

Decision 99-04-060 April 22, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Water Company (U 133 W) for an order pursuant to Public Utilities Code 454 and 1001 et seq. to participate in the State Water Project and to recover all present and future costs under contract with the Central Coast Water Authority and other related costs to deliver water to its Santa Maria District.

**ORIGINAL**

Application 96-11-007  
(Filed November 4, 1996)

(See Attachment A for List of Appearances.)

**O P I N I O N**

**1. Summary**

This decision denies the application of Southern California Water Company (SCWC) to impose a special fee to recover fixed costs and a special balancing account to recover variable costs resulting from the company's participation in the State Water Project.

**2. Procedural Background**

SCWC has appeared before us four times seeking to recover past and future costs of its participation in the Coastal Branch Phase II Extension of the California Aqueduct of the State Water Project.<sup>1</sup>

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<sup>1</sup> SCWC notes, correctly, that it has filed only two applications in this matter. The first, Application (A.) 92-06-044, was filed in 1992 and was denied. At the Commission's invitation, SCWC filed a petition for modification, which also was denied. SCWC in 1996 filed its second and only other application, A.96-11-007, in this proceeding. That

*Footnote continued on next page*

In 1992, the company filed A.92-06-044, seeking authority to participate in the State Water Project under contract with the Central Coast Water Authority for the annual delivery of 7,900 acre feet of water to SCWC's Santa Maria District. SCWC sought to increase rates in the Santa Maria District by 59% to recover all costs associated with the company's participation. In support of the application, SCWC stated that its participation in the State Water Project was necessary to offset an overdraft of the Santa Maria Groundwater Basin, to improve the quality of water provided to customers, and to meet the demands of growth.

On March 24, 1993, the Commission denied the application in Decision (D.) 93-03-066, 48 CPUC2d 511. The Commission criticized the substantial costs of SCWC's participation in the project (as much as \$130 million), the lack of reasonableness review by either SCWC or the Commission, and the company's insistence that ratepayers bear all risk of participation. The Commission questioned whether SCWC, acting alone, could accomplish much in averting overdraft of the groundwater basin, stating: "Rehabilitation of the Santa Maria Groundwater Basin is not the responsibility of, and is beyond the physical and financial resources of any single individual, company, or agency." (48 CPUC2d at 519.)

At the Commission's invitation, SCWC on April 2, 1993, petitioned to modify the decision, this time proposing to reduce its intended participation in the State Water Project to 3,000 acre feet per year instead of 7,900 acre feet per year. The Commission on July 8, 1993, denied the petition in D.93-07-018, 50 CPUC2d 341, finding that the company had not justified participation at the 3,000-acre foot level, had declined to allocate risk between shareholders and

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application was amended in 1998, and it is that amended application that is the subject of this proceeding.

ratepayers, and had not demonstrated a manner in which costs could be controlled by the company. The Commission admonished SCWC to reevaluate its participation in the State Water Project, adding:

*"If after such a process, SCWC still desires to participate in [the State Water Project], SCWC should then determine a reasonable level at which it desires to participate, and then develop a clear plan that is financially realistic given the size of its present and future customer base and the realistic needs of that customer base. It should include in its plan a provision to insure an equitable distribution of costs between its ratepayers and its shareholders so that neither group is unduly burdened."* (50 CPUC2d at 344; emphasis in original.)

In 1995, SCWC reduced its planned participation in the State Water Project to 500 acre feet per year, and it sought approval of the Commission to sell its excess entitlement of 2,500 acre feet per year to the Goleta Water District for approximately \$1 million. On November 21, 1995, the Commission authorized the sale in D.95-11-043, 62 CPUC2d 466.

On November 4, 1996, SCWC filed this application, seeking originally to increase rates in the Santa Maria District by 16% to recover the costs of participating in the State Water Project at a level of 500 acre feet per year. Two public participation hearings were conducted in Santa Maria on May 21, 1997. More than 50 ratepayers spoke in opposition to SCWC's request. On June 5, 1997, SCWC moved to postpone evidentiary hearings while it considered amending its application to eliminate the request for a rate increase. The motion to stay was granted on June 10, 1997.

