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 4 OF JOINT APPENDICES

TO THE OPENING BRIEF ON THE MERITS

File 4 of 4 – Pages 623-869 – Joint Appendices GG-QQ

[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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TABLE OF CONTENTS

The appendices in support of this petition contain true and correct copies of the following documents or excerpts:

Vol. 4 – Appendices GG-QQ – Pages 623-869

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JOINT APPENDIX GG

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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 BB

R.17-06-024, *Application of California Water Service Company for Rehearing of Decision 20-08-047* (October 5, 2020)

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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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)

APPLICATION OF CALIFORNIA WATER SERVICE COMPANY FOR REHEARING OF DECISION 20-08-047

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TABLE OF CONTENTS

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)

APPLICATION OF CALIFORNIA WATER SERVICE COMPANY
FOR REHEARING OF DECISION 20-08-047

I. INTRODUCTION

Pursuant to Rule 16.1 of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission ("Commission"), California Water Service Company ("Cal Water") hereby submits this Application for Rehearing of Decision ("D.") 20-08-047, which the Commission adopted during the August 27, 2020 Commission business meeting and issued on September 3, 2020. As explained in further detail below, D.20-08-047's elimination of the Water Revenue Adjustment Mechanism/Modified Cost Balancing Account ("WRAM/MCBA" or "decoupling WRAM") is unlawful and erroneous because of numerous procedural and substantive errors.

The decoupling WRAM is vital to furthering Commission and State policies with respect to balancing conservation, affordability, and infrastructure investment.[1] As California deals with the escalating effects of climate change, including the likelihood of more frequent and longer-

[1] One of the six objectives established in the Commission's Water Action Plan is to "set rates that balance investment, conservation, and affordability." 2005 Water Action Plan, p. 5. The Commission then committed to the following: "The CPUC will ensure that the established rates will provide recovery of reasonable and prudently incurred costs and a fair and equitable return to shareholders. The CPUC will develop rates and ratemaking mechanisms to further the above goals of affordability, conservation, and investment in necessary infrastructure." *Id.*

lasting droughts, eliminating such a crucial tool should not have occurred through a process that was riddled with legal errors. Therefore, for the reasons outlined below, Cal Water respectfully requests the Commission to grant this Application for Rehearing, vacate the portions of D.20-08-047 addressing the decoupling WRAM and direct it to be considered in a separate ratesetting categorized phase or proceeding with an opportunity for hearings.

II. PROCEDURAL HISTORY

The Commission initiated this proceeding in July 2017. In the Order Instituting Rulemaking ("OIR"), the Commission stated that it would be reviewing the existing low-income customer assistance programs of the Class A water utilities in order to examine the feasibility of developing a consistent program, and investigating the possibility of low-income assistance to smaller Commission-regulated water utilities.[2] The Commission also stated that it would consider water affordability, including whether there are public revenue sources that could be used to assist affordability efforts, such as revenue from bottled water companies.[3] Finally, the Commission stated that it would "examine standardizing water sales forecasting" in a subsequent phase.[4]

The initial scoping memo, issued January 9, 2018, stated, "The issues to be addressed in this proceeding relate to a review of low-income rate assistance programs for water utilities under the Commission's jurisdiction."[5] As discussed in more detail below, the initial scoping memo did not mention the decoupling WRAM at all, let alone that elimination of it was part of

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[2] *Order Instituting Rulemaking evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between the Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, Affordability and Sales Forecasting* (July 10, 2017), p. 2

[3] *Id.*

[4] *Id*, p. 8.

[5] *Scoping Memo and Ruling of the Assigned Commissioner* ("Scoping Memo") (January 9, 2018), p. 2.

the scope of this proceeding. Later, the assigned Commissioner issued an amended scoping memo, which likewise made no mention of the decoupling WRAM.[6]

The Commission held the first of several workshops in this proceeding on November 13, 2017.[7] This joint workshop with the State Water Resources Control Board ("SWRCB") focused on access and affordability of safe, clean, reliable drinking water. The Commission held a second joint workshop on January 14, 2019, focusing on rising drought risk and forecasting.[8] Commission staff prepared a report for the January 14, 2019 workshop, and the assigned Administrative Law Judge invited parties to file comments.[9] California Water Association ("CWA") was the only party to file comments on the workshop report, in which it noted that the correct focus was on accurate forecasts, not whether forecasts are high or low.[10] The assigned Administrative Law Judge also provided notice of two additional workshops: a workshop on data sharing between Commission-regulated energy companies and municipal water companies to be held on April 12, 2019, and a workshop on rate design to be held on May 2, 2019.

Commission staff prepared a report on the May 2, 2019 workshop and the assigned Administrative Law Judge again invited parties to file comments.[11] In its opening comments on the workshop report, the Public Advocates Office made several recommendations, including

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[6] *Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* ("First Amended Scoping Memo") (July 9, 2018).

[7] *Administrative Law Judge's Corrected Ruling Noticing Joint Workshop of the California Public Utilities Commission and the State Water Resources Control Board* (November 8, 2017).

[8] *Administrative Law Judge's Amended Ruling Correcting Day for Workshop and Noticing Joint Workshop on Water Sales Forecasting and Rising Drought Risk* (December 19, 2018).

[9] *Administrative Law Judge's Ruling Inviting Comment on Water Division's Staff Report on Joint Agency Workshop; and Noticing Additional Proceeding Workshops* (March 20, 2019).

[10] *Comments of California Water Association on Water Sales Forecasting and Rising Drought Risk Staff Report* (April 5, 2019), p. 2.

[11] *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule* (June 21, 2019).

elimination of the decoupling WRAM.[12] In reply comments, CWA noted that this was beyond the scope of issues identified for consideration in this proceeding.[13]

The Commission held its final workshop in Phase I of this proceeding on August 2, 2019.[14] The staff report for that workshop does not mention elimination of the decoupling WRAM or conservation performance, although the accompanying ruling from the assigned Administrative Law Judge ("ALJ") sought comment on whether the Commission should consider ordering companies with decoupling WRAMs to convert to Monterey-style WRAMs in their next General Rate Case ("GRC").[15] It is important to note that this issue was originally framed by the ALJ in this ruling as being introduced for consideration in future GRCs, not as elimination of the decoupling WRAM in this proceeding.

In its opening comments, CWA again noted that this issue was outside of the scope of the proceeding.[16] Public Advocates Office argued that the Commission should "provide the clear and unambiguous policy direction in this Rulemaking that utilities should convert full WRAMs to Monterey-Style WRAMs," which would be implemented in subsequent GRCs.[17]

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[12] *Comments of the Public Advocates Office On Administrative Law Judge Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule* (July 10, 2019), p. 13.

[13] *Reply Comments of California Water Association Responding to Administrative Law Judge's June 21, 2019 Ruling* (July 24, 2019), p. 2.

[14] *Administrative Law Judge's Ruling Providing Notice of New Date for Workshop on Low-Income Rate Assistance Programs, Water Affordability, and Issues Presented in Proceeding* (July 3, 2019).

[15] *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions* (September 4, 2019), p. 3 ("6. For utilities with a full Water Revenue Adjustment Mechanism (WRAM)/Modified Cost Balancing Account (MCBA), should the Commission consider converting to Monterey-style WRAM with an incremental cost balancing account? Should this consideration occur in the context of each utility's GRC?").

[16] *Comments of California Water Association Responding to Administrative Law Judge's September 4, 2019 Ruling* (September 16, 2019), pp. 13-15.

[17] *Comments of the Public Advocates Office on the Water Division's Staff Report and Response to Additional Questions* (September 16, 2019), p. 5.

In reply comments, CWA explained that consideration of the issue of conversion from the decoupling WRAM to the Monterey-style WRAM in this proceeding was inappropriate.[18] In its reply comments, Public Advocates Office repeated its arguments in favor of elimination of the WRAM and included a graph purporting to show that "water utilities with and without full decoupling WRAM have shown almost identical trends in annual sales fluctuations," claiming that the graph was developed using data from Class A water utilities annual reports.[19] (The graph was created by the Public Advocates Office and did not appear in the annual reports.) The Public Advocates Office cited the graph for the incorrect proposition that lack of a decoupling WRAM does not adversely affect conservation efforts.

The schedule, however, provided no opportunity for the parties to dispute the graph's accuracy, the purported underlying data or otherwise respond to the materials that were only submitted in the reply comments by Public Advocates Office. The Public Advocates Office's introduction of this new information late in the proceeding in reply comments denied the parties the opportunity to address it, and made the Commission's reliance on this graph as justification for the elimination of the decoupling WRAM a prejudicial legal error.

The proposed decision of Commissioner Martha Guzman-Aceves, issued July 3, 2020 ("Proposed Decision"), prohibited companies with decoupling WRAMs from requesting to continue these WRAMs in their next GRCs and ordered them to transition to the Monterey-style WRAMs in those proceedings.[20] Cal Water filed comments on the Proposed Decision, pointing out that elimination of the decoupling WRAM is outside of the scope of this proceeding,

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[18] *Reply Comments of California Water Association Responding to Administrative Law Judge's September 4, 2019 Ruling* (September 23, 2019), pp. 2-3.

[19] *Reply Comments of the Public Advocates Office on the Water Division's Staff Report and Response to Additional Questions* (September 23, 2019), pp. 6-7.

[20] Proposed Decision, p. 87, Ordering Paragraph 3.

explaining taking such action would increase bills for many low-income customers and low water users, and noting that the Proposed Decision mischaracterized the Monterey-style WRAM. Cal Water also noted that the findings regarding the performance of the decoupling WRAM are not supported by substantial evidence and requested that the Commission consider the policy merits of decoupling more fully.[21] In its reply comments, Cal Water explained that the Proposed Decision's conclusions regarding sales forecasting incentives are flawed, and urged the Commission to reject to the proposal by the Public Advocates Office to transition Cal Water in its current pending GRC.[22]

The Commission opened this item for discussion at its August 6, 2020 meeting. Elected officials, representatives of public interest groups, and even two former Commissioners spoke at the meeting – discussing the benefits of the decoupling WRAM, the harm that would be caused by its elimination, and urging the Commission not to adopt the Proposed Decision.

Later that month, less than 24 hours before its scheduled vote on the matter at the August 27, 2020 meeting, the Commission issued a revised version of the Proposed Decision, which made substantive changes. In particular, the revision to the Proposed Decision deleted the minimal discussion regarding the decoupling WRAM's purported lack of impact on water savings, or conservation, by water utilities,[23] and added a few vague statements claiming, without record support, that continuing the decoupling WRAM for conservation purposes would

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[21] *Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves* (July 27, 2020), pp. 8-9.

[22] *Reply Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves* (August 3, 2020), pp. 2-3.

[23] As Cal Water noted in its opening comments on the Proposed Decision, the minimal discussion of the issue in the original version of the Proposed Decision was confusing and flawed because it contained multiple references to "Table A," which was not included in the Proposed Decision. *Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves* (July 27, 2020), p. 14. The entire discussion, including the references to "Table A" was deleted in the revised version of the Proposed Decision.

not benefit customers. Although the revised Proposed Decision still prohibited Cal Water and the other WRAM companies from requesting that the decoupling WRAM be continued in their next GRCs, it made requests to implement the Monterey-style WRAM instead optional.

Despite these significant changes, the Commission did not offer parties the opportunity to provide comments on this last minute substantive change, but instead voted to adopt the revised Proposed Decision at the August 27, 2020 meeting. The Commission then issued D.20-08-047 on September 3, 2020.

III. DISCUSSION

A. D.20-08-047 Unlawfully Addressed and Resolved the Issue of Whether to Continue to Permit Water Utilities to Implement the Full Decoupling WRAM, Which Was Never Identified as an Issue to Be Considered Under Any Scoping Memo in this Proceeding.

D.20-08-047 violated the Commission's duty to regularly pursue its authority and proceed in the manner required by law when it resolved the issue of whether to continue to permit water utilities to implement the full decoupling WRAM. The issue was never included under any of the issues to be considered in this proceeding, as identified in the three scoping memos. This was a clear violation of the Commission's own procedural rules concerning the scope of issues addressed in rulemaking proceedings and substantially prejudiced the parties in this proceeding supportive of the decoupling WRAM, including Cal Water. Among other prejudice, as more fully discussed below, the parties were not put on notice to allow them to dispute the categorization for the proceeding and to instead request a ratesetting categorization with a hearing.

1. The Commission May Not Decide an Issue That Has Not Been Identified in the Scoping Memo as an "Issue To Be Considered" in the Proceeding.

Public Utilities Code Section 1701.1(c)(1) mandates that the "assigned commissioner shall schedule a prehearing conference and shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered…"[24] Citing this authority, Rule 7.3 in turn provides, "The assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and issues to be addressed."[25] These requirements for a formal scoping memo identifying the issues to be considered in a proceeding are intended to give fair notice to parties who may seek to substantively participate and be heard on that matter. Thus, the Commission may not unilaterally disregard its own established rules and procedures.[26]

In Southern California Edison Co. v. Pub. Utilities Com., the California Court of Appeal annulled a Commission decision where the Commission decided an issue outside the scope of the proceeding. The Court found that the Commission failed to proceed in a manner required by law when it failed to comply with its own rules regarding the scope of issues to be considered in a proceeding, and that failure was prejudicial.[27] Similarly, in City of Huntington Beach v. Pub. Utilities Com., the appellate court reversed and set aside a Commission decision because the

[24] Pub. Util. Code § 1701.1(c)(1).

[25] Rule 7.3.

[26] *See* Calaveras Tel. Co. v. Pub. Utilities Com., 39 Cal. App. 5th 972 (2019) ("We conclude the Commission failed to proceed in the manner required by law and abused its discretion because its resolution and decision do not conform with the CHCF-A implementing rules [which it established in its earlier decisions]."),

[27] Southern California Edison Co. v. Pub. Utilities Com., 140 Cal. App. 4th 1085 (2006) ("Edison") (annulling a Commission decision where it addressed an issue that was not previously encompassed within the issues to be considered in the proceeding set forth in the scoping memo).

Commission's consideration of an issue outside the scope of the proceeding was an abuse of discretion and violated the procedural rights of the parties.[28]

2. The Consideration of Whether to Discontinue the Use of the Decoupling WRAM was Never Formally Identified as an Issue to Be Considered in Any Scoping Memo in this Proceeding.

Here, none of the three scoping memos issued in this proceeding apprised the parties that the potential elimination of the decoupling WRAM or other matters relating to decoupling mechanisms were in fact "issue to be considered" in this rulemaking proceeding. The original scoping memo issued on January 9, 2018 identified several issues to be addressed in this proceeding relating to the various topics mentioned in the original OIR, but none of those issues includes the decoupling WRAM or even decoupling more broadly:[29]

> Phase I of the proceeding will address the following issues:
>
> 1. Consolidation of at risk water systems by regulated water utilities
>
>   a. How could the Commission work with the SWRCB and Class A and B water utilities to identify opportunities for consolidating small non-regulated systems within or adjacent to their service territories that are not able to provide safe, reliable and affordable drinking water? Should the Commission address consolidation outside of each utility's general rate case (GRC)?
>
>   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)?

[28] City of Huntington Beach v. Pub. Utilities Com., 214 Cal. App.4th 566. (2013) (annulling a Commission decision where it addressed an issue relating to preemption of a local ordinance that it had previously determined in a scoping memo to be outside the issue to be considered in this proceeding).

[29] Scoping Memo, pp. 2-3.

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 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?

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?

Phase II of this proceeding will address the technical components of the Commission's low income water programs and jurisdictional issues. The following issues will be addressed in Phase II or if necessary a Phase III of this proceeding:

5. Program Name;

6. Effectiveness of LIRA Programs;

7. Monthly Discounts;

8. Program Cost Recovery;

9. Commission Jurisdiction Over Other Water Companies; and

10. Implementation of Any Changes to Existing LIRA Programs.

The amended scoping memo later issued on July 9, 2018 did not substantially alter the scope, but merely identified two more issues to be considered in this proceeding, neither of which included the decoupling WRAM or to decoupling:[30]

> We therefore include the following issues within the scope of this proceeding:
>
> 1. How best to consider potential changes in rate design such that there is a basic amount of water that customers receive at a low quantity rate; and
>
> 2. Whether the California Public Utilities Commission (Commission) should adopt criteria to allow for sharing of low-income customer data by regulated investor-owned energy utilities with municipal water utilities.

Finally, the second amended scoping memo issued relatively recently on June 2, 2020 was entirely related to "potential Commission response to the COVID-19 pandemic" and convers a phase of the proceeding not yet undertaken.[31]

Thus, none of the three Scoping Memos indicated that this proceeding would consider whether the decoupling WRAM or any other form of decoupling mechanism should continue to be available to the water utilities that presently employ a decoupling WRAM. By comparison, when the Commission previously addressed the decoupling WRAM in Rulemaking 11-11-008, Commissioner Sandoval's *Assigned Commissioner's Third Amended Scoping Memo and Ruling Establishing Phase II* in that previous proceeding devoted several pages the decoupling WRAM

[30] Amended Scoping Memo, p. 3.

[31] *Second Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Directing Comments to Consider Potential Commission Response to COVID-19* (June 2, 2020) ("Second Amended Scoping Memo"), p. 1.

and the specific issues that the Commission intended to address with respect to it.[32] Indeed, neither the word "WRAM" nor the word "decoupling" appear in any the scoping memos, nor does it even appear in the original OIR. Therefore, it is clear from the face of each of the three scoping memos that the WRAM and decoupling were never properly noticed as an issue to be considered in this proceeding.

3. D.20-08-047's Contention that the Decoupling WRAM Issues "Is and Has Always Been Within the Scope of this Proceeding" is Flawed and Unsupported.

When the proposal to eliminate the decoupling WRAM was first raised in this proceeding, CWA objected to the discussion of that issue as outside the established scope of this proceeding.[33] Despite those objections, D.20-08-047 asserts to the contrary that the consideration of the decoupling WRAM "is and has always been within the scope of this proceeding."[34] This assertion is erroneous and unsupported by the record, as established below.

a. Neither a Party, an Administrative Law Judge, nor a Workshop Panel May Enlarge the Scope of a Commission Proceeding, Which Must Be Established by the Assigned Commissioner Through the Issuance of a Scoping Memo.

D.20-08-047 contends that the elimination of the decoupling WRAM has and is in within the scope of this proceeding based upon the discussion of the topic in comments, workshops, and rulings by the Administrative Law Judge:[35]

> 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 while the Public Advocates Office of the Public Utilities Commission

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[32] *See* R.11-11-008, *Assigned Commissioner's Third Amended Scoping Memo And Ruling Establishing Phase II* (April 30, 2015), pp. 12-16 (setting forth the issues to be considered in Phase II of that proceeding), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M151/K340/151340564.PDF.

[33] *Reply Comments of California Water Association Responding to Administrative Law Judge's June 21, 2019 Ruling* (July 24, 2019), p. 2.

[34] D.20-08-047, p. 60.

[35] *Id.*, p. 54.

> argued that the large variances in forecasted sales are exacerbated by the WRAM/MCBA process. 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.

D.20-08-047 goes on to assert that these actions demonstrate that the consideration of the changes to the decoupling WRAM are within the scope of this proceeding:[36]

> As noted above, the September 4, 2019, assigned ALJ Ruling included a summary of the August 2, 2019, Workshop, where parties raised the issue of the WRAM during the discussion of mechanisms to improve sales forecasts during droughts. The scope of this proceeding includes consideration of "how to improve water sales forecasting." Thus, based on the discussion at the workshop on ways to improve water sales forecasting, the ruling specifically called for party input on whether the Commission should change all utilities to use Monterey-Style WRAMs with ICBA, and whether such a transition should occur in the context of the utilities' next GRC. Therefore, 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.

Setting aside for the moment the fact that "improving sales forecasting" is an objective goal that hardly compels an examination of the decoupling WRAM, the rationale advanced in this portion of D.20-08-047 is completely contrary to law. No provision of the Public Utilities Code nor any one of the Commission's Rules of Practice and Procedure permit a party, a workshop panel or even an Administrative Law Judge to enlarge the scope of a proceeding. By statute, the authority to determine the scope of a proceeding is vested exclusively in the Assigned Commissioner who

[36] *Id.*, pp. 59-60.

exercises that authority by issuing "a scoping memo that describes the issues to be considered…"[37]

In this proceeding, the Assigned Commissioner did not expressly include the examination of the decoupling WRAM in any of the scoping memos. That is the extent of the relevant analysis on whether the Commission has complied with its procedures governing the issuance of a scoping memo. Therefore, these assertions regarding actions by parties, workshop panels, and even the Administrative Law Judge fail to cure the plain fact that D.20-08-047 considered and addressed an issue outside the established scope of the proceeding.

b. The Scoping Memo Issue of "Forecasting Water Sales" Did Not Apprise the Parties that the Potential Elimination of the Decoupling WRAM Would be an Issue to Be Considered in this Proceeding.

As mentioned above, D.20-08-047 contends that the consideration of the decoupling WRAM falls under the broader issue of improving water sales forecasting described in the original January 9, 2018 scoping memo.[38] This explanation is unsupported and unpersuasive. Water sales forecasting is a wholly distinct ratemaking issue from revenue decoupling and the decoupling WRAM. The purported connection between the two issues, if any, is never fully substantiated anywhere in D.20-08-047.

While D.20-08-047 identifies specific factors for water utilities to utilize when forecasting future water sales,[39] it does not explain how, if at all, these implicate the decoupling

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[37] Pub. Util. Code § 1701.1(c)(1) ("The **assigned commissioner** shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution and that, consistent with due process, public policy, and statutory requirements, determines whether the proceeding requires a hearing.") (emphasis added); *see also* Rule 7.3 ("The **assigned Commissioner** shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and issues to be addressed.") (emphasis added).

[38] D.20-08-047, p. 60 ("Therefore, 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.").

[39] *Id.*, pp. 49-51.

WRAM or other decoupling issues. Instead, only connection between the two issues found in the decoupling WRAM are the statement in Finding of Fact 19 that "Implementation of a Monterey-Style WRAM means that forecasts of sales become more significant in establishing test year revenues"[40] and in Conclusion of Law 4 that "Elimination of the WRAM/MCBA will provide better incentives to more accurately forecast sales while still providing the utility the ability to earn a reasonable rate of return."[41] As explained further in Section III.E.2 below, the rationale underlying both claims purporting to connect the decoupling WRAM and sales forecasting is flawed and D.20-08-047 fails to support either assertions with law or evidence in the record, rendering the asserted justification baseless.[42] More importantly, that purported linkage was never readily apparent from the description of "Forecasting Water Sales" found in the original scoping memo so as to apprise parties that the elimination of the decoupling WRAM would be implicated in this proceeding.

In Southern California Edison Co. v. Pub. Utilities Com., the Court of Appeals explained that in examining whether an issue is within the scope of a Commission proceeding, the express language found in the scoping memo must be interpreted "in the context of the discussion and directives that followed in the order."[43] The Edison court was required to determine whether the issue of "prevailing wages" fell within the ambit of the scoping memo's inquiry into "whether to adopt rules to prohibit 'bid shopping' and 'reverse auctions' consistent with rules governing state

[40] D.20-08-047, p. 103, Finding of Fact 19.

[41] D.20-08-047, p. 104, Conclusion of Law 4.

[42] *See* California Manufacturers Association v. Pub. Utilities Com., 24 Cal. 3d 251 (1979) (annulling a prior Commission decision due to the fact that "The findings on the material issues are insufficient to justify the rate spread adopted. While the commission's asserted justification for changing its method of spreading rate increase is conservation of natural gas resources, neither finding nor evidence exists showing the method adopted will result in conserving more natural gas than would other proposed methods.").

[43] Edison, at 1105.

and federal public works contracts."[44] In order to do so, the court considered what subjects were specifically discussed in the scoping memo and what information was sought from the utilities.[45] After considering those factors, the court concluded that "the prevailing wage" proposal was beyond the scope of issues identified in the scoping memo.[46] Thus, the court held that the Commission violated its own procedures regarding the issuance of a Scoping Memo and annulled the offending decision that had addressed that issue.[47]

Here, with respect to "Forecasting Water Sales" listed in the initial scoping memo, the Commission address two questions in particular:[48]

> 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 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?

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[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*, at 1106.

[48] Scoping Memo, pp. 2-3. These same questions are presented in a block quote in D.20-08-047 on pages 53-54 when discussing the scope of the proceeding.

These questions clearly reflect a more explicit focus on the processes governing methodologies and specific mechanisms directly affecting water sales forecasts. While issues tangentially concerning the decoupling WRAM might be arguably responsive to these questions, the complete elimination of the decoupling WRAM was never included by the particular language here. Relative to the strained linkage between sales forecasting and the decoupling WRAM in the initial scoping memo (which again never even mentions the terms "WRAM" or "decoupling" anywhere), D.20-08-047's outsized[49] and extensive discussion dedicated to the decoupling WRAM is wholly inconsistent with the amount of discussion (or lack thereof here) in the scoping memos. Therefore, D.20-08-047's rationale that the elimination of the decoupling WRAM was included under the issue of improving water sales forecasting fails.

This overly broad interpretation of the initial scope of issues to be considered in this proceeding by D.20-08-047 would effectively render the scoping memo requirements entirely meaningless as the Commission could include any issue in a final decision so long as it can come up with an explanation, no matter how tenuous and questionable it is after the fact. That should not be the case. The mandate for the formal issuance of a scoping memo in Public Utilities Code Section 1701.1(c)(1) and Rule 7.3 serve to prohibit that unlawful practice.

Therefore, the tenuous, post-hoc explanation asserted in D.20-08-047 simply does not meet the obligation of the Commission to follow the procedures it has set forth to issue a proper scoping memo in each rulemaking proceeding. Instead, it is readily apparent that current parties, including Cal Water, or others who may have elected to participate as parties were never apprised of the fact the Commission apparently intended to address the decoupling WRAM in

[49] For example, twenty-one of the twenty-four Findings of Fact address whether the decoupling WRAM should be continued. Setting aside the portions of D.20-08-047 that summarize the comments of the parties, address procedural issues and set forth Findings of Fact, Conclusions of Law and Ordering Paragraphs, over 70% of the substantive text of D.20-08-047 is devoted to the WRAM, a term that is never expressly mentioned in any the scoping memo.

this proceeding at the time each scoping memo was issued. At a minimum, on an issue as major and contentious as the decoupling WRAM has been, it is patently unsupported by the record as well as highly prejudicial for the Commission to assert that it had innocuously included that topic under the guise of "improving sales forecasting" all along.

4. The Failure to Identify the Decoupling WRAM as an Issue to Be Considered in the Scope of this Proceeding Resulted in Undue Prejudice to Parties That Supported Retaining the WRAM.

Had the OIR or any of the scoping memos at the outset clearly indicated that whether to permit water utilities to continuing implementing the decoupling WRAM as an issue to be considered in this rulemaking proceeding, Cal Water would have disputed its categorization and/or requested an evidentiary hearing . The decoupling WRAM has been one of the most contentious and closely analyzed topics in water utility ratemaking before the Commission. Issues relating to the decoupling WRAM have been litigated in virtually every GRC of the water utilities that has implemented one, including for Cal Water. As detailed in Section 4 B below, the decoupling WRAMs were adopted in ratesetting categorized proceedings with scheduled hearings.

At the outset, Cal Water would have invoked numerous procedural rights that were never afforded in this quasi-legislative rulemaking proceeding. These include evidentiary hearings to present admissible evidence that (1) eliminating the decoupling WRAM will likely lead to bill increases for many low-income and low-usage customers; and (2) water utilities with the decoupling WRAM have maintained greater cumulative reductions in water use, on a per capita basis, as compared to water utilities with the Monterey WRAM. Instead, it was not until July 10, 2019 (over a year after the first amended scoping memo was issued) that the elimination of the decoupling WRAM was raised as an issue in this proceeding. The Commission did not raise the issue by amending the OIR. Nor was it raised by the Assigned Commissioner through an

amended scoping memo. It was raised by a single party to the proceeding, Public Advocates Office, in a set of comments.[50] In reply comments, CWA objected to Public Advocates Office's proposal as outside the scope of this proceeding.[51] Notwithstanding these objections, the Administrative Law Judge issued a ruling soliciting for further comments on the issue in September 2019.

Between September of 2019 and July of 2020, neither the Commission nor the Assigned Commissioner took any action in response to the comments, including to confirm or deny whether the proposed elimination of the decoupling WRAM was actually an issue in this proceeding. For this reason, the parties were further denied notice or opportunity to file a motion or request other interim relief, including raising the matter to the full Commission. It was not until July 3, 2020 that the Assigned Commissioner issued her Proposed Decision, which not only indicated that the elimination of the decoupling WRAM was going to be considered and addressed in this rulemaking proceeding, but that it would be the central focus of the Proposed Decision despite the earlier protests that it was never properly identified as an issue to be considered in any of the earlier scoping memos.

As discussed above, the issue of whether to eliminate the decoupling WRAM was never included as an issue to be considered in any of the scoping memos issued in this proceeding. That omission denied the current parties and other stakeholders that supported the decoupling WRAM any adequate notice to dispute the quasi-legislative characterization, request a ratesetting categorization and/or invoke their corresponding procedural rights, including, without limitation,

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[50] *Comments of the Public Advocates Office On Administrative Law Judge Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule* (July 10, 2019), p. 13.

[51] *Reply Comments of California Water Association Responding to Administrative Law Judge's June 21, 2019 Ruling* (July 24, 2019), p. 2.

a hearing from the outset of this proceeding. Therefore, the Commission violated Public Utilities Code Section 1701.1(c)(1) by considering and addressing the proposed elimination of the decoupling WRAM in D.20-08-047, which was outside the established scope of the proceeding. The Commission should grant rehearing and order the decoupling WRAM to be addressed in a separate phase or proceeding with a ratesetting categorization.

B. D.20-08-047 Unlawfully Modified Several Prior Commission Decisions Addressing the Decoupling WRAM Without Providing the Parties an Opportunity to Be Heard.

In D.20-08-047, the Commission prohibited California-American Water Company, Cal Water, Golden State Water Company, Liberty Utilities (Park Water) Corp., and Liberty Utilities (Apple Valley Ranchos Water) Corp. from requesting to continue the decoupling WRAM in their next GRCs.[52] The Commission initially approved decoupling WRAMs for these companies in ratesetting categorized proceedings with an opportunity for hearings and repeatedly approved continuation of the decoupling WRAMs in multiple decisions in ratesetting proceedings over the last decade.

For Cal Water, the Commission approved the decoupling WRAM in five separate ratesetting proceedings that all provided the opportunity for evidentiary hearings. Cal Water first requested a decoupling WRAM in Application 06-10-026. That matter was consolidated with similar conservation-related applications by other water companies, as well as with an investigation to consider policies to advance the Commission's conservation objectives.[53] The scoping memo for that proceeding categorized Phase I, which would consider decoupling, among

[52] D.20-08-047, p. 106, Ordering Paragraph 3.

[53] A.06-09-006, A.06-10-026, A.06-11-009, A.06-11-010, I.07-01-022, *Administrative Law Judge's Ruling Affirming Consolidation of Proceedings* (January 16, 2007), *available at* https://docs.cpuc.ca.gov/PublishedDocs/EFILE/RULINGS/63704.PDF.

other issues, as ratesetting, and set a schedule for evidentiary hearings.[54] Cal Water was able to reach a settlement on the decoupling WRAM and other issues with the Division of Ratepayer Advocates ("DRA") and The Utility Reform Network. The settlement was contested, and evidentiary hearings were held.[55]

In D.08-02-036, the Commission approved the decoupling WRAM settlement and found that it was reasonable in light of the whole record, consistent with law, and in the public interest.[56] In particular, the Commission found that Cal Water's decoupling WRAM balances "utility and ratepayer interests and will ensure that neither is harmed nor benefits from the adoption of conservation rates."[57]

In its subsequent GRC, the Commission authorized Cal Water to continue the decoupling WRAM. The proceeding was categorized as ratesetting and provided an opportunity for hearings.[58] Cal Water entered into a settlement with multiple parties, including the Public Advocates Office (then known as DRA), agreeing, "the Commission should not change the fundamental mechanism of the WRAM/MCBA as it was adopted in D.08-02-036."[59] In its decision in that proceeding, D.10-12-017, the Commission identified the decoupling WRAM as key settlement issue, and approved the settlement, finding that it was reasonable in light of the whole record, consistent with law, and in the public interest.[60]

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[54] A.06-09-006, A.06-10-026, A.06-11-009, A.06-11-010, I.07-01-022, *Assigned Commissioner's Ruling and Scoping Memo* (March 8, 2007), pp. 7-8, *available at* https://docs.cpuc.ca.gov/PublishedDocs/EFILE/RULC/65375.PDF.

[55] D.08-02-036, p. 4.

[56] *Id.*, p. 29.

[57] *Id.*

[58] A.09-07-001, *Assigned Commissioner's Scoping Memo and Ruling* (October 2, 2009), pp. 4, 7, *available at* https://docs.cpuc.ca.gov/PublishedDocs/EFILE/RULC/107886.PDF.

[59] D.10-12-017, Attachment C, p. 489.

[60] D.10-12-017, pp. 6-8, 32.

In D.12-04-048, the Commission addressed an application filed by Cal Water and the other WRAM companies regarding amortization of the WRAM balancing accounts.[61] That proceeding had been categorized as ratesetting and provided an opportunity for evidentiary hearings.[62] In that decision, the Commission directed the applicants to provide testimony in their next GRCs addressing, among other issues, whether the Commission should adopt a Monterey-style WRAM instead of a decoupling WRAM and whether the decoupling WRAM should be eliminated.[63]

In its next GRC, Cal Water provided the testimony required by D.12-04-048. That proceeding was categorized as ratesetting and provided the opportunity for evidentiary hearings.[64] In its decision in that proceeding, the Commission noted that the parties had agreed to retain the decoupling WRAM without modification, and found that the settlement was reasonable in light of the whole record, consistent with law and in the public interest.[65]

In Cal Water's next GRC, it requested that the decoupling WRAM no longer be considered a "pilot" program and that it be considered a permanent part of Cal Water's rate structure.[66] That proceeding was categorized as ratesetting and included the opportunity for

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[61] D.12-04-048, p. 1 ("In this decision we address the schedule and process that Apple Valley Ranchos Water Company, California Water Service Company, Golden State Water Company and Park Water Company (applicants) use to recover from customers, or refund to customers, the annual net balance in their Water Revenue Adjustment Mechanisms and Modified Cost Balancing Accounts (WRAM/MCBA).").

[62] A.10-09-017, *Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo* (June 8, 2011), pp. 14, 16, *available at* https://docs.cpuc.ca.gov/PublishedDocs/EFILE/RULC/136757.PDF.

[63] D.12-04-048, pp. 42-43, Ordering Paragraph 4.

[64] A.12-07-007, *Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling* (December 3, 2012), p. 5, *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M031/K735/31735785.PDF.

[65] D.14-08-011, pp. 73, 93.

[66] A.15-07-015, *Application of CALIFORNIA WATER SERVICE COMPANY (U60W), a California corporation, for an order (1) authorizing it to increase rates for water service by $94,838,100 or 16.5% in test year 2017, (2) authorizing it to increase rates by $22,959,600 or 3.4% on January 1, 2018, and $22,588,200 or 3.3% on January 1, 2019, in accordance with the Rate Case Plan, and (3) adopting other related rulings and relief necessary to*

evidentiary hearings.[67] In the settlement agreement submitted in that proceeding, Cal Water and the Office of Ratepayer Advocates (predecessor to the Public Advocates Office) agreed that the decoupling WRAM should no longer be considered a pilot.[68] The Commission approved the settlement, finding that it was reasonable in light of the whole record, consistent with the law and in the public interest, and conveyed the permanent status of the decoupling WRAM in an ordering paragraph.[69]

In sum, the Commission has approved Cal Water's decoupling WRAM in five separate decisions, all issued in ratesetting proceedings that provided the opportunity for evidentiary hearings.[70] In D.20-08-047, the Commission unlawfully modified these previous decisions by eliminating the decoupling WRAM without providing an opportunity to be heard, as follows.

1. Public Utilities Code Section 1708 Requires the Commission to Provide Parties with an Opportunity to Be Heard Before the Commission Can Rescind, Alter, or Amend any Order or Decision Made by It.

The Public Utilities Code requires the Commission to provide parties notice and the opportunity to be heard before rescinding, altering or amending any order or decision:[71]

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implement the Commission's ratemaking policies (July 9, 2015), p. 18, *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M153/K177/153177625.PDF.

