

AUG 19 2013

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Deputy

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT,

Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA,

Respondent,

CALIFORNIA-AMERICAN WATER
COMPANY,

Real Party In Interest.

Case No. S208838

Commission Decisions

D.11-03-035

& D.13-01-040

**SUPPLEMENTAL ANSWER OF RESPONDENT
TO PETITION FOR WRIT OF REVIEW**

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August 14, 2013

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\$7,598,300 or 12.25% in the Year 2011 Under the Current Rate Design and to
Increase its Revenues for Water Service in the Toro Service Area of its
Monterey District by \$354,324 or 114.97% in the Year 2009; \$25,000 or 3.77%
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Company for an Order Authorizing the Collection and Remittance of
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IN THE SUPREME COURT OF THE
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Commission Decisions
D.11-03-035
& D.13-01-040

**SUPPLEMENTAL ANSWER OF RESPONDENT
TO PETITION FOR WRIT OF REVIEW**

**TO THE HONORABLE CHIEF JUSTICE TANI G. CANTIL-SAKAUYE &
ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:**

Respondent, the California Public Utilities Commission (“Commission”), respectfully requests permission to file this supplemental answer in the above captioned proceeding to clarify an ambiguity in the pleadings before this Court. (See California Rules of Court Rule 8.520(d).)

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On February 25, 2013, the Monterey Peninsula Water Management District (“District” or “MPWMD”) filed a petition for writ of review (“Writ Petition”) challenging the lawfulness of Commission Decision (D.) 11-03-035 and Rehearing Order D.13-01-040 (together “Decision”),¹ which considered an application by California-American Water Company (“Cal-Am”)² and subsequent proposed settlement agreement by Cal-Am, the District,³ and the Division of Ratepayer Advocates (“DRA”), requesting recovery of a “User Fee” on Cal-Am's utility bills.

On July 17, 2013, this Court granted review of the Writ Petition.

Upon further review of the pleadings now before this Court, the Commission recently realized that the parties have used the term “User Fee” to refer to two different things. Accordingly, the Commission’s position as to what it can, and cannot, lawfully do may be unclear in the pleadings before the Court. To better assist the Court in its review and understanding of this matter, the Commission respectfully seeks leave in its motion to clarify this issue by this supplemental answer.

¹ A copy of D.11-03-035 and D.13-01-040 can be found as Tab 1 and Tab 2, respectively in the District's Writ Petition (“Pet.”).

² Cal-Am is a water corporation whose services are regulated as a public utility by the Commission.

³ The District is a governmental entity created by the Legislature to manage water resources in the Monterey Peninsula area. (Cal. Water Code, Appendix, Chapter 118-1 to 118-901 (Stats. 1977, ch. 527.)

As explained below, the term “User Fee” can be interpreted to mean two different things: a “Utility Surcharge,” which the Commission has jurisdictional authority to review, or a “Government Fee,” which a utility collects solely as an agent for a government entity and is free from Commission regulation. The Decision under review evaluated the proposed User Fee as a Utility Surcharge within its lawful purview.

II. CLARIFICATION REGARDING THE NATURE OF THE USER FEE

- A. The Commission had directed Cal-Am to submit an application for a Utility Surcharge or other new method of collecting funds to support the District’s activities, and it reviewed the proposal accordingly in the Decision.**

As noted in the Commission’s original Answer, consideration of Cal-Am’s application and the subsequent settlement was guided by the direction given to the parties in D.09-07-021.⁴ (Answer, at pp. 5-6.) In D.09-07-021, the Commission discussed what it wanted Cal-Am to submit in this proceeding and the reasons for doing so:

To the extent that Cal-Am and its ratepayers are legally responsible for these programs, we expect Cal-Am to discharge that responsibility in an efficient and effective manner either by its own actions or as a joint project with the Management District.

⁴ *Application of California-American Water Company for Authorization to Increase its Revenues for Water Service in its Monterey District by \$24,718,200 or 80.30% in the Year 2009; \$6,503,900 or 11.72% in the Year 2010; and \$7,598,300 or 12.25% in the Year 2011 Under the Current Rate Design and to Increase its Revenues for Water Service in the Toro Service Area of its Monterey District by \$354,324 or 114.97% in the Year 2009; \$25,000 or 3.77% in the Year 2010; and \$46,500 or 6.76% in the Year 2011 Under the Current Rate Design, and Related Matters [D.09-07-021] (2009) __ Cal.P.U.C.3d __, at pp. 116-123 (slip op.). A copy of D.09-07-021 can be located at: http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/104226.PDF.*

Therefore, we direct Cal-Am to meet and confer with the Management District to discuss funding for, and implementation of, both the Mitigation Program and, the Aquifer Storage and Recovery Project, including particularly the possibility of implementing them as joint projects like that described above.

(D.09-07-021, at p. 122 (slip op.).)

The Commission also described the appropriate model for a joint project:

We have previously approved a joint project between Cal-Am and the Management District for conservation programs, which included recovery of the Management District's costs from Cal-Am's customers by a [utility] *surcharge* placed on the customers' bills.

(*Id.* at p. 121 (slip op.) (emphasis added).)

In addition, the Commission directed:

Cal-Am shall then file, no later than 180 days after the effective date of today's decision, an application setting forth any *new method* of collecting funds to support program costs properly assignable to Cal-Am, whether performed by Cal-Am or the Management District.

(*Id.* at p. 123 (slip op.) (emphasis added).)

Prior to D.09-07-021, Cal-Am has collected a District User Fee for program implementation costs as a Government Fee or tax. (Petition, at p. 3.) At the request of a local government entity, a utility places such a fee on its customer bills simply acting as a billing and collection agent for the government entity, and it then remits the collected funds to the government entity.