On April 10, 1998, responding to an Administrative Law Judge Ruling proposing dismissal of the application, SCWC filed the amended application that is before us today. In the amended application, SCWC proposes that fixed costs of the company's participation in the State Water Project be borne by customers seeking new service instead of by current customers, and that variable costs be

booked to a full service balancing account for inclusion in rates following reasonableness review. A public participation hearing was conducted on August 19, 1998, in Santa Maria to consider the amended application. More than 200 persons attended, most of them expressing continued opposition to SCWC's participation in the State Water Project.

An evidentiary hearing was conducted on November 3 through 6, 1998, in San Francisco. Briefs were filed on December 8, 1998, by SCWC, the Ratepayer Representation Branch of the Water Division (Branch), the Santa Maria Valley Water Conservation District (Conservation District), the California Farm Bureau Federation and the Santa Barbara County Farm Bureau (Farm Bureaus), the Orcutt Area Advisory Group, Inc., the Scenic Shoreline Preservation Conference, and the Foxenwoods Estates Homeowners Association. Reply briefs were filed on January 12, 1999, at which time this matter was deemed submitted for decision.

### **3. Nature of the Amended Application**

SCWC is the second largest investor-owned water company in California, serving 238,000 customers in 22 customer service areas, including the Santa Maria District in Santa Barbara County. In Santa Maria, SCWC is known as California Cities Water.

The Santa Maria District is comprised of five water systems that are not physically interconnected. The largest system is the Orcutt system. The systems draw their water from the Santa Maria Groundwater Basin through 29 company-owned wells. The Santa Maria District has 12,500 active customers, 10,440 of them in the Orcutt system. In 1997, customers in the Santa Maria District used 10,761 acre feet of groundwater.

The State Water Project is a complex system of reservoirs, aqueducts, pumping plants, power plants, canals and tunnels that transport water from Northern California to the rest of the state. The facilities are owned and operated by the California Department of Water Resources. The first facilities were authorized by the Legislature in 1951 and the first delivery of State Water Project water occurred in 1962. The final portion of the 642-mile aqueduct system is the Coastal Branch, which delivers state water to San Luis Obispo and Santa Barbara Counties.

SCWC first contracted in 1986 to bring State Water Project water into the Santa Maria District. Since 1992, SCWC has been entitled to state water through a Water Supply Agreement with the Central Coast Water Authority. The Authority is a public entity created by Santa Barbara County water purveyors to construct and maintain a water treatment plant and extensions to the State Water Project pipeline. SCWC has built local distribution facilities to transport water from the project pipeline to the Santa Maria District. SCWC took its first delivery of state water at the Tanglewood turnout of the Santa Maria District in August 1998.

As of March 31, 1998, SCWC is carrying a net capital investment of \$2.98 million in the Coastal Branch of the State Water Project, including \$1 million in retention fees paid to the Coastal Branch for SCWC's entitlement of 500 acre feet per year. The company estimates that its share of fixed costs of the project will amount to an additional \$16.6 million through the year 2035, when its contract with the Central Coast Water Authority expires. Other fixed costs include \$225,500 for a booster pump station to be built in the Orcutt system, income tax impacts, and a return on equity of 10.4% (or \$1.97 million) on the use of shareholder funds for this project from 1998 through 2006. (Exhibit 6, p. 7.)

In its amended application, SCWC proposes to recover these fixed costs through a new "service access charge" of \$6,500 per unit applicable to the next 2,297 new service connections in the Santa Maria District service area and in contiguous areas. Most of the new connections would take place in these contiguous areas, which SCWC then would seek to include in its service area. In this way, according to the company, "new growth" will be paying for SCWC's participation in the State Water Project. By its terms the tariff would expire after the 2,297 new unit connections. While by company estimates, the 500 acre feet of state water will only be sufficient for 1,000 new units, the company believes that assessing the \$6,500 charge on the additional 1,297 new units is reasonable since these units will have access to SCWC facilities to take delivery of water from other sources. The company has negotiated with the City of Santa Maria to obtain state water for customer 1,001 and beyond, and the city would charge a fixed cost fee of about \$7,400 to each new dwelling unit receiving water.

