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Supreme Court of California
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CASE NO. S269099 (CONSOLIDATED WITH S271493)

In the Supreme Court
of the State of California

GOLDEN STATE WATER COMPANY,
CALIFORNIA-AMERICAN WATER COMPANY,
CALIFORNIA WATER SERVICE COMPANY,
LIBERTY UTILITIES CORP.
AND CALIFORNIA WATER ASSOCIATION
Petitioners,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Respondent.

VOLUME 3 OF JOINT APPENDICES TO THE OPENING BRIEF ON THE MERITS

File 3 of 4 – Pages 524-622 – Joint Appendices X-FF

[Opening Brief on the Merits Filed Concurrently]

After Decisions Nos. 20-08-047 and 21-09-047
Of the Public Utilities Commission of the State of California

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Joint App. Y (prior GSWC Ex. M)	*Comments of Golden State Water Company (U 133 W) on Proposed Decision and Order,* R.17-06-024 (July 27, 2020)	549-558
Joint App. Z (prior Liberty Ex. K)	*Joint Comments of Liberty Utilities (Park Water) Corp. (U 314-W) and Liberty Apple Valley Ranchos Water) Corp. (U 346-W) on Proposed Decision*, R.17-06-024 (July 27, 2020)	559-577
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Joint App. EE (prior Liberty Ex. L)	*Joint Reply Comments of Liberty Utilities (Park Water) Corp. (U 314-W) and Liberty Apple Valley Ranchos Water) Corp. (U 346- W) on Proposed Decision*, R.17-06-024 (August 3, 2020)	609-616
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Dated: September 1, 2022

Respectfully submitted,

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JOINT APPENDIX X

S__________

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA WATER SERVICE COMPANY
Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Respondent.

Decisions No. 20-08-047 and 21-09-047

Of the Public Utilities Commission of the State of California

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EXHIBIT X

R.17-06-024, *Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves* (July 27, 2020)

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024 (Filed June 29, 2017)

COMMENTS OF CALIFORNIA WATER SERVICE COMPANY (U 60 W)
ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES

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COMMENTS OF CALIFORNIA WATER SERVICE COMPANY (U 60 W) ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public utilities Commission ("Commission"), California Water Service Company ("Cal Water") hereby submits these comments on the Proposed Decision of Commissioner Guzman Aceves ("PD"), issued on July 3, 2020 and served on parties on July 7, 2020.[1] Cal Water respectfully urges the Commission to modify the PD's flawed disposition of the decoupling Water Revenue Adjustment Mechanism/Modified Cost Balancing Account ("WRAM/MCBA" or "decoupling mechanism"). The effect of implementing the PD as adopted would be to:

- *Increase* bills for customers who have low to moderate water usage (disproportionately hurting low-income customers), and *decrease* bills for high water users, in the near term due to rate design changes;[2]
- Weaken water conservation efforts by encouraging less aggressive conservation rate designs and eliminating the decoupling of water sales and revenues;[3]
- *Increase* all customer bills in the near term because the total cost of producing water will increase if water usage increases due to weakened conservation signals;[4]
- *Increase* all customer bills in the long-term because fewer costs can be avoided in long-term infrastructure planning if water conservation is less effective due to weakened conservation signals.[5]

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[1] Assigned Administrative Law Judge Robert Haga sent an email to the service list of this proceeding on July 6, 2020 confirming that "the due date for opening comments is July 27, 2020 and reply comments are due August 3, 2020." Therefore, these comments are timely filed.

[2] There will be a shift in revenue collection from higher water users to lower water users. The PD acknowledges the need for a "transition" to Monterey-style WRAMs (pp. 56-57), and "expects" that future rate designs will "minimize the number of households requiring greater water usage by setting breakpoints between tiers above Tier 1 that minimize the percentage of households in these higher tiers" (p. 60). This immediate rate increase will result in a higher bill in perpetuity.

[3] Despite appearing to acknowledge the value of conservation education, programs, and rate designs run and overseen by companies, the PD is internally inconsistent by asserting that "Conservation is not done by the utility but instead is accomplished by the customers" (p. 54). This lays the groundwork for the questionable conclusion, based on one set of incomplete data that has not been subject to full review and another set of undisclosed data, that full decoupling (WRAM/MCBAs) does not result in any greater conservation than that of Monterey-style WRAMs (pp. 54-55).

[4] The expenses associated with water production, such as chemicals, purchased water, purchased power, and pump taxes, increase when the volume of water that must be produced increases.

[5] Water conservation is a key tool for lowering the overall cost of water by decreasing the need for additional infrastructure. For example, the Los Angeles Department of Water and Power has calculated that its residents and businesses paid water rates that were 27% lower because of investments in water conservation over the previous

Cal Water urges the Commission to cure the factual and legal infirmities of the PD that would lead to these undesirable outcomes by adopting the revised Findings of Fact and Conclusions of Law provided in **Appendix A**. In addition, Cal Water urges the Commission to re-focus attention on the goal of this proceeding – providing assistance to low-income water customers – by taking the following steps:

- In a separate industry-wide proceeding (or later phase of this proceeding), develop a complete record with the involvement of interested parties to analyze the implications of eliminating the decoupling WRAM/MCBA mechanism, including the customer bill increases described above.
- Encourage collaboration to analyze more targeted, revenue-neutral initiatives to address decoupling concerns, such as:
    - Building on the aggressive conservation rate designs of decoupled companies by rolling WRAM/MCBA balances into base rates. This would collect a greater percentage of the balance from high water users;
    - Waiving decoupling surcharges for customers who qualify for low-income programs; and,
    - Applying decoupling surcharges only to water usage in Tier 2 and higher.
- Encourage collaboration to provide guidance for company-specific affordability initiatives that can be pursued in subsequent GRCs. For example, the Commission could direct Cal Water to propose in its next GRC:
    - Modifications of its Rate Support Fund to assist customers or districts that meet certain criteria; and,
    - A proposal to increase the discount for low-income customers balanced against the cost to other customers for subsidizing the program.

I. SUMMARY OF COMMENTS

- The PD's unsupported conclusion that decoupling mechanisms must be eliminated will hurt, rather than help, the Commission's conservation goals, and disproportionately impact the exact customer constituencies the Commission set out to assist in this proceeding.
- It is premature to eliminate decoupling without understanding the impact of the decoupling policy changes the Commission adopted in 2016, and without

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three decades (Chesnutt, Pekelney, and Spacht, 2019). A similar study for Tucson, Arizona, concluded that water conservation helped the city avoid hundreds of millions of dollars in water and wastewater operating and capital costs (Rupprecht, 2020). In yet another study, the City of Westminster, Colorado, calculated that its residents and businesses paid water and wastewater rates that were 47% lower and development fees that were 44% lower because of investments in water conservation over the previous three decades (Feinglas et al., 2017).

exploring less draconian alternatives that can ease the burden of WRAM surcharges on low-income customers.

- The PD's misunderstanding of the technicalities of the two mechanisms – the decoupling WRAM/MCBA and the Monterey-style WRAM – results in flawed conclusions.
- The PD relies upon incomplete and erroneous data without providing interested parties the opportunity for validation, and more egregiously, without any analysis or consideration of how a mandatory transition to a Monterey-style WRAM would impact customer bills.
- The PD should be modified to move consideration of the merits of water decoupling to a different proceeding, or to a later phase in this proceeding, and should focus instead on initiatives targeted at enhancing affordability for low-income customers.

II. DISCUSSION

A. The PD Will Increase Bills for Low-Income Customers and Low Water Users

If the PD is adopted as drafted, Cal Water will be required to file its next GRC in July 2021 with proposed increases to the majority of residential customers stemming solely from implementation of a more "flattened" rate design and the transition from a decoupling WRAM/MCBA to a Monterey-style WRAM.[6] As outlined below, while the PD is motivated by a well-meaning desire to protect low-income customers from higher water bills, it would have the opposite effect and actually lead to rate increases for everyone *except those who use the most water*. This is because the rate design associated with the Monterey-Style WRAM and advocated by the PD would shift costs away from customers with high water usage, and towards customers with less usage.

Cal Water's low-income customers have water usage patterns that are very similar to customers who are not in its low-income program except in one key respect: low-income customers are a small proportion of the residential households who routinely have extremely high water usage.[7] Given these usage patterns, the aggressive conservation rate design Cal Water

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[6] PD, pp. 60-61; p. 87 (Ordering Paragraph 3).

[7] Customers who are in Cal Water's Low Income Ratepayer Assistance ("LIRA") program are considered to be low-income for the purposes of this analysis, while customers who are not in the LIRA program ("non-LIRA customers") are not considered to be low-income.

implemented with decoupling is favorable for lower-income customers for the reasons discussed below.

Following the long-standing approach in the energy industry for energy conservation,[8] the Commission advocated use of the WRAM/MCBA to decouple water usage from the revenue collected, thereby enabling water utilities to implement aggressive conservation rates that discouraged wasteful or excessive water usage. Water rates were recalculated using two principles. First, moving away from the industry standard of collecting 50% of revenues from service charges and 50% of revenues from quantity rates, the decoupled companies changed rates to collect more revenues through quantity rates.[9] Second, for residential customers, decoupled companies designed quantity rates consisting of increasing tiered rates (or inclining block rates) so that higher water users pay more for additional units of water.

In contravention of the water conservation goals espoused by the Commission and the state of California, the PD moves away from these conservation-oriented rate design principles by eliminating decoupling and supporting a rate structure that "minimizes the percentage of households in [ ] higher tiers."[10] The result will be more "flattened" tiers[11] and increases in the service charge.[12] Reverting back to these more traditional rate design elements will mute the conservation signals, cause customers using the *least* amount of water to experience the *largest* bill increases, and *financially benefit the highest-volume water users*.

As mentioned above, the distinguishing characteristic between Cal Water's low-income customers and other residential customers is that high-usage customers tend not to be low-

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[8] *See, e.g.,* D.93887 (adopting Energy Rate Adjustment Mechanism ("ERAM") for Pacific Gas and Electric Company); D.93892 (adopting ERAM for San Diego Gas & Electric Company); D.82-12-055 (adopting ERAM for Southern California Edison Company).

[9] *See, e.g.,* D.08-02-036, p. 15. This shift can also be described as increasing the percentage of fixed costs (not to be confused with the fixed rate, which is the service charge) that is recovered through the variable rates (also known as the quantity or commodity charges or rates). If provided the opportunity, Cal Water can present data demonstrating that the rate designs of companies *without* decoupling currently collect a higher percentage of revenues from service charges, as compared to companies *with* decoupling.

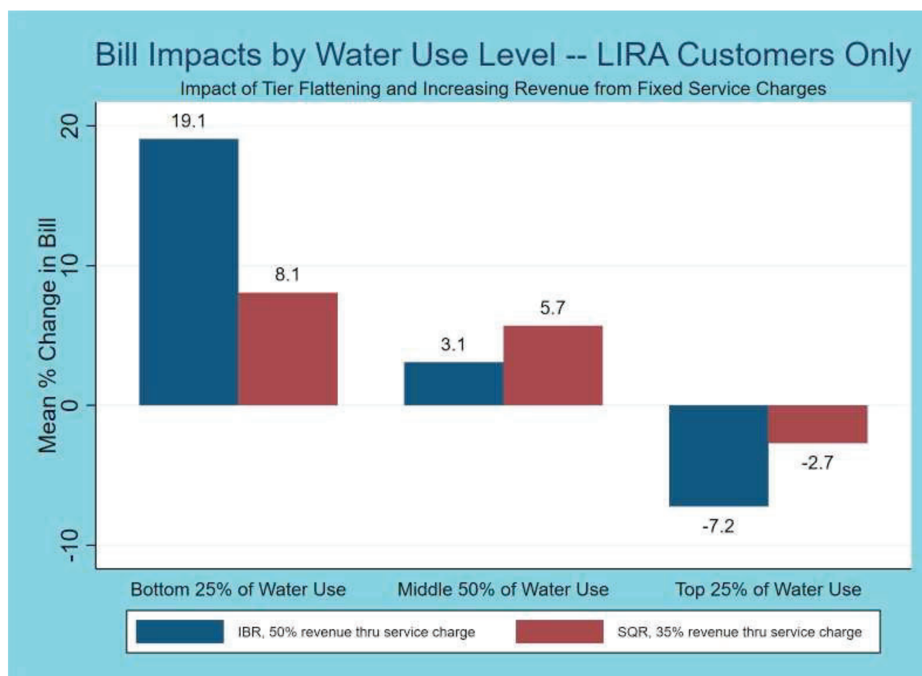
[10] PD, p. 60.

[11] In order to minimize the households in the higher tiers, the amount of usage in the higher blocks are decreased. If less usage is calculated to be recovered from higher blocks, the rates for the lower blocks must be increased. The result is a tiered rate design that is more "flattened."

[12] If service charges are increased so that less revenue is collected through quantity rates, cost recovery is spread out more evenly among customers regardless of the amount of water used, which results in a net benefit to customers with high water usage.

income. Therefore, this shift in rate design would *harm* not help most low-income customers, the ones who the Commission ostensibly set out to assist in this proceeding. This is demonstrated in the graph below that shows how low-income customers would be impacted if Cal Water's current rate design were replaced under two different scenarios.

- In Scenario 1, revenue collection would be shifted to 50/50 between the service charge and the quantity rates, but Cal Water's tiered rate structure (increasing block rates or IBRs) would be retained, though the rates would be scaled down to account for the greater level of revenue recovered by the service charge.
- In Scenario 2, a smaller amount of revenues would still be collected through the service charge (in this case, 35%), but traditional single-quantity rates (SQR) would be implemented.
- The bill impacts are broken down into three customer groups based upon their relative water usage (bottom 25%, middle 50%, and top 25%). For each group of customers, the bar graph on the left is Scenario 1, and the bar graph on the right is Scenario 2.
- For example, for low-income customers with usage that falls within the lowest 25% of consumption, the average increase in bills is 19.1% for the IBR rate design in Scenario 1 and 8.1% for the SQR rate design in Scenario 2.



It would also be troubling for customers with medium water usage who fall just outside of the eligibility criteria for Cal Water's low-income program. This untenable situation cannot have been intended by the Commission in this proceeding. As a policy matter, the shift away

from Cal Water's current conservation rate designs would be a major step backwards for the Commission – and the state – in both water conservation and water affordability.

B. Eliminating Cal Water's Decoupling Mechanism Is Premature

In D.16-12-026, the Commission continued decoupling with the directive that companies should move towards collecting 40% of revenue through the service charge, rather than the 30% previously advocated.[13] In its 2018 GRC application, Cal Water had the first opportunity to implement this policy change, and also pursued a variety of initiatives that establish a better balance between affordability, conservation, and financial stability through a proposed settlement agreement with the Public Advocates Office that is still pending.[14]

If adopted, the PD would prematurely pull the plug on such efforts and undo years of work developing progressive water conservation policies and rate designs. Historically, Cal Water has been proactive in seeking ways to improve both conservation and support low-income customers, while simultaneously working to limit impacts relating to decoupling. Cal Water is the only water company with the Rate Support Fund, a subsidy that makes rates more affordable for *all customers* in high-cost districts, not just low-income residential customers, through a modest surcharge applied to Cal Water customers company-wide. Prior to the most recent drought, Cal Water proposed the Sales Reconciliation Mechanism ("SRM") to minimize the WRAM/MCBA under-collections that result in WRAM surcharges,[15] and successfully implemented the SRM in 2015 just as the drought began in earnest. As a result, in 2019, the median decoupling charge for single-family residential customers was only $2.47 per month.[16] Finally, for the last several years, Cal Water has heeded the calls of customers to decrease the number of rate changes that occur over the course of a year, and now "bundles" changes in rates and surcharges/surcredits together as much as possible.

Cal Water stepped up these efforts in its currently pending GRC (A.18-07-001), where Cal Water has worked collaboratively with the Public Advocates Office to reach a settlement that

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[13] D.16-12-026, pp. 56-57.

[14] Financial stability is essential for providing safe drinking water and reliable infrastructure.

[15] The SRM was proposed in July 2012, and approved in D.14-08-011 (p. 19).

[16] The median monthly water bill for single-family residential customers was $53.58 for the same period. Accordingly, seventy-five percent of decoupling charges for customers in this class were less than $5.00 per month in 2019.

significantly modifies the Rate Support Fund program to address affordability issues in high-cost districts.[17] Cal Water and the Public Advocates Office also modified the revenue recovery allocated between service charges and quantity rates, and recalculated both the tier break points and the tiered rates themselves consistent with D.16-12-026.[18] Because that GRC is still pending, the merits of these changes have yet to be tested.

More recently, Cal Water proactively requested to defer all bill increases until January 1, 2021, in light of the financial impacts of COVID-19 on customers.[19] Each of these initiatives and efforts are aimed at assisting the most vulnerable customers during this difficult time, and are where the Commission's focus should be. The Commission should wait to evaluate the results of these efforts, rather than eliminating decoupling in this PD, and afford Cal Water the opportunity to work collaboratively with stakeholders in this proceeding, as discussed below, to address affordability without putting conservation at risk. For these reasons, if the Commission nonetheless concludes here that companies should transition from decoupling to the M-WRAM, Cal Water respectfully requests that it be allowed to undertake such a transition in its July 2024 GRC application, rather than its July 2021 GRC application.

C. In a Rush to Judgment, the PD Overlooks More Reasonable Options

One of the pitfalls of attempting to address an issue that was not within the original scope of the proceeding, and that has been shoehorned into this phase through a tenuous connection to sales forecasting, is that neither reasonable alternatives to the elimination of decoupling, nor measures to mitigate the negative impacts of decoupling, can be fully vetted. Rather than abandoning decoupling policy entirely, the Commission could consider different ways to minimize WRAM balances[20] and/or recover under-collected revenues relating to decoupling.

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[17] *See* A.18-07-001, *Settlement Agreement of California Water Service Company and the Public Advocates Office* (October 8, 2019), pp. 15-18.

[18] *Id*., pp. 21-23.

[19] *See* CWS Advice Letter No. 2380 (April 1, 2020); *Motion of California Water Service Company (U 30 W) for Timely Resolution of Proceeding and Deferral of Rate Changes due to COVID-19 Pandemic,* A.18-07-001 (April 28, 2020).

[20] As discussed above, Cal Water and the Public Advocates Office have already agreed in its currently pending GRC to a rate design that recovers more revenue from service charges with the goal of decreasing decoupling balances, as recommended in D.16-12-026,.

For example, under-collections from decoupling are currently recovered through a uniform surcharge applied to each unit of water used. This is in contrast to the conservation-based rate design of basic water rates that recovers a higher proportion of the cost of water from the highest users of water. One way to leverage this more progressive rate design is to roll under-collected decoupling balances into base rates themselves each year.

Alternatively, to minimize the impact of decoupling surcharges on low-income customers, customers who are enrolled in Cal Water's low-income program could be exempted from decoupling surcharges altogether. Or, to avoid penalizing customers who have already conserved as much as possible, and whose bills never go beyond the first tier of water usage, decoupling surcharges could be applied only to water usage that fall into higher tiers. These alternative recovery mechanisms would require testing and analysis at the ratemaking area level for each company. Some obvious benefits, however, are that they could be implemented sooner (without having to wait until the end of a subsequent GRC), and because the scope of the changes is more limited, the outcome is more predictable and allows for a more informed choice.

