Mailed 6/7/2002

Decision 02-06-021 June 6, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Citizens Utilities Company of California (U-87-W), a California Corporation, and California-American Water Company (U-210-W), a California Corporation, for each of the following orders: 1. Authorizing Citizens Utilities Company of California to sell and transfer all of its water utility assets and indebtedness to California-American Water Company; 2. Authorizing California-American Water Company to acquire all of the water utility assets and indebtedness of Citizens Utilities Company of California and thereafter to engage in and carry on the water utility business and service to the customers of Citizens Utilities Company of California; 3. Authorizing Citizens Utilities Company of California to withdraw from the water utility business; and 4. For related relief.	Application 00-05-015 and Application 00-05-016 (Filed May 16, 2000)
And Related Matters.	

O P I N I O N

This decision grants Advocates for the Public Interest (API) an award of $94,284.09 in compensation for contributions to Decision (D.) 01-09-057. That decision authorized California-American Water Company (CalAm) to acquire all of the California water utility assets of Citizens Utilities Company of California (Citizens).

1. Background

These consolidated proceedings began as two separate proceedings, the first (Application (A.) 00-05-015) seeking approval of acquisition by CalAm of the water utility properties of Citizens, the second (A.00-05-016) seeking approval of a merger of CalAm and San Jose Water Company (SJW). The two proceedings were consolidated in late 2000 after the start of evidentiary hearings in A.00-05-015. In March 2001, applicants in A.00-05-016 moved to withdraw that application. In D.01-09-057, the Commission authorized the Citizens acquisition, subject to various ratemaking conditions, and it dismissed the SJW merger application.

Following prehearing conferences in both dockets on June 22, 2000, API timely filed a Notice of Intent (NOI) to claim compensation in each docket. The NOIs were opposed by applicants. On September 6, 2000, Administrative Law Judge (ALJ) McVicar ruled in favor of API on all requisite elements for eligibility in both proceedings.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file an NOI within 30 days of the prehearing conference or by a date established by the

Commission. As noted, API timely filed its NOI and was deemed eligible for compensation.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

> "in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution

includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

In this proceeding, API intervened early and took an initial critical view of the value to ratepayers of the Citizens acquisition and the SJW merger, and of CalAm's synergies savings assumptions. API urged the Commission to strike a better balance between ratepayers' risks and rewards and the risks and rewards of CalAm.

As the proceeding progressed, API did extensive financial and policy analysis in support of its position, concluding that under most reasonable scenarios CalAm would suffer substantial losses under the application's sharing proposal. According to the Commission's decision:

> "During the evidentiary hearings, API devoted considerable time and effort to drawing out of CalAm the details and assumptions underlying the synergies analysis and Application sharing proposal. Surfacing those details and assumptions, which had not been developed elsewhere in the record in a consistent and understandable way, proved critical in analyzing whether the acquisition and sharing proposal should be approved."

The Commission's decision notes API's key role in moving the applicants to offer an alternative sharing proposal that ultimately was adopted. The decision's substantive analysis of ratepayer benefits, quantifiable benefits, stayout benefits and rate effects relies on various API analyses.

Alone among protesting parties, API participated in virtually all of the 26 days of hearing required in this proceeding. API also addressed all of the ALJ's requests for additional information, analyses and evidence needed to bolster the record. API successfully argued that the SJW merger would not

necessarily benefit ratepayers, and the merger application ultimately was withdrawn.

Quantification of major benefits of API's participation is reflected in Table 3 of the decision. It shows that ratepayers would receive present-worth benefits of between $41 million and $75 million out of total quantified benefits from the acquisition of $100 million to $136 million.

In sum, the Commission adopted API's recommendations on several major issues and relied extensively on API analyses. API's participation did not duplicate the showings of other parties. We find that API has demonstrated that it made a substantial contribution to D.01-09-057.

API filed this request for compensation on November 26, 2001. The request is unopposed.

4. The Reasonableness of Requested Compensation

API seeks compensation for all of its professional time, travel expenses and compensation request time, for a total of $98,686.09.

For professional time, Ron Knecht claims 403.7 hours at an hourly rate of $220 for a total of $88,814.00, and 73.0 hours of travel and compensation-request time at an hourly rate of $110 for a total of $8,030.