The company asks that its share of variable costs of State Water Project water (estimated at about \$55,000 per year) be treated as a purchased water cost for ratemaking purposes, subject to full supply cost balancing account treatment. Unlike the more typical incremental supply cost balancing account, the full supply cost balancing account would permit the company to return lower variable costs to ratepayers, but it also would permit passing on higher variable costs to ratepayers. The company states that state water will have lower variable costs than pumped water, and that a full cost balancing account thus will benefit ratepayers.

#### **4. SCWC Witnesses Say a Fee on "New Growth" Is Reasonable**

Through three witnesses, SCWC presented evidence to show that state water is necessary if the company is to serve new growth without depleting the Santa Maria Groundwater Basin. By assessing its proposed access fee on new

connections, the fixed costs of the state water will be borne by developers and others who otherwise might be unable to build because of a lack of water. As to variable costs, SCWC believes that state water is less costly to deliver than pumped water and, because of this, may actually reduce rates in the Santa Maria District.

Donald K. Saddoris, SCWC regional vice president, testified that the company needs state water to comply with the Orcutt Community Plan, adopted in July 1997 by the Santa Barbara County Board of Supervisors. The first phase of the plan allows development of 4,000 new homes and commercial development over the next 10 years, and an additional 3,000 new homes in the 10 years that follow. The sites for this development are contiguous to SCWC's certificated service area in the Santa Maria District.

The Community Plan requires that no building permits will issue unless builders can show that new homes will be served by a new source of water, like the State Water Project, rather than the groundwater basin, which some believe is in or close to overdraft. The source of the new water must be guaranteed for 75 years. The Community Plan also requires that new water have a lower level of total dissolved solvents than is now available from groundwater. Thus, according to Saddoris, growth cannot take place under the Community Plan without state water, and SCWC is the logical source for supplying state water.

Saddoris testified that the company's service access charge is designed to recover all of SCWC's fixed costs for delivering state water to the Santa Maria District. In meetings with local builders and examining service access charges imposed by other water purveyors, SCWC determined that an access charge of \$6,500 "was what the market would bear." (Exhibit 1, p. 19.) It divided this amount into the total fixed costs for state water through the year 2035, concluding that the new fee should be assessed on the next 2,297 new units to be

built. Sadoris testified that developers are willing to pay the \$6,500 per unit because they believe it is the only practical way to receive water meeting requirements of the Orcutt Community Plan.

Sadoris testified that the proposed new balancing account for the variable costs of state water was devised as a way to pass on savings to current ratepayers, since the company expects costs of delivering State Water Project water to be less than costs of pumping groundwater from the groundwater basin.

Dan Masnada, Executive Director of the Central Coast Water Authority, testified that all facilities of the Coastal Branch of the State Water Project were designed and built prudently and economically. He testified that the Coastal Branch is fully subscribed, with all of its capacity committed to project participants, including SCWC. He testified that no non-participant can receive the state water until first refusal has been offered to all other participants. He testified that the State Water Project has the capacity to produce 3 million acre feet of water per year, but that availability of water supplies will vary with hydrologic cycles of the state. He said that, on average, SCWC could expect to receive 80% of its entitlement to state water each year.

Daniel A. Dell'Osa, SCWC manager of legal affairs, described the company's costs of participating in the State Water Project. He said that distribution facilities in the Santa Maria District have been completed, with the exception of a \$225,500 booster pump station to be constructed in 1999 to serve the district's interconnection between the Orcutt system and the City of Santa Maria. The interconnection will permit the Orcutt system to receive state water wheeled through Santa Maria's connections to the pipeline.

Dell'Osa testified that the company's shareholders bear the risk that actual cost of participation in the State Water Project will exceed estimates, and they also bear the risk that fewer than 2,297 housing units will be added to SCWC's



service territory. Dell'Osa acknowledged in rebuttal testimony that the company is seeking recovery of more of its costs here than it did in its earlier application, which sought a rate increase. He stated that in the earlier application, SCWC was willing to forgo some recovery to better its chance of prevailing. In addition, he said, the amended application imposes greater risk that the company will not be able to recover all capital expenses.

