Decision **DRAFT DECISION OF ALJ ECONOME** **(Mailed 5/31/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of California-American Water Company (U-210-W), a California corporation, RWE Aktiengesellschaft, a corporation organized under the laws of the Federal Republic of Germany, Thames Water Aqua Holdings GmbH, a corporation organized under the laws of the Federal Republic of Germany, Thames Water Plc, a corporation organized under the laws of the United Kingdom and Wales, and Apollo Acquisition Company, a Delaware Corporation, for an order Authorizing Apollo Acquisition Company to merge with and into American Water Works Company, Inc. resulting in a change of control of California-American Water Company, and for such related relief as may be necessary to effectuate such transaction.	Application 02-01-036 (Filed January 28, 2002)

OPINION DENYING PETITION TO MODIFY DECISION 02-12-068

I. Summary

This decision denies the petition of the County of Santa Cruz (Santa Cruz) to modify Decision (D.) 02-12-068.

II. Procedural Background

On December 10, 2003, Santa Cruz filed a petition to modify D.02-12-068. Santa Cruz states its requested modifications are to (1) prohibit California-American Water Company (Cal-Am) from charging rates above its actual cost of providing water service in the former California water districts of Citizens

Utilities Company of California (Citizens) and (2) prohibit Cal-Am's current parent and new owner, RWE Aktiengesellschaft (RWE), from recovering through rates charged ratepayers in these districts any portion of the acquisition premium paid by the shareholders of Cal-Am's former parent corporation, American Water Works Company (AWW), for Citizens' California water utility facilities.

On January 9, 2004, RWE and Cal-Am filed a joint response to the petition urging its denial because the Commission has previously reviewed and decided the issues the petition raises.

This petition is timely filed pursuant to Rule 47(d) of the Commission's Rules of Practice and Procedure because it is filed within one year of the effective date of D.02-12-068. Although Santa Cruz was not a party to this proceeding, Rule 47(e) allows a non-party to file a petition for modification, provided that the petitioner states how it is affected by the decision and why the petitioner did not participate in the proceeding earlier.

III. Santa Cruz' Petition Raises Issues Previously Addressed and Decided in D.02-12-068 and D.04-05-023

Santa Cruz' petition can be distilled into two claims: (1) that Cal-Am no longer has the need or right to recover through the Alternative Sharing Mechanism the acquisition premium paid for the assets of Citizens because of RWE's purchase of stock of AWW; and (2) that Cal-Am has not adequately demonstrated synergy savings due to the Cal-Am/Citizens transaction in its general rate case proceeding (a proceeding that, since this petition was filed, has been decided in D.04-05-023).

Montara Sanitary District (MSD), which was represented by the same legal counsel that represents Santa Cruz in this petition, specifically raised the Alternative Sharing issue in the reply briefs before the issuance of D.02-12-068.

Because the Alternative Sharing issue was raised so late, a September 26, 2002 Administrative Law Judge (ALJ) ruling requested additional briefing on this issue.[1]

The Alternative Sharing issue was thus fully briefed by the parties and decided in D.02-12-068, 2002 Cal. PUC LEXIS 909 ** 42-43. In D.02-12-068, the Commission declined to eliminate the Alternative Sharing Mechanism established in D.01-09-057 as a result of the RWE purchase.

> "In D.01-09-057, we approved an Alternative Sharing Mechanism in the context of the Citizens transaction, which is a separate transaction from the one we consider here. We therefore disagree with MSD and do not eliminate this mechanism because the monies Cal-Am will obtain as a result of the Alternative Sharing Mechanism are incorporated into the asset value of Cal-Am." (D.02-12-068, 2002 Cal. PUC LEXIS 909, ** 42-43.)

The Alternative Sharing issue was again raised by other parties in A.02-09-032, Cal-Am's general rate case for Felton, in which Santa Cruz participated.[2] In D.04-05-023, the Commission confirmed its holding in D.02-12-068, again declining to eliminate the Alternative Sharing Mechanism:

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[1] A November 14, 2002 ALJ ruling denied Santa Cruz' October 4, 2002 motion to intervene in the proceeding as untimely, given that Santa Cruz was served with the application at the time it was filed, that lengthy hearings had concluded in early August, that opening and reply briefs had already been filed, and that the only outstanding item was the briefing on the Alternative Sharing issue. The ruling stated that the issues Santa Cruz sought to address, namely service quality and rates charged for water service to residents in Felton, are best addressed in the Felton District's pending general rate case, Application (A.) 02-09-032. The ruling encouraged Santa Cruz to participate in that proceeding.