D. The PD's Findings Regarding the Performance of Decoupling Are Not Supported by Substantial Evidence.

The PD unfairly discounts the value and performance of decoupling by reaching factually incorrect findings that are critically flawed, and are not supported by substantial evidence in light of the full record. Most significantly, the PD's decision to eliminate decoupling is premised on two interconnected findings of fact that "[a]verage consumption per metered connection for WRAM utilities is less than the consumption per metered connection for non-WRAM utilities"[21] and that "[c]onservation for WRAM utilities measured as a percentage change during the last 5 years is less than conservation achieved by non-WRAM utilities, including Class B utilities."[22] There are several significant problems with these findings. Moreover, the scant evidence used to reach those findings have considerable procedural deficiencies as outlined in these comments below.

The PD errs by unduly focusing on the comparisons of data over the previous five-year period. However, water savings during much of this period were not discretionary, but rather

[21] PD, p. 84, Finding of Fact 10.

[22] PD, p. 84, Finding of Fact 11.

were largely the result of temporary emergency mandates by the Governor and the State Water Resources Control Board, some of which applied directly to end-use customers.[23] Additionally, the PD acknowledges that the use widespread use of Lost Revenue Memorandum Accounts ("LRMA") among non-decoupled companies effectively functioned to allow those companies to "recover lost revenues caused as a result of the declared drought emergencies," thereby partially replicating what a WRAM would have done.[24] Consequently, focusing on this period does not allow for a meaningful comparison of conservation performance between decoupled and non-decoupled utilities. The collective successes of water utilities and their customers during the previous drought merely **prove** rather than refute the efficacy of revenue decouple mechanisms in facilitating water conservation.

Moreover, this comparison mistakenly assumes that the water use reductions achieved during the years of a historic drought could be replicated in periods of non-drought where such conservation mandates are absent. The Commission established the decoupling in order to remove disincentives for utilities to implement cost-effective long-term conservation, which is not the same as short-term fixes applicable only during periods of drought. The PD's consideration of only the latter and not the former is inconsistent with the State's goal of "making water conservation a California way of life."[25]

A more appropriate comparison between decoupled and non-decoupled companies must take into account periods of non-drought when state conservation mandates and the LRMA are absent. Indeed, if given the opportunity to submit the evidence, Cal Water can show that the multiple years leading up to the drought have been overlooked, and yet those are the years when water utilities with conservation-focused programs and rate structures achieved substantially more conservation than those without such strategies. In particular, Cal Water can demonstrate

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[23] *See, e.g.,* State Water Resources Control Board Resolution 2015-0032 (May 5, 2015) (implementing emergency regulations in California Code of Regulations, title 23, sections 864, 865 and 866 setting forth "End-User Requirements in Promotion of Water Conservation," "Mandatory Actions by Water Suppliers," and "Additional Conservation Tools," respectively), *available at* https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/emergency_regulations/rs2015_0032_with_adopted_regs.pdf.

[24] PD, pp. 58-59. Lest the Commission conclude that permitting the LRMA during times of declared drought would be a functional substitute, Cal Water notes that in addition to only being a one-way mechanism (it only tracks lost revenue associated with reduced sales, but not over-collections above adopted forecasts), the LRMA only tracks revenue shortfalls.

[25] Executive Order B-37-16 (May 9, 2016).

that, between 2008 and 2014, fully decoupled utilities saw a larger decrease in average customer water use than did M-WRAM utilities. Thus, even in light of the very limited record on the full WRAM available in this proceeding, it is unreasonable for the PD to find that decoupling has not had a positive effect on water conservation. Cal Water is confident that if given an opportunity, it could present further persuasive evidence and make an even more compelling showing demonstrating the efficacy of decoupling on conservation.[26] However, as explained later below, the PD's rushed and incomplete evaluation of decoupling mechanisms has denied Cal Water and other parties a fair opportunity to be heard on critical disputed issues.

E. The PD Misstates the Mechanics of What the M-WRAM Is and What It Can Do.

In addition to the flawed comparisons between decoupled companies and non-decoupled companies outlined above, the PD operates with an incorrect understanding of what the M-WRAM is intended to do. The critical difference between the two is that the full decoupling WRAM is intended to mitigate external revenue risks due to sales variations by truing up the utility's conservation rate revenue to forecasts **previously approved by the Commission**, while the M-WRAM only trues up such revenues to what they would have been if the standard non-conservation rate design had been in effect.[27] This means that the M-WRAM only relates to how the recorded water usage translates to dollar revenues based on the rate design – **it does not capture differences due to changes in customer behavior on water consumption driven by conservation**. By comparison, full decoupling is specifically designed to track the actual impact

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[26] For example, Cal Water made such a showing regarding the WRAM in the context of its pending GRC proceeding A.19-07-001 where it presented testimony and actual data in the evidentiary record regarding the performance of its WRAM and the benefits associated with it, subject to cross-examination by other parties.

[27] *See* D.06-08-011, p. 16 fn. 15 ("The WRAM balancing account for California-American Water Company's Monterey Division is not intended to true up the utility's steeply ascending, multiple-block revenues to the GRC estimate, but rather to what the revenues would have been had each customer been billed on the Commission-standard rate design described earlier. Thus, it does not relieve California-American Water Company of its normal revenue risk due to sales variation, but rather returns it to that normal risk level from the extreme revenue risk it would otherwise face under the steeply ascending, multiple-block rate structure the Commission has established to meet water production constraints placed on the utility by the California Water Resources Control Board.").

of conservation on customer consumption. Thus, the PD errs in asserting that the M-WRAM decouples sales from revenues.[28] It does not do so; nor was it ever intended to.

The PD is also misguided in concluding that the "Monterey-style WRAM provides better incentives to more accurately forecast sales while still providing the utility the ability to earn a reasonable rate of return."[29] This flawed conclusion is not borne out by real world data comparing sales forecasts and actual sales between decoupled and non-decoupled companies. Instead, water utilities provide sales forecasts in their GRCs pursuant to the accepted approaches outlined by the Commission based upon actual historical data. There is no evidence whatsoever in the record of this proceeding that Cal Water or any other water utilities has ever intentionally provided inaccurate forecasted sales, or that they would have any incentive to do so, either fully decoupled or not. The PD's consideration of the M-WRAM as a substitute is therefore premised on a significant misunderstanding of that mechanism that is not supported by the record evidence.

F. The PD's Flawed Disposition of Decoupling Issues Constitutes Procedural Error.

1. Eliminating Decoupling Is Not Appropriately Within the Scope of This Proceeding.

The PD incorrectly asserts that "[c]onsideration of changes to the WRAM/MCBA is and has always been within the scope of this proceeding as part of our review of how to improve water sales forecasting."[30] This is an unsupported and tenuous overexpansion of the identified scope of issues noticed in the Order Instituting Rulemaking, which is primarily focused on the LIRA programs of Class A water utilities and states only that "the Commission in a separate phase of this proceeding will examine standardizing water sales forecasting."[31] The PD's overly broad interpretation of the noticed scope of issues for this proceeding is overreaching and fails to

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[28] PD, p. 59 ("At the same time, we have identified some benefit to the WRAM/MCBA process with respect to decoupling sales from revenues and that the Monterey-Style WRAM captures the identified benefits without the negative effects on customers of a traditional WRAM.").

[29] PD, p. 85, Conclusion of Law 3.

[30] PD, p. 85, Conclusion of Law 2.

[31] *Order Instituting Rulemaking* (July 10, 2017), p. 8; *see also Scoping Memo and Ruling of Assigned Commissioner* (January 9, 2018), p. 3 (including the scope of issues, "What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?").

acknowledge the essential fact that parties were simply never given adequate notice that the elimination of the WRAM was ever properly in consideration at any point of this proceeding. Because the WRAM was outside of the scope of issues reasonably identified in either the OIR or any scoping memo, if the Commission adopts the PD as currently written, it will not have "proceeded in the manner required by law."[32]

The 2006 S. California Edison Co. v. Pub. Utilities Com.[33] opinion by the California Court of Appeals is particularly instructive here. In that case, the Commission similarly instituted a rulemaking proceeding regarding bid shopping and reverse auctions for energy utilities.[34] Several months into the proceeding, one of the parties similarly made a proposal that was objected to as outside the scope of that proceeding.[35] The Commission, as it did here, issued further rulings seeking input on those proposals, but never suggested in any manner that it "intended to modify the scope of issues in the proceeding to include the new proposals."[36] The court later found that the limited, last-ditch efforts to amend the scope and allow feedback on those proposals just before the Commission adopted those new proposals in a formal decision were insufficient.[37] Therefore, the concluding that the Commission "failed to proceed in the manner required by law … and that the failure was prejudicial,"[38] the court annulled the Commission's decision.[39]

Here, similar to the Edison case, the Commission would similarly fail to proceed in the manner require by law and prejudice parties including Cal Water in violation of due process if it chooses to adopt the PD as currently written. Instead, issues as complex and controversial as the

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[32] Cal. Pub. Util. Code § 1757(a)(2).

[33] S. California Edison Co. v. Pub. Utilities Com., 140 Cal. App. 4th 1085 (2d Dist. Ct. App. 2006) ("Edison").

[34] *See Id.*, at 1091–1092.

[35] *See Id.*, at 1092–1093, 1105–1106. Here, the proposal to eliminate the WRAM was first introduced in this proceeding in the July 10, 2019 comments by PAO, p. 13 ("Specifically, the Commission should expediently convert all existing full WRAM/MCBA mechanisms to 1) Monterey Style WRAMs, which are directly tied to conservation rate design, with 2) an incremental cost balancing account.").

[36] Edison, at 1106. Here, the PD asserts that it issued a ruling specifically calling for input on the WRAM (among several other topics) in September 2019. *See* PD, p. 52. Beyond comments and reply comments on that ruling, there have not been any substantive opportunities to further provide evidence on the WRAM.

[37] Edison, at 1106.

[38] *Id.*

[39] *Id.*, at 1107.

elimination of decoupling and further changes to rate design demand clearer notice and a meaningful opportunity for parties to participate and present evidence. For example, if parties had been able to show that harm to conservation, and to the water bills of low-income and low-water-usage customers would increase, the stakeholder groups focused on environmental and socioeconomic issues in this proceeding would have been able to test the validity of these claims, and render their own opinions in turn. Now the Commission is engaged in a rushed and inadequate consideration of these issues. Cal Water therefore recommends that the Commission decline to summarily eliminate decoupling under these haphazard circumstances, and instead give due consideration to its merits and challenges in a separate proceeding, or in a third phase in this proceeding.

2. Eliminating Decoupling Would Violate Due Process.

The PD also legally errs because its flawed disposition of decoupling issues would deny parties a fair and meaningful opportunity to address disputed issues of fact and conclusions of law relating to the full WRAM/MCBA, in violation of due process. Notably, the PD relies solely on two critically deficient pieces of purported evidence to reach its linchpin finding that "it is not necessary for a utility to have a full WRAM/MCBA mechanism in order that their customers conserve water."[40]

First, the Commission relies on a graph shown in the Public Advocates Office's September 23, 2019 reply comments purporting to show that "the annual chance in average consumption per metered connection is almost the same during the last eight years for both WRAM and Non-WRAM utilities."[41] Notably, the Public Advocates Office's data was newly introduced on reply and parties have not had an opportunity to respond to it before the PD was issued. Cal Water recently served a data request on the Public Advocates Office to verify those claims, and the initial response suggests that there may have been errors in the data and in the calculations underlying the assertions of the Public Advocates Office. It is therefore highly prejudicial for the PD to rely upon such disputed information without affording parties a fair opportunity to respond.

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[40] PD, p. 55.

[41] PD, pp. 54-55, *citing to* "The Public Advocates Office of the Public Utilities Commission Sept. 2019 Reply Comments at 7."

Second, the PD asserts that "a review of reported annual consumption from the State Water Resources Control Board shows that over time utilities with a WRAM/MCBA conserve water at about the same rate, or even less, than water utilities without a WRAM."[42] This complex, *sua sponte* review of extra-record information was never prompted by any party, nor was notice ever given that the Commission would undertake such an analysis. While the PD refers to a "Table A" purporting to support such a finding,[43] no "Table A" was ever included in the PD, or otherwise made available to the parties for review. Instead, the assigned ALJ in this proceeding indicated that reference to "Table A" was merely a clerical error and would be removed in a subsequent revision.[44] Thus, given only the succinct and opaque description in the PD, parties have no practical way of understanding how the calculations were derived or of verifying whether they are correct (and nor would a reviewing court). Accordingly, the data is clearly insufficient to be the "substantial evidence" required for a Commission decision.

These two fatal deficiencies are prejudicial and in violation of due process because they are the only two pieces of evidence identified in the PD for the key conclusion that "customer conservation is accomplished independently of whether a utility does or does not maintain a WRAM/MCBA mechanism,"[45] the conclusion that leads directly to the PD's decision to eliminate decoupling. As mentioned above, if Cal Water were given a fair opportunity to be heard and to respond to the claims of the Public Advocates Office in a properly scoped proceeding, it would offer compelling evidence refuting the PD's assertions.

G. The Policy Merits of Decoupling Should Be Considered More Fully

Cal Water respectfully urges the Commission to revise the PD and instead consider modifications to the decoupling mechanism in a separate proceeding or, in the alternative, in a later phase of this proceeding. The evidentiary record regarding decoupling in this proceeding is woefully incomplete and fails to provide the Commission with an adequate basis for the findings of fact and conclusions of law that it attempts to reach. Given the unintended consequences and

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[42] PD, p. 55.

[43] *Id.*

[44] *See* E-mail of Administrative Law Judge Robert Haga to parties in R.17-06-024 on July 8, 2020 ("1) The reference to Table A was a clerical error; and 2) All necessary corrections, including this one, will be made following the review of all comments to the PD.").

[45] PD, p. 55.

procedural deficiencies of the PD outlined above, the Commission should at minimum withhold judgment on decoupling until parties have an adequate opportunity to present and respond to relevant evidence.

III. CONCLUSION

At minimum, the potential consequences of the PD on water conservation and affordability are too significant to be rushed. Cal Water respectfully urges the Commission to correct the significant errors in the PD as shown in **Appendix A** and instead defer consideration of the policy merits of decoupling to a separate proceeding, or to a later phase of this proceeding, when it can be appropriately evaluated.

Respectfully submitted,

Date: July 27, 2020

Respectfully submitted,

By: */s/ Natalie D. Wales*
Natalie D. Wales

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APPENDIX A

Proposed Changes to Findings of Fact and Conclusions of Law
(Proposed additions in blue bold underline and proposed deletions in red strikethrough)

Findings of Fact

1. The WRAM/MCBA ratemaking mechanism provides that when actual water sales are less than adopted, the difference in sales revenue will be recovered though a balancing account.

2. If actual sales exceed adopted sales, the WRAM/MCBA mechanism will return the over-collected revenues to customers through a balancing account. WRAM/MCBA ratemaking mechanisms were **first** adopted by settlements in **the Commission's water conservation Order Instituting Investigation proceeding I.07-01-022 and subsequent** GRCs for California-American Water Company, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corp., and Liberty Utilities (Apple Valley Ranchos Water) Corp. **beginning** in 2008.

3. The major purpose of adopting WRAM/MCBA was to decouple sales from revenues and thus promote conservation.

4. The MCBA ~~provides that~~ **adjusts for a reduction in** variable **water production** ~~costs are reduced~~ when there is a reduction in water quantity sales.

5. The ICBA ~~provides that variable costs are reduced under the~~ **adjusts for wholesaler price changes for water production costs among adopted water supply sources but functions independently of a** Monterey-Style WRAM mechanism. ~~The various options for modifying or eliminating WRAM/MCBA as ordered by D.12-04-048 were not adjudicated and resolved in subsequent GRC proceedings.~~

6. ~~Although~~ D.16-12-026 concluded that the WRAM/MCBA ratemaking mechanism should be continued at that time~~, it~~ **and** noted the reasons for continuing WRAM included forecast uncertainty, conservation, and the need for investment during the drought.

~~7. The quantification of changes in risk due to the existence or elimination of WRAM/MCBA has not been addressed since the WRAM/MCBA was adopted.~~

~~8.~~**7.** While the WRAM/MCBA was adopted to encourage conservation, the application of this ratemaking mechanism has led to substantial under-collections and subsequent increases in quantity rates.

~~9.~~**8.** Conservation of water use is by customers, **in large part motivated by conservation programs, education and rate design from** ~~not~~ the utility.

~~10. Average consumption per metered connection for WRAM utilities is less than the consumption per metered connection for non-WRAM utilities.~~

~~11. Conservation for WRAM utilities measured as a percentage change during the last 5 years is less than conservation achieved by non-WRAM utilities, including Class B utilities.~~

~~12.~~**9.** Since WRAM/MCBA is implemented through a balancing account, there are intergenerational transfers of costs.

~~13.~~**10.** ~~The WRAM/MCBA mechanism is not the best means to minimize intergenerational transfers of costs when compared to an alternative available to the utilities and the Commission.~~ Tiered rate design causes customers to use less water at increased costs per unit consumed~~; thus, use of tired rate design is a reasonable means to stabilizing~~**, but destabilizes** revenues.

~~14.~~**11.** The ~~Monterey-Style~~ WRAM**/MCBA** ~~combined with the ICBA~~ is a method to account for ~~lesser~~ **the difference between adopted and recorded** quantity sales and ~~stabilize revenues~~ **production costs in a manner to keep utilities financially indifferent from promoting the Commission's conservation policies**. ~~Implementation~~ **Elimination** of a ~~Monterey-Style~~ WRAM**/MCBA** means that forecasts of sales become very ~~significant~~ **controversial** in establishing test year revenues.

~~15. No quantification of the risk effects of using the WRAM/MCBA mechanism is evident in past GRC proceedings.~~

~~16.~~**12.** During a governor declared drought emergency, it is reasonable to provide utilities not using a WRAM/MCBA mechanism to establish lost revenue memorandum accounts.

~~17.~~**13.** A single, straight-forward name will aid outreach to consumers and statewide coordination in the delivery of assistance to low-income consumers.

14. California-American Water Company's Advice Letter 1221 for establishing a tariff that provided a discount to **entities providing affordable housing to** low-income multi-family renters provides a good starting point for ~~a pilot~~ **concepts to assist low-income multi-family renters**.

~~18.~~**15.** The information delineated in Section 10, Water Consolidation Timelines, above is a reasonable minimum amount of information required to begin a streamlined review of ~~the~~ proposed consolidation transaction**s**.

Conclusions of Law

1. This decision should be effective today to provide timely notice to Class A water utilities in advance of their next GRC filings.

2. Consideration of changes to the WRAM/MCBA ~~is and has always been within the scope of~~ **was raised in** this proceeding as ~~part of~~ **relevant to** our review of how to improve water sales forecasting.

3. Elimination of the WRAM/MCBA mechanism is a policy decision not determined by law**, but is subject to procedural constraints as currently presented in this proceeding preventing the Commission from such a determination at this time**.

4. If the Commission wishes to assess the WRAM/MCBA mechanism it should do so in a separate proceeding with adequate notice and opportunities for interested and affected parties to provide input.