[67] A.15-07-015, *Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* (January 7, 2016), pp. 19-22, *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M157/K541/157541800.PDF.

[68] D.16-12-042, Exhibit A, p. 35 ("The Parties agree that the "pilot" conservation rate design that has been in effect for Cal Water since 2008 should be considered permanent going forward, without limiting the possibility for future modifications and improvements.").As indicated on that page of the settlement agreement, "the attributes of the conservation rate design program include the following for each ratemaking area: tiered residential quantity rates, single quantity rates for non-residential customer (with greater revenue collection shifted to quantity rates), an enhanced water conservation program, full Water Revenue Adjustment Mechanisms ("WRAMs"), and Modified Cost Balancing Accounts ("MCBAs")." (Emphasis added).

[69] D.16-12-042, p. 78, Ordering Paragraph 7.

[70] Although not addressed here specifically, the Commission similarly issued multiple decisions approving the decoupling WRAMs for the other WRAM companies.

[71] Pub. Util. Code § 1708.

> 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. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

Because the Commission rescinded its prior approval of the decoupling WRAM, under the Public Utilities Code it had an obligation to provide the WRAM companies with notice and opportunity to be heard. The only exception to this requirement is set forth in Section 1708.5(f), which allows the Commission to "adopt, amend, or repeal a **regulation** using notice and comment rulemaking procedures, without an evidentiary hearing, except with respect to a regulation being amended or repealed that was adopted after an evidentiary hearing."[72] The Legislature has indicated that it did not intend for the term "regulation" to apply to all Commission decisions and orders:[73]

> It is the further intent of the Legislature that the term "regulation," as used in subdivision (a) of Section 1708.5 of the Public Utilities Code, not be construed to refer to all orders and decisions of the Public Utilities Commission, but, rather, be construed as a general reference to rules of general applicability and future effect. It is the intent of the Legislature that the Public Utilities Commission have the authority to define more precisely the term "regulation" for the purpose of Section 1708.5 of the Public Utilities Code.

The decoupling WRAM is not a "regulation." It is not a rule of general applicability, but is instead a specific revenue mechanism that the Commission has authorized for four Class A water utilities. Moreover, even if the Commission attempted to improperly characterize the decoupling WRAM as a "regulation," because Cal Water's WRAM was adopted after an

[72] Pub. Util. Code § 1708.5(f) (emphasis added).

[73] Assembly Bill 301 (1999), Stats. 1999, c. 568, Section 1(b), *available at* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=199920000AB301.

evidentiary hearing, the "notice and comment" process provided in this proceeding would still be insufficient.

2. The Commission Failed to Afford Parties a Meaningful Opportunity to Be Heard Prior to Reversing its Earlier Decisions that had Authorized the Use of the Decoupling WRAM.

As discussed above, the Commission held several workshops in this proceeding, and offered the occasional opportunity to submit comments on the workshop reports. In California Trucking Association v. California Public Utilities Commission, however, the California Supreme Court held that Section 1708 "requires a hearing at which parties are entitled to be heard and to introduce evidence…"[74] In particular, the California Supreme Court held that "merely being allowed to submit written objections" was insufficient.[75]

The Commission initially approved the decoupling WRAM in a ratesetting proceeding following an evidentiary hearing, and has affirmed it in multiple ratesetting decisions since then. As such, the Public Utilities Code requires the Commission to provide Cal Water and the other decoupling WRAM companies a hearing and the opportunity to present evidence. The requirements of Section 1708 are not satisfied by merely offering the parties an opportunity to submit written comments on a new proposal (the course followed in this proceeding).

When the assigned Administrative Law Judge raised the issue of converting decoupling WRAMs to Monterey-style WRAMs late in the proceeding, it was framed as an issue for the Commission to consider in subsequent GRCs.[76] In comments on that ruling, CWA stated that

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[74] California Trucking Association v. Pub. Utilities Com., 19 Cal. 3d 240, 245 (1977).

[75] *Id.,* at 244.

[76] *Assigned Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions* (September 4, 2019), p. 3.

such a change would have to be made in the GRCs for the WRAM companies.[77] GRCs are categorized as ratesetting and offer the opportunity for evidentiary hearings. When the Proposed Decision was issued eliminating the decoupling WRAM in this proceeding, Cal Water and others noted in comments that that no formal evidence had been received in this proceeding and requested the opportunity to present and respond to evidence.[78] Cal Water would have presented admissible evidence that (1) eliminating the decoupling WRAM will likely lead to bill increases for many low-income and low-usage customers and (2) water utilities with the decoupling WRAM have maintained greater cumulative reductions in water use, on a per capita basis, as compared to water utilities with the Monterey WRAM. Perhaps most critically, no fair opportunity was ever given to rebut or even respond to the material found in the earlier September 23, 2019 reply comments by Public Advocates Office (including the graph purportedly based on water utility annual reports) that is relied upon heavily in D.20-08-047.

The Commission did not respond to these requests. The Proposed Decision instead was revised to chide the parties for not providing evidence of the benefits of the decoupling WRAM,[79] ignoring the fact that the Commission never provided the opportunity to introduce evidence at a hearing as required by Section 1708. The Commission must remedy this legal error

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[77] *Comments of California Water Association Responding to Administrative Law Judge's September 4, 2019 Ruling* (September 16, 2019), p. 14.

[78] *Comments of California Water Service Company (U 60 W) On The Proposed Decision Of Commissioner Guzman Aceves* (July 27, 2020), pp. 14-15; *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves* (July 27, 2020), pp. 7-8; *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* (July 27, 2020), pp. 4-5; *Comments of Golden State Water Company (U 133 W) on Proposed Decision and Order* (July 27, 2020), pp. 8-13; *Comments of California Water Association on the Proposed Decision of Commissioner Guzman Aceves* (July 27, 2020), pp. 4-7.

[79] D.20-08-047, pp. 68-69.

by granting this application for rehearing and providing the opportunity for an evidentiary hearing.

a. The Fact that the Earlier Decisions Addressing the Decoupling WRAM Approved Settlement Agreements Does Not Excuse the Commission's Statutory Duty to Provide an Opportunity to be Heard.

In D.20-08-047, the Commission observed that since the issuance of D.12-04-048, the issue of whether to continue the decoupling WRAMs had been resolved by settlements in the WRAM companies' GRCs. The Commission stated, "the policy to continue the use of WRAM/MCBA has not been adjudicated."[80] The Commission further stated, "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."[81]

Although, as noted previously, the Commission did not specifically address the parties' requests for an evidentiary hearing, the dismissal of settlement approval and the claim regarding "adjudication" does not remove it from the requirements of Section 1708. Any suggestion that a decision adopting a settlement is not subject to Section 1708 is flatly incorrect.

As an initial matter, it is important to recall that although the Commission first approved Cal Water's decoupling WRAM via settlement, the settlement was contested and evidentiary hearings were held on the settlement. Moreover, even in proceedings where the issue of continuation of the decoupling WRAM was settled without an evidentiary hearing, it was still "resolved" by the Commission. The Commission's approval of a settlement is governed by Rule 12.1, which states, "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law,

[80] *Id.*, pp. 58-59. Despite the Commission's reference to "policy" here, as noted above the decoupling WRAM is not a rule of general applicability and therefore does not fall under the "regulation" exemption of Section 1708.

[81] *Id.*, p. 101, Finding of Fact 8.

and in the public interest." Therefore, in each of the proceedings approving settlements for Cal Water and the other WRAM companies, the Commission determined that the record supported continuation of the WRAM, that continuing the decoupling WRAM was consistent with the law, and that the decoupling WRAM served the public interest.

D.20-08-047's suggestion that decisions approving settlements do not warrant the procedural protections embraced in Section 1708 not only has no basis in law but it is inconsistent with the longstanding policy of the Commission that settlements are a favored means of resolving contested proceedings. Numerous Commission decisions have endorsed settlements as an "appropriate method of alternative ratemaking" and express a strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.[82] This policy supports many worthwhile goals, including not only reducing the expense of litigation and conserving scarce Commission resources, but also allowing parties to reduce the risk that litigation will produce unacceptable result.[83]

If Section 1708 were interpreted to include an unwritten exception for decisions approving settlements, it would create disincentive for parties to enter into such agreements. Parties would be effectively waiving their rights to notice and hearing if the Commission subsequently rescinds, alters or amends the decision approving the settlement.

The language of Section 1708 applies to "any order or decision," not any "adjudicated" order and decision. It does not exempt decisions approving settlements. There is no authority for the creation of two classes of Commission decisions: those approving settlements and those

[82] *See, e.g.,* D.05-10-041, D.15-03-006, D.15-04-006.

[83] *See* D.14-12-040, p. 32.

resolving issues in dispute at submission. As such, the Commission committed legal error by elimination the decoupling WRAM with providing the opportunity for an evidentiary hearing.

b. Characterizing the Decoupling WRAM as a Pilot Program is Inaccurate and Does Not Excuse the Commission's Statutory Duty to Provide an Opportunity to be Heard.

Throughout D.20-08-047, the Commission refers to the decoupling WRAM as a "pilot program."[84] However, in D.16-12-042 the Commission ordered that the decoupling WRAM and other elements of Cal Water's conservation rate design are no longer a pilot and are now considered permanent.[85] In that proceeding, Cal Water requested that the Commission adopt the conservation rate design pilot as a permanent component of Cal Water's rate structure. Cal Water defined the conservation rate design as including "tiered residential rates, single-tariff rates for non-residential customer classes, an enhanced water conservation program, full Water Revenue Adjustment Mechanisms ("WRAMs"), and Modified Cost Balancing Accounts ("MCBAs")."[86] Cal Water and the Office of Ratepayer Advocates (the predecessor to Public Advocates Office, "ORA") entered into a settlement on this and other issues, which the Commission approved. In its decision, the Commission specifically ordered:[87]

> The pilot conservation rate design that has been in effect for California Water Service Company since 2008 shall be permanent, without limiting the possibility of future modifications and improvements.

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[84] *See, e.g.*, D.20-08-047, p. 55 ("The WRAM and MCBA were first implemented in 2008 and were developed as part of a **pilot program** to promote water conservation") (emphasis added)

[85] D.16-12-042, p. 78, Ordering Paragraph 7 ("The pilot conservation rate design that has been in effect for California Water Service Company since 2008 shall be permanent, without limiting the possibility of future modifications and improvements.").

[86] A.15-07-015, *Application of CALIFORNIA WATER SERVICE COMPANY (U60W), a California corporation, for an order (1) authorizing it to increase rates for water service by $94,838,100 or 16.5% in test year 2017, (2) authorizing it to increase rates by $22,959,600 or 3.4% on January 1, 2018, and $22,588,200 or 3.3% on January 1, 2019, in accordance with the Rate Case Plan, and (3) adopting other related rulings and relief necessary to implement the Commission's ratemaking policies* (July 9, 2015), p. 18, *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M153/K177/153177625.PDF.

[87] D.16-12-042, p. 78, Ordering Paragraph 7.

Even for WRAM companies that may not have obtained such an order, the continued characterization of the decoupling WRAM as a "pilot" is inaccurate and misleading. Nothing in D.12-04-048, issued eight years ago, established a termination date or "sunset" for the employment of a WRAM. Instead, it directed that the future employment of each utility's WRAM be determined in that utility's GRC, where the Commission approved the continuation of each via settlement.

If this characterization of the decoupling WRAM as a pilot program is intended to suggest that the prior decisions are exempt from the reach of Section 1708, it fails. In each of the WRAM company GRCs after D.12-04-048, the companies presented evidence regarding the following issues:

> Option 1: Should the Commission adopt a Monterey-style WRAM rather than the existing full WRAM? The Monterey-style WRAM is not a revenue decoupling mechanism as such, it is rather a revenue adjustment mechanism that allows the utility to true-up the revenue it actually recovers under its conservation rate design with the revenue it would have collected if it had an equivalent uniform rate design at actual sales levels.
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> Option 2: Should the Commission adopt a mechanism that bands the level of recovery, or refund, of account balances based on the relative size of the account balance. For example, an annual WRAM/MCBA under-collection/over-collection less than 5% of the last authorized revenue requirement would be amortized to provide 100% recovery/refund, balances between 5-10% would be amortized to provide only 90% recovery/refund, and balances over 10% would be amortized to provide only 80% recovery/refund.
>
> Option 3: Should the Commission place WRAM/MCBA surcharges only on higher tiered volumes of usage, thereby benefiting customers who have usage only in Tier 1 or have reduced their usage in the higher tier levels?
>
> Option 4: Should the Commission eliminate the WRAM mechanism?

> Option 5: Should the Commission move all customer classes to increasing block rate design and extend the WRAM/MCBA mechanisms to these classes?[88]

In each of these proceedings, the Commission determined that continuation of the decoupling WRAM was reasonable based on this evidence, consistent with the law, and in the public interest. By contrast, in this proceeding, the Commission did not provide any opportunity to present evidence on issues related to continuation of the decoupling WRAM, and prohibited the WRAM companies from providing evidence on this issue in next GRCs. This is entirely at odds with the Section 1708, which requires that before the Commission terminates a decoupling WRAM adopted in a prior decision, the parties to the proceeding that led to the decision be permitted to introduce evidence with respect to its continued use. That is the outcome that would result from determining the continued use of a decoupling WRAM in each WRAM utility's next GRC.[89] That is the course required by Section 1708.

c. The Commission Criticized the Lack of Evidence in the Support of the WRAM, But Did Not Allow Parties to Present Evidence

Although, as discussed below, the Commission did not provide adequate evidence to support its decision, it chided the parties for failing to present evidence in support of the decoupling WRAM, and used that lack of evidence to justify its decision to eliminate it. For example, the Commission claims, "there is no evidence that eliminating the WRAM will raise rates on low-income and low use customers."[90] With respect to the impact of elimination of the decoupling WRAM on rates for low-income and low use customers, Cal Water and others

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[88] D.12-04-048, p. 39.

[89] To be clear, Cal Water does not assert that a rate-setting proceeding considering the future use of a WRAM must be a GRC. The proceeding must, however, offer Cal Water an "opportunity to be heard as provided in the case of complaints..." Section 1708.

[90] D.20-08-047, p. 68.

provided extensive information on this issue in comments on the Proposed Decision as an offer of proof and in support of a hearing request.[91] While this information may not rise to the level of evidence admitted at a hearing, the Commission ignored these substantial showings, despite citing to the comments of the Public Advocates Office on the Proposed Decision to support its claim. [92]

Furthermore, the Commission explained that a fundamental reason for its elimination of the WRAM is that "no party presented evidence or arguments that persuade us that the pilot WRAM/MCBA mechanism provides discernable benefits that merit its continuation."[93] As discussed above, however, the issue of the WRAM was outside the scope of this proceeding. When the issue was raised by the by the assigned Administrative Law Judge very late in the proceeding, there was no opportunity for parties to provide evidence or any hearing held. Requests in comments on the Proposed Decision by Cal Water and others for the opportunity to provide evidence were ignored. The Commission cannot base its decision on a lack of evidence that it gave the parties no opportunity to provide.

C. The Commission Unlawfully Mischaracterized this Proceeding as Quasi-Legislative Rather Than as Ratesetting, Thereby Depriving Parties of Procedural Rights Available Only in Ratesetting Proceedings.

D.20-08-047 is unlawful because it improperly deprives water utilities of many of the procedural rights that should have been available in this proceeding given to the ratesetting

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[91] *Comments of California Water Service Company (U 60 W) On The Proposed Decision Of Commissioner Guzman Aceves* (July 27, 2020), pp. 3-6; *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves* (July 27, 2020), p. 3; *Comments of Golden State Water Company (U 133 W) on Proposed Decision and Order* (July 27, 2020), p. 3.

[92] *See* The Utility Reform Network v. Pub. Utilities Com., 166 Cal. App. 4th 522, 537 (2008). (It is error for the Commission to rely on a single source untested by hearing or cross-examination while rejecting others without explanation other than to characterize them as "unpersuasive.").

[93] D.20-08-047, p. 68-69.

nature of the elimination of the decoupling WRAM. Public Utilities Code Section 1701.1 defines the categorizations of Commission proceedings for the purposes of determining the applicable procedural mechanisms available in each type of proceeding, which are described in subsection (d):[94]

> (1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations that may establish rules affecting an entire industry.
>
> (2) Adjudication cases, for purposes of this article, are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702.
>
> (3) Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.
>
> (4) Catastrophic wildfire proceedings, for purposes of this article, are proceedings in which an electrical corporation files an application to recover costs and expenses pursuant to Section 451 or 451.1, as applicable, related to a covered wildfire, as defined in Section 1701.8.

Rule 1.3 of the Commission's Rules further define the categories of proceedings and provide the following definitions relevant here:[95]

> (e) "Quasi-legislative" proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.
>
> (f) "Ratesetting" proceedings are proceedings in which the Commission sets or investigates rates for a specifically

[94] Pub. Util. Code § 1701.1(d)(1)-(4).

[95] Rule 1.3(e)-(f).

> named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). "Ratesetting" proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. Other proceedings may be categorized as ratesetting, as described in Rule 7.1(e)(2).

The OIR establishing this proceeding preliminarily determined the categorization to be a quasi-legislative proceeding.[96] The category was later confirmed in the January 9, 2018 scoping memo and has not been changed since that time.[97] The elimination of the decoupling WRAM for the five water utilities expressly identified in Order Paragraph 3 is plainly inconsistent with the quasi-legislative categorization of this proceeding. In turn, this unlawful designation resulted in substantial prejudice to the parties supportive of the decoupling WRAM, including Cal Water.

1. The Elimination of the Decoupling WRAM in this Proceeding Renders it a Ratesetting Proceeding Because it Effectively Predetermines the Outcome on that Issue in Future GRC Proceedings, Contrary to the Commission's Designation of the Proceeding as Quasi-Legislative.

The elimination of the decoupling WRAM in D.20-08-047 is presented as a specific prohibition that five expressly-named water utilities (including Cal Water) "in their next general rate case applications, shall not propose continuing existing Water Revenue Adjustment Mechanisms/Modified Cost Balancing Accounts but may propose to use Monterey-Style Water Revenue Adjustment Mechanisms and Incremental Cost Balancing Accounts."[98] The nature of this Ordering Paragraph is such that it clearly belongs in a ratesetting proceeding.

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[96] OIR, p. 18, Ordering Paragraph 3 ("The category of this Order Instituting Rulemaking is preliminarily determined to be a quasi-legislative proceeding as the term is defined in Rule 1.3(d) of the Commission's Rules of Practice and Procedure.").

[97] *Scoping Memo and Ruling of Assigned Commissioner* (January 9, 2018), p. 8, Ordering Paragraph 1 ("The category of this proceeding is quasi-legislative."). The quasi-legislative categorization in the OIR and each of the Scoping Memos further bolsters the argument above that the Commission had never intended to include the elimination of the decoupling WRAM in this proceeding, which would be an action properly taken in a ratesetting proceeding addressing a rate mechanism for specifically-named utilities.

[98] D.20-08-047, p. 106, Ordering Paragraph 3.

The elimination of the decoupling WRAM in Ordering Paragraph 3 does not "establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities" as with a quasi-legislative proceeding,[99] but instead belongs in a ratesetting proceeding, which "establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities)."[100] The decoupling WRAM is clearly a mechanism that sets the rates of a water utility through the annual true-up mechanism and Ordering Paragraph 3 is indisputably aimed at specifically named utilities, which included Cal Water. Therefore, the elimination of the decoupling WRAM is an unlawful ratesetting action taken in a Commission proceeding improperly categorized as quasi-legislative in violation of statute and the Commission's own rules.

The fact that the immediate elimination of the WRAM does not occur directly in D.20-08-047, but rather will be implemented in each water utility's subsequent GRC (each of which should be a ratesetting proceeding) is a distinction without a difference. Ordering Paragraph 3 essentially pre-decides the future resolution of the decoupling WRAM in those GRCs by entirely prohibiting any of the water utilities from even proposing to the continue the decoupling WRAM at all. This unlawfully binds the discretion of future Commissioners to address the decoupling WRAM by preventing the issue from ever reaching them. At minimum, the Commission must revise Ordering Paragraph 3 to avoid impermissibly precluding itself from considering issues in future, separate proceedings.

Nor was there any reasonable grounds for appealing the designation of the proceeding as quasi-legislative following the issuance of any of the scoping memos pursuant to Public Utilities

[99] Rule 1.3(e) (defining quasi-legislative proceedings).

[100] Rule 1.3(f) (defining ratesetting proceedings).

Code 1701.1(a) and Rule 7.6, since the proposed elimination of the decoupling WRAM was never properly identified as an issue to be considered in this proceeding. Due to that fault, this issue was belatedly made apparent only upon the issuance of the Proposed Decision. By then, it was too late.

If the Commission intended to issue a decision affecting the rates of the water utilities with a decoupling WRAM, it should have properly categorized the matter as "ratesetting." Instead, the Commission failed to do that to the detriment and prejudice of those parties.

2. The Incorrect Categorization of the Proceeding Prejudiced the Parties By Depriving Them of Critical Procedural Protections Available in Ratesetting Proceedings.

The improper categorization of the proceeding as quasi-legislative indisputably prejudiced the parties in this proceeding by depriving them of important procedural protections that would have been available were it properly designed as ratesetting, including, without limitation, a hearing. The failure of the Commission to follow the statutory requirements and its own established procedural rules governing the categorization of its proceedings and the resulting prejudice caused to the parties are grounds for vacating D.20-08-047.[101]

The Commission's continued treatment of the docket as a quasi-legislative proceeding without a hearing denied the affected parties the right to introduce evidence rebutting the inferences drawn by D.20-08-047. This categorization foreclosed a review of whether the findings are supported by substantial evidence in light of the whole record, which is the standard applied to each of the ratesetting proceedings in which the decoupling WRAM was adopted.

Although a decision in a rulemaking proceeding generally is not subject to a substantial evidence review, it is when it modifies a decision from a ratesetting proceeding without a

[101] Edison, at 1106.

hearing. Public Utilities Code Section 1708 precludes modification of an order subject to an evidentiary standard (*i.e.*, a decision reached in a prior ratesetting proceeding) by an order not subject to an evidentiary standard (*i.e.*, a decision reached in a quasi-legislative proceeding), unless the subsequent rulemaking proceeding offers the parties to the earlier ratesetting proceeding the opportunity to introduce evidence. Indeed, irrespective of whichever evidentiary standard ultimately governs either type of proceeding, Section 1708 provides the parties that opportunity before a decision in the second proceeding may lawfully modify that reached in the first. A contrary rule eviscerates Section 1708 and the distinction between rulemaking and ratesetting proceedings drawn in Public Utilities Code Section 1708.5(f).[102]

The Commission's continued treatment of the docket as a quasi-legislative proceeding without a hearing denied Cal Water and other parties the right to present oral argument before the Commission guaranteed by Section 1701.3(i) and Rule 13.13. Indeed, on August 20, 2020, Cal Water and other parties made a joint motion for oral argument on the issues in the Proposed Decision concerning the decoupling WRAM.[103] This motion was summarily denied in D.20-08-047.[104]

Moreover, even the governing rules for this proceeding would have been different under a ratesetting categorization. The statutory rules governing adjudications and ratesetting provide

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[102] Pub. Util. Code 1708.5(f) ("Notwithstanding Section 1708, the commission may conduct any proceeding to adopt, amend, or repeal a regulation using notice and comment rulemaking procedures, without an evidentiary hearing, except with respect to a regulation being amended or repealed that was adopted after an evidentiary hearing, in which case the parties to the original proceeding shall retain any right to an evidentiary hearing accorded by Section 1708.").

[103] *Joint Motion of California Water Association, 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. for Oral Argument and Request to Shorten Time for Response* (August 20, 2020).

[104] D.20-08-047, p. 108, Ordering Paragraph 8 ("8. All pending motions in this proceeding not specifically addressed in this decision, or not previously addressed, are denied.")

for proscriptions, restriction or reporting of ex parte communications;[105] the statutory rules governing quasi-legislative matters do not. [106] The statutory rules governing adjudications and ratesetting provide for peremptory challenges;[107] the statutory rules governing quasi-legislative matters do not.

D. D.20-08-047's Elimination of the Decoupling WRAM is Unlawful Because the Commission it Predetermined the Outcome on that Ratesetting Issue Without Holding a Hearing.

D.20-08-047's elimination of the decoupling WRAM is unlawful because it effectively fixed water utility rates and rate mechanisms without first holding a hearing as statutorily required. Public Utilities Code Section 728 dictates the manner in which the Commission is to "fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts" and provides in the relevant part:[108]

> Whenever the commission, **after a hearing**, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in connection with any service, product, or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force.

Public Utilities Code Section 729 requires:[109]

> The commission may, **upon a hearing**, investigate a single rate, classification, rule, contract, or practice, or any number thereof, or the entire schedule or schedules of rates, classifications, rules, contracts, and practices, or any thereof, of any public utility, and may establish new rates, classifications, rules, contracts, or practices or schedule or schedules in lieu thereof.

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105 *See* Pub. Util. Code § 1701.2(g) & 1701.3(h).

106 *See* Pub. Util. Code § 1701.4(c).

107 *See* Pub. Util. Code § 1701.2(c) & 1701.3(g).

108 Pub. Util. Code § 728.

109 Pub. Util. Code § 729.

Both of these statutory provisions have been construed by the California Supreme Court as requirements for the Commission to hold hearings prior to the implementation of new rates. In City of Los Angeles v. Pub. Utilities Com., the Court explained that the "purpose behind the hearing requirement of section 728 … is to air the policy considerations behind various rate proposals and to establish controverted facts."[110] Previously, in Pacific Tel. & Tel. Co. v. Pub. Utilities Com., the Court also explained that "the same is true of the provision of section 729, also cited by the commission. From 1915 until the Public Utilities Act was codified in 1951, the provisions now found in sections 728 and 729 comprised paragraphs (a) and (b), respectively, of section 32, and at all times the section instructed the commission to first hold a hearing, and then fix rates to be thereafter observed and in force."[111]

The crux of both of these statutory provisions and these long-standing California Supreme Court cases is that the Commission must hold a hearing **before** fixing utility rates. In this case, as explained above, Ordering Paragraph 3 predetermines the disposition of the WRAM in subsequent GRCs, effectively fixing the outcome of that issue on utility rates. The consequence of this failure is apparent in this proceeding: the evidentiary record and D.20-08-047 itself fail to include much of the important policy considerations – including on water conservation and affordability of utility rates – that are squarely implicated with the elimination of the decoupling WRAM.

Having failed to properly hold a hearing on that ratesetting matter before essentially resolving it with finality, D.20-08-047 violates the mandates of Sections 728 and 729.

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[110] City of Los Angeles v. Pub. Utilities Com., 15 Cal. 3d 680, 697 (1975).

[111] Pacific Tel. & Tel. Co. v. Pub. Utilities Com., 62 Cal. 2d 634, 653-654 (1965) (citations and footnotes omitted).

E. D.20-08-047 is an Unlawful Abuse of Discretion Because Several of the Findings of Fact and Substantive Discussion That Serve as the Basis for Eliminating the Decoupling WRAM are Not Based on Evidence in the Record.

The Public Utilities Code requires the Commission to "render its decisions based on the law and on the evidence in the record."[112] As discussed above, the Commission held a series of workshops, and gave the parties the occasional opportunity to provide comments. There is no properly developed record in this proceeding, and certainly nothing that could be characterized as "substantial evidence" to support the Commission's findings. Moreover, parties had no opportunity to dispute and test the purported factual predicates on which the Commission relied. Contested assertions not subject to cross-examination may not provide substantial evidence to support a finding.[113]

1. The Evidence in the Record Does Not Support D.20-08-047's Finding Regarding Comparative Reductions in Water Consumption and Conservation.

The Commission based its decision to eliminate the decoupling WRAM in large part on its belief that it was not necessary to achieve water conservation.[114] The Commission included two findings of fact with respect to water conservation:[115]

> 13. Average consumption per metered connection for WRAM utilities is less than the consumption per metered connection for non-WRAM utilities as evidenced in water utility annual reports filed from 2008 through 2016.
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> 14. 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

[112] Pub. Util. Code §1701.1(e)(8).

[113] Independent Energy Producers Association/Utility Reform Network v. Pub. Utilities Com., 223 Cal. App. 4th 945 (2014).

[114] D.20-08-047, pp. 62-70.

[115] *Id.*, pp. 102-103.

> as evidenced in water utility annual reports filed from 2008 through 2016.

The reference to unidentified annual reports in each finding was added the day before the Commission voted on the Proposed Decision. First, these findings are flawed because they purport to show the difference in water consumption for companies with and without the WRAM, but provide no information as to the magnitude of the difference, which is necessary to determine whether the differences are meaningful and reasons therefore.

Second, Finding of Fact 13 appears to be based on the graph included in the Public Advocates Office's September 23, 2019 reply comments.[116] As noted above, Cal Water had no opportunity to provide evidence or even comments regarding this issue. The Commission improperly accepted without question a limited data set that had not been subject to public review, was untested at a hearing and failed to provide stakeholders the opportunity to provide different data or any explanation why that data does not lead to the conclusion reached.

Third, as Cal Water demonstrated in its reply comments on the Proposed Decision, decoupled water companies have consistently maintained greater cumulative reductions, on a per capita basis, as compared to companies with the Monterey-style WRAM. In these comments, Cal Water offered a graph, also based on information from the annual reports, illustrating the cumulative reduction in water use per customer by companies with and without the decoupling WRAM.[117] Cal Water's graph demonstrated that before the drought, customers of decoupled

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[116] *Id.*, p. 67-68 ("The Public Advocates Office of the Public Utilities Commission made its recommendations based on the Class A water utilities' annual reports to the Commission from 2008 to 2016."). Aside from the discussion of reporting requirements in annual reports discussed in Section 9 of D.20-08-047, this is the only express mention of annual reports in the text of the decision before arriving at Findings of Fact 13 and 14.

[117] *Reply Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves* (August 3, 2020), pp. 3-4.

companies achieved 29% more than those of non-WRAM companies. For the entire period of 2008-2018, the savings were more than 13%.[118]

In its discussion of the comments on the Proposed Decision, the Commission makes no reference to Cal Water's graph. It is not clear why the Public Advocates Office's graph is part of the "record" relied upon by the Commission when Cal Water's graph and the comments of others were not. With data like that presented by Cal Water absent from the record and not even mentioned expressly in D.20-08-047, the evidence does not support the Commission's findings.

The Commission's assertions regarding conservation in the body of D.20-08-047 are similarly unsupported. For example, the Commission cites discussion at the August 2, 2019 workshop and comments on the workshop support as the basis for its conclusion that continuation of the decoupling WRAM for conservation purposes will not benefit customers.[119] Yet an examination of the workshop report provides no indication of a discussion of conservation and the decoupling WRAM, and the only information on the issue in the comments is the graph in the reply comments of the Public Advocates Office, which we have discussed above.

The Commission states, "We continue to believe that other actions by companies, the Legislature, the State Water Resources Control Board, and the Commission have, and continue to do more to achieve conservation requirements...,"[120] but provides no information regarding these actions or any studies or reports that would allow the parties to quantify the impacts of these "other actions" as compared to the decoupling WRAM.

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[118] *Id.*, p. 4.

[119] D.20-08-047, p. 67.

[120] *Id.*, p. 69.

Similarly, the Commission claims that the decoupling WRAM is not necessary because:[121]

> [I]t appears that over the years since WRAM/MCBA mechanisms were adopted, including drought years in 2014, 2015, and 2016, customers have heeded the continuing message and mandates that water is a precious resource that should not be wasted. These efforts heed the message from former Governor Brown's Executive Orders during our drought years from 2013-2017 that declared a drought state of emergency in 2014; called for a statewide 25 percent reduction in urban water usage in 2015; and set forth actions in 2016 to make conservation a California way of life.

To the extent that D.20-08-047 is asserting the Governor's Order, rather than inclining block rates, led to the consumption reductions, it offers no study or report or report reaching such a conclusion that the parties could test at hearing. The findings of fact regarding consumption, as well as the conclusions made in the body of the decision, are not supported by the evidence and therefore do not provide sufficient support for the Commission's decision.

2. The Evidence in the Record Does Not Support D.20-08-047's Claim that Eliminating the Decoupling WRAM Would Improve Water Sales Forecasting.

The Commission also based its decision to eliminate the decoupling WRAM on its claim that it will improve water sales forecasting. In Conclusion of Law 4, the Commission stated:[122]

> Elimination of the WRAM/MCBA will provide better incentives to more accurately forecast sales while still providing the utility the ability to earn a reasonable rate of return.

To support this conclusion, the Commission provided Finding of Fact 19, which stated:[123]

> Implementation of a Monterey-Style WRAM means that forecasts of sales become more significant in establishing test year revenues.

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[121] *Id.*, pp. 69-70 (footnotes omitted).

[122] *Id.*, p. 104.

[123] *Id.*, p. 103, Finding of Fact 19.

The Commission does not provide any support for the presumption that the "significance" of sales in establishing test year revenues leads to forecasts that are more accurate. Without the protection of the decoupling WRAM, companies may have an incentive to develop conservative forecasts to provide better protection against sales risk. Furthermore, based on the summary of comments made at the August 2, 2019 workshop, it appears that sales forecasting has actually improved since the implementation of the decoupling WRAM.[124]

Indeed, some of the Commission's statements with respect to forecasting give the impression that the Monterey-style WRAM is misunderstood:[125]

> In view of the foregoing, we believe that it is an appropriate time to move to eliminate the option for water utilities to use the full WRAM/MCBA mechanism. However, to account for the consequences of inaccurate forecasts, it is reasonable that these former WRAM utilities be provided an opportunity to establish Monterey-Style WRAMs offset by ICBAs.

The Monterey-style WRAM does not "account for the consequences of inaccurate forecasts." Indeed, it was the failure of the Monterey-style WRAM to account for the difference between forecasted and actual consumption that led to the development of the decoupling WRAM. The Commission's misstatements regarding the Monterey-style WRAM undercut its findings regarding the benefits to sales forecasting of transitioning to the Monterey-style WRAM.

Moreover, the Commission provides no support in D.20-08-047 for its belief that the (unproven) potential for more accurate forecasts with the Monterey-style WRAM provides more protection to customers than the decoupling WRAM. As the Commission explained in Findings

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[124] *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions* (September 4, 2019), Attachment A, p. 5, noting comments by CWA that "Current methods are producing more accurate three-year forecasting" and by the Public Advocates Office that "Recent forecasts have improved, but there is still room for further improvements."

[125] D.20-08-047, p. 71.

of Fact Nos. 1 and 2, the decoupling WRAM raises **or lowers** rates to adjust for variances in sales.[126] Nothing in the decision, however, explains how improved forecasts without the decoupling WRAM will ensure that a utility's actual revenue is no more and no less than that the Commission found reasonable in the utility's last GRC.

The Commission's findings with respect to sales forecasts are not supported by evidence and therefore do not justify the Commission's decision to eliminate the decoupling WRAM.

3. The Evidence in the Record Does Not Support D.20-08-047's Finding Regarding Intergenerational Transfer of Costs.

The Commission also cites intergenerational transfers as a justification for elimination of the decoupling WRAM,[127] supported by the following findings:[128]

> 15. Since WRAM/MCBA is implemented through a balancing account for recovery, there are intergenerational transfers of costs.
>
> 16. 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.

Finding of Fact 15 could be made of any balancing account, including, for example, the incremental cost balancing account authorized for all water utilities for many years. The Commission does not quantify the extent of these transfers, although it concedes elsewhere in

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[126] Finding of Fact No. 2 erroneously states that (emphasis added):

> If actual sales exceed adopted sales, the WRAM/MCBA mechanism will return the over-collected revenues to customers through a balancing account with a surcharge on customer bills.

The text at page 48 of D.20-08-047 correctly states that (emphasis added):

> The WRAM tracks the difference between the authorized quantity rate revenues and actual billed quantity-rate revenues over a calendar year period and recovers any shortfall or returns any over-collected amount via a quantity-based surcharge or a meter-based sur-credit, respectively.

[127] D.20-08-047, p. 70.

[128] *Id.*, p. 103, Findings of Fact 15 & 16.

D.20-08-047 that "such intergenerational transfers may not be significant over long periods of time."[129] The simple fact that there are intergenerational transfers associated with the WRAM, particularly in light of the fact they may not be significant, does not support the Commission's decision to eliminate the decoupling WRAM.

Finding of Fact 16 is more unsupported opinion than fact. The finding (and the body of D.20-08-047) are absent of (1) any description or identification of the "alternative available to the utilities and the Commission", (2) whether employment of that "alternative" would result in "intergenerational transfers" and (3) why one is "not the best." Finding of Fact 16 is devoid of evidentiary support. Any reliance on it is unlawful.

