Decision **DRAFT DECISION OF ALJ WALWYN (Mailed 1/11/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California-American Water Company for an order authorizing it to increase its rates for water service in its Sacramento District to increase revenues by $3,160.8 or 14.35% in the year 2005, by $2,158.6 or 8.48% in the year 2006, and by $1,202.2 or 4.35% in the year 2007.	Application 04-04-040 (Filed April 30, 2004)
In the Matter of the Application of California-American Water Company (U 210-W) for an order authorizing it to increase its rates for water service in its Larkfield District to increase revenues by $494.1 or 26.16% in the year 2005, by $183.4 or 7.63% in the year 2006, and by $61.9 or 2.39% in the year 2007.	Application 04-04-041 (Filed April 30, 2004)
In the Matter of the Application of California-American Water Company (U 210-W) for authority pursuant to Public Utilities Code Section 454 to Restructure and Consolidate its Rates for its Sacramento and Larkfield Districts.	Application 04-08-013 (Filed August 11, 2004)

INTERIM OPINION

Summary

Pursuant to Section 455.2 of the Public Utilities Code, this decision grants interim rate relief to California American Water Company (Cal-Am) for its Larkfield and Sacramento districts on the effective date of this decision.[1] In its filings in this proceeding, Cal-Am has made a substantial showing supporting a rate increase at least equal to the rate of inflation. The delay in processing its pending general rate cases (GRCs) is not due to dilatory actions of either Cal-Am or the Commission. Rather, the procedural schedule adopted here is necessary in order to give full consideration to the issue of rate consolidation.

Under the provisions of Section 455.2, it is in the public interest to grant interim rate relief to Cal-Am for its Sacramento and Larkfield districts because the procedural schedule adopted here does not allow a Commission decision by the first day of the first test year in Cal-Am's GRC applications and the result of the adopted schedule should not result in either the utility foregoing revenue necessary for just and reasonable rates or the ratepayers paying less (or more) than reasonable rates.

The interim increase is based on the rate of inflation as compared to existing rates for each district (the rate of inflation to be calculated using the most recent Consumer Price Index maintained by the U.S. Department of Labor), will be subject to refund, and will be adjusted upward or downward, back to the effective date, consistent with the final rates adopted by the Commission in the

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[1] In its November 17, 2004 motion requesting interim rate relief, Cal-Am requested an effective date of January 1, 2005. However, in its December 13, 2004 reply to the Office of Ratepayer Advocates (ORA) objection to its request, Cal-Am recognized that interim relief cannot be granted retroactively and changed its requested date to be the effective date of the Commission's decision.

pending general rate cases and rate consolidation case. Cal-Am shall file a tariff within 15 days to implement this interim rate relief. Finally, Cal-Am is directed to file a report demonstrating how it plans to refund or surcharge the difference between the interim rate and the adopted rate. The report is due within 30 days of this Commission decision.

Background

On April 30, 2004, Cal-Am filed its applications for general rate increases for its Sacramento and Larkfield districts, Application (A.) 04-04-040 and A.04-04-041, respectively. At the first prehearing conference (PHC) on July 13, 2004, Cal-Am stated that in response to Ordering Paragraph 12 of Decision (D.) 04-05-023, issued after its April filings, it would likely file an application to consolidate for ratemaking purposes its Sacramento and Larkfield districts. After requesting and receiving a brief extension of time for its filing, Cal-Am filed its rate consolidation application, docketed as A.04-08-013, on August 11, 2004.

At the August 16, 2004 PHC, Cal-Am and the Office of Ratepayer Advocates (ORA) both agreed it made good sense to consolidate the three cases for purposes of evidentiary hearings, and the Administrative Law Judge (ALJ) so ruled. A preliminary procedural schedule was set, and agreed to by all parties, that followed the schedule proposed in Cal-Am's August filing.

Following a third PHC on September 23, 2004 to address the protests filed in response to A.04-08-013, the procedural schedule set at the August 16 PHC was adopted in the Scoping Memo issued on October 18, 2004. This procedural schedule provides for a final Commission decision on April 21, 2005.

At each of the three PHCs, and again in the Scoping Memo, Cal-Am was advised that its request for interim rates should be made by separate motion and follow the criteria set forth in D.04-06-018.

On November 17, 2004, Cal-Am filed a motion for interim rate relief, requesting the Commission authorize it to implement interim rates effective January 1, 2005. Cal-Am states that interim relief should be granted because: (1) the delay in this proceeding is due entirely to internal matters at the Commission and is not due to any action of Cal-Am; (2) Commission case law supports granting the requested relief; and (3) the requested relief is in the public interest.

