based on the rate of inflation would be inappropriate in some districts, and confusing to ratepayers in all districts to the extent that interim and final rate adjustments would follow in rapid succession. Under these circumstances, we find it would be in the public interest to adopt CalWater's alternative proposal of establishing its present rates as interim rates, subject to refund, and to be adjusted upward or downward back to the interim rates'

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[8] D.04-08-018 (June 9, 2004), Conclusion of Law 9.

effective date consistent with the final rates adopted by the Commission in this proceeding.

Finally, the Rate Support Fund all-party settlement proposes low-income and high cost district subsidies be established in certain areas, to be funded by surcharges imposed in all 24 CalWater districts. If the Rate Support Fund provisions are adopted, the high-cost district subsidies should be made available to the affected customers on the same timetable as any related backbilling that results from our approving interim rates. This condition should not apply to low-income subsidies because no low-income customer will have established eligibility for the period during which interim rates are in effect. The 24-district Rate Support Fund surcharge should not be imposed back to the effective date of interim rates because any shortfalls would be made up in due course through the Rate Support Fund balancing account.

Assignment of Proceeding

John A. Bohn is the Assigned Commissioner and James C. McVicar is the assigned ALJ in these proceedings.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by _____.

Findings of Fact

1. The 39-day delay in filing the formal application was not a CalWater-caused source of delay in issuing a final decision.

2. CalWater and DRA's late filing of a proposed settlement that addressed most of the summary of earnings and related issues and provided the Rate Case Plan-mandated comparison exhibit did not significantly delay the proceeding.

3. The earliest date the Commission could have acted to grant CalWater's motion for interim rate relief was July 20, 2006.

4. CalWater's showing does not support rate increases that are at least equal to the rate of inflation for four of the eight districts in this proceeding.

5. The interim rate level we set affects the timing of CalWater's revenues but not their overall amount.

6. An interim rate increase based on the rate of inflation would be inappropriate in some districts, and confusing to ratepayers in all districts to the extent that interim and final rate adjustments would follow in rapid succession.

Conclusions of Law

1. CalWater is eligible to seek interim rate relief under Public Utilities Code Section 455.2 for the eight districts in this general rate case proceeding.

2. CalWater should not be held responsible for any delay related to the late-filed and incomplete WRAM stipulation or our subsequent deliberations pertaining to it.

3. It is in the public interest to adopt CalWater's current rates as interim rates, subject to refund, and to adjust them upward or downward back to their effective date consistent with the final rates adopted by the Commission in this proceeding.

4. CalWater's interim rates should be made effective July 20, 2006.

5. To establish interim rates as promptly as possible, this decision should be made effective today.

6. This proceeding should remain open pending resolution of CalWater's general rate case applications.

O R D E R

IT IS ORDERED that:

1. California Water Service Company's (CalWater) current rates for the eight districts subject to this general rate case proceeding are designated as interim rates pursuant to Public Utilities Code Section 455.2. The interim rates shall be effective as of July 20, 2006, shall be subject to refund, and shall be adjusted upward or downward, back to their effective date, consistent with the final rates adopted by the Commission in this proceeding.

2. When final rates for test year 2006/2007 have been approved in these eight general rate case districts, CalWater is authorized to file an advice letter to recover or refund in each district the difference between the interim rates authorized in this order and the test year 2006/2007 rates adopted in the general rate case proceeding order. The period over which those differences are recovered or refunded shall be one year, or such shorter period(s) as CalWater and the Commission's Water Division may jointly agree is appropriate in any district. If a Rate Support Fund is approved, any related retroactive adjustments to interim rates shall be as described in the discussion section of this order. CalWater shall include with its advice letter(s) all supporting data and calculations. The Water Division shall inform the Commission if it finds the proposed rate changes do not comply with this order or other Commission requirements.

3. CalWater shall include in its initial bills implementing the Ordering Paragraph 2 retroactive rate adjustments a one-time explanation of those adjustments.

4. This proceeding remains open pending resolution of CalWater's general rate case applications.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated July 25, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

********** SERVICE LIST **********
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