Decision **PROPOSED DECISION OF ALJ THORSON (Mailed 9/30/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California Water Service Company (U 60 W) for an Order Authorizing it to Increase Rates for Water Service in its Palos Verdes District.	Application 03-01-034 (Filed January 31, 2003)
Application of California Water Service Company (U 60 W) for an Order Authorizing it to Increase Rates for Water Service in its Oroville District.	Application 03-01-035 (Filed January 31, 2003)
Application of California Water Service Company (U 60 W) for an Order Authorizing it to Increase Rates for Water Service in its Selma District.	Application 03-01-036 (Filed January 31, 2003)
Application of California Water Service Company (U 60 W) for an Order Authorizing it to Increase Rates for Water Service in its Dominguez District.	Application 03-01-037 (Filed January 31, 2003)

(See Appendix A for a list of appearances.)

INTERIM DECISION ON CALIFORNIA WATER SERVICE COMPANY'S MOTION FOR INTERIM RATE INCREASE

California Water Service Company (CWS), as part of its pending, consolidated general rate case (GRC) for four districts, has moved for an interim rate increase under the provisions of Pub. Util. Code § 455.2. This section, enacted by the Legislature in 2002, provides for an inflation-indexed interim rate

increase in the event a water GRC is not completed in the time contemplated by the Commission's rate case plan.

The request for an interim rate increase was initially set forth in CWS' applications for ratemaking in its Dominguez, Oroville, Palos Verdes, Selma districts. The scoping memo, filed on April 23, 2003, provided for an interim increase request to be specifically raised by the company's motion, which was filed on April 25, 2003. The Office of Ratepayer Advocates (ORA), the sole protestant to the applications, filed its response on May 8, 2003. The motion was orally argued before the assigned Administrative Law Judge (ALJ) on May 9, 2003. CWS was permitted to file a subsequent reply on May 16, 2003, and its motion was deemed submitted on that day. We adopt the ALJ's proposed decision and authorize CWS to file a tariff implementing an inflation-indexed interim rate increase effective September 12, 2003, or the date this decision is effective, whichever is later, for each of the four districts.

I. Provisions of Section 455.2

Pub. Util. Code § 455.2, effective January 1, 2003, provides an interim rate increase for a water corporation when final action on the corporation's ratemaking application has been delayed. For purposes of this motion, six specific provisions of Section 455.2 are applicable:

- The Commission is required to establish a schedule (known as a general rate case plan) requiring each water corporation subject to the plan to file a ratemaking application every three years.

- The Commission must issue its final decision on a water corporation's general rate case application so that the decision becomes effective on the first day of the first test year.

- If the Commission's decision is not effective on that date, the corporation "may file a tariff implementing interim rates that may be increased by an amount equal to the rate of inflation as compared to existing rates." Normally, these rates are to be effective on the first day of the test year.

- In its final decision, the Commission may adjust the interim rates, either upward or downward, retroactively to the effective date of the interim rates. If the interim rates are decreased, the Commission may order refunds.

- "The [C]ommission may authorize a lesser increase in interim rates if the [C]ommission finds the rates to be in the public interest."

- Finally, "[i]f the presiding officer . . . determines that the [C]ommission's decision cannot become effective on the first day of the first test year due to actions by the water corporation, the presiding officer or [C]ommission may require a different effective date for the interim rates or final rates."

II. Rate Case Plan

As early as 1979, the Commission adopted a rate case plan for Class A water utilities, those entities with more than 10,000 service connections. The most recent water rate case plan was approved on August 8, 1990, in *Re Schedule for Processing Rate Case Applications by Water Utilities.*[1] Under this plan, both "Dominguez" and "CWS" (California Water Service) are specifically scheduled for July ratemaking filings. For July filings, "the calendar year following the year

[1] D.90-08-045, 37 CPUC2d 175 (1990).

of filing is the first test year , ..."[2] The filing of the application, however, is preceded by the filing of a Notice of Intention (NOI) to file the rate application. The NOI is due 40 days before the actual filing of the rate application. The NOI is intended to provide the Commission's industry division with "a brief statement of the amount and percent of increases sought and the reasons for the proposed increases."[3]