The Commission agrees with the District, as acknowledged in its Answer, that it presumes that local government entities possess the authority to impose government entity fees, charges and taxes unless or until there is a contrary determination by the

Superior Court. (Answer, at p. 13, citing e.g., *Packard. v. PG&E Co.* [D.77800] (1970) 71 Cal.P.U.C. 469, 472; *Investigation on the Commission's Own Motion to Establish Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed by Local Government Entities on Public Utilities* [D.89-05-063] (1989) 32 Cal.P.U.C.2d 60, 69 [“This Commission does not dispute the authority or right of any local government entity to impose or levy any form of tax or fee upon utility customers or the utility itself, which that local entity, as a matter of general law or judicial decision, has jurisdiction to impose....”], & pp. 71-72 [Findings of Fact Numbers 9 & 10].) The reasonableness of such a Government Fee is not subject to Commission regulation.⁵

However, as illustrated by the above cited excerpts, the Commission was concerned that a Government Fee imposed by the District might not be the most efficient and effective method of funding programs that are Cal-Am’s responsibility. Thus, the Commission directed Cal-Am to confer with the District and propose a possible alternative for funding program costs, i.e., a new or different method such as a Utility Surcharge for the continued funding instead of a Government Fee. Utility Surcharges are collected by a utility as part of its revenue requirement and their reasonableness is subject to determination by the Commission. This is true regardless of whether the surcharge is

⁵ The Commission’s *Order Modifying D.11-03-035 and Denying Rehearing, as Modified* also recognized the authority of local government entities as stated in D.89-05-063. (D.13-01-040, at p. 5, fns. 18, 19 & 21.)

retained by the utility, or remitted in whole or part to another entity for services it performs on the utility's behalf.

Cal-Am's application called its proposal a User Fee. The District's pleadings suggest that it continues to view that proposal as a Government Fee. But because the Commission had specifically asked for an alternative, it reviewed the proposal as a Utility Surcharge, not a Government Fee.

As noted in the Commission's Answer, it has in fact subsequently approved funding for certain program funds as a Utility Surcharge.⁶ (Answer, at p. 6, fn 13.) The following excerpt from D.12-06-020 may be useful:

Turning now to the portions of the District's mitigation program for which Cal-Am is responsible, Cal-Am and the District have entered into a written agreement pursuant to which the District will continue these activities and Cal-Am will reimburse the District for its costs up to \$1.6 million per year.... We will also approve Cal-Am's proposed recovery of these costs by continuing its existing District *surcharge* mechanism with the amounts adjusted to reflect the change in costs being recorded.

(D.10-06-020, at pp. 7-8 (slip op.) (emphasis added).)⁷

⁶ *In the Matter of the Application of California-American Water Company for an Order Authorizing the Collection and Remittance of the Monterey Peninsula Water Management District User Fee* [D.12-06-020] (2012) __ Cal.P.U.C.3d __, at pp. 5, 7-8 (slip op.). A copy of D.12-06-020 can be located at: http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/169628.PDF.

⁷ See also D.12-06-020, *supra*, at p. 11 [Ordering Paragraph Number 3] (slip op.).

This discussion concerning the distinction between a Government Fee and a Utility Surcharge is intended to clarify for the Court that the Commission's consideration of the reasonableness of the proposed User Fee was made solely in the context of determining whether Cal-Am's proposal was a suitable new method of funding program costs as requested in D.09-07-021.

B. The Commission did not prohibit the District from collecting a "Government Fee" on Cal-Am's customer bills.

For the reasons stated above, the Decision rejecting the parties' proposed settlement agreement did not rule on the District's ability to impose a Government Fee, and neither D.09-07-021 nor the Decision under review by this Court directed the District or Cal-Am to cease to collect a Government Fee. The Commission had asked for an alternative to a Government Fee, and it considered Cal-Am's proposal in that light.

III. CONCLUSION

The above stated clarification is submitted to assist Court review given that the parties' pleadings appear to have assigned two different meanings to the term User Fee. For the reasons stated above, the Commission submits that its Decision was both reasonable and lawful.

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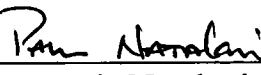
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Dated: August 14, 2013

Respectfully submitted,

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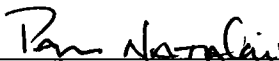
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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing Respondent's Answer is 1,540 words in length. In completing this word count, I relied on the "word count" function of the Microsoft Word program.

Dated: August 14, 2013



Pamela Nataloni

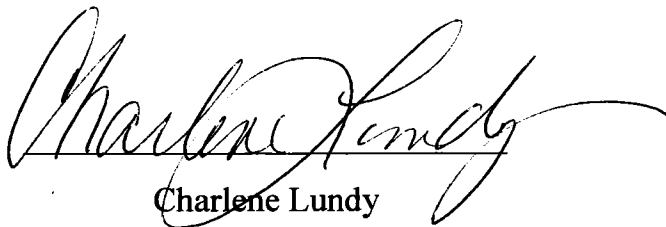
CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I am a citizen of the United States, over the age of 18 years, with business address at 505 Van Ness Avenue, San Francisco, California and am neither a party to nor interested in **Case No. S208838, *Monterey Peninsula Water Management District v. Public Utilities Commission of the State of California***, before the Supreme Court of the State of California.

On August 14, 2013 San Francisco, California, I caused to be deposited in overnight mail copies of **SUPPLEMENTAL ANSWER OF RESPONDENT TO PETITION FOR WRIT OF REVIEW** in **Case No. S208838** on all parties listed on the attached service list.

Each copy was enclosed in a sealed envelope and all postage thereon fully prepaid.

I certify under penalty of perjury that the foregoing is true and correct.


Charlene Lundy

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