

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
Collection and Remittance of the
Monterey Peninsula Water
Management District User Fee.

Application No. 10-01-012
Filed January 5, 2010

**COMMENTS OF
THE DIVISION OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION**

I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's Rules of Practice and Procedure ("Rules"), the Division of Ratepayer Advocates ("DRA") hereby files its Comments on the December 21, 2010 Proposed Decision ("PD") of Administrative Law Judge Bushey, rejecting an all party settlement authorizing collection and remittance of the Monterey Peninsula Water Management District User Fee.

DRA notes that under Rule 14.3 of the Commission's Rule of Practice and Procedure comments on proposed decisions "shall focus on factual, legal or technical errors" in the proposed decision, making specific references to the record. The Commission should reject the Proposed Decision because the settlement is a just and reasonable outcome for ratepayers. DRA is unable to consistently make specific references to the record because, in anticipation of an all party settlement, DRA did not file testimony and the Parties were not given opportunity to fully develop the record.

II. DISCUSSION

A. The PD Errs in Asserting Jurisdiction over the District's User Fee

1. The PD Commits Factual Error by Characterizing MPWMD's programs as Cal Am's.

The PD commits factual error by finding that the programs funded by the District's User Fee are California American Water's ("Cal Am") responsibility. The Monterey Peninsula Water Management District's ("MPWMD" or "District") User Fee funds programs that are the responsibility of the MPWMD, not that of California American Water.

2. The PD Commits Legal Error By Improperly Interfering with the Authority of a Government Agency.

The Commission has no jurisdiction of the District's User Fee. The PD errs in its failure to comply with Commission precedent, D.89-05-063. Further, the PD is inconsistent with the Guidelines for the Equitable Treatment of Revenue-Producing Mechanisms Imposed by Local Government Entities on Public Utilities. The PD effectively disputes the authority of MPWMD as a local governmental entity to impose or levy a tax or fee upon utility customers or the utility itself. This issue is outside of the Commission's jurisdiction. As the Commission stated in D.89-05-063, "Any issue relating to such local authority is a matter for the Superior Court, not this Commission." The PD itself acknowledges that MPWMD is authorized by the legislature to impose taxes, fees and other assessments, and that these funding mechanisms are outside of the Commission's jurisdiction.¹ The Commission lacks jurisdiction to question or reject the tax or fee.

¹ PD at 2.

B. The Commission Should Accept the All-Party Settlement, or Allow a Hearing and Reasonable Time for Parties to Request Alternate Relief.

DRA fully supports the all party settlement reached in this proceeding, and respectfully urges that the Commission adopt the settlement in its entirety. DRA will not reargue the motion in support of settlement, but as the Parties argued in that motion, the settlement is reasonable in light of the record, is consistent with the law, and is in the public interest. The PD's finding to the contrary is unsupported. As such, DRA supports the Comments to the PD filed by Monterey Peninsula Municipal Water District².

Should the Commission reject the settlement, DRA respectfully requests that the PD be modified to reopen the record and allow a hearing and reasonable time for Parties to request alternate relief. Under Rule 12.4, if a settlement is rejected, the Commission may:

- (a) Hold hearings on the underlying issues, in which case the parties to the settlement may either withdraw it or offer it as joint testimony,
- (b) Allow the parties time to renegotiate the settlement,
- (c) Propose alternative terms to the parties to the settlement which are acceptable to the Commission and allow the parties reasonable time within which to elect to accept such terms or to request other relief.

The PD does not allow for any of those alternatives. From the time of DRA's February 18, 2010 Protest, the Parties anticipated settling this application. In fact, DRA's protest was limited to challenging the accounting mechanism proposed in the application³. With that understanding, DRA did not prepare or serve testimony, nor did the other Parties submit supplemental or rebuttal testimony. Moreover, the Parties attempt to resolve this matter without evidentiary hearings cannot be construed as a waiver of their right to present evidence and cross examine witnesses.

² DRA has not had the opportunity to review the Comments to the PD filed by California American Water.

³ DRA Protest, filed February 18, 2010, at 1-3.

The PD rejects the settlement as unreasonable in light of the whole record because the “record contains insufficient cost justification, several instances of apparent double-counting, and ratemaking treatment at odds with our standards.”⁴ This is factually incorrect as there is no evidence in the record to support this finding. If there is an appearance of double counting, the Parties should be afforded the opportunity to address such findings in a hearing. Further, as the only contested issue among the Parties was the proper accounting mechanism, the Parties did not develop the record to include additional evidence on uncontested issues. Again, if there is a question about the cost justification or ratemaking treatment of the user fees, the applicants should have the opportunity to address these questions in an evidentiary hearing. To close this proceeding now, without affording the Parties an opportunity for hearings on the factual issues raised in the PD, would be to improperly deny the Parties their due process.

III. CONCLUSION

For the reasons stated above, DRA respectfully requests that the PD be modified to accept the settlement, or in the alternative, that the PD be modified to reopen the record and allow the Parties hearings on this application.

Respectfully Submitted,

/s/ ALLISON BROWN

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⁴ PD, at 13.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION**” to the official service list in **A.10-01-012** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on January 10, 2011 at San Francisco, California.

/S/ MARTHA PEREZ

Martha Perez

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A.10-01-012

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