

ATTACHMENT

**Digest of Differences Between
ALJ Minkin's Proposed Decision and the
Alternate Proposed Decision of Commissioner Bohn**

A.04-09-019: In the Matter of the Application of California-American Water Company (Cal-AM) (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates

Pursuant to Public Utilities Code § 311(e), this is the digest of the substantive differences between the proposed decision (PD) of Administrative Law Judge Angela Minkin (mailed on October 21, 2010) and the proposed alternate decision (APD) of Commissioner John Bohn (also mailed on October 21, 2010).

The proposed decision in this matter finds that the following modifications to the proposed Settlement Agreement and Water Purchase Agreement should be adopted:

1. The PD finds that the capital cost cap for the Regional Project facilities should be limited to \$227.4 million. The PD sets an absolute cost cap ceiling of \$275.5 million, beyond which cost recovery from California-American Water Company's (Cal-Am) ratepayers will not be allowed.
2. The PD removes the idea of a fees "limit" and concludes that any fees charged by Marina Coast Water District for new connections as the former Fort Ord area is developed should be contributed to offset the indebtedness of the Regional Project, which will reduce overall costs to Cal-Am ratepayers.
3. Because the financing plans are not final, the PD modifies the Settlement Agreement and Water Purchase Agreement to require Cal-Am to file and serve the financing plans in this proceeding. To the extent that the financing plan determines that the cost of debt will not exceed 6%, the

debt service coverage is set at 1.0 and that State Revolving Fund loans or grants can be accessed, the PD states that the Commission will accept the filing as a compliance filing. While not asserting jurisdiction over the Public Agencies, if the terms of the financing plan exceed these limits, the PD states that the Commission must review and approve the financing plan.

4. As proposed by the Settling Parties, the PD finds that a representative of the Monterey Peninsula Cities known as the Municipal Advisor should be added to the Advisory Committee. The PD modifies this provision by determining that the Municipal Advisor should be granted full voting Party status for purposes of decision-making for the Regional Project, as defined in the Water Purchase Agreement.
5. The PD adopts a capital cost cap of \$95 million for the Cal-Am only facilities, the most probable estimated cost of construction. The PD also sets an absolute cost cap of \$106.875 million, beyond which Cal-Am ratepayer funding will not be authorized.
6. The PD revises the interest rate applied to the Allowance for Funds Used During Construction and applies the rate proposed by DRA, i.e., the risk-adjusted two-year corporate borrowing rate (currently 2.46%) to compensate Cal-Am for its carrying costs.
7. To the extent that the capital costs exceed the initial cost caps established but are less than the absolute ceiling placed on the Regional Facilities and the Cal-Am-owned facilities, the PD requires Cal-Am to file an application to justify why ratepayers should pay for additional costs.
8. The PD also makes three modifications to the advice letter procedure proposed by the Settling Parties. First, Cal-Am is required to file Tier 3 advice letters to recover its purchased water costs and requires 120 days for staff processing of these advice letters. Second, in order to recover the costs for Cal-Am facilities, the PD also requires Cal-Am to file Tier 3 advice letters and requires 120 days

for staff processing of these advice letters. Finally, because the PD requires Cal-Am to file an application requesting recovery of capital costs incurred above the capital cost cap of \$95 million (but below the absolute cap of \$106.875 million), the Settlement Agreement must be modified to revise the procedure for the final advice letter filing. To the extent that costs for the Cal-Am facilities are equal to or less than \$95 million, Cal-Am may file a final advice letter. To the extent that those costs exceed \$95 million but are less than \$106.875 million, Cal-Am must file an application to request recovery of the incremental costs.

9. The PD finds that it is reasonable to review Operation and Maintenance (O&M) costs in a separate phase of this proceeding, or in a successor proceeding.

As the Settling Parties have agreed, the PD requires Cal-Am to submit regular status reports on the permitting, financing, design, bidding, and construction of the Regional Project to the Executive Director and to the Director of the Division of Water and Audits (DWA). The PD also requires Cal-Am to meet quarterly with the Division of Ratepayer Advocates (DRA) and DWA staff. No modification is required to effectuate this requirement.