**5. Water Branch Questions Need for Project Participation**

Gerald Korshak, regulatory policy analyst for the Water Division's Ratepayer Representation Branch, testified that Branch's position is that SCWC is free to participate in the State Water Project, but it should not be permitted to recover its costs in the manner sought in the amended application.

Korshak testified that Branch's analysis concludes that SCWC has sufficient water to meet all current and future needs in the Santa Maria District. Additional water is needed to serve new growth but, according to Branch, that water could be acquired from other sources and wheeled through the SCWC interconnection at less cost than that of participating in the State Water Project.

Moreover, Korshak said, the 500 acre feet of state water that SCWC is entitled to receive would at most serve 1,000 dwelling units directly or through offset, not the 2,297 that would pay the \$6,500 fee. Those not benefiting from the state water would still have to pay the fee, plus additional fees to obtain water from other sources. Korshak testified that the Commission traditionally has held that a charge for water service should relate directly to the cost of that service, not to what the market will bear.

Branch questioned the costs that the company seeks to recover, stating that a substantial portion related to retention fees and services for the 3,000 acre feet and 7,900 acre feet entitlements that were later abandoned.

As to the request for a full cost balancing account, Korshak testified:

"In the past, the Commission has generally favored incremental balancing accounts for the cost of water in order to provide incentives to greater efficiency. If it can change the mix of supplies to decrease its overall costs, a utility will reap the benefit. Though the ratepayer does not benefit, the Commission has felt that such an arrangement served the goal of an efficient use of resources."  
(Exhibit 18, p. 9.)

Branch also raised the question of whether SCWC's 500 acre feet of water will be available at all. In a settlement agreement dated February 27, 1992, the Central Coast Water Authority committed to various citizens groups that the Authority would require each Water Supply Agreement contractor to offset its share of groundwater basin overdraft before being made available for other purposes. (Exhibit 18, p. 5.) While SCWC argues that it is not contractually bound by the Authority's commitment, Branch states that other participants, including the City of Santa Maria, have complied with that commitment.

**6. Conservation District: State Water Unnecessary**

The Conservation District, which is responsible for managing the Santa Maria Groundwater Basin, argues that SCWC's plan would encourage growth beyond the company's ability to supply water, thus risking further depletion of the basin. The District's witness, consultant Catherine E. Yap, testified that SCWC's current service territory will be fully built out with the addition of about 1,500 more customers, and that the company now has sufficient water to serve those customers. State water, therefore, is justified primarily by a need to serve new customers outside the service area, but 500 acre feet is inadequate to meet that need. Yap testified that her calculations show that SCWC actually can expect to receive an average of 400 acre feet per year of state water, and this would serve only about 700 equivalent dwelling units.

The District in its testimony criticized SCWC for failing to explore less costly alternatives to serve new growth, including conservation or purchase of state water from such sources as the City of Santa Maria, which has indicated a willingness to sell up to 2,000 acre feet of the 16,200 acre feet of state water to which it is entitled.

The District argues that \$978,000 of the fixed costs claimed by SCWC arguably were disallowed by this Commission in its prior decisions and, in any event, represents costs attributable to the company's abandoned efforts to participate in the State Water Project at 7,900 and 3,000 acre foot levels.

The District's witness testified that the \$6,500 fee proposed by SCWC, based on "what the market will bear" is unprecedented and inimical to the Commission's policy that rates must reasonably reflect a customer's share of costs that it imposes on the utility system. The company's fee would discriminate among new customers, according to the District, since only the first 700 customers would receive state water from SCWC, while the remaining 1,597 subject to the fee could use SCWC facilities but would have to purchase their water elsewhere. If the City of Santa Maria supplies the water, these customers would have to pay the city's \$7,400 capital fee on top of the \$6,500 fee to SCWC.

The District also criticized the proposal for a full cost balancing account, arguing that such an account (as opposed to an incremental balancing account) would permit SCWC to purchase water supplies from new sources and pass on any increased costs to current ratepayers.