F. The Commission Unlawfully Reached D.20-08-047 By Failing to Meet its Obligations Under Public Utilities Code Section 1705 to Hear All Evidence that Might Bear On the Exercise of its Discretion and to Demonstrably Weigh that Evidence.

Public Utilities Code Section 1705 provides a statutory requirement that Commission decisions "contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision."[130] Courts have interpreted this requirement for the Commission to render findings on all material issues under Section 1705 as a concomitant obligation to (1) hear all evidence that might bear on the exercise of its discretion and (2) demonstrably weigh that evidence.[131] In United States Steel Corporation v. Pub. Utilities Com., the California Supreme Court explained these responsibilities:[132]

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[129] *Id.*, p. 64.

[130] Pub. Util. Code § 1705.

[131] United States Steel Corporation v. Pub. Utilities Com., 29 Cal. 3d 603 (1981); Northern California Power Agency v. Pub. Utilities Com., 5 Cal. 3d 370 (1971); Industrial Communications Systems v. Pub. Utilities Com., 22 Cal. 3d 572 (1978).

[132] United States Steel Corporation v. Pub. Utilities Com., 29 Cal. 3d 603, 608-609 (1981) (citations omitted).

> Concomitant with the discretion conferred on the commission is the duty to consider all facts that might bear on exercise of that discretion. The commission must consider alternatives presented and factors warranting adoption of those alternatives. That duty is inherent in the requirement that the decision "contain, separately stated, findings of fact and conclusions of law ... on all issues material to the order or decision."

In this proceeding, it is plainly evident from the analysis and disposition of the issues relating to the decoupling WRAM that the Commission has failed to meet its duties under Section 1705.

1. D.20-08-047 Unlawfully Precludes Water Utilities From Proposing to Continue the Decoupling WRAM in their Subsequent GRCs.

First, as explained above, D.20-08-047 unlawfully precludes Cal Water and other water utilities from proposing to continue the decoupling WRAM in their subsequent GRCs and effectively binds the discretion of future Commission actions on the issue. Having been denied a fair opportunity to present testimony or exhibits on that issue, D.20-08-047's preemptive determination here effectively bars water utilities from presenting evidence in their next GRCs showing that decoupling is in the public interest entirely. That is inconsistent with the Commission's obligation under Section 1705 to hear all evidence that might bear on the exercise of its discretion and makes it impossible for the Commission to demonstrably weigh that evidence. The preemptive denial of the matter in subsequent GRCs also violates the Legislative directive under Public Utilities Code Section 727.5(c) that the "commission shall consider, and may authorize, a water corporation to establish a balancing account, rate stabilization fund, or other contingency fund, the purpose of which shall be the long-term stabilization of water rates."[133] Therefore, Ordering Paragraph 3 of D.20-08-047 is unlawful because it violates the Commission's statutory responsibilities relating to the exercise of its discretion under Section 1705 set forth in United States Steel Corporation v. Pub. Utilities Com..

[133] Pub. Util. Code § 727.5(c).

2. D.20-08-047 Unlawfully Omits Any Meaningful Analysis Regarding the Impact of the Elimination of the Decoupling WRAM.

Second, D.20-08-047 violates the Commission's duty under Section 1705 to hear all evidence that might bear on the exercise of its discretion and demonstrably weigh that evidence by unlawfully omitting any meaningful discussion regarding the potential impacts of eliminating the decoupling WRAM on Commission's Water Action Plan objective of "set[ting] rates that balance investment, conservation, and affordability."[134]

In comments to the Proposed Decision, each of the water utilities with a decoupling WRAM (including Cal Water) highlighted the negative consequences that the elimination of the decoupling WRAM would have on low-income and low-use customers due to the modifications that would need to be made to the existing conservation-focused rate design made possible only with the existence of the decoupling WRAM.[135] Commissioner Randolph's subsequent dissent to D.20-08-047 goes further to succinctly lay out the potential negative consequences that should have been explored in the evidentiary record of this proceeding:[136]

> No one likes a WRAM surcharge, especially when those surcharges become large. However, simply eliminating a WRAM surcharge does not make water more affordable. This Decision is not a magic bullet slaying high bills. Indeed, it removes a revenue adjustment mechanism. Without that mechanism, companies will still need to design rates to match their revenue requirement.
>
> While this Decision does not make changes to any company's rate design, there will be an increasing need for the water companies to limit sales risk due to the removal of the WRAM. They are very likely to propose higher service charges as well as having flatter tiers or else face a very real risk of not meeting their revenue requirement.

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[134] 2005 Water Action Plan, p. 5.

[135] *Comments of California Water Service Company (U 60 W) On The Proposed Decision Of Commissioner Guzman Aceves* (July 27, 2020), pp. 3-6; *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves* (July 27, 2020), p. 3; *Comments of Golden State Water Company (U 133 W) on Proposed Decision and Order* (July 27, 2020), p. 3.

[136] D.20-08-047, *Dissent of Commissioner Randolph*, p. 1 (emphasis added).

> Such an outcome would lead to increasing the bills of low-usage customers which correlates with low-income customers. This outcome is exactly opposite of this proceeding's intent by harming low-income customers. Such a rate design would also blunt the conservation signal.
>
> Now, one could argue that such a rate design has neither been proposed nor approved. Hypothetically, assume that in the future the Commission does not allow higher service charges or the flattening of tiers. If such a rate design were to be approved, then the water companies will likely argue that they should increase their rates of return on equity as their business risk is increased. This will lead to higher rates for everyone.

Consideration of these unanticipated consequences is absent from the evidentiary record because the parties were not afforded on opportunity to address them – whether in disagreement or in support. Rather than properly contemplating these issues, D.20-08-047 dismisses out of hand, without any real consideration or explanation, the possibility that eliminating decoupling could harm low-income and low-use customers, instead providing the single conclusory statement that "there is no evidence that eliminating the WRAM will raise rates on low-income and low-use customers."[137] Particularly in a rulemaking proceeding purportedly opened specifically with the goal of assisting low-income water customers, this is plainly insufficient.

This dismissive take fails to recognize that major water policy changes are interconnected, and as such merit a comprehensive analysis to understand their implications. Commissioner Randolph's dissent references the third leg of the "balanced rates" objective that is missing from D.20-08-047 – infrastructure investment. Namely, if the Commission now denies a request to modify rate designs in the absence of decoupling, a higher return on equity could be needed to ensure appropriate infrastructure investment. The result could be a rate increase for all

[137] D.20-08-047, p. 68.

customers that is caused neither by new capital investment nor an increase in expenses, but by the elimination of decoupling.

Reviewing Commissioner Randolph's dissent in light of this crucial Water Action Plan objective brings into sharp focus how D.20-08-047, with its superficial analysis of these issues, makes no attempt to consider the appropriate balance between conservation, affordability, and investment. The Commission need not ultimately accept arguments made by the water utilities or the Public Advocates Office, but it is obligated to at minimum hear and weigh them under Section 1705 – D.20-08-047 fails to demonstrate that this was ever done in a legal manner.

Therefore, D.20-08-047 clearly fails to support a conclusion that the Commission demonstrably weighed all of the evidence that might bear on the exercise of its discretion in violation of Section 1705. Additionally, as explained in the following section, the failure to properly consider all of the material impacts that eliminating the decoupling WRAM would have resulted in other unintended consequences that further render D.20-08-047 unlawful.

G. D.20-08-047's Elimination of the Decoupling WRAM and Preemptive Prohibition on Rate Design Changes Unlawfully Impairs the Ability of Cal Water to Earn an Adequate Rate of Return in Violation of the Constitution.

D.20-08-047 asserts that "there is no legal basis upon which WRAM/MCBA is required or necessary in water utility regulation."[138] This statement is an oversimplification of the matter and misses the point. By eliminating the decoupling WRAM and simultaneously preempting the ability of water utilities to make the necessary rate design changes, D.20-08-047 unlawfully impairs the ability of Cal Water to earn its authorized rate of return, in violation of the Constitutional mandate to afford regulated public utilities a fair opportunity to earn an adequate return on its investment.

[138] *Id.*, p. 60.

As explained above, the elimination of the decoupling WRAM will necessarily require substantial changes to the existing conservation-focused water utility rate designs to offset the resulting increased revenue risk in its absence. While D.20-08-047 acknowledge that "rate design is the ultimate determinant of impacts to low-income and low-use customers," it inexplicably then mandates that "water utilities can and will propose rate structures in their next GRC application where the Commission will ensure low-income and low-use customers are not adversely impacted."[139] Yet simple mathematics demonstrate that the only means by which a utility with a decoupling WRAM can retain an opportunity to earn its authorized rate of return is to increase its monthly charge and flatten its rate tiers, resulting in increases to the charges assessed to low-volume users (which often coincide with low-income users), precisely the **opposite** result from that sought in the OIR. It is troubling that D.20-08-047 entirely fails to even properly acknowledge this legal deficiency. Courts have held that the determination of whether the rates set by the Commission will produce a constitutionally adequate return on equity is a factual question.[140] Such a determination required here was never adequately considered in D.20-08-047, let alone properly addressed.

Therefore, D.20-08-047's immutable retention of the existing conservation-focused rate structure in periods of volatile consumption will impair the utility's ability to earn its authorized rate of return in the absence of a decoupling WRAM, resulting in an unlawful and confiscatory rate of return in violation of the long-standing utility ratemaking principles under the

[139] *Id.*, p. 68.

[140] Ponderosa Telephone Co. v. Pub. Utilities Com., 36 Cal. App. 5th 999 (2019).

Constitution set forth by U.S. Supreme Court in Bluefield Co. v. Pub. Serv. Com.,[141] Power Comm'n v. Hope Gas Co.,[142] and Duquesne Light Co. v. Barasch.[143]

IV. REQUEST FOR ORAL ARGUMENT ON APPLICATION FOR REHEARING

Pursuant to Rule 16.3, Cal Water hereby requests oral argument on the issues presented in this Application for Rehearing. Holding oral argument here would materially assist the Commission in resolving this Application for Rehearing by creating an open venue for the Commissioners and the parties to fully evaluate each of the legal errors outlined herein. In particular, the extremely complex procedural history and substantive policymaking consideration associated with the decoupling WRAM are best explored through a dynamic two-way dialogue that can only be held equitably and transparently in public oral argument before the entire Commission.

D.20-08-047 raises issues of major significance for the Commission because it "departs from existing Commission precedent without adequate explanation."[144] D.20-08-047 radically shifts away from the decoupling WRAM tool that water utilities like Cal Water have used from more than a decade. Yet, as outlined above, many of the substantive explanations for doing so remain unanswered (in particular, the issue of how the Commission intends to resolve the inevitable impacts to low-income and low-use customers caused by the elimination of the decoupling WRAM, as alluded to in Commissioner Randolph's dissent). Moreover, the extensive comments on the Proposed Decision and considerable involvement of the parties in this proceeding leading up to the adoption of D.20-08-047 easily demonstrate that it "presents legal

[141] Bluefield Co. v. Pub. Serv. Com., 262 U.S. 679 (1923).

[142] Power Com. v. Hope Gas Co., 320 U.S. 591 (1944).

[143] Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989).

[144] Rule 16.3(a)(1).

issues of exceptional controversy, complexity, or public importance."[145] For these reasons, oral argument on this Application for Rehearing is well-justified and should be granted.

V. REQUEST FOR RELIEF

Cal Water requests that the Commission vacate the portions of D.20-08-047 that address the decoupling WRAM due to the legal errors outlined in this Application for Rehearing and direct that it be considered in a separate phase or proceeding characterized as ratesetting that clearly identifies in a scoping memo the decoupling WRAM as an issued to be considered. Such an evaluation would necessarily involve a hearing, fair opportunities for parties to present and cross-examine evidence in the record, and other requisite procedural protections afforded in a ratesetting proceeding. At minimum, the Commission must revise D.20-08-047 to avoid precluding or pre-deciding issues from fairly being considered in its other future proceedings.

VI. CONCLUSION

In summary, the elimination of the decoupling WRAM in D.20-08-047 is a product of numerous procedural and substantive legal errors that have prejudiced the parties in this proceeding, including Cal Water. These legal infirmities have led not only to unsound decision-making by eliminating an important progressive water conservation and ratemaking mechanism, but also result in an unlawful decision. Therefore, Cal Water respectfully urges the Commission to grant this Application for Rehearing and vacate the portions of D.20-08-047 addressing the decoupling WRAM for the reasons outlined above. Cal Water also respectfully requests that the Commission hold oral argument on this Application for Rehearing.

[145] Rule 16.3(a)(3).

Date: October 5, 2020

Respectfully submitted,

By: */s/ Natalie D. Wales*
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JOINT APPENDIX HH

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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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)

APPLICATION OF LIBERTY UTILITIES (PARK WATER) CORP. (U 314-W) AND LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP. (U 346-W) FOR REHEARING OF DECISION 20-08-047

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Dated: October 5, 2020

Table Of Contents

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)

APPLICATION OF LIBERTY UTILITIES (PARK WATER) CORP. (U 314-W)
AND LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP. (U 346-W)
FOR REHEARING OF DECISION 20-08-047

In accordance with Rule 16.1 of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission ("Commission"), Liberty Utilities (Park Water) Corp. ("Liberty Park Water") and Liberty Utilities (Apple Valley Ranchos Water) Corp. ("Liberty Apple Valley") (together, "Liberty") hereby submit this Application for Rehearing ("Application") of Decision ("D.") 20-08-047 (the "Decision").

I. INTRODUCTION

The Decision reverses longstanding Commission policy by prohibiting each water utility that employs a Water Revenue Adjustment Mechanism/Modified Cost Balancing Account ("WRAM/MCBA") from proposing the continuance of the existing WRAM/MCBA in its next general rate case ("GRC") application but permitting such utilities to propose a Monterey-Style Water Revenue Adjustment Mechanism/Incremental Cost Balancing Account ("Monterey-Style WRAM/ICBA"). This major change to Commission policy was neither based on evidentiary hearings nor any kind of robust record. Rather, the Decision unlawfully gave parties little to no opportunity to be heard on this important issue. Parties had just 19 days (which includes the time for reply comments) to respond to one question in a September 4, 2019 Ruling ("September Ruling") that asked whether the WRAM should be replaced by the Monterey-Style WRAM. The September Ruling included 17 other questions on separate issues. The next word on the elimination of the WRAM from the Commission was the July 3, 2020 Proposed Decision ("PD"). Parties scrambled to submit comments on the PD within the 20-day

deadline to explain that elimination of the WRAM will harm conservation efforts, have negative impacts on low-income customers and affordability in violation of the purpose of this proceeding, is unsupported by the evidence and contrary to Commission decisions that have repeatedly endorsed the WRAM, and that the WRAM is materially different from the Monterey-Style WRAM and cannot simply be replaced by it.[1] Most importantly, the parties explained that the WRAM was never even set forth in the scope of this proceeding, and the PD was issued without proper vetting or any meaningful input by the parties on the elimination of the WRAM.

The Decision follows suit by addressing the problems of rashly eliminating the WRAM, largely by stating that no evidence was presented demonstrating that the WRAM provides benefits or is necessary. However, the very reason the record lacks such evidence is that parties were not given any opportunity to provide it. The parties were only barely offered a chance to express an opinion in comments on the September Ruling, and this opportunity was given without the parties having been given any warning about the import of those comments. That does not constitute a meaningful opportunity to be heard.

As set forth in the Dissent of Commissioner Randolph, the Decision's elimination of the WRAM will likely harm low-income customers, blunt the conservation signal, and lead to higher bills for all customers. A change in policy with such severe consequences requires proper evaluation and input from all stakeholders. The Decision is not based on an examination of the issues by all parties and requires rehearing to allow for a complete and transparent record.

As discussed below, the Decision's failure to provide parties with a meaningful opportunity to be heard is a violation of law. The Commission should grant rehearing to consider this important issue based on a fully informed and vetted record.

II. THE DECISION UNLAWFULLY ELIMINATES THE WRAM WITHOUT PROVIDING PARTIES WITH A MEANINGFUL OPPORTUNITY TO BE HEARD

The Decision repeatedly claims that its elimination of the WRAM/MCBA is justified by a lack of evidence showing any need for the WRAM, stating that its reasoning is supported because "there is no evidence that eliminating the WRAM will raise rates on low-income and low-use customers"[2]; "no party has presented evidence or arguments that persuade us that the pilot WRAM/MCBA mechanism

[1] *See* Opening Comments on the PD of California-American Water Company, California Water Association, California Water Service Company, Great Oaks Water Company, Golden State Water Company, Liberty, and National Association of Water Companies.

[2] Decision at 68.

provides discernable benefits that merit its continuation;"[3] and "no water company or any other party offered any alternative to the WRAM/MCBA process other than allowing companies to use a Monterey-Style WRAM in future GRCs."[4] This justification completely ignores one of the key problems with the Decision: ***parties were given no opportunity to provide evidence demonstrating the numerous negative impacts that the elimination of the WRAM is likely to cause***. If parties had been given the opportunity to be heard in an appropriately vetted proceeding, the Commission could have considered evidence showing that, among other things, 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, elimination of the WRAM will not accomplish improved sales forecasting, and the Monterey-Style WRAM is not as effective at promoting conservation as the WRAM. Even in the brief amount of time that parties had to evaluate the consequences of the elimination of the WRAM during the 20-day comment period on the PD, the Golden State Water Company undertook an analysis that "shows that customers of WRAM companies do in fact conserve more than customers of M-WRAM companies."[5] That analysis provides a glimpse of the type of input that would have been offered if all parties had a meaningful opportunity to examine the issue and provide input.

The Decision attempts to cover for the lack of consideration given to the elimination of the WRAM by arguing that it was always an issue in the proceeding under the guise of "Forecasting Water Sales" set forth in the January 9, 2018 Scoping Memo.[6] However, even the Decision admits that nothing in the proceeding specifically addressed the WRAM until late last year.[7] During the course of two years and multiple workshops, the topic of the WRAM was never introduced. The parties were first asked to address the WRAM specifically in response to a question posed in the September Ruling. Parties were given 12 days to respond to the 18 questions posed in that ruling (only one of which asked about the elimination of the WRAM) and seven days for reply comments. In reply comments dated September 23, 2019, the Public Advocates Office presented a graph, upon which the PD heavily relied to prove that "the annual change in average consumption per metered connection is almost the same during the last

3 Decision at 68-69.

4 Decision at 71.

5 Golden State Water Company's Opening Comments on the PD at 10-13.

6 Decision at 53-54.

7 Decision at 54.

eight years for both WRAM and Non-WRAM utilities."[8] The PD's second key piece of evidence supporting its elimination of the WRAM was a nonexistent "Table A," which, according to the PD, was "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 that led to the PD's elimination of the WRAM. After the Public Advocates Office provided its graph in reply comments on September 23, 2019, there were no other workshops or comments addressing the WRAM issue. Indeed, between October 2019 and June 2020—when a newly assigned ALJ issued a new scoping memo (that also did not include the WRAM)—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 so-called evidentiary support for the elimination of the WRAM despite the fact that the parties had no opportunity to refute either piece of "evidence."

After comments on the PD raised numerous questions about the Public Advocates Office's graph and the nonexistent Table A, the final Decision deleted all references to this alleged evidence and supported its elimination of the WRAM only with unsubstantiated beliefs about whether the WRAM is beneficial and its statements that the parties provided no evidence opposing those beliefs. Deleting references in the Decision to the alleged evidence that led to the conclusion to eliminate the WRAM does not erase the problem that parties were not given the opportunity to evaluate such "evidence" or to provide any meaningful input on a substantial change in Commission policy.

It is undisputed that there were no evidentiary hearings in this proceeding to vet the elimination of the WRAM. It is undisputed that the WRAM was not specifically set forth in the Scoping Memo as an issue in this proceeding, which was initiated to address the improvement of low-income customer assistance programs. It is undisputed that the parties had a mere 19 days to respond to the September 4, 2019 Ruling's single question about the possibility of converting to a Monterey-Style WRAM. Instead of being provided with a meaningful opportunity to evaluate the issue, the parties were sandbagged by the sudden emergence of a PD declaring the elimination of the WRAM. This tactic to push through a hasty decision based on a lack of evidence disproving unsupported beliefs about a conservation

[8] PD at 54-55.

[9] PD at 55.

mechanism that has been in place for over a decade when parties had little to no opportunity to present such evidence is beyond inappropriate—it is unlawful.

The Decision 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."[10] This statement is false. GRC decisions subsequent to D.12-04-048 have 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 specifically 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.[11]

The Decision itself cites another example of a Commission decision that endorses the continuation of the WRAM.[12] 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."[13] A fully vetted record would have revealed these decisions (and likely others) that evaluated and endorsed the WRAM subsequent to D.12-04-048 and considered such decisions before eliminating longstanding conservation mechanism.

[10] Decision at 60.

[11] D.15-11-030 at 3 (emphasis added).

[12] *See* Decision at 61 and 66.

[13] D.16-12-026 at 40.

Instead, without a review of the Commission's prior evaluations, the Decision reverses D.12-04-048, at least two decisions since D.12-04-048 that have endorsed the continuation of the WRAM, and Commission policy that has been in effect for over a decade—even though parties were provided only 19 days to respond to a single question presented on the issue in the September Ruling. This egregious failure to provide parties with any meaningful opportunity to be heard on the reversal of longstanding Commission policy is a violation of law.

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."[14]

As explained above and as is evident by a review of the very brief record in this proceeding on the WRAM issue, the parties here had no meaningful opportunity to be heard on this issue and absolutely no opportunity to refute the "evidence" that was initially used to support elimination of the WRAM in the PD. By failing to provide such an opportunity, the Decision violates Public Utilities Code Section 1708, and therefore the Commission must grant rehearing.

III. REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 16.3, Liberty hereby requests oral argument regarding the Commission's order revoking its authority to continue using the WRAM/MCBA. Oral argument is warranted because, as described above, the Commission's order on the WRAM/MCBA constitutes a major departure from longstanding Commission precedent that was adopted without any meaningful opportunity for the parties to be heard on the issue. Oral argument would provide the Commissioners with a much needed opportunity to examine legal errors in the Decision and the far-reaching ramifications of the Decision that have not yet even been given superficial consideration. Given the due process violations at issue, and the alarming potential consequences of eliminating the WRAM without proper evaluation of those consequences, oral argument is both appropriate and imperative.

[14] *Cal. Trucking Assoc. v. Pub. Util. Com.*, 19 Cal. 3d 240, 243-244 (1977).

IV. CONCLUSION

For the foregoing reasons, the Commission must grant rehearing of the Decision and establish a robust, complete, and transparent examination of decoupling before eliminating the decoupling mechanism for the water industry.

Dated: October 5, 2020

Respectfully submitted,

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JOINT APPENDIX II

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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

APPLICATION OF GOLDEN STATE WATER COMPANY (U 133 W) FOR REHEARING OF DECISION 20-08-047

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the WRAM-related issues were not resolved by the settlement adopted by the Commission.[36] Rather, 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 the five WRAM Options.[37] In that Decision, the Commission issued critical Conclusions of Law regarding these topics, including:

> The 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.[38]

And:

> Because 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.[39]

Thus, unlike in the instant proceeding, in GSWC's 2012 GRC, the Commission developed an extensive record regarding the WRAM and MCBA, including through evidentiary hearings, and concluded that GSWC's WRAM and MCBA should remain in place.

Remarkably, even after GSWC explained the extent of the litigation and the Commission's orders from GSWC's 2012 GRC in its comments filed on the PD,[40] the Commission wrongly states in the Decision that the WRAM was part of the settlement adopted by Decision 13-05-011.[41] It was not. The Decision includes multiple findings of fact on this topic

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[36] *Id.* at Finding of Fact #3 (stating: "On June 21, 2012, DRA, Golden State, and TURN filed a motion for approval of a settlement agreement that resolves all issues in this proceeding ***except Golden State's Special Request No. 1, Special Request No. 8, and WRAM****."*).

[37] *Id*. at 65-81

[38] *Id*. at Conclusion of Law #72.

[39] *Id*. at Conclusion of Law #88.

[40] *GSWC Comments on PD* at 5-6.

[41] The Decision states: "In July 27, 2020, comments on the proposed decision, Golden State Water Company argues that the Commission did consider such risks as part of approving a settlement in D.13-05-011. However, as D.13-05-011 adopts a settlement it cannot be cited in such a manner." (Decision 20-08-047 at 60, note 40.) This footnote conflates GSWC's explanation of the extensive adjudication of the WRAM issues during GSWC's 2012 GRC with the statements that GSWC made regarding settlements adopted in the GRCs of other WRAM Utilities. (*See GSWC Comments on PD* at 6 (stating: "***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" (emphasis added).) With this conflation, the Decision misstates

that are inarguably wrong.[42] From a due process perspective, the fact that GSWC previously litigated, including through evidentiary hearings, its authority to continue using its WRAM and MCBA mechanisms makes the revocation of these mechanisms, without providing GSWC any opportunity to refute the only data that purports to support revocation, particularly problematic.

Rulemaking 11-11-008 (the "Balanced Rates Proceeding")

In the Balanced Rates Proceeding, the Commission solicited detailed input from stakeholders as part of its in-depth investigation of the WRAM/MCBA. 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 the "foundational issue" of whether the WRAM/MCBA should remain in places. Those questions were:

7. Do WRAMs and MCBAs, by decoupling the utilities' revenue functions from changes in sales, succeed in neutralizing the utilities' incentive to increase sales? Is there a better way?
8. Are WRAMs and MCBAs effective mechanism to collect authorized revenue in light of tiered inclining block conservation rates? Is there a better way to proceed in light of the drought and the Executive Order?
9. Do WRAMs and MCBAs appropriately incentivize consumer conservation? Are adjustments needed? Would another mechanism be better suited for the utility to collect authorized revenue for water system needs and encourage conservation in light of the drought and the Executive Order?
10. Are WRAMs and MCBAs effective at encouraging conservation when decreases in volumetric consumption by some or all consumers lead to large balances in WRAMs and MCBAs being assessed on all ratepayers? What adjustments in the WRAM or MCBA mechanisms are needed to encourage conservation? Should such adjustments be paired with other steps such as advanced metering, other technology, and/or steps to more quickly detect leaks and notify customers about water usage?

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history and incorrectly asserts that the Commission's orders on the WRAM set forth in Decision 13-05-011 cannot be cited because they were part of a settlement.

[42] *Id*. at Finding of Fact #8 (wrongly asserting: "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."); Finding of Fact #10 (wrongly asserting: "The quantification of changes in risk due to the existence or elimination of WRAM/MCBA has not been adjudicated since the WRAM/MCBA was adopted."); and Finding of Fact #20 (wrongly asserting: "No quantification of the risk effects of using the WRAM/MCBA mechanism is evident in past GRC proceedings.").

new proposal in response to a tangential issue. Just as in the 2003 proceeding, here, the WRAM/MCBA issue was introduced very late in the proceeding (in this case, more than 24 months after the OIR was issued). And while in the 2003 proceeding, the Laborers submitted a large amount of evidence (400 pages) and the other parties at least had six days/three business days to respond to the new evidence, because of the manner in which the instant proceeding unfolded, the only evidence supporting the revocation of the WRAM and MCBA mechanisms is a single graph submitted by Cal PA that the WRAM Utilities never had an opportunity to refute. As sure as in the 2003 proceeding the Commission failed to regularly pursue its authority as contemplated by PU Code Section 1757.1, in the instant case, the Commission failed to regularly pursue its authority, including by violating the due process rights of the WRAM Utilities,[66] as detailed further below.

B. The Decision Relies on Data that the WRAM Utilities had No Opportunity to Analyze or Refute, in Violation of PU Code Section 1708 and Due Process

A critical finding of fact underlying the Commission's order requiring the WRAM Utilities to abandon their WRAM/MCBA mechanisms in their next GRC applications is its conclusion that the WRAM/MCBA mechanisms are no more effective in promoting conservation than the M-WRAM/ICBA mechanisms.[67] That is, while the Commission orders the WRAM Utilities to abandon the WRAM/MCBA mechanisms, it authorizes them to propose to use M-WRAM/ICBA mechanisms.[68] However, this conclusion is based on a single graph provided by Cal PA that purports to show that the annual change in average consumption per metered connection was almost the same during the period from 2008-2016 for both WRAM Utilities and Non-WRAM utilities.[69] The Commission's reliance on this data to support

[66] Per PU Code Section 1757.1(b), the Commission shall have failed to regularly pursue its authority if it has violated a party's due process rights. ("In reviewing decisions pertaining solely to water corporations, the review shall not be extended further than to determine whether the commission has regularly pursued its authority, ***including a determination whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or this state***."(Cal. Pub. Util. Code § 1757.1(b) (emphasis added).)

[67] D.20-08-047 at 67 and Findings of Fact #13 and #14.

[68] *Id*. at Ordering Paragraph #3.

[69] *Id*. at 67 (citing to *The Public Advocates Office of the Public Utilities Commission Sept. 2019 Reply Comments* at 7).

abandoning its prior orders authorizing the WRAM/MCBA mechanisms violates PU Code Section 1708 and the WRAM Utilities' due process rights because the WRAM Utilities had no meaningful opportunity to analyze or refute this data.[70]

The graph provided by Cal PA was submitted for the first time in Cal PA's last reply comments filed in this proceeding, notwithstanding that there were five workshops in this proceeding, and Cal PA did not present this data in any of the workshops or in any set of comments that would have afforded the WRAM Utilities an opportunity to investigate and refute the data. The Decision's order requiring abandonment of the WRAM and MCBA in reliance on this one-sided perspective, without giving GSWC and the other WRAM Utilities any ability to refute the data, is a violation of the due process rights of the parties to this proceeding.[71]

Specifically, PU Code Section 1708, which governs all proceedings before the Commission,[72] 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.[73] 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."[74] 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."[75] And the California Court of Appeal 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

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[70] Cal. Pub. Util. Code § 1708 (stating: "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.") (emphasis added)).

[71] *Id*.; *see*, *also*, *Brewer,* 190 Cal. 60 (1922), *supra*, note 47 and accompanying text.

[72] 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).

[73] *See*, *supra*, note 70.

[74] *Cal. Trucking Assoc. v. Pub. Util. Com.*, 19 Cal. 3d 240, 243-244 (1977).

[75] *Id*. at 244.

for refutation."[76] Therefore, California law requires the Commission to have afforded the parties to this proceeding an opportunity to refute Cal PA's graph before the Commission changed its prior orders regarding the WRAM/MCBA. The parties had no such opportunity in this proceeding.

Even if the WRAM Utilities' authority to use their WRAM/MCBA mechanisms is deemed a "regulation" such that, under PU Code Section 1708.5(f), the Commission would have broader authority to revoke that regulation without holding an evidentiary hearing,[77] the Commission may not revoke GSWC's WRAM/MCBA without an evidentiary hearing. That is, because the Commission previously held evidentiary hearings in order to determine whether GSWC's authority to use the WRAM/MCBA should continue or whether an alternative mechanism should be imposed, California law would require that the Commission hold an evidentiary hearing before revoking GSWC's authority. Specifically, PU Code Section 1708.5(f) provides:

> Notwithstanding Section 1708, the commission may conduct any proceeding to adopt, amend, or repeal a regulation using notice and comment rulemaking procedures, without an evidentiary hearing, ***except with respect to a regulation being amended or repealed that was adopted after an evidentiary hearing, in which case the parties to the original proceeding shall retain any right to an evidentiary hearing accorded by Section 1708***.[78]

As discussed above, during GSWC's 2012 GRC, the Commission held an evidentiary hearing solely to consider whether GSWC's authority to continue using its WRAM and MCBA should remain in effect. Decision 13-05-011, which resolved that GRC, states explicitly that continuation of the WRAM was not one of the issues resolved by the settlement adopted by the Commission in that proceeding.[79] Rather, in Decision 13-05-011, the Commission dedicated more than 16 pages to analyzing whether the WRAM/MCBA were achieving their stated purposes and to considering the alternative WRAM Options,[80] and issued six separate

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[76] *Cal. Assoc. of Nursing Homes, etc. v. Williams*, 4 Cal. App. 3d 800, 810-11 (3rd App. Dist. 1970).

[77] *See* Cal. Pub. Util. Code § 1708.5(f).

[78] *Id*. (emphasis added)

[79] Decision 13-05-011 at Finding of Fact #3 (stating: "On June 21, 2012, DRA, Golden State, and TURN filed a motion for approval of a settlement agreement that resolves all issues in this proceeding ***except Golden State's Special Request No. 1, Special Request No. 8, and WRAM***).

[80] *Id.* at 65-81.

conclusions of law regarding GSWC's authorization to continue using the WRAM/MCBA.[81] And the Commission ultimately concluded that the WRAM/MCBA should remain in effect without modification.[82] Given that the Commission held evidentiary hearings solely to investigate the effectiveness of the WRAM/MCBA and the WRAM Options before issuing its decision authorizing GSWC to continue using its WRAM, under PU Code Section 1708.5(f), GSWC would retain its right to an evidentiary hearing before the Commission may revoke that authority.

To be clear, whether or not GSWC is entitled to an evidentiary hearing in accordance with PU Code Section 1708.5(f) before its authority to use its WRAM/MCBA mechanisms may be revoked, PU Code Section 1708 and the due process rights of GSWC and the other WRAM Utilities have been violated in this proceeding. That is, the WRAM Utilities were denied any opportunity to submit any evidence as to the importance of not having their WRAM/MCBA mechanisms revoked and to refute Cal PA's graph. Even if an evidentiary hearing is not required, multiple decisions of the California Supreme Court and Courts of Appeal make clear that due process requires these opportunities to be heard, and for refutation, before the Commission may deprive a party of its rights. Therefore, the Commission's order revoking the WRAM Utilities' authority to continue using their WRAM/MCBA mechanisms violates due process and PU Code Section 1708, irrespective of GSWC's independent right to an evidentiary hearing under PU Code Section 1708.5.

C. By Failing to Establish an Evidentiary Record that Supports the Order to Require the WRAM Utilities to Abandon their WRAM/MCBA Mechanisms, the Commission Abused Its Discretion, as set forth in PU Code Section 1757.1(a)(1)

The failure to establish a meaningful record in this proceeding, including the associated due process violation, constitutes an abuse of discretion as set forth in PU Code Section 1757.1(a)(1).[83] Requiring the abandonment of the WRAM/MCBA mechanisms is a fundamental

[81] *Id*. at Conclusions of Law #72, #88, #89, #90, #91 and #92.

[82] *Id*. at Conclusion of Law #88 (stating: "Because 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.").

[83] *See* Cal. Pub. Util. Code § 1757.1(a)(1).

change that will have significant implications for the future operations the WRAM Utilities, as the Decision readily acknowledges.[84] But because of the late stage at which this topic was introduced into this proceeding, there is no record evidence that actually supports this order. Rather, the Decision relies on unvetted data that does not support Cal PA's claims or the Commission's conclusions, and outdated data from a 2012 decision. And the Commission failed to establish any record regarding the impacts that this change will have on low-income and low-use customers—the predominant focus of this proceeding. By revoking the WRAM Utilities' authority to use their WRAM/MCBA mechanisms in the future, without developing and evaluating any record that actually supports its reversal of long-standing policy, the Commission has abused its discretion.[85] Accordingly, the Commission should correct this statutory error by eliminating its orders directing abandonment of the WRAM set forth in Ordering Paragraph #3 of the Decision.

1. Because the WRAM Utilities Were Not Afforded an Opportunity to Refute Cal PA's Data, the Decision Relies on "Facts" that Do Not Support its Conclusions

As discussed above, a critical determination upon which the Decision bases its order to require abandonment of the WRAM/MCBA is its finding that the WRAM/MCBA mechanisms are no more effective in promoting conservation than the M-WRAM/ICBA mechanisms.[86] However, the only "fact" supporting this determination is the single graph provided by Cal PA, which was not vetted by any other party to this proceeding, that purports to show that the annual change in average consumption per metered connection was almost the same during the period from 2008-2016 for both WRAM Utilities and Non-WRAM utilities.[87] But, as GSWC explained in its comments on the PD, Cal PA's graph does not support any finding that use of the M-WRAM/ICBA is as effective as the WRAM/MCBA in promoting conservation objectives. That is, Cal PA's graph suffers from three fatal problems when used for this purpose.

[84] *See* Decision 20-08-047 at 72.

[85] Cal. Code Civ. Proc. § 1094.5(b).

[86] D.20-08-047 at 67 and Finding of Fact #13.