Assuming the NOI was properly filed, the water corporation is authorized to file the actual ratemaking application after the 40-day period. Under the plan, the Commission is allowed "224+" days, approximately 7-1/2 months, to reach a final decision on applications involving four districts (such as CWS' applications here). Even when processing a case pursuant to the plan, the final decision for July filers would likely not be reached by the beginning of the first test year. For example, a company might file its application in late July. The 7-1/2 month process would normally conclude during the following March, for a test year beginning three months earlier in January.[4]

The Legislature found shortcomings in the 1990 water rate case plan when it enacted Section 455.2. The legislative findings note that the 1990 plan has not been updated. The findings continue, "Not later than December 31, 2003, the

---

[2] *Id.* at 18.8.

[3] *Id.* at 190.

[4] CWS acknowledges that even a longer period is the norm for mid-year filers: "This period of time [one year] roughly approximates the amount of time in which Cal Water would ordinarily expect an application to be processed by the Commission based on Cal Water's status as a mid-year filer under the [existing rate case plan]." CWS, Motion to Set Effective Date of Interim Rates Pursuant to Section 455.2 of the Pub. Util. Code at 3 (April 25, 2003).

[C]ommission should review and revise . . . the rate case plan . . . to ensure its consistency with relevant statutes and [C]ommission practice in addressing rate applications by water corporations . . . ."[5] Although the Commission is developing a revised rate case plan, it has not yet been adopted.[6]

III. CWS' Ratemaking Applications

CWS' motion demonstrates the perplexity of applying newly enacted Section 455.2 during the transition between the old rate case plan, still effective, and a new or revised plan, not yet adopted. Under the new law, CWS, a July filer, would normally be authorized to request an interim rate increase effective January 2003 since the Commission did not reach its final decision on the rate application by that time. However, CWS' application itself was not filed in compliance with the old rate case plan. CWS filed its NOIs for the four districts on July 31, 2002. The actual applications were filed on January 31, 2003.

A declaration filed by Natalie Walsh of ORA (and unopposed by CWS) explains the delay between the NOIs and application filing. The declaration indicates:

> In order to accommodate Office of Ratepayer Advocates resource constraints that would result from the Southern California Water filing at the same time that California Water Company's applications for its Palo[s] Verdes, Oroville, Selma and Dominguez Districts were being processed, Stan Ferraro from California Water Company agreed to delay filing California Water Company's general rate case applications for

---

[5] 2002 Cal. Stat. 2002, ch. 1147 § 1.

[6] See R.03-09-005 (September 4, 2003).

> those districts to January 2003 which constituted a four month delay.[7]

ORA later characterizes this arrangement as an agreement to accommodate both Southern California Water Company and CWS, but the preceding language indicates that this agreement benefited ORA as well.

IV. ORA's Opposition

Nevertheless, ORA opposes CWS' motion for an interim rate increase. ORA argues that (a) application of Section 455.2 here would lead to an absurd result since CWS would be entitled to an interim increase as of January 1, 2003, even before the company filed its applications; (b) the Legislature did not intend for Section 455.2 to be applied before the Commission adopted a new water rate case plan; and (c) if an interim increase is to be allowed, it should be effective as of January 1, 2004 (reflecting the 12-month period usually required to process the rate applications of July filers).

A. Absurd Result Can Be Avoided

ORA is correct that literal application of deadlines under the existing rate case plan would result in a strange situation with both the filing of the applications and the Section 455.2 interim increase occurring in January 2003—thus allowing the Commission virtually no time to process the applications. However, CWS does not argue for such a result; and Section 455.2 does not require it.

Relying instead on the specific language of Section 455.2(b), CWS asks the presiding officer or the Commission to exercise discretion in setting a

---

[7] Declaration of Natalie Walsh, Ex. 1 to ORA Response (May 8, 2003).

different effective date for an interim increase. CWS proposes July 1, 2003, as "a reasonable accommodation for the unique facts of this proceeding."[8] We exercised such discretion before the enactment of Section 455.2,[9] and we will continue to do so under the new law. Rejecting CWS' proposed effective date, we adopt September 12, 2003, as the more appropriate effective date since it marks the expected date of Commission approval of applications made on January 31 under the existing rate case plan. If our approval of this decision occurs after September 12, the effective date of this decision should be the date of increase.