5. As compared to the WRAM/MCBA, ~~T~~**t**he Monterey-style WRAM ~~provides better incentives to more accurately~~ **will result in more contentious disputes in water utility proceedings to determine sales** forecast ~~sales~~ while still providing the utility ~~the ability~~ **more limited assistance** to earn a reasonable rate of return.

~~4.~~**6.** As WRAM utilities **would** have individual factors affecting a **potential** transition to Monterey-Style WRAM mechanism, ~~this~~ **any such** transition should be implemented in each WRAM utilities' respective ~~upcoming~~ GRC applications.

~~5.~~**7.** A reasonable transition to the new uniform name should be adopted. The Customer Assistance Program (CAP) name should be used for all Commission-regulated water utilities for their low-income water assistance programs.

~~6.~~**8.** It is reasonable to allow each water utility to adopt the uniform CAP name as part of its next general rate case.

~~7.~~**9.** The process to achieve consolidation should be as effective and efficient as possible.

~~8.~~**10.** Water utilities should provide analysis in their next GRC case to determine the appropriate Tier 1 breakpoint that aligns with the baseline amount of water for basic human needs for each ratemaking area.

~~9.~~**11.** Water utilities should ~~consider and~~ provide analysis for ~~establishing~~ **considering** a baseline not set below both the Essential Indoor Usage of 600 cubic feet per household per month, as stated in the Affordability Rulemaking (R.18-07-006) and the average winter use in each ratemaking district.

~~10.~~**12.** California-American Water Company should be directed to file a Tier 3 advice letter, within 60-days of the issuance of this decision, outlining a pilot program **based on AL 1221** that provides a discount to ~~water users in~~ low-income multi-family **housing providers** ~~dwellings that do not pay their water bill directly through the utility~~. All other Class A water

utilities interested in creating a low-income multi-family pilot program should file a Tier 3 advice letter that includes at least the same level of detail.

~~11.~~**13.** This proceeding should remain open to consider Phase II issues.

JOINT APPENDIX Y

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

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low – Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024

**COMMENTS OF GOLDEN STATE WATER COMPANY (U 133 W)
ON PROPOSED DECISION AND ORDER**

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July 27, 2020

Further, the PD ignores that this very topic was considered in a recent proceeding in which the Commission considered extensive input from all parties and thereafter determined to maintain the WRAM/MCBA. The PD asserts that "[t]his is the first time the Commission has taken input to consider the foundational issue of whether [the] WRAM/MCBA should continue, and if so, in what form it should continue."[13] This is completely wrong. In fact, the Commission solicited detailed input from stakeholders as part of its in-depth investigation into this issue in Rulemaking 11-11-008[14] (the "Balanced Rates Proceeding"). In fact, no less than 9 of the 16 questions set forth in the Assigned Commissioner's Third Amended Scoping Memo and Ruling Establishing Phase II were directly related to this "foundational issue."[15] This stands in sharp contrast to the 1 question regarding this topic included in the Sept. 4, 2019 ALJ's Ruling in this proceeding. And, in the Balanced Rates Proceeding, after considering the parties' responsive comments and reply comments, the Commission determined that the WRAM and MCBA should continue, stating:

> We conclude that, at this time, the WRAM mechanism should be maintained. There is a continuing need to provide an opportunity to collect the revenue requirement impacted by forecast uncertainty, the continued requirement for conservation, and potential for rationing or moratoria on new connections in some districts. These effects will render uncertainty in revenue collection and support the need for the WRAM mechanism to support sustainability and attract investment to California water IOUs during this drought period and beyond.[16]

The Commission should be deeply troubled by the PD's failure to acknowledge—much less consider—the depth with which the Commission investigated this topic in the Balanced Rates proceeding.

The PD also misstates history with regard to the Commission's direction in 2012 to the WRAM companies to provide testimony in their then-current or next GRCs addressing five "WRAM Options", including whether the Commission should adopt an M-WRAM rather than the full WRAM. Specifically, the PD asserts that because the Commission considered whether or not the WRAM should be maintained for each of the five WRAM utilities in GRCs that were resolved by settlements, the "policy to continue the use of WRAM/MCBA has not been adjudicated."[17] The PD then implies that the WRAM/MCBA simply continued for the five WRAM utilities without any real analysis by the

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[13] PD at 52.
[14] *OIR on the Commission's Own Motion into Addressing the Commission's Water Action Plan Objective of Setting Rates that Balance Investment, Conservation, and Affordability for the Multi-District Water Utilities of: California-American Water Company (U210W), California Water Service Company (U60W), Del Oro Water Company, Inc. (U61W), GSWC (U133W), and San Gabriel Valley Water Company (U337W).*
[15] *See Assigned Commissioner's Third Amended Scoping Memo and Ruling Establishing Phase II*, R.11-11-008 (Apr. 30, 2015) at 13-16 (see questions #7 through #15).
[16] Decision 16-12-026 at 41.
[17] PD at 51.

Commission. This also is completely wrong. In fact, in GSWC's relevant GRC (Application 11-07-017), evidentiary hearings were held solely on the WRAM issues,[18] the parties submitted supplemental briefs on the WRAM Options,[19] and Decision 13-05-011, which resolved that GRC, dedicated **more than 16 pages** both to analyzing whether the WRAM/MCBA were achieving their stated purposes and to five WRAM Options.[20] Moreover, the Commission issued several Conclusions of Law regarding these topics, including that "[t]he WRAMs/MCBAs established for Golden State are functioning as intended because the WRAMs/MCBAs have severed the relationship between sales and revenues and, as a result, have removed most disincentives for Golden State to implement conservation rates and conservation programs"[21] and that "[b]ecause the WRAMs/MCBAs established for Golden State are functioning as intended, none of the WRAM Options set forth in D.12-04-048 should be adopted at this time."[22]

As to other WRAM utilities, although continuation of the WRAM/MCBA may have been included in settlements, in order to approve the settlements, the Commission was required to conclude that they were in the public interest.[23] In other proceedings, the Commission has rejected portions of settlements over the objections of settling parties when it has concluded that those portions did not meet the requisite standard.[24] Thus, the PD is wrong to imply that the Commission failed to consider whether the WRAM/MCBA should be continued simply because continuation of these mechanisms was included in settlements.

Further, in proceedings in which those settlements were adopted, the Commission adjudicated issues that necessarily required substantive consideration of the WRAM/MCBA. For example, the settlement adopted by the Commission in the 2012 GRC of California Water Service Company ("Cal Water") did not cover Cal Water's request to establish a Sales Reconciliation Mechanism ("SRM") that would adjust its adopted sales forecast for escalation years if recorded sales for the past year are more than 5% different than adopted test year sales.[25] One of the main drivers behind that request was Cal Water's goal of reducing WRAM/MCBA balances in the second and third years of a rate case cycle.[26]

[18] Decision 13-05-011 at 7,
[19] *Id*. at 8.
[20] *Id*. at 65-81
[21] *Id*. at Conclusion of Law #72.
[22] *Id*. at Conclusion of Law #88.
[23] *See*, *e.g.*, Decision 14-08-011 at 21 and Conclusion of Law #2; *see*, *also*, Rule 12.1(d) (providing that the Commission "will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest").
[24] *See*, *e.g.*, Decision 18-09-008 at 33-35 (rejecting two sections of an all-party settlement on the grounds that they were not reasonable in light of the whole record and, as a result, not in the public interest).
[25] Decision 14-08-011 at 18.
[26] *Id*.

Accordingly, the Commission reviewed—and granted—the SRM request in the context of the WRAM, stating "[a]fter having weighed the pros and cons, as well as the policy implications both sides have raised, the Commission will give Cal Water the opportunity to deploy the SRM as a means to mitigate against a high WRAM balance."[27] The Commission's conclusion of the SRM to be "in the public interest" necessarily encompassed consideration of the WRAM/MCBA mechanisms. That is, the Commission could only find an SRM intended to be a companion mechanism to the WRAM/MCBA mechanisms to be warranted if maintenance of the WRAM/MCBA mechanisms were also warranted.

For all of the foregoing reasons, the PD's characterization of the WRAM/MCBA as a pilot program[28] that the Commission has failed to re-evaluate in the dozen years that the mechanisms have been in place is wrong on all counts. The Commission has scrutinized the WRAM and MCBA mechanisms in proceedings dedicated to conservation objectives and undertaken thorough analyses of whether there is any better alternative—including whether an M-WRAM/ICBA approach would be superior. Each time, the Commission has concluded that the WRAM/MCBA mechanisms should remain in place. All of this prior work should not be undone in a proceeding in which this is an ancillary topic and in which no meaningful record was established to support the dramatic shift in policy. Such an outcome would constitute an abuse of discretion.[29]

B. The PD Fails to Consider the Unintended Consequences on Low-Income Customers of Requiring Replacement of the WRAM/MCBA with the M-WRAM/ICBA

As the original objectives of this proceeding were directed at achieving effective rate assistance programs in order to improve affordability for low-income customers, it is critical that any policy changes adopted in this proceeding be considered in the context of the effects on low-income customers. Nothing in this proceeding's record addresses how forcing utilities to convert from WRAM/MCBA to M-WRAM/ICBA mechanisms will impact low-income customers. And there is reason to believe that elimination of the WRAM would be detrimental to those customers. Within a week of the PD's issuance, Jonathan Reeder, a highly respected regulatory analyst, released an equity research analysis of the PD's proposal to require WRAM/MCBA utilities to switch to an M-WRAM/ICBA approach. Mr. Reeder stated that approval of the PD would be viewed as "a decidedly negative development" that "would further call into question the constructiveness of the CA regulatory environment."[30]

[27] *Id*. at 19.
[28] PD at 2.
[29] *See, supra,* note 4.
[30] Jonathan Reeder, *CPUC PD Would End Traditional Water Decoupling Mechanism* (Jul. 10, 2020) (hereinafter "Reeder Analysis") at 1.

Accordingly, because potential investors would view investment in California water utilities as a riskier enterprise, adoption of the PD's recommendations regarding the WRAM/MCBA would likely result in a higher cost of capital, particularly as revenue decoupling mechanisms are one of the risk mitigation factors that investors take into account.[31] That higher cost of capital would flow through to all utility customers—including low income customers. Moreover, Mr. Reeder recognizes that converting to an M-WRAM/ICBA may be detrimental to low income customers, in particular. That is, an M-WRAM rate design typically includes higher monthly service charges and tiered rate structures that affect affordability for low-income customers who tend to be low-usage customers. Mr. Reeder states:

> the volumetric risk that utilities are exposed to under the M-WRAM actually supports a higher percentage of the revenue requirement being recovered under fixed charges (versus volumetric charges) which often results in higher bills for low income customers ([who]typically have lower usage levels) which would be counterintuitive to the rulemaking docket's intended purpose – for instance CWT [a WRAM utility] only recovers ~30% of the revenue requirement through the fixed charge versus SJW [an M-WRAM utility] at ~40%.[32]

In sum, the PD recommends this policy change without any information in the record regarding unintended consequences for low-income customers. It is imperative that the Commission decline to adopt this extraordinary policy shift unless and until a meaningful record, including with regard to impacts on low-income customers, has been established that actually supports the change.

C. The Utilities had no Opportunity to Review or Respond to the Data upon which the PD Relies and that Data Does Not Demonstrate what the PD Concludes

The PD concludes that the WRAM/MCBA utilities should be required to switch to an M-WRAM/ICBA approach based on (i) a graph provided by Cal PA that purports to show that the annual change in average consumption per metered connection is almost the same during the last eight years for both WRAM and Non-WRAM utilities, and (ii) a review of reported annual consumption from the State Water Resources Control Board ("SWRCB") that the PD asserts shows that, over time, utilities with a WRAM/MCBA conserve water at about the same rate, or even less, than water utilities without a WRAM.[33] The Commission should reject the use of this data for this purpose both because (i) the parties to this proceeding were afforded no opportunity to review and respond to this data prior to its inclusion in the PD, and (ii) as a substantive matter, the data does not demonstrate that use of the M-WRAM/ICBA is as effective as the WRAM/MCBA in promoting conservation objectives, as the PD

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[31] Exh. GSWC-03 (*Prepared Direct Testimony of Paul R. Moul*) in A.17-04-001 et. al) at 7 (describing the WRAM as one of the risk mitigation factors considered by investors as part of a utility stock price).
[32] Reeder Analysis at 1.
[33] PD at 55.

concludes. Thus, reliance on this data is flawed on both procedural and substantive grounds.

As to procedure, the graph provided by Cal PA was submitted for the first time in Cal PA's last reply comments filed in this proceeding, such that the other parties had no opportunity to vet or respond to the data. The Commission must not ignore that there were five workshops in this proceeding but Cal PA did not present this data in any of the workshops, and Cal PA also failed to include this data in any set of comments that would have afforded the other parties an opportunity to dissect and comment on the information. By employing this strategy, Cal PA denied GSWC and the other utilities any ability to provide evidence demonstrating the flaws in Cal PA's analysis. Adoption of the extraordinary policy change recommended by the PD in reliance on this one-sided perspective, without giving GSWC and the other WRAM utilities any ability to refute the data, would violate these parties' due process rights.

Section 1708 of the California Public Utilities Code, which governs all proceedings before the Commission,[34] requires "notice to the parties, and with opportunity to be heard as provided in the case of complaints" before a Commission order may alter, rescind, or amend any prior Commission decision or order.[35] The California Supreme Court has determined that the mere opportunity to provide comments on a proposal does not satisfy the requirement of Section 1708 that a prior order be altered only after "opportunity to be heard."[36] Rather, the Court has found that "[t]he phrase "opportunity to be heard' implies at the very least that a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal."[37] Further, the Court has determined that "[a] statute calling for the adoption of administrative orders upon public notice and hearing implies that the evidence supporting the order be disclosed and made part of a hearing record with opportunity for refutation."[38] The parties here were denied the "opportunity for refutation" that due process requires. Thus, adopting the PD's recommendations regarding the WRAM/MCBA would constitute legal error.

Reliance on the SWRCB data would be even more improper. That data has never been presented in this proceeding, and the PD failed to include the "Table A" that is purportedly based on this data and that is claimed to show conservation by utilities without WRAMs exceeding conservation by utilities with WRAMs. Page 55 of the PD references Table A as though it is included in the PD, but there is no

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[34] Cal. Pub. Util. Code § 1701 ("All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission . . . ."); *see also Cal. Motor Transport Co. v. Pub. Util. Com.*, 59 Cal. 2d 270, 272 (1963).
[35] Cal. Pub. Util. Code § 1708.
[36] *Cal. Trucking Assoc. v. Pub. Util. Com.*, 19 Cal. 3d 240, 243-244 (1977).
[37] *Id*. at 244.
[38] *Cal. Assoc. of Nursing Homes, etc. v. Williams*, 4 Cal. App. 3d 800, 810-11 (1970).

such table. In response to questions about the missing table, ALJ Haga stated that the reference to Table A was "a clerical error" and that this will be fixed "following the review of all comments to the PD."[39] Incredibly, the parties are still being denied any opportunity to review and respond to the purported evidence being relied upon in the PD. This cannot be consistent with the Commission's due process obligations.

As to substance, neither the Cal PA graph nor, to the best that we can surmise without seeing Table A, the SWRCB data, supports any finding that use of the M-WRAM/ICBA is as effective as the WRAM/MCBA in promoting conservation objectives. The Cal PA graph purports to compare the historical change in consumption (use per customer) for the WRAM companies and the M-WRAM companies for the period 2008 to 2016. Cal PA contends, and the PD accepts, that the Cal PA graph demonstrates that there is no difference between the two mechanisms in terms of their impact on conservation. There are three problems with Cal PA's graph that makes Cal PA's contention wrong.

The first problem is that the graph compares the annual rate of change in average usage. This is an issue because even small differences in the annual rate of change compound and cumulate over time, becoming significant differences in average usage. A more appropriate analysis would be comparing the actual, cumulative percentage change in average usage over time, which uncovers the compounding effect on average usage that is lost in Cal PA's graph. The chart below provides this comparison:[40]

Comparison of WRAM and M-WRAM Companies
Percent Change in Usage per Customer
2008-2018

	Year over Year Percent Change		Cumulative Percent Changed Since 2008		Ratio of Aggregate Reduction In Usage from 2008 to 2018: WRAM companies compared To M-WRAM companies
	M-WRAM (1)	WRAM (2)	M-WRAM (3)	WRAM (4)	(5) (4)/(3)
2008					
2009	-8.1%	-8.6%	-8.14%	-8.56%	5.21%
2010	-6.5%	-8.8%	-14.08%	-16.61%	17.96%
2011	-1.2%	-2.2%	-15.14%	-18.48%	22.11%
2012	5.8%	5.1%	-10.17%	-14.36%	41.15%
2013	1.3%	1.2%	-9.01%	-13.36%	48.30%
2014	-5.7%	-5.8%	-14.21%	-18.41%	29.52%
2015	-18.0%	-17.1%	-29.67%	-32.36%	9.09%
2016	-2.2%	-0.9%	-31.21%	-33.01%	5.74%
2017	5.7%	3.7%	-27.27%	-30.51%	11.92%
2018	4.1%	4.2%	-24.28%	-27.60%	13.67%

As shown in the first two columns of this table, the annual change in average usage per customer for the

[39] Email from ALJ Haga sent to all Parties to R.17-06-024 on July 8, 2020.
[40] The data in this chart is calculated using a weighted average of consumption based upon the relative size of each utility. In contrast, the Cal PA graph uses a simple average of consumption across the various utilities.

M-WRAM and WRAM companies has generally moved in concert with one another, the difference being less than 1% in 6 of the 8 years. This is the data that the Cal PA graph reflects. However, the third and fourth columns of this table highlight the compounding effect of these small differences over time, and the cumulative differences in per capita usage are quite different. For the period from 2008 to 2014, which, for the reasons explained below, is the period that is indicative of actual WRAM versus M-WRAM effects (as opposed to other factors affecting conservation outcomes), the annual change in per capita consumption favors the WRAM companies (either larger declines or smaller increases) every year. Between 2008 and 2014, the difference in the annual percentage change in per capita usage averaged 0.9% in favor of the WRAM companies. This meant that by the end of 2014, the cumulative change in per capita consumption was only 14.2% for the M-WRAM companies, compared to 18.4% for the WRAM companies. As reflected in the fifth column, this cumulative decrease in per capita consumption was almost 30% greater for the WRAM companies by 2014. In other words, the reduction in usage per customer for the WRAM companies from 2008 to 2014 was almost 30% greater than the reduction in usage per customer for the M-WRAM companies.

The second problem with the Cal PA graph is that it fails to take into account critical factors that impacted the conservation outcomes of the WRAM versus M-WRAM companies. One of those factors was the imposition of mandatory water usage reduction targets by then Governor Brown in 2015. In response to the Governor's Emergency Declaration, the SWRCB adopted specific targets for water conservation for each water provider, which were intended to reduce statewide urban water consumption by 25% from 2013 levels. The targets varied by water system and were set based on system-specific average residential use per customer in 2013. The targets were based on 2013 usage in order to recognize the varying levels of conservation already taking place in different water systems. For GSWC, the initial targets in 9 of the 18 systems reviewed by the SWRCB were below 20%.[41] In contrast, only 1 of the 6 targets for the M-WRAM companies was less than 20%.[42] In response to these mandated conservation targets, all of the investor-owned water utilities implemented customer usage reductions (both voluntary and mandatory) as authorized by their Rule 14.1 tariff schedule. The logical conclusion is that usage data from that time period is not a valid comparison of conservation effects of WRAM versus M-WRAM, because conservation during this period was driven by the mandatory usage restrictions and the utilities were subject to differing mandatory usage restrictions.