[87] *Id*. at 67 (citing to *The Public Advocates Office of the Public Utilities Commission Sept. 2019 Reply Comments* at 7).

The first problem with Cal PA's graph is that it compares the annual rate of change of average usage per customer and does not take into account the compounding and cumulative effects of these changes over time and thereby ignores that, during the most indicative six-year period included in Cal PA's graph, the reduction in usage per customer for WRAM utilities was almost 30% greater than for M-WRAM utilities.[88]

The second problem is that Cal PA's graph ignores that, during the two-year period in which M-WRAM customers significantly reduced consumption, they were subject to mandatory conservation orders imposed by governmental authorities and that, once those orders were lifted, the conservation outcomes of the M-WRAM utilities reverted to being materially worse than the conservation outcomes of the full WRAM utilities.[89] Moreover, in order to recognize the varying levels of conservation already taking place in different water systems, the mandatory conservation orders established different targets that were based on system-specific average residential use per customer in 2013. For GSWC, the initial reduction targets in 9 of the 18 systems were below 20%.[90] In contrast, only 1 of the 6 reduction targets for the M-WRAM companies was less than 20%.[91] 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 respective Rule 14.1 tariff schedules. The logical conclusion is that usage data from that time period is not a valid comparison of conservation effects of the full 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. Accordingly, those years demonstrate nothing more than that mandatory conservation orders are an effective means of causing utility customers to reduce their water usage.

The third problem with Cal PA's graph is that during the two-year period in which M-WRAM customers significantly reduced consumption, three of the four M-WRAM utilities benefited from revenue decoupling mechanisms that effectively turned their M-WRAMs into full WRAMs. As such, those two years also do nothing to demonstrate the effectiveness of

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[88] See the detailed discussion of this issue in *GSWC Comments on PD* at 10-11.

[89] *Id*. at 11-12.

[90] *Id*. at 11 (citing to: June 2014-May 2020 Urban Water Supplier Monthly Reports, available at: https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/conservation_reporting.html.)

[91] *Id*.

M-WRAM versus WRAM mechanisms in promoting conservation, because 75% of the M-WRAM utilities were effectively full WRAM utilities during that two-year period. As GSWC explained in its comments on the PD, 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 conservation memorandum accounts for water utilities without decoupling mechanisms during periods of mandatory conservation/drought. **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**.[92]

Because the M-WRAM utilities had decoupling mechanisms in place that effectively allowed them to operate as full WRAM utilities during this period, the data provides no basis for comparing the relative conservation outcomes of WRAM Utilities versus non-WRAM utilities.

In sum, with regard to the Commission's consideration of the WRAM/MCBA mechanisms in this proceeding, the only data in the record was included therein without any opportunity for review or rebuttal by the WRAM Utilities. As a result of this violation of due process, the fatal flaws in that data did not come to light prior to the Commission's issuance of the PD, and the Commission ignored the comments on the PD submitted by the WRAM Utilities exposing those fatal flaws. Because this evidence does not support any finding that use of the M-WRAM/ICBA is as effective as the WRAM/MCBA in promoting conservation objectives, the Decision's order requiring abandonment of the WRAM/MCBA mechanisms is not supported by any data. By (i) ordering the abandonment of the WRAM/MCBA without providing the WRAM Utilities any opportunity to counter Cal PA's graph, such that no valid record was established on this topic,[93] and (ii) refusing even to consider and address the opposing information provided in the WRAM Utilities' comments on the PD,[94] the Commission abused its discretion as

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[92] *GSWC Comments on PD* at 12-13 (citing 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)).

[93] *See Util. Reform Network v. Pub. Util. Com.*, 223 Cal. App. 4th 945, 959 (1st App. Dist. 2014) (evidence not subject to cross-examination cannot be the sole support for a finding of fact).

[94] *See U.S. Steel*, 29 Cal.3d 603 (1981), *supra*, note 47.

contemplated by PU Code Section 1757.1(a)(1).

2. Due to the Failure to Establish a Meaningful Record in this Proceeding, the Decision Relies on Obsolete Data and Includes Findings of Fact that have no Factual Basis in the Record

One of the key reasons that the Decision concludes that the WRAM/MCBA should be eliminated is its determination that "this ratemaking mechanism has led to substantial under-collections and subsequent increases in quantity rates"[95], but the record does not include any current data that supports this finding. Rather, because the record purported to support discontinuance of the WRAM/MCBA is woefully incomplete, the Decision relies on out-of-date information with regard to WRAM/MCBA balances. The Decision 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)."[96] But the Decision cites Decision 12-04-048 for this premise, and that decision relies on stale data from 2010-2012.[97] As GSWC explained in comments on the PD, 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.[98]

Here too, the Commission's conclusion that the WRAM/MCBA should be abandoned, in no small part based on its determination regarding "substantial under-collections", with no evidence in the record that supports this finding, constitutes an abuse of discretion under PU Code Section 1757.1(a)(1). This is clear legal error.

Moreover, the Decision includes among its "Findings of Fact" statements that have no factual basis in the record. For example, the Decision includes two findings of fact regarding

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[95] Decision 20-08-047 at Finding of Fact #11.

[96] *Id*. at 55.

[97] Decision 12-04-048 at Appendices B and C.

[98] *See GSWC Comments on PD* at 14 (citing 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).

"intergenerational transfers of costs" associated with the WRAM, asserting therein that the Commission has a superior alternative for minimizing such intergenerational transfers.[99] But the Decision acknowledges that the intergenerational transfers occur when WRAM balances are significant and under-collected,[100] and as addressed above, the Decision fails to consider any current data regarding WRAM balances. Moreover, the Decision fails to quantify the extent of any such intergenerational transfers and even concedes that "such intergenerational transfers may not be significant over long periods of time"[101]. In reality, the Commission has no basis for conducting any such quantification or analyzing the significance of intergenerational transfers in the short or long term, because there is no data in the record regarding the under-collections that would lead to intergenerational transfers or the intergenerational transfers themselves. In an apparent effort to satisfy the requirements of PU Code Sections 1705[102] and 1757.1(a)(4),[103] the Commission simply inserted findings of fact that have no factual basis in the record.

3. The Commission Failed to Establish Any Record Regarding the Unintended Consequences on Low-Income Customers of Requiring the WRAM Utilities to Abandon their WRAM/MCBA Mechanisms

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 WRAM Utilities to abandon their WRAM/MCBA mechanisms will impact low-income customers. As PU Code 321.1(a) requires the Commission to assess the consequences of its decisions, including

[99] Decision 20-08-047 at Finding of Fact #15 (stating: "Since WRAM/MCBA is implemented through a balancing account for recovery, there are intergenerational transfers of costs") and Finding of Fact #16 (stating: "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.").

[100] *Id*. at 70.

[101] *Id*.

[102] Cal. Pub. Util. Code § 1705 (requiring that decisions of the Commission "contain, separately stated, findings of fact . . . on all issues material to the order or decision").

[103] Cal. Pub. Util. Code § 1757.1(a)(4) (requiring that a decision of the Commission be "supported by the findings").

economic effects, as part of each ratemaking, rulemaking or other proceeding,[104] consideration of the economic impacts of this significant policy change would be required regardless of whether it was proposed in a ratemaking or rulemaking context. The adoption of this policy change during a proceeding that was intended to focus on the affordability of water for low-income customers, without establishing and considering any record regarding the impacts of the change on low-income customers, undoubtedly constitutes legal error.

In fact, multiple parties to this proceeding identified the risk of significant negative consequences to low-income customers arising from this dramatic shift in policy[105] and the need for the Commission to develop an evidentiary record that assesses this risk before adopting this dramatic shift in policy.[106] In a letter submitted to the Commission, former Commissioner Sandoval also identified the Commission's failure to have meaningfully litigated the impacts of its WRAM/MCBA orders on all ratepayers, including low-income ratepayers.[107] So many stakeholders raised this concern because of the undeniable relationship between (i) the revenue decoupling that the WRAM affords and (ii) progressive rate designs that benefit low-income and low-use customers. Commissioner Randolph succinctly summarized the problem in her dissent to the Decision, stating:

> While this Decision does not make changes to any company's rate design, there will be an increasing need for the water companies to limit sales risk due to the removal of the WRAM. They are very

[104] Cal. Pub. Util. Code § 321.1(a).

[105] *See*, *supra*, note 29.

[106] *See, e.g.*, *Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves* at 4 (stating: "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.").

[107] Letter of Catherine J.K. Sandoval, Associate Professor, Santa Clara University School of Law and Former Commissioner from Jan. 2011-Jan. 2017, with the subject line: "*Re: Rulemaking 17-06-024, Legal and Factual Error in the Proposed Decision Undercuts Affordability*" (Aug. 3, 2018) at 5-6. Former Commissioner Sandoval explained that there had been no opportunity in this proceeding to investigate the impacts of changing from a WRAM to an M-WRAM on all affected ratepayers, including low-income ratepayers, and that the PD "lacks the record foundation to support its order to switch from a WRAM to a Monterey-Style WRAM and fails to investigate the affordability impacts of this proposal." In changes made to the Original PD before its adoption as Decision 20-08-047, Commissioner Guzman Aceves modified the Original PD's orders from (i) requiring conversion from a WRAM/MCBA to an M-WRAM/ICBA to (ii) requiring abandonment of the WRAM/MCBA and an option to propose an M-WRAM/ICBA. This modification does not change the fact that no record was established regarding the impacts of abandoning the WRAM on low-income ratepayers.

> likely to propose higher service charges as well as having flatter tiers or else face a very real risk of not meeting their revenue requirement. Such an outcome would lead to increasing the bills of low-usage customers which correlates with low-income customers. This outcome is exactly opposite of this proceeding's intent by harming low-income customers.[108]

There is little doubt that Commissioner Randolph's warning will prove prescient. Non-WRAM utilities' rates are designed in a manner that puts a higher portion of their revenue requirement into service charges paid by all customers regardless of usage. As explained in GSWC's comments on the PD, in GSWC's WRAM districts, GSWC recovers only 42% of fixed costs in the service charge, but in Clearlake, which is not a WRAM district, GSWC recovers 50% of fixed costs in the service charge, which is consistent with the standard rate design methodology that was used prior to implementation of the WRAM. And, as a further point of comparison, Great Oaks Water Company, an M-WRAM utility, recovers 75% of its fixed costs in services charges.[109]

At no point in this proceeding did the Commission establish a record that assesses these realities in order to allow for meaningful consideration of the consequences of abandoning the WRAM on low-income and low-use customers. Rather, the Decision blithely dismisses these realities by stating "water utilities can and will propose rate structures in their next GRC applications where the Commission will ensure low-income and low-use customers are not adversely impacted."[110] But there is no evidence in the record that provides any basis to conclude that revenue decoupling can be abandoned without any adverse impact to low-income and low-use customers. To the contrary, the comments on the PD filed by the WRAM Utilities and others clearly indicate the opposite: that, without the revenue decoupling afforded by the WRAM, changes in rate design will be needed, and those changes are likely to be detrimental to low income customers.[111] The reality is that water utilities that do not have WRAM/MCBA mechanisms (including water utilities with M-WRAM/ICBA mechanisms) have flatter tiers and rate structures that put more fixed costs into the service charge. Without the revenue decoupling

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[108] Dissent of Commissioner Randolph to Decision 20-08-047.

[109] *Great Oaks Water Company's Comments to Proposed Phase I Decision* at 5.

[110] Decision 20-08-047 at 68.

[111] *See*, *supra*, note 29 and accompanying text.

afforded by the WRAM/MCBA mechanisms, the WRAM Utilities will need to propose the same or be at real risk of not recovering their revenue requirements, and the Commission cannot arbitrarily reject those requests. The Decision is fundamentally flawed because it fails to recognize, much less address, these realities. And the California Supreme Court has made clear that the Commission has a duty to consider all facts that might bear on the exercise of its discretion and assess the economic impacts of its decisions.[112] By failing to do so in this proceeding, the Commission has abused its discretion as contemplated by PU Code Section 1757.1(a)(1).

IV. REQUEST FOR ORAL ARGUMENT

In accordance with Rule 16.3, GSWC hereby requests oral argument regarding the Commission's order revoking the WRAM Utilities' authority to continue using their WRAM and MCBA mechanisms. Oral argument is appropriate and warranted in this proceeding because, as described in detail above, the Commission's order on the WRAM/MCBA mechanisms constitutes a major departure from long-standing Commission precedent that was adopted without evidentiary support.[113] Moreover, the Commission failed to establish any record regarding the impacts of this order on low-income and low-use customers and then ignored the comments submitted by numerous stakeholders that explained why abandonment of the revenue decoupling afforded by the WRAM would likely result in rate design changes that would be detrimental to low-income and low-use customers. Because the revenue decoupling afforded by the WRAM is a critical component of the progressive rate designs adopted by the WRAM Utilities and the Commission failed to take into account the unintended negative consequences of the Decision on vulnerable constituents, the legal errors raised by this application for rehearing also present issues of public importance.[114]

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[112] *See U.S. Steel*, 29 Cal.3d 603 (1981), *supra*, note 47.

[113] *See* Rule 16.3 of the Rules of Practice and Procedure of the Commission (stating that a request for oral argument included within an application for rehearing should "demonstrate that the application raises issues of major significance for the Commission because the challenged order or decision: (1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation; (2) changes or refines existing Commission precedent; (3) presents legal issues of exceptional controversy, complexity, or public importance; and/or (4) raises questions of first impression that are likely to have significant precedential impact. . . .").

[114] *Id*.

Oral argument would afford the Commissioners an opportunity to probe through question and answer the legal errors discussed in this application for rehearing. Accordingly, GSWC believes that an oral argument would be the most efficient and equitable manner for the Commission to evaluate fully and fairly the due process violations and abuses of discretion that transpired in this proceeding, and the ramifications of those errors on the WRAM Utilities and their customers, including their low-income customers.

V. CONCLUSION

For the reasons set forth above, the Commission should (i) grant oral argument regarding the revocation of the WRAM/MCBA mechanisms, (ii) delete Findings of Fact #8, #10 and #20, each of which is clearly wrong, [115] (iii) delete Findings of Fact #13 and #14, which are based on Cal PA's flawed graph;[116] (iv) delete Findings of Fact #11, #15 and #16, for which there is no basis in the record,[117] and (v) eliminate the order set forth in Ordering Paragraph #3 requiring the WRAM Utilities to abandon their WRAM/MCBA mechanisms in their next GRC applications. The Commission should order a new phase of this proceeding or open a new proceeding for the purpose of taking evidence on and assessing the full impacts of abandoning the WRAM/MCBA mechanisms, including the impacts on low-use and low-income customers.

October 5, 2020

Respectfully submitted,

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[115] *See*, *supra*, note 42 and accompanying text.

[116] *See*, *supra*, notes 24, 67, and 88-92 and accompanying text.

[117] *See*, *supra*, notes 95-99 and accompanying text.

JOINT APPENDIX JJ

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 X

California-American Water Company Application for Rehearing of D.20-08-047 and Request for Oral Argument, R.17-06-024,

October 5, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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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)

CALIFORNIA-AMERICAN WATER COMPANY APPLICATION FOR REHEARING OF D.20-08-047 AND REQUEST FOR ORAL ARGUMENT

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October 5, 2020

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TABLE OF CONTENT

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)

CALIFORNIA-AMERICAN WATER COMPANY APPLICATION FOR REHEARING OF D.20-08-047 AND REQUEST FOR ORAL ARGUMENT

I. INTRODUCTION

In accordance with Rule 16.1 of the Commission's Rules of Practice and Procedure, California-American Water Company ("California American Water") respectfully files this application for rehearing of Decision ("D.") 20-08-047.[1] In D.20-08-047, the Commission eliminated the decoupling Water Revenue Adjustment Mechanisms/Modified Cost Balancing Account ("WRAM/MCBA") by prohibiting California American Water, California Water Service Company, Golden State Water Company, and Liberty Utilities from requesting to continue this well-established and vital mechanism in their next general rate cases.[2] As discussed in more detail below, D.20-08-047 is unlawful, erroneous, and includes significant legal errors. In particular, the Commission's decision violated its rules and the Public Utilities Code by issuing a decision on an issue that was not part of the scope of this proceeding. In addition, the Commission erred by failing to regularly pursue its authority[3] by not considering all the facts

[1] D. 20-08-047, *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*, Decision and Order.

[2] *Id*., p. 106, Ordering Paragraph 3.

[3] See Pub. Util. Code §1751.1(b).

that might bear on its elimination of the decoupling WRAM, failing to provide factual support for its actions, and including insufficient findings and evidence to support D.20-08-047.

Additionally, pursuant to Rule 16.3, California American Water requests oral argument on this application for rehearing. This application raises issues of major significance for the Commission because D.20-08-047 departs from existing Commission precedent without adequate explanation and presents legal issues of exceptional controversy, complexity and public importance. Oral argument will materially assist the Commission in resolving this application.

II. REQUEST FOR RELIEF

California American Water requests that the Commission vacate and/or set aside D.20-08-047, due the numerous and substantial legal errors outlined above. To the extent that the Commission still considers elimination of the decoupling WRAM, it should establish a separate phase or proceeding to do so, and provide opportunities for an evidentiary hearing to develop a record with respect to the impact on rate design, low-income customers, forecasting and conservation.

At the very minimum, California American Water requests that the Commission vacate D.20-08-0547 with respect to its Monterey District. As discussed in more detail below, California American Water's current steeply tiered Monterey District rate design would likely be financially untenable without the decoupling WRAM, but may be necessary to maintain conservation levels and avoid significant economic harm to the company and its customers. California American Water should have the opportunity to request to continue the decoupling WRAM in its next general rate case and provide evidence in support of this request.

III. THE COMMISSION VIOLATED ITS RULES AND THE PUBLIC UTILITIES CODE BY ISSUING A DECISION ON AN ISSUE OUTSIDE THE SCOPE OF THIS PROCEEDING

The Commission is required to conduct all proceedings in compliance with the Public Utilities Code and the Commission's Rules of Practice and Procedure.[4] Under the Public Utilities

[4] Pub. Util. Code §1701.

Code and the Commission's Rules, the assigned Commissioner determines the issues the Commission will address in a proceeding and identifies those issues in a scoping memo.[5]

In the initial scoping memo for this proceeding, the assigned Commissioner indicated that the scope of issues included: (1) consolidation of at risk water systems, (2) forecasting water sales, (3) regulatory changes to lower rates and improve access to safe, quality drinking water for disadvantaged communities, and (4) regulatory changes that would ensure and/or improve the health and safety of regulated water systems.[6] The assigned Commissioner subsequently issued an amended scoping memo identifying the following issues: (1) providing a basic amount of water at low quantity rate, and (2) the possibility of regulated investor-owned energy utilities sharing low-income customer data with municipal water utilities as additional issues that the Commission would consider in this rulemaking.[7] Neither the initial scoping memo nor the amended scoping memo included consideration of elimination of the decoupling WRAM within the scope of issues to be addressed.

In D.20-08-047, the Commission claims that consideration of changes to the decoupling WRAM "has always been within the scope of this proceeding as part of our review of how to improve water sales forecasting."[8] The language of the scoping memo with respect to sales forecasting, however, does not support that claim:

> 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 in their GRC application. However, given the significant length of time between Class A water utility GRC

[5] Pub. Util. Code §1701.1(c); CPUC Rule 7.3.

[6] *Scoping Memo and Ruling of the Assigned Commissioner*, January 9, 2018 ("Scoping Memo"), pp. 2-3.

[7] *Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge*, July 9, 2018, p. 3.

[8] D.20-08-047, p. 60.

> 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?[9]

Merely identifying the avoidance of regressive rates, improving water sales forecasting, and questioning the guidelines or mechanisms that can improve or standardize water sales forecasting does not bring the elimination of the decoupling WRAM within the scope of this proceeding. Although an adopted forecast is one of the inputs to the WRAM calculation, the decoupling WRAM is not a forecasting mechanism. The Commission's interpretation of the scoping memo as including the issue of elimination of the decoupling WRAM because it addresses improvements to sales forecasting is overly broad.

In *Southern California Edison v. CPUC,* the California Court of Appeal indicated this type of broad interpretation of scoping memo language is incorrect, and that the scope of issues to be considered in a Commission proceeding consists of those issues addressed specifically.[10] In that decision, the Court found that the Commission violated its own rules by issuing a decision on an issue outside the scope of the proceeding and in doing so failed to proceed in the manner required by law, and that the failure was prejudicial.[11]

Indeed, there would be no reason for California American Water or other interested parties to interpret the language of the scoping memo as broadly as the Commission claims in D.20-08-047, since previously the Commission explicitly mentioned the WRAM in another scoping memo when it considered the issue as part of a prior rulemaking. Specifically, in the amended scoping memo for Rulemaking 11-11-008, the Commission identified, among others, the following WRAM-related issues:

> 7. Do WRAMs and MCBAs, by decoupling the utilities' revenue functions from changes in sales, succeed in neutralizing the utilities' incentive to increase sales? Is there a better way?

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[9] Scoping Memo, pp. 2-3.

[10] *Southern California Edison v. CPUC,* (2002) 140 Cal. App. 4th 1085, 1105.

[11] *Id*., 140 Cal App. 4th at 1106.

> 8. Are WRAMs and MCBAs effective mechanism to collect authorized revenue in light of tiered inclining block conservation rates? Is there a better way to proceed in light of the drought and the Executive Order?
>
> 9. Do WRAMs and MCBAs appropriately incentivize consumer conservation? Are adjustments needed? Would another mechanism be better suited for the utility to collect authorized revenue for water system needs and encourage conservation in light of the drought and the Executive Order?
>
> 11.Do WRAMs and MCBAs achieve the statutory objective of safe, reliable water service at just and reasonable rates? Is their function properly communicated to consumers and do consumers understand their purpose?
>
> 13.Is there a policy or procedure that would accomplish the same results as the WRAM and MCBAs without the attendant issues discussed in the previous questions especially in light of the drought and the Executive Order?[12]

After consideration of these issues, the Commission concluded, "the WRAM should be maintained."[13] Given the previous specific identification of WRAM issues in the scoping memo for the referenced rulemaking, there is no reason that any party would interpret the language regarding forecasting improvements in the scoping memo in this proceeding as encompassing the elimination of the decoupling WRAM.

In support of its claim that the elimination of the WRAM was always within the scope of the proceeding, the Commission refers to a discussion of the decoupling WRAM by parties at a sales forecasting workshop and to the September 4, 2019 *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional*

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[12] R.11-11-008, *Order Instituting Rulemaking 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), Golden State Water Company (U133W), and San Gabriel Valley Water Company (U337W)*, Assigned Commissioner's Third Amended Scoping Memo and Ruling Establishing Phase II, pp. 14-15.

[13] D.16-12-026, *Order Instituting Rulemaking 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), Golden State Water Company (U133W), and San Gabriel Valley Water Company (U337W)*, Decision Providing Guidance on Water Structure and Tiered Rates, p. 41.

Questions.[14] The Commission claims that since this ruling specifically asked for input on elimination of the decoupling WRAM after it was raised by parties at the forecasting workshop, the issue had always been part of the Commission's consideration of how to improve water sales forecasting.[15]

The scope of a proceeding, however, is not determined by comments made by parties at a workshop or by a ruling by the assigned Administrative Law Judge. As discussed above, it must be set forth by the assigned Commissioner in a scoping memo. The language of the scoping memo does not include elimination of the decoupling WRAM within the list of explicit issues to be resolved in this proceeding. By addressing an issue outside the scope of the proceeding in D.20-08-047, the Commission violated the Commission's rules and the Public Utilities Code.

In *Southern California Edison v. CPUC*, the Court found that this type of violation was prejudicial. In that decision, the Court stated, "We cannot fault the parties for failing to respond to the merits of proposals that were not encompassed in the scoping memo absent an order amending the scope of issues to include the new proposals."[16] When the issue of the elimination of the WRAM was raised late in this proceeding, California Water Association ("CWA"), recognizing that it had not been identified as an issue for consideration by the assigned Commissioner in a scoping memo, pointed out that it was outside the scope.[17] Absent an order amending the scope of the proceeding to include this new proposal, there was no reason for California American Water or other interested parties to know that the Commission would move forward with a decision eliminating of the decoupling WRAM.

As in the Southern California Edison case, the Commission's failure to comply with its own rules and with the Public Utilities Code is prejudicial. If elimination of the decoupling

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[14] D.20-08-047, p. 59.

[15] *Id.*, pp. 59-60.

[16] *Southern California Edison v. CPUC*, 140 Cal App. 4th at 1106.

[17] *Comments of California Water Association Responding to Administrative Law Judge's September 4, 2019 Ruling*, September 16, 2019, p. 13.

WRAM had been included in the scope of the proceeding, California American Water would have had the opportunity to build a record on the impacts of elimination of the WRAM, discuss it in pleadings, and request evidentiary hearings to address disputed factual issues. Given the vital need for the decoupling WRAM in the Monterey District in particular, and the potential for elimination of the WRAM to cause substantial harm in that district, California American Water would have taken steps to ensure that the Commission had a full and complete record upon which to base its decision.

Moreover, the Commission's violation of its rules and the Public Utilities Code prejudices entities who may have sought to participate in the proceeding if the elimination of the decoupling WRAM had been properly identified as an issue. Numerous entities have actively participated in multiple Commission proceedings involving the water supply constraints in California American Water's Monterey District, and the need to encourage efficient water usage to avoid fines or rationing. If the Commission had properly identified this issue as being part of the scope of this proceeding, these parties would have had a fair and full opportunity to participate. Since the Commission has prohibited California American Water from seeking to continue the decoupling WRAM in its next general rate case, however, these parties have been denied the opportunity to address this issue, even if they may be negatively impacted by elimination of the WRAM.

IV. THE COMMISSION FAILED TO REGULARLY PURSUE ITS AUTHORITY

The lack of effort made to develop a record on the issue of elimination of the WRAM belies the Commission's claim that this issue was always part of the proceeding. By failing to fully examine and develop a record on the elimination of the decoupling WRAM, the Commission has failed to regularly pursue its authority.

A. The Commission Erred in Failing to Consider All of the Facts and Issues

In *United States Steel Corp. v. Public Utilities Com.* the California Supreme Court held that the Commission has a duty to consider all facts that might bear on the exercise of its

discretion.[18] There, the Supreme Court annulled a Commission decision because the Commission failed to consider the economic impacts of its action.[19] In this proceeding, the Commission did not consider all the facts that might bear on its decision to eliminate the decoupling WRAM. In particular, the Commission did not consider adjustments that the WRAM companies might need to make to their rate designs and how those adjustments might affect low-income customers and conservation, particularly in California American Water's Monterey District.

1. The Commission Erred in Failing to Consider Rate Design

As California American Water noted in the comments on the Proposed Decision, the rate designs of the companies without decoupling WRAMs and the rate designs of companies with decoupling WRAMs, such as California American Water and California Water Service, are markedly different.[20] California American Water's current rate designs in most of its districts include four rate tiers, with steep differentials between the tiers and a low percentage of fixed costs recovered through the meter charge. California American Water has a five-tier rate design in its Monterey District, with a spread between tier 1 and tier 5 of 800%. By contrast, the tiered rate designs of the companies without decoupling WRAMs tend to recover more revenue through the monthly service charge and include fewer tiers with less substantial differentials between them.[21]

The marked difference between California American Water's tiered rate designs and the tiered rates designs of the companies without decoupling WRAMs is not a coincidence. California American Water's steeply tiered rate designs result in a significant level of revenue volatility because the high rates in the upper tiers mean that small changes in water usage results

[18] *United States Steel Corp. v. Public Utilities Com.*, 29 Cal. 3d 603, 608 (1981).

[19] *Id.*, 29 Cal. 3d at 610.

[20] *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, pp. 2-3.

[21] *Id.*

in large changes in revenue collection. This volatility cannot be fully addressed by forecasting. Revenue volatility is a more critical issue for the water industry because of the high level of fixed costs.

Forecasts are estimates of future events and there has always, and will continually be deviations from even the most accurate forecasts. With a steeply tiered rate design like California American Water's, however, these inevitable deviations, even if relatively minor, have a disproportionate effect on revenue collection. Indeed, California could incorporate all of the forecasting factors adopted in D.20-08-047,[22] as it already does, but the deviations from the forecast in the upper tiers would still cause significant revenue volatility.

Because the volatility cannot be fully ameliorated by improved forecasting, California American Water's steeply tiered rate designs would prevent it from recovering its authorized revenue requirement if not for the decoupling WRAM. This is why California American Water did not develop steeply tiered rate designs in most of its districts until after the decoupling WRAM was implemented,[23] and is likely why the companies without decoupling WRAMs have less steeply tiered rate designs. The Monterey-style WRAMs ("M-WRAM") that these companies have do not address these fluctuations in customer usage.

Indeed, California American Water knows from firsthand experience that steeply tiered rates designs are not workable without the decoupling WRAM, because, as the "Monterey-style" name suggests, the non-decoupling M-WRAM was developed for California American

[22] D.20-08-047, pp. 50-51.

[23] The current four-tier rate design for most California American Water districts was initially adopted through a settlement between California American Water, Natural Resources Defense Council, Division of Ratepayer Advocates and The Utility Reform Network. D.12-11-006, *Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by $4,134,600 or 2.55% in the year 2011, by $33,105,800 or 19.68% in the year 2012, by $9,897,200 or 4.92 % in the year 2013, and by $10,874,600 or 5.16% in the year 2014*, Decision Adopting the Rate Design Settlement Agreement for California-American Water Company's Larkfield, Los Angeles County, San Diego County and Ventura County District and the Toro Service Area of the Monterey County District, p. 4.

Water's Monterey District, where California American Water has experienced decades-long water supply constraints.

In 1995, the State Water Resources Control Board ("SWRCB") issued Order WR 95-10,[24] in which it concluded that although California American Water had been diverting approximately 14,106 acre-feet per year (afy) from the Carmel River, it had only had a legal right to 3,376 afy.[25] The SWRCB ordered California American Water to reduce diversions from the Carmel River to the greatest practicable extent and replace about 10,730 afy by obtaining other sources of water and through other actions, such as conservation.[26]

In 1996, the Commission approved a settlement allowing California American Water to implement a then-experimental three-tier conservation rate design.[27] The new rate design also reduced the revenues collected through the monthly fixed service charge and waived the service charge for low-income customers.[28] The M-WRAM would track the "variation in projected revenue" between the experimental conservation rate design and the standard Commission rate design.[29] The conservation rates were actually set to over-collect the authorized revenue requirement because the first tier and third tier rates were simply a percentage of the standard rate, including recovery of 75% of fixed costs in the variable quantity rates.[30] In its decision, the

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[24] Order WR 95-10, Order on Four Complaints Filed Against the California-American Water Company, July 6, 1995 ("Order 95-10").

[25] *Id.*, p. 25.

[26] *Id*., pp. 38-39. *See also* D.18-09-017, *Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates*, Decision Approved a Modified Monterey Peninsula Water Supply Project, Adopting Settlement Agreements, Issuing Certificate of Public Convenience and Necessity and Certifying Combined Environmental Report, pp. 3-9, which provides a detailed discussion of California American Water's Monterey District water supply issues.

[27] D.96-12-005, *Application of California-American Water Company for an order authorizing it to increase its rates for water service in its Monterey Division*, Opinion.

[28] *Id*., p. 13.

[29] *Id*.

[30] *Id*., Appendix B, pp 21-23, Tables N-Q, pp. 65-68.

Commission noted, "The experimental rate design would increase the variability of Cal-Am's revenues."[31]

Over time, California American Water faced increasing challenges with respect to water supply, including the threat of multi-million dollar fines and severe rationing.[32] To avoid these outcomes, California American Water had to implement increasingly aggressive tiered rate designs with higher upper block quantity rates aimed at the customers using the most water.[33] As these rate designs evolved, revenue volatility increased,[34] and the M-WRAM, which did not address changes in consumption due to conservation pricing signals, did not provide the necessary revenue stability, making it impossible for California American Water to recover its revenue requirement.

California American Water was in an untenable position, made worse by the SWRCB's issuance of a draft Cease and Desist Order in 2008. California American Water needed to send even stronger pricing signals to avoid severe rationing and/or fines for the Monterey District. Yet the volatility created by an even more steeply tiered rate design would prevent California American Water from recovering its revenue requirement. It was only with the adoption of the decoupling WRAM for the Monterey District, however, that California

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[31] *Id*., Finding of Fact 9.

[32] *See* D.18-09-017, pp. 3-9, which provides a detailed discussion of California American Water's Monterey District water supply issues.

[33] D.00-03-053, *Application of the California-American Water Company (U210W) for an Order Authorizing it to Increase its Rates for Water Service in its Monterey Division*, Opinion, pp. 22-25; D.04-07-035, *Application of California-American Water Company (U210W) for an Order for Emergency Authority to Temporarily Increase Upper Block Rates for Water Service in its Monterey District to Avoid SWRCB Violations and Request for Immediate Ex Parte Relief*, Opinion Authorizing Conservation Rates, pp. 5, 12; D.05-03-012, *Application of California-American Water Company (U210W) for Orders (1) for Standby Authority to Impose Emergency Temporary Increases in Upper Block Volume Rates for Water Service in its Monterey District if Needed to Avoid SWRCB Violations in 2005 and (2) for Authority to Refund Over Collections of the Monterey District WRAM Account Balances Collected Pursuant to D.04-07-035*, Opinion Authorizing Conservation Rates, pp. 5-7.

[34] The Commission has recognized that California American Water faces particularly challenging revenue volatility in its Monterey District. D.16-12-003, *Application of California-American Water Company (U210W) for Authorization to Modify Conservation and Rationing Rules, Rate Design, and Other Related Issues for the Monterey District*, Decision Addressing WRAM Balances, Rate Design, Conservation and Rationing Rules, and Other Issues for the Monterey District, p. 48.

American Water was able to implement its current five-tier rate design, which specifically targets high levels of use in upper tiers.[35]

California American Water's experience with the M-WRAM and its Monterey District provides insight as to the differences between the rate designs companies with and without the decoupling WRAM. It also indicates that California American Water will have to modify its rate designs to take into account the elimination of the decoupling WRAM.

This key issue, however, was absent from the Commission's decision in this proceeding. The Proposed Decision did not examine the differences between the rate designs of the companies with and without decoupling WRAMs, and initially did not even consider that California American Water and the other companies would have to modify their rate designs in order to maintain their ability to recover their authorized revenue requirement. The Proposed Decision erroneously implies that the vital and necessary decoupling WRAM could be eliminated and the only that thing that water companies would have to change would be their forecasts.[36]

In a last minute revision the evening before the Commission vote, language was added to the Proposed Decision stating, "rate design and rate impacts are independent of whether a utility has a WRAM or Monterey-Style WRAM."[37] Of course, there is nothing in the decision or the record to support the claim that rate design is independent of whether a utility has a

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[35] D.09-07-021, *Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service in its Monterey District by $24,718,200 or 80.30% in the year 2009; $6,503,900 or 11.72% in the year 2010; and $7,598,300 or 12.25% in the year 2011 Under the Current Rate Design and to Increase its Revenues for Water Service in the Toro Service Area of its Monterey District by $354,324 or 114.97% in the year 2009; $25,000 or 3.77% in the year 2010; and $46,500 or 6.76% in the year 2011 Under the Current Rate Design*, Final Decision Authorizing Rate Increase in Monterey Water District and Toro Service Area, pp. 123-127, Appendix A.

[36] Proposed Decision, p. 57. The issue is only faced head-on in the dissent of Commissioner Randolph, which correctly recognizes, that the decoupling WRAM water companies "are very likely to propose higher service charges as well as having flatter tiers or else face a very real risk of not meeting their revenue requirement." D.20-08-047, Dissent of Commission Randolph, p. 1.

[37] D.20-08-047, p. 53.

decoupling WRAM or Monterey-style WRAM. Indeed, the Commission has previously recognize the link between rate design, volatility, and the decoupling WRAM:

> Because Cal-Am's current rate design, designed to encourage water conservation, causes volatility in Cal-Am's revenue collection, the Commission finds it reasonable to allow the WRAM/MCBA to remain open.[38]

As California American Water discussed above, certain rate designs are only financially viable with a decoupling WRAM. This last minute modification to the decision does not disguise the fact that the Commission failed to consider how elimination of the decoupling WRAM would affect rate design.

