

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

Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by \$34,559,200 or 16.29% in the year 2018, by \$8,478,500 or 3.43% in the year 2019, and by \$7,742,600 or 3.03% in the year 2020.

Application No. 16-07-002

(Filed July 1, 2016)

**COMMENTS OF THE CITY OF THOUSAND OAKS CONTESTING
CONSOLIDATION AND CONSOLIDATED RATE DESIGN SECTIONS
OF PARTIAL SETTLEMENT AGREEMENT BETWEEN
CALIFORNIA-AMERICAN WATER COMPANY AND THE CITY OF CORONADO
ON SAN DIEGO ISSUES IN THE GENERAL RATE CASE**

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September 18, 2017

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I. INTRODUCTION

Pursuant to Rule 12.2 of the Commission’s Rules of Practice and Procedure,¹ the City of Thousand Oaks (“City”) comments on the Partial Settlement Agreement Between California-American Water Company and the City of Coronado on San Diego Issues in the General Rate Case, filed on August 18, 2017, along with a Joint Motion for Adoption of a Partial Settlement Agreement Between California-American Water Company and the City of Coronado on San Diego Issues in the General Rate Case. (Hereafter, the Joint Motion will be referenced as “Motion,” and the Partial Settlement Agreement will be referenced as “Partial Settlement.” California-American Water Company will be referenced as “Cal-Am,” the City of Coronado will be referenced as “Coronado,” and Cal-Am and Coronado will at times be collectively referenced as the “Settling Parties.”) These Comments are timely filed under Rule 1.15, because the last day to file them under Rule 12.2 fell on Sunday, September 17, 2017.

The City contests sections 4.1 and 4.2 of the Partial Settlement. Under the Partial Settlement – and counter to Cal-Am’s purported goal of advancing conservation – the residential customers using the least water in all five of the Districts making up Cal-Am’s Southern Division² would be forced to shoulder much higher rate increases than residential customers using more water. Further, residential customers in the Ventura District – where the City’s Cal-Am customers are located – fare the worst, while those in the San Diego District – including Coronado’s Cal-Am customers – fare the best.

The Settling Parties request that the Commission approve a largely unexplained consolidated rate design that was agreed upon by only two parties to this proceeding. By reaching an agreement with a single city located in San Diego County, Cal-Am purports to settle issues concerning ratepayers throughout the five Districts in Cal-Am’s proposed sprawling Southern Division. Thus, as to sections 4.1 and 4.2, the Partial Settlement is partial as to the parties involved, not just the issues settled. Furthermore, the Partial Settlement in fact involves only one of the parties – Cal-Am – that took a position on consolidation and the consolidated rate design proposed in this proceeding. Coronado, the other Settling Party, took no position whatsoever on Southern Division consolidation and consolidation rates.

¹ References to Rules in these Comments are to the Commission’s Rules of Practice and Procedure, unless otherwise stated.

² Cal-Am’s Southern Division, which it proposes to consolidate, consists of the Baldwin Hills, Duarte, San Diego, San Marino, and Ventura Districts.

As will appear below, the Settling Parties have not met their burden to prove that sections 4.1 and 4.2 of the Partial Settlement are reasonable in light of the whole record, consistent with law, and in the public interest. The Commission should therefore reject sections 4.1 and 4.2 of the Partial Settlement.

II. BACKGROUND

A. Procedural and Factual Summary

On July 1, 2016, Cal-Am filed this Application for Authorization to Increase its Revenues for Water Service (Application 16-07-002) (“Application”). The testimony supporting the Application “propose[d], for ratemaking purposes, the combination of all revenue requirements and costs of service for the Los Angeles County, San Diego County, and Ventura County Districts. This structure would produce a cost of service and revenue requirement for the entire Southern Division.”³

Cal-Am sent its Southern Division customers notices of Public Participation Hearings (“PPH”) that were held in January and February 2017.⁴ City witness Jay T. Spurgin used rate impact information from those PPH notices to generate Attachment E to his direct testimony (Exhibit CTO-14).⁵ Attachment E to Exhibit CTO-14 demonstrates that those PPH notices show that, with consolidation, the average Ventura District residential bill would increase by 32.06% over the three years of 2018, 2019, and 2020, as opposed to 14.61% without consolidation.⁶ The Ventura District, where the City is located, was the only District in the Southern Division where the average residential customer would have a higher average residential bill increase over three years with consolidation than without consolidation under the Application.⁷ Further, rates for non-residential Ventura District customers would increase by 27% in 2018 alone.⁸ There was strong opposition from the public, as well as from Ventura District elected officials, to Cal-Am’s proposed Southern Division consolidation.⁹

³ Ex. CAW-2, Stephenson/Cal-Am, 64:1-4. (Ms. Chew sponsored this exhibit when it was served, but Mr. Stephenson sponsored it at hearing.) See also discussion at pages 3- 4 of the City’s Concurrent Opening Brief filed June 6, 2017 (“City OB”) regarding the inconsistent manner in which Cal-Am described its Southern Division consolidation proposal in this proceeding.

⁴ Ex. CTO-14, Spurgin/City, Attachments B-D.

⁵ Ex. CTO-14, Spurgin/City, 4:9-10.

⁶ Ex. CTO-14, Spurgin/City, Attachment E, row in each table for the Ventura District.

⁷ See City OB, pp. 11-13.

⁸ Ex. CTO-14, Spurgin/City, 6:26-27; 10:2-4.

⁹ See City OB, pp. 30-31.