Thus, although the above table shows a change in annual consumption that favors M-WRAM

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[41] June 2014-May 2020 Urban Water Supplier Monthly Reports, available at: https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/conservation_reporting.html.
[42] *Id*.

companies in the years 2015 to 2016 (i.e., larger decreases in both years for the M-WRAM companies versus the WRAM companies) those reductions are not valid indicators of the effectiveness of the M-WRAM or the WRAM mechanism. Rather, the impressive reductions in average usage per customer during this period (both for the M-WRAM companies and the WRAM companies) are a reflection of their abilities to comply with the Governor's directive to achieve mandatory usage reductions. As a result of the 2015 and 2016 reductions, the aggregate reduction in usage of WRAM companies as compared to M-WRAM companies declined to only 5.74% by the end of 2016 (as opposed to 29.52% at the end of 2014)). The last two lines of the table include data for 2017 and 2018, data which was not included in the Cal PA graph. These last two years are revealing because the mandated restrictions that affected customer usage in 2015 and 2016 ended in early 2017. Importantly, the table indicates that once the Governor's directive ceased to be in effect, the pendulum swung back the other way. That is, the difference in the cumulative percentage change in per capita consumption between the WRAM and the M-WRAM companies started to increase again. And by the end of 2018, the cumulative decrease in per capita consumption for the WRAM companies was 13.67% greater than for the M-WRAM companies. In other words, by 2018, the reduction in usage per customer for the WRAM companies from 2008 was 13.67% greater than the reduction experienced by the M-WRAM companies over that same time period. Accordingly, unlike what appears from Cal PA's graph, the data shows that customers of WRAM companies do in fact conserve more than customers of M-WRAM companies.

The third problem with Cal PA's analysis is that it fails to take into account that, during the time period covered by Cal PA's graph, three of the M-WRAM companies benefited from other rate decoupling mechanisms, such as Drought Lost Revenue Memorandum Accounts and Water Conservation Memorandum Accounts, which were intended to mitigate the effects of not having a full WRAM.[43] The practical effect of these rate decoupling mechanisms was to convert the M-WRAM into a full WRAM for these companies during the effective time period. This point was highlighted in San Jose Water Company's ("SJW") latest GRC. In response to arguments made by Cal PA (then the Office of Ratepayer Advocates ("ORA")) against the request of SJW to convert from an M-WRAM to a full WRAM during SJW's 2018 GRC, SJW's witness testified regarding this very issue, explaining:

> [T]he Commission has recognized the relationship between conservation and full decoupling, by authorizing temporary decoupling like mechanisms in water

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[43] *See, e.g.,* AL 484 (filed Jul. 18, 2016) (San Gabriel Water Company request to amortize the net under-collected balance in its Drought Lost Revenue Memorandum Account and Drought Surcharge Revenue Memorandum Account for Jun 1, 2015 to June 30, 2016); AL 486 (effective Apr. 26, 2016) (authorized recovery by San Jose Water Company of its under-collected Water Conservation Memorandum Account balance for Jan. 1 to Dec. 31, 2015); AL 272-W (filed May 31, 2018) (Great Oaks Water Company request to offset the adjusted balance in its Conservation Lost Revenue and Expense Memorandum Account, which had been in effect since 2014).

> conservation memorandum accounts for water utilities without decoupling mechanisms during periods of mandatory conservation/drought. **<u>The impressive conservation figures for SJWC cited in ORA's testimony largely resulted from periods during which such mechanisms, as well as price signals, were in place</u>**.[44]

Accordingly, Cal PA's graph does not support that an M-WRAM is as effective as a full WRAM for promoting conservation.

With regard to the SWRCB data, as noted above, the PD relies heavily on data that was never part of the record and is not in the PD itself, making it exceedingly difficult to address the validity of the conclusions reached. From the research that GSWC conducted trying to figure out what data Table A purports to summarize, the SWRCB data cannot be used to analyze the comparative effects of M-WRAM versus WRAM mechanisms on conservation outcomes. One problem is that, after 2016, the SWRCB did not collect data for systems under a certain size, so the data is incomplete. The more critical problem is that, (as with the data used in the Cal PA graph), the time frame for the SWRCB data includes the years of differing mandatory use restrictions and conservation targets that resulted in differing conservation outcomes among the utilities. Generally, the SWRCB collected usage data on urban water usage by system. The SWRCB set usage reduction targets for each system based on average usage for residential customers within the system in 2013 and reported on usage/conservation results compared to those 2013 usage levels and reduction targets. For example, GSWC provides service in 18 systems designated as urban systems and had reduction targets ranging from 8% to 36%.[45] Half of our systems had targets that were below 20%; in contrast, only 1 of the six systems served by the M-WRAM companies had a target below 20%.[46] This is pertinent because the targets were set based on 2013 usage levels in a manner that recognized systems that had already achieved a certain conservation level by 2013. Critically, the conservation targets and results reflected in the SWRCB data were mandated by the Governor and had nothing to do with the relative effectiveness of the WRAM versus the M-WRAM. The PD's conclusion to the contrary is wrong. The most that can be deduced from the SWRCB data is that the CPUC-jurisdictional utilities succeeded in achieving the mandated conservation. Nothing more.

D. The PD Fails to Take into Account Critical Differences between a Full WRAM and an M-WRAM

The PD's conclusion that the M-WRAM is just as effective in promoting conservation as the full WRAM is erroneous not only because the data on which the PD relies fails to support this conclusion,

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[44] Exh. SJW-4 in Docket A.18-01-004 (*Rebuttal of SJW to the ORA Report and Recommendations on Revenues and Rate Design, Revenue Decoupling and Refunds*) at 6 (emphasis added).
[45] *See, supra, note 41.*
[46] *Id.*

but because the PD fails to recognize that the M-WRAM does not remove a utility's disincentive to promote conservation. That is, the M-WRAM does not track lost revenues due to changes in usage; rather it tracks the difference between (a) the revenues collected from actual usage billed at the actual tiered conservation rates versus (b) the revenues that would have been collected from the same actual usage if it had been billed under a standard single quantity rate. By ignoring the difference between actual sales revenues and adopted sales revenues, the M-WRAM does not remove the disincentive for a utility to promote conservation.

In the Balanced Rates proceeding, the Commission explained that the purpose of the WRAM is "to sever the relationship between sales and revenues in order to remove any disincentives for the water utility to implement aggressive conservation rates and conservation programs."[47] And in Resolution W-5192 recently issued for SCE's Catalina Water System, the Commission explained that the decoupling of water sales from revenues "is intended to facilitate water conservation while providing adequate financial resources to water utilities to operate their systems safely and reliably."[48] Because the WRAM truly decouples sales and revenues and the M-WRAM does not, the mechanisms are not substitutes for one another. In sum, the PD errs by ordering WRAM/MCBA utilities to convert to M-WRAM/ICBA mechanisms without taking all of these critical differences into account.

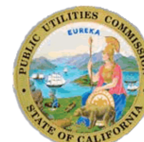
E. The PD Relies on Incomplete and Out-of Date WRAM Balance Data

Because the record purported to support discontinuance of the WRAM/MCBA is woefully incomplete, the PD relies on out-of-date information with regard to WRAM/MCBA balances. The PD asserts that the WRAM/MCBA amounts are implemented through balancing accounts that "rarely provide a positive balance (over-collected) but instead have been negative (under-collected)."[49] But the PD cites Decision 12-04-048 for this premise, and that decision relies on stale data from 2010-2012.[50] If a record with current data had been established in this proceeding, it would have become apparent that GSWC's WRAM balances have generally declined over the past several years and that GSWC refunded many over-collections in its ratemaking areas in recent years, including in both the Arden Cordova and Simi Valley service areas, which had over-collected WRAM balances in each of the last 3 years.[51]

For all of the foregoing reasons the PD's Findings of Fact, Conclusions of Law and Ordering

[47] Decision 16-12-003 at 18.
[48] Resolution W-5192 at Finding of Fact #13.
[49] PD at 18.
[50] Decision 12-04-048 at Appendices B and C.
[51] *See* AL 1813-W (filed Mar.18, 2020), AL 1766-W (filed Mar. 21, 2019) and AL 1741-W (filed Mar. 23, 2018), each of which was submitted with WRAM over-collections in Arden Cordova and Simi Valley.

JOINT APPENDIX Z



BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024 (Filed June 29, 2017)

JOINT COMMENTS OF LIBERTY UTILITIES (PARK WATER) CORP. (U 314-W) AND LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP. (U 346-W) ON THE PROPOSED DECISION

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Dated: July 27, 2020

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Liberty Utilities' Joint Comments on Proposed Decision

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024 (Filed June 29, 2017)

JOINT COMMENTS OF LIBERTY UTILITIES (PARK WATER) CORP. (U 314-W) AND LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP. (U 346-W) ON THE PROPOSED DECISION

In accordance with Rule 14.3 of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission ("Commission") and the email from Administrative Law Judge Haga dated July 6, 2020, Liberty Utilities (Park Water) Corp. ("Liberty Park Water") and Liberty Utilities (Apple Valley Ranchos Water) Corp. ("Liberty Apple Valley") (together, "Liberty"), hereby submit comments on the Proposed Decision of Commissioner Guzman Aceves entitled "Decision and Order" ("PD"), which was filed with the Commission on July 3, 2020 and served on July 6, 2020.

As detailed below, the PD's order for Liberty Park Water and Liberty Apple Valley to transition their existing Water Revenue Adjustment Mechanism ("WRAM") to the Monterey-Style WRAM is based on numerous factual errors, is contrary to both the State of California and Commission's stated policy on water conservation, and violates the law requiring that parties have an opportunity to be heard. Liberty recommends that a new proceeding or additional phase of this proceeding be initiated with evidentiary hearings to establish a robust, complete, and transparent examination of decoupling before a Commission decision eliminates the decoupling mechanism for the water industry. Additionally, the Commission should reject the PD's adoption of additional Minimum Data Requirements for consolidation applications because they will cause inefficiency and delay.

I. THE PD'S DISPOSITION OF THE WRAM/MCBA MECHANISM MUST BE REJECTED BECAUSE IT IS PREMISED ON LEGAL AND FACTUAL ERRORS.

The PD requires each water utility that employs a Water Revenue Adjustment Mechanism/Modified Cost Balancing Account ("WRAM/MCBA") to transition to a Monterey-Style

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Water Revenue Adjustment Mechanism/Incremental Cost Balancing Account ("Monterey-Style WRAM/ICBA") in its next general rate case ("GRC") application.[1] As discussed below, the PD's reasoning is replete with factual errors, and its failure to provide parties with an opportunity to be heard is a violation of law.

Additionally, the PD appears to be based on a misunderstanding of differences between the WRAM and the Monterey-Style WRAM. Despite the similar name, the Monterey-Style WRAM is entirely different from the WRAM. In contrast to the WRAM, the Monterey-Style WRAM is not a decoupling mechanism. It does not decouple revenue from sales, nor is it designed to true-up revenues to what was authorized by the Commission as the WRAM is. The PD does not recognize these distinctions. The PD states, "[W]e have identified some benefit to the WRAM/MCBA process with respect to decoupling sales from revenues and that the Monterey-Style WRAM captures the identified benefits without the negative effects on customers of a traditional WRAM."[2] The PD concludes that "[c]onsequently, we believe there is good reason for transitioning WRAM utilities away from this mechanism and that a policy change eliminating WRAM/MCBA is a reasonable outcome."[3] The Monterey-Style WRAM does not "capture the benefit" of decoupling sales from revenues at all because it does not decouple sales from revenues. Rather, the Monterey-Style WRAM is a rate design mechanism intended to equalize the revenue generated by tiered rates with what a uniform quantity rate would have produced. The Monterey-Style WRAM does not provide any adjustment for fluctuations in sales.

The PD's failure to correctly differentiate between the WRAM and the Monterey-Style WRAM is not surprising, given the complete lack of an adequate evidentiary record and review by the parties. For this reason, for the many factual errors explained below, and for its clear violation of law, the PD's disposition of the WRAM/MCBA must be rejected.

A. <u>**The PD's Misstatement That the Commission Has Not Endorsed the WRAM After Decision 12-04-048 Is A Factual Error.**</u>

The PD states that "while the Commission has chosen not to change the existing WRAM mechanisms, it also did not endorse the continuation of the 'pilot' program in an adjudicated proceeding or rulemaking."[4] This statement is false. GRC decisions subsequent to Decision ("D.") 12-04-048 have

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1 PD at 47-60.
2 PD at 59.
3 *Id.*
4 PD at 52.

addressed the issue of whether to continue implementing the WRAM/MCBA mechanism. For example, in the most recent GRC decision for Liberty Apple Valley, the Test Year 2015 GRC (A.14-01-002), the Commission endorsed the WRAM mechanism and correctly stated that large WRAM balances result from inaccurate sales forecasts and not the mechanism itself. D.15-11-030 states:

> In addition, this decision reviews the Water Revenue Adjustment Mechanism (WRAM) and Modified Cost Balancing Account (MCBA) revenue decoupling mechanisms pursuant to Decision (D.) 12-04-048. This decision finds that the WRAMs/MCBAs are achieving their stated purpose by severing the relationship between sales and revenue and removing most disincentives for Apple Valley Ranchos Water Company to implement conservation rates and conservation programs, and that overall water consumption by its ratepayers has been reduced.
>
> The decision does not adopt any of the WRAM options set forth in D.12-04-048, because large WRAM balances result from inaccurate sales forecasts and none of the WRAM options address inaccurate/inflated forecasts. We anticipate a low risk of under-collections in the WRAM account during this General Rate Case after requiring a reduced sales forecast to comply with the Governor's Executive Order B-29-15.[5]

Without recognizing its inconsistency, the PD itself cites another example of a Commission decision that endorses the continuation of the WRAM.[6] D.16-12-026 found that there was a "need for the WRAM mechanism to support sustainability and attract investment to California water IOUs during this drought period and beyond."[7] Despite decisions that consider and endorse the WRAM subsequent to D.12-04-048, parties were denied an adequate opportunity here to review, be heard on this issue, and discuss all Commission decisions that have evaluated this important issue since D.12-04-048.

Additional phases of this proceeding should be initiated to establish a complete and transparent examination of decoupling, which is more complex than the PD implies. A proper review of the history of the WRAM would demonstrate that the PD's examination is insufficient. The Commission created the revenue adjustment mechanism to be a tool for electric utilities more than 30 years ago, and it and its successor mechanisms have been beneficial to utilities and customers alike. The use of decoupling mechanisms is a universal practice for electric utilities, including companies such as Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric and PacifiCorp. Liberty Park Water's own affiliate Liberty Utilities (CalPeco Electric) LLC ("Liberty CalPeco") has a

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5 D.15-11-030 at 3 (emphasis added).
6 *See* PD at 51.
7 D.16-12-026 at 40.

Commission authorized decoupling mechanism known as the Base Revenue Requirement Balancing Account ("BRRBA"). Unlike the WRAM, which only tracks the commodity revenues, the BRRBA tracks the difference between Liberty CalPeco's authorized annual base rate revenue requirement and the annual recorded revenue from base rates. The BRRBA therefore enables Liberty CalPeco to recover 100% of its authorized base rate revenue whereas the WRAM allows for recovery of commodity revenue (which is approximately 75% of base rate revenue for Liberty Park Water and 70% for Liberty Apple Valley). There is no evidence or rationale presented in the record of this proceeding as to why the Commission would authorize a full decoupling mechanism for Liberty CalPeco but not allow a partial decoupling mechanism for Liberty Park Water or Liberty Apple Valley. This example, and others, should be considered, and parties must have a meaningful opportunity to be heard to develop an accurate record before any decision on the WRAM is made.

The PD finds that the WRAM should be eliminated based on factual errors regarding Commission decisions endorsing the WRAM. Therefore, the PD's disposition of the WRAM/MCBA must be rejected.

B. The PD's Failure to Provide Parties With a Meaningful Opportunity to be Heard Constitutes Legal Error.

The Commission initiated this rulemaking to address the improvement of low-income customer assistance programs. During the course of two years and multiple workshops, the topic of the WRAM was never introduced. On July 10, 2019, the Public Advocates Office first raised the WRAM issue in comments and proposed mandatory conversion of the WRAM to the Monterey-Style WRAM. In its reply comments dated September 23, 2019, the Public Advocates Office presented a graph that the PD claims proves that "the annual change in average consumption per metered connection is almost the same during the last eight years for both WRAM and Non-WRAM utilities."[8] The PD's second key piece of evidence supporting its elimination of the WRAM is a nonexistent "Table A," which, according to the PD, "is a review of reported annual consumption from the State Water Resources Control Board [that] shows that over time utilities with a WRAM/MCBA conserve water at about the same rate, or even less, than water utilities without a WRAM."[9] The parties had no meaningful opportunity to review and refute this alleged evidence.

As discussed above, at least two Commission decisions since D.12-04-048 have endorsed the

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8 PD at 54-55.
9 PD at 55.

continuation of the WRAM. The PD attempts to change those decisions and policies without providing an opportunity for parties to review the evidence or be heard on the issue. Such an attempt is a violation of law and requires that the PD's rash disposition of the WRAM/MCBA be rejected.

Public Utilities Code Section 1708 limits the Commission's discretion to change its prior decisions:

> The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it.

Parties had no opportunity to present evidence or to cross-examine witnesses on the WRAM/MCBA issue in this proceeding. "The phrase 'opportunity to be heard' implies at the very least that a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal."[10]

The parties here had no meaningful opportunity to be heard and absolutely no opportunity to refute the dubious evidence supporting the PD's conclusion to eliminate the WRAM. After the Public Advocates Office first provided its graph on September 23, 2019, there were no other workshops addressing the WRAM issue. There were no comments addressing the WRAM issue. Indeed, between October 2019 and June 2020—when a newly assigned ALJ issued a new scoping memo—there was nothing addressing the WRAM issue. On July 3, 2020, the PD was filed, using the Public Advocates Office's graph from late September 2019 and the nonexistent "Table A" as the evidentiary support for the elimination of the WRAM. The parties have had no opportunity to be heard or to refute this graph and table. By failing to provide such an opportunity, the PD violates Public Utilities Code Section 1708 and therefore the PD's disposition of the WRAM/MCBA must be rejected.

C. <u>The PD's Misstatement That WRAM Balances Have Been Large and Under-Collected Is a Factual Error.</u>

The PD states that a review of WRAM utility balancing accounts over the past years rarely indicates an over-collected balance.[11] This statement is misleading and a factual error.