If the Commission had identified the decoupling WRAM as part of the scope of the proceeding from the beginning, and if it had made an attempt to develop a record with respect to its elimination, the water companies would have had the opportunity to bring the issue of rate design to the Commission's attention prior to the comments on the Proposed Decision. By failing to consider the potential rate design impacts of its action to eliminate the decoupling WRAM, the Commission also failed to consider how the elimination of the decoupling WRAM will affect conservation, particularly in California American Water's Monterey District, and low-income customers in all districts.

a. The Commission Erred in Failing to Consider the Impact on Conservation

It is also extremely likely that rate tier changes necessary to reflect the elimination of the decoupling WRAM – implementing fewer and flatter tiers – will impact conservation. In D.20-08-047, the Commission states, "Conservation is not done by the utility but instead is accomplished by the customers."[39] The Commission noted that a water utility, through its rate design, "provides a signal to customers that increased usage will result in increased costs per unit

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[38] D.18-12-021, *Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by $34,559,200 or 16.29% in the year 2018, by $8,478,500 or 3.43% in the year 2019, and by $7,742,600 or 3.03% in the year 2020*, Decision Adopting the 2018, 2019 and 2020 Revenue Requirement for California American Water Company, p. 208.

[39] D.20-08-047, p. 62.

consumed," and that customers make choices to use less water based, at least in part, on the water utility's rate design.[40] The Commission failed, however, to consider how customers will react to a rate design that lessens the financial consequences for high water-use.

As California American Water knows based on its experience in its Monterey District, without the decoupling WRAM it will have to reduce the number of tiers and flatten the differential between the tiers in order to maintain the ability to recover its revenue requirement.[41] This change in rate design, however, will result in reduced bills for high-water use customers, since the highest rates in the highest tiers will have to be eliminated.[42]

Because the Commission failed to consider the rate design implications of the elimination of the decoupling WRAM, however, it also failed to consider whether conservation levels will be maintainable, when post-decoupling rate designs end up giving the highest water use customers a price break. The Commission's observation in D.20-08-047 about customer responsiveness to price signals indicates that at least some customers are likely to react to weakening high use price signals by increasing usage. The Commission's failure to consider this issue is legal error.

b. Conservation Impacts Could be Severe for the Monterey District

For most companies, and even most California American Water districts, increased usage would be contrary to State and Commission policy, but ultimately manageable. For California America Water's Monterey District, however, increased usage could be catastrophic.

As noted above, California American Water's Monterey District is subject to various SWRCB orders requiring it to reduce diversions from the Carmel River and to meet certain conservation goals. Order 95-10, which was the catalyst for California American Water's

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[40] *Id*.

[41] In Monterey, the flattening of the tiers will be very substantial and likely increase the consumption of customers in the current higher tiers.

[42] *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, p. 4.

experimental tiered rate design and the M-WRAM, directed California American Water to "achieve 15 percent conservation in the 1996 water year and 20 percent conservation in each subsequent year."[43] In 2009, the SWRCB found that California American Water, which was continuing to divert about 7,150 afy from the Carmel River, was in violation of Water Code §1052. The SWRCB issued a cease and desist order ("CDO") directing California American Water to make certain efforts to find a replacement water supply, to immediately reduce its diversion from the Carmel River by five percent, and beginning October 2011 to reduce diversions 121 afy per year on a cumulative basis through conservation and other measures.[44] The SWRCB subsequently updated this directive in 2016 to impose a 1,000 afy reduction in the effective diversion limit for each failure to meet a certain milestone.[45]

In Order 2016-0016, the SWRCB also discussed the penalties that could be assessed against California American Water if increased usage causes it to exceed the diversion limits established in the SWRCB orders:

> To the extent that additional demand reduction and immediate supply acquisition efforts fail, Cal-Am would face significant fines. Each day of violation of a CDO accrues a potential administrative penalty of $10,000 in certain drought years, or of $1,000 in wetter years. (See Wat. Code, § 1845, subd. (b)(1).) This administrative penalty is in addition to the potential administrative civil liability penalties for unlawful diversion of water under Water Code section 1052, which may be imposed for all unlawful diversions, not just those which are in excess of the levels set in the CDO. Such penalties are up to $1,000 per day and $2,500 per acre-foot of unlawfully diverted water in certain drought years, and up to $500 per day in wetter years. (See Wat. Code, § 1052, subd. (c).) Thus, in wetter years, Cal-Am would face approximately $550,000 for each year of violation of the CDO. In certain drought years, such as those the state is currently experiencing, Cal-Am could face over $4 million per year of violation in per-diem

[43] Order 95-10, p. 41.

[44] Order WR 2009-0060, In the Matter of the Unauthorized Diversion and Use of Water by the California American Water Company, ("Order 2009-0060"), pp. 56-57.

[45] Order WR 2016-0016, In the Matter Of Application of California American Water Company To Amend State Water Board Order 2009-0060 ("Order 2016-0016"), pp. 21-23.Indeed, due to circumstances beyond its control California American Water recently missed a milestone under Order WR 2016-0016 on September 30, 2020.

> penalties, in addition to up to $2.5 million in penalties for every 1,000 acre-feet that the company diverts unlawfully.[46]

The SWRCB noted that implementation of rationing was also an option if necessary.[47] The Commission has recognized that imposition of rationing would "have significant effects on the local economies within the Monterey Peninsula"[48] with "little to no opportunity for the Monterey Peninsula to return to normal economic conditions, nor could local agencies achieve their plan goals for moderate growth."[49]

In addition to the SWRCB orders, California American Water's diversions from the Carmel River to provide water service to its customers has made it subject to prosecution by the U.S. Fish and Wildlife Service for the "take" of the California red-legged frog, and by the National Marine Fisheries Service for the "take" of the California Coast steelhead. Both creatures are listed as threatened under the Endangered Species Act. California American Water has entered into conservation agreements with these agencies, but enforcement actions could include further reduction of the water supply and heavy fines.[50] These agreements place even more pressure on California American Water to maintain substantial conservation in its Monterey District.

Due to continued delays in developing a replacement water supply and until new adequate water supplies are made available, it is possible that any increase in water consumption could cause California American Water to exceed the SWRCB limits. In its comments on the Proposed Decision, California American Water demonstrated pricing signals conveyed by the rate design changes necessary to adjust to the elimination of the decoupling WRAM could increase demand eight percent higher in the Monterey District, which would push water

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[46] Order 2016-0016, p. 11.

[47] Order 2016-0016, p. 10.

[48] D.18-09-017, p. 180.

[49] *Id*., p. 124, fn. 333

[50] *Id*., pp. 6-7.

consumption in excess of the limits established by the SWRCB.[51] This would put California American Water at risk of incurring hundreds of thousands of dollars in in SWRCB penalties every year, with the potential for multimillion-dollar penalties in drought years, as well as rationing, which would harm the Monterey economy.

There is nothing in D.20-08-047 or the record of the proceeding to indicate that the Commission considered the effect of elimination of the decoupling WRAM on the unique circumstances of California American Water's Monterey District. California American Water's ability to maintain consumption within legal limits in the Monterey District will be substantially impaired without its aggressive rate design, which, as discussed above, is only workable in conjunction with the decoupling WRAM. The Commission's elimination of the decoupling WRAM, therefore, could potentially put California American Water in the position of having to choose between compliance with the SWRCB and other conservation orders, or the ability to recover its revenue requirement. Placing California American Water in this position would be unlawful, and the Commission's failure to consider this issue is legal error.

c. The Commission Erred in Failing to Consider the Impact on Low-Income Customers

It is also extremely likely that rate tier changes necessary to reflect the elimination of the decoupling WRAM will negatively affect low-income customers. With the decoupling WRAM, California American Water has been able to develop rate designs that recover a lower percentage of costs through a fixed monthly fee, and to provide a lower basic quantity rate for low-income customers. Many low-income customers are also efficient water users, and the steeply tiered rate deigns made possible by the decoupling WRAM benefits these customers because of the lower rate in the lower tiers.

Without the decoupling WRAM, California American Water will have to take steps to address revenue volatility in order to meet its revenue requirement. As California American

[51] *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, p. 5.

Water discussed above, this volatility cannot be fully addressed through forecasting. The only ways to reduce volatility are to increase the percentage of costs recovered through the fixed charge and reduce the number of and flatten the rate tiers. Making those changes would unavoidably increase rates for low-income customers and customers with efficient water usage (who are also often low-income customers).[52]

The Proposed Decision was revised to state that the Commission "will ensure low-income and low-use customers are not adversely impacted" by rate design changes proposed in the next general rate cases for the companies with decoupling WRAMs.[53] It is unclear how the Commission will do that however, since the rates and rate designs adopted by the Commission must also maintain California American Water's right to the opportunity to earn a reasonable rate of return.[54] Continuing the steeply tiered rate designs without the protection of the decoupling WRAM will prevent California American Water from doing so.

As noted above, the Commission has a duty to consider all facts that might bear on the exercise of its discretion. In *United States Steel Corp. v. Public Utilities Com.*, the California Supreme Court annulled a Commission decision on minimum rates for intrastate transportation of commodities by highway carriers for failure to consider the economic impact of its actions.[55] In this instance, the Commission had a duty to consider all facts that might bear on its decision to eliminate the decoupling WRAM. In its zeal to eliminate the decoupling WRAM, however, the Commission failed to consider all issues as required to regularly pursue its authority. The Commission's refusal to consider the impact of its action on rate design, which in turn meant that it did not consider the impact of the elimination of the decoupling WRAM on low-income

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[52] *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, p. 4.

[53] D.20-08-047, p. 68.

[54] *FPC v. Hope Natural Gas Co. Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia* 262 U.S. 679 (1923).

[55] *United States Steel Corp. v. Public Utilities Com.*, 29 Cal. 3d 603, 610 (1981).

customers and conservation, particularly in the Monterey District, renders D.20-08-047 similarly invalid.

B. D.20-08-047 Lacks the Necessary Support

In *Cal. Mfrs. Ass'n v. PUC*, the California Supreme Court annulled a Commission decision because the findings and evidence were not sufficient to justify the Commission's order.[56] "While the commission's asserted justification for changing its method of spreading rate increase is conservation of natural gas resources, neither finding nor evidence exists showing the method adopted will result in conserving more natural gas than would other proposed methods."[57] Similarly, the California Supreme Court also determined, "A decision that affects the rights of a party, but has no factual support, would not be one made in the regular pursuit of commission authority and could deny due process."[58]

In this instance, the Commission's elimination of the decoupling WRAM impedes California American Water from having a fair opportunity to earn a reasonable rate of return.[59] As discussed above, without the decoupling WRAM, California American Water will need to modify its rate design to lessen revenue volatility in order to have the ability to recover its authorized revenue requirement. The Commission's last minute addition to D.20-08-047, however, in which it pledges to ensure that "low-income and low-use customers are not adversely impacted" by rate design changes, could hinder California American Water's ability to develop a post-decoupling rate design that still affords it the opportunity to earn a reasonable rate of return. As such, the Commission's bar against continuing the decoupling WRAM in future general rate cases affects California American Water's rights.

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[56] *Cal. Mfrs. Ass'n v. PUC*, 24 Cal. 3d 251 (1979)

[57] 24 Cal. 3d at 259.

[58] *Camp Meeker Water System, Inc. v. Public Utilities Com.*, 51 Cal. 3d 845, 864 (1990). Although the judicial review statute cited in this decision has been modified, the standard applied in the decision, whether the Commission has regularly pursued its authority, still applies to decisions involving Commission-regulated water companies. *See* Pub. Util. Code §1757.1(b).

[59] *FPC v. Hope Natural Gas Co. Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923).

In D.20-08-047, the Commission justifies its elimination of the decoupling WRAM on two claims: (1) that it will improve forecasting and (2) that it is no longer needed to achieve conservation. The findings and evidence set forth in D.20-08-047 on these issues, however, are not sufficient to justify the Commission's elimination of the decoupling WRAM.

1. The Findings and Evidence Do Not Support the Commission's Claims Regarding Sales Forecasting

D.20-08-047 includes the following Finding of Fact and Conclusion of Law with respect to forecasting.

> Finding of Fact 19.
>
> Implementation of a Monterey-Style WRAM means that forecasts of sales become more significant in establishing test year revenues.[60]
>
> Conclusion of Law 4.
>
> Elimination of the WRAM/MCBA will provide better incentives to more accurately forecast sales while still providing the utility the ability to earn a reasonable rate of return.[61]

As discussed in more detail below, there is no support in the decision or the record for this finding and conclusion. As such, they are not sufficient to justify the Commission's elimination of the decoupling WRAM, and the lack of factual support indicates that the Commission has failed to regularly pursue its authority.

Elsewhere in D.20-08-047, the Commission claimed that the decoupling WRAM "eliminates the incentive to accurately forecast sales in a GRC."[62] The Commission furthermore stated, "We conclude that in order "to improve water sales forecasting," the "WRAM/MCBA mechanism cannot continue."[63] However, there is no reference legal authority, evidence or record to support this claim and conclusion.

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[60] D.20-08-047, p. 103.

[61] *Id*., p. 104.

[62] *Id*., p. 53.

[63] *Id*., p. 75.

As California American Water and others have noted, the "record" in this proceeding with respect to the decoupling WRAM is nearly nonexistent.[64] California American Water has concerns with characterizing the workshop reports and comments in this proceeding as a "record" upon which the Commission can rely.[65] Nonetheless, examination of these materials reveals that the minimal information regarding the decoupling WRAM and forecasting contained therein appears to contradict the Commission's conclusion on this issue.

The Commission held a workshop addressing water sales forecasting on January 14, 2019. The overview included with the notice of the workshop does not explicitly identify forecasting incentives related to the decoupling WRAM as an issue to be addressed.[66] The workshop report indicates that WRAMs were discussed, and that representatives of California American Water, California Water Service Company and Golden State Water Company claimed that WRAMs "allow them to institute more accurate and equitable rates."[67]

The Commission held a second workshop addressing water sales forecasting on August 2, 2019. The workshop report indicates that CWA and the Public Advocates Office agree that forecasts have been improving.[68] CWA clarified in its comments on the workshop report that the differences between forecasts from the water utilities and the Public Advocates Office

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[64] *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, pp. 7-8; *Comments of California Water Association on the Proposed Decision of Commissioner Guzman Aceves*, pp. 4-7; *Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, pp. 8-10; *Comments of Golden State Water Company on Proposed Decision and Order*, July 27, 2020, pp. 7-13; *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*, July 27, 2020, pp. 4-6.

[65] By issuing the D.20-08-047, the Commission denied the parties their statutory right to an evidentiary hearing. (Pub. Util. Code §1708; *see California Trucking Assn. v. Pub. Util. Com.*¸19 Cal.3d 240, 244 (1977).)

[66] *Administrative Law Judge's Amended Ruling Correcting Day for Workshop and Noticing Joint Workshop on Water Sales Forecasting and Rising Drought Risk*, December 19, 2018, p. 2.

[67] *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report on Joint Agency Workshop; and Noticing Additional Proceeding Workshops*, March 20, 2019, Attachment A.

[68] *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions*, September 4, 2019, Attachment A, p. 5.

have gotten smaller since implementation of the decoupling WRAM.[69] In its comments on the workshop report, Southern California Edison noted that inaccurate forecasts were not the result of implementation of the decoupling WRAM, but instead due to the application of a general forecast methodology (known as the New Committee Method) to all water companies.[70]

Therefore, to the extent that workshops and comments are considered the "record" in this proceeding, it shows that implementation of the decoupling WRAM has actually led to more accurate sales forecasts, contrary to the Commission's claim that the decoupling WRAM eliminates the incentive to accurately forecast sales. As such, there is no support for the Commission's conclusion that elimination of the decoupling WRAM will provide better incentives to more accurately forecast sales.

Furthermore, nothing in the "record" of this proceeding addresses whether sales forecasts are "more significant" with the M-WRAM (although in its comments on the Proposed Decision, Public Advocates Office claimed that elimination of the decoupling WRAM will create an incentive to underestimate sales).[71] Accurate sales forecasts are significant for companies with decoupling WRAMs because they provide for timely recovery of authorized fixed costs and avoid the negative financial consequences of large WRAM/MCBA balances. With the decoupling WRAM, inaccurate forecasts force companies to shift recovery of authorized costs from rates to the WRAM/MCBA. The delay in recovery of these authorized costs, which can be twenty years or longer, has a direct impact on cash flow. As California American Water previously explained, it funds the WRAM/MCBA undercollections with long-term debt and equity, the 90-day commercial paper rate applied to WRAM/MCBA balances does

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[69] *Comments of California Water Association Responding to Administrative Law Judge's September 4, 2019 Ruling*, September 16, 2019, p. 6.

[70] *Comments of Southern California Edison Company (U-338-E) on Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions*, July 27, 2020, p. 3, citing D.07-05-062, *Order Instituting Rulemaking to Consider Revisions to the Rate Case Plan for Class A Water Companies*, Opinion Adopting Revised Rate Case Plan for Class A Water Utilities, Appendix A, A-23 – A-25.

[71] *Comments of the Public Advocates Office on the Proposed Decision of Assigned Commissioner*, July 27, 2020, p. 8, fn. 31.

not allow it to recover the costs it incurs to fund the undercollections.[72] Therefore, the Commission's finding that sales forecasts are "more significant" with an M-WRAM is unsupported and inaccurate.

Because the Commission's finding and conclusion regarding sales forecast are unsupported, they do not provide sufficient justification to eliminate the decoupling WRAM. As in *Cal. Mfrs. Ass'n v. PUC*, cited above, the lack of sufficient justification constitutes legal error and indicates that the Commission failed to regularly pursue its authority.

2. The Findings and Evidence Do Not Support the Commission's Claim Regarding Conservation

In D.20-08-047, the Commission made the following findings of fact regarding conservation and the decoupling WRAM:

> 13. Average consumption per metered connection for WRAM utilities is less than the consumption per metered connection for non-WRAM utilities as evidenced in water utility annual reports filed from 2008 through 2016.
>
> 14. 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 as evidenced in water utility annual reports filed from 2008 through 2016.[73]

Although the Commission justified elimination of the decoupling WRAM based on its belief that it was no longer needed for conservation purposes, it did not make any conclusion of law with respect to the impact of the decoupling WRAM on conservation. The Commission opens D.20-08-047 by claiming that the decoupling WRAM has "proven to be ineffective in achieving its primary goal of conservation"[74] but provides no support for this claim. Later, the Commission states, "Based on the discussion at the workshop and the comments of the parties on the workshop report and issues listed, we are not persuaded that continuing the WRAM/MCBA

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[72] *Reply Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, August 3, 2020, p. 3.

[73] D.20-08-047, pp. 102-103.

[74] *Id*., p. 2.

for strictly conservation purposes is beneficial to ratepayers."[75] These findings and unsupported claims are not sufficient to justify the Commission's elimination of the decoupling WRAM and once again, the lack of factual support indicates that the Commission has failed to regularly pursue its authority.

There is no mention of the impact of the decoupling WRAM on conservation in the "record" of this proceeding until the very last document filed by Public Advocates Office before the Proposed Decision was issued.[76] The information in Findings of Fact 13 and 14 regarding the average consumption per metered connection and conservation measured as a percentage change over the last five years were introduced for the first time the Proposed Decision. The non-specific cites to water utility annual reports from 2008 through 2016 were added in a revision to the Proposed Decision made the evening before the Commission voted on this matter. By relying on these findings to support the elimination of the decoupling WRAM, the Commission hinders due process and fails to regularly pursue its authority.[77] The introduction of and reliance upon this "evidence" so late in the proceeding is prejudicial to California American Water and the other parties because there was no opportunity to analyze the annual report data or address whether it is appropriate to assess the effect of the decoupling WRAM using data from this period.

Moreover, these findings do not support the Commission's claim that the decoupling WRAM has been "ineffective" in achieving its primary goal of conservation and indeed appear to cancel each other out. While Finding of Fact 14 indicates that conservation measured as a percentage of change by non-WRAM utilities is greater than that of the decoupling WRAM utilities, Finding of Fact 13 indicates that the utilities with decoupling WRAMs have been more

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[75] *Id.*, p. 67.

[76] *Reply Comments of the Public Advocates Office on the Water Division's Staff Report and Response to Additional Questions*, September 23, 2019, pp. 6-7.

[77] *See* Pub. Util. Code §1708.

successful in reducing consumption overall.[78] Moreover, although these findings describe differences in conservation metrics between utilities with and without the decoupling WRAM, they provide no indication of the magnitude of these differences and whether the differences indeed show that the decoupling WRAM has been ineffective in achieving conservation. As such, these findings are not sufficient to justify the Commission's elimination of the decoupling WRAM.

In addition to these findings, as noted above the Commission also stated that it based its conclusion - that continuing the decoupling WRAM for conservation purposes would not benefit customers - on the workshop discussion and comments on the workshop report.[79] This reference appears to be to the August 2, 2019 workshop and the comments filed on the report of that workshop, discussed previously.

As summarized in the report, the discussion of conservation at the April 2, 2019 workshop was limited. California American Water explained how its tiered conservation rate design worked with its LIRA program.[80] CWA discussed conservation efforts in response to climate change.[81] A&N Technical Services discussed how conservation efforts could lead to reduced customer bills through avoided costs.[82] With respect to the decoupling WRAM, according to the workshop report, the parties primarily discussed WRAM balances.[83]

The workshop report provides no indication that there was any discussion as to how the decoupling WRAM affects conservation. In its comments on the workshop report, CWA indicated that the report omitted its statement at the workshop of how "the WRAM helps the

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[78] The goal of conservation is to increase savings in total usage, so a percentage metric is not the best measurement of conservation success.

[79] D.20-08-047, p. 67.

[80] *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions*, September 4, 2019, Attachment A, pp. 2-3.

[81] *Id*., p. 5.

[82] *Id*., p. 6.

[83] *Id*., pp. 4-5.

Commission further certain policy goals, such as conservation, low-income support and affordability."[84] No revisions were made to the report, however. Therefore, there is nothing in the record with respect to the discussion at the April 2, 2019 workshop that would support any conclusion regarding the impact of the decoupling WRAM on conservation.

The discussion of this issue in the workshop comments – the second source cited as support by the Commission – is similarly skimpy. As just mentioned, CWA requested in its opening comments that the workshop report be modified to include its general statement that the decoupling WRAM helps the Commission further conservation policy goals.[85] No other party discussed the WRAM in connection with conservation in opening comments on the workshop report. Public Advocates Office was the only party to (very briefly) address conservation and the decoupling WRAM in reply comments. In its reply comments, Public Advocates Office includes a single graph purporting to show that water companies with and without decoupling WRAMs have "almost identical trends in annual sales fluctuations" for the period from 2008 to 2016.[86] The source was generically identified as "Class A Annual Reports to the CPUC."[87]

Therefore, when the Commission stated that it concluded that continuing decoupling WRAM for conservation purposes is not beneficial to customers based on the discussion at the workshop and comments on the workshop report, it actually meant that it based that conclusion on a single graph in the reply comments of the Public Advocates Office. As with the findings of fact, using this graph as support for the elimination of the decoupling WRAM is prejudicial. 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

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[84] *Comments of California Water Association Responding to Administrative Law Judge's September 4, 2019 Ruling*, September 16, 2019, p. 7.

[85] *Id*.

[86] *Reply Comments of the Public Advocates Office on the Water Division's Staff Report and Response to Additional Questions*, September 23, 2019, pp. 6-7.

[87] *Id*.

presented for the first time in the final set of reply comments, there was no opportunity to determine or dispute the veracity of the information presented.

Similar to the issue of forecasting, the findings and claims in D.20-08-047 do not provide sufficient justification for elimination of the decoupling WRAM. Again, the lack of sufficient justification constitutes legal error and indicates that the Commission failed to regularly pursue its authority.

V. REQUEST FOR ORAL ARGUMENT

California American Water requests oral argument on this application for rehearing pursuant to Commission Rule 16.3. As discussed below, oral argument is justified because this application raises issues of major significance for the Commission. D.20-08-047 departs from existing Commission precedent without adequate explanation and this application for rehearing presents legal issues of exceptional controversy, complexity, and public importance.

Oral argument will materially assist the Commission in resolving this application. Oral argument will provide the opportunity for a transparent and public discussion of the important, complex and controversial issues raised in this proceeding, and will allow for a dialogue between decisionmakers and affected parties.

A. D.20-08-047 Departs from Commission Precedent Without Adequate Explanation

California American Water's decoupling WRAM has been affirmed in multiple Commission decisions over the last decade.[88] Just a few years ago, in D.16-12-026, the Commission recognized the continued need for the decoupling WRAM:

> 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

[88] D.09-07-021, pp. 123-127; D.12-11-006, p. 4; D.15-04-007, *Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by $18,473,900 or 9.55% in the year 2015, by $8,264,700 or 3.90% in the year 2016, and by $6,654,700 or 3.02% in the year 2017*, Decision Adopting the 2015, 2016 and 2017 Revenue Requirement for California-American Water Company, p. 14; D.18-12-021, p. 208.

> and support the need for the WRAM mechanism to support sustainability and attract investment to California water IOUs during this drought period and beyond.[89]

As discussed above, with respect to the elimination of the decoupling WRAM, which the Commission had repeatedly considered and approved, the Commission failed to consider all of the relevant facts and issues, failed to provide the necessary factual support, and failed to provide findings and evidence sufficient to justify its order. As such, D.20-08-047 departs from Commission precedent without adequate explanation

B. The application for rehearing presents legal issues of exceptional controversy.

As discussed above, California American Water believes that the Commission did not regularly pursue its authority and violated the Public Utilities Code when it eliminated the decoupling WRAM in D.20-08-047. While the WRAM is a vital tool that has allowed California American Water to implement steeply tiered rate designs that target high water users and benefit low-income customers, California American Water recognizes that its implementation, with restrictions that limited the ability of water companies to adjust forecasts and prevented timely recovery of WRAM balances, has become highly controversial. This controversy is reflected by the Commission's public comment page for this proceeding, which indicates that more than 772 comments were submitted. The controversy is also reflected by the dozens of speakers who addressed this issue at the Commission's voting meetings on August 6 and August 27, including two former Commissioners. The exceptional controversy surrounding the elimination of the decoupling WRAM justifies California American Water's request for oral argument.

Moreover, as discussed above, numerous entities have participated in multiple Commission proceedings regarding California American Water's Monterey District. In these proceedings, issued related to the decoupling WRAM and efficient water use have been highly contested. The controversial nature of water use in Monterey provides additional justification for oral argument.

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[89] D.16-12-026, p. 41.

C. The application for rehearing presents legal issues of exceptional complexity.

At issue in this application for rehearing is whether the Commission may prevent water companies from providing evidence in future general rate case proceedings regarding the need for and benefits of the decoupling WRAM without developing a record in this proceeding regarding those issues. This application for rehearing also addresses the issue of whether the Commission may make certain findings in this proceeding without any record support. These legal determinations are complex, as are the associated issues raised in this application for rehearing, including the need for and benefits of decoupling, development and implementation of tiered rate designs, and evaluation of conservation incentives. The exceptional complexity of the issues raised in this application for rehearing justifies California American Water's request for oral argument.

D. The application for rehearing raises legal issues of exceptional public importance.

As discussed above, Commission's elimination of the decoupling WRAM in D.20-08-047 will likely result in increased rates for low-income customers, either through the rate design changes necessary to allow California American Water to recover its revenue requirement or, if the Commission prevents such changes, through an increase in the rate of return on equity to reflect California American Water's higher business risk.[90] 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 such as wildfires and extreme weather conditions, resolution of legal issues that may avoid placing greater financial stress on millions of Californians is of exceptional public importance.

The Commission's elimination of the decoupling WRAM will also hinder California American Water's ability to target its highest use customers through steeply tiered conservation rates. Without the decoupling WRAM, the volatility associated with these rate designs would not provide California American Water the opportunity to recover its revenue requirement. While

[90] D.20-08-047, Dissent of Commission Randolph, p. 1.

the Commission in D.20-08-047 suggests that these aggressive rate designs are not necessary to achieve substantial conservation, California American Water is concerned that the inevitable rate decrease for high-use customers that will occur as it transitions way from these rate designs will encourage inefficient usage. Given the State's commitment to conservation as a way of life, as well as the need for conservation in the face of more frequent and extended droughts, resolution of legal issues that may significantly impact conservation is of exceptional public importance. This is particularly true in Monterey, where, as discussed above, increased consumption could lead to multi-million dollar fines and/or economically devastating restrictions on water usage.

Finally, issuing a decision on an issue outside the scope of the proceeding violates the Commission's own rules and the Public Utilities Code. The Commission has expended significant effort in increasing the transparency and accessibility of its proceedings. Issuing a decision on an issue outside the scope of the proceeding does not provide for a transparent process, and deprives parties of a full and fair opportunity to participate. Determining whether the Commission has done so here is of exceptional public importance because it goes to the heart of participation in the Commission process.

VI. CONCLUSION

For the reasons discussed above, California American Water respectfully requests that the Commission set aside and/or vacate D.20-08-047, so that it may address the errors set forth in this application. At the very minimum, California American Water requests that the Commission vacate D.20-08-0547 with respect to its Monterey District, and allow California American Water in its next GRC to request and provide support for continuation of the decoupling WRAM in the Monterey District. California American Water also requests oral argument on the application for rehearing to assist the Commission in resolving this application.

Respectfully submitted,

October 5, 2020

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JOINT APPENDIX KK

Decision 07-05-062 May 24, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Revisions to the General Rate Case Plan For Class A Water Companies.	Rulemaking 06-12-016 (Filed December 14, 2006)

OPINION ADOPTING REVISED RATE CASE PLAN FOR CLASS A WATER UTILITIES

TABLE OF CONTENTS

OPINION ADOPTING REVISED RATE CASE PLAN FOR CLASS A WATER UTILITIES

I. Summary

Today, we adopt several significant changes to the Rate Case Plan (RCP) for Class A water utilities[1] approved in Decision (D.) 04-06-018. We adopt a new schedule for filing general rate cases (GRCs). Under our new schedule, multi-district water utilities will be required to eventually file a single GRC for all districts at the same time. The transition to this new schedule will be gradual.

We also require separate applications for cost of capital determinations. We will require Class A water utilities to file cost of capital applications on a triennial basis, and we will adopt an adjustment mechanism for the intervening years in the first applicable cost of capital proceedings under this RCP. The largest multi-district Class A water utilities will file their first cost of capital applications in May 2008. The remaining Class A water utilities will file their first cost of capital applications in May 2009. All of the cost of capital applications filed in the same year will be consolidated.

To reduce discovery during GRC proceedings, we adopt Minimum Data Requirements (MDRs) to be completed by the utility as part of its GRC testimony and its cost of capital testimony. We also adopt several modifications to the existing RCP processing schedule for GRCs. The timing for Public Participation Hearings (PPHs) is modified to accommodate notice requirements for companies with bimonthly billing. We also modify the existing RCP processing schedule by

[1] Class A water utilities are those companies with more than 10,000 service connections. Unless otherwise noted, all requirements of this decision only apply to Class A water utilities.

incorporating Alternative Dispute Resolution (ADR) to assist parties in narrowing the disputed issues and by adding a technical conference about the utility's models to ensure that these models are properly understood and usable.

Our new RCP also improves our oversight of water quality by requiring utilities to provide us with water quality data through the MDRs and by authorizing the assigned Commissioner or assigned Administrative Law Judge (ALJ) to appoint a water quality expert to offer testimony in any GRC proceeding. We considered whether to require utilities to comply with an unaccounted water standard under consideration by the California Urban Water Conservation Council (CUWCC). While we adopt some minor changes in this area, we will not require any major changes until after the CUWCC completes its review process of Best Management Practice 3 (BMP 3).

Finally, we adopt a new procedure for utilities to obtain interim rate relief while a GRC is pending and, for the first time, we adopt a procedure for Class A water utilities to obtain waivers to the requirements to file a GRC application and to file every three-years. Our new RCP permits utilities to waive or delay the triennial filing requirement with consent of the Executive Director, in consultation with Water Division, and to obtain authority, in certain instances, to file a GRC by advice letter.

II. Background

Since we adopted the RCP in D.04-08-016, all Class A water utilities have had the opportunity to file and process at least one GRC. As a result, Class A water utilities and our staff have gained valuable insights into ways to build upon the existing RCP. In addition, since we implemented the existing RCP, we adopted a Water Action Plan on December 15, 2005 (Water Action Plan 2005). The four key principles of the Water Action Plan 2005 are (1) safe, high quality water; (2) highly reliable water supplies; (3) efficient use of water; and

(4) reasonable rates and viable utilities. The Water Action Plan 2005 also includes six objectives: (1) maintain the highest standards of water quality; (2) strengthen water conservation programs to a level comparable to those of energy utilities; (3) promote water infrastructure investment; (4) assist low income ratepayers; (5) streamline Commission regulatory decision-making; and (6) set rates that balance investment, conservation, and affordability.

In July 2006, the Water Division solicited input on how our existing RCP might be modified to support implementation of the Water Action Plan 2005. The Water Division also sought input on how to design the process permitted under Section 455.2 of the Public Utilities Code[2] for granting waivers to the RCP, as anticipated by D.06-06-037. Lastly, the Water Division asked parties to comment on possibly refining the RCP to reflect lessons learned over the course of the past three years while we implemented the existing RCP.

On December 14, 2006, we issued this Order Instituting Rulemaking (OIR) to build upon the process started by the Water Division of incorporating the goals of the Water Action Plan 2005 into the RCP. In this OIR, we identified several areas where improvement in the RCP was a priority based on the Water Division's workshops held in September 2006. We outlined these issues in the OIR and attached, at Appendix A to the OIR, a draft proposed RCP. The draft proposal reflected certain improvements to the RCP based on the Commission's experience with the existing RCP, the comments of water utilities and other parties during workshops, and our desire to incorporate aspects of the Water Action Plan 2005 into the RCP.

[2] Unless otherwise noted, all statutory references are to the Public Utilities Code.

After carefully reviewing all the comments and reply comments filed by parties[3] on February 21 and 28, 2007 to the draft proposed RCP, we now adopt a new RCP. We discuss each of the modifications to the RCP below. In addition, Appendix A hereto, sets forth a complete copy of the new RCP and the MDRs.

This Rulemaking is closed.

III. Modifications to the Existing Rate Case Plan

A. Single Rate Case for Multi-District Utilities

The OIR proposed that all multi-district water utilities file a single general rate case for all their districts at the same time and once every three years. In addition, the OIR proposed that the length of the rate case plan be 14 months for single-district applications and 20 months for multi-district applications. Under the OIR, we further proposed that the 14-month and 20-month time frames would start with the proposed application's submission date and end with the expected effective date of GRC rates.

The Joint Parties[4] agree to very few details regarding our proposal. Their recommendation on the RCP schedule is limited to very minor changes to the proposed 14-month GRC processing schedule.

Regarding our proposal for a single rate case for multi-district utilities, DRA states that it would prefer for the Commission to continue to process GRCs under the existing RCP adopted in D.04-06-018. DRA's position is primarily

[3] The following parties filed comments, reply comments, or both: Division of Ratepayer Advocates (DRA), California Water Association, Park Water Company, San Gabriel Valley Water Company, Monterey Peninsula Water Management District, American Water Company, and the California Department of Health Services. The assigned ALJ accepted a letter sent to the assigned ALJ on March 9, 2007 and dated October 27, 2006 by the California Department of Health Services as comments.

[4] The Joint Parties includes the DRA, California Water Association, its member Class A water utilities, and Park Water Company. Some of the individual participants of the Joint Parties also filed separate comments.

based on its opposition to single tariff rate design for multi-district utilities. According to DRA, a single rate case for multi-district utilities may somehow encourage the Commission to adopt a policy in favor of single tariff rate design. We see no such connection. DRA also states that, if the Commission decides to move ahead on multi-district GRCs, the Commission should establish the new RCP as a pilot project. On the actual sequence for utilities to file their GRCs, DRA suggests the Commission modify the filing sequence of certain utilities, namely Great Oaks Water and Valencia. In addition, DRA states that California American Water Company should file a separate GRC on a 14-month schedule for its Monterey District. Finally, regarding GRC updates, DRA suggests in its reply comments that the Commission retains the existing system under D.04-06-018 because, according to DRA, it has worked well.