In support of its position, Cal-Am states that the delay in the Commission issuing D.04-05-023 regarding its 2002 GRC applications prevented Cal-Am from filings its 2004 GRCs in a timely fashion. However, even the delayed filing of its 2004 GRC applications did not necessarily prevent the Commission from issuing a decision by January 1, 2005. Cal-Am asserts that the mandated filing of the Sacramento/Larkfield consolidated rates application within 90 days of the issuance of D.04-05-023 was the apparent catalyst in the adoption of a procedural schedule in this proceeding that now prevents a Commission decision on the 2004 GRC applications by January 1, 2005. Cal-Am asserts that both the requirement to file the consolidated rate application and the timing of the filing were beyond its control.

On December 2, 2004, ORA opposed Cal-Am's request. ORA stated that the delay in this proceeding was due to Cal-Am's inaction, specifically Cal-Am's failure to meet its commitment to file its GRC applications on or before January 20, 2004, whether the Commission had reached a decision on Cal-Am's earlier GRC application or not. (See Exhibit C attached to Cal-Am's motion, an

October 10, 2003 letter from Cal-Am setting forth the terms of its GRC filing agreement with ORA.)

ORA asserts that Section 455.2 requires the Commission to take into account delays caused by the water corporation in deciding whether or not to grant the requested interim rate relief. Due to Cal-Am's three-month delay in filing its GRC application, ORA opposes Cal-Am's motion for interim rates effective January 1, 2005. The earliest effective date ORA supports for interim rates is April 30, 2005, one year from the actual date that Cal-Am filed its 2004 GRC applications.[2]

Cal-Am requested, and received, approval to file a reply to ORA's December 2, 2004 response on December 13, 2004. Cal-Am denies that the delay in this proceeding was due to Cal-Am's inaction, and it urges the Commission to expeditiously authorize it to implement interim rates subject to refund or surcharge based on the rates ultimately adopted in this proceeding.[3] Cal-Am includes here a showing that its applications support a rate increase at least equal to the rate of inflation, a showing that the two-year rate case cycle here, as opposed to the typical three-year rate case cycle for water utilities, will have a

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[2] ORA also requests that the Commission direct Cal-Am to file a report demonstrating how it plans to refund (surcharge) the difference between the interim rate and the adopted rate and that this report be filed within 30 days of the Commission decision authorizing an interim rate.

[3] Specifically, Cal-Am states it mistakenly referenced a January 2004 filing date for the general rate case applications in its motion. Citing the term "proposed general rate case applications" in one portion of its letter agreement with ORA, Cal-Am interprets this to mean that January 20, 2004 was the date for submission on a Notice of Intent (NOI) not a "final" application.

minimal effect on ratepayers, and a showing that the public interest is served by granting interim rate relief in situations similar to that of Cal-Am.

In its reply, Cal-Am also modifies the date it requests interim rates be effective. Rather than January 1, 2005, Cal-Am requests that interim rates be effective on the date of the final Commission decision on its request. It proposes an expedited schedule that would allow this date to be January 27, 2005.

Discussion

Cal-Am is a water utility with greater than 10,000 service connections and is therefore eligible to seek interim rate relief pursuant to Section 455.2. Exhibits A and B to Cal-Am's November 16, 2004 motion contain the 1990 rate case plan schedule under which it filed its April 30, 2004 applications.

Section 455.2, enacted in 2002, provides for 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. The implementation questions resulting from the enactment of this statute have been addressed in several individual cases. (See In re California Water Service, D.03-10-072 (Oct. 30,2003); In re San Jose Water Co., D.03-12-007 (Dec. 4, 2003); In re Cal-Am, D.04-05-023 (May 12, 2004); In re California Water Service, D.04-09-038 (Sept. 23, 2004); and in D.04-06-018, the first decision in R.03-09-005, our generic rulemaking to evaluate existing practices and policies for processing GRCs.) We will focus on the general rules established in D.04-06-018 and then cite to individual cases where pertinent.[4]

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[4] While this proceeding does not fully follow the new general rate case plan set forth in D.04-06-018, it is appropriate to use the criteria for evaluating Section 455.2 requests.

The criteria set forth in D.04-06-018 for interim rate relief under Section 455.2 require that:

a. 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;

b. the Commission determine whether interim relief is "in the public interest"; and

c. 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. (See Section III.E., *mimeo.*, at 21.)