Various parties served prepared direct and rebuttal testimony under the schedule established by the Commission. The City vigorously opposed consolidation and consolidated rates.¹⁰ ORA proposed a conceptual implementation framework for consolidation if it were adopted.¹¹ The County of Los Angeles submitted testimony urging that regional rate consolidation be more closely analyzed.¹² Notably, Coronado submitted prepared direct testimony of two witnesses, neither of whom addressed either Cal-Am’s proposed Southern Division consolidation or consolidated rates.¹³ Coronado submitted no rebuttal testimony.

Evidentiary hearings were held on May 2-5 and 8-12, 2017. No party cross-examined Mr. Spurgin. Various parties filed opening and reply briefs, including the City. The City extensively briefed its opposition to consolidation of and consolidated rates for the Southern Division in both its opening and reply briefs. Coronado filed neither an opening nor reply brief and thus continued to take no position on consolidation of or consolidated rates for the Southern Division.

B. The Partial Settlement Agreement

After the time to file was twice extended, Cal-Am and Coronado timely filed the Motion, which seeks approval of the Partial Settlement affecting Cal-Am’s entire Southern Region, on August 18, 2017. The Motion includes only three paragraphs – amounting to only about a page-and-a-half of text – asserting that the Partial Settlement is reasonable in light of the whole record, consistent with law, and in the public interest.¹⁴ This part of the Motion purports to justify the entire Partial Settlement with citations to four authorities and no citations to the record.

The Partial Settlement, also filed on August 18, 2017, includes agreements between Cal-Am and Coronado on five issues – including only one issue on which Coronado had previously taken a position during this proceeding. The five agreements in the Partial Settlement fall into two basic categories. First, the Partial Settlement addresses three “San Diego District Engineering Issues,” which consist of agreements on Automated Metering Infrastructure, the Strand Water Pipeline Replacement Project, and the Coronado/Imperial Beach Recycled Water

¹⁰ See generally Mr. Spurgin’s Prepared Direct Testimony (Ex. CTO-14) and Prepared Rebuttal Testimony (Ex. CTO-15).

¹¹ See City OB, p. 36 and the City’s Concurrent Reply Brief, filed June 20, 2107 (“City RB”), pp. 13-15.

¹² Ex. LAC-01, Garrison/County of LA, pp. 7-8.

¹³ Ex. COR-4, Maurer/Coronado; Ex. COR-5, Dolan/Coronado.

¹⁴ Motion, pp. 3-4.

Project.¹⁵ Section 3.3 in this portion of the Partial Settlement, concerning the Coronado/Imperial Beach Recycled Water Project,¹⁶ addresses the only issue on which Coronado had taken a position in this proceeding, and the agreement on this issue appears to have primarily protected water “for service to the Coronado Municipal Golf Course.”¹⁷ Second, the Partial Settlement addresses two “Consolidation and Rate Design Issues,” which consist of agreements on Southern Region Consolidation and Southern Division Consolidated Rate Design. The agreement on “Southern Region Consolidation,” which is section 4.1 of the Partial Settlement, states only that the Settling Parties agree that consolidation is in their and the public’s best interests, and that “consolidation will impose rates for non-essential uses on all customers in the consolidated area that are more comparable over the entire Southern Region.”¹⁸ The quoted language is repeated on page 4 of the Motion, but neither document provides a meaningful explanation of the assertion. The agreement on “Southern Division Consolidated Rate Design,” which is section 4.2 of the Partial Settlement, contains a number of unsupported assertions regarding the effects of the rate design on the City, assumes that 89% of purchased-water costs will be retained by Ventura and San Diego, and contains a commitment by Cal-Am to include and seek the advice of Coronado in settlement discussions related to Cal-Am’s commitment to seek consolidation of all costs in Cal-Am’s next General Rate Case.¹⁹ These agreements are supported by only general references to CAW-2 (Chew’s Direct Testimony (at hearing, Stephenson’s)) and CAW-32 (Stephenson’s Rebuttal Testimony – Public)²⁰ and two citations to the testimony of the City and ORA.

On August 21, 2017, the City served a Data Request on Cal-Am, per Rule 12.3, in order to obtain information necessary to evaluating sections 4.1 and 4.2 of the Partial Settlement. On August 31, 2017, Cal-Am provided responses to the City’s Data Request. A number of Cal-Am’s responses were limited, particularly regarding the effects of the proposed consolidated rate

¹⁵ Partial Settlement, pp. 2-6.

¹⁶ Partial Settlement, pp. 5-6.

¹⁷ Partial Settlement, p. 6.

¹⁸ Partial Settlement, p. 7.

¹⁹ Partial Settlement, pp. 9-10.

²⁰ Partial Settlement, pp. 7 & 10. CAW-32 is the confidential version of Stephenson’s Rebuttal Testimony. The reference in the Partial Settlement is likely intended to be a reference to CAW-33, which is the public version of Stephenson’s Rebuttal Testimony. (See 10 Tr. 603:13-17 [identified]; 12 Tr. 752:12-18 [admitted].)

design in 2019 and 2020. The City filed a motion to compel production of such information, which Cal-Am opposed. As of the time of this filing, the motion had not been decided.

Pursuant to Rule 13.14(b), the City has filed a motion to set aside submission and reopen the record²¹ to include in the record pertinent Cal-Am responses to this recent discovery. In those discovery responses Cal-Am states the information it provided is relevant to this proceeding.²² Even without data for 2019 and 2020, the discovery responses that were provided demonstrate that, as to average residential rate impacts, the Ventura District fares the worst under consolidation and the San Diego District fares best. In addition, in all five Districts, residential customers using the least water shoulder higher rate increases than all but the very highest users.