In its comments, the California Water Association (CWA)[5] states three main concerns regarding the proposal for single multi-district filings. CWA notes that, in some instances, the proposed RCP extends beyond the three-year cycle required under Section 455.2. CWA also is concerned that, due to the proposal to increase the length of the GRC processing schedule to 20 months, the Commission must modify the GRC schedule to accept, with certain restrictions, updated data. Lastly, CWA points out that, in its opinion, the proposed RCP creates inefficiencies by processing some of the smaller Class A water utilities, namely San Gabriel Valley Water Company (San Gabriel), under the same 20-month schedule as the larger Class A water utilities. As a partial solution to

[5] The following CWA member utilities specifically joined in its comments and reply comments: California American Water Company, California Water Service Company, Golden State Water Company, San Gabriel Valley Water Company, San Jose Water Company, Suburban Water Company, and Valencia Water Company. Some of these utilities also filed individual comments and reply comments.

its concerns, CWA proposes several modifications to the proposed RCP, including changing the GRC filing schedule to provide for a one-year transition period to the new RCP and processing the four single district utilities (Great Oaks Water, San Jose Water, Suburban Water Systems, Valencia Water) and the two district companies (San Gabriel and Park Water Company) on a slightly modified 14-month schedule while processing the three largest multi-district utilities on the 20-month schedule. Lastly, CWA suggests shortening the proposed 20-month schedule by two months to 18 months. California American Water Company filed separate comments on these issues largely agreeing with CWA.

Park Water Company's (Park) comments state that the OIR incorrectly describes the relationship between Park and Apple Valley. Apple Valley is not a district of Park. Instead, Apply Valley is a wholly-owned subsidiary of Park and a separate Class A water utility. In addition, Park points out that because Park and Apple Valley are separate utilities and because Apple Valley contracts out its regulatory work to Park, combining rate cases with Apple Valley would prove difficult. According to Park, its regulatory staff does not have the resources to prepare two general rate cases simultaneously.

The Monterey Peninsula Water Management District (MPWMD) has concerns about a multi-district filing by California American Water Company, which would include the Monterey District, because such a filing might minimize the attention given to the complex issues in the Monterey District. For certain regulatory-compliance reasons, MPWMD also requests that instead of scheduling California American Water Company's next general rate case for July 2009, the Commission should schedule the rate case for January 2008.

San Gabriel urges the Commission to continue to permit it to file separate rate cases for its two divisions, the Los Angeles County Division and Fontana

Water Division. San Gabriel also argues that the 20-month schedule is too long because, among other reasons, at the end of the 20 months, the data will be stale. In addition, San Gabriel states that, by adopting the proposed RCP, the Commission will violate Section 455.2 by failing to provide San Gabriel with a rate increase within three years.

We conclude that the existing RCP schedule for filing GRCs should be revised. The adopted schedule is set forth in Section VI of the new RCP, attached hereto as Appendix A. Our adopted schedule is based on our consideration of the comments and reply comments filed by parties and is consistent with the Water Action Plan 2005 by striking the appropriate balance between capturing the efficiencies gained from consolidating certain districts into a single rate case and continuing to process the rate cases as expeditiously as possible. This schedule will not be adopted as a so-called "pilot project," as suggested by DRA. As the parties gain experience with this schedule, they may identify potential improvements and should notify the Commission's Water Division at the appropriate time so that we can consider further refinements to the RCP consistent with the Water Action Plan 2005.

Our adopted schedule permits Park and Apple Valley to file separate GRCs under the 14-month schedule. Park and Apple Valley are separate Class A water utilities. Accordingly, we conclude that combining Park and Apple Valley will not significantly reduce the total number of GRC proceedings.

We further conclude that, after a transition period, San Gabriel will file a consolidated GRC for its Fontana Water Division and its Los Angeles County Division under the 20-month schedule. Unlike Park and Apple Valley, San Gabriel's Fontana Water and Los Angeles County Divisions are part of one Class A water utility.

The remaining multi-district companies, California American Water Company, California Water Service Company, and Golden State Water Company, will file their GRCs under the 20-month schedule. We will gradually consolidate all districts into one GRC for each utility during a transition period. At this time, we do not believe a shorter schedule, such as the 18-month schedule proposed by CWA, allows sufficient time to process a multi-district GRC.

A number of parties expressed concern about delays beyond the time frame contemplated by Section 455.2. Our gradual phase-in to the single multi-district rate case schedule will alleviate these delays. While delays may still exist beyond the three-year cycle set forth in Section 455.2(c), the length of such delays is short and we also adopt a procedure for rate relief during these delays. This procedure is described herein at III(A)(1).

Regarding the Monterey District, parties suggest that the issues presented by this district are too complex to consolidate with other districts but that consolidation may be appropriate in the future. Under the adopted RCP, we will gradually consolidate the Monterey District with the other districts while ensuring that the issues presented by this district still receive the appropriate attention.

Our adopted schedule also reflects the suggestions of parties regarding the time necessary to complete certain required GRC tasks. These revisions are relatively minor and require no further elaboration.

Lastly, to the extent that the RCP schedule requires minor modifications to address mergers, acquisitions or the entry of new water utilities, the Water Division has authority to initiate changes to the RCP schedule through a proposed Resolution for Commission consideration.

1. Rate Adjustments During RCP Transition Period

The proposed RCP addressed the issue of rate adjustments under Section 455.2(c) during the transition to the new RCP. Our proposal in the OIR was as follows: for districts where the last review of rates was more than three years earlier, the utility may seek an annual rate change, subject to refund and limited to the rate of inflation, by a Tier 2 advice letter.

In response, CWA states that the proposal to limit interim rate relief during the transition period to the rate of inflation is inadequate based on soaring costs in some water service areas. Moreover, according to CWA, the transition to the new RCP schedule will result in certain companies filing GRCs beyond the three-year filing requirement set forth in Section 455.2(c). According to CWA, such delay can only occur when the utility and the Commission mutually waive the three-year filing requirement. CWA suggests that we permit water utilities that fall within this delay period to file GRCs during CWA's so-called one-year transition period.

In its reply comments, DRA disagrees with CWA's proposal for handling the transition period. Instead, DRA suggests that the Commission direct the Class A water utilities and DRA to work together to develop a proposal to address delays beyond the three-year GRC filing cycle. DRA notes that, in Ordering Paragraph 3 of D.04-06-018, we addressed this transition problem by ordering the parties to devise a mutually agreeable proposal within 60 days of the date of issuance of that decision.

As stated above, we conclude that our new RCP schedule will further the Water Action Plan 2005's objective of streamlining the Commission's decision-making process by requiring a single rate case for each of the three largest multi-district Class A water utilities and San Gabriel while permitting the remaining Class A water utilities to file single district GRCs. Under the new RCP, however,

some districts may be scheduled for a GRC beyond the three-year filing cycle set forth in Section 455.2(c).

We conclude that companies experiencing a delay in their GRCs under our new RCP may seek a rate modification, subject to refund as set forth below, via an advice letter.[6] Our adopted procedure is set forth at II(B) of the RCP. Section II(B) also sets forth the procedure for seeking permission to forego a GRC filing. We will not limit the rate changes sought in these filings to the rate of inflation. However, interim rates under Section 455.2(c), when approved, will be subject to refund and shall be adjusted upward or downward back to the effective date of the interim rates upon the adoption of final rates by the Commission at the conclusion of a GRC scheduled under the RCP. This procedure will only apply during our transition to the new RCP when the new RCP plan delays a water utility's GRC beyond the three-year cycle set forth in Section 455.2(c). We decline to adopt CWA's suggestion to permit utilities to file applications. Applications will unduly complicate the RCP schedule and create numerous inefficiencies. Furthermore, the advice letter process addresses all of CWA's concerns. Lastly, during the transition to the new RCP, the assigned ALJ may modify the time schedule for processing GRCs to accommodate the workload concerns or other needs of the parties.

2. GO Review During RCP Transition Period

During our transition to the new RCP, we will review all GO for (1) California Water Service Company with its July 1, 2007 GRC; (2) San Gabriel with its July 1, 2007 GRC; (3) Golden State Water Company with its July 1, 2008 GRC; and (4) California American Water Company with its January 1, 2010 GRC filing. Consistent with our standard procedures, all customers potentially

[6] We do not designate this advice letter under any "Tier."

impacted by these comprehensive GO filings must be appropriately noticed of any proposed rate changes and any proposed changes to the GO must be adequately supported by evidence in the record. We anticipate that a utility may seek rate changes related to GO in districts not undergoing a GRC review. In such instances, the utility may file an advice letter to implement any Commission-approved rate changes.

3. Updates to Recorded Information in Pending GRC Application

In the OIR, we proposed not to modify the existing process set forth in D.04-06-018 for applicants to offer updates to recorded data in a pending GRC application. Under our existing process, within 45 days of a GRC filing, an applicant can submit more recent recorded data. According to the existing RCP, any updates must be restricted to the data included in the original application or testimony. The existing RCP makes clear that any new or additional items or forecasted costs are not updates to recorded data and will not be accepted. The existing RCP also provides that, under extraordinary circumstances, a water utility may seek discretionary post-application modifications.

CWA points out that the 20-month schedule is six months longer than the existing processing schedule. Accordingly, it proposes that we permit water utilities to update their GRC applications if the recorded year-end data is significantly different from the estimated data included in the GRC application or if data significantly changes the utility's case. CWA claims that updated data will produce more accurate rates that more closely reflect the true cost of utility service and, in support of this goal, points to the Water Action Plan 2005's principle of reasonable rate and viable utilities.

DRA disagrees with CWA. In reply comments, DRA contends that the existing procedures set forth in D.04-06-018 are adequate.

San Gabriel suggests that it is impractical to allow parties to continuously change the data in a pending application but also urges the Commission to permit updates so that our decisions are not based on stale information.

We conclude that, with the exception of certain specific expenses, updates will be permitted consistent with the existing procedure set forth in D.04-06-018. These specific expenses include employee benefits (all medical, dental, pension, and other benefits), insurance, and Sarbanes-Oxley compliance costs. Regarding these specific expenses, the utility may file a motion to submit updates following the filing of the GRC application to include both year-end recorded data and more recent estimates of these specific expenses. This result strikes the appropriate balance between the principle of reasonable rates and viable utilities and the policy goal of streamlining Commission regulatory decision-making, as set forth in the Water Action Plan 2005. Consistent with the Plan, this process is fair as it allows the utilities an opportunity to seek post-application modifications when changes are material and ensures that other parties have an opportunity to indicate whether they have adequate time to analyze the new data.

B. Cost of Capital Proceedings

The OIR proposed that a separate cost of capital proceeding be establish on a parallel track to a company's GRC and that the Commission address all Class A water utilities' cost of capital applications for a given year on a consolidated basis. The OIR also proposed to give Class A water utilities the option to request modifications to their cost of capital annually. Finally, under the OIR, cost of capital applications would be due May 1 of the year prior to the Test Year.

DRA suggests that cost of capital continue to be addressed within the utility's GRC. DRA expresses concern about the reduced ability to negotiate settlements in a GRC in the absence of issues related to cost of capital. DRA also expresses concern about increased workload should utilities file cost of capital

applications each year and suggests that cost of capital results may not be timely since the GRC and cost of capital proceedings will proceed on separate tracks.

According to CWA, the Commission should continue to address cost of capital within individual GRC proceedings. Should consolidation be adopted, CWA suggests that the five publicly-traded (and soon-to-be publicly traded) companies be consolidated in one proceeding and the remaining companies continue to have cost of capital addressed in their individual GRC applications. California American Water Company filed separate comments on this issue largely agreeing with CWA.

San Gabriel states that one consolidated cost of capital proceeding cannot effectively address the variety of capital models and other financial variations among Class A water utilities.

MPWMD supports a consolidated cost of capital proceeding. MPWMD points out that California American Water Company's Monterey District pays a high cost of capital and MPWMD finds that a consolidated proceeding might bring down the cost of capital.

Park also opposes consolidation of cost of capital applications for Class A water utilities. Park argues that consolidated cost of capital proceedings will hinder the ability of utilities to present company-specific risk data. If the Commission adopts a consolidated cost of capital schedule, Park suggests that March 1 be used as the filing date for the consolidated cost of capital applications when the GRC seeks new rates starting January 1.

The Joint Parties make no recommendation on this issue.

We have carefully considered the recommendations by parties on this topic. Although the parties present various reasons for us to reject the consolidation of cost of capital applications, we conclude that consolidation of cost of capital proceedings will serve to streamline our regulatory process,

consistent with the objectives of the Water Action Plan 2005. In these consolidated proceedings, we intend to consider company-specific factors. Accordingly, the concerns of parties that company-specific risks will be overlooked are unfounded.

Based on the comments by parties, we adopted a modified version of our original proposal. In response to concerns that one consolidated cost of capital proceeding would not effectively address the variety of capital models and other financial variations among Class A water utilities, we adopt a RCP that reviews cost of capital in two groups. The three largest multi-district Class A water utilities[7] are directed to file cost of capital applications on May 1, 2008 and on a triennial basis thereafter. The Commission will consolidate these three cases. In this way, similar companies with similar risks will present information to us at the same time. The parties shall include in this May 1, 2008 filing a proposal to annually update the authorized capital structure for the following two years. This mechanism will apply between triennial proceedings. The Commission will adopt such a mechanism in this May 2008 proceeding.

All the remaining Class A water utilities will file cost of capital applications on May 2009 and on a triennial basis thereafter. The Commission will consolidate these cases. The parties shall include in the May 2009 filing a proposal to annually update the authorized capital structure. This mechanism will apply between triennial proceedings. The Commission will adopt such a mechanism in this May 2009 proceeding.

The procedural schedule for these cost of capital proceedings will be determined by the assigned ALJ or assigned Commissioner at the first

[7] The three Class A water utilities are California American Water Company, California Water Service Company, and Golden State Water Company.

consolidated proceedings, in May 2008 and May 2009. The Commission will process these cost of capital proceedings in a timely fashion and promptly incorporate the results into pending or existing rates. The schedule will be set with the goal of having a final decision within six months.

C. Interim Rate Relief during a Pending GRC

The OIR suggested a new procedure to facilitate and expedite requests under Section 455.2(a) and (b) for interim rate relief during a pending GRC application. The proposal consisted of the following: (1) a motion by the applicant filed 60 days before the first day of the test year that addressed the extent the applicant was responsible for delay and setting forth its proposed interim rates, (2) a ruling by the assigned ALJ or assigned Commissioner in response to the applicant's motion addressing, among other things, whether the applicant contributed to any delay in the proceeding and the appropriateness of the interim rate proposal, and (3) assuming that the Presiding Officer finds that the applicant was not at fault for delay, the Presiding Officer would authorize the applicant to file an advice letter implementing these interim rates effective the first day of the test year, pursuant to General Order (GO) 96-B.

The Joint Parties make no recommendation on this matter.

CWA suggests that we further streamline our proposal for obtaining interim rates. Seeking to minimize all procedural hurdles associated with obtaining interim rate relief, CWA particularly objects to our proposal to the extent it requires a utility to "prove" that it did not contribute to the delay in adopting rates. CWA contends that our proposal is inconsistent with Section 455.2. According to CWA, Section 455.2 creates a rebuttable presumption that the utility did not cause the delay. Under CWA's proposal, a utility would file a Tier 1 advice letter seeking to implement interim rates effective

automatically after 20 days unless a protest was filed. Park and San Gabriel generally agree with CWA.

DRA urges the Commission to retain the existing procedure under D.04-06-018 for obtaining interim rate relief during a pending GRC. DRA objects to a procedure permitting an ALJ to approve the rate modification rather than, as required under D.04-06-018, the Commission in a formal decision. According to DRA, the proposal fails to conform to the requirement of Section 455.2 for Commission approval, not ALJ approval, of interim rates. DRA claims that CWA's proposal to authorize a rate change via an advice letter would contravene the requirements of Section 454 that rates be "justified" by a substantial showing.

Based on parties' comments, we conclude that certain modifications are warranted to our original proposal. To be clear, our adopted interim rate process only applies during a pending GRC when the applicant, another party, or the Presiding Officer anticipates that the Commission's decision will not be effective on the first day of the first test year in a general rate case application. We adopt this procedure pursuant to Section 455.2(a) and (b).

An applicant seeking interim rate relief under Section 455.2 is required to file a motion for interim rate relief on or before the date set for the filing of opening briefs unless a different date is designated by the Presiding Officer. During this time frame, any other party may also file a motion for interim rate relief. Responses to this motion will be permitted consistent with the Rules of Practice and Procedure. In addition, we direct the Presiding Officer to convene a status conference the first business day after parties file opening briefs. The Presiding Officer shall schedule this status conference in each GRC and the purpose of such conference will be to determine the need for interim rates and to adopt a procedure to ensure interim rates are filed via advice letter and approved in a timely fashion.

While CWA and others suggest that a motion is unnecessary and inefficient, we find the information provided in a motion and in any responses filed to such motion necessary for the Presiding Officer to make a specific finding on the delay issue as set forth in Section 455.2. For this reason, the motion shall address the degree, if any, that applicant was responsible for delay during the proceeding. As stated above, this requirement is necessary for the Presiding Officer to determine whether the delay was "due to actions by the water company," consistent with Section 455.2. Contrary to CWA's contention, Section 455.2 does not create a rebuttable presumption that the utility did not cause the delay. The basis for CWA's assertion is unclear. While CWA is correct that Section 455.2 does not specifically require that interim rates be established through a motion filed by an applicant, the statute does permit the Presiding Officer to establish a later-effective date for interim and final rates if delay is caused by the applicant. To make a finding on the cause of delay, evidence must be brought before the Presiding Officer. We determine that, consistent with our Rules of Practice and Procedure, a motion and responses to this motion are an effective way to bring evidence before the Presiding Officer.

The Motion shall also request the establishment of a memorandum account to track any possible refund amounts based on final rates.

In response to this motion, the Presiding Officer will issue a ruling. The ruling will determine whether the applicant was responsible for the delay in implementing rates, determine if the requested rates are appropriate for submission to the Commission via advice letter, and suggest a specific effective date for interim rates. The ruling will also direct applicant to establish a memorandum account to track any difference between the interim rates and the final rates in an advice letter filing.

As mentioned above, DRA continues to support the procedure established by D.04-06-018 that requires the ALJ to prepare a proposed decision on the issues of delay and interim rates to be approved by the Commission. We favor a more streamlined approach consistent with the objectives of the Water Action Plan 2005. DRA is concerned that our more streamlined approach may compromise our compliance with the statutory requirement that rates be "justified," as set forth in Section 454. Under our adopted procedure, interim rates will be implemented via advice letter,[8] subject to refund. While our approach is a departure from D.04-08-016, it satisfies the statutory requirements set forth in Sections 455.2 and 454.

After the Presiding Officer issues a ruling on the motion for interim rate relief, we direct the applicant to file an advice letter consistent with the findings in the Presiding Officer's rulings. The applicant's advice letter filing will be effective according to the findings of the Presiding Officer's ruling. Under our adopted procedure and consistent with Section 455.2, the applicant's "interim rates shall be effective on the first day of the first test year in the general rate case application" as long as the Presiding Officer finds that applicant was not responsible for delay. In instances where there are large rate adjustments to be made at the time of implementing final GRC rates, the Commission will incorporate the time value of money that either the ratepayers or shareholders bore for the duration of the interim rate relief period.

We will continue a number of our current practices adopted under D.04-06-018 regarding interim rates. Under Section 455.2, interim rate relief is limited to the "rate of inflation." In D.04-06-018, we adopted an index for determining the rate of inflation, the most recent 12-month ending change in the

[8] We do not designate this advice letter under any "Tier."

U.S. Cities CPI-U published by the U.S. Bureau of Labor Statistics. No parties commented on our proposal to rely on this index. Consistent with D.04-06-018, this index will be applied to all revenue requirement components except those items included in balancing accounts.

D. Rate Case Plan Waivers

Section 455.2(c) directs us to adopt a procedure for granting waivers to the requirement that water utilities file a GRC application every three years. Section 455.2(c) states, in pertinent part, "The plan shall include a provision to allow the filing requirement to be waived upon mutual agreement of the commission and the water corporation."

No procedure currently exists in the RCP for such waivers. In D.06-06-037, we invalidated the RCP waiver process adopted in D.06-02-010 because we determined that parties were not afforded adequate notice and opportunity to be heard on the waiver procedure adopted in our prior RCP proceeding, R.03-09-005. In this OIR, we again proposed a procedure for obtaining such waivers.

The Joint Parties make two recommendations in response to our proposed RCP waiver procedure. The first recommendation addresses the procedure required under Section 455.2(c) to permit waivers to the triennial rate case cycle. In the OIR, we proposed that, should the water utility and the Commission (through the Executive Director) mutually agree to a waiver of the triennial GRC filing requirement, the water utility would be foreclosed from filing a GRC until its next scheduled GRC. The Joint Parties suggest that we permit a water utility to waive the triennial GRC filing for a period less than three years provided that written agreement exists between the water utility and DRA.

In response to the Joint Parties' comments, we will modify our proposal in the OIR. Under Section 455.2, the Commission can agree to permit the utility to

file according to a schedule other than the triennial schedule set forth in the adopted RCP. While we do not anticipate that we would grant such requests unless special circumstances exist, we will provide for this possibility by removing the following language from the proposed RCP at Section V(1): "Granting of this request by the Executive Director will result in the waiver by the utility of rate changes until its next schedule rate case."

The Joint Parties' second recommendation addresses our proposal to authorize a water utility to waive its right to file an application and, instead, file its GRC via advice letter. The Joint Parties recommend that utilities only be permitted to file an advice letter in lieu of a GRC application under the requirements of our proposal in Section V of the RCP if written agreement exists between the utility and DRA to rely on the advice letter procedure outlined therein.

We agree that such a modification is necessary. The utility must seek the agreement of DRA prior to filing a GRC via advice letter filing.

The Joint Parties do not comment on any other aspects of our RCP waiver procedure. No other parties comment on this topic. Accordingly, except for the above modification, our proposal remains unchanged. We note, however, that Section 455.2 authorizes the Commission to agree to waivers in certain circumstances. We now delegate to the Executive Director, in consultation with Water Division, the authority to enter into and grant requests for the waivers set forth in Section 455.2(c). The procedures that utilities must follow to obtain such waivers can be found in Section V of the RCP.

E. Minimum Data Requirements

To streamline the formal discovery process during a GRC or a cost of capital proceeding, the OIR proposed standardized MDRs to be submitted as part of the utility's testimony in its GRC and cost of capital proceedings. We

noted in the January 29, 2007 Scoping Memo that we would also consider whether the MDRs at Section II.G should direct the utility to demonstrate compliance with Section 10620 of the Water Code. Section 10620 of the Water Code requires utilities, and others, to prepare Urban Water Management Plans.

The Joint Parties make no recommendation on any matter related to the MDRs. DRA supports the MDRs but urges the Commission to incorporate portions of the Master Data Request into the MDRs or continue to require compliance with the Master Data Request. DRA submits revisions to the proposed MDRs to reflect the incorporation of critical portions of the Master Data Request. DRA also supports our recommendation to include a provision regarding Section 10620 compliance.

CWA generally supports the proposed MDRs but finds the Master Data Request to be unnecessary with the addition of the MDRs. CWA asks that we clarify whether utilities will be required to submit both under the new RCP. CWA also asks us to clarify whether the MDRs constitute the standard by which a proposed application will be deemed complete for filing and for purposes of issuance of the required deficiency letter. In addition, CWA claims that the proposed MDR on "Conservation and Efficiency" prematurely sets a specific percentage reduction for all utilities and fails to consider the significant differences among utilities.

MPWDM generally supports the MDRs but also seeks clarification on the status of DRA's Master Data Request.

We conclude that the MDRs, attached hereto at Appendix A (RCP Attachment 1 and Attachment 2) will apply to GRC applications and cost of capital proceedings, respectively. We further clarify that DRA's Master Data Request is not incorporated as part of the MDRs. While we appreciate DRA's argument that it will need additional information beyond the MDRs, DRA will

continue to have the opportunity to ask for supplementary information during formal discovery. We expect parties to work cooperatively during discovery. Unreasonable delay in responding to discovery is not acceptable and will be taken into consideration should applicant seek interim rate relief under Section 455.2(b).

No party opposes our suggestion to include a compliance showing regarding Section 10620 of the Water Code. Accordingly, we will incorporate such a requirement into the MDRs. For purposes of issuance of a deficiency letter, a proposed application will be deemed complete if all MDRs are submitted.

Lastly, we clarify the MDRs on "Conservation and Efficiency." We expect utilities to submit plans to achieve certain water reduction goals. While we consider these goals attainable, we do not now require utilities to meet these goals.

F. Notice of Rate Increases for Utilities with Bimonthly Billing

The OIR acknowledged that, under the existing RCP, utilities relying on bimonthly billing are not afforded sufficient time to notify their customers of a proposed rate increase or of upcoming PPHs. To provide sufficient time to provide such notice, the OIR proposed to modify the RCP processing schedule to hold public participation hearings later.

DRA agrees that the RCP should be modified to afford utilities with bimonthly billing sufficient time to provide customer notice but that the RCP should require PPHs before DRA submits its report. The Joint Parties agree that the RCP should allow adequate time for notifying customers of rate changes. No other party addresses this issue.

We conclude that the RCP processing schedule should be modified so that utilities have more time to provide notice to customers and so that PPHs are held before DRA submits its report. Accordingly, we adopt minor modifications to the OIR proposal. The adopted schedule will also provide DRA with sufficient time to investigate any new customer concerns raised at a PPH before DRA submits its report.

G. Addition of Technical Conference

The Water Action Plan 2005 includes the broad policy objective of "reasonable rates and viable utilities." In an effort to further this objective, the OIR proposed to add a technical conference requirement to the RCP. The Joint Parties agree that the addition of a technical conference to the RCP would ensure that Water Division and other parties understand the utility's ratemaking models. No parties contest this suggestion. We will adopt a technical conference requirement. This technical conference will be held between the filing of reply briefs and the issuance of the proposed decision. The specific details regarding the timing of the technical conference are set forth in the RCP, attached hereto as Appendix A.

H. Water Quality Review

To improve the Commission's review of water quality, the OIR proposed that the assigned Commissioner and assigned ALJ appoint, at the utility's expense, an independent expert witness to offer evidence on the utility's water quality compliance in its GRC proceeding. This proposal is founded on *Hartwell Corp. v. Superior Court*, 27 Cal.4th 256 (2002). In *Hartwell*, the California Supreme Court held that the Commission has constitutional and statutory responsibilities to ensure that water utilities provide water that protects the public health and safety. The OIR also incorporated water quality into the MDRs and suggested

that the proposed decision in a GRC proceeding make specific findings and recommendations concerning the utility's water quality compliance.

The Joint Parties agree that a water quality expert witness would provide valuable input in a GRC. The Joint Parties further suggest that such an expert witness could be a qualified representative from the Department of Health Services (DHS) or a water quality consultant recommended by DHS.

Park comments that it is unclear whether the OIR proposes that the costs of a water quality expert be recoverable in rates or by some other method.

After considering all these comments, we direct the assigned Commissioner or the assigned ALJ to any Class A water utility GRC proceeding to appoint a water quality expert to provide evidence to assist us in making specific findings and recommendations concerning a utility's water quality compliance unless good cause exists to forego the appointment of a water quality expert. If the water quality expert submits written testimony, the water quality expert will be subject to cross-examination in accordance with the Rules of Practice and Procedure. Initially, the process we anticipate is that all GRCs will be referred to a water quality expert soon after the GRC is filed and the water quality expert will provide a preliminary review of the utility's water quality and address the water quality aspects of GO 103 and other applicable law. We further anticipate that the water quality expert will provide an informal report to the Presiding Officer prior to the PHC. If the Presiding Officer determines that a more extensive report is required, the Presiding Officer will order such a report and testimony in a ruling with the scoping memo by the same or a different water quality expert. Parties will be permitted to submit written responses to this aspect of the scoping memo.

In the future, where the utility has met all sampling and testing requirements, has no test results on facilities in active service that exceed certain

maximum contaminant levels (MCLs), and no party raises concerns of merit, then no appointment of a water quality expert may be necessary.

In contrast to our proposal in the OIR, we do not expect the utilities to pay for this expert witness. To facilitate our oversight of water quality, the Commission's Water Division will enter into any required contracts with qualified water quality experts. The Water Division will oversee these contracts. We also will incorporate water quality into the MDRs and require that any proposed decision in a GRC proceeding make specific findings and recommendations concerning the utility's water quality compliance.

Finally, DHS offered support for certain additions to our MDRs that we included in the OIR. CWA, in its reply comments, agreed with the suggestions of DHS. As a result, as proposed in the OIR, we will require utilities to respond to certain water quality matters in their GRCs. These matters are set forth in the MDRs.

I. Reduction of Unaccounted Water

The OIR notes that since 1991 many water utilities have used the CUWCC's BMP 3, "Water Loss, System Water Audits, Leak Detection and Repair," to determine whether unaccounted water loss in the system exceeds 10%. As we noted in the OIR, BMP 3 has been criticized because it is based on a pre-screening test and, if improperly performed or manipulated, BMP 3 allows the water utility to avoid a full audit, even in situations where the recovery of lost water would be economically beneficial to the utility. To address this criticism (as well as for other reasons), CUWCC is considering adopting a new water loss audit methodology in a revised BMP 3. The new water loss audit methodology under consideration by CUWCC is derived from the American Water Work Association's (AWWA) standard methods for water auditing which

is based upon the International Water Association's (IWA) Best Management Practice (herein the "AWWA/IWA audit methodology").

The OIR proposed the AWWA/IWA audit methodology, due to the clear resulting benefits, even though CUWCC is still in the process of considering whether to revise the BMP 3. Specifically, under the new methodology, Class A water utilities would perform and submit the results of a water loss audit as part of the GRC application and testimony.

The Joint Parties recommend that, until the CUWCC adopts changes, if any, to its BMP 3 to include this new methodology, the Commission continue to require Class A water utilities to comply when cost-effective with the existing CUWCC BMP 3. The Joint Parties suggest that it would be premature for the Commission to require utilities to comply with this new methodology. The revisions to BMP 3 are ongoing and may be significant based on the failure of this new methodology to consider the limited capital planning horizon of investor-owned utilities.

MPWMD supports the use of the new methodology. MPWMD suggests that any reduction in unaccounted water will improve service quality to customers. As a result, customers may be less adverse to rate increases.

We conclude that the concerns of the Joint Parties have merit. CUWCC is reviewing the AWWA/IWA audit methodology, and some problems may exist as it applies to utilities. We will not adopt any new requirements for unaccounted water at this time.

However, the current BMP 3 is ineffective in encouraging water utilities to reduce water losses, as the 10% unaccounted water target can be easily achieved through the manner in which unaccounted water is reported. The BMP 3 language dates back to 1991 and reflects the methodology for system water auditing and leak deduction included in the AWWA M 36 manual at that time.

The AWWA M 36 manual is currently being revised. This manual will have the same unaccounted water requirements as the revised BMP 3 once both the M 36 manual and BMP 3 revisions are approved. Approval is expected to happen by early 2008. Consequently, water utilities shall be required to comply with the M 36 manual and BMP 3 as they are stated currently and to further comply when revised. During this interim period when the improved standard for unaccounted water will not be in effect, water utilities will be required to use the free Water audit software developed by AWWA, as set forth in the MDRs.[9] Consistent with the Water Action Plan 2005, we are concerned about avoidable unaccounted water and seek to make improvements in this area.

J. Alternative Dispute Resolution

The OIR proposed that the RCP include an ADR process. Under the proposal in the OIR, an initial meeting among the active parties and an ALJ neutral is mandatory.

The Joint Parties generally agree with the ADR proposal in the OIR but suggest that, after the initial meeting, participation in the ADR process be optional, not mandatory. The Joint Parties believe that unless both DRA and the utility agree to rely on the ADR process, the process will not be useful or successful. MPWMD supports the use of ADR, especially if the meeting dates for ADR are scheduled at the same time and place as other meetings, such as PHCs or PPHs.

Under the proposal in the OIR, the ALJ neutral assigned to a particular GRC proceeding would determine whether ADR will be mandatory or optional. We adopt this rule and will make minor modifications to clarify the role of the

[9] The software is available at: http://www.awwa.org/WaterWiser/waterloss/Docs/031WA AWWA Method.cfm.

ALJ neutral. While the Joint Parties may be correct that mandatory ADR will yield no results, we believe that the ALJ neutral is best able to make this determination based on the ALJ's neutral understanding of the circumstances of each case. Consistent with the Water Action Plan 2005, we intend to rely on the ADR process to streamline the GRC process. Accordingly, the first scheduled ADR meeting will be mandatory and subsequent meetings will be arranged by the assigned ALJ neutral as appropriate.

IV. Workshop

We have also concluded that while the MDRs provide us with a substantial amount of information, water utilities may continue to provide that information to us in a variety of formats. As a result, Water Division may spend valuable time comparing these different formats when this time could be better spent. We are particularly concerned with establishing a consistent format for submitting financial data in a GRC application. For this reason, we direct Water Division to convene workshops to develop a uniform method for reporting summary of earnings and other associated information in support of GRC applications.

V. Categorization and Need for Hearing

In the OIR, the Commission preliminarily determined the category of this rulemaking proceeding to be quasi-legislative as the term is defined in Rule 1.3(d) of our Rules of Practice and Procedure. Today we affirm this categorization. Consistent with the preliminary determination in the OIR that no formal hearing was needed in this proceeding, as confirmed by the January 29, 2007 Scoping Memo, no hearing was held in this proceeding.

VI. Comments on Proposed Decision

The proposed decision of the assigned Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed on April 18, 2007, and reply comments were filed on April 23, 2007.

VII. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Regina M. DeAngelis is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.04-06-018, we adopted a RCP for Class A water utilities.
2. Since D.04-08-016, all Class A water utilities have had the opportunity to file and process at least one GRC.
3. On December 15, 2005, we adopted the Water Action Plan 2005.
4. The four key principles of this Plan are (1) safe, high quality water; (2) highly reliable water supplies; (3) efficient use of water; and (4) reasonable rates and viable utilities.
5. The Plan also includes six objectives: (1) maintain the highest standards of water quality; (2) strengthen water conservation programs to a level comparable to those of energy utilities; (3) promote water infrastructure investment; (4) assist low income ratepayers; (5) streamline Commission regulatory decision-making; and (6) set rates that balance investment, conservation, and affordability.
6. On December 14, 2007, we issued this Order Instituting Rulemaking to build upon the process started by the Water Division to incorporate the goals of the Water Action Plan 2005 into the RCP.

7. After carefully reviewing all the comments and reply comments filed by parties on February 21 and 28, 2007, to the draft proposed RCP attached to the OIR, we adopt a new RCP.

Conclusions of Law

1. The RCP is consistent with the Water Action Plan 2005.
2. The RCP is consistent with the requirements of Section 455.2.
3. The RCP procedures for addressing rate adjustments during the transition period are consistent with Section 455.2.
4. The RCP interim rate process under Section 455.2(a) and (b) only applies during a pending GRC when the applicant anticipates that the Commission's decision will not be effective on the first day of the first test year in a general rate increase application.
5. The process for obtaining interim rates while a GRC is pending upholds the statutory requirements set forth in Sections 455.2 and 454.
6. Consistent with Section 455.2, we adopt a procedure for waiver of certain RCP requirements.
7. The Minimum Data Requirements, attached hereto at Appendix A (RCP Attachment 1 and Attachment 2) will apply to GRC applications and cost of capital proceedings, respectively.

O R D E R

IT IS SO ORDERED that:

1. The Rate Case Plan (RCP) for Class A Water Utilities, including the Minimum Data Requirements, attached hereto as Appendix A is adopted.
2. This RCP, attached hereto as Appendix A, supersedes the RCP attached to Decision 04-06-018.

3. The RCP furthers the policy objections set forth in the Water Action Plan 2005 as it promotes timely processing of cases seeks to balance the workload of the Commission and its staff over time, and enables comprehensive review by the Commission of rates and operations of all Class A Water Utilities.

4. All Class A Water Utilities shall comply with the filing schedule and all other general rate case (GRC) requirements as set forth in the RCP.

5. All Class A Water Utilities must submit a proposal to adjust cost of capital in their first cost of capital applications filed under this RCP, as described herein.

6. We delegate to the Executive Director, in consultation with the Water Division, the authority to enter into and grant requests for the waivers set forth in Section 455.2(c).

7. To facilitate our oversight of water quality during GRCs for Class A Water Utilities, we direct the Commission's Water Division to enter into any required contracts with qualified water quality experts. We direct the Water Division to oversee these contracts.

8. We further authorize the Presiding Officer in a GRC to rely on the testimony of a water quality expert consistent with *Hartwell Corp. v. Superior Court*, 27 Cal. 4th 256 (2002).

9. The Commission's Water Division shall convene workshops to develop a uniform method for reporting summary of earnings and other associated information in support of GRCs filed by Class A Water Utilities. The Water Division shall submit its recommendations to the Commission within 180 days of this decision.