#### **7. Intervenor Testimony**

Representatives of three community organizations testified. The Orcutt Advisory Group represented that it had 4,700 signatures on a petition opposing SCWC's participation in the State Water Project because of the high cost of state water and the concern that ratepayers would be asked to pay that cost. The

Foxenwoods Estates Homeowners presented testimony opposing the new balancing account on grounds that it would be used to charge current ratepayers for costs that would not benefit them. The Scenic Shoreline Preservation Conference criticized the company's plans to hook up new homes to what it called "paper water."

#### 8. Discussion

There are undeniable benefits to SCWC's participation in the State Water Project. This new source of water would permit the company to serve new growth without depleting the Santa Maria Groundwater Basin. Availability of state water would add flexibility to the company's water management plans. If the company itself were willing to absorb the cost of State Water Project participation in hopes of profiting from added business, there would be no need for this application. As Branch points out, SCWC does not need this Commission's approval to participate in the State Water Project.

However, SCWC seeks to recover from ratepayers the \$3 million in fixed costs that the company has already spent, the additional \$17 million it intends to spend through the year 2035, and variable costs each year of \$50,000 or more. It seeks to make that recovery through an unprecedented "service access charge" to be imposed on new customers, most of them outside of the company's current service area, and a full cost balancing account that generally is unavailable to Class A water companies.

Under Pub. Util. Code § 454, SCWC has the burden of proof to show that the relief it requests is justified and reasonable. (See Pacific Telephone and Telegraph Company (1979) 2 CPUC2d 89, 98.) The burden is a heavy one, particularly where, as here, the utility proposes new and untested methods of recovering revenue from ratepayers. Among other things, the company must show that its participation in the State Water Project is necessary for it to meet its

public utility obligations, and that the rate increases it proposes (the service access charge and the full cost balancing account) are reasonable, prudent and justified.

We are compelled to conclude on this record that SCWC has not met its burden of proof. We find that the company's participation in the State Water Project (when ratepayers are asked to bear the cost) is not justified when participation is based solely on requirements of the Orcutt Community Plan. We find further that fewer than half of those who would pay the proposed service access charge would get water from SCWC, while the rest would not. We find that the full cost balancing account carries a risk of increased rates for current ratepayers without any discernible benefit. Because the utility has not sustained the burden of satisfying this Commission that its proposed increase in rates is justified, the application must be denied. (E. L. Anderson (1930) 34 CRC 676.)

To justify its request for ratepayer assessments, SCWC relies solely upon its need to meet the requirements of the Orcutt Community Plan. SCWC no longer relies (as it did in its three earlier requests) on an impending overdraft of the groundwater basin. Whether the basin is in overdraft, and whether restrictions should be imposed, are issues now before the Santa Clara Superior Court in the case of Santa Maria Valley Water Conservation District v. City of Santa Maria, et al., No. CV 770214. The issue of basin overdraft, therefore, is not before us in this amended application.

The Orcutt Community Plan provides that building permits will issue for up to 4,000 equivalent dwelling units over the next decade only if it is shown that each new connection has a 75-year commitment for water from sources other than the groundwater basin. The plan, however, does not require that SCWC become a participant in the State Water Project, nor does it require that SCWC be

the water purveyor in areas outside of SCWC's service territory, where most of the new growth will take place.

The evidence shows that SCWC has adequate water to meet growth within its existing service territory. The evidence further shows that the company can purchase water from the City of Santa Maria or other State Water Project participants to serve contiguous areas outside of SCWC's service territory. Indeed, the application contemplates that SCWC will purchase water from the City of Santa Maria on behalf of new customers beyond the 1,000 new units that it estimates can be served through the company's 500 acre feet entitlement. If SCWC can purchase state water to serve the 1,001st new customer, it seems clear that SCWC would be able to purchase state water to serve the 1st new customer.

Thus, the record shows that while the contractual advantages of being a participant in the State Water Project are desirable in obtaining state water, participation is not required for SCWC to purchase state water and serve new growth.

Moreover, if state water is required to serve new growth because of the Orcutt Community Plan, the 500 acre feet committed to SCWC is inadequate to meet more than a fraction of that new growth. There is no dispute that the 500 acre feet will not serve the 2,297 connections that, under SCWC's proposal, would pay a \$6,500 service access charge. Indeed, a company witness testified that SCWC will on average receive only about 400 acre feet of state water per year, which, according to the Conservation District's consultant, will be sufficient for only about 700 of the new connections.