The APD differs from the Proposed Decision in the following areas:

1. The APD adopts a capital cost cap for the Regional Project facilities of \$224.4 million, and sets a cost cap ceiling of \$272.5 million. Cost recovery from Cal-Am's ratepayers above the cost cap ceiling will only be allowed upon a showing of exceptional circumstances and subject to a rigorous reasonableness review.
2. The APD increases Marina Coast Water District's (MCWD) contribution to \$25 million, which consists of \$22 million associated with new connection fees and \$3 million for the associated intangible benefits that MCWD will receive from participating in the Regional Project.
3. As with the PD, the APD finds that a representative of the Monterey Peninsula Cities known as the Municipal Advisor should be added to the Advisory Committee.

However, the APD does not conclude that the Municipal Advisor should be granted full voting Party status.

4. The APD adopts a capital cost cap of \$95 million for the Cal-Am only facilities, and sets a cost cap ceiling of \$106.875 million. Cost recovery from Cal Am's ratepayers above the cost cap ceiling will be allowed upon a showing of exceptional circumstances and subject to a rigorous reasonableness review.
5. The APD revises the interest rate applied to the Allowance for Funds Used during Construction to reflect the actual cost of borrowing. The APD adopts an interim rate of 4.00%, with a true-up for the actual carrying cost.

(END OF ATTACHMENT)

ANG/jt2 10/21/2010



FILED

10-21-10

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
California-American Water Company
(U210W) for a Certificate of Public
Convenience and Necessity to Construct
and Operate its Coastal Water Project to
Resolve the Long-Term Water Supply
Deficit in its Monterey District and to
Recover All Present and Future Costs in
Connection Therewith in Rates.

Application 04-09-019
(Filed September 20, 2004;
Amended July 14, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING COMMENTS ON PROPOSED DECISION AND ALTERNATE
PROPOSED DECISION, AND SCHEDULING ORAL ARGUMENT**

This Ruling provides guidance regarding the comment period for the Proposed Decision (PD) and the Alternate Proposed Decision (APD), issued on October 21, 2010. The PD and the APD address the proposed Settlement Agreement and Water Purchase Agreement filed on April 7, 2010 in Application 04-09-019. The Ruling also schedules an oral argument in front of Commissioner Bohn.

In order to provide for the required 30-day review period before these items appear on a Commission agenda, these matters will be considered at the Commission's business meeting scheduled for December 2, 2010. Rule 14.3 of the Commission's Rules of Practice and Procedure establishes the procedures for commenting on proposed and alternate proposed decisions, consistent with the requirements set forth in Pub. Util. Code §§ 311(d) and (e). Here, the PD and APD are issued on October 21, 2010; pursuant to Rule 14.3 opening comments

would be due on November 10, 2010 and reply comments would be due on November 15, 2010. However, because these matters will not be considered by the full Commission until December 2, it is reasonable to provide parties additional time to comment on the proposed decisions. Comments on the PD and APD shall be filed and served no later than November 17, 2010 and reply comments shall be filed and served by November 22, 2010. Both the PD and the APD are lengthy documents and address many issues; therefore, I will allow the parties 25 pages to comment on the PD, the APD, or both.

I note that the Settling Parties have requested the opportunity to consider any modifications proposed by the Commission. (§ 6.1 of the Settlement Agreement). For the Public Agencies, to the extent this action must be noticed and considered in a public meeting, as required by the Brown Act, I ask that the Public Agencies convene such meetings without delay. No later than November 17, 2010, the Settling Parties shall file and serve a pleading, separate from the comments on the PD and APD, that informs the Commission whether they accept the modifications of either the PD, the APD, or both documents. Parties may file and serve comments on that pleading on November 22, 2010.

In consultation with Commissioner Bohn, as provided for in Rule 8.2(c)(1), we have scheduled oral argument to take place on November 2, 2010 at 10 a.m. in Hearing Room A in the Commission's San Francisco Headquarters,

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505 Van Ness Avenue, San Francisco, California.¹

IT IS SO RULED.

Dated October 21, 2010, at San Francisco, California.

/s/ ANGELA K. MINKIN

Angela Minkin
Administrative Law Judge

¹ The oral argument will be noticed as a Commission meeting, consistent with the provisions of Government Code § 11122.5 so that a quorum of the Commissioners may attend.