10. Should the RCP schedule require modification due to a merger, a new entrant, or other significant change, we authorize the Water Division to prepare a Resolution for changing the schedule for our consideration.

11. Rulemaking 06-12-016 is closed.

12. This order is effective today.

Dated May 24, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX A

Rate Case Plan and Minimum Data Requirements for Class A Water Utilities

General Rate Applications

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

I. Introduction

This Rate Case Plan (RCP) supersedes the RCP adopted by Decision (D.) 04-06-018, as modified by D.06-02-010 and D.06-06-037. Consistent with Section 455.2 of the Public Utilities Code[1] and the Commission's Water Action Plan 2005, this RCP promotes timely processing of general rate cases (GRCs), balances the workload of the Commission and its staff over time, and facilitates comprehensive Commission review of the rates and operations of all Class A water utilities.

II. General Rate Case Structure and Process

A. Filing Schedule

Under the RCP, each Class A water utility is scheduled to file a GRC once every three years, with certain exceptions, as specified herein. During the transition to this RCP, Section VI may, in some instances, schedule a GRC application for a particular utility before or beyond the three years. In those instances, the water utility is permitted to act consistent with Section II. B and II. C, below.

The RCP processing period for utilities will be either 14 months or 20 months, beginning with the submission date of the proposed application and ending with the expected effective date of final rates. The 14-month or 20-month processing period will apply as set forth below.

The deadline for the utility to submit its proposed application is either November 1 or May 1 with the requisite application being filed on the following January 1 and July 1, respectively, as provided below. **All references to the first day of the month for the filing deadlines herein means the first Commission business day of the month.**

B. Procedure to Address Delay Beyond the Three-Year GRC Cycle

A water utility that experiences a delay beyond three-years in filing a GRC application due to the transition to the RCP schedule may seek to implement an interim rate change via an advice letter.

[1] All subsequent section references are to the Public Utilities Code unless otherwise indicated.

Such filing will not excuse a utility from filing its future GRCs according to the RCP schedule. These interim rates, when approved, will be subject to refund and shall be adjusted upward or downward back to the effective date of the interim rates with the adoption of final rates by the Commission at the conclusion of a GRC scheduled under the RCP.

The procedures herein will only apply during our transition to the RCP in instances when this RCP schedule delays a GRC for any water utility beyond the three-year cycle set forth in Section 455.2.

C. Procedure to Forego a Scheduled GRC

In any GRC under this RCP, the utility may choose to forgo review of rates for a district when the adopted rates are for a test year less than three years prior. In these circumstances, the utility does not need to include responses to the Minimum Data Requirements for such district in a proposed application addressing multiple districts. The utility shall advise the Commission of its decision to forego a GRC by letter to the Water Division Director.

D. Cost of Capital Applications

The three largest multi-district Class A water utilities, California American Water Company, California Water Service Company, and Golden State Water Company, are directed to file a cost of capital application on May 1, 2008 and on a triennial basis thereafter.[2] The Commission will consolidate these three cases. The utilities shall include in this May 1, 2008 filing a proposal to annually update the authorized capital structure. This mechanism will apply between triennial proceedings. The Commission will adopt such a mechanism in the May 2008 proceeding.

All the remaining Class A water utilities will file a cost of capital application on May 1, 2009 and on a triennial basis thereafter. The Commission will consolidate these cases. The utilities shall include in the May 2009 filing a proposal to annually update the authorized capital structure. This mechanism will apply between triennial proceedings. The Commission will adopt such a mechanism in the May 2009 proceeding.

[2] For the first cost of capital applications filed under this RCP, the utilities shall serve their applications on the service list to R.06-12-016.

E. The Record for a GRC Proceeding

Informal communications between applicant, DRA, and other interested parties are encouraged at all stages of the proceedings, including the proposed application review period. Informal communication is encouraged to facilitate a better understanding of the positions of the parties, avoid or resolve discovery disputes, and eliminate unnecessary litigation. However, all information necessary for the Commission to make its decision must be included in the formal record. While the Commission supports alternative forms of dispute resolution for GRC filings, any resulting agreement, and the record on which it is based, must meet all applicable Rules of Practice and Procedure as well as the Commission's standard for settlements. A complete comparison exhibit for each district, with supporting rationale, is essential for any settlement agreement.

F. Water Quality Expert

The Presiding Officer shall appoint a water quality expert to assist the Commission in making specific findings and recommendations concerning a utility's water quality compliance unless good cause exists to forego such appointment. Initially, all GRCs will be referred to a water quality expert soon after the GRC is filed, and the water quality expert will provide a preliminary review of a utility's water quality and address the water quality aspects of GO 103 and other applicable law. We further anticipate that the water quality expert will provide an informal report to the Presiding Officer prior to the PHC. If the Presiding Officer determines that a more extensive report is required, the Presiding Officer will order a report and testimony by the same or a different water quality expert in a ruling with the scoping memo. If a water quality expert submits testimony, the expert will be subject to cross-examination. Parties will be permitted to file responses to this aspect of the scoping memo.

In the future, where the utility has met all sampling and testing requirements, has no test results on facilities in active service that exceed certain maximum contaminant levels (MCLs), and no party raises concerns of merit, then no appointment of a water quality expert may be necessary.

III. Schedule for Processing GRCs

The schedule for processing GRC applications is set out below. By mutual agreement, DRA and the utility may modify the date for filing the proposed application. The Presiding Officer shall set the final schedule for each proceeding at or after the Prehearing Conference (PHC) or through a scoping memo. During the transition to the new RCP, the Presiding Officer may modify

this schedule to accommodate the workload concerns or other needs of parties related to this transition.

Event	14-month Schedule	20-month Schedule
Proposed Application	-60	-60
Deficiency Letter Mailed	-30	-30
Appeal to Executive Director	-25	-25
Executive Director Acts	-20	-20
Application Filed/Testimony Served	0	0
PHC Start Date	10–75	10–75
Update of Applicant's Showing	45	100
Public Participation Hearings (as needed)	10–90	10-190
DRA Testimony	97	204
Other Parties Serve Testimony	97	218
Rebuttal Testimony	112	264
ADR Process	115-125	270-290
Evidentiary Hearings (if required)	126-130	290-310
Opening Briefs Filed and Served	160	340
Motion for Interim Rates	160	340
Mandatory Status Conference	161	341
Reply Briefs Filed and Served (with Comparison Exhibit)	175	350
Water Division Technical Conference	180	370
Proposed Decision Mailed	240	460
Comments on Proposed Decision	260	480
Reply Comments	265	485
Commission Meeting	280	500

Cost of Capital
May 1 on triennial basis

IV. Detailed Processing Schedule

A. Proposed Application

Day -60 (All Applications)

1. Dates of Proposed Application

No later than November 1 for water utilities scheduled to file the final application in January. No later than May 1 for water utilities scheduled to file in July.

2. Number of Copies of Proposed Application

The original signed copy of the proposed application shall be served on DRA. The proposed application shall not be tendered to the Docket Office. Four copies of the proposed application and supporting testimony shall be provided to DRA for single district filings, five copies for multi-district filings, and one copy to the Commission's Legal Division and Water Division. DRA shall be provided with one full paper copy set of workpapers. A searchable electronic copy (via email or CD) of the proposed application, supporting testimony, and workpapers shall be provided to DRA on the filing date. Applicant shall furnish copies of the proposed application, supporting testimony, and workpapers to interested parties upon written request.

3. Content of Proposed Application and Supporting Prepared Testimony

A utility's proposed application for a rate increase must identify, explain, and justify the proposed increase. The proposed application shall include a proposed schedule consistent with the RCP with a test period consistent with the RCP. The proposed application shall include, but not be limited to, the information set forth in Attachment 1, Minimum Data Requirements. The utility is not required to follow the order of information in Attachment 1, but must include a cross-reference to where each of the Minimum Data Requirements is set forth in its testimony. The Presiding Officer may ask for summary sheets of each district in a consolidated case or request that the application be filed in a particular format that facilitates review. The utility bears the burden of proving that its proposed rate increase is justified and must include in the proposed application and supporting testimony, all information and analysis necessary to meet this burden.

4. DRA Evaluation of Proposed Application

Within -30 days (All Applications)

DRA will review and evaluate the proposed application to determine whether the proposed application complies with the Minimum Data Requirements. No later than 30 days after the proposed application is tendered, DRA will inform the utility in writing whether the proposed application

complies. If DRA determines that the proposed application complies with these Minimum Data Requirements, then DRA will notify the Commission's docket office to accept for filing a GRC application from that utility at any time within the following 30 days. If DRA determines that the proposed application does not comply with the MDR, then DRA will issue a deficiency letter.

B. Deficiency Letter Issued

Day -30 (All Applications)

No later than 30 days after the proposed application is tendered, DRA shall issue any deficiency letter. DRA shall also transmit a courtesy electronic copy of the letter to the utility's representative on the day of issuance. The deficiency letter shall include a list of the topics on which the proposed application is deficient. To the extent known, DRA shall describe the information and analysis needed to cure the deficiencies. Upon request, DRA shall promptly meet and confer with the utility. Unless and until the defects listed in the deficiency letter are resolved pursuant to the appeals process or cured, the Commission will not accept the GRC application for filing.

For purposes of the RCP, a deficiency is a material omission of any Minimum Data Requirement from the proposed application, supporting testimony, or workpapers. A deficiency is not a subjective determination that the proposed application or submitted documents, including workpapers, do not adequately support the utility's request or are non-responsive to the RCP filing requirements. Failure to respond to a data request for information beyond the Minimum Data Requirements is not a requirement of the RCP and failure to respond to a data request is not a deficiency.

The following examples are not deficiencies: 1) a request by DRA for clarification of the utility's submitted prepared testimony or supporting calculations, unless the submitted materials overall were disorganized or unclear; 2) use of recorded or estimated data for subjects that are not required under the RCP; and 3) a determination by DRA that a proposed position is incorrect or inadequately supported by the testimony and/or workpapers and therefore requires additional information to evaluate. These are not deficiencies for the purpose of accepting the proposed application.

C. Appeal to Executive Director

Day -25 (All Applications)

If the utility disagrees with any or all defects listed in the deficiency letter, the utility may file and serve an appeal to the Executive Director. Service shall include copies to the Executive Director, the Director of the Water Division, the Assistant Chief ALJ (Water), and DRA. The utility shall concisely identify the points in the deficiency letter with which it disagrees and shall provide all necessary citations and references to the record to support its claim.

D. Executive Director Acts

Day -20 (All Applications)

No later than five days after the appeal is filed, the Executive Director shall act on the appeal by a letter ruling served on all parties. Electronic courtesy copies shall also be provided on the day of issuance.

E. Application Filed

Day 0 (All Applications)

No later than 60 days after the proposed application is tendered and DRA has notified the Docket Office that the proposed application is not deficient, the utility may file its GRC application consistent with Rule 1.13 of the Rules of Practice and Procedure[3] or electronically consistent with the requirements of Resolution ALJ-188.

Supporting testimony shall not be filed with the Docket Office but shall be served on all parties including the Presiding Officer or, if one is not yet assigned, the Chief ALJ. Applications must conform with all applicable Rules, including Rule 1.5, which indicates that font type must be no smaller than 10 points. All data included in the application and testimony shall be updated to include information that was not available when the proposed application was tendered, and all such changes shall be quantified and explained in a comparison exhibit. The application shall conform to the content of the proposed application and supporting testimony, and shall include final versions of the exhibits provided in the proposed application. The utility shall serve copies of its application in

[3] Unless otherwise noted, all subsequent references to "Rules" or "Rule" are to the Commission's Rules of Practice and Procedure.

accordance with the same directives, set forth above, applicable to the proposed application.

F. Updates

Day 45 (14-month schedule)
Day 100 (20-month schedule)

Up to 45 days or 100 days after filing, as applicable, more recent recorded data used in the application/testimony may be provided by the utility. More recent recorded data are utility plant or expense account balances showing actual historical amounts. The more recent recorded data must be used in the same manner and for the same purpose as the data included in the original application/testimony. New or additional items or forecasted costs are not updates to recorded data and will not be accepted, except that the water utility is permitted to file a motion for permission to file updates of the following expenses: employee benefits (all medical, dental, pension, and other benefits), insurance, and Sarbanes-Oxley compliance costs.

Under extraordinary circumstances, a water utility may seek discretionary post-application modifications. Any such request must, at a minimum, show that the addition sought: (1) causes material changes in revenue requirement; (2) is the result of unforeseeable events; (3) is not off-set by other cost changes; and (4) can be fairly evaluated with proposed schedule changes that have been agreed to by all parties. Any such request shall be by made by written motion, with an opportunity for other parties to respond, as provided in the Rules. The Presiding Officer shall rule on the motion and, if the motion is granted, shall provide the other parties with a reasonable amount of time to respond to the updated information. The Presiding Officer shall set a revised schedule, if appropriate.

G. PHC Held

Day 10 - 75 (All Applications)

The assigned Commissioner and/or ALJ shall convene a PHC and set the procedural schedule for the proceeding. At the PHC, the Presiding Officer and the parties will discuss Alternative Dispute Resolution (see below) and the scope of the proceeding, the timing, process, and appointment of an independent water quality expert to provide testimony to assist the Commission with its assessment of water quality compliance. The PHC will most likely, but not necessarily, be scheduled after the expiration of the protest period.

H. Public Participation Hearings, if applicable

Day 10-90 (14-month schedule)
Day 10-190 (20-month schedule)

The schedule may include Public Participation Hearings if necessary due to public interest. The ALJ and/or Commissioner may also direct the applicant to make information about the rate case available to the public via other communication channels, including the Internet and other means of public outreach. The applicant shall provide notice of the hearings in accordance with Rule 3.2 and any supplemental procedures directed by the Presiding Officer pertaining to notice of hearings.

I. Distribution of DRA Testimony

Day 97 (14-month schedule)
Day 204 (20-month schedule)

DRA shall serve prepared testimony on the service list to the proceeding consistent with Rules 1.9 and 1.10. Two paper copies shall be served on the Presiding Officer. Workpapers shall be served on all service list appearances. DRA shall arrange its workpapers in an organized and logical fashion.

J. Distribution of Testimony by Other Parties

Day 97 (14-month schedule)
Day 218 (20-month schedule)

Any interested parties shall serve their prepared testimony on the service list to the proceeding consistent with Rules 1.9 and 1.10. Two paper copies shall be served on the Presiding Officer. Workpapers shall be served on all appearances. Parties shall arrange workpapers in an organized and logical fashion.

K. Distribution of Rebuttal Testimony

Day 112 (14-month schedule)
Day 264 (20-month schedule)

Rebuttal testimony may be prepared by any party and shall be served on the service list consistent with Rules 1.9 and 1.10. Two paper copies shall be served on the Presiding Officer. Workpapers shall be served on service list appearances.

L. Alternative Dispute Resolution (ADR)

Day 115-125 (14-month schedule)
Day 270-290 (20-month schedule)

ADR will be explained by the Presiding Officer at the initial PHC and addressed in the scoping memo. An ALJ neutral will be appointed to meet with the parties as needed throughout the proceeding. Specific ADR processes will be held during the period between rebuttal testimony and the evidentiary hearing. The ALJ neutral and the parties will plan and schedule the specific ADR processes that are appropriate for that proceeding. These methods may include facilitation, mediation, or early neutral evaluation conducted by an ALJ neutral not assigned to the proceeding. All active parties must participate in an initial session of ADR and each active party must have an official at such meeting with decision-making authority. Unless the parties agree otherwise, all ADR sessions will be confidential and the communications will not be used in the formal proceeding. For additional information on the Commission's ADR program, see Resolution ALJ-185.

M. Evidentiary Hearings

Day 126-130 (14-month schedule)
Day 290-310 (20-month schedule)

The Presiding Officer shall preside over evidentiary hearings and shall take evidence to prepare the formal record. At the conclusion of the hearings, the Presiding Officer shall set the briefing schedule and set the date for submission of the case for decision by the Commission, consistent with the RCP processing schedule herein.

N. Opening Briefs Filed and Served

Day 160 (14-month schedule)
Day 340 (20-month schedule)

The parties may file concurrent opening briefs setting out their recommendations on specific issues, with supporting references to the record. The applicant shall include a comprehensive discussion of the issues and shall address in detail each issue identified as "contentious" in the application. The Presiding Officer may adopt a uniform briefing outline for use by all parties.

O. Motion for Interim Rates and Status Conference

Day 160 and Day 161 (14-month schedule)
Day 340 and Day 341 (20-month schedule)

Unless otherwise designated by the Presiding Officer, parties must file a motion for interim rates pursuant to Section 455.2. Response to the motion will be accepted consistent with the Rules. Section V(D) herein sets forth this process in greater detail. This process must include a mandatory status conference the day after the date parties file opening briefs to evaluate the need for interim rates and the process for implementing such rates.

P. Reply Briefs Filed and Served

Day 175 (14-month schedule)
Day 350 (20-month schedule)

Each party may file a brief that responds to the issues raised by other parties in opening briefs. The applicant, DRA, and other active parties shall prepare and submit a Joint Comparison Exhibit showing complete comparison tables for the test and escalation years. The tables shall show each party's final position on each component of revenue requirement and shall identify all remaining major disputed issues, and the dollar amounts associated with each disputed issue. All major revisions to a party's position on an issue shall be explained. The tables shall consolidate the two test years and one attrition year methodology for capital additions with the one test year and two escalation years program for expenses to show a complete projected revenue requirement for each of the three years in the cycle. Final adjustments to balancing or memorandum accounts that have been approved by DRA may be incorporated in the Joint Comparison Exhibit.

Q. Water Division Technical Conference

Day 180 (14-month schedule)
Day 370 (20-month schedule)

Water Division shall host a Technical Conference following submission of the case to review the ratemaking models utilized by the parties in the case in order to assist the Presiding Officer in the preparation of tables for the proposed decision.

R. Presiding Officer's Proposed Decision Mailed

Day 240 (14-month schedule)
Day 460 (20-month schedule)

The Presiding Officer's proposed decision shall be filed and served consistent with applicable laws and regulations.

In addition to relevant issues raised in the proceeding, each decision: (1) shall discuss utility's district-by-district compliance with water quality standards as required by General Order 103; and (2) unless deviation is otherwise expressly justified in the decision, shall include standard ordering paragraphs providing for escalation year increases subject to an earnings test. A sample ordering paragraph is set out in the footnote.[4]

S. Comments on Proposed Decision

Day 260 (14-month schedule)
Day 480 (20-month schedule)

Comments on the proposed decision shall be filed and served on all parties consistent with Commission Rules.

T. Reply Comments

Day 265 (14-month schedule)
Day 485 (20-month schedule)

As provided in Commission Rules, the parties may file and serve replies to comments on the proposed decision.

U. Expected Commission Meeting

Day 280 (14-month schedule)
Day 500 (20-month schedule)

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[4] Sample Ordering Paragraph: An escalation advice letter, including workpapers, may be filed in accordance with General Order (GO) 96-B no later than 45 days prior to the first day of the escalation year. To the extent that the pro forma earnings test for the 12 months ending September 30, as adopted in D.04-06-018, exceeds the amount authorized in this decision, the requested increase shall be reduced by the utility from the level authorized in this decision to conform to the pro forma earnings test. Advice letters filed in compliance with this decision shall be handled as Tier 1 filings, effective on the first day of the test year. Advice letters not in compliance with this decision will be rejected consistent with GO 96-B.

The proposed decision may be on the agenda for the first regularly scheduled meeting of the Commission occurring 30 or more days after the date the proposed decision is issued.

V. RCP Deviations and Waivers

This section describes possible deviations from the RCP schedule and the procedure by which a utility may seek a deviation or waiver from the RCP schedule or other certain requirements.

A. Waiver of Scheduled GRC Filing

The utility may seek waiver of a GRC application scheduled under the RCP by letter to the Executive Director. Such letter shall be sent to the Executive Director no later than 90 days prior to the scheduled application filing date with a copy to the Chief ALJ, Water Division Director, DRA Director, and the service list of its most recent GRC. The scheduled GRC filing will be waived upon mutual agreement of the Commission (through the Executive Director in consultation with the Water Division) and the water utility. The Executive Director will report to the Commission at the next scheduled Commission meeting the disposition of any requests for waiver of the three-year filing requirement.

B. Authority to file GRC by Advice Letter in Lieu of Application

The utility may file an advice letter in lieu of an application if all of the following circumstances are met:

1. the utility tenders its proposed application;
2. the proposed application is found to be complete;
3. the proposed application consists of a single ratemaking district; and
4. the requested change in revenue requirement is 5% or less.

If the utility meets these criteria, it may, on its specified application filing date under the RCP, file its GRC by advice letter rather than by application, but it must continue to comply with the RCP Minimum Data Requirements in its advice letter filing. The utility shall notify the Commission's Executive Director by letter with a copy to the Chief ALJ, Water Division Director, DRA Director, and Docket Office no later than five days before the application due date

whether it will file an application or advice letter. The GRC advice letter will be processed as a Tier 3 advice letter.

C. Filing a GRC by Advice Letter in Lieu of Application with Prior Approval

If subsection b (1)-(4), above, are not satisfied, the filing of an advice letter in lieu of an application is permitted only if prior Commission approval is obtained. The utility shall file an advice letter seeking authority to file its GRC by advice letter no later than 90 days prior to the due date for its application for GRC. The utility must continue to prepare its proposed application consistent with the RCP and Minimum Data Requirements while its advice letter seeking approval for the waiver is pending. The advice letter will be processed as a Tier 3 advice letter. If the Resolution denies the request, the utility shall file its GRC application as specified in the RCP. If the Commission grants the utility's request, the GRC advice letter will be processed as a Tier 3 and the filing requirements set forth in subsection B shall apply.

D. Interim Rates while a GRC is Pending

This interim rate process only applies during a pending GRC when the applicant, another party, or the Presiding Officer anticipates that the Commission's decision will not be effective on the first day of the first test year in a general rate increase application. This procedure is adopted pursuant to Section 455.2(a) and (b).

Should an applicant seek interim rate relief, the applicant must file a motion for interim rate relief on or before the date for filing its opening brief, unless a different date is designated by the Presiding Officer. During this time, any other party may also file a motion for interim rate relief. Responses to this motion will be permitted, consistent with the Rules. The motion shall address the degree, if any, that applicant was responsible for delay during the proceeding, the requested rate modification (not to exceed the rate of inflation), and a proposed effective date for interim relief. The motion shall also request the establishment of a memorandum account to track the difference between the interim rates and the final rates.

In response to this motion, the Presiding Officer will issue a ruling. The ruling will determine whether the applicant was responsible for the delay in implementing rates, determine if the requested rates are appropriate for submitting to the Commission via advice letter, and set a specific effective date for interim rates. The ruling will also direct applicant to request the

establishment of a memorandum account with the advice letter filing that implements interim rates.

After a ruling is issued on the motion for interim rate relief, the applicant must file an advice letter consistent with the ruling. The applicant's advice letter filing will be effective according to the findings of the ruling. Under our adopted procedure and consistent with Section 455.2, the applicant's "interim rates shall be effective on the first day of the first test year in the general rate case application" as long as the Presiding Officer finds that applicant was not responsible for delay.

Under Section 455.2, interim rate relief is limited to the "rate of inflation." The index for determining the rate of inflation will be the most recent 12-month ending change in the U.S. Cities CPI-U published by the U.S. Bureau of Labor Statistics.

In instances where there are large rate adjustments to be made at the time of implementing final GRC rates, the Commission will incorporate the time value of money that either the ratepayers or shareholders bore for the duration of the interim rate relief period.

The Presiding Officer shall also convene a status conference on the first business day after the date parties file opening briefs. The purpose of this status conference is to determine the need for interim rates and to adopt a procedure to ensure interim rates are filed via advice letter and approved in a timely fashion.

VI. RCP GRC SCHEDULE

Utility	Districts	GRC Filing Date	Cost of Capital Filing Date	Effective Date	Processing Time (months)
FIRST CYCLE					
Cal Water	8 & All GO[1]	July 1, 2007	May 1, 2008	July 1, 2008	14
San Gabriel	(1) LA & GO	July 1, 2007	May 1, 2009	July 1, 2008	14
Cal Am	(2) Monterey; Felton; Sewer All GO	January 1, 2008	May 1, 2008	July 1, 2009	20
Park (Apple Valley)	1 & All GO	January 1, 2008	May 1, 2009	January 1, 2009	14
Suburban	1	January 1, 2008	May 1, 2009	January 1, 2009	14
Golden State	9 Regions II & III & GO	July 1, 2008	May 1, 2008	January 1, 2010	20
San Gabriel	1 (FO)	July 1, 2008	May 1, 2009	July 1, 2009	14
Cal Am	5[2]	January 1, 2009	May 1, 2008	July 1, 2010	20
Park-Central	1	January 1, 2009	May 1, 2009	January 1, 2010	14
San Jose	1	January 1, 2009	May 1, 2009	January 1, 2010	14
Cal Water	24	July 1, 2009	May 1, 2008	January 1, 2011	20
Great Oaks	1	July 1, 2009	May 1, 2009	July 1, 2010	14
Valencia	1	January 1, 2010	May 1, 2009	January 1, 2011	14
Golden State	7 Region I	January 1, 2010	May 1, 2008	January 1, 2011	14
SECOND CYCLE					
Cal Am	All	July 1, 2010	May 1, 2011	January 1, 2012	20

[1] In this Application, Cal Water may apply for additional step increases for its remaining 16 districts.

[2] LA Districts, Sacramento, and Larkfield.

Utility	Districts	GRC Filing Date	Cost of Capital Filing Date	Effective Date	Processing Time (months)
San Gabriel	1 (LA) & GO	July 1, 2010	May 1, 2012	July 1, 2011	14
Park (Apple Valley)	1 & GO	January 1, 2011	May 1, 2012	January 1, 2012	14
Suburban	1	January 1, 2011	May 1, 2012	January 1, 2012	14
Golden State	16	July 1, 2011	May 1, 2011	January 1, 2013	20
San Gabriel	1 (FO)	July 1, 2011	May 1, 2012	July 1, 2012	14
Park-Central	1	January 1, 2012	May 1, 2012	January 1, 2013	14
San Jose	1	January 1, 2012	May 1, 2012	January 1, 2013	14
Cal Water	24	July 1, 2012	May 1, 2011	January 1, 2014	20
Great Oaks	1	July 1, 2012	May 1, 2012	July 1, 2013	14
Valencia	1	January 1, 2013	May 1, 2012	January 1, 2014	14
San Gabriel	2 (FO & LA)	January 1, 2013	May 1, 2012	July 1, 2014	20
THIRD CYCLE					
Cal Am	All	July 1, 2013	May 1, 2014	January 1, 2015	20
Park (Apple Valley)	1	January 1, 2014	May 1, 2015	January 1, 2015	14
Suburban	1	January 1, 2014	May 1, 2015	January 1, 2015	14
Golden State	16	July 1, 2014	May 1, 2014	January 1, 2016	20
Park – Central	1	January 1, 2015	May 1, 2015	January 1, 2016	14
San Jose	1	January 1, 2015	May 1, 2015	January 1, 2016	14
Cal Water	24	July 1, 2015	May 1, 2014	January 1, 2017	20
Great Oaks	1	July 1, 2015	May 1, 2015	July 1, 2016	14
Valencia	1	January 1, 2016	May 1, 2015	January 1, 2017	14
San Gabriel	2 (LA & FO)	January 1, 2016	May 1, 2015	July 1, 2017	20

VII. Escalation and Attrition Advice Letter Procedure

The most recent memorandum entitled, "Estimates of Non-labor and Wage Escalation Rates" as described in D.04-06-018, shall be used for Escalation Years 1 and 2 rate increase requests and shall be sought by Tier 1 advice letter no later than 45 days prior to first day of the escalation year. The advice letter filing shall include all calculations and documentation necessary to support the requested rate change. The requested rate increase shall be subject to the pro forma earnings test, as specified in D.04-06-018. Revenue requirement amounts otherwise subject to rate recovery, e.g., through balancing or memorandum accounts, shall not be subject to escalation.

All rate base items, including capital additions and depreciation, shall not be escalated but rather shall be subject to two test years and an attrition year, consistent with D.04-06-018. If the Escalation Year and Attrition Year advice letters are in compliance with this decision, GO 96-B, and other requirements, the advice letter shall be effective on the first day of the escalation or attrition year, consistent with the procedures set forth in GO 96-B.

Utilize the following methods for preparing escalation year requests:[1]

1. Estimate escalation year labor expenses by the most recent labor inflation factors as published by the DRA.
2. Estimate non-labor escalation year expenses, excluding water production related expenses, by the most recent composite non-labor 60%/compensation per hour 40% inflation factors published by DRA.
3. Estimate escalation year water production related expenses based on escalation year sales.
4. Adjust for all non-recurring and significant expense items prior to escalation. A significant expense is equal to or greater than 1% of test year gross revenues.
5. Expense items subject to recovery via offset accounts, e.g., balancing accounts, shall not be escalated.
6. Estimate escalation year expenses not specifically addressed in DRA's published inflation factors, (such as insurance) based on CPI-U for most recently available 12 months, as provided in D.04-06-018.

[1] In each water utility's escalation year advice letter filing, the most recent DRA inflation factors will be used.

7. Escalation year expenses may also be increased by the most recent five-year average customer growth or other growth adopted by the Commission.
8. For the first escalation year, estimate customers by adding the five-year average change in customers by customer class or other growth adopted by the Commission to the test year customers. For the second escalation year, estimate customers by adding the five-year average change in customers by customer class or other growth adopted by the Commission to the first escalation year customers.
9. Estimate sales for the escalation years for the residential, multifamily, and business classes by multiplying the number of customers for each escalation year by the test year sales per customer. Use the test year sales for all other customer classes for both escalation years.
10. Forecast sales revenues for the escalation years based on each year's forecast of sales and customers. Other revenues will be estimated using a five-year average of recorded other revenue.

Class A Water Utilities
Rate Case Plan
Attachment 1 of 2

Minimum Data Requirements for Utility General Rate Case Application and Testimony

The Water Action Plan adopted on December 15, 2005 includes four principles: (1) safe high quality water; (2) highly reliable water supplies; (3) efficient use of water; and (4) reasonable rates and viable utilities. In order to ensure that Class A water utilities adhere to the four principles as well as providing sufficient information to promote sound decision-making, the following information must be included in the utility's Results of Operations Report when a GRC is filed. Testimony served concurrently with the GRC application must include data responsive to the specific topics and questions listed below. The application and testimony need not respond to the Minimum Data Requirements in the order presented below, but must include a cross reference that identifies where each topic and question is addressed and the cross-reference document will become part of the formal record. When filing a multi-district GRC, the utility must provide responses both on a company aggregate and individual district basis.

I. General Rate Case Application Requirements

The application must contain the following summary information:

A. Summary of Requested Revenue Requirement and Rate Base Changes

Compare the proposed amounts to the last adopted and last recorded amounts to determine the difference in dollars and percentages. Show the difference, i.e., the proposed change, in a table, as set out below.

Comparison Between Proposed Test Year and Last Test Year Adopted and Last Recorded Year			Proposed Test Year
	Last Test Year	Last Recorded Year	
Total Rev Req $			
Rate Base $			
Rate Base %			
Operating Expenses $			
Operating Expenses %			
Rate of Return			

B. Primary Cost Increases

List the five most significant issues, in dollar terms that the utility believes require a rate change. Identify the cause of cost increases.

C. Issues of Controversy

List the major controversial issues included in the GRC filing. Include the dollar impact of these issues, and a brief summary of the utility's rationale on this subject.

D. Proposed Notice to Customers

Include in the proposed application proposed notices to customers that will be submitted for review by the Commission's Public Advisor upon filing of the proposed application. The proposed notices should describe the reasons for the requested rate change and estimated average bill changes for a typical customer in each district by customer class.

II. Testimony Requirements

A. Basic Information

All significant[3] changes between last adopted figures and recorded amounts shall be explained. Forecasted amounts shall include an explanation of the forecasting method.

1. Number of customers and percentage of customer increase for last authorized test years, last five years recorded data, and proposed test year.[4]

[2] Use most recent 12 months of available data; revise with complete calendar year data when available.

[3] A significant expense is equal to or greater than 1% of test year gross revenues.

2. Total water sales in CCF for the last authorized test year, last five years recorded data, and proposed test year.[5]
3. Revenue requirement authorized for last test and escalation years and proposed test year.
4. Recorded revenues for last five years and proposed test year forecast.[6]
5. Revenues per customer for last authorized test years, last five years recorded data, and proposed test year.
6. Number of general office employees and percent increase for the last authorized test years, last five years recorded data, and proposed test year.
7. Number of district employees and percent increase for the last authorized test years, last five years recorded data, and proposed test year.
8. List each rate change since the last GRC decision by district, including the date, percentage change to typical residential customer bill, percentage change to revenue requirement, total dollar change, and citations to

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[4] Forecast customers using a five-year average of the change in the number of customers by customer class. Should an unusual event occur, or be expected to occur, such as the implementation or removal of limitation on the number of customers, then an adjustment to the five-year average will be made. Calculate customer consumption by using a multiple regression (any commonly used multiple regression software could be employed, e.g., Eviews, SAS, TSP, Excel, Lotus), based on the material in the "Standard Practice No. U-2" and the "Supplement to Standard Practice No. Utilities-25" with the following improvements: (A) Use monthly data for ten years, if available. If ten years' data is not available, use all available data, but not less than five years of data. If less than five years of data is available, the utility and DRA will have to jointly decide on an appropriate method to forecast the projected level of average consumption; (B) Use 30-year average for forecast values for temperature and rain; and (C) Remove periods from the historical data in which sales restrictions (e.g., rationing) were imposed or the Commission provided the utility with sales adjustment compensation (e.g., a drought memorandum account), but replace with additional historical data to obtain ten years of monthly data, if available.

[5] Forecast water sales for all classes of customers for utilities that are under government-mandated production limitations based on that limitation and consideration of unaccounted for water and historical production reserves while under the imposed limitation. Water sales for customer classes other than residential, multifamily, and business (such as industrial, irrigation, public authority, reclaimed, and other) will be forecast on total consumption by class using the best available data.

[6] Estimate test year sales revenues based on the test year sales and customer forecast. Estimate other revenues using the best available data.

authority for each increase, and sum to arrive at cumulative rate change by district since last GRC.

B. Revenue Requirement: Operations and Maintenance, Administrative and General, General Office

As part of the Results of Operation Report, all significant changes between last adopted figures and recorded amounts shall be explained. Show results of operation in summary table as specified by the Water Division. Forecasted amounts shall include an explanation of the forecasting method.[7] Among other information to support the utility's request, provide the following:

1. Operation and Maintenance (O&M) Expenses for the last authorized test year, last five years recorded data, and proposed test year.
2. O&M expense per customer for last authorized test year, last five years recorded data, and proposed test year.
3. Maintenance expense and percent increase/decrease for last authorized test year, last five years recorded data, and proposed test year.
4. Maintenance expense per customer and percent increase/decrease for last authorized test year, last five years recorded data, and proposed test year.
5. A&G Expenses and percent increase for the last authorized test year, last five years recorded data, and proposed test year.
6. A&G Expense per customer and percent increase for the last authorized test year, last five years recorded data, and proposed test year.
7. Number of district employees per thousand customers and percent increase for the last authorized test year, last five years recorded data, and proposed test year.
8. District employee's total payroll expenses and percent increase for the last authorized test year, last five years recorded data, and proposed test year.
9. District employee's payroll expenses per thousand customers and percent increase for the last authorized test year, last five years recorded data, and proposed test year.

[7] For district and general office expenses, excluding water production related expenses, parties may forecast using traditional estimating methodologies (historical averages, trends, and specific test year estimates). In addition to any other methodology the utility may wish to use, the utility shall also present, in its workpapers, an inflation adjusted simple five-year average for all administrative and O&M expenses, with the exception of off-settable expenses and salaries.

10. District employee's expensed payroll and percent increase for the last authorized test year, last five years recorded data, and proposed test year.
11. District employee's capitalized payroll and percent increase for the last authorized test year, last five years recorded data, and proposed test year.
12. Number of general office employees per thousand customers and percent increase for the last authorized test year, last five years recorded data, and proposed test year.
13. General office payroll expense and percent increase for the last authorized test year, last five years recorded data, and proposed test year.
14. General office payroll expense per thousand customers and percent increase for the last authorized test year, last five years recorded data, and proposed test year.
15. General office expensed payroll and percent increase for the last authorized test year, last five years recorded data, and proposed test year.
16. General office capitalized payroll per thousand customers and percent increase for the last authorized test year, last five years recorded data, and proposed test year.
17. Number of supervisory, managerial and executive employees in General Office for the last authorized test year, last five years recorded data, and proposed test year.
18. Number of supervisory, managerial and executive employees in General Office per thousand customer for the last authorized test year, last five years recorded data, and proposed test year.
19. If general office expenses are shared with other regulated water districts or other unregulated affiliates or functions, describe how these expenses are allocated (a) by the most recent Commission decision (provide citation to decision number and exact page reference) or (b) if these expenses are now subject to allocation by Commission decision (provide citation to decision number and exact page reference), how these expenses have been allocated, in fact, since the last general rate case or general rate adjustment.