SCWC claims that assessing a \$6,500 fee on 2,297 connections is fair despite the fact that it can provide its water to fewer than half those connections because the remaining new customers would have the advantage of SCWC's facilities through which to receive water from other sources. The evidence does not

support this view. The company's own witness testified that the fee was calculated based on what the market would bear, and that the reason the fee would apply to 2,297 connections is so that the company can recover its fixed costs. Providing facilities for new growth was not part of the equation. Moreover, the testimony shows that customers outside SCWC's service territory can secure water from other sources (e.g., directly from the City of Santa Maria) and, through an alternative interconnection, avoid the SCWC system and its \$6,500 access fee.

The company admits that its service access fee would be unprecedented. Under the plan, up to 1,000 new connections would pay \$6,500, the next 1,297 connections would pay \$6,500 plus a \$7,400 Santa Maria fixed cost fee, and connections thereafter would pay the \$7,400 Santa Maria fee, all for the same service. While these differences may not constitute discriminatory ratemaking, they certainly raise that concern.

As the Commission has recognized, a fee like this one, similar to a facilities fee, represents "a major departure from the long-standing principle in regulating investor-owned utilities that owners provide capital, either debt or equity, for the construction of plant facilities, and customers pay nothing until the plant is used and useful." (Re Revision of General Order 103 and Water Tariff Rules 15 and 16 (1991) 39 CPUC2d 594, 602.) By this principle, a return on the owners' investment, including capital recovery through depreciation expense, is part of the utility's revenue requirement, which is the basis for rates. Accordingly, the Commission has limited the availability of facilities fees to smaller "Class C and D Water companies and those water districts serving 2,000 or fewer customers...where it is shown that the new connections will require new or replaced plant." (39 CPUC2d at 601.) While Class A water companies may seek such fees, "they will have to show that their need for a facilities fee outweighs the

ratemaking principle that shareholders, rather than ratepayers, should bear the cost of plant facilities." (39 CPUC2d at 602.)

The company suggests for the first time in its reply brief that if the Commission considers the access fee inequitable, it could authorize the fee only for those connections that actually will receive water from SCWC. The application does not present that as an option, nor has this record examined the implications of a service access charge of \$15,000 or more per connection on 700 to 1,000 new connections.

Traditionally, under the Commission's rules, a water company may serve new development through main extension agreements authorized by the utility's Tariff Rule 15, where developers provide refundable payment in advance for necessary facilities. An SCWC witness testified that Rule 15 was not explored in this case because it was precluded by sign-up requirements for participating in the State Water Project. As Branch notes, however, "SCWC always has had the option of using Rule 15. And, as Mr. Saddoris testified earlier, the City of Santa Maria is certainly willing to sell water to accommodate new development." (Brief of the Ratepayer Representation Branch, at 10.)

The company's request for a full cost balancing account for variable costs of state water is similarly troublesome. Current ratepayers objected to this fee at public participation hearings and on the stand, arguing that the company could use the account to charge them for escalating costs of purchased water brought on by State Water Project participation.

The company asserts that full cost balancing account treatment is appropriate because supply mix will vary over time, often resulting in savings that should be passed on to SCWC's customers. The mix of supply, however, varies over time throughout California and cannot be considered a basis for departing from the traditional method of recording only changes in the price of



purchased water and the cost of production. (Exhibit 18, at 9.) No other SCWC district has been authorized to establish a full cost balancing account. Indeed, the only water company so authorized is the San Gabriel Water Company, which is unable to control its mix of supply. (See Re San Gabriel Water Company (1996) 67 CPUC2d 98.) By contrast, authorizing this treatment for SCWC in the Santa Maria District, where control over mix is complete, could remove what the Commission has determined is an incentive for a company to operate efficiently. (Exhibit 18, at 9.)