The table below shows the WRAM/MCBA balances recorded by calendar year for Liberty Apple Valley from 2009 to 2018. The table shows that, although there were significant under-collections recorded in the WRAM/MCBA from 2009 through 2014, these under-collections have radically diminished since then and represent a small percentage of authorized revenues. Moreover, the balance

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10 *Cal. Trucking Assoc. v. Pub. Util. Com.*, 19 Cal. 3d 240, 243-244 (1977).
11 PD at 52.

for 2018 is an over-collection that was refunded to customers through a one-time surcredit.

Apple Valley
Net $ WRAM & MCBA[12]

2008	None
2009	1,439,959
2010	1,855,642
2011	2,570,699
2012	1,428,851
2013	2,230,310
2014	2,049,956
2015	110,938
2016	245,910
2017	242,914
2018	(481,094)

Part of the PD's frustration with under-collections is that "customers experience frustrating multiple rate increases due to GRC test year, attrition year, WRAM/MCBA, and other offsets."[13] The PD's "solution" is to replace the WRAM with the Monterey-Style WRAM. However, this proposed replacement fails to recognize that the issue of multiple rate changes is not a function of the WRAM and that the proposed transition from the WRAM to the Monterey-Style WRAM will not eliminate these multiple rate changes. During the rate case cycle, rates typically increase annually, once for the GRC Test Year, followed by increases in the two escalation years. Multiple rate increases occur for many reasons. One reason is that the often delayed timing of GRC decisions routinely requires an interim rate true-up (*i.e.*, an additional surcharge or surcredit). There are also offsets, which are simply a pass-through of supply costs (purchased water or purchased power) that are outside of a utility's control and ability to forecast in a GRC. Replacing the WRAM with the Monterey-Style WRAM will not necessarily eliminate any associated increases because there may still be a surcharge/surcredit associated with the Monterey-Style WRAM. Liberty agrees that utilities should continue to educate customers about these processes to help mitigate any frustration about the timing of rate increases. Liberty has done so in numerous "open houses" designed to educate customers.

One possibility to reduce multiple rate increases may be to develop a procedure in which all increases are implemented simultaneously on either January 1 or July 1, depending on whether the

[12] These are calendar year balances. Amortizations are not reflected in balances. A ( ) indicates over-collections.
[13] PD at 49.

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utility files its GRC application in January or July. If parties were given the chance to provide input in this proceeding, they would offer other possibilities to alleviate the burdens of multiple rate increases. By failing to allow parties the opportunity to review and be heard on the WRAM issue, the PD suffers from a lack of insight and perspectives that could help address these issues, correct factual errors before making conclusions, and present more alternatives. The PD's disposition of the WRAM/MCBA should be rejected, and the Commission should direct another phase of the proceeding to address these issues with the input of all stakeholders.

D. The PD's Invalid Comparison Between the WRAM and the Monterey-Style WRAM Constitutes Factual Error.

The PD concludes that a comparison of utilities using the WRAM and those using the Monterey-Style WRAM shows that both have achieved similar conservation results, and therefore the WRAM is unnecessary.[14] Although it is not entirely clear what time span the PD uses for this comparison, it appears that the years used are either 2008-2016 (if referencing the graph provided by the Public Advocates Office submitted in reply comments on September 23, 2019) or 2015-2019 (if referencing the nonexistent Table A). In either scenario, the PD's comparison is invalid because California was in a prolonged drought for most or all of the evaluation period.[15] Because of the drought, mandatory usage restrictions would have caused customers to reduce their water use regardless of the Monterey-Style WRAM. The PD has not considered whether utilities using the WRAM and the Monterey-Style WRAM were subject to the same conditions during the relevant time periods. Without accounting for how severe drought conditions may have impacted conservation during the relevant time periods, these comparisons are based on factual inaccuracies and do not support the PD's conclusion that the Monterey-Style WRAM is as effective in conservation efforts as the WRAM.

Furthermore, the PD acknowledges that, during the recent drought, the Commission authorized the non-WRAM companies a Lost Revenue Memorandum Account to track revenue shortfalls: "All non-WRAM utilities availed themselves of the opportunity to establish such accounts and thus were able to recover lost revenues caused as a result of the declared drought emergencies."[16] The Lost Revenue Memorandum Account provided utilities using the Monterey-Style WRAM with a separate rate decoupling mechanism, which means that non-WRAM utilities essentially had a WRAM in effect

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[14] PD at 54-56.

[15] The U.S. Drought Monitor started in 2000. Since 2000, the longest duration of drought (D1-D4) in California lasted 376 weeks beginning on December 27, 2011 and ending on March 5th, 2019. *See* https://www.drought.gov/drought/states/california.

[16] PD at 58-59.

during the drought. Given that all utilities had access to a WRAM mechanism during the drought, it is not unexpected for non-WRAM and WRAM utilities to have shown comparable conservation for that period and in no way proves that the WRAM and Monterey-Style WRAM are equally effective at achieving conservation objectives.

The Monterey-Style WRAM is not as effective at promoting conservation as the WRAM. The Monterey-Style WRAM does not account for the change between actual sales and adopted sales. Therefore, it does not remove the disincentive for a utility to promote conservation like the WRAM does. The WRAM is part of an effective conservation rate design in furtherance of the State's goal of "Making Water Conservation A California Way of Life."[17] The WRAM allows utilities greater flexibility to shift fixed costs into volumetric rates, which reduces costs for essential water use by lowering fixed charges and first tier rates. Higher upper tier rates composed of combined fixed and variable costs recovery send price signals to customers to conserve and reward efficient use. The ability to influence customer demand has, in turn, allowed the utilities to defer expensive investments in new water supplies and thereby minimized the pressure on rates.

If this issue had been fully vetted, then the crucial differences between the Monterey-Style WRAM and the WRAM would have been clarified. They were not. The PD's reliance on erroneous comparisons underscores the importance of a meaningful opportunity to be heard by all parties before rushing to conclusions on issues such as the elimination of the WRAM.

E. <u>The WRAM/MCBA Mechanism Does Not Remove Consequences for Inaccurate Forecasts.</u>

The PD asserts that the WRAM/MCBA eliminates the consequences of inaccuracy for the water utility.[18] This assertion is false.

Even with the WRAM/MCBA, Liberty's earnings are still subject to variation because the WRAM/MCBA does not eliminate estimating error. The WRAM only provides for recovery of the revenues assumed to be recovered through commodity rates. Under Liberty Apple Valley's current adopted rate design, about 70% of its revenues are collected through commodity rates. The remaining revenue, about 30%, is still subject to estimating error. Further, while the WRAM/MCBA is generally assumed to provide a full recovery of commodity rate revenue (less production cost savings), it does not ensure the receipt of the adopted level of commodity rate revenues. The actual revenues used in the

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17 *See* https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Water-Use-And-Efficiency/Make-Water-Conservation-A-California-Way-of-Life/Files/PDFs/Final-WCL-Primer.pdf.

18 PD at 58.

calculation of the WRAM/MCBA, the booked commodity rate revenues, are revenues billed, not revenues received. Any amount billed to customers but not received is not accounted for as a reduction to revenue, but as Uncollectible Expense, which is not covered by the WRAM/MCBA. Uncollectible Expense, which now amounts to 0.31% of gross revenues (but is expected to substantially increase because of the COVID-19 pandemic), is still subject to estimating error.

Additionally, expenses are still subject to estimating error. Only supply costs or production expenses, expenses covered in Liberty's production cost balancing accounts, are not subject to estimating error under the MCBA. Production expenses, however, are a small percentage of total expenses. For example, production expenses comprise only 8% of Liberty Apple Valley's total expenses. The remaining expenses are still subject to estimating error with respect to adopted expense levels, especially in years two and three of the rate case cycle.

The primary cause of differences between actual and adopted sales is weather. For obvious reasons, utilities cannot predict the weather years in advance, and therefore forecasting is necessarily uncertain. Eliminating the WRAM will not result in perfect forecasting by utilities, which will still suffer the consequences of this inevitable uncertainty. It is unfair and unreasonable for the PD to use the elimination of the WRAM as a purported tool to achieve an impossible goal. Therefore, the PD's disposition of the WRAM/MCBA should be rejected in favor of initiating another phase of this proceeding in which all stakeholders can provide input and help to properly define the desired objectives.

F. The PD Fails to Acknowledge That the Monterey-Style WRAM/ICBA Does Not Provide the Same Benefits to Customers as the WRAM/MCBA.

The WRAM and MCBA act in concert to effect recovery of the fixed costs in the commodity rates, and recovery of balances in the WRAM and MCBA occurs on a combined basis. The WRAM is offset by savings in purchased water, pumping assessments, and energy costs that result from the reduced usage levels that are reflected in the MCBA. The Monterey-Style WRAM will not be similarly offset by the ICBA because the ICBA functions independently of the Monterey-Style WRAM.

The ICBA only tracks changes in the unit supply costs and does not account for the savings that result from reduced usage levels. Additionally, the ICBA does not account for the savings that can result from changes in water supply mix. For example, in 2018, Liberty Park Water was able to increase the percentage of pumped water produced from its groundwater wells from 53% to 70% and thereby reduce the amount of water purchased from the Central Basin Metropolitan Water District from 47% to 30%. The balance recorded in the MCBA for 2018 was $2,613,160 (an increase of $1,039,389 over the

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amount recorded in 2017), and that amount was passed through to customers through the MCBA. Under the ICBA methodology, the company would have kept the savings resulting from the change in supply mix, and customers would not have received any benefits.

By rejecting the PD's disposition of the WRAM/MCBA and initiating another phase of this proceeding to fully explore the WRAM issue, the Commission can help promote a result that retains the current benefits offered by the WRAM/MCBA and does not harm customers.

II. PROPOSED DATA REQUIREMENTS FOR CONSOLIDATION PROPOSALS WOULD CAUSE INEFFICIENCY AND DELAY.

The PD clearly supports the consolidation of water systems, stating that "[i]t is incumbent upon this Commission to ensure the process to achieve consolidation is as effective and efficient as possible."[19] Unfortunately, the adoption of an extended list of Minimum Data Requirements ("MDRs") to be filed with consolidation applications would have the opposite effect by causing inefficiency and delay.

The PD adopts a list of MDRs for all new water systems consolidation applications that adds over 45 items (including the numerous sub-categories) to the current MDRs. Adding such an extensive list of data requirements is burdensome and does not serve the goal of expediting water system consolidation proceedings. This burden will be especially oppressive when the water system to be acquired is small and struggling—the exact type of water system that is encouraged to consolidate under California and Commission policy.[20] Such water systems are unlikely to have all the required information easily available. Furthermore, many of the MDR items added by the PD include data that is confidential,[21] irrelevant,[22] and overbroad.[23]

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[19] PD at 68.

[20] The California legislature enacted the Public Water System Investment and Consolidation Act of 1997 to recognize the scale economies that could be achieved through consolidation and sought to provide incentives to facilitate such transactions. *See* Pub. Util. Code § 2719. In 2015, it enacted Senate Bill 88, granting new authority to mandate consolidations of struggling water systems to the State Water Resources Control Board ("SWRCB"). *See* Health & Safety Code §§ 116680-116684. The SWRCB stated that "[c]onsolidating public water systems and extending service from existing public water systems to communities and areas which currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability." SWRCB, *Fact sheet: Frequently Asked Questions on Mandatory Consolidation or Extension of Service for Water Systems*, *available at* https://www.waterboards.ca.gov/drinking_water/programs/compliance/docs/fs082415_mand_consolid_faq.pdf. The Commission's own 2010 Water Action Plan specifically supports "incentives for the acquisition or the operation of small water and sewer utilities, in recognition of the benefits to customers of such acquisitions." 2010 Commission Water Action Plan, p. 9.

[21] *See e.g.*, PD at 73, item 14 and at 76, item 26.

[22] *See e.g.*, PD at 74, item 19.

[23] *See e.g.*, PD at 73, item 15.

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The majority of the additional items required for MDRs in the PD were suggested by the Public Advocates Office.[24] The Public Advocates Office has gone on record stating that it has reconsidered its position in recent years regarding acquisitions by Class A water utilities and that it is opposed to such acquisitions because it is opposed to the Public Water System Investment and Consolidation Act of 1997 ("Consolidation Act").[25] The Public Advocates Office has stated its belief that "[i]n passing the Consolidation Act and requiring the Commission to use the standard of FMV to set rate base for the distribution system of an acquired water system, the legislature provided water utilities a generous incentive to acquire public water systems."[26] The Public Advocates Office is opposed to such an incentive in contravention to the Commission's policy to support incentives for the acquisition of small water utilities.[27] It is not surprising that the Public Advocates Office proposes to extend the list of MDRs for such acquisitions to the point that it will cause significant delay and ultimately impede approval.

Liberty agrees with the PD that "if all of the documents required for an acquisition are filed as requested, and there is no controversy over the statements or facts then there should be an acceleration in processing the application or advice letter."[28] However, the extensive and burdensome list of MDRs added by the PD will make such acceleration more difficult, if not impossible. The final decision should affirm the MDRs approved by D.99-10-064 and decline to adopt additional MDRs that will cause inefficiency and delay.

III. <u>CONCLUSION.</u>

For the foregoing reasons, the Commission should reject the PD's order for Liberty Park Water and Liberty Apple Valley to transition their existing WRAM to the Monterey-Style WRAM. Liberty recommends that a new proceeding or additional phase of this proceeding be initiated with evidentiary hearings to establish a robust, complete, and transparent examination of decoupling before a Commission decision eliminates the decoupling mechanism for the water industry. The Commission should also reject the PD's adoption of additional MDRs for consolidation applications because they will cause inefficiency and delay.

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24 PD at 72.
25 Public Advocate Office's Brief on Threshold Issues, dated January 22, 2019, in A.18-09-013, at pp. 2-3.
26 *Id.*
27 2010 Commission Water Action Plan, p. 9. The Consolidation Act itself was enacted by the Legislature, in part, to facilitate the acquisition of small water systems by Class A water utilities. D.99-10-064 at p. 2.
28 PD at 71.

Respectfully submitted,

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Dated: July 27, 2020

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Appendix A

Proposed Modifications to Findings of Fact, Conclusions of Law,

and Ordering Paragraphs

(Rule 14.3)

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Appendix A

Proposed Modifications to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs

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Proposed changes to the PD are in redline/~~strikeout~~ format.

Findings of Fact (as numbered in the PD)

~~5. The ICBA provides that variable costs are reduced under the Monterey-Style WRAM mechanism. The various options for modifying or eliminating WRAM/MCBA as ordered by D. 12-04-048 were not adjudicated and resolved in subsequent GRC proceedings.~~

5.~~6. Although~~ D.16-12-026 concluded that the WRAM/MCBA ratemaking mechanism should be continued. ~~at that time,~~ ~~it noted t~~The reasons for continuing WRAM included forecast uncertainty, conservation, and the need for investment during the drought.

6. A new phase of this proceeding is necessary to evaluate the continued need for the WRAM/MCBA ratemaking mechanism.

~~7. The quantification of changes in risk due to the existence or elimination of WRAM/MCBA has not been addressed since the WRAM/MCBA was adopted.~~

~~8. While the WRAM/MCBA was adopted to encourage conservation, the application of this ratemaking mechanism has led to substantial under-collections and subsequent increases in quantity rates.~~

~~9. Conservation of water use is by customers, not the utility.~~

~~10. Average consumption per metered connection for WRAM utilities is less than the consumption per metered connection for non-WRAM utilities.~~

~~11. Conservation for WRAM utilities measured as a percentage change during the last 5 years is less than conservation achieved by non-WRAM utilities, including Class B utilities.~~

~~12. Since WRAM/MCBA is implemented through a balancing account, there are intergenerational transfers of costs.~~

~~13. The WRAM/MCBA mechanism is not the best means to minimize intergenerational transfers of costs when compared to an alternative available to the utilities and the Commission. Tiered rate design causes customers to use less water at increased costs per unit consumed; thus, use of tired rate design is a reasonable means to stabilizing revenues.~~

~~14. The Monterey-Style WRAM combined with the ICBA is a method to account for lesser quantity sales and stabilize revenues. Implementation of a Monterey-Style WRAM means that forecasts of sales become very significant in establishing test year revenues.~~

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~~15. No quantification of the risk effects of using the WRAM/MCBA mechanism is evident in past GRC proceedings.~~

8. ~~18. The information delineated in Section 10, Water Consolidation Timelines, above is a reasonable minimum amount of information required to begin a streamlined review of the proposed consolidation transaction.~~ The Minimum Data Requirements established by D.99-10-064 provide a streamlined review for proposed consolidation transactions. Adopting additional Minimum Data Requirements will cause inefficiency and delay.

<u>Conclusions of Law</u> (as numbered in the PD)

~~2. Consideration of changes to the WRAM/MCBA is and has always been within the scope of this proceeding as part of our review of how to improve water sales forecasting.~~

~~3. Elimination of the WRAM/MCBA mechanism is a policy decision not determined by law. The Monterey-style WRAM provides better incentives to more accurately forecast sales while still providing the utility the ability to earn a reasonable rate of return.~~

~~4. As WRAM utilities have individual factors affecting a transition to Monterey-Style WRAM mechanism, this transition should be implemented in each WRAM utilities' respective upcoming GRC applications.~~

8. ~~11.~~ This proceeding should remain open to consider Phase II issues and to evaluate the continued need for the WRAM/MCBA ratemaking mechanism.

<u>Ordering Paragraphs</u> (as numbered in the PD)

~~3. California-American Water Company, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corporation, and Liberty Utilities (Apple Valley Ranchos Water) Corporation, in their next general rate case applications, shall transition existing Water Revenue Adjustment Mechanisms to Monterey-Style Water Revenue Adjustment Mechanisms.~~

6. ~~7.~~ In any application by a water utility for consolidation or acquisition of another system, the utility shall provide the information required by D.99-10-064. ~~identified in Section 10, Water Consolidation Timelines, above as part of the application or with the Minimum Data Request in order to help streamline consideration of its application.~~

7. ~~8.~~ Rulemaking 17-06-024 remains open to consider Phase II issues and to evaluate the continued need for the WRAM/MCBA ratemaking mechanism.

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JOINT APPENDIX AA

Decision **PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**
(Mailed 7/3/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low – Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024

DECISION AND ORDER

O R D E R

IT IS ORDERED that:

1. In any future general rate case applications filed after the effective date of this decision, a water utility must discuss how these specific factors impact the sales forecast presented in the application:

   (a) Impact of revenue collection and rate design on sales and revenue collection;

   (b) Impact of planned conservation programs;

   (c) Changes in customer counts;

   (d) Previous and upcoming changes to building codes requiring low flow fixtures and other water-saving measures, as well as any other relevant code changes;

   (e) Local and statewide trends in consumption, demographics, climate population density, and historic trends by ratemaking area; and

   (f) Past Sales Trends.

2. Water utilities shall provide analysis in their next general rate case applications to determine the appropriate Tier 1 breakpoint that aligns with the baseline amount of water for basic human needs for each ratemaking area.

3. California-American Water Company, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corporation, and Liberty Utilities (Apple Valley Ranchos Water) Corporation, in their next general rate case applications, shall transition existing Water Revenue Adjustment Mechanisms to Monterey-Style Water Revenue Adjustment Mechanisms.

4. Commission regulated water utilities shall name or rename their respective low-income water assistance program as "Customer Assistance Program" as part of their next general rate case applications. Water utilities with low-income programs shall describe their programs in filings and public

JOINT APPENDIX BB

S__________

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA WATER SERVICE COMPANY
Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Respondent.

