Decision **DRAFT DECISION OF ALJ WALWYN** **(Mailed 11/14/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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 Monterey District to increase revenues by $9,456,100 or 32.88% in the year 2006; $1,894,100 or 4.95% in the year 2007; and $1,574,600 or 3.92% in the year 2008; and for an order authorizing sixteen Special Requests with revenue requirements of $3,815,900 in the year 2006, $5,622,300 in the year 2007, and $8,720,500 in the year 2008; the total increase in rates for water service combined with the sixteen Special Requests could increase revenues by $13,272,000 or 46.16% in the year 2006; $7,516,400 or 17.86% in the year 2007; and $10,295,100 or 20.73% in the year 2008.	Application 05-02-012 (Filed February 16, 2005)
In the Matter of the Application of California-American Water Company (U 210 W) for Authorization to Increase its Rates for Water Service in its Felton District to increase revenues by $796,400 or 105.2% in the year 2006; $53,600 or 3.44% in the year 2007; and $16,600 or 1.03% in the year 2008; and for an order authorizing two Special Requests.	Application 05-02-013 (Filed February 16, 2005)

OPINION GRANTING INTERIM RATE RELIEF

OPINION GRANTING INTERIM RATE RELIEF

I. Summary

Pursuant to Section 455.2 of the Public Utilities Code (Section 455.2), this decision grants interim rate relief to California-American Water Company (Cal-Am) for its Monterey and Felton districts on January 1, 2006. The interim rate increase is based on the rate of inflation as compared to existing rates for each district, will be subject to refund, and will be adjusted upward or downward, back to January 1, 2006, consistent with the final rates adopted by the Commission in the pending general rate cases.[1]

We find it is in the public interest to grant interim rate relief to Cal-Am. While Cal-Am is responsible for some of the delay in the procedural schedule, we find its actions do not warrant denying interim relief. There are mitigating circumstances such that the revised procedural 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.

II. Cal-Am's Request for Interim Rate Relief

On October 11, 2005, Cal-Am filed its motion for interim rate relief. It states that interim rate relief is warranted because (1) Section 455.2(b) and Commission case law supports granting interim rate relief in this instance; (2) the requested relief is in the public interest; and (3) the evidentiary hearing schedule alone has prevented the Commission from issuing a final decision by January 1, 2006.

---

[1] The rate of inflation is to be calculated using the most recent Consumer Price Index maintained by the U.S. Department of Labor.

On October 18, 2005, Felton Friends of Locally Owned Water (Felton FLOW) filed a response opposing Cal-Am's request.[2] Felton FLOW opposes Cal-Am's request for interim rate relief because the request is necessitated in large part by Cal-Am's own actions and is contrary to the public interest.

Felton FLOW asserts that under Section 455.2(b) a utility applicant has no right to an interim rate increase if the delay in issuance of the Commission's decision is due in any respect to the utility's own actions. Felton FLOW cites eight instances of procedural delay caused by Cal-Am, the most significant being the late filing of its applications, the complexity of the applications, the delay in filing a complete proposed partial settlement, and Cal-Am's request to have a late-filed exhibit admitted into evidence.

In addition, Felton FLOW asserts that Cal-Am cannot satisfy the requirement established in Decision (D.) 04-06-018 that the applicant demonstrate that an interim rate increase is in the public interest because in Cal-Am's last general rate case (GRC) for the Felton district, D.04-05-023, the Commission noted that by Cal-Am's own admission, its actual earned return on equity exceeded the level authorized by the Commission in every year from 1993 to 2001.[3]

On October 26, 2005, Cal-Am requested, and was granted, permission to file a reply to Felton FLOW's response by October 31, 2005. In its reply, Cal-Am states that Felton FLOW's assertion that Cal-Am is largely to blame for the delay

---

[2] Pursuant to the procedural schedule, Felton FLOW's response is contained in its reply brief.

[3] D.04-05-023, footnote 72, *mimeo.* at 54.

in the proceeding lacks sufficient supporting facts and is based on either misstatements or overstatements of actual fact and, further, ignores Felton FLOW's own actions in delaying the procedural schedule. On the issue of public interest, Cal-Am states its earnings for the years 1997-2001 were high due to recovery of past undercollections in various balancing and memorandum accounts, not due to exceptional earnings. Further, Cal-Am has already experienced substantial delay in rate relief for the Felton district from a 16-month delay in implementation of rates approved in D.04-05-023.

III. Discussion

Cal-Am is a Class A water utility, i.e., it has greater than 10,000 service connections. Section 455.2, enacted in 2002, provides for a Class A water utility 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.

Cal-Am's GRC applications for the Monterey and Felton districts are made pursuant to the new three-year GRC cycle requirements for Class A water utilities set forth in the rate case plan (RCP) adopted in D.04-06-018. For the 2005 transitional first year filings under the RCP, the Commission adopted in D.04-06-018 an expedited schedule, allowing a February 1 rather than January 1 filing date while retaining a projected completion date by the end of the calendar year; Cal-Am's Monterey and Felton districts are included in the February 1, 2005 filing schedule.