Opposing parties raise other objections to this application. Branch notes the commitment of the Coastal Branch to require each water supply contractor to commit to offset its share of any basin overdraft before using state water for other purposes. (Exhibit 8, A and B.) SCWC argues that it is not legally bound to obey such an order by the Coastal Branch. That position would seem to be an invitation to litigation. The Conservation District disputes the reasonableness of fixed costs that SCWC seeks to recover from new growth, noting that the costs are higher than those sought by the company in its earlier requests. The company defends these costs (and Branch does not take issue with their accuracy), but the company's witness was unprepared to substantiate the costs in any detail or to explain why future ratepayers should pay costs related to the company's abandoned plans for larger entitlements to state water. The Farm Bureaus note that SCWC cannot meet the 75-year commitment required by the Orcutt Community Plan because the company's contract for state water expires in 2035.

In summary, SCWC has failed to show that its participation in the Coastal Branch Phase of the State Water Project is necessary for the company to meet its public utility obligations to serve existing or future customers. It has failed to show that such participation is reasonable, given the limited number of

connections for which SCWC could directly provide water in a contiguous area. It has failed to show that its service access charge is based on the cost of providing service, or that the charge would provide essentially similar benefits to each ratepayer who pays it. SCWC has not shown special circumstances to justify a full supply cost balancing account, nor has it been able to assure current ratepayers that they would not pay more because of the full cost account while receiving little in the way of benefit. The burden of proof of these matters rests solely upon the applicant. In the words of the Commission,

"A fundamental principle involving public utilities and their regulation by governmental authority is that the burden rests heavily upon a utility to prove that it is entitled to rate relief and not upon the Commission, the Commission staff, or any interested party, or protestant to prove the contrary." (Suburban Water Co. (1962) 60 CPUC 183.)

Because the burden has not been met, we deny the application.

#### **9. Comments on Proposed Decision**

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure.

Comments were filed by SCWC, the Conservation District, the Ratepayer Representation Branch, the Farm Bureaus and the Orcutt Area Advisory Group. Those parties opposing the application support the proposed decision, but they urge that dismissal of the application be made with prejudice to any further filing on this subject by SCWC. The District urges that we state explicitly that all costs of SCWC's participation in the State Water Project in its Santa Maria District are to be borne entirely by SCWC's shareholders.

We are not prepared to go that far at this time. As we have noted, the question of overdraft of the Santa Maria Groundwater Basin is now in litigation. The results of that litigation could have consequences affecting state water that this Commission may have to address. While the company has not proposed main extension agreements financed solely by developers, that possibility should not be foreclosed on this record.

However, we share the concern of the parties about further proceedings on this subject, and we caution SCWC that any subsequent application similar to this or the three earlier plans for State Water Project participation will be susceptible at the outset to a motion to dismiss.

SCWC opposes the draft decision. In its comments, SCWC raises essentially the arguments that were considered below, and we believe that those arguments have been adequately addressed in the decision that we adopt today.

The Conservation District and SCWC suggest minor changes to the text of the decision, and those changes have been made where warranted.

#### **Findings of Fact**

1. In D.93-03-066, 48 CPUC2d 511, the Commission in March 1993 denied the application of SCWC to increase rates by 59% in the Santa Maria District to recover costs of the company's contract for 7,900 acre feet per year from the State Water Project.

2. In D.93-07-018, 50 CPUC2d 341, the Commission in July 1993 denied SCWC's petition for modification of the earlier decision in which SCWC sought to reduce the level of its participation in the State Water Project to 3,000 acre feet per year.

3. In D.95-11-043, 62 CPUC2d 466, the Commission approved SCWC's sale of 2,500 acre feet of its entitlement in the State Water Project to the Goleta Water District.

4. In November 1996, SCWC filed this application seeking a 16% rate increase in the Santa Maria District to recover costs of participating in the State Water Project at a level of 500 acre feet per year.

5. Responding to a proposed ruling to dismiss the application, SCWC in April 1998 amended this application to eliminate the rate increase proposal and, instead, to substitute a request for a service access charge for the next 2,297 connections and a full supply cost balancing account.

6. Three public participation hearings in this matter have been conducted in the Santa Maria District; several hundred ratepayers attended and approximately 80 spoke in opposition to SCWC's participation in the State Water Project.