III. THE SETTLING PARTIES HAVE FAILED TO CARRY THEIR BURDEN OF PROOF.

The Settling Parties bear the burden of proving that the settlement should be adopted by the Commission.²³ Rate case settlements will be rejected “no matter how reasonable they might otherwise appear, where they are not supported by a comprehensive initial showing.”²⁴ And, because the Partial Settlement proposes new rates, Cal-Am has a statutory burden to prove that those rates are just and reasonable.²⁵ Cal-Am must carry its burden to show that rates are just and reasonable in its initial showing²⁶ and, having failed to do so through testimony and briefing, cannot now do so through conclusory assertions regarding a settlement with only one of the numerous affected parties – let alone through reply briefing or additional submission of evidence in support of the Partial Settlement.

Furthermore, contested settlements are subject to more detailed review and heightened scrutiny, especially when they occur in the presence of a complete evidentiary record.²⁷ “[A] contested settlement is not entitled to any greater weight or deference merely by virtue of its label as a settlement; it is merely the joint position of the sponsoring parties, and its

²¹ Motion of the City of Thousand Oaks to Set Aside Submission and Reopen the Record to Admit Discovery Responses of California-American Water Company as Exhibits CTO-16 and CTO-17, filed September 14, 2017 (“Motion to Reopen”).

²² See Attachment A to Motion to Reopen, response to Request 3 in the City’s Data Request No. 6, second paragraph of response.

²³ D.09-11-008, *mimeo*, p. 6.

²⁴ D.01-02-075, *mimeo*, p. 14 n. 11 (internal quotation marks omitted).

²⁵ D.09-11-008, *mimeo*, pp. 11-12.

²⁶ See, e.g., D.08-01-020, *mimeo*, p. 2; D.05-08-041, *mimeo*, p. 9.

²⁷ D.96-01-011, *mimeo*, p. 27.

reasonableness must be thoroughly demonstrated by the record.”²⁸ The Commission has recognized that “settlements brought to this Commission for review are not simply the resolution of private disputes” and that “[t]he public interest and interests of ratepayers must also be taken into account, and the Commission’s duty is to protect those interests.”²⁹ “A major factor in determining whether a contested settlement is reasonable is the extent to which the settlement is supported by parties representing the affected interests.”³⁰

As required by Rule 12.1(d), “[t]he Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.” Accordingly, the Settling Parties have the burden of proving that each of these three conditions has been met before the Commission can approve the Partial Settlement. As discussed further below, the Settling Parties have not carried their burden and, if anything, their anemic showing actually demonstrates that the Partial Settlement should be rejected.

IV. THE COMMISSION SHOULD REJECT SECTIONS 4.1 AND 4.2 OF THE PARTIAL SETTLEMENT.

As explained in the City’s Opening and Reply Briefs, Cal-Am has failed to meet its burden regarding the consolidation proposed in its Application. Cal-Am is now trying to do an end run around its statutory responsibility to justify consolidation and its proposed rates, but again fails to meet its burden. The Settling Parties not only fail to offer any substantive explanation of the consolidated rate design proposed in the Partial Settlement – and instead rely on bald assertions – but also fail to make even a superficial showing that the consolidation agreements comply with Rule 12.1(d). Even from what minimal detail is included in the Motion and Partial Settlement, it is clear that the consolidation agreements fail to comply with Rule 12.1(d). Cal-Am’s attempt to settle the contested consolidation issues with a party that expressed no position on the issue – and that appears to have been allocated significant benefits from the revised consolidated rate design – should be rejected.

²⁸ D.02-01-041, *mimeo*, p. 13; see D.96-01-011, *mimeo*, p. 27 (“This more detailed review and heightened scrutiny is especially appropriate when the settlement is not all-party, and also because we have a complete evidentiary record in Phase 1 and all the issues have been fully briefed.”).

²⁹ D.01-02-075, *mimeo*, p. 10 (internal quotation marks omitted).

³⁰ D.07-03-044, *mimeo*, p. 259.

A. The Settling Parties' Bald Assertions Utterly Fail to Carry Their Burden Regarding the Partial Settlement.

The Settling Parties do not even attempt to explain the rates being proposed under the consolidation settlements. The Motion and Partial Settlement provide no exemplary tariff language setting forth the rates expected under the settled-upon "Consolidated Rate Design" nor any tables similar to those included in the PPH notices provided by Cal-Am to customers before the three PPHs held in Southern California in early 2017. In fact, as discussed in section IV.C.2 below, the Settling Parties do not even include the comparison exhibit required by Rule 12.1(a). And Cal-Am revealed through responses to the City's recent Data Request No. 6 that Cal-Am had not even generated bill impacts beyond 2018 for the customers affected by its settlement with Coronado,³¹ even though it had generated such bill impacts earlier in this proceeding.³²

Instead, the Partial Settlement states that the Settling Parties "agree that the consolidation rate design should be based on" parameters cryptically stated in two tables found on page 9 of the Partial Settlement. There is a reference to SQR, the "Standard Quantity Rate," but the amount of the SQR is stated nowhere in either the Partial Settlement or the Motion. There are bald assertions regarding rate impacts in Thousand Oaks, but no rate at all is stated for any of the referenced tiers. Quite simply, it is not possible to determine the proposed rates or test the assertions of rate impact based on the face of the Partial Settlement – and the Motion is of no further help. It is also not possible to determine the impact that rates under the Partial Settlement will have on customers as compared to the Application. Only through conducting discovery was the City able to obtain limited information regarding rate impacts – but that should not have been necessary. It is the Settling Parties' burden to prove that the settlement should be adopted, and that includes providing information to meet the burden of proof. The City having obtained such information through discovery should not aid the Settling Parties in overcoming their lack of a comprehensive initial showing.

B. The Partial Settlement Is Not Reasonable in Light of the Whole Record.

Settling Parties fail to demonstrate the Partial Settlement is reasonable in light of the whole record. Among other deficiencies, the Settling Parties advance a Partial Settlement that continues to pick rate "winners and losers" and fails to provide meaningful citations to the record to support the Motion. Furthermore, the Settling Parties fail to make even a superficially

³¹ See Response to Request No. 3 in City Data Request No. 6 (Attachment A to Motion to Reopen).

³² Ex. CTO-14, Spurgin/City, Attachments B-D.

sufficient showing, because they rely almost entirely on the incorrect assertion that Coronado is representative of affected interests for the entire Southern Division.

1. The Partial Settlement Continues to Pick Rate “Winners and Losers.”

The consolidation proposed in the Application picked rate winners and losers,³³ and the Partial Settlement not only repeats but exacerbates this flaw through the use of a rate design to pick winners and losers. Although the Partial Settlement states that Cal-Am proposes “to combine all revenue requirements and costs of service for the Los Angeles County, San Diego County, and Ventura County Districts” for ratemaking purposes,³⁴ the Partial Settlement also concedes that the rate design proposed under the Application “retained about 66% of San Diego’s and Ventura’s variable costs within just those two Districts,” which “equates to about \$27 million of variable costs that will stay with San Diego and Ventura.”³⁵ The choice of which parties will benefit from consolidation and by how much is repeated in and exacerbated by the Partial Settlement. Under the Partial Settlement, Ventura and San Diego now retain 89% of their purchased-water costs and Baldwin Hills now retains all of its purchased-water costs.³⁶ In light of such continued manipulation of the rate structure, Cal-Am’s promise to “at a minimum . . . [seek] full consolidation of all costs for ratemaking purposes in the Southern Division”³⁷ is not only largely empty – because there is no way to know whether the Commission would adopt whatever Cal-Am proposes³⁸ – but also disingenuous. Thus, the Partial Settlement continues to pick winners and losers, a problem that plagued Cal-Am’s Southern Division consolidation proposal from the start.³⁹

The Partial Settlement’s assertion on page 9 that the adjustments to the rate design are motivated by a desire to “ensure moderation of the overall rate impact” is belied by the disparate impacts on residential customers. Attachment B to the Motion to Reopen, which Cal-Am provided as part of its response to Request 3 in the City’s recent Data Request No. 6,

³³ See, e.g., City OB, pp. 9-11; City RB, p. 14.

³⁴ Partial Settlement, p. 6.

³⁵ Partial Settlement, p. 7.

³⁶ Partial Settlement, pp. 9-10.

³⁷ Partial Settlement, p. 10.

³⁸ 10 Tr. 638:17-22 (Stephenson/Cal-Am). Mr. Stephenson and Mr. Spurgin agree on this point. Ex. CTO-14, Spurgin/City, 10:15-16. See also 12 Tr. 803:9-12 (Rauschmeier/ORR) (Mr. Rauschmeier cannot guarantee the Commission will approve whatever Cal-Am proposes in its next rate case).

³⁹ See City OB, pp. 9-11; City RB, p. 14.

demonstrates that residential customers across Cal-Am's proposed Southern Division who use the least water will see higher percentage rate increases than all but the highest water users.

Attachment B to the Motion to Reopen demonstrates that consistently throughout all five Districts, residential customers using the least water have the highest bill impacts under the Partial Settlement, with the exception of very high water users, such as those in the 95th percentile for all five Districts and those for the 75th percentile for San Marino. First, it is simply unfair for those using the least water to suffer higher percentage rate increases as described above. Second, this result is counterintuitive if the goal is truly to encourage conservation. It amounts to a slap in the face of those who keep their consumption low to have their rate increase be larger than the rate increase for those who use more.

The Partial Settlement picks rate winners and losers not only by targeting certain Districts, but also by targeting the residential customers who use the least amount of water. The Partial Settlement cannot be found reasonable in light of the whole record when it repeats and exacerbates one of the Application's fatal flaws.

2. The Settling Parties Fail to Prove the Partial Settlement Is Reasonable in Light of the Whole Record – and It Is Not.

The Commission requires settling parties to provide “a comprehensive initial showing,”⁴⁰ but the Settling Parties present no meaningful citations to the record as to any of the sections of the Partial Settlement, including sections 4.1 and 4.2.

First, the Motion does not cite to the record in support of any portion of the Partial Settlement, including sections 4.1 and 4.2.

Second, the Partial Settlement merely refers generally to the testimony of two witnesses in support of sections 4.1 and 4.2. Settling Parties follow descriptions of their settlement of an issue with “REFERENCES.” The “REFERENCES” after all sections of the Partial Settlement contain only citations to hearing exhibits by identification number, witness, and description. In no instance do Settling Parties provide citations to the pages or sections within such exhibits that it is claimed support that section of the Partial Settlement.⁴¹ The same non-specific references

⁴⁰ D.01-02-075, *mimeo*, p. 14 n. 11 (internal quotation marks omitted).

⁴¹ See §§ 3.1, p. 3; 3.2, p. 4; 3.3, p. 6; 4.1, p. 7; and 4.2, p. 10.

follow each of sections 4.1 and 4.2: “Exh. CAW-2, Chew Direct; Exh. CAW-32, Stephenson Rebuttal – Public.”⁴²

It is neither the task nor the burden of the City, other parties, or the Commission to comb through and determine whether and how this testimony supports sections 4.1 and 4.2 of the Partial Settlement. That burden falls to the Settling Parties, who have failed to perform it. Because of the Settling Parties’ failure to present a detailed and comprehensive initial showing,⁴³ sections 4.1 and 4.2 of the Partial Settlement are not reasonable in light of the whole record.

Further, sections 4.1 and 4.2 are decidedly not reasonable in light of the whole record. Instead, the record supports the conclusion that Southern Division consolidation as proposed by Cal-Am in its Application and then proposed in the Partial Settlement is unreasonable and should not be adopted. The City presented an overwhelming showing in its Opening and Reply Briefs demonstrating that Cal-Am failed to prove the Commission should adopt Cal-Am’s Southern Division consolidation proposal.⁴⁴ Cal-Am does not meet its burden of proof as to Southern Division consolidation and associated rates any further by presenting to the Commission a document that is, in reality, “merely the joint position of” Cal-Am and Coronado,⁴⁵ especially when Coronado took no position in the case as it was being litigated with respect to consolidation issues.

3. The Settling Parties’ Motion Fails to Offer Even a Superficially Sufficient Showing That the Partial Settlement Is Reasonable in Light of the Whole Record.

In the Motion, the Settling Parties offer only a short four-sentence paragraph purporting to show that the settlement agreement is reasonable in light of the whole record⁴⁶ and, in the Partial Settlement, the Settling Parties only generally refer to Chew’s Direct Testimony (at hearing, Stephenson’s) and Stephenson’s Rebuttal Testimony – both of which were submitted in support of a different rate design. This showing is not even superficially sufficient.

⁴² As previously noted, Ex. CAW-32 is the confidential version of Stephenson’s Rebuttal Testimony. The correct exhibit appears to be Ex. CAW-33.

⁴³ D.01-02-075, *mimeo*, p. 14 n. 11.

⁴⁴ These arguments are summarized, with record citations, in the City RB at pages 3-13.

⁴⁵ D.02-01-041, *mimeo*, p. 13; see D.96-01-01, *mimeo*, p. 27 (“This more detailed review and heightened scrutiny is especially appropriate when the settlement is not all-party, and also because we have a complete evidentiary record in Phase 1 and all the issues have been fully briefed.”).

⁴⁶ Motion, p. 3.

As an initial matter, the Settling Parties assert that they “each accepted adjustments to their initial position to reach a resolution on the issues set forth in the agreement, but those adjustments do not jeopardize Cal-Am’s ability to provide adequate service to its customers.”⁴⁷ Even assuming this assertion is true in the complete absence of any explanation or factual support, this assertion fails to acknowledge or address the fact that merely providing “adequate service” is not the same as consolidation and a consolidated rate design being reasonable in light of the whole record. For example, providing “adequate service” at unfair rates or unfairly distributing the costs of providing such service would not be reasonable. There is no discussion as to why merely providing “adequate service” makes the Partial Settlement reasonable in light of the whole record, and there is no meaningful discussion of why the rates and distribution of costs is reasonable.

The only other support the Settling Parties offer in the Motion is that Coronado “has a direct interest in each of the settled issues because those issues effect [sic] the interests of its residents and businesses” and, thus, that “[t]he terms and requirements proposed in the Settlement Agreement are just and reasonable and will benefit Cal-Am’s customers.”⁴⁸ As the Partial Settlement acknowledges, however, Coronado did not comment on consolidation or the rate design in its testimony.⁴⁹ And the Settling Parties’ argument fails to acknowledge that consolidation and the consolidated rate design will affect customers in Cal-Am’s entire Southern Region, not just Cal-Am’s customers in Coronado. There has been no showing that the City’s Cal-Am customers will benefit from consolidation – only an unsupported assertion that City’s “average customer” will see a decrease from the “current standalone rate design” – and no explanation of what this decrease consists of or even what is meant by the “current standalone rate design.”⁵⁰ In fact, it appears from the immediately following sentence in the Partial Settlement that the Settling Parties make this assertion based on changes to the tier breakpoints, which suggests that this is simply a statistical manipulation similar to that attempted by Cal-Am in its rebuttal testimony.⁵¹ Furthermore, there is no showing that ORA or ratepayers from the

⁴⁷ Motion, p. 3.

⁴⁸ Motion, p. 3.

⁴⁹ Partial Settlement, p. 7.

⁵⁰ Partial Settlement, p. 9.

⁵¹ See City OB, pp. 31-34 and City RB, p. 6. A review of the widely ranging percentage increases and decreases for each District found in Attachment B to the Motion to Reopen could lead to the conclusion that, despite Mr. Stephenson’s prior criticism that average numbers can be misleading, Cal-Am might be

other areas in Cal-Am's Southern Region were represented in the settlement negotiations between Cal-Am and Coronado. If anything, the Settling Parties' anemic attempt to justify the Partial Settlement actually indicates that the Partial Settlement is not reasonable in light of the whole record.⁵²

4. Coronado Is Not a Proper Representative of Affected Interests.

Despite claims in the Motion to the contrary,⁵³ the Partial Settlement is not supported by parties representing the affected interests.⁵⁴ Coronado represents only Cal-Am ratepayers in its boundaries. To paraphrase Cal-Am's Closing Brief filed after hearing, Coronado represents the interests of the subset of Cal-Am's Southern Division customers located in Coronado.⁵⁵ Coronado can no more speak for the customers in Ventura, Baldwin Hills, Duarte, or San Marino, than those customers can speak for Coronado, as evidenced by the testimony opposing Southern Division consolidation submitted by the City and the County of Los Angeles and comments opposing consolidation made at the PPHs held in Ventura and Los Angeles County.

The claim that Coronado represents affected interests as to the consolidation issues merely by having Cal-Am customers within its borders⁵⁶ ignores the significant differences between Cal-Am's customers across the Southern Division. Coronado customers do not represent the affected interests of customers in the rest of the proposed consolidated Southern Division. Significantly, at the time of the PPH notices, Cal-Am's San Diego District represented the lowest residential consumption of all of the five districts making up the proposed Southern Division, with an average consumption reported by Cal-Am of 71.6 CGL per month.⁵⁷ The district with the next lowest level of average residential consumption is the Baldwin Hills District at 110.2 CGL per month (38.6 CGL higher than San Diego), and the other districts have

manipulating tier breaks to reach lower average bill impacts. See Ex. CAW-33, Stephenson Rbtl./Cal-Am, 50:14 - 51:17.

⁵² See D.09-11-008, *mimeo*, p. 8. There, ratepayers were not represented at all in settlement negotiations. Here, ratepayers in four of the five Southern Division Districts are not represented in the settlement negotiations, because the Partial Settlement impacts them differently from Coronado ratepayers. For further discussion, see section IV.B.4.

⁵³ Motion, p. 1 & n. 2.

⁵⁴ D.07-03-044, *mimeo*, p. 259.

⁵⁵ Closing Brief of California-American Water Company filed in this docket on June 20, 2017, p. 96, stating the City represents "the interests of a subset of Cal-Am's Southern Division[] customers residing in Thousand Oaks."

⁵⁶ Motion, p. 1 & n. 2.

⁵⁷ Exh. CTO-14. Spurgin/City, Attachment E, row in each table for San Diego in column labeled "Avg Use (CGL)."

higher average usage, with the highest average usage being 157.8 CGL/month (86.2 CGL higher) in the San Marino District.⁵⁸ The drastic differences in average monthly consumption indicate that the interests in the rates to be charged of the customers in the other four Districts in the proposed Southern Division diverge vastly from those of Coronado customers.

This is not a case like D.07-03-044, where two consumer groups, Aglet and TURN, opposed a settlement that was supported by then-DRA, which is statutorily charged with representing all utility customers.⁵⁹ In fact, the Partial Settlement admits that Coronado provided no testimony as to consolidation or consolidated rate design in this proceeding.⁶⁰ Thus, in section 4.1 and 4.2, Cal-Am purports to settle with a party that did not even join issue on two matters it purports to settle.⁶¹ This renders inaccurate and nonsensical the statement in section 1.0 of the Partial Settlement that the Settling Parties settled out of a desire “to avoid the expense, inconvenience, and the uncertainty attendant to litigation of *matters in dispute between them*.”⁶² There was, as acknowledged in sections 4.1 and 4.2 of the Partial Settlement, no dispute regarding consolidation and consolidation rates between Cal-Am and Coronado, because Coronado did not dispute any consolidation issues. As to consolidation issues, Coronado is admittedly not a party that represents an affected interest.

Thus, the claims in the Motion notwithstanding, at least as to the issues of consolidation and consolidation rates, the settling parties here are not “fairly representative of the affected interests.”⁶³ Rather, only Coronado, which did not even take a position in this proceeding on either consolidation or consolidated rates, agreed to a settlement as to such consolidation and a consolidated rate design that is not adequately explained in the Partial Settlement. Even if Coronado has, at the eleventh hour, developed a position on consolidation and consolidated rate design to which it heretofore did not testify and which it did not brief, nothing in the Motion or

⁵⁸ Exh. CO-14, Spurgin/City, Attachment E, rows in each table for the LA-Baldwin Hills, LA-Duarte, LA-San Marino, and Ventura Districts, in column labeled “Avg Use (CGL).”

⁵⁹ D.07-03-044, *mimeo*, p. 268; see also D.09-12-045, *mimeo*, pp. 34-35 (Commission declined to adopt a settlement that lacked the sponsorship of parties representing ratepayer advocates and thus was not sponsored by parties who represented “all affected interests”).

⁶⁰ Partial Settlement, §§ 4.1 & 4.2, p. 7. The only appearance by Coronado’s counsel Mr. Bakker on the record at the hearing occurred on May 10, 2017, when he appeared for admission of certain data request responses and the prepared direct testimony of Coronado’s two witnesses, which were not opposed. 14 Tr. 998:9 - 1001:1.

⁶¹ In point of fact, Coronado also took no position on the issues settled in §§ 3.1 and 3.2 of the Partial Settlement.

⁶² Motion, p. 1.

⁶³ Motion, p. 1.

Partial Settlement asserts that or shows it to be true. Any effort to provide such information on reply should be rejected.⁶⁴

Settling Parties have failed to meet their burden to prove that Coronado represents the affected interests as to the agreements in sections 4.1 and 4.2 of the Partial Settlement.⁶⁵ The Commission should reject sections 4.1 and 4.2 of the Partial Settlement.

C. The Partial Settlement Is Not Consistent With Law.

The Settling Parties must prove the Partial Settlement is consistent with law, and have failed to do so. They fail to prove the rates resulting from the Partial Settlement will be just and reasonable, omit a comparison exhibit required by Rule 12.1(a), and make – at best – a conclusory showing simply asserting that they are not aware of any inconsistency with law.

1. In Attempting to Propose New Rates, Cal-Am Fails to Meet Its Statutory Obligations.

The Legislature has declared that it is unlawful for a public utility such as Cal-Am to demand or receive a charge unless the charge is just and reasonable⁶⁶ or to alter any practice to create a new rate without first making a showing before the Commission and the Commission finding that the new rate is justified.⁶⁷ “It is the fundamental principle of public utility regulation that ‘the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the Commission, its staff or any interested party . . . to prove the contrary.’”⁶⁸ “Any doubts must be resolved against [Cal-Am,] upon whom rests the burden of proof.”⁶⁹

“To approve a proposed settlement agreement, the Commission must conclude that the provisions of the agreement do not violate applicable law.”⁷⁰ Accordingly, the Commission has rejected at least one settlement as inconsistent with law where the affected parties were not represented and the proposed rates were not just and reasonable as required by Public Utilities Code section 451.⁷¹

⁶⁴ D.01-02-075, *mimeo*, p. 14, n. 11; see D.08-01-020, *mimeo*, p. 2; D.05-08-041, *mimeo*, p. 9

⁶⁵ D.07-03-044, *mimeo*, p. 259.

⁶⁶ Pub. Util. Code § 451.

⁶⁷ Pub. Util. Code § 454(a); D.05-12-020, *mimeo*, p. 4 (“Under § 454, public utilities must make a showing to the Commission that any proposed rate change is justified, and receive a finding by the Commission to that effect, before making such change.”).

⁶⁸ D.08-01-020, *mimeo*, p. 2 (alteration in original) (quoting D.83-05-036).

⁶⁹ D.90642, *mimeo*, p. 9; accord D.00-02-046, *mimeo*, p. 38.

⁷⁰ D.09-11-008, *mimeo*, p. 8.

⁷¹ D.09-11-008, *mimeo*, pp. 11-12 (finding a proposed settlement inconsistent with Public Utilities Code section 451).

Cal-Am did not meet its statutory burden before proposing the Partial Settlement with Coronado, and the Settling Parties do not meet the burden to prove that the Partial Settlement should be adopted. The Settling Parties provide unsupported assertions regarding the impact of sections 4.1 and 4.2 on rates for all customers in the Southern Division and two cryptic tables, along with scant citations to the record. Such a conclusory showing cannot carry the Settling Parties' burden to prove the settlement should be adopted. Such a failure of proof is also a failure to meet the obligations set forth in Public Utilities Code.⁷²

Therefore, the Partial Settlement is not consistent with law.

2. The Settling Parties Failed to Comply with Rule 12.1(a)'s Requirement to File a Comparison Exhibit.

The third paragraph of Rule 12.1(a) requires that, “[w]hen a settlement pertains to a proceeding under a Rate Case Plan or other proceeding in which a comparison exhibit would ordinarily be filed, the motion must be supported by a comparison exhibit indicating the impact of the settlement in relation to the utility’s application”

The Settling Parties have failed to comply with Rule 12.1(a). Cal-Am’s Application is a proceeding under the revised Water Rate Case Plan adopted in D.07-05-062.⁷³ The rule’s language is plain and clear: a motion seeking approval of a settlement filed in a proceeding under a Rate Case plan “*must*” include a supporting comparison exhibit which indicates “*the impact of the settlement in relation to the utility’s application.*”⁷⁴ Neither the Partial Settlement nor the Motion present any supporting comparison exhibit showing such impact. With respect to sections 4.1 and 4.2 of the Partial Settlement, a comparison exhibit should have been presented that permits other parties and the public to determine how the agreed-upon “Southern Division Consolidated Rate Design” impacts customers as compared to Cal-Am’s Application.

The Commission should reject any argument that such impacts could not be included in a comparison exhibit in the absence of an approved revenue requirement. First, Cal-Am previously projected rate impacts of its GRC proposal in notices it served on its customers when it filed the Application and then again before the PPHs held earlier this year. Thus, Cal-Am is able to project bill impacts based on the revenue requirement it is requesting at the time it

⁷² D.09-11-008, *mimeo*, pp. 11-12.

⁷³ D.07-05-062, *mimeo*, pp. 1 & 15, n. 7 (D.07-05-062 applies to Class A water utilities, which include Cal-Am); Cal-Am Application, p. 1 (Application in this proceeding was filed as directed in D.07-05-062).

⁷⁴ Rule 12.1(a) (emphasis added).

provides such notices. It could do exactly the same when filing a settlement motion in order to comply with Rule 12.1(a). Second, the Commission certainly would have understood when it adopted Rule 12.1(a) (and prior Rule 51.1(c)) that the timing of a settlement could impact the finality of information to be included in a comparison exhibit, and the Commission nonetheless imposed the requirement on parties filing a settlement motion. Third, permitting the comparison exhibit to be filed after Cal-Am's revenue requirement is final would be too late in this circumstance. By that time it will be too late for parties to comment on the Partial Settlement in light of the late-provided comparison exhibit.⁷⁵

The failure to comply with Rule 12.1(a) is no minor omission. This failure to comply with the Commission's rules prevents active parties in this proceeding and the public generally from understanding the impact of the Partial Settlement on rates. The failure to follow this Rule is an additional indication that the Settling Parties have failed to support the Partial Settlement with a detailed and comprehensive initial showing, and is thus a failure to meet the Settling Parties' burden of proof as to the Partial Settlement.⁷⁶

3. The Settling Parties' Make No Effort to Show Consistency With Law.

Settling Parties seek to show consistency with law in a single sentence in the Motion, stating: "The Parties are aware of no statutory provision or prior Commission decision that would be contravened or compromised by the proposed Settlement Agreement."⁷⁷ Such a perfunctory statement is insufficient regarding the Partial Settlement, which attempts to resolve consolidation and consolidation rate design issues that were contested by parties that did not join the Partial Settlement.

