

JUN 17 1992

Decision 92-06-046 June 17, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
of CALIFORNIA WATER SERVICE COMPANY)
(U 60 W), a corporation, for an order)
authorizing it to increase rates)
charged for water service in the)
Stockton District.)

ORIGINAL

Application 89-06-037
(Filed June 21, 1989)

INTERIM OPINION

Summary

California Water Service Company (CWS) is granted authority to establish a memorandum account, with interest, to track all of its litigation costs resulting from the Water Branch investigation into the reasonableness of the Second Amended Contract (SAC) with the Stockton East Water District, et al.

This decision rejects Water Utilities Branch's (Staff) request to deny CWS' request to record interest. We have, however, adopted Staff's request to more precisely define the classes of expenses which may be recognized. Staff also reserved the right to challenge the reasonableness of any claim at a later date.

Procedural History

On April 12, 1989, the Commission in recognition of the SAC with the Stockton East Water District, et al., issued Decision (D.) 89-04-014, Application (A.) 88-12-016, authorizing CWS to record its expenses for purchased power and pump tax in the balancing account established by D.85138 for purchased water, and ordering it to file an advice letter requesting a rate reduction. Additionally, the Commission directed CWS to file a general rate application to fully reflect the rate impact of the SAC. As directed, CWS filed Advice Letter 1103 on April 26, 1989,

requesting a 12.5% rate reduction. As further directed, CWS filed a general rate application for its Stockton District on June 21, 1989.

D.90-02-042 approved an agreement between Water Branch and CWS to establish a Phase II-B in A.89-06-037 which would address the reasonableness of SAC. In Phase II-B, Water Branch presented a report entitled "Analysis and Recommendations Pertaining to Reasonableness of Expenses Under the Second Amended Contract with the Stockton East Water District [and] California Water Service Company" which was addressed during three days of hearings, November 5-7, 1990. Additionally, a prehearing conference took place on December 12, 1991, and one day of hearing was held on March 26, 1992.

Discussion

At the December 12, 1991 prehearing conference and the March 26, 1992 hearing, Water Branch counsel took the position that CWS is only entitled to rate recovery for prospective costs associated with the processing of Phase II-B after a memorandum account is established. While CWS does not concede the point, it requests the establishment of a memorandum account, with interest, to track all out-of-pocket costs associated with the litigation of Phase II-B. CWS desires to minimize the risk that it might not recover costs reasonably incurred by it in connection with Water Branch's investigation concerning the prudence of SAC.

CWS takes the position that D.90-02-042 is an interim opinion pending the outcome of Phase II-B and rates may be adjusted prospectively to reflect CWS' reasonably expected out-of-pocket costs associated with Phase II-B. In its view, the only applicable limitation on recovery would be the remaining amount of the increase requested in A.89-06-037. As CWS calculates it, the recovery limit without the necessity of additional notification to customers is \$689,200. However, CWS is unwilling to assume the risk that some of its costs will not be recovered and, accordingly,

seeks protection by tracking all out-of-pocket costs through a memorandum account, with interest.

Staff argues that it would be premature to allow interest on this memorandum account since the allowability of interest on memorandum accounts is at issue in Phase II of the "Risk OII," OII 90-11-033. It contends that allowing CWS to include interest in the amounts recorded in the account would be a precedent that interest must be allowed.

In our opinion, allowing interest to be recorded could not be considered a precedent that it must be allowed. Whether or not the question is at issue in another proceeding, the question is not prematurely raised. CWS has merely requested that interest be included in the memorandum account. This reserves to CWS the right to argue on the merits that recovery with interest is allowable either in this proceeding or in the Risk OII, without touching off an unnecessary dispute over retroactive ratemaking.

Staff also claims that CWS' request is overbroad in that it seeks to include "all out-of-pocket costs." Staff has proposed instead that the account be limited to legal fees, consultant fees and other outside regulatory expenses which CWS incurs in connection with the litigation over the water supply contract.

Staff also wishes to expressly reserve the right to challenge any entry on the basis of reasonableness and to have this reservation of right recognized. We concur with is request. We will also treat Staff as having reserved the right to challenge the allowability of interest.

Consequently we have decided that CWS should be allowed to record expenses as defined by staff plus interest in a memorandum account with the questions of reasonableness and of the allowability of interest postponed until after litigation over the water supply contract is complete.

Findings of Fact

1. Phase II-B in this matter can be expected to generate additional litigation costs.
2. CWS should have an opportunity to recover reasonable litigation costs resulting from Phase II-B. It should not be faced with litigating the question of retroactive ratemaking in order to recover.
3. CWS' request is unduly broad; Staff's counter proposal limiting the scope of costs to be recorded is reasonable.
4. An order establishing a memorandum account for all such expenses incurred subsequently is reasonable to avoid further controversy.
5. Since litigation is now in progress, this order should be effective today.

Conclusions of Law

1. Authorizing CWS to record legal fees, consultant fees and other outside regulatory expenses which CWS incurs in connection with the litigation over the water supply contract in Phase II-B in A.89-06-037, including interest, in a memorandum account will allow us to consider whether any of those costs or interest should be allowed, without deciding whether retroactive ratemaking is involved.
2. Staff has effectively reserved its right to challenge reasonableness of such costs and the propriety of allowing interest.

INTERIM ORDER

IT IS ORDERED that:

1. California Water Service Company (CWS) is authorized to establish a memorandum account to track prospectively legal fees, consultant fees and other outside regulatory expenses which CWS incurs in connection with the litigation over the water supply

contract in Phase II-B in Application (A.) 89-06-037, including interest.

2. Interest should be calculated monthly at the 90-day commercial paper interest rate.

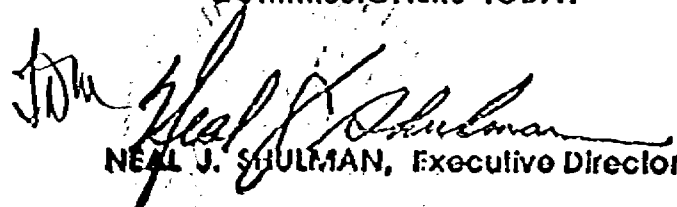
3. The memorandum account so established in Phase II-B of A.89-06-037 shall remain in effect until further order by the Commission.

This order is effective today.

Dated June 17, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director