Direct expenses totaled $1,842.09, mostly mileage, postage and copying costs.

4.1 Hours Claimed

The requested time includes professional time incurred in initial review, discovery, preparation of testimony, pleadings, hearings, briefs and comments. The compensation requested is greater than that estimated in the NOIs ($70,600) but is justified by API on the fact that the hearings in these two cases stretched far beyond the scope and duration set out in the

Scoping Memos. We agree with this assessment. API appropriately breaks down time spent on various issues and activities. We have reviewed the detailed showing of professional time expended, and we find that the hours claimed are reasonable.

4.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services.

API seeks compensation for Knecht of $220 an hour for professional work and one-half that amount for travel time and for preparation of the compensation request. In the most recent cost-of-capital case before the Commission, Knecht was awarded $190 per professional hour, although the Commission recognized that a rate of $210 might be justified had the compensation request been more complete. (*See*, D.01-10-024, at 12-13.) During 1998, when Knecht worked as a consultant to R. J. Rudden Associates, Inc., Knecht's time was billed to and paid by the California Independent System Operator at the $210 hourly rate. Finally, Knecht's resume shows experience and achievement corresponding to that of other experts receiving rates in this range.

We believe that API has justified an hourly rate of $210 per hour, or $20 more per hour than Knecht was awarded by this Commission last year. However, the showing for a further increase to $220 for work in 2001 is not persuasive in light of conditions prevailing in the economy, including the legal system, for most of 2001. While API seeks to show that the $220 rate is comparable to that paid another intervenor in other proceedings, API has not shown that the comparison reflects comparable training and experience. With the adjustment in Knecht's hourly rate for 2001 to $210 (and $105 for travel and

preparation of the compensation request), the amount of compensation awarded to API is reduced by $4,402 (*i.e.*, to $94,284.09) from the amount requested.

4.3 Other Costs

API claims $8,030 for 73 hours of travel time and time devoted to preparation of this compensation request, along with $1,842.09 for automobile mileage (at 31 cents per mile), postage and copying. No compensation is requested for facsimile reproduction of documents, which was extensive. As noted, we have reduced the hourly rate for travel and preparation of this compensation request to $105, rather than $110. With that adjustment, we find these costs reasonable.

5. Award

We award API $94,284.09 for contributions to D.01-09-057. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after API filed this compensation request (February 11, 2002) and continuing until full payment is made.

6. Allocation of Award Among Utilities

The award granted today should be paid pursuant to Pub. Util. Code § 1807. Based on our review of the record, we believe that it is equitable to split the cost of the award between CalAm, the surviving entity in the transaction with Citizens, and SJW. CalAm and SJW should split the costs incurred up to March 8, 2001, the date of withdrawal of the CalAm-SJW merger. CalAm should bear the costs of this award incurred after March 8, 2001. Costs up to March 8, 2001 totaled $64,048.14; costs after that date totaled $30,235.95. Therefore, SJW will be responsible for costs of $32,024.07, and CalAm will be responsible for costs of $62,260.02.

7. Waiver of Comment Period

This is a compensation matter. Accordingly, pursuant to Pub. Util. Code § 311(g)(3) and Rule 77.7(f)(6) of the Rules of Practice and Procedure, the otherwise applicable 30-day review and comment period is being waived.

Findings of Fact

1. API timely requests compensation for contribution to D.01-09-057 as set forth herein.

2. The hourly rate requested for API's attorney should be reduced by $10 to $210 per hour.

3. The miscellaneous costs incurred by API in this proceeding are reasonable.

Conclusions of Law

1. API has fulfilled the requirements of Pub. Util. Code §§ 1801-1812,which govern awards of intervenor compensation.

2. API should be awarded $94,284.09 for contributions to D.01-09-057 in these proceedings.

3. This order should be effective today so that API may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Advocates for the Public Interest is awarded $94,284.09 as set forth herein for substantial contributions to Decision 01-09-057.

2. California-American Water Company shall pay $62,260.02 of the award, and San Jose Water Company shall pay $32,024.07 of the award. Interest shall be paid at the rate earned on prime, three-month commercial paper as reported in

the Federal Reserve Statistical Release, G.13, with interest beginning on February 11, 2002, and continuing until the full payment has been made.

3. These proceedings are closed.

This order is effective today.

Dated June 6, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners