

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

In the Matter of the Application of California-
American Water Company (U 210 W) for Authority
Pursuant to Public Utilities Code Section 454 to
Restructure and Consolidate its Rates for its
Monterey and Felton Districts

A.04-08-012
(Filed August 11, 2004)

**MOTION OF
FELTON FRIENDS OF LOCALLY OWNED WATER
FOR LEAVE TO FILE COMMENTS ON PROPOSED DECISION DENYING
INTERVENOR COMPENSATION
(AND ATTACHED COMMENTS)**

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May 5, 2006

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Pursuant to Rule 45 of the Commission's Rules of Practice and Procedure, Felton Friends of Locally Owned Water ("Felton FLOW") respectfully requests leave to file Comments on the Proposed Decision of Administrative Law Judge McVicar that would deny Felton FLOW's request for intervenor compensation in this proceeding in its entirety.

Felton FLOW believes that the Proposed Decision fails to fully or fairly consider its contributions to this proceeding, is fundamentally inconsistent with a long line of Commission decisions on intervenor compensation and would do a disservice not only to Felton FLOW and the many residents of Felton who actively participated in this proceeding through Felton FLOW, but would also set a terrible precedent that would preclude ordinary citizens groups from effectively participating in future Commission proceedings. Felton FLOW is unaware of any prior decision of the Commission in which an intervenor whose participation was so critical to an entire Commission proceeding, and whose recommendation on the central issue in the proceeding was adopted, has been denied compensation. The Proposed Decision is in this respect unprecedented.

Neither Felton FLOW nor any other party interested in this issue has had an opportunity to express their views on the Proposed Decision or to fully explain its many flaws since the Proposed Decision waives comment.¹ For these reasons, Felton FLOW seeks leave to comment

¹ DRA and the County of Santa Cruz have also filed motions for leave to file comments in opposition to the Proposed Decision and in support of Felton FLOW's request for intervenor compensation. To the best of Felton FLOW's knowledge, there has been no ruling on either of these

on the Proposed Decision and to explain how the flaws in the Proposed Decision can best be remedied.

Felton FLOW's Comments on the Proposed Decision together with recommended revisions to the Proposed Decision are attached to this motion.

Respectfully submitted,

By: /s/ Edward O'Neill

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**COMMENTS OF
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ON PROPOSED DECISION DENYING INTERVENOR COMPENSATION**

Felton Friends of Locally Owned Water (“Felton FLOW”) respectfully submits its Comments on the Proposed Decision of Administrative Law Judge McVicar (“Proposed Decision”). The Proposed Decision would deny Felton FLOW’s request for intervenor compensation in this proceeding in its entirety. In doing so, it fails to fully or fairly consider the contribution of Felton FLOW to this proceeding, is fundamentally inconsistent with a long line of Commission decisions on intervenor compensation and would do a disservice not only to Felton FLOW and the many residents of Felton who actively participated in this proceeding through Felton FLOW, but would also set a terrible precedent that would preclude many ordinary citizens from effectively participating in future Commission proceedings. For these reasons, Felton FLOW urges the Commission to reject the Proposed Decision and approve an Alternate Decision acknowledging Felton FLOW’s contribution to this proceeding and granting its request for intervenor compensation in part, if not in full. Recommended revisions to the Proposed Decision to accomplish this result are contained in Appendix A to these Comments.

**The Proposed Decision Fails To Fully Acknowledge Felton FLOW’s
Substantial Contributions To This Proceeding**

The Proposed Decision fails to fully acknowledge the contributions of Felton FLOW to this proceeding, errs in its account of the development of issues in the proceeding, and errs in concluding that Felton FLOW did not make a substantial contribution to D.05-09-004.

The most important and fundamental defect in the Proposed Decision is that it fails to fully explain how central the views and opinions of Felton residents were to this entire

proceeding and fails to acknowledge the role Felton FLOW played in organizing and facilitating virtually all aspects of the participation of local Felton residents in this proceeding. This proceeding was quite unique in the extent to which the views and opinions of local Felton residents were central to and influenced the final decision of the Commission. It was initiated by the Commission for the specific and only purpose of considering possible means of addressing the concerns of local Felton residents regarding rate shock in the community. Representatives of Felton, including Felton FLOW, met with Commissioners, including Commissioner Kennedy after the Proposed Decision of ALJ McVicar was issued in Cal-Am's last general rate case and Felton FLOW noticed that it failed to do anything to address rate shock concerns in Felton. Felton FLOW urged Commissioner Kennedy to modify the Proposed Decision to address this concern and she agreed. As a result, the Proposed Decision was revised and the Commission's final decision in the matter required Cal-Am to file a new application to permit the Commission to further consider possible means of mitigating high rates and rate shock in Felton through the consolidation of water utility districts.²

Felton FLOW did not ask the Commission to initiate a new proceeding to address their concerns, it would have much preferred that the Commission address its concerns directly in its decision on Cal-Am's last general rate case. When the Commission ordered Cal-Am to file a new application for the benefit of Felton residents, however, the views of Felton residents became central to this proceeding. Felton FLOW responded by organizing local community opposition, participating in good faith throughout the proceeding and effectively and persuasively presenting the vehement opposition of the local community to Cal-Am's proposal. Moreover, by opposing the consolidation proposed by Cal-Am, the purpose of which was to benefit residents of Felton and only residents of Felton, Felton residents virtually guaranteed that Cal-Am's proposal would be rejected by the Commission. In light of the local community's opposition, all other issues and concerns clearly became secondary. There was simply no way the Commission was ever going to raise rates in Monterey to mitigate rate shock in Felton, with Felton residents uniformly and vocally opposed to this. The Proposed Decision fails to mention this critical point and, as a result, substantially understates Felton FLOW's contribution to this proceeding, which was not only significant but determinative.

The Proposed Decision discounts Felton FLOW's role in this regard on grounds that Felton FLOW was allegedly not the only party that represented the Felton ratepayers in the

² See D.04-05-023.

proceeding. It states that DRA did so as well.³ The Proposed Decision is wrong in this regard. It is well established that DRA is responsible for representing ratepayer interests generally in Commission proceeding and not the discrete interests of any particular ratepayer group. In addition, DRA could not possibly have represented Felton ratepayers in this proceeding since it represented Monterey ratepayers, whose rates were at risk of increasing under Cal-Am's proposal, had an inherent conflict of interest in also representing Felton ratepayers, whose rates would be reduced under Cal-Am's plan. DRA did not represent the discrete views of Felton residents, nor did it ever purport or attempt to do so. DRA agrees with Felton FLOW on this point.⁴

The Proposed Decision also misrepresents the role and responsibility Felton FLOW undertook for organizing and facilitating participation in this proceeding by and on behalf of local Felton residents. The Proposed Decision states that the views of the local community were "an important factor in our decision,"⁵ but goes on to state that the Commission sees "little nexus" between the letters and e-mails from the local community and statements in public participation hearings and the costs Felton FLOW seeks to recover in the proceeding. In point of fact, Felton FLOW was instrumental in organizing and orchestrating virtually all aspects of the local community's participation in this proceeding, including turnout at public participation hearings, letters and e-mails to the Commission, coordination of strategy and participation with the County of Santa Cruz and to a lesser degree ORA, preparing written prepared testimony, presenting oral testimony by residents, filing briefs, filing comments on the Proposed Decision, and following up through meetings with Commissioners and advisors. This entire effort was coordinated in close consultation with its counsel. The Proposed Decision is simply wrong in stating that Felton FLOW did not contribute by ensuring that the views of the local Felton community were effectively communicated and advocated in the proceeding. Felton FLOW orchestrated this effort and since the Commission has conceded that it relied heavily on the views of the local community in its decision,⁶ there is no question that Felton FLOW made a substantial contribution to the Commission's decision in this regard.

³ Proposed Decision at 9.

⁴ See Motion of Division of Ratepayer Advocates to File Attached Comments On The Opinion Denying Intervenor Compensation (Comments Attached) dated April 26, 2006 at 2.

⁵ Proposed Decision at 9.

⁶ D.05-09-004 at 25-27, and 31.

The Proposed Decision Is Fundamentally Inconsistent With A Long Line Of Commission Decisions Granting Intervenor Compensation

In denying compensation to Felton FLOW, the Proposed Decision is inconsistent with a long line of Commission decisions granting compensation to intervenors for a wide range of contributions to Commission decisions. The Commission has a well established history of recognizing the contributions of intervenors whose recommendations on the central issues in its proceedings have been adopted by the Commission as was Felton FLOW's in this proceeding. The Commission generally grants intervenors full compensation in such circumstances. The Commission also has an equally long and well established history of recognizing the contributions of intervenors whose recommendations have been adopted only in part. In such circumstances, the Commission generally grants substantial compensation, and in many instances full compensation. In D.99-11-006, for example, the Commission granted \$245,953 in compensation on UCAN's request for \$251,108. The Commission did so on grounds that even though it rejected UCAN's positions on several contested issues in the underlying application of SDG&E for a distribution performance incentive, UCAN "influenced the Commission's decision." Many other decisions are in accord with this decision in granting substantial compensation to intervenors whose recommendations have been adopted only in part by the Commission.⁷ On numerous occasions, the Commission has also awarded substantial compensation to intervenors whose recommendations have been rejected in their entirety by the Commission. In D.98-11-014, for example, the Commission granted TURN \$431,415 of the \$436,047 it requested for its participation in a proceeding concerning the PG&E Gas Accord, even though TURN opposed the Gas Accord and the Commission adopted it over TURN's opposition. Similarly, the Commission awarded substantial compensation to San Luis Obispo Mothers for Peace in D.89-03-063, the Redwood Alliance in D.89-99-103, and TURN in D.01-06-063, even though the Commission did not adopt any of their recommendations in any of the underlying Commission decisions for which they sought and received compensation in these dockets. The Commission has awarded compensation in such proceedings in recognition of the fact that substantial contributions can be made to the Commission's decisionmaking process in

⁷ In D 99-08-006, for example, the Commission granted TURN the full compensation it requested, \$36,334, in a proceeding involving the provision of electronic Yellow Page information, even though few issues were raised in the underlying proceeding and the Commission rejected TURN's argument on one of the key issues it raised - that Pacific Bell violated Rule 1. Similarly, in D.96-09-024, Cal/NEVA was awarded almost all of the compensation is requested, \$27,520 out of \$28,364, even though its position was adopted only in part.

many different ways and that the Commission benefits greatly by intervenors who bring different points of view, raise important issues that the utilities have not raised, and assist in developing a full and complete record before the Commission.

The primary issue in this proceeding was whether Cal-Am's application to consolidate its Felton and Monterey water utility districts to mitigate rate shock in Felton should be adopted. Felton FLOW actively participated throughout the proceeding and consistently urged the Commission to reject Cal-Am's proposed consolidation. The Commission adopted this recommendation.⁸ Thus, Felton FLOW's recommendation on the central issue in this proceeding was adopted. In addition, in doing so, the Commission specifically cited the opposition of the local community, which was organized by Felton FLOW and implemented through participation in public participation hearings, testimony in evidentiary hearings, letters and e-mails to the Commission, and ex parte communications with Commissioners and advisors, as an important factor contributing to its decision on this central issue.⁹ Felton FLOW also recommended that in the event the Commission rejects Cal-Am's proposal, it should mitigate rate shock in Felton through other means. The initial Proposed Decision of ALJ McVicar in this proceeding would have rejected Cal-Am's proposed consolidation and ordered an immediate 30% rate increase without mitigating rate shock.¹⁰ In its Reply Comments and ex parte meetings, Felton FLOW pointed out that rate shock concerns in Felton had increased significantly during the course of the proceeding as a result of the deferral the general rate increase in D.04-05-023 and Cal-Am's additional pending general rate case for Felton¹¹ and urged the Commission to modify the Proposed Decision to address rate shock in Felton through other means.¹² The Commission agreed with this recommendation. The Commission's final decision was revised to phase in the rate increase deferred in D.04-05-023 over six years to mitigate rate shock.¹³ This admittedly was not the particular solution Felton FLOW recommended, but the change to the Proposed

⁸ See D.05-09-004, mimeo at 2.

⁹ See D.05-09-004, mimeo at 26-27 (citing testimony of Felton FLOW witnesses) and 31.

¹⁰ See D.05-09-004, mimeo at 33 acknowledging this fact.

¹¹ Felton FLOW noted that as a result of these factors, Felton District ratepayers were facing increases in rates of between 144.2% and 205.5%. See Joint Notice of Ex Parte Communication by Felton FLOW, County of Santa Cruz and San Lorenzo Valley Water District at 3.

¹² See Reply Comments of Felton FLOW on Proposed Decision of ALJ McVicar at 1-5, and Joint Notice of Ex Parte Communication by Felton FLOW, County of Santa Cruz and San Lorenzo Valley Water District at 3.

¹³ D.05-09-004, mimeo at 33.

Decision was clearly adopted for the specific purpose of addressing the defect Felton FLOW pointed out in the Proposed Decision.

Felton FLOW thus contributed to this proceeding through Commission adoption of its positions on the two issues most central to the proceeding. It also contributed by representing an interest that would otherwise not have been effectively represented in the proceeding (the specific interests of Felton residents);¹⁴ proposing and advancing a practical and feasible alternative to Cal-Am's consolidation proposal for Commission consideration (consolidation of the Felton District with the Sacramento and Larkfield Districts, rather than with the Monterey Districts);¹⁵ and assisting in the development of a full record that, among other things, fully explained why Felton residents are so opposed to further consolidation of the Felton and Monterey districts despite the fact that this would reduce rates in Felton in the near term. Rather than recognizing and awarding compensation for these contributions, the Proposed Decision would deny Felton FLOW's request for compensation. In doing so, the Proposed Decision is fundamentally inconsistent with prior Commission precedent awarding substantial compensation to intervenors

The Proposed Decision also discusses several specific issues on which Felton FLOW claims contributed and rejects these contributions as not substantial. It does so, however, on grounds that are almost uniformly inconsistent with prior Commission precedent. It concludes, for example, that Felton FLOW did not make a substantial contribution by demonstrating that Cal-Am's consolidation proposal in this proceeding was inconsistent with its own long term plans. It does so on grounds that this issue was first developed on cross examination by MPWMD's counsel. The fact that Cal-Am's consolidation proposal in this proceeding was the first step in its long term plan to consolidate water utility districts was actually first raised in the testimony of Cal-Am's witness Stephenson. Every intervenor in the proceeding was aware of this and planned cross examination on this testimony. MPWMD covered the issue on cross examination first, only because of the happenstance of the order of cross examination. MPWMD's cross examination of Mr. Stephenson preceded Felton FLOW's, but this provides no valid ground for concluding that Felton FLOW did not make a substantial contribution on this issue. Under Commission precedent, whether an intervenor's contribution to a Commission

¹⁴ In its decision, the Commission explicitly stated that the opposition of local residents to Cal-Am's proposal was a significant factor contributing to its decision to deny Cal-Am's application.

¹⁵ The Commission not only considered Felton FLOW's alternative, it acknowledged that this alternative may be superior to Cal-Am's consolidation proposal. See D.05-09-004 mimeo at 28.

proceeding on an issue is substantial or not is determined by all of the facts and circumstances of its participation not by the order of cross examination. Commission precedent clearly recognizes that a substantial contribution may be made through participation that supplements or complements the participation of other parties, as did Felton FLOW's on this issue, not by who gets first crack at cross examination.

The Proposed Decision also states that Felton FLOW did not make a substantial contribution by developing and advancing the alternative proposal of mitigating rate shock in Felton by consolidating the Felton District with the Sacramento and Larkfield Districts rather than with the Sacramento District. This alternative was directly responsive to the central issue in the proceeding and was advocated by Felton FLOW. The Proposed Decision states, however, that this alternative was first advanced by the County of Santa Cruz, not Felton FLOW. The Proposed Decision is also wrong in this regard. Felton FLOW has been working in close collaboration with the County to advance its interests in securing a lasting solution to water service and rate concerns in Felton since long before this proceeding was initiated and was instrumental in developing this alternative working in collaboration with the County. The Proposed Decision fails to give proper weight or value to Felton FLOW's role in developing and advancing this alternative because Felton FLOW has not requested any compensation for work it did prior to the commencement of this proceeding. Felton FLOW should not be penalized, however, for making contributions for which it has not requested any compensation or for the Proposed Decision's erroneous speculation regarding the origination of the alternative consolidation proposal advanced and developed by Felton FLOW in conjunction with the County. More importantly, however, under prior Commission precedent intervenors are not required to be the first party to raise an issue or to originate an alternative in order to be found to have made a substantial contribution on the issue. The Proposed Decision is inconsistent with prior Commission precedent in applying such a standard.

The Proposed Decision is thus fundamentally inconsistent with a very long line of Commission decisions and precedent acknowledging that intervenors contribute in many different ways to Commission proceedings and awarding compensation even where their recommendations have been adopted only in part, or not at all.

The Proposed Decision Would Set A Terrible Precedent

To the best of Felton FLOW's knowledge, the Commission has never denied compensation to an intervenor that was the only party representing the specific ratepayers whose

interests were central to the proceeding, participated fully throughout the proceeding and whose recommendation on the penultimate issue pending before the Commission was adopted, as was the case with Felton FLOW in this proceeding. Denying compensation to Felton FLOW in these circumstances would set a terrible precedent that would discourage ordinary citizens participation in future Commission proceedings.

Ad hoc citizen groups that coalesce as a result of a common interest in issues affecting their local community, such as Felton FLOW, must overcome formidable obstacles to participate in Commission proceedings. They are generally unfamiliar with the Commission and its precedent, process and procedure, rarely have the legal or technical expertise required to effectively participate and often have difficulty finding attorneys and experts willing to undertake such representation at reduced rates with no assurance of being paid. In addition, Commission proceedings tend to be extraordinarily time consuming, expensive and inconvenient for ordinary citizens who must volunteer many hours of their time to attend public participation hearings, review and approve prepare testimony, attend evidentiary hearings, file briefs and other pleadings to ensure that the issues of concern to the community are not overlooked by the Commission as a result of other pressing concerns in higher priority. The Legislature and the Commission have long sought to reduce the obstacles to participation by such citizens groups by providing compensation to intervenors who participate in good faith and make a substantial contribution. The Proposed Decision would make a very sharp break from the long line of Commission decisions encouraging such participation through fair and reasonable awards of compensation for participation in Commission proceedings and, in doing so would serve to impose a significant barrier to such participation.

Conclusion

For the reasons set forth in these Comments, Felton FLOW respectfully requests that the Commission reject the Proposed Decision and approve an Alternative Decision that grants its

request for intervenor compensation in part, if not in whole. Recommended revisions to the Proposed Decision to accomplish this result are attached in an Appendix to these Comments.

Respectfully submitted,

By: /s/ Edward O'Neill

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Dated: May 5, 2006

Appendix

Recommended Revisions to Proposed Decision

1. Delete the caption on page 1 and substitute:

“OPINION GRANTING FELTON FLOW’S REQUEST FOR INTERVENOR COMPENSATION FOR CONTRIBUTIONS TO DECISION 05-09-004.”

2. Delete the first sentence in the first paragraph on page 1 and substitute the following:

This decision finds that Felton FLOW made a substantial contribution to Decision (D.)05-09-004 and grants its request for \$49,719 in intervenor compensation.

3. Following the Heading “FLOW’s Claimed Contributions” on page 6, delete and substituted the following:

FLOW states that it made a significant contribution to this proceeding by representing the interests of local Felton residents and opposing CalAm’s proposal to consolidate the Felton and Sacramento Districts. The views of Felton residents were central to this proceeding since it was initiated to consider possible means to mitigate rate shock in Felton. Felton FLOW was instrumental in organizing and advancing the uniform and vehement opposition of Felton residents to CalAm’s proposed consolidation in this proceeding and the Commission relied heavily on the views of the Felton community in reaching its decision to deny Cal-Am’s application. We therefore agree that FLOW made a significant contribution to D.05-09-004 through presenting and advocating the views of Felton residents.

FLOW’s compensation filing also lists several specific grounds upon which it claims to have successfully opposed CalAm’s proposed consolidation, and specifically cites several as substantial contributions. We need not address each of these separate grounds since we find that FLOW made a substantial contribution through organizing and advancing the views of Felton residents and this opposition was a key factor in our decision to deny CalAm’s application.

4. Delete the text from pages 8 through 13.

5. Delete the second full paragraph on page 15 through and to the heading “Waiver of Comment Period” and substitute the following:

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive” as that term is used in § 1801.3. In general, we require that the costs of participation bear a reasonable relationship to the benefits realized through such participation. In prior decisions we have acknowledged, however, that it can be difficult, if not impossible to assign specific ratepayer benefits to the contributions of intervenors in proceedings that involve other than purely economic issues.¹⁶ In this proceeding, the views of

¹⁶ See D.01-11-023.

Felton residents were the single most important factor bearing on the Commission's decision and by opposing Cal-Am's proposed consolidation, Felton residents sacrificed an opportunity to reduce rates in their community and contributed to saving ratepayers in Monterey from bearing the additional costs that CalAm's proposal would have entailed. In this sense, Felton FLOW's participation in this proceeding provided ratepayer savings that were reasonable in relation to its costs of participation.

Hours Claimed

Based on a review of activities and the associated hours with each activity, including Felton FLOW's voluntary reduction of 15% in its time spent on substantive issues in this proceeding, we find the hours claimed by Felton FLOW reasonable.

Hourly Rates

Hourly rates for Felton FLOW's attorneys and paralegal have been previously approved by the Commission and the rates Felton FLOW has requested for this proceeding are below the rates most recently approved by the Commission. Felton FLOW requests an hourly rate of \$435 for O'Neill for 2004 and 2005; \$285 for Gray for 2005; and \$135 for Pau for 2004. In D.06-04-018, the Commission approved a rate of \$470 for O'Neill for 2004; \$310 for Gray for 2004; and \$145 for Pau for 2004. Thus all of the rates that Felton FLOW has requested for its attorneys and paralegal in this proceeding are below the rates previously approved by the Commission. We find these rates reasonable and will approve them.

Other Costs

Felton FLOW requests \$1,428.98 in other costs (filing fees, delivery services, parking, photocopying, and other travel expenses). Based upon a review of these expenses we find them reasonable.

Award

We will award Felton FLOW \$49,719.60 calculated as described above.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after Felton FLOW filed its compensation request and continuing until the utility makes its full payment of the award.

6. Delete Findings of Fact 3 and 4 and substitute the following:

3. Felton FLOW made a substantial contribution to D.05-04-009.

Add the following additional Findings of Fact:

4. The hourly rates requested by Felton FLOW are below the rates previously approved by the Commission for Felton FLOW's attorneys and paralegal and are reasonable.

5. The miscellaneous costs incurred by Felton FLOW are reasonable.

7. Revise Conclusions of Law 1 through 3 to state as follows:

1. FLOW has fulfilled the requirements of Sections 1801-1812 governing awards of intervenor compensation.
2. FLOW is entitled to intervenor compensation for its contribution to D.05-09-004.
3. FLOW's request for intervenor compensation should be granted.

8. Revise the Ordering Paragraphs to read as follows:

1. Felton FLOW is awarded \$49,719.60 for its substantial contribution to D.05-04-009.
2. CalAm shall pay Felton FLOW \$49,719.60 within 30 days of the effective date of this order.
3. CalAm shall also pay interest on the award at the rate earned on prime, three month commercial papers, reported in Federal Reserve Statistical Release G.13 with interest, commencing the 75th day after Felton FLOW filed its compensation request and continuing until the award is paid full.
4. This proceeding is close.
This order is effective today.