[2] This application was consolidated with A.02-09-030, A.02-09-031 and A.02-09-033 and addressed in D.04-05-023. Almquist, the witness who raised this issue in A.02-09-032,

Footnote continued on next page

> "Next, Almquist argues that the premium RWE paid to American Water Works shareholders has fully repaid American's shareholders for the acquisition premium they paid to Citizens when they purchased Citizens' water assets. Thus, the acquisition premium amortization the Commission authorized in D.01-09-057 is no longer justified. We previously considered and rejected this argument in the RWE acquisition proceeding. We decline to reconsider it here." (See 2004 Cal. PUC LEXIS 234 ** 95-96, footnote omitted.)

We have thus twice previously considered and rejected the Alternative Sharing issue which Santa Cruz raises here again, and we again deny the relief requested.

As to the second issue, namely, synergy savings from the Citizens and RWE transactions, Santa Cruz litigated this issue in Felton's general rate case, and in D.04-05-023, which issued on May 6, 2004, we found that CalAm's claimed savings do exist:

> "Santa Cruz expressed a host of objections to CalAm's synergies savings analysis and allocation. According to Santa Cruz, CalAm's synergies analysis is fundamentally flawed, in part because even if CalAm had not acquired Citizens' properties some other entity would have, and thus many of the benefits claimed would have been realized without CalAm's involvement. Some of the synergies savings, particularly those involving financing, were actually due to the RWE acquisition, and CalAm fails to distinguish between them. CalAm's claimed savings are based on excessively hypothetical circumstances, including an assumption that CalAm's cost of capital will be lower than Citizens' for the next 40 years. Some of the claimed synergies savings come from reductions in

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was a former Santa Cruz County Supervisor and witness for Santa Cruz on some issues, but he raised this issue in his own right.

service. And, Santa Cruz argues, Cal Am has not justified allocating any of the acquisition premium to either Montara or Felton.

"We have examined each allegation in light of CalAm's showing and we do not agree with Santa Cruz. Most of the synergies savings accrue from cost of capital savings, cost of investment savings, and allocation of general office costs to Arizona; savings from other sources are small by comparison. Cost of capital savings are a primary contributor, and those arise in large part from CalAm's much lower equity ratio (a topic we cover more fully in a later section). We are convinced those savings do exist and came about due to CalAm's acquisition of the Citizens assets. In D.01-09-057, we approved allocating the Citizens asset purchase price among the six states involved on the basis of Citizens' gross plant. CalAm has extended that allocation method here down to the district level. Santa Cruz (and MSD with it earlier) argues that the share CalAm would allocate to Felton (and earlier, to Montara as well) is excessive, but it provides no better allocation proposal; its favored method is apparently to allocate none of the acquisition premium to Felton district, an outcome we reject as unsupported and unreasonable. We accept CalAm's acquisition premium amortization figures, as concurred in by ORA, for each district and test year." (See D.04-05-023, 2004 Cal. PUC LEXIS 234 ** 36-37, footnotes omitted; see also ** 94-95.)[3]

[3] A CalAm proposal to modify the Alternative Sharing Mechanism and synergy analysis was considered in D.04-05-023 and rejected without prejudice to the parties raising the issue with notice to all parties who participated in A.00-05-015, the application in which D.01-09-057 was issued. (See 2004 Cal. PUC LEXIS 234 ** 37-39.) If CalAm, or other parties, wish to propose such modifications, they should follow the Commission's directives in D.04-05-023.

We therefore decline to revisit the two issues raised by Santa Cruz by means of this petition. Santa Cruz' petition for modification of D.02-12-068 is denied.

IV. 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. No party filed comments to the draft decision.

V. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Janet A. Econome is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission has repeatedly addressed and rejected the substance of the claims made in this petition.

2. The petition has not shown new or changed facts that would justify allowing further litigation of the underlying issues.

Conclusions of Law

1. Santa Cruz' petition for modification of D.02-12-068 should be denied.

2. In order to achieve finality in this application, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Petition of the County of Santa Cruz to Modify Decision 02-12-068, filed on December 10, 2003, is denied.
2. Application 02-01-036 is closed.

This order is effective today.

Dated _____, at San Francisco, California.