B. Interim Increase Not Dependent on New Rate Case Plan

Under the existing water rate case plan, CWS would reasonably expect to have a final Commission decision by approximately September 12, 2003. Under the schedule set forth in the scoping memo, this proceeding is scheduled to be submitted for decision on November 14, 2003. The final decision will not be reached in the time contemplated by the rate case plan although the decision will be finalized within the 18-month period required by law.

While ORA argues that Section 455.2 cannot be applied until the Commission approves a new water rate case plan, the statute does not contain such a threshold condition. The Legislature did not revoke or suspend the 1990

---

[8] California Water Service Co., Reply to Response of ORA (May 16, 2003).

[9] *See* D.02-12-063, 2002 Cal. PUC LEXIS 918, *5 (Dec. 19, 2002) (Budget restrictions in ORA travel funds should not be used as a reason to delay the effective date for a water company's rate application. "This delay should not result in the utility being penalized because the delay is not caused by the utility.")

rate case plan but only directed the Commission to "review and revise, as appropriate," the earlier plan.[10] The presiding officer and Commission have discretion to approve an alternative date to achieve equitable, practical results in unusual cases such as this—thereby advancing the stated legislative purpose of providing "a certain but flexible schedule for investigating and addressing rate changes proposed by water corporations."[11]

C. Stated Policy Prevails Over Practice

The 1990 water rate case plan adopts a 7-1/2 month processing period for July filers while in practice a water rate case may normally take up to 12 months to complete. Absent disruptive company actions or extraordinary events that delay completion, the Commission should adhere to its adopted 1990 case management policy rather than the longer, informal practice that has evolved. The anticipated revision of the water rate case plan is the appropriate opportunity for making necessary and realistic modifications to the existing schedule. For the moment, we believe that September 12, 2003, which is the date when the case should have been completed consistent with the existing plan, is the appropriate date for an interim increase; we further believe this effectuates the legislative purpose embodied in Section 455.2. In the meantime, ratepayers have avoided a possible rate increase that might have been effective in early 2003 if CWS had filed its applications in fall 2002.

---

[10] 2002 Cal. Stat. Ch. 1147 § 2.

[11] *Id.* at § 1.

V. Affected Districts

Since only two of CWS' four districts in this GRC have more than 10,000 service connections, the question arises as to whether the interim rate increase applies to the two smaller districts as well (Oroville and Selma). Section 455.2(a) is unambiguous. The interim rate increase is available to "a water corporation with greater than 10,000 service connections . . . ." The language does not limit the increase to *districts* with greater than 10,000 service connections. Since CWS is a water corporation having more than 10,000 service connections in total, the company may request an interim rate increase for specific districts with less than 10,000 connections.

VI. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. No comments were received.

VII. Assignment of Proceedings

Geoffrey F. Brown is the Assigned Commissioner and John E. Thorson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. CWS, having more than 10,000 service connections, is subject to our 1990 rate case plan for water corporations and is a July filer under that rate case plan.

2. CWS submitted its NOI to file ratemaking applications on July 31, 2002, and its applications on January 30, 2003.

3. The delay in filing CWS' applications was due to resource constraints of the ORA preventing that office from handling both CWS' applications and those of another water corporation at the same time.

4. The delay in filing CWS' applications prevents our decision from becoming effective on the first day of the first test year, January 1, 2003.

5. Under the 1990 rate case plan for water corporations, our final decision on CWS' applications would be expected in approximately 224 days after the filing of the applications or, in this case, on September 12, 2003.

6. Based on the existing schedule for this proceeding, we will not reach a final decision on CWS' applications by September 12, 2003.

Conclusions of Law

1. Under Pub. Util. Code § 455.2, CWS is authorized to file a tariff with the Commission implementing interim rates in an amount equal to the rate of inflation as compared to existing rates.