Decisions No. 20-08-047 and 21-09-047

Of the Public Utilities Commission of the State of California

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EXHIBIT Y

R.17-06-024, *Reply Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves* (August 3, 2020)

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024 (Filed June 29, 2017)

REPLY COMMENTS OF CALIFORNIA WATER SERVICE COMPANY (U 60 W) ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES

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August 3, 2020

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REPLY COMMENTS OF CALIFORNIA WATER SERVICE COMPANY (U 60 W) ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES

I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public utilities Commission ("Commission"), California Water Service Company ("Cal Water") hereby submits these Reply Comments on the Proposed Decision of Commissioner Guzman Aceves ("PD"). Cal Water supports the opening comments of several parties urging the Commission to reverse the PD's unsupported conclusion that companies with a decoupling Water Revenue Adjustment Mechanism/Modified Cost Balancing Account ("decoupling WRAM") must transition to a Monterey-style WRAM ("M-WRAM"). In addition, the recommendation of the Public Advocates Office ("Cal Advocates") that such a transition should occur in Cal Water's pending General Rate Case, A.18-07-001, should be rejected.

II. DISCUSSION

Cal Water fully supports the arguments by several parties that addressing fundamental changes to the decoupling mechanism would require the Commission to formally amend the scope of the proceeding, allow stakeholders to present additional evidence, and provide access to data relied upon by the Commission.[1] As a substantive matter, parties cite the mismatch between this requirement and the stated intent of this proceeding to increase affordability for low-income customers, explaining how decoupling will harm, rather than help them.[2] If the Commission pursues the elimination of decoupling, several parties indicate, like Cal Water, that the Commission must provide stakeholders an opportunity to be heard by allowing the submission of additional evidence, providing access to any data relied upon by the Commission, and enabling parties to challenge the one data set provided thus far.

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[1] *See, e.g.,* Comments of California Water Association on the Proposed Decision of Commissioner Guzman Aceves ("CWA") at 4-7; Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves ("CAW") at 6-8; Comments of Golden State Water Company on Proposed Decision and Order ("GSWC") at 3-13; Joint Comments of Liberty Utilities (Park Water) Corp. (U 314-W) and Liberty Utilities (Apple Valley Ranchos Water) Corp (U 346-W) ("Liberty") at 4-5, 7-8; and Comments on the National Association of Water Companies on the Proposed Decision of Commissioner Guzman Aceves ("NAWC") at 2-4.

[2] *See, e.g.,* CAW at 2-6; GSWC at 3.

A. Cal Advocates' Comments Highlight the Flaws of the PD

1. Cal Advocates and the PD's Conclusions about Sales Forecasting Incentives Are Flawed

Cal Advocates asserts that the M-WRAM "incents parties to strive for accurate sales forecasting in the GRC process."[3] Yet in a footnote that appears earlier in its comments, Cal Advocates acknowledges the ***problematic incentive associated with an M-WRAM***, stating that "Eliminating the WRAM will incent utilities to under forecast sales, as they will not have to return the difference in revenues to customers. The Commission should remain aware of this incentive if this PD is adopted."

This warning, buried in a footnote, should give the Commission pause. Specifically, with the transition to an M-WRAM, the current incentive for accurate sales forecasts will shift to an incentive for lower forecasts, driving water rates higher. With less effective conservation signals, customers will use more water. When water usage exceeds the lower sales forecasts, an M-WRAM company will be able to retain all additional revenues from quantity charges, rather than being required to return those revenues to customers. Neither Cal Advocates nor the PD acknowledges this significant drawback to transitioning to an M-WRAM.

Cal Water notes that, since the implementation of decoupling in 2008, Cal Advocates and Cal Water have consistently reached settlements on both sales forecasting and rate design.[4] If Cal Advocates has believed the sales forecasts underpinning Cal Water's rates are flawed due to inappropriate incentives allegedly associated with decoupling, these settlements reflect an abdication of Cal Advocates' responsibilities.

Cal Advocates' allegation regarding a decoupled utility's incentives perpetuates a narrative that is ***false*** in Cal Water's case: that Cal Water prefers to charge lower rates and risk incurring high WRAM surcharges, rather than trying to generate the correct rates so that there is no WRAM balance.[5] This perspective ignores that it is district personnel, customer service, and rates staff who respond to customer concerns every day, rather than once every three years. In the face of customer ire over both rates increases and decoupling surcharges, ***decoupled companies like Cal Water have the most incentive to pursue accurate sales forecasts***. The PD's approach of supporting the redesign of rates that will immediately increase the bills of all except high water users, without any accompanying

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[3] Comments of the Public Advocates Office on the Proposed Decision of Assigned Commissioner and Administrative Law Judge ("Cal Advocates") at 9.

[4] Cal Advocates has generally accepted Cal Water's proposed sales forecasts with minor tweaks.

[5] Cal Water notes that M-WRAM can also generate a balance that must be recovered from customers as well, either through a surcharge or by rolling the balance into base rates.

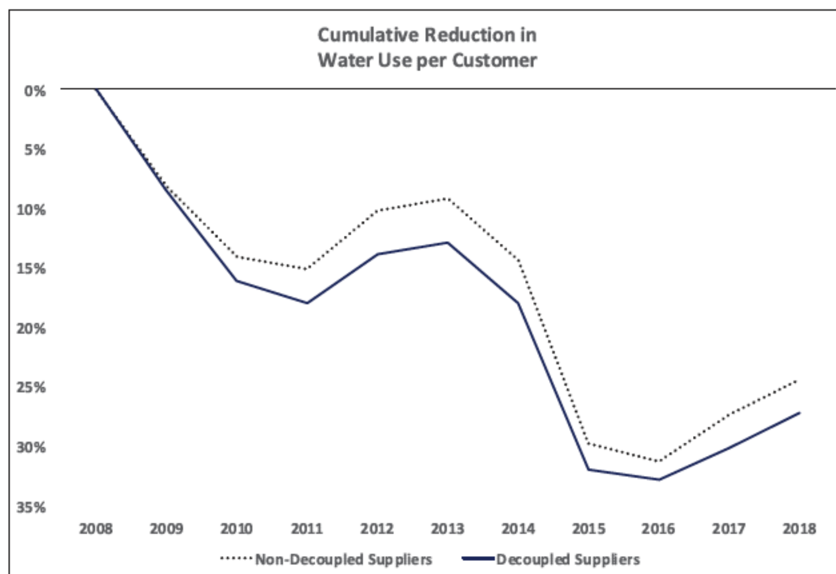
benefit to service, safety, or reliability, will generate more customer frustration.

Finally, Cal Advocates implies that the decoupling mechanism should address "when a utility underspends authorized capital budgets." Cal Advocates does not acknowledge that the Commission requires a long-standing escalation year earnings test to specifically address underspending of authorized capital budgets. This oversight confuses the issue by raising the specter of a known concern that an existing mechanism already addresses. Notably, Cal Advocates does not argue that the earnings test is inadequate.

2. Cal Advocates' Comments Do Not Cure the Inadequate Record

Great Oaks highlights that the PD improperly accepts without question a limited data set that has not been subject to public review, and failed to provide stakeholders the opportunity to provide different data.[6] Cal Advocates references the three data sets upon which the PD draws the conclusion that decoupled companies do not conserve any more than non-decoupled companies. While Cal Advocates' claim regarding its own data set is unsurprising, the public has not been given access to the two remaining data sets. Either Cal Advocates has access to what has been withheld from other stakeholders, Cal Advocates is making a claim unsupported by analysis, or Cal Advocates has been able to replicate the results cited in the PD. In the absence of the latter, Cal Advocates' assertion that the data sets are "accurate" should be given little weight.

The importance of the Commission having access to more data is illustrated by the following graph, *which uses the same data source relied upon by Cal Advocates*, but tells a very different story:



The above graph shows that decoupled water companies have consistently maintained greater

[6] Great Oaks Water Company's Comments to Proposed Phase 1 Decision ("Great Oaks") at 9-10.

cumulative reductions, on a per capita basis, as compared to M-WRAM companies. Before the drought, customers of decoupled companies achieved 29% more than those of non-WRAM companies. For the entire period of 2008-2018, the savings were more than 13%. Stakeholders and customers deserve a policy decision based on a comprehensive understanding of the data related to decoupling. With data like the above absent from the record in Phase 1, the Commission has yet to achieve this understanding.

B. The Commission Should Reject the Proposal to Transition Cal Water to an M-WRAM in its Pending GRC

1. The Pending Settlement Addresses the Concerns of the PD Without Jeopardizing Conservation

For Cal Water, the first opportunity to implement the sales forecasting and rate design guidance in D.16-12-026 was in its July 2018 GRC application (A.18-07-001). In comments on this PD, Cal Water described the several tools used, including a shift in revenue recovery, and re-setting both the rates and the amount of water in each tier.[7] Furthermore, the proposed settlement is based upon a robust sales forecasting methodology that already includes each of the factors the PD recommends for improving sales forecasts.[8] The Commission should reject Cal Advocates' last-minute proposal to eliminate decoupling in A.18-07-001 and jettison that work.[9]

More importantly, for the reasons described in Cal Water's comments on the PD, many of the customers the Commission seeks to protect would be harmed by a revenue-neutral change in rate design to reflect the characteristics associated with M-WRAM companies.[10] During this time of continuing financial insecurity, the bills of lower water users should not increase due solely to a flawed policy decision, rather than to reasonable and prudent increases in costs approved by the Commission.

In addition, one factor relied upon by the PD to support the elimination of decoupling is absent from A.18-07-001. Per the settlement agreement, Cal Advocates avers that the agreed-upon sales forecasts are appropriate, regardless of the Commission's treatment of decoupling. Unlike Cal Water, Cal Advocates does not indicate that the M-WRAM it recommends in that case requires

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[7] Comments of the California Water Service Company (U 60 W) on the Proposed Decision of Commission Guzman Aceves ("Cal Water") at 6-7.

[8] PD at 46-47.

[9] As Great Oaks indicates, "Effective and smart regulation does not include making sweeping and abrupt policy changes without first considering whether existing policies have worked." Great Oaks at 4.

[10] *See, e.g.,* Cal Water at 3-6. In its GRC, Cal Water explained that a transition to an M-WRAM would require reconsideration of rate design. Opening Brief of California Water Service Company, A.18-07-001 (September 9, 2019) at 47. ("Any significant change with respect to Cal Water's full WRAM/MCBA – including the recommended changes by [the Public Advocates Office to transition to an M-WRAM] – will necessitate a significant if not complete overhaul of Cal Water's rate design."). Cal Advocates did not object to this assertion in its Reply Brief.

reconsideration of the settled sales forecast. Because the proposed settlement reflects sales assumptions reviewed and approved by Cal Advocates, any of the concerns about the company's sales forecasting incentives in A.18-07-001 should be fully allayed.

The settlement in A.18-07-001 reflects a new balance between conservation, affordability, and reliable infrastructure for each of Cal Water's twenty ratemaking areas. Not only will the tools described above decrease the likelihood that high decoupling balances will develop in the future, customers will continue to experience strong conservation signals. The avoided costs associated with the continuing decrease in water consumption will benefit customers in both the short- and long-term.

2. The Commission Should Not Further Delay a Decision That Is Already Overdue

Reply Briefs were filed in Cal Water's GRC proceeding in September 2019, and parties filed a proposed settlement addressing the majority of issues in the case in October 2019. With the statutory deadline for resolving the case established as September 30, 2020, a proposed decision must be issued by August 25, 2020, at the latest, in order to be addressed at the Commission's September 24, 2020 Voting Meeting.

As discussed above, the record in A.18-07-001 does not reflect rate designs appropriate for Monterey-style WRAMs. The PD itself indicates that the transition to M-WRAMs "should not be implemented immediately."[13] Cal Advocates' proposal would require re-opening the record for A.18-07-001 and initiation of a second phase devoted to rate design, potentially requiring evidentiary hearings and briefs. Resolution of the GRC proceeding is already overdue by eight months and counting. While Cal Water has requested that new rates go into effect on January 1, 2021 in order to give customers that benefit of rate stability amidst the financial disruption caused by COVID-19, a revenue-neutral re-design of rates for all twenty of Cal Water's ratemaking areas, any additional adjustments of RSF funding, and the unavoidable procedural delays for due process combine to make it unlikely that the Commission could adopt new final rates before January 1, 2021.

III. CONCLUSION

For the reasons discussed above, Cal Water continues to urge the Commission to correct the significant errors in the PD, and defer consideration of the policy merits of decoupling to a separate proceeding, or to a later phase of this proceeding, when it can be appropriately evaluated. Furthermore, Cal Advocates' proposal to modify the PD to require transition to an M-WRAM in A.18-07-001 is unwarranted and should be rejected.

[13] PD at 56-57.

Respectfully submitted,

Date: August 3, 2020

Respectfully submitted,

By: <u>*/s/ Natalie D. Wales*</u>
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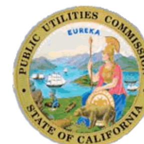
JOINT APPENDIX CC



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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low – Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024

REPLY COMMENTS OF GOLDEN STATE WATER COMPANY (U 133 W)
ON PROPOSED DECISION AND ORDER

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August 3, 2020

REPLY COMMENTS OF GOLDEN STATE WATER COMPANY (U 133 W) ON PROPOSED DECISION AND ORDER

I. INTRODUCTION

Pursuant to Rule 14.3(d) of the Commission's Rules of Practice and Procedure, Golden State Water Company ("GSWC") submits these reply comments identifying (i) the misrepresentations of fact and condition of the record in the comments of the Public Advocates Office ("Cal PA") on the Proposed Decision ("PD") in respect of the WRAM/MCBA and Monterey-style WRAM ("M-WRAM")/ICBA, and (ii) how the comments of the Joint Advocates[1] demonstrate the unintended negative consequences, including affordability concerns, associated with converting a WRAM/MCBA to an M-WRAM/ICBA.

GSWC, and almost every other party, disagrees with Cal PA's recommendations on the WRAM/MCBA and M-WRAM/ICBA. But there is one related point on which there is unanimity: The PD fails to support adequately any order requiring conversion from a WRAM/MCBA to an M-WRAM/ICBA. Cal PA worked hard to explain away this failing as inconsequential. GSWC and the other parties demonstrated the contrary; this failure is fatal, both because no record was established that supports this dramatic shift in policy and because the PD fails to address the negative consequences likely to result from this change. Accordingly, Cal PA's suggested "clarifications" to the PD should be rejected and the Commission should decline to order the conversion from a WRAM/MCBA to an M-WRAM/ICBA.

II. CAL PA'S COMMENTS REGARDING THE WRAM/MCBA SHOULD BE REJECTED

A. The Record Does Not Support Conversion to M-WRAM/ICBA Mechanisms

The Commission should reject Cal PA's recommendation to modify the PD to "[r]eflect that the record demonstrates that the WRAM/MCBA Ratemaking Mechanism is not necessary to achieve conservation" because the underlying premise is false. Cal PA identifies three data sets that it claims support this premise; none of this data actually does, and two of the data sets are not even in the record.

The first "data set" is a graph submitted by Cal PA in its final reply comments prior to the PD's issuance,[2] which strategy denied the other parties any opportunity to evaluate and rebut the data, as is required by due process before the Commission may change its orders in reliance on this data.[3] Cal PA's graph fails to demonstrate that the M-WRAM/ICBA are as effective as the WRAM/MCBA in promoting conservation because that data (i) fails to show the substantial cumulative effects of the conservation efforts in WRAM utility service areas, which during the most indicative six-year period resulted in a

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[1] Collectively Pacific Institute for Studies in Development, Environment, and Security, the Leadership Counsel for Justice and Accountability, the Community Water Center, and the Natural Resources Defense Council.
[2] Referred to by Cal PA as "eight years of annual change in average consumption for WRAM and non-WRAM utilities, showing almost identical patterns of change in consumption" (Cal PA Comments on PD at 4).
[3] *See* Comments of Golden State Water Company (U 133 W) on Proposed Decision and Order (hereinafter "GSWC Comments on PD") at notes 34-38 and accompanying text.

reduction in usage per customer for WRAM utilities that was almost 30% greater than for M-WRAM utilities,[4] and (ii) fails to reflect that during the two-year period in which M-WRAM customers significantly reduced consumption (A) they were subject to mandatory conservation orders imposed by governmental authorities, and once those orders were lifted, the conservation outcomes of M-WRAM utilities reverted to being materially worse than those of the WRAM utilities,[5] and (B) three of the four M-WRAM utilities benefitted from revenue decoupling mechanisms that effectively turned their M-WRAMs into full WRAMs.[6] Had Cal PA's graph been subject to evaluation and rebuttal, it would be clear that this data fails to support Cal PA's and the PD's conclusion.

The other two data sets to which Cal PA points[7] suffer from the same flaws as the Cal PA graph and also are problematic because the data only covers water utility customers in "urban" service territories.[8] But more critically for purposes of responding to Cal PA's recommendation, neither of these data sets is in the record in this proceeding. Rather, they were discussed for the first time in the PD by reference to a certain "Table A" that was supposed to have been included in the PD but was omitted due to a "clerical error."[9] Even if "Table A" had been included in the PD, the data would not be in the record as it would have appeared for the first time in the PD—after the evidentiary record was closed.[10]

Because there is no evidence that "the WRAM/MCBA Ratemaking Mechanism is not necessary to achieve conservation," the Commission should reject Cal PA's requested modification of the PD.

B. Cal PA's Factual Assertions regarding the WRAM/MCBA are False

Cal PA falsely claims that the WRAM incentivizes utilities to over-forecast consumption and propose rates that are artificially low during general rate cases ("GRCs").[11] This is wrong. Due to the time-value of money, WRAM companies ultimately lose money when there are significant under-collections. This is because WRAM balances accrue interest at the very low 90-day commercial paper rate[12] and WRAM surcharges are capped at 10% of the last authorized revenue requirement.[13] So if

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[4] *Id*. at 10-11.
[5] *Id*. at 11-12.
[6] *Id*. at 12-13.
[7] Referred to by Cal PA as (i) five years of water savings percentages from WRAM utilities versus M-WRAM utilities that show cumulative water savings for M-WRAMs exceeding cumulative water savings from WRAM utilities and (ii) five years of conservation data from Class B non-WRAM utilities showing conservation for non-WRAM utilities exceeding conservation for WRAM and M-WRAM utilities (Cal PA Comments on PD at 4).
[8] GSWC Comments on PD at 13.
[9] *Id*. at note 39 and accompanying text.
[10] Decision 19-06-039 at 5 (explaining that all proceedings "must have a point where the evidence is considered submitted and no more evidence is accepted without a motion or request," and that this process "ensures that all parties have an opportunity to comment upon the evidence thereby ensuring due process").
[11] Cal PD Comments on PD at 2.
[12] Standard Practice U-27-W at 9.
[13] *See* Decision 12-04-048 at 41, Ordering Paragraph #3.

there are large WRAM under-collections, the period of time over which the utility can recapture those under-collections is very long, and the minimal interest that accrues on WRAM balances is insufficient to compensate the utility for that lost value. GSWC is also fully aware that neither the Commission nor our customers like large WRAM balances; we strive to forecast sales as accurately as possible in our GRCs so as to keep our WRAM balances low and to avoid Commission and customer concern.