In considering whether Cal-Am's application support a rate increase at least equal to the rate of inflation, we look first at the three cases Cal-Am has filed. Its April 30, 2004 GRC applications request a 14.35% revenue increase for the Sacramento district in 2005 (A.04-04-040), and a 26.16% increase for the Larkfield district in 2005 (A.04-04-041). In its August 11, 2004 application for rate consolidation of Sacramento and Larkfield districts (A.04-08-013), Cal-Am also requests a 2005 consolidated rate increase for Sacramento and Larkfield that is greater than the rate of inflation. These applications are complete, and include detailed rate tables and sponsoring testimony.[5] There is no dispute that both the initially proposed increases and the increases that would result from our

[5] In addition, on December 16, 2004 Cal-Am, ORA and the Larkfield Wikiup Water District Advisory Committee filed a motion for adoption of a settlement agreement that contained 2005 rates for Sacramento of over 7% and 2005 rates for the Larkfield district of more than 8%. This proposed settlement resolves most issues in the GRC cases but not the rate consolidation application.

adoption of the settlement exceed the current rate of inflation. Based on this record, we find that Cal-Am has made a substantial showing in its applications for a rate increase in each district that is at least equal to the rate of inflation.

The main dispute here concerns the cause for the delay in processing these GRC applications. While Cal-Am's April 30, 2004 applications were late, the Commission under the 1990 rate plan schedule had the minimum time necessary to resolve the cases by year-end. It is the August 11, 2004 rate consolidation application that, when consolidated for hearing with the April applications, caused the delay in resolving the GRC applications beyond the date referenced in Section 455.2, that date being the first day of the first test year in the GRC applications.

We look first to the cause and timing of the rate consolidation application, then whether there was a need to consolidate it with the GRC applications. The roots of the August 11, 2004 rate consolidation application are found in Cal-Am's request in its 2002 GRC proceeding to consolidate the rates of the Sacramento/Larkfield districts and the Monterrey/Felton districts. In deciding Cal-Am's 2002 GRCs, the Commission denied Cal-Am's requests for rate consolidation for the Sacramento/Larkfield districts and the Monterrey/Felton districts but stated that it wanted to consider the matter further and directed Cal-Am to make a subsequent filing.

In its request for interim rates, Cal-Am states that it only made its August 11, 2004 rate consolidation application after reviewing the decision language of D.04-05-023 and determining that the application was required within 90 days of the May 12, 2004 decision.[6] [7] In D.04-05-023, the Commission found that the record was insufficient to support a decision on rate consolidation and that the public interest would be better served by a timely consideration by this Commission of rate consolidation proposals with an evidentiary showing that fully addresses all identified issues. (*Mimeo.*, at pp. 42-43.)

Based on the discussion above, we find that the cause and timing for the rate consolidation application are the requirements set forth in D.04-05-023. We turn next to the question of whether there was a need to consolidate A.04-08-013 with the April GRC applications. The October 18, 2004 scoping memo recognizes that if the Commission adopts a rate consolidation proposal for Larkfield and Sacramento, it would change the revenue requirements, rate designs, and rates

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[6] On July 30, 2004, in a letter to the Commission's Executive Director, Cal-Am sought a one week extension of time to comply with the August 4, 2004 deadline for the rate consolidation filings set forth in Ordering Paragraph 12 of D.04-05-023. Cal-Am stated it needed this time in order to prepare "fifteen year projections of the average annual water bill at stand-alone and consolidated rates for each district, an examination of the customer effects of the significant capital projects Cal-Am anticipates in its Sacramento and Monterey Districts, an analysis of the effect of the consolidation proposals on savings stemming from previous transactions, and (to) address the issue of how the consolidation applications will affect the currently filed Sacramento and Larkfield District general rate case applications (A.04-04-040, A.04-04-041) and the Monterey District general rate case application to be filed in February 2005." Executive Director Steve Larson granted Cal-Am a one week extension of time to August 11, 2004.

[7] The County of Santa Cruz disagrees with Cal-Am on which districts should be included in the rate consolidation filing ordered in D.04-05-023. It has protested A.04-08-013 and A.04-08-012, Cal-Am's rate consolidation application for the Monterrey and Felton districts. A.04-08-012 is being handled as a separate proceeding.

requested in the GRC filings and for this reason affirms the ALJ's initial ruling to consolidate the three proceedings. We find it would be unduly confusing for customers and an unnecessary duplication of Commission resources and hearing time to have the GRC applications and the rate consolidation application proceed on concurrent schedules and agree that a consolidated procedural schedule is needed here. We further agree that the schedule set in the scoping memo is appropriate.