On February 16, 2005, Cal-Am late-filed its applications for the Monterey and Felton districts but did not serve the parties on its service list. On February 28, 2005, Cal-Am filed amended applications and served all parties.

Notices of the amended applications appeared in the Commission's Daily Calendar on March 3, 2005, with protests due by April 4, 2005.[4]

The criteria set forth in D.04-06-018 for interim rate relief under Section 455.2[5] require 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. (See Section III.E., *mimeo*. at 21.)

On the first criterion, Cal-Am has made a detailed showing in its application in support of rate increases for each district that are substantially higher than the rate of inflation; it supports its request with rate tables,

---

[4] On March 21, 2005, an administrative law judge (ALJ) ruling memorialized the filing delays, confirmed the protest date, directed Cal-Am to file a revised procedural schedule by March 25, 2005, set a prehearing conference (PHC) for April 5, 2005, and provided interested parties an opportunity to file PHC statements addressing the revised procedural schedule and the scope of issues contained in the applications by March 30, 2005.

[5] There have also been several individual cases that have addressed requests for interim rate relief under Section 455.2. (See In re Cal-Am, D.05-02-007 (February 10, 2005); In re California Water Service, D.03-10-072 (October 30, 2003); In re San Jose Water Co., D.03-12-007 (December 4, 2003); In re Cal-Am, D.04-05-023 (May 12, 2004); In re California Water Service, D.04-09-038 (September 23, 2004);

workpapers, and sponsoring testimony. The proposed partial settlement agreement between Cal-Am and ORA also proposes rate increases higher than the rate of inflation. Cal-Am's showing, and the proposed partial settlement, are contested and the merits will not be addressed until a final decision is proposed.

On the second criterion, public interest, Cal-Am argues that the legislative intent of Section 455.2(b) is to protect shareholders where the utility is not the cause of the delay. Felton FLOW argues that the public interest requires the utility not receive interim rate relief if it responsible for the procedural delay and, in addition, the Commission should also consider a history of the utility overearning its authorized rate of return. We will first address the matter of procedural delay prior to making a finding on public interest.

We find that while Cal-Am is responsible for some of the delay in the procedural schedule, there are mitigating circumstances such that Cal-Am should be allowed interim rate relief on January 1, 2006. The primary causes of procedural delay in this proceeding is the complexity of the applications, especially the 16 special requests Cal-Am submitted for Monterey, combined with the expedited schedule set in D.04-06-018. While Cal-Am is responsible for including the 16 special requests, we agree with its assertion that the Monterey district faces an unusually tight water supply and extraordinarily complicated water supply issues, and this GRC proceeding is the right forum for it to seek relief for most of these special requests.[6] In the case of delay caused by the late-filed applications and the additional time necessary for supporting tables to be

[6] The May 31, 2005 scoping memo ruled that Special Requests #2 and #3 were not within the scope of this proceeding.

provided for the proposed partial settlement, Cal-Am appears to have exerted its best efforts to minimize the delays caused by its errors and omissions. Further, by withdrawing its request to reopen the evidentiary record, Cal-Am acted to avoid additional delay. We also give consideration to the considerable delay Cal-Am has experienced in collecting the last rate increase approved for the Felton district.

Therefore, we find it in the public interest to grant interim rate relief to Cal-Am. The result of the revised procedural schedule here 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 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.

IV. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Christine M. Walwyn is the assigned Administrative Law Judge in this proceeding.

V. 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 comments were filed.

Findings of Fact

1. Cal-Am submitted its GRC applications under the new RCP schedule adopted in D.04-06-018. This schedule is expedited for 2005 in order to provide for a final Commission decision prior to January 1, 2006.

2. Based on the existing schedule for this proceeding, a final decision is not scheduled until March, 2006.

3. The primary cause of procedural delay in this proceeding is the complexity of the applications, especially the 16 special requests Cal-Am submitted for Monterey, combined with the expedited schedule set in D.04-06-018. While Cal-Am is responsible for including the 16 special requests, we agree with its assertion that the Monterey district faces an unusually tight water supply and extraordinarily complicated water supply issues and this GRC proceeding is the right forum for it to seek relief for most of these special requests.

4. There are mitigating circumstances in this case such that the delays caused by Cal-Am do not warrant a delay in interim rate relief.

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 Monterey and Felton districts.

2. Cal-Am has made a detailed showing in its applications for a rate increase for both 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 effective January 1, 2006.

4. This decision should be effective immediately.

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

O R D E R

IT IS ORDERED that:

1. California-American Water Company (Cal-Am) shall file, by advice letter within five days, a tariff with the Commission implementing interim rates in its Monterey and Felton districts. 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 state 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. This proceeding remains open for resolution of the pending applications.

This order is effective today.

Dated _____, at San Francisco, California.