Cal PA also falsely claims that the WRAM provides an opportunity "for Water IOUs to significantly increase rates outside of the GRC process via WRAM surcharges."[14] WRAM surcharges are in no way "outside of the GRC process." Rather, they allow utilities to recover the revenue requirement that was authorized during the GRC if and only if the authorized revenue requirement would not otherwise be recovered because actual sales are lower than the forecasts approved, after litigation or settlement, in the GRC. And if actual sales are higher than forecasted sales, the utility credits or refunds to its customers the amount earned in excess of its revenue requirement. This relates directly to Cal PA's other false assertion: that the WRAM/MCBA benefits utilities to the detriment of customers. Cal PA argues that "MRAM/MCBA results in inaccurate forecasts and transfers risks from the Water IOUs to customers."[15] To the contrary, the WRAM/MCBA are two-way balancing accounts that reduce forecast-error risk for both customers and utilities. When amounts are under-collected, customers are surcharged and when amounts are over-collected, customers receive a credit or refund. Within the last four years, GSWC has had many over-collections that resulted in credits or refunds.[16]

Finally, Cal PA's claim that the WRAM/MCBA enables utilities to collect their forecasted fixed costs even "[i]f estimated fixed costs do not materialize"[17] is misguided and misleading. It is misguided because utilities' rates are set based upon two related expectations: (i) within a given GRC period, utilities will recover their estimated fixed costs whether they materialize or not, and (ii) if utilities spend more on capital projects than their estimated fixed costs within the GRC period, they will not recover the overspend during the relevant period. Moreover, because the WRAM/MCBA also return funds to customers if sales forecasts turn out to have been too low, the mechanisms protect customers against possibly paying more towards a utility's fixed costs than authorized in the GRC. As such, there would be nothing wrong with a WRAM/MCBA resulting in utility recovery of estimated fixed costs within a given rate case period, if that is what were to transpire based on the underlying circumstances.

Cal PA's claim is misleading because it fails to address the Commission's pro-forma earnings

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[14] Cal PA Comments on PD at 2.
[15] *Id*. at 3.
[16] *See* AL 1694-W (filed Mar. 13, 2017), AL 1740-W (filed Mar. 14, 2018), AL 1741-W (filed Mar. 23, 2018), ALs 1767-W and 1766-W (filed Mar. 21, 2019), and AL 1813-W (filed Mar.18, 2020) (submitted with WRAM over-collections in Region 3, Arden Cordova and Simi Valley).
[17] Cal PA Comments on PD at 8.

test. Recognizing that a utility's revenue requirement is developed based on forecasts that may not prove accurate, the Commission instituted the pro forma earnings test to ensure that a utility does not get to implement an attrition year rate increase if it already is earning more than its authorized rate of return. Underspending on its capital budget would be a likely cause of a utility's earnings test failure. In such a case, the pro forma earnings test would operate to limit the utility's ability to recover, during the second and third year of the rate cycle, those estimated fixed costs that did not materialize.

Given Cal PA's failure to grasp the basic principles of test-year ratemaking and the protections afforded by the pro forma earnings test, the Commission should give no weight to Cal PA's claim that the WRAM/MCBA enable utilities to charge customers for "fixed costs [that] do not materialize".

C. If GSWC were Required to Convert to an M-WRAM/ICBA in A.20-07-012, the Application Would Require Extensive Changes

The Commission should reject Cal PA's request that GSWC transition to an M-WRAM in our current GRC. Such an order would (i) require that we re-do a huge portion of A.20-07-012, (ii) be very costly, (iii) significantly delay the GRC and (iv) lead to customer confusion. The PD acknowledges that converting to an M-WRAM/ICBA would be a "major change" that will take time to implement.[18] Cal PA's statement that the application was filed "only two weeks ago" ignores the year of work and considerable utility resources dedicated to preparing A.20-07-012 and the extensive changes (and time to make the changes) that would be required were the WRAM eliminated. As the WRAM is a critical underpinning of GSWC's conservation rates, GSWC would be unduly and unlawfully prejudiced if required to convert to an M-WRAM in our current GRC without an opportunity to make other changes.

There is no question that, if required to convert to an M-WRAM, GSWC would propose an entirely different rate design that mitigates the loss of revenue decoupling. To illustrate: (i) in our WRAM districts, we recover only 42% of our fixed costs in the service charge, but in Clearlake, which is not a WRAM district, we recover 50% of fixed costs in the service charge, and (ii) Great Oaks Water Company (an M-WRAM utility) recovers 75% of its fixed costs in services charges.[19] Our conservation rate tier breaks, number of tiers, and the rate differential between tiers would also require reassessment. Those rate design changes would directly impact our forecasted sales and thus indirectly impact virtually every aspect of the application, including re-evaluation of our water supply needs and capital projects.

In sum, A.20-07-012 was premised on the WRAM/MCBA remaining in effect. Without those mechanisms, we would need to re-do much of the application, resulting in a costly waste of utility resources and a significantly delayed GRC. And GSWC has already published and will soon mail the

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[18] PD at 57.
[19] Great Oaks Water Company's Comments to Proposed Phase I Decision at 5.

customer notices regarding the requested rate increases in A.20-07-012. If we are required to re-do the application, GSWC would need to re-notice all of our customers, which would undoubtedly create customer confusion. Accordingly, if the Commission requires GSWC to convert from a WRAM/MCBA to an M-WRAM/ICBA, we should only be required to do so in our next GRC, not in A.20-07-012.

III. THE JOINT ADVOCATES' COMMENTS REVEAL THE DETRIMENTAL EFFECTS OF ABANDONING THE WRAM/MCBA

The Joint Advocates neither endorse nor reject the PD's proposal to require conversion to an M-WRAM/ICBA, but their observations reveal the detrimental effects of such a conversion on low-use customers and conservation. Although not stated explicitly, the Joint Advocates' recommendations reflect that the rate designs of M-WRAM utilities are both less affordable for low-use customers and less effective in incentivizing conservation. The Joint Advocates argue:

> [A]ny proposed rate structure that increases the share of total revenues to be derived from traditional fixed charges, or that proposes unaffordable Tier 1 rates, should not be approved by the Commission in the GRCs, and the Commission should clearly adopt policies that prevent rate structures that eliminate or reduce conservation incentives.[20]

As discussed above in connection with GSWC's existing GRC, it would not be reasonable to expect that WRAM utilities will be able to maintain their more progressive rate designs if forced to abandon the revenue decoupling mechanisms that support those rates. Were the Commission to order conversion to an M-WRAM/ICBA, the rate design changes of concern to the Joint Advocates would need to be part of the conversion. This is a key reason that ordering such a conversion would be a mistake.[21]

IV. CONCLUSION

For the foregoing reasons, GSWC requests that the Commission revise the PD as set forth in GSWC's comments on the PD.

August 3, 2020

Respectfully submitted,

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[20] Joint Advocates' Comments on Proposed Decision and Order (Phase I) at 6-7.

[21] The Joint Advocates also make a recommendation that contemplates maintaining the WRAM: establishing pre-approved drought contingency rates as a means of avoiding excessive WRAM balances. As stated in GSWC's comments on the PD, if the Commission believes it necessary to reconsider maintaining the WRAM/MCBA, the Commission should do so in a separate proceeding or in a separate phase of this proceeding during which options such as drought contingency rates may be considered.

JOINT APPENDIX DD

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA-AMERICAN WATER COMPANY
Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Respondent.

Decision Nos. 20-08-047 and 21-09-047

Of the Public Utilities Commission of the State of California

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EXHIBIT U

Reply Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves, R.17-06-024, August 3, 2020

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low – Income Customers of Investor-Owned Water Utilities, and Affordability.	R.17-06-024

REPLY COMMENTS OF CALIFORNIA-AMERICAN WATER COMPANY
ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES

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August 3, 2020

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC), California-American Water Company (CAW) submits these Reply Comments on the *Proposed Decision of Commissioner Guzman Aceves* (PD). In opening comments, CAW and several other parties demonstrated that the elimination of the decoupling WRAM/MCBA would not address affordability or reduce rates for low-income customers, and would remove an important and effective conservation tool.[1] The shift in cost recovery resulting from elimination of the WRAM/MCBA would create an added ongoing financial burden for CAW's most economically vulnerable customers and would provide a benefit to high-volume water users in CAW's wealthiest communities.[2] Furthermore, **given the lack of transparency and the nonexistent record in this proceeding, adoption of the PD would constitute a legal error**. If the CPUC is inclined to revisit continuation of the decoupling WRAM/MCBA, it should do so in a separate proceeding with adequate notice and opportunity for interested parties to participate. At a time when Californians are facing significant challenges due to the economic effects of the COVID-19 emergency, as well as experiencing impacts from climate change, the CPUC should not risk substantial harm by acting in an arbitrary and capricious manner.

In its opening comments, CAW also raised concerns regarding the obstacles associated with developing a pilot program that would provide a direct discount to low-income non-customer residents of multi-family housing[3] and with the proposed Minimum Data Requirements (MDRs) for consolidation applications.[4] In these reply comments, CAW will focus on the misrepresentations made in the opening comments of the Public Advocates Office (CalPA), recommendations regarding timing and collaboration opportunities for the pilot program included in the comments of the Joint Advocates and the Center for Accessible Technology, and the need to avoid unnecessarily complicating the consolidation process.

II. CALPA MISCHARACTERIZES THE RECORD ON CONSERVATION

CalPA falsely claims that the record in this proceeding demonstrates that the WRAM/MCBA is not necessary to achieve conservation, thereby justifying its elimination.[5] As discussed in more detail below, **there is**

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[1] *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves* (CAW Comments), pp. 2-6; *Comments of the National Association of Water Companies on the Proposed Decision of Commissioner Guzman Aceves*, pp. 2-3; *Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves*, pp. 3-6; *Comments of Golden State Water Company (U 133 W) on Proposed Decision and Order*, pp. 7-8;

[2] CAW Comments, pp. 2-6.

[3] *Id.*, pp. 11-13.

[4] *Id.*, pp. 13-15.

[5] *Comments of the Public Advocates Office on the Proposed Decision of the Assigned Commissioner* (Cal Advocates Comments), pp. 3-4.

no record in this proceeding with respect to the link between the WRAM/MCBA and conservation.[6]

In its comments, CalPA states that the "record" on conservation consists of three "data sets."[7] The first "data set" is a graph included in reply comments filed by CalPA in response to a ruling from the assigned Administrative Law Judge, purporting to compare the annual change in consumption for Class A water utilities with and without a WRAM/MCBA over an eight-year period.[8] No information was provided with respect to the data or methodology underlying the graph, other than a cite to the "Class A Annual Reports to the CPUC." Because this information was presented for the first time in the final set of reply comments, none of the parties had the opportunity to determine or dispute the veracity of the information presented.

The second "data set" cited by CalPA is a reference in the PD to Table A. The PD states that Table A shows, based on "public information available from the State Water Resources Control Board," that water savings by utilities with Monterey-style WRAMs (M-WRAMs) exceeded the conservation for those utilities with WRAM/MCBAs during the period from 2015-2019.[9] The PD does not provide a specific citation to any State Water Resources Control Board (SWRCB) data or reports. Table A was not included in the PD and, according to an email from the assigned Administrative Law Judge, does not exist. Moreover, this is the first mention in this proceeding of SWRCB conservation information. The parties did not have the opportunity to analyze SWRCB data or address whether it is appropriate to assess the effect of the WRAM/MCBA using data from this period. A record is developed over the course of the proceeding – it cannot be created in a PD.

The third "data set" cited by CalPA is another reference to the non-existent Table A. The PD states that Table A shows the conservation achieved by Class B water utilities without WRAM/MCBAs or M-WRAMs exceeded the conservation by water utilities with these mechanisms during the period from 2015-2019.[10] The PD does not indicate the source for this information and there is no record to support this statement.

A graph which the parties had no opportunity to assess or refute, a non-existent table, and a generic reference to "public information" from the SWRCB (mentioned for the first time in the PD) cannot be considered a "record." In the prior proceedings in which the CPUC assessed the WRAM/MCBA, it based its decisions on ample records developed during proceedings that provided opportunities for parties to present information and review and respond to the information presented by others.[11] The PD justifies the elimination of the WRAM/MCBA in large part

[6] CAW Comments, pp. 7-8.
[7] Cal Advocates Comments, p. 3.
[8] *Reply Comments of Public Advocates Office on the Water Division's Staff Report and Response to Additional Questions*, September 23, 2019, p. 7.
[9] PD, p. 55.
[10] *Id.*
[11] *See* D.08-02-036; D.08-08-030; D.12-04-048; D.16-12-003; D.16-12-026.

on the premise that the WRAM/MCBA is not necessary to achieve conservation. Given the complete lack of a record on this issue in this proceeding, adoption of the PD would constitute a legal error.

III. CALPA MISCHARACTERIZES THE INCENTIVES CREATED BY THE WRAM/MCBA

CalPA alleges that the WRAM/MCBA creates an incentive for water utilities to overestimate sales in their GRC forecasts, resulting in lower GRC rate increases and larger WRAM/MCBA balances.[12] Contrary to the claims of CalPA, however, there is no benefit in shifting recovery of authorized costs from rates to the WRAM/MCBA.

Although CalPA inaccurately states that a water utility can shift recovery of authorized costs from rates to the WRAM/MCBA "with no long-term consequence to its revenue collections,"[13] the lag associated with revenue recovery through the WRAM/MCBA can financially harm water utilities (to the detriment of customers). The delay in recovery of these authorized costs, which can be twenty years or longer, has a direct impact on cash flow. Since CAW has had to fund the WRAM/MCBA undercollections with long-term debt and equity, the 90-day commercial paper rate applied to WRAM/MCBA balances does not allow CAW to recover the costs it incurs to fund the undercollections. Therefore, the WRAM/MCBA maintains the added incentive of water utilities to strive to accurately forecast sales in order to provide for timely recovery of authorized fixed costs and avoid the negative financial consequences of large WRAM/MCBA balances.

CalPA also appears to argue that water utilities have the incentive to shift recovery of costs to the WRAM/MCBA because recovery of WRAM/MCBA balances allegedly involves "reduced transparency and public scrutiny."[14] As an initial matter, CAW is proud of its record of providing safe, efficient and reliable water service, is committed to transparent and full communication with its customers, and does not object to public scrutiny of its costs. The costs recovered through the WRAM/MCBA are authorized costs that are transparent to the public through the GRC process, scrutinized by Cal Advocates and other interested parties, and determined to be reasonable by the CPUC.

Moreover, with respect to recovery of WRAM/MCBA balances through advice letters, the CPUC has concluded that "the advice letter process provides necessary protections"[15] and "existing procedures fully protect ratepayers and the public."[16] In particular, the CPUC noted that parties, customers and the public have the opportunity to protest advice letters,[17] parties have an opportunity for discovery upon request,[18] the CPUC has the

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[12] Cal Advocates Comments, p. 7.
[13] *Id*.
[14] *Id.*, p. 8.
[15] D.16-12-003, p. 35.
[16] *Id.*, p. 36.
[17] *Id.*, p. 35, citing General Order 96-B, General Rule 7.4.1.
[18] *Id.*, p. 36, fn. 37.

ability to reject or suspend advice letters,[19] and the CPUC can require that additional notice to be provided to customers if necessary.[20]

In addition to erroneously arguing that the WRAM/MCBA incentivizes water utilities to overestimate sales, CalPA also contends that elimination of the WRAM/MCBA will create an incentive to *underestimate* sales.[21] The fact that these incentives allegedly occur with or without a WRAM/MCBA undercuts the arguments of CalPA in favor of its removal. Moreover, while CAW does not necessarily agree that such incentives exist, CalPA ignores the robust review of water utility sales forecasts that occurs as part of the GRC. As CalPA stated in its comments, "The GRC process provides considerable transparency, oversight, notice, and public participation."[22] It is the CPUC's responsibility to ensure that adopted rates are just and reasonable, including the forecasts underlying such rates. To the extent that CalPA or others believe that a water utility is over- or under-estimating its sales forecast it can address this issue through testimony, hearings and briefs. Since the accuracy of sales forecasts is already addressed through the GRC process there is no need to take the drastic step of eliminating the WRAM/MCBA, with the attendant negative consequences for low-income customers and impacts on conservation, to address this issue.

IV. THE CPUC SHOULD ALLOW FLEXIBILITY IN THE LOW-INCOME MULTI-FAMILY HOUSING PILOT

The PD gives CAW 60 days to develop a "pilot program that provides a discount to water users in low-income multifamily dwellings that do not pay their water bill directly through the utility."[23] In its opening comments, CAW noted the well-documented obstacles to providing a discount directly to non-customers,[24] including the CPUC's own inability to determine an equitable way to provide such a benefit.[25] The Joint Advocates discussed similar hurdles in their opening comments, but also pointed out the benefits to low-income customers of discounted conservation and efficiency programs and bill discounts for certain types of multi-family housing.[26] The Joint Advocates, as well as the Center for Accessible Technology, recommended extending the period to develop the pilot program from 60 to 120 days, to allow CAW to collaborate with stakeholders and interested parties.[27]

CAW welcomes the opportunity to access the expertise of these organizations and obtain the input of

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[19] *Id.*, p. 36, citing General Order 96-B, General Rule 7.6.1.
[20] D.16-12-003, p. 38.
[21] Cal Advocates Comments, p. 8, fn. 31.
[22] *Id.*, p. 7.
[23] PD, pp. 64-65.
[24] CAW Comments, pp. 12-13.
[25] D.05-05-015, p. 4.
[26] *Joint Advocates Comments on Proposed Decision and Order (Phase 1)* (Joint Advocates Comments), pp. 9-10.
[27] Joint Advocates Comments, pp. 10-11; *Comments of the Center for Accessible Technology on Proposed Decision and Order (Phase 1)*, p. 6.

stakeholders, and agrees that extending the deadline to at least 120 days would aid this effort. CAW also requests that the CPUC modify the PD to allow the pilot program to include proposals that benefit low-income residents of multi-family housing even if the discounts are not provided directly to non-customers. Making the pilot program more flexible will allow CAW and interested parties to develop innovative ways to provide assistance.

V. THE CPUC SHOULD NOT UNECESSARILY COMPLICATE THE CONSOLIDATION PROCESS

The PD sets forth MDRs to be included with all consolidation applications.[28] In its opening comments, CAW cautioned that some of the MDRs may make the process less efficient (particularly since many MDRs were just copied from a list developed in another state), and could make such beneficial transactions less attractive to potential buyers and sellers.[29] In its opening comments, CalPA recommended that the CPUC modify the PD to give CalPA the power to determine whether the MDRs are complete.[30] CAW urges the CPUC to reject this request. As a potentially adverse party with its own vested interests, it would be inappropriate to give CalPA the power to determine the sufficiency of the MDRs provided. This extra step would also be unnecessary. In cost of capital filings, water utilities provide the MDR information with the application and supporting materials.[31] Like cost of capital proceedings (and unlike GRCs), the issues to be considered for a consolidation application are relatively limited. Therefore, if the CPUC adopts the consolidation MDRs, it should similarly allow the required material to be provided with the consolidation applications. Given the benefit of consolidation recognized in the PD, there is no reason to make the process more burdensome by adding additional unnecessary steps.