Therefore, we find that the delay in processing Cal-Am's April GRC applications is not due to dilatory actions of either Cal-Am or the Commission. The procedural schedule adopted here is necessary in order to give full consideration to the issue of rate consolidation. The result of this procedural schedule is that the Commission is not able to reach a final decision on Cal-Am's 2004 GRC applications by the first day of the first test year in its GRC applications.

Under the provisions of Section 455.2, it is in the public interest to grant interim rate relief to Cal-Am for its Sacramento and Larkfield districts because the procedural schedule adopted here does not allow a Commission decision by the first day of the first test year in Cal-Am's GRC applications and the result of the adopted schedule should not result in either the utility foregoing revenue necessary for just and reasonable rates or the ratepayers paying less (or more) than reasonable rates.

Pursuant to Section 455.2, if interim rate relief is authorized, the applicant must file a tariff implementing interim rates that may be increased by an amount equal to the rate of inflation as compared to existing rates, and these interim rates shall be subject to refund and shall be adjusted upward or downward back to the interim rate effective date, consistent with the final rates adopted by the

Commission. In D.04-06-018, we determined that the rate of inflation should be calculated using the most recent Consumer Price Index maintained by the U.S. Department of Labor, and we apply that methodology here. As we stated in Cal-Am's last GRC decision, the Commission cannot grant an interim rate increase retroactively. In its reply comments, Cal-Am requests that date of the Commission's decision here be the effective date of the interim rate relief. We agree.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Christine M. Walwyn is the assigned ALJ in this proceeding.

Comments on Draft Decision

The draft decision of the Principal Hearing Officer 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.

On January 18, 2005, Cal-Am filed a motion for a waiver of the 30-day public notice and comment period so that the Commission can consider the draft decision at its public agenda meeting on February 10, 2005. Cal-Am requests the waiver under Rule 77.7(g) and includes a stipulation of all parties to the request. Since the Commission can act on this draft decision on February 10, 2005 without a waiver of the 30-day public notice and comment period, the motion is superfluous and we do not address it further.

Findings of Fact

1. Cal-Am is a water corporation with greater than 10,000 service connections.

2. Cal-Am submitted its GRC applications on April 30, 2004 under the 1990 rate case plan schedule and these cases were consolidated with its rate consolidation application filed on August 11, 2004.

3. The need and timing for the rate consolidation application is set forth in D.04-05-023.

4. The consolidation of the April 30, 2004 GRC applications with A.04-08-012 is necessary.

5. Under the 1990 rate case plan schedule, a final Commission decision would be expected by December 2004.

6. Based on the existing schedule for this proceeding, a final decision is not scheduled until April 2005.

7. The delay in processing Cal-Am's GRC applications is not due to dilatory actions of either Cal-Am or the Commission.

Conclusions of Law

1. Cal-Am is eligible to seek interim rate relief under Public Utilities Code Section 455.2 for its GRC applications for the Sacramento and Larkfield districts.

2. Cal-Am has made a substantial showing in its applications for a rate increase in both the Sacramento and Larkfield districts that is at least equal to the rate of inflation.

3. It is in the public interest to grant Cal-Am interim rate relief.

4. Cal-Am should be granted interim rate relief for its Sacramento and Larkfield districts on the effective date of this decision.

5. Based on the recommendation of the Office of Ratepayer Advocates, Cal-Am should file a report demonstrating how it plans to refund or surcharge the difference between the interim rates and the adopted rates. This report should be filed within 30 days of the date of this decision

6. This decision should be effective immediately.

7. This proceeding should remain open for resolution of the pending applications.

INTERIM ORDER

IT IS ORDERED that:

1. California-American Water Company (Cal-Am) shall file, by advice letter within 15 days, a tariff with the Commission implementing interim rates in its Sacramento and Larkfield districts effective on the date of this decision. The interim increase shall be based on the rate of inflation as compared to existing rates for each district (the rate of inflation to be calculated using the most recent Consumer Price Index maintained by the U.S. Department of Labor), shall be subject to refund, and shall be adjusted upward or downward, back to the effective date, consistent with the final rates adopted by the Commission in this proceeding.

2. Upon tariff approval, Cal-Am shall notify its customers in writing of the interim rate increase. 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.

3. Cal-Am shall file a report demonstrating how it plans to refund or surcharge the difference between the interim rate and the adopted rate within 30 days of this decision.

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

This order is effective immediately.

Dated _____, at San Francisco, California.