7. An evidentiary hearing was conducted on November 3 through 6, 1998, in San Francisco, with appearances in opposition to this application made by Branch, the Conservation District, the Farm Bureaus, the Orcutt Area Advisory Group, the Scenic Shoreline Preservation Conference, and the Foxenwoods Estates Homeowners Association. Final briefs were filed on January 12, 1999, when the matter was deemed submitted for decision.

8. SCWC is the second largest investor-owned water company in California, serving 238,000 customers in 22 customer service areas, including the Santa Maria District in Santa Barbara County.

9. The Santa Maria District obtains its water from the Santa Maria Groundwater Basin through 29 company-owned wells.

10. Since 1992, SCWC has been entitled to state water through a Water Supply Agreement with the Central Coast Water Authority.

11. SCWC took its first delivery of state water at the Tanglewood turnout of the Santa Maria District in August 1998.

12. As of March 31, 1998, SCWC is carrying a net capital investment of \$2.98 million in the Coastal Branch of the State Water Project, including \$1 million in retention fees for SCWC's entitlement of 500 acre feet per year.

13. SCWC's share of fixed costs of the project will amount to an additional \$16.6 million through the year 2035, when the contract with the Coastal Branch expires.

14. Variable costs of State Water Project water are estimated at about \$55,000 per year.

15. The company proposes to recover its fixed costs by assessing a \$6,500 service access charge on the next 2,297 equivalent dwelling units connected in the Santa Maria District and in contiguous areas. The access charge would terminate after 2,297 connections.

16. SCWC's 500 acre feet of state water will serve directly or by offset between 700 and 1,000 new connections.

17. The Orcutt Community Plan adopted by Santa Barbara County in 1997 permits 4,000 new homes in the next 10 years and 3,000 new homes in the following 10 years, but requires that each new facility have a guaranteed source of water for the next 75 years that does not further rely on the groundwater basin.

18. SCWC states that the only reasonable way in which it can comply with the Orcutt Community Plan is to participate in and obtain water from the State Water Project.

19. On average, SCWC will receive 80% of its entitlement to state water each year, or 400 acre feet of water.

20. The Santa Maria District will be built out with the addition of about 1,500 new homes.

21. SCWC has sufficient water to meet the needs of the Santa Maria District, but it needs additional water if it is to serve and incorporate contiguous areas.

22. SCWC may purchase state water from the City of Santa Maria, which is a participant in the State Water Project.

23. State Water Project participants have a right of first refusal of water made available by other participants.

24. After the right of first refusal, State Water Project participants in the Coastal Branch may sell their state water to any buyer in the county.

25. A full cost balancing account would permit SCWC to return variable cost savings to ratepayers or to pass on additional costs to ratepayers.

#### **Conclusions of Law**

1. Under Pub. Util. Code § 454, a utility has the burden of proof to show that the rate relief it requests is justified and reasonable.

2. SCWC's participation in the State Water Project, when ratepayers are asked to bear the cost, is not justified based solely on requirements of the Orcutt Community Plan.

3. Basin overdraft is not at issue here, since that matter is now before the Santa Clara Superior Court.

4. The fact that fewer than half of those new customers paying the proposed \$6,500 service access fee would receive state water directly or through offset from SCWC raises a concern of discriminatory ratemaking.

5. A Class A water company seeking a fee similar to that of a facilities fee must show that the need for such a fee outweighs the ratemaking principle that shareholders, rather than ratepayers, should bear the cost of plant facilities.

6. SCWC has not shown special circumstances to justify a full supply cost balancing account.

7. SCWC does not need this Commission's approval to participate in the State Water Project so long as it does not seek to recover its investment from ratepayers.

**O R D E R**

**IT IS ORDERED that:**

1. The application of Southern California Water Company for authorization to recover all present and future costs of its participation in the State Water Project to deliver water to its Santa Maria District is denied.

2. Application 96-11-007 is closed.

This order is effective today.

Dated April 22, 1999, at San Francisco, California.

**RICHARD A. BILAS**  
President  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
Commissioners

ATTACHMENT A

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

Last updated on 25-JAN-1999 by: LIL  
A9611007 LIST

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(END OF ATTACHMENT A)