VI. CONCLUSION

As discussed above and in CAW's opening comments, adoption of the PD would constitute a legal error and would result in increased rates for CAW's most economically vulnerable customers while providing a benefit to high-volume water users in CAW's wealthiest communities. CAW urges the CPUC to modify the PD as indicated in Attachment A to CAW's opening comments and take the time to conduct a thorough and comprehensive review of the relevant issues.

August 3, 2020

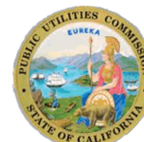
Respectfully submitted,

By: */s/ Sarah E. Leeper*

Sarah E. Leeper, Vice President and General Counsel
California-American Water Company

[28] PD, pp. 71-76.
[29] CAW Comments, pp. 13-15.
[30] Cal Advocates Comments, p. 11.
[31] D.07-05-062, Appendix A, A-32 – A-33.

JOINT APPENDIX EE



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

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024 (Filed June 29, 2017)

JOINT REPLY COMMENTS OF LIBERTY UTILITIES (PARK WATER) CORP. (U 314-W) AND LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP. (U 346-W) ON THE PROPOSED DECISION

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Dated: August 3, 2020

Attorneys for Liberty Utilities (Park Water) Corp. and
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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024 (Filed June 29, 2017)

JOINT REPLY COMMENTS OF LIBERTY UTILITIES (PARK WATER) CORP. (U 314-W) AND LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP. (U 346-W) ON THE PROPOSED DECISION

In accordance with Rule 14.3 of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission ("Commission") and the email from Administrative Law Judge Haga dated July 6, 2020, Liberty Utilities (Park Water) Corp. ("Liberty Park Water") and Liberty Utilities (Apple Valley Ranchos Water) Corp. ("Liberty Apple Valley") (together, "Liberty"), hereby submit reply comments on the Proposed Decision of Commissioner Guzman Aceves entitled "Decision and Order" ("PD").

Liberty supports the opening comments of the other parties to this proceeding who have raised significant and alarming issues regarding the PD's order that each water utility employing a Water Revenue Adjustment Mechanism/Modified Cost Balancing Account ("WRAM/MCBA") must transition to a Monterey-Style Water Revenue Adjustment Mechanism/Incremental Cost Balancing Account ("Monterey-Style WRAM/ICBA") in its next general rate case ("GRC") application. These issues include that the failure to provide an opportunity to be heard is a violation of law, the PD is mistaken in stating that the Commission has not endorsed the WRAM since D.12-04-048, the PD's conclusion that the WRAM is unnecessary for conservation is based on faulty evidence, the Monterey-Style WRAM/ICBA does not provide the same benefits to customers as the WRAM/MCBA, and evaluation of the WRAM was never put forth in the scope of this proceeding.

Opening comments from the California Water Service Company, California-American Water Company and the Golden State Water Company raise the particularly problematic issue that the elimination of the WRAM may result in increased rates for low-income customers and actually benefit

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high-volume water users.[1] Nothing in the record addresses these negative effects for low-income customers or affordability in general. This failure to consider the impacts for low-income customers is particularly unreasonable given that these considerations are the point of this proceeding. The Commission should reject the PD's disposition of the WRAM/MCBA and initiate a new phase of this proceeding to establish a complete record with all parties' input to prevent a result that may harm the very customers it wants to protect.

Additionally, the Commission should reject the Public Advocate Office's request to require a proposed application for acquisitions because it will cause unnecessary burden and delay.

I. THE PUBLIC ADVOCATES OFFICE'S COMMENTS UNDERSCORE THE PD'S MISUNDERSTANDING OF THE WRAM.

The Public Advocates Office seeks several modifications for what it calls "ambiguities" or "imprecise statements" in the PD.[2] These requests demonstrate that even the Public Advocates Office believes that the PD does not accurately explain or understand the WRAM. For example, the Public Advocates Office states that Finding of Fact No. 8 is incorrect because "surcharge amounts are not rolled into quantity rates, but billed as a separate line item," and that the PD inaccurately references "rate increases" instead of "bill increases."[3] The Public Advocates Office then continues for several pages to allegedly help correct inaccuracies in the PD regarding how the WRAM and Monterey-Style WRAM function.[4] Although most of the Public Advocates Office's corrections are themselves wrong, its belief that the PD does not accurately explain the WRAM demonstrates that the Commission must take a much closer look at the WRAM before making the rash move of eliminating it. As discussed in opening comments, a new proceeding or additional phase of this proceeding dedicated to a transparent examination of the WRAM would provide a forum to evaluate the inaccuracies in the PD raised by all parties, including the Public Advocates Office.

The Public Advocates Office claims that the PD errs in its description of WRAM and Monterey-Style WRAM's impact on sales forecasting. The Public Advocates Office contends that "the WRAM/MCBA mechanism removes all financial consequences of inaccurate sales forecasting from the water utility and *transfers* this risk to its customers."[5] This assertion is false. As explained in the

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1 *See* California-American Water Company's Opening Comments at 2-6, California Water Service Company's Opening Comments at 3-6, and Golden State Water Company's Opening Comments at 7-8.
2 Public Advocates Office's Opening Comments at 6.
3 *Id.* at 7.
4 *Id.*at 7-10.
5 *Id.* at 7.

opening comments of Liberty and Great Oaks Water Company,[6] the WRAM/MCBA does ***not*** eliminate the consequences of inaccuracy for the water utility, and the suggestion that there is no financial risk for the utility is wrong. It appears that improving sales forecasting is a major objective for both the PD and the Public Advocates Office. Elimination of the WRAM, however, will not accomplish that objective and may result in many negative consequences that neither the PD nor the Public Advocates Office has yet considered. Although the Public Advocates Office's contention regarding the WRAM's impact on sales forecasting is incorrect, its contention demonstrates the disparate views that must be examined before a decision on the WRAM is made.

Numerous parties have described other significant errors in detail, including, but not limited to, the failure to provide an opportunity to be heard is a violation of law, the PD is mistaken that the Commission has not endorsed the WRAM since D.12-04-048, the PD's conclusion that the WRAM is unnecessary for conservation is based on faulty evidence, elimination of the WRAM will have negative impacts on low-income customers and affordability in violation of the purpose of this proceeding, the Monterey-Style WRAM/ICBA does not provide the same benefits to customers as the WRAM/MCBA, and evaluation of the WRAM was never put forth in the scope of this proceeding.[7]

The fact that almost every party has found significant errors in the PD's evaluation of the WRAM shows that it is imperative the Commission reject the PD's disposition of the WRAM/MCBA. These many issues, questions and concerns must be fully vetted in a separate proceeding in which all stakeholders can have an opportunity to be heard and establish a complete record for the evaluation of the WRAM.

II. <u>THE WRAM HELPS ACHIEVE CONSERVATION GOALS.</u>

The Public Advocates Office states that "the PD accurately concludes that the WRAM/MCBA ratemaking mechanism is not necessary to achieve water conservation," citing its own graph and the PD's non-existent Table A as the data sets that prove that conclusion.[8] As set forth in the majority of the opening comments, these data sets are invalid because California was in a prolonged drought for most or all of the time periods utilized and because all non-WRAM companies had Lost Revenue Memorandum Accounts that provided them with a separate rate decoupling mechanism during the period of

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6 Liberty's Opening Comments at 8-9, Great Oaks Water Company's Opening Comments at 5-7.

7 *See* Opening Comments of California-American Water Company, California Water Association, California Water Service Company, Great Oaks Water Company, Golden State Water Company, and National Association of Water Companies.

8 Public Advocates Office's Opening Comments at 4.

comparison.

Although the parties were not provided with an opportunity to evaluate and refute these data sets before issuance of the PD, in its opening comments, the Golden State Water Company undertook an analysis of these data sets, which "shows that customers of WRAM companies do in fact conserve more than customers of M-WRAM companies."[9] That analysis provides a glimpse of the type of input that could be offered if all parties had a meaningful opportunity to examine the data sets and demonstrates that the PD has no evidence to support its erroneous conclusions about the WRAM's influence on conservation goals. The Monterey-Style WRAM is not as effective at promoting conservation as the WRAM, and it is an error to eliminate the WRAM, especially without the benefits of a fully vetted process in which all parties may properly analyze applicable data sets.

III. THE PUBLIC ADVOCATES OFFICE'S REQUEST TO REQUIRE PROPOSED APPLICATIONS FOR ACQUISTIONS WILL CAUSE SUBSTANTIAL DELAY AND IS CONTRARY TO COMMISSION POLICY.

In its Comments, the Public Advocates Office states that, in addition to adding over 40 items of Minimum Data Requirements ("MDR") for acquisition applications, the Commission should also "require utilities to provide MDR information *prior to* the filing of the acquisition application" by requiring "utilities to submit a proposed application for acquisitions that includes the MDRs, using a similar process as is utilized in GRCS."[10] To avoid any confusion, the Public Advocates Office specifies that the proposed application must include "1) the MDR submittal, and 2) a deficiency review process."[11] Public Advocates Office fails to acknowledge that requiring proposed applications will add at least two months to the timeline for approval of acquisitions.[12]

The Commission supports incentives to encourage the acquisition of small water utilities.[13] The PD rightly supports the consolidation of water systems, stating "[i]t is incumbent upon this Commission to ensure the process to achieve consolidation is as effective and efficient as possible."[14] Adding a minimum of two months to the timeline for approval of acquisitions will not achieve the goal of increasing the efficiency of the process. Instead, it will only add delay.

Moreover, the Public Advocate Office's request to require a proposed application for

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9 Golden State Water Company's Opening Comments at 10-13.
10 Public Advocates Office's Opening Comments at 12 (emphasis in original).
11 *Id.*
12 *See* D.07-05-062 (Rate Case Plan), at A-5 through A-8.
13 2010 Commission Water Action Plan, p. 9. The Consolidation Act itself was enacted by the Legislature, in part, to facilitate the acquisition of small water systems by Class A water utilities. D.99-10-064 at p. 2.
14 PD at 68.

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acquisitions has not been vetted in any way by the parties. It is inappropriate to initiate such a request for the first time in comments on a PD. The parties should be allowed time to consider such an extreme proposal and fully evaluate the potential impacts. For these reasons, the Commission must deny Public Advocates Office's request to require utilities to submit a proposed application for acquisitions.

Additionally, the Public Advocates Office seeks to "clarify" the "terminology" for consolidations and acquisitions by utilizing "the term 'acquisition' when referring to a water utility's purchase of another water system."[15] Although the Public Advocates Office does not provide a reason for this need to clarify the terminology other than "consistency,"[16] its current opposition to acquisitions of small water utilities by Class A utilities raises concerns that the Public Advocates Office is attempting to push its agenda of shifting policy against "acquisitions."[17] As set forth in D.99-10-064, "the Legislature enacted Senate Bill 1268 to add Pub. Util. Code §§ 2718, et seq., the Public Water System Investment and **Consolidation** Act, effective January 1, 1998" to address a "water corporation **acquiring** a public water system."[18] The Consolidation Act specifically addresses the acquisition of water systems. Therefore, the terms acquisition and consolidation have always been used interchangeably by both the Legislature and the Commission since they began encouraging acquisitions because of their benefits to customers. Neither State nor Commission policy supports any attempt to carve out "acquisitions" as separate from "consolidations."

IV. CONCLUSION

For the foregoing reasons, the Commission should reject the PD's order to eliminate the WRAM and open a new proceeding or additional phase of this proceeding to examine the issue. The Commission should also reject the Public Advocate Office's request to require a proposed application for acquisitions because it will cause unnecessary burden and delay.

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15 Public Advocates Office's Comments at 10-11.
16 *Id.*
17 *See* Liberty Park Water and Liberty Apple Valley's Joint Comments at 11.
18 D.99-10-064 at 2 (emphasis added).

Dated: August 3, 2020

Respectfully submitted,

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JOINT APPENDIX FF

Decision **PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**
(Mailed 7/3/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low – Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024

DECISION AND ORDER

b. In what ways can the Commission assist Class A and B utilities that provide unregulated affiliate and franchise services to serve as administrators for small water systems that need operations & maintenance support as proscribed by Senate Bill (SB) 552 (2016)?

2. Forecasting Water Sales:

a. How should the Commission address forecasts of sales in a manner that avoids regressive rates that adversely impact particularly low-income or moderate-income customers?

b. In D.16-12-026, adopted in R.11-11-008, the Commission addressed the importance of forecasting sales and therefore revenues. The Commission, in D.16-12-026, directed Class A and B water utilities to propose improved forecast methodologies in their GRC application[s]. However, given the significant length of time between Class A water utility GRC filings, and the potential for different forecasting methodologies proposals in individual GRCs, the Commission will examine how to improve water sales forecasting as part of this phase of the proceeding. What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?

3. What regulatory changes should the Commission consider to lower rates and improve access to safe quality drinking water for disadvantaged communities?

4. What if any regulatory changes should the Commission consider that would ensure and/or improve the health and safety of regulated water systems?

In addition, the Scoping Memo set forth the following issues would be addressed in 2019 workshops and additional comments from parties:

1. Program Name;
2. Effectiveness of LIRA Programs;
3. Monthly Discounts;

Both the WRAM/MCBA and Monterey-Style WRAM with ICBA mechanisms are independent of low-income ratepayer impacts. Both mechanisms are independent of ratepayer conservation efforts that are primarily driven by rate design considerations.

Moreover, rate design and rate impacts are independent of whether a utility has a WRAM or Monterey-Style WRAM.

In order to achieve a goal of this proceeding to improve water sales forecasting, we agree with the Public Advocates Office of the Public Utilities Commission that water utilities that currently use a WRAM[25] shouldmay propose a Monterrey-Style WRAM in their next GRC. As discussed below, we find that the problems identified in the current WRAM/MCBA process are minimized in a Monterrey-Style WRAM without reducing the benefits we seek to achieve through the use of the WRAM process.

5.2.1. Transitioning WRAM Utilities to Monterey-Style WRAM5.2.1. Barring the Use of WRAM/MCBA in Future General Rate Cases

The January 9, 2018, Scoping Memo laid out the following issues to address in this proceeding:

2. Forecasting Water Sales

a. How should the Commission address forecasts of sales in a manner that avoids regressive rates that adversely impact particularly low-income or moderate income customers?

b. In Decision (D.)16-12-026, adopted in Rulemaking 11-11-008, the Commission addressed the importance of forecasting sales and therefore revenues. The Commission, in D.16-12-026, directed Class A and B water utilities to propose improved forecast methodologies

[25] Cal-Am, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corporation, and Liberty Utilities (Apple Valley Ranchos Water) Corporation. *See,* D.08-08-032, D.08-06-022, D.08-08-030, D.08-09-026, D.08-11-023, D09-05-005, D.09-07-021 and D.10-06-038.

in their GRC application. However, given the significant length of time between Class A water utility GRC filings, and the potential for different forecasting methodologies proposals in individual GRCs, the Commission will examine how to improve water sales forecasting as part of this phase of the proceeding. What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?

…

In comments to this Scoping Memo the California Water Association, among other suggestions, called for folding the WRAM/MCBA recovery into base rates instead of surcharges[26] while the Public Advocates Office of the Public Utilities Commission argued that the large variances in forecasted sales are exacerbated by the WRAM/MCBA process.[27] Accordingly, the August 2, 2019, workshop included a panel on drought sales forecasting that identified a number of problems with the WRAM/MCBA mechanism. The September 4, 2019, Ruling specifically sought comment on whether the Commission should convert utilities with a full WRAM/MBCBA mechanism to a Monterey-Style WRAM with an incremental cost balancing account.

The WRAM and MCBA were first implemented in 2008 and were developed as part of a pilot program to promote water conservation. The Commission adopted these mechanisms as part of conservation rate design pilot programs. The goals of the WRAM/MCBA are to sever the relationship between sales and revenue to remove any disincentive for the utility to implement conservation rates and programs; ensure cost savings are passed on to ratepayers; and reduce overall water consumption. The WRAM/MCBA also adjusts for all water consumption reductions, not just consumption reductions due to implementing conservation. The Commission recognizes that it is difficult

[26] CWA Comments dated February 23, 2018 at 9.
[27] Public Advocates Office Comments dated February 23, 2018 at 8.

to parse out consumption declines due to the sole effects of conservation programs and rate designs from other contributing factors such as weather, drought, economic effects, or inaccurate sales forecast, but the WRAM/MCBA goes beyond removing a utility's disincentive to promote conservation by taking all of these factors into account.

The revenue and rate impacts of WRAM/MCBA amounts are implemented through balancing accounts for recovery through surcharges. When actual sales are less than forecasted sales used in establishing a revenue requirement, the revenue shortfall, less offsetting marginal expenses, is surcharged to customers in addition to their regular tariffed rates. However, these balances rarely provide a positive balance (over-collected) but instead have been negative (under-collected).~~[26]~~[28] Consequently, ratepayers experience not only the rate increase attributable to GRC rate changes, including increases in attrition years, but also a subsequent rate increase due to amortizing negative WRAM balances. It is unlikely that the average customer understands how this regulatory mechanism works, consequently, customers experience frustrating multiple rate increases due to GRC test year, attrition year, WRAM/MCBA, and other offsets.~~[27]~~[29]

The Commission adopted settlements between the Division of Ratepayer Advocates (currently the Public Advocates Office of the Public Utilities Commission) and various Class A water utilities in D.08-06-002, D.08-08-030, D.08-08-032, D.08-09-026, D.08-11-023, D09-05-005, D.09-07-021, and D.10-06-038. These settlements included conservation rate design and adoption of WRAM as a means of promoting conservation by decoupling sales from revenues. As explained in D.08-08-030, the Commission, while citing to the 2005 Water Action

~~[26]~~[28] D.12-04-048 at 13.
~~[27]~~[29] California Water Association 2018 Phase I Comments at 7-9.

CERTIFICATE OF SERVICE

I, John D. Ellis, am over 18 years old and not a party to this action. I am employed in the City and County of San Francisco, California. My business address is Four Embarcadero Center, 17th Floor, San Francisco, CA 94111-4109.

On September 1, 2022, I served a true and correct electronic copyof the above titled **VOLUME 3 OF JOINT APPENDICES TO THE OPENING BRIEF ON THE MERITS** on all parties by electronically filing and serving the documents via True Filing and/or email:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 1, 2022 in San Francisco, California.

/s/ John D. Ellis
John D. Ellis

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
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STATE OF CALIFORNIA
Supreme Court of California

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ADDITIONAL DOCUMENTS	Vol. 1 Appendices A-P to Opening Brief 4880-8763-9600 v.3
ADDITIONAL DOCUMENTS	Vol. 2 Appendices Q-W to Opening Brief 4894-8041-0672 v.3
ADDITIONAL DOCUMENTS	Vol. 3 Appendices X-FF to Opening Brief 4881-2178-3856 v.4
ADDITIONAL DOCUMENTS	Vol. 4 Appendices GG-QQ to Opening Brief 4879-3743-1088 v.3

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/1/2022

Date

/s/John Ellis

Signature

Ellis, John (269221)

Last Name, First Name (PNum)

Sheppard Mullin Richter & Hampton

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