2. The interim rates may be applied in all districts involved in this proceeding.

3. The late filing of CWS' ratemaking applications was due to the actions of the water corporation.

4. Pursuant to Pub. Util. Code § 455.2(b), interim rates should be authorized as of September 12, 2003, or the effective date of this decision, whichever is later.

INTERIM ORDER

IT IS ORDERED that:

1. California Water Service Company (CWS) is entitled to file, by advice letter, a tariff with the Commission implementing interim rates in its Selma, Oroville, Palos Verdes, and Dominguez districts, as of September 12, 2003, or the effective date of this decision, whichever is later, and continuing until the Commission issues a final decision on CWS' applications or orders otherwise.

2. The interim increase in rates will be no greater than an amount equal to the rate of inflation as compared to existing rates for each of the districts. Rate of inflation will be calculated using the most recent Consumer Price Index maintained by the U.S. Department of Labor.

3. The interim rates will remain subject to refund and will be adjusted upward or downward to the interim rate effective date, consistent with the final rates adopted by the Commission.

4. Upon tariff approval, CWS shall notify its customers in writing of the interim rate increase. Notice will be provided on or before the effective date of the interim rate increase and may be sent as a bill insert. The notice will reference this interim decision and explicitly say that the interim rates are subject to refund and will be adjusted upward or downward back to the interim rate effective date, consistent with the final rates adopted by the Commission. CWS and the Office of Ratepayer Advocates shall meet and prepare a proposed notice to ratepayers, but the notice must not be sent until the Commission's Public Advisor approves it in writing.

5. This proceeding remains open for resolution of the pending applications.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

********** SERVICE LIST **********
Last Update on 20-JUN-2003 by: LIL
A0301034 LIST
A0301035/A0301036/0301037

********** APPEARANCES **********

Todd Alexander Pickles
Attorney At Law
BINGHAM MC CUTCHEN LLP
THREE EMBARCADERO CENTER
SAN FRANCISCO CA 94111
(415) 393-2392
todd.pickles@bingham.com
For: California Water Service Company

Greg Bowling
Attorney At Law
BINGHAM MCCUTCHEN LLP
THREE EMBARCADERO CENTER
SAN FRANCISCO CA 94111
(415) 393-2101
gregory.bowling@bingham.com
For: California Water Service Company

Thomas F. Smegal
CALIFORNIA WATER SERVICE COMPANY
1720 NORTH FIRST STREET
SAN JOSE CA 95112
(408) 367-8200
tsmegal@calwater.com
For: Califonia Water Service Company

Joseph S. Lucido
President
LEONA VALLLEY CHERRY GROWERS ASSN.
9300 LEONA AVENUE
LEONA VALLEY CA 93551
(661) 270-9545
For: LEONA VALLLEY CHERRY GROWERS ASSN.

Monique M Steele
Legal Division, RM. 5035
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-2913
mms@cpuc.ca.gov
For: Office of Ratepayer Advocates

Jeffrey Young
473 WOODLEY PLACE
SANTA ROSA CA 95409
(707) 538-7031
jgyoung@ev1.net

********** STATE EMPLOYEE **********

Yoke W. Chan
Office of Ratepayer Advocates
RM. 3200
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-1909
ywc@cpuc.ca.gov
For: Office of Ratepayer Advocates

Fred L. Curry 5
Water Division
RM. 3106
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-1739
flc@cpuc.ca.gov

Maria E. Stevens
Executive Division
RM. 500
320 WEST 4TH STREET SUITE 500
Los Angeles CA 90013
(213) 576-7012
mer@cpuc.ca.gov

John E Thorson
Administrative Law Judge Division
RM. 5007
505 VAN NESS AVE
San Francisco CA 94102
(415) 355-5568
jet@cpuc.ca.gov

********* INFORMATION ONLY **********

APPENDIX A

********** SERVICE LIST **********
Last Update on 20-JUN-2003 by: LIL
A0301034 LIST
A0301035/A0301036/0301037

(END OF APPENDIX A)