Cal-Am's language in the Partial Settlement is similar to the language evaluated in D.08-01-043. In that decision, the Commission noted that settling parties DRA and Golden State Water Company had stated they were unaware that their partial settlement might conflict with any statute or Commission decision.⁷⁸ And, in stark contrast to the current matter, the Commission had first found that DRA and Golden State Water Company were fairly

⁷⁵ Rule 12.2 provides 30 days after service of a motion for adoption of a settlement for filing of comments contesting the settlement.

⁷⁶ D.01-02-075, *mimeo*, p. 14 n. 11.

⁷⁷ Motion, p. 4.

⁷⁸ D.08-01-043, *mimeo*, p. 12.

representative of the affected interests.⁷⁹ Here, ORA is not a party to the Partial Settlement and as already discussed, and Coronado is not representative of the affected interests.

For example, the City has repeatedly pointed out in its testimony and briefing that Cal-Am failed to meet its burden regarding Southern Division consolidation. Nevertheless, Cal-Am has attempted to settle consolidation issues with a different party – a party that previously took no position on consolidation issues. Cal-Am’s perfunctory statement regarding a settlement on proposed consolidation and a rate design – which have been shown throughout this proceeding to be in contravention of the Public Utilities Code – utterly fails to meet the Settling Parties’ burden to prove the Partial Settlement is consistent with law.

D. The Partial Settlement Is Not in the Public Interest.

The Commission has found the obligation to prove a settlement is in the public interest to be unmet where “the settling parties have presented no evidence of a compelling public interest that would be furthered by [a] proposed settlement agreement.”⁸⁰ Here, the Settling Parties have provided no such evidence, instead making vague assertions of public benefits unsupported by any citation to the record.

As to issues concerned in sections 4.1 and 4.2 of the Partial Settlement, the Motion states:

The Settlement Agreement also establishes clear policies and targets for reducing water losses in a cost-effective manner through the Parties agreement on proposed rate consolidation and rate design in the San Diego District. For example, consolidation will impose rates for non-essential uses on all customers in the consolidated area that are more comparable over the entire Southern Region, thereby signaling the importance of water conservation and water sustainability.⁸¹

However, as will be discussed below, the Partial Settlement in reality fails to encourage conservation and is otherwise not in the public interest.

1. The Partial Settlement Is Not in the Public Interest Because It Does Not Encourage Conservation.

As explained in Section IV.B.1 above, Attachment B to the Motion to Reopen demonstrates that consistently throughout all five Districts, residential customers using the least water have the highest bill impacts under the Partial Settlement, with the exception of very high water users, such as those in the 95th percentile for all five Districts and those for the 75th percentile for San Marino. Far from encouraging conservation, this rate design would punish

⁷⁹ D.08-01-043, *mimeo*, p. 12.

⁸⁰ D.09-11-008, *mimeo*, p. 13.

⁸¹ Motion, p. 4.

those using the least amount of water and thus counteract incentives for these customers to conserve. Furthermore, the highest residential water users in the San Diego District obtain a whopping 19.45% **decrease** in their average monthly bill while the customers using the least amount of water see the only percentile increase in that District. Despite the Settling Parties' assertions to the contrary, even the limited data available shows that the proposed rate design would not "signal[] the importance of water conservation and water sustainability."⁸²

2. The Partial Settlement Is Not in the Public Interest Because of Its Unfair Treatment of Ventura District Ratepayers, Especially in Comparison to Those in the San Diego District.

Ventura customers continue to fare badly under the Partial Settlement, as they did under consolidation as proposed in Cal-Am's Application.⁸³ Attachment B to the Motion to Reopen shows that in 2018 the average Ventura residential customer has the highest percentage bill impact, at 4.76%, and the next highest average increase is for Duarte, at 3.56%. In contrast, in the San Diego District, where Coronado is located, the average rate **decreases** by 4.21%. In fact, only the lowest water users see a percentage increase in San Diego.

Such disparate and unfair treatment of Ventura District customers (and for that matter customers in Duarte and San Marino) is not in the public interest, and the Settling Parties have made no showing that it is.

3. The Partial Settlement Is Not in the Public Interest Because It Amounts to an End Run Around Cal-Am's Statutory Burden to Prove That Rates Are Just and Reasonable and Will Discourage Future Public Participation in Commission Proceedings.

The City demonstrated that Cal-Am failed to meet its burden to prove that its Southern Division consolidation proposal should be adopted.⁸⁴ Cal-Am's Application proposes new rates, and the Partial Settlement does not relieve Cal-Am of its statutory burden to prove that those rates are just and reasonable.⁸⁵ The City demonstrated that Cal-Am had not met its burden, and Cal-Am should not be allowed to use the Partial Settlement to engage in an end run around its statutory burden. Not only is that not consistent with law, it is also not in the public interest to permit this to occur, and Settling Parties have made no showing that it is.

⁸² Motion, p. 4.

⁸³ See City OB, pp. 11-13 and City RB, pp. 9-10.

⁸⁴ See City OB, pp. 9-36 and City RB, pp. 3-13.

⁸⁵ D.09-11-008, *mimeo*, pp. 11-12.