C. Revenue Requirement: Water Sales and Production

As part of the Results of Operation Report, all significant changes between last adopted figures and recorded amounts shall be explained. Show results of operation in summary table as specified by the Water Division. Forecasted amounts shall include an explanation of the forecasting method. Among other information to support the utility's request, the utility shall provide the following:

1. Total water production in CCF for the last authorized test year, last five years recorded data, and proposed test year.
2. Total purchased water in CCF for the last authorized test year, last five years recorded data, and proposed test year.
3. Total pumped water pumped in CCF for the last authorized test year, last five years recorded data, and proposed test year.
4. Total treated water in CCF for the last authorized test year, last five years recorded data, and proposed test year.
5. Total surface water in CCF for the last authorized test year, last five years recorded data, and proposed test year.
6. Total raw water in CCF for the last authorized test year, last five years recorded data, and proposed test year.
7. Total recycled water in CCF for the last authorized test year, last five years recorded data, and proposed test year.
8. Sales per customer for different customer classes (in CCF/customer) for the last authorized test year, last five years recorded data, and proposed test year.[8]

D. Rate Base

All significant changes between last adopted figures and recorded amounts shall be explained. Forecasted amounts shall include an explanation of the forecasting method.[9] All significant capital additions shall be identified and justified, and must include need analysis, cost comparison and evaluation, conceptual designs, and overall budget. Also include a comparison of the forecasted capital additions adopted in the last GRC and actual capital additions.

1. Rate base and percentage of increases for last authorized test years, last five years recorded data, and proposed test year.

[8] The utility and DRA shall use the "New Committee Method" to forecast per customer usage for the residential and small commercial customer classes in general rate cases.

[9] In addition to any other methodology the utility may wish to use, the utility shall derive the test years and attrition year estimates by taking the year-end properly recorded plant balance of the latest recorded year and adding to it the average plant additions of the last five years. The results of this methodology may be included in workpapers.

2. Rate base per customer and percentage of increases for last authorized test years, last five years recorded data, and proposed test year.
3. Plant-in Service and percentage of increases for last authorized test years, last five years recorded data, and proposed test year.
4. Plant-in Service per customer and percentage of increases for last authorized test years, last five years recorded data, and proposed test year.
5. List the plant improvements authorized in test years but not built.
6. List plant improvements built in last test years but not authorized.
7. List all items in Plant-in Service included in rate base not "used and useful" in the last five years and proposed test year.
8. To the extent not included in a previous GRC application, include a detailed, complete description accounting for all real property that, since January 1, 1996, was at any time, but is no longer, necessary or useful in the performance of the water corporation's duties to the public and explain what, if any, disposition or use has been made of said property since it was determined to no longer by used or useful in the performance of utility duties.[10] The disposition of any proceeds shall also be explained.

E. Supply and Distribution Infrastructure Status and Planning

1. Demonstrate compliance with § 10620 of the California Water Code which requires the utility to prepare an Urban Water Management Plan. The utility shall demonstrate compliance by providing a copy of the letter the utility has received from DWR affirming a completed Urban Water Management Plan.
2. Identify unaccounted for water in CCF and percentage of total water production for the last authorized test year, last five years recorded data, and proposed test year amounts.
3. Submit the results of a water loss audit performed no more than 60 days in advance of the submission of the proposed application. The audit report will be prepared using the free Audit Software developed by the American Water Works Association (AWWA) and available on the AWWA website.

[10] For example, real property subject to Water Infrastructure Improvement Act of 1995 (Pub.Util. Code §§ 789, 789.1, 790, 790.1).

4. In connection with the water loss audit described above, the utility shall conduct and submit the results of a cost/benefit analysis for reducing the level of unaccounted water reported in the water loss audit. If unaccounted water is more than approximately 7% for each district or service area, submit a plan to reduce unaccounted water to a specific amount.
5. Identify specific measures taken to reduce unaccounted water in the last five years and proposed test year.
6. Identify number of leaks in the last five years.
7. Describe leak detection program.
8. Provide leak repair time and cost statistics for last five years.
9. Identify specific measures taken to reduce number of leaks in the last five years and proposed test year.
10. Calculate the average age of distribution system.
11. List number of feet of and size of mains replaced for last authorized test years, last five years recorded data, and proposed test year amounts.
12. Concisely list all major water sources, including the permit number or contract, remaining duration of the entitlement, and any pending proceedings or litigation concerning any major source. Location of the source need not be included.
13. Identify water supply (in gpm) added to system for the last three years and proposed test years.
14. Identify storage volume (in million gallons) added to water system for the last three years and proposed test years.
15. Identify treatment volume (in million gallons) added to water system in the last three years and proposed test years.
16. Include a copy of the latest Department of Water Resources Water Management Plan.
17. Provide confirmation of compliance with EPA Vulnerability Assessment and Office of Emergency Services Response Plan.
18. Any water utility filing a GRC on or after July 1, 2008 must submit a long-term, 6-10 year Water Supply and Facilities Master Plan to identify and address aging infrastructure needs. The Plan should be consistent with recommendations and elements of comprehensive asset management identified in the General Account Office's March 2004

Report, GAO 04-461: *Water Infrastructure: Comprehensive Asset Management has Potential to Help Utilities Better Identify and Plan Future Investments*. This report can be found at http://www.gao.gov/new.items/d04461.pdf.

19. If expected system improvement requirements over next five years exceeds average authorized capital additions over past two GRCs, identify a ratemaking approach (for example, a Distribution System Improvement Charge), to ensure infrastructure renewal.

F. Conservation and Efficiency

1. Specific measures taken to promote water conservation in the last five years and the proposed test years.
2. Submit plan to achieve five percent reduction in average customer water use over three-year GRC cycle.
3. Identify the percentage of metered customers in aggregate and by district and your plan to convert customers to metered service.
4. Confirm membership in the California Urban Water Conservation Council
   a) For those companies that are a member of CUWCC, submit a Separate Report that list the company's compliance with the 14 BMPs.
   b) For those companies that are not members of CUWCC, submit a Separate Report on the implementation of CUWCC's BMPs.
5. Provide specific measures taken to promote energy conservation in the last five years and the proposed test years.
6. Identify and assess options to improve energy efficiency of water pumping, purification systems, and other energy intensive water processes.
7. Identify options to achieve reductions in energy use related to its water utility operations over the proposed GRC cycle, including a plan to achieve a ten percent reduction in energy use per Ccf.
8. Identify number of water pumps rated in pump efficiency tests as "Low," "Normal" and "High" in the last five years.
9. Identify number of low efficiency pumps replaced for the last authorized test years, the last five years and the proposed test years.

10. Calculate delivery factors (kWh/CCF) for the (1) total system, (2) wells only, and (3) boosters only, for the last authorized test year, last five years recorded data, and the proposed test years.

G. Water Quality

1. Summarize any non-compliance with maximum contaminant levels (MCLs) since the last GRC.
2. Summarize any Treatment Techniques or Action Level exceedances.
3. Summarize any Notification Levels or Response Level exceedances.
4. Provide copy of the distributed Consumer Confidence Report (CCR) for each year not covered by the last GRC.
5. Provide copies of CDHS citations issued to the system, if any.
6. Provide copy of last CDHS inspection report and letters of violation.
7. Provide information on all actions taken to comply with CDHS requests.
8. Provide an explanation as to how regulations expected to be promulgated in the next five years may affect your operations.
9. Provide copy of CDHS State Revolving Funds Needs Survey Documentation.
10. Recommend additional water quality requirements, tests, conditions, protocols, etc. that may be needed in the future to assure water quality and safety, including costs and enforcement.

H. Service Quality

1. Number of customer complaints received in last three years, categorized by major subject areas.
2. Measures taken to reduce the number of complaints in the last three years and plan for GRC cycle.

I. Corporate and Unregulated Activities

1. Identify and explain all transactions with corporate affiliates involving utility employees or assets, or resulting in costs included in revenue requirement over the last five years. Include all documentation, including a list of all such contracts, and accounting detail necessary to demonstrate that any services provided by utility officers or employees to corporate

affiliates are reimbursed at fully allocated costs.

2. To the extent the utility uses assets or employees included in revenue requirement for unregulated activities, identify, document, and account for all such activities, including all costs and resulting revenue, and provide a list of all contracts over the last five years.

J. Rate Design

Testimony should describe how the proposed rate design promotes customer conservation and low-income water user affordability. At a minimum, the proposed rate design should include:

1. Conservation rate design (e.g., increasing block rates) for metered customers or otherwise be consistent with industry-wide rules on conservation rate design.
2. Low-Income tariff.
3. Identify opportunities and options for consolidation of district tariffs, where appropriate.

K. Other

1. Describe any adopted mechanism to remove the water utility financial disincentive to promote conservation or adjust for conservation impacts on sale revenues.
2. Propose a method or methods to remove the water utility financial disincentive to promote conservation, if one is not currently adopted.[11]
3. Identify Class C and D or mutual water companies adjacent to current service territories and opportunities for interconnection or acquisition.
4. List the major policies, programs, plant additions, and improvements proposed in the GRC that promote achievement of the four Water Action Plan 2005 principles.

L. Workpapers

Workpapers are served as described in the Rate Case Plan but are not part of the proposed application. Include all supporting analysis, documentation,

[11] May include a water revenue adjustment mechanism, shareholder/ratepayer conservation incentives, or other approaches.

calculations, back-up detail, and any other information relied on but not readily available to other parties. Electronic copies of all spreadsheets or other analytical methods necessary to fully calculate the effect of any revenue requirement change on final rates should be included. All workpapers must include a table of contents, page numbering, and cross-references to issues discussed in testimony, and must be arranged in a logical fashion.

Class A Water Utilities
Rate Case Plan
Attachment 2 of 2

Minimum Data Requirements for Utility
Cost of Capital Application and Testimony

Testimony served concurrently with the cost of capital application must include data responsive to the specific topics and questions listed below, among other information necessary to support the request. The application and testimony need not respond to the Minimum Data Requirements in the order presented below, but must include a cross reference that identifies where each topic and question is addressed in the testimony. Provide responses both on a company aggregate and individual district basis as appropriate.

A. List most recent authorized return on equity and rate of return on rate base, with reference to decision number.

B. Report actual return on equity and rate of return on rate base annually for the past five years.

C. Describe the proposed capital structure and rate of return. Identify and explain all significant changes from last adopted capital structure and cost of capital. Report cost of capital information in summary table as set out below:

	Test Year ____ Escalation Years ____ and ____		
	Capital Structure	Cost	Weighted Cost

Debt			
Preferred Stock			
Common Equity			
Total	100.00 %		

D. Regarding long-term debt:

1. List the sinking fund amounts for each issue, by issue, by year.
2. List the retirements by issue, for the current year.
3. List the interest rates for each issue, by issue.
4. List the terms of each issue, by issue, with issue date and date due.
5. List the cost of issuance for each issue, by issue.
6. List name of lender for each issue, by issue.
7. Provide the formula used to determine the cost of new issues of long-term debt (Example: 30-year Treasury Bond + 100 basis points), as well as the reason for using the particular rate and basis point premium.
8. If company or affiliate is rated by S&P, provide rating. If not rated, what would be rating based on forecast cost of new debt?

E. Are company stocks, bonds, or company as a whole rated or commented on by any organization or agency?

a) If so, provide name(s) and phone number(s) of rating/commenting organization(s) and the ratings/comments received in the past 12 months.

b) Provide this information on an ongoing basis.

F. List actual rate base for the past five years, by year, by district.

G. Workpapers are served but not part of the application and should include:

1. Copies of all publications, articles, book references, regulations, and decisions, referenced in testimony.
2. Supporting documentation for all models used to determine return on equity.

(END OF APPENDIX A)

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JOINT APPENDIX LL

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 B

Assigned Commissioner's Ruling and Scoping Memo, I.07-01-022,

March 8, 2007

JB2/eap 3/8/2007

FILED
03-08-07
02:23 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities.	Investigation 07-01-022 (Filed January 11, 2007)
In the Matter of the Application of Golden State Water Company (U 133 E) for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates.	Application 06-09-006 (Filed September 6, 2006)
Application of California Water Service Company (U 60 W), a California Corporation, requesting an order from the California Public Utilities Commission Authorizing Applicant to Establish a Water Revenue Balancing Account, a Conservation Memorandum Account, and Implement Increasing Block Rates.	Application 06-10-026 (Filed October 23, 2006)
Application of Park Water Company (U 314 W) for Authority to Implement a Water Revenue Adjustment Mechanism, Increasing Block Rate Design and a Conservation Memorandum Account.	Application 06-11-009 (Filed November 20, 2006)
Application of Suburban Water Systems (U 339 W) for Authorization to Implement a Low Income Assistance Program, an Increasing Block Rate Design, and a Water Revenue Adjustment Mechanism.	Application 06-11-010 (Filed November 22, 2006)

ASSIGNED COMMISSISONER'S RULING AND SCOPING MEMO

This ruling revises the scope of the proceeding and the schedule as set forth in the preliminary scoping memo in the Order Instituting Investigation (OII). It also determines that the proceeding will have two phases, the first to consider rate-related conservation measures, including proposed settlement agreements establishing conservation rate design pilot programs, and the second to consider non-rate design conservation measures.

I deny Golden State Water Company's (Golden State) petition to modify the OII but grant Golden State the opportunity to amend its rate-related conservation proposals. I decline to consolidate the California American Water Company (Cal-Am) general rate case (GRC) applications with this proceeding. Instead, I will coordinate review of rate-related conservation measures in this investigation and in those GRC applications.

Background

The Commission opened this investigation to address policies to achieve its conservation objectives for Class A water utilities and ordered the consolidation of four pending conservation rate design applications—Application (A.) 06-09-006 (Golden State Water Company (Golden State)), A.06-10-026 (California Water Service Company (CalWater)), A.06-11-009 (Park Water Company (Park)), and A.06-11-010 (Suburban Water Systems (Suburban)).[1] Parties filed responses to the preliminary scoping memo on January 29, 2007, and a prehearing conference (PHC) was held on February 7,

[1] A January 16, 2007 ruling affirmed consolidation of the applications with the OII.

2007. Settlement discussions are underway in the consolidated applications, with the exception of Golden State.

Golden State filed a petition both to modify the OII and the ruling consolidating the proceedings on February 6, 2007. Responses to the petition were filed on February 16, 2007. By e-mail ruling on March 2, 2007, the administrative law judge (ALJ) suspended the schedule set forth in the OII pending issuance of this ruling and scoping memo.

Phase 1: Rate-Related Conservation Measures

The proposal to create two phases is unopposed. The first phase of this proceeding will address rate-related conservation measures, including the parties' increasing block rate and Water Revenue Adjustment Mechanism (WRAM) proposals.[2] Any settlements and motions proposing their adoption under Rule 12.1 of the Commission's Rules of Practice and Procedure shall be filed on or before April 23, 2007. In order to assess how any settlement addresses the rate-related conservation objectives identified in the OII, I will order the settling parties to discuss relevant issues in the motion proposing the settlement agreement and/or the settlement.

The motion and/or settlement agreement shall state whether the company has a low-income affordability program, metered service, and monthly or bimonthly bills. The motions shall address the impact of the settlement agreements on low-income affordability. The motion and/or settlement shall discuss how increasing block rate levels and the percentages between them were

[2] Suburban also filed for approval of a low income assistance program; that proposal will be addressed in Phase I.

determined and shall provide the settling parties' position on whether the increase in rates between tiers will effectively promote conservation. The motion and/or settlement shall provide data on elasticity of demand, *e.g.*, how do they calculate it, what assumptions were included, what studies were referenced, and what timeframe was used. The parties shall provide charts which illustrate the effect of the proposed rate structures, such as marginal and/or average price curves. These charts shall include fixed and consumption charges. If the settlement agreements do not include seasonal rates, the parties shall state why they believe they are unnecessary. The parties shall state whether the WRAM includes all or a subset of revenue and the basis for that determination. The parties shall justify whether the conservation rate design proposal should be effective after completion of this proceeding or after the next GRC. The parties shall propose customer education initiatives necessary to implement the settlements, including outreach efforts to limited English proficiency customers, monitoring programs to gauge the effectiveness of the adopted conservation rate design, and recommendations on how these results will be reported to the Commission.

Comments on the motions and settlement agreements and replies to those comments shall be filed on May 23 and June 7, 2007, respectively. By focusing the motions and comments on rate-related conservation issues identified in the OII, I seek to avoid hearings on the proposed conservation rate design programs. However, I will schedule dates for testimony and hearings, should they be necessary.

Phase 2: Non-Rate Design Conservation Measures

The second phase of this proceeding will consider the non-rate design conservation measures identified in the OII. The Division of Ratepayer

changed to quasi-legislative. The Commission preliminarily determined that hearings might be necessary to implement policy issues for individual companies. The parties also believe the rulemaking phase, *i.e.,* Phase II, may require hearings. I concur. Quasi-legislative hearings may be necessary in Phase II. If there are areas of factual dispute, hearings on those issues may proceed with pre-served testimony.

Timetable

Pursuant to the OII, the undersigned assigned Commissioner and/or the ALJ may revise the schedule. I revise the schedule as follows:

April 23, 2007	Parties file motions proposing settlement agreements; Golden State files rate-related conservation proposals
May 23, 2007	Comments on proposed settlement agreements
June 7, 2007	Reply comments on proposed settlement agreements
June 29, 2007	Opening testimony on rate-related conservation measures or settling parties' testimony on contested issues
July 20, 2007	Reply testimony on rate-related conservation issues or contesting parties' testimony on contested issues
July 20-August 3, 2007	Hearings – Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, CA 94102
TBD	Briefs
TBD	Mailing of proposed decision, first possible Commission consideration of proposed decision

The parties who intend to file notices of intent (NOI) requested an extension to file the NOIs until after the scoping memo issued in order to prepare

JOINT APPENDIX MM

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 E

A.10-09-017, *Assigned Commissioner and Assigned Administrative Law Judge's Ruling and Scoping Memo* (June 8, 2011)

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MP1/CMW/jt2 6/8/2011

FILED
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08:00 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W), California Water Service Company (U60W), Golden State Water Company (U133W), Park Water Company (U314W) and Apple Valley Ranchos Water Company (U346W) to Modify D.08-02-036, D.08-06-002, D.08-08-030, D.08-09-026, D.08-11-023, D.09-05-005, D.09-07-021, and D.10-06-038 regarding the Amortization of WRAM-related Accounts.	Application 10-09-017 (Filed September 20, 2010)

ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING AND SCOPING MEMO

1. Summary

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure, this ruling and scoping memo determines the procedural schedule (with a proposed submission date), the category of the proceeding, the issues to be addressed, the designated presiding officer, and the need for hearing.

2. Background

This application was submitted on September 20, 2011 by California-American Water Company (Cal-Am), California Water Service Company (Cal-Water), Golden State Water Company (Golden State), Park Water Company (Park) and Apple Valley Ranchos Water Company (Apple Valley), together

IT IS RULED that:

1. This proceeding is categorized as ratesetting and that category determination is appealable under the procedures set forth in Rule 7.6. *Ex parte* communications are permitted with restrictions, as set forth in Rules 8.2, 8.4, and 8.5, and are subject to the reporting requirements of Rule 8.3.

2. Evidentiary hearings are required. This is a change to the preliminary determination and, therefore, an assigned Commissioner's ruling shall be placed on the Commission's Consent Agenda for approval of this change.

3. Administrative Law Judge Christine M. Walwyn is the presiding officer.

4. The scope of this proceeding is to:

    1) Quickly address the extraordinarily high 2010 and 2011 WRAM/MCBA balances in Cal-Am's Monterey District, especially in light of the unique characteristics of that district, and specify the procedural forum and timetable to address longer-term options;

    2) Resolve the nine specific requests identified in the application, and do this in light of the data submitted by applicants on the WRAM/MCBA balances incurred to date and estimated for 2011 (Appendices A and B to this ruling). Include an examination of whether the high volatility experienced in some districts comports with the Commission's expectations in adopting the mechanisms, including our stated conservation objectives and the safeguards articulated in D.08-06-002 and other decisions. Also analyze the volatility of the WRAM/MCBA mechanism in light of the data presented by the applicants in their April 15, 2011 filing, unless DRA specifically reserves an area of analysis for later, more comprehensive review.

JOINT APPENDIX NN

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of the Golden State Water Company (U133W) for an order authorizing it to increase rates for water service by $58,053,200 or 21.4% in 2013, by $8,926,200 or 2.7% in 2014; and by $10,819,600 or 3.2% in 2015.	Application 11-07-017 (Filed July 21, 2011)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE

1. Summary

This scoping memo and ruling identifies the issues to be considered in this proceeding, sets a procedural schedule, determines the category of the proceeding and the need for hearings, pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules), and designates a presiding officer in accordance with Rule 13.2.

2. Background

On July 21, 2011, Golden State Water Company (Golden State) filed Application (A.) 11-07-017 (Application), a general rate case (GRC) request to increase rates for water service in each of its ratemaking areas in Regions 1, 2, and 3 of its service territory and for General Office expense for the period from

January 2013 through December 2015.[1] In addition, the Application includes twelve special requests and identifies two additional issues of controversy.

The Application appeared in the Commission's Daily Calendar on July 26, 2011.

Protests to the Application were timely filed by the Town of Apple Valley on August 18, 2011, the City of Claremont on August 22, 2011, the City of Ojai on August 19, 2011, the City of San Dimas on August 24, 2011, and the Division of Ratepayer Advocates (DRA) on August 25, 2011.[2] A prehearing conference was held on September 21, 2011.

3. Categorization and Need for Hearings

This scoping memo confirms the Commission's categorization of this proceeding as ratesetting as preliminarily determined in Resolution (Res.) ALJ 176-3278, issued July 28, 2011. This determination is appealable under the provisions of Rule 7.6. This scoping memo also confirms that hearings are necessary and sets forth the hearing schedule.

[1] Golden State has nine ratemaking districts within Regions 1, 2, and 3. Region 1 is comprised of the Arden Cordova, Bay Point, Clearlake, Los Osos, Ojai, Santa Maria and Simi Valley Customer Service Area (CSAs). Each Region 1 CSA is a separate ratemaking area. Region 2 is a single ratemaking area comprised of the Central Basin East, Central Basin West, Southwest, and Culver City CSAs. Region 3 is a single ratemaking area comprised of the Apple Valley, Barstow, Calipatria-Niland, Claremont, Morongo Valley, Placentia, San Dimas, San Gabriel Valley, Los Alamitos, and Wrightwood CSAs.

[2] On October 12, 2011, the City of Placentia filed a motion requesting party status. The motion was granted on November 2, 2011.

4. Scope of Proceeding

The purpose of this proceeding is primarily to establish just and reasonable rates for each of Golden State's ratemaking areas in Regions 1, 2, and 3 of its service territory and for General Office expense for the period from January 2013 through December 2015, and to make all other necessary orders for Golden State to offer safe and reliable water service. This proceeding will also consider Golden State's twelve Special Requests and two Issues of Controversy listed in the Application.

Interested parties identified in their protests to the Application and at the prehearing conference the issues they recommend be included in the scope of this proceeding. Except for issues concerning Golden State's cost of capital and rate of return,[3] the issues identified in the protests respond to the Application and are within the scope of this proceeding.

The revised rate case plan (RRCP) adopted in Decision (D.) 07-05-062 requires Golden State to file a separate application for cost of capital determinations,[4] and Golden State has filed A.11-05-004, pursuant to this requirement.[5] Therefore, Golden State's cost of capital, capital structure, return on equity, rate of return, and the Water Capital Cost Mechanism adopted in D.09-07-051 will not be considered in this proceeding.

[3] San Dimas states that it is unreasonable to raise rates to maintain a high rate of return, and Ojai recommends that Golden State's rate of return be considered in this proceeding.

[4] D.07-05-062, Appendix A, Section II.D.

[5] The scoping memo in A.11-05-004, et al., was issued on September 13, 2011.

The RRCP requires GRC proceedings to review water quality to ensure that water utilities provide water that meets public health and safety requirements. To improve the Commission's review of water quality, the RRCP requires the presiding officer to appoint a water quality expert to assist the Commission in making specific findings and recommendations concerning a utility's water quality compliance unless good cause exists to forego such appointment.[6]

The Application indicates that during the last three years eight Golden State water systems received citations, notices of violations, and orders for non-compliance with the California Department of Public Health's (CDPH's) drinking water regulatory program. Golden State has been responsive in correcting the violations and compliant with reporting to its customers in its annual Consumer Confidence Reports any contaminants exceeding Maximum Contaminant Level drinking water standards and yet-to-be-set drinking water standards.

Because there are no water quality issues that are not already addressed in the Application[7] and because no party raises concerns about Golden State's water quality, there is no need for a more extensive report or testimony by the water quality expert.

[6] D.07-05-062, Appendix A, Section II.F. Carmen Rocha in the Division of Water and Audits is the Commission's water quality expert.

[7] The Application proposes capital improvements for uranium treatment at the Placentia Water System Orangethorpe Plant, and requests authority to establish a memorandum account to track costs related to this project.

Rate Design Issues

D.08-08-030 adopted a settlement that, among other things, established a pilot program containing a conservation rate design and the Water Rate Adjustment Mechanisms (WRAMs) and Modified Cost Balancing Accounts (MCBAs) decoupling mechanisms for each Golden State ratemaking area.[8]

The decision on Golden State's 2010 GRC for its Region 1 (D.10-12-059) adopted a plan that requires Golden State to file a rate design proposal in this proceeding for all service areas that complies with the settlement adopted by D.10-12-059.[9] In particular, Golden State must design rates that address the allocation between service charge and commodity rate to comply more closely with the California Urban Water Conservation Council's Best Management Practice Number 1.4, which sets a target of recovering 30% of total revenue through the service charge and 70% of total revenue through the quantity charge.[10] In addition, Golden State Water Company is required to file a rate design proposal in this proceeding for all service areas that provide more uniform tier width and price differentials between tiers.[11]

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[8] D.09-05-005 adopted a settlement between Golden State and DRA that made changes in rate design adopted in D.08-08-030. D.10-11-035, addressing Golden State's 2010 GRC for its Regions 2 and 3, adopted a settlement that, among other things, changed the two-tier to a three-tier conservation rate design for most Regions 2 and 3 ratemaking areas.

[9] Appendix I of D.10-12-059 describes rate design issues to be considered in this proceeding.

[10] D.10-12-059, Ordering Paragraph No. 5.

[11] D.10-12-059, Ordering Paragraph No. 6. D.10-12-059 also requires Golden State, in this application and prepared testimony, to specifically cite to and indicate its compliance with or any deviations from the agreement embodied in Exhibit D-28 of the

Footnote continued on next page

D.09-05-005 addressed, among other things, arguments that the tiered increasing block rate structure creates a potential for meter-reading errors. D.09-05-005 directed Golden State to keep a record of meter-reading errors pertaining to tiered rates. These data should now be available, so this issue will be considered in this proceeding.

In addition to the rate design issues discussed above, the rate design issues identified in the protests are within the scope of this proceeding. Specifically, the Ojai and San Dimas protests assert that Golden State customers are penalized for reducing water usage.

First 5 LA Oral Health Community Development Program

Golden State filed Advice Letter (AL) 1455-W on August 8, 2011, to establish a memorandum account to track, among other costs, operation and maintenance expenses for the period from 2013-2015 for proposed fluoridation systems in connection with the First 5 LA Oral Health Community Development Program. In this Application, Golden State requests that, if Golden State files for a surcharge for fluoridation in connection with the First 5 LA Oral Health Community Development Program during this proceeding, the authorized expenses be incorporated into the final rates approved in this proceeding.[12]

On September 26, 2011, the Commission published Draft Res. W-4890 addressing Golden State's request in AL 1455-W. Draft Res. W-4890 is scheduled for consideration at the November 10, 2011, Commission meeting. Draft Res.

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settlement adopted by D.10-12-059, and requires DRA's report to evaluate any proposals made by Golden State in this GRC. D.10-12-059 at 22.

[12] Prepared testimony of S. David Chang at 6.

W-4890 provides that the operation and maintenance costs beginning January 2013 will be reviewed and considered in this proceeding.

On October 26, 2011, Golden State filed and served a motion requesting authorization to modify the Application to request authorization for costs in connection with water fluoridation implemented pursuant to Golden State's participation in the First 5 LA Oral Health Community Development Program.[13] No objections to this request were filed.[14] The motion is granted.

Therefore, we include in this proceeding the reasonableness of the operation and maintenance costs for proposed fluoridation systems in connection with the First 5 LA Oral Health Community Development Program.

Review of Golden State's Conservation Rate Pilot Program

As noted above, D.08-08-030 adopted a settlement that established a pilot program, to be reviewed in subsequent rate cases for each region, consisting of a conservation rate design and the WRAM and MCBA decoupling mechanisms for each Golden State ratemaking area.[15] This proceeding will include the first review of Golden State's conservation rate pilot program, including a review of the WRAM and MCBA decoupling mechanisms.

The Golden State/DRA settlement adopted in D.08-08-030 states that the goals of the WRAM and MCBA decoupling mechanisms are: (1) to sever the relationship between sales and revenue to remove any disincentive for Golden

[13] The motion requests an extension of the deadline to serve opening testimony in connection with Golden State's request, and includes the Prepared Supplemental Testimony of S. David Chang as an attachment.

[14] The October 27, 2011, ALJ ruling shortened time to respond to the motion.

[15] Sections III.A and III.B.

State to implement conservation rates and conservation programs; (2) to ensure cost savings resulting from conservation are passed on to ratepayers; and (3) to reduce overall water consumption by Golden State ratepayers.[16]

The October 19, 2007 Motion of DRA and Golden State in A.06-09-006, *et al.*, requesting approval of the Golden State/DRA settlement states:

> [T]he desired outcome of and purpose for using these WRAMs and MCBAs are to ensure that [Golden State] and its ratepayers are proportionally affected when conservation rates are implemented. For purposes of the Settlement Agreement, a proportional impact means that if consumption is over or under the forecast level, the effect on either [Golden State] or its ratepayers (as a whole within each ratemaking district) should reflect that the costs or savings resulting from changes in consumption will be accounted for in a way such that neither the utility nor ratepayers are harmed or benefited at the expense of the other party. (at 13.)

Therefore, we will consider whether the WRAMs/MCBAs are achieving their stated purpose (i.e., whether Golden State and its ratepayers are proportionally affected under conservation rates), and if not, what changes are needed to ensure the WRAMs/MCBAs achieve their stated purpose. In addition, we will consider whether the WRAMs/MCBAs, by severing the relationship between sales and revenue, have removed disincentives for Golden State to implement conservation rates and conservation programs; whether cost savings resulting from conservation are passed on to ratepayers; and whether overall water consumption by Golden State ratepayers has been reduced.

[16] Section V.

Golden State, among others, filed A.10-09-017 (the WRAM-Related Amortization Proceeding), requesting, among other things, to shorten the amortization recovery period for balances in the WRAMs and MCBAs established for Golden State and other water utilities.[17] Golden State requests that accelerating WRAM/MCBA amortization be considered in this proceeding, if a final decision has not been issued in the WRAM-Related Amortization Proceeding in time for the effective date of rates adopted in this proceeding.[18]

The scoping memo in the WRAM-Related Amortization Proceeding states that a review the WRAM and MCBA mechanisms should be done in each applicant's GRC, and the risks and consequences of the mechanisms should be evaluated in the recently consolidated cost of capital proceeding for California-American Water Company, California Water Service Company, Golden State, and San Jose Water Company.

The scoping memo in the WRAM-Related Amortization Proceeding anticipates a Commission decision in December 2011 addressing the Golden State, *et al.* request to shorten the amortization recovery period. Therefore, this proceeding will not consider Golden State's request to shorten the amortization recovery period for balances in the WRAM and MCBA, or any of the other eight

[17] Application of California-American Water Company, California Water Service Company, Golden State Water Company, Park Water Company and Apple Valley Ranchos Water Company to Modify D.08-02-036, D.08-06-002, D.08-08-030, D.08-09-026, D.08-11-023, D.09-05-005, D.09-07-021, and D.10-06-038 regarding the Amortization of WRAM-related Accounts.

[18] Prepared testimony of Nanci Tran at 18.

requests being addressed in the WRAM-Related Amortization Proceeding.[19] In addition, this proceeding will not consider issues concerning the risks and consequences of the WRAM/MCBA mechanisms that should be evaluated in A.11-05-004, *et al*.[20]

As stated above, the purpose of this proceeding is primarily to establish just and reasonable rates for years 2013 through 2015 and make all other necessary orders for Golden State to offer safe and reliable water service. The following issues will be considered in this proceeding:

1. The just and reasonable test year 2013 and post-test years 2014 and 2015 revenue requirements, inclusive of all operating expenses and capital costs and the costs of all

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[19] The issues addressed in the WRAM-Related Amortization Proceeding are, (1) Amortization Period (Over what period of time should WRAM/MCBA balances be amortized?); (2) Deadline For Submitting Report (When should Applicant submit its annual WRAM/MCBA report?); (3) Deadline For Requesting Amortization (When should a utility ask to amortize a WRAM/MCBA balance?); (4) Process For Requesting Amortization (How should a utility ask to amortize a WRAM/MCBA balance?); (5) The "Trigger" for Amortization (Which WRAM/MCBA balances should be amortized?); (6) Applying Surcharge/Surcredit (How should the surcharge or surcredit be applied to customers' bills?); (7) Accounting for Amortized Amounts ("First In - First Out"); (8) "Under-Amortized" and "Over-Amortized" Amounts (When a surcharge/surcredit is not collecting/recovering the intended dollar amounts, how should the remainder balance be handled?); and (9) Additional Amortization For Outstanding WRAM Revenues.

[20] The scoping memo in the WRAM-Related Amortization Proceeding states that a review the WRAM and MCBA mechanisms should be done in each applicant's GRC, and the risks and consequences of the mechanisms should be evaluated in the recently consolidated cost of cost of capital proceeding for California-American Water Company, California Water Service Company, Golden State, and San Jose Water Company.

operating or customer-related programs necessary to provide safe and reliable water service in the test year, including:

a. Whether Golden State's proposed revenue and rate increases for test and escalation years are reasonable and justified, including sales, revenue, consumption, and number of customers;

b. Whether Golden State's estimate of its operation & maintenance, and administrative & general expenses are reasonable, including payroll, conservation, and payments from polluters;

c. Whether Golden State's proposed additions to plant are accurate, reasonable, and justified, including construction work in progress; and

d. Whether Golden State's General Office expenses and capital additions are reasonable, including cost allocations, insurance, pension and benefits, and overhead rates.

2. Golden State's twelve special requests (a. through l. below) and Issues of Controversy (m. and n. below), including:

a. Whether the Commission should approve the stipulation resolving the Santa Maria Groundwater Adjudication and Litigation, and the rate adjustments necessary for Golden State to participate in implementing certain water management programs required under the stipulation;

b. Whether the Commission should approve Golden State's request to establish a new fire sprinkler rate structure and to add additional meter size combinations to its tariffs to accommodate the new fire sprinkler rate structure;

c. Whether the Commission should approve Golden State's request for a new memorandum account for carrying costs at the adopted rate of return and recovery of operating and maintenance expenses

relating to the investigation & treatment of high uranium levels at Golden State's Orangethorpe Plant;

d. Whether the Commission should approve Golden State's request for amortizing & continuing balancing and memorandum accounts;[21]

e. Whether the Commission should approve Golden State's request for a balancing account for group medical insurance costs;

f. Whether the Commission should approve Golden State's special request for an increase in meter testing deposits;

g. Whether the Commission should approve Golden State's request to track the cost of chemicals in the MCBAs in addition to the costs of purchased water, purchased power, and pumped water assessments and taxes that are currently tracked in the MCBAs;

h. Whether the Commission should approve Golden State's request to recalculate the surcharge levied in the Arden Cordova CSA used to amortize and recover the balance of the Aerojet Water Litigation Memorandum Account;

i. Whether the Commission should approve Golden State's request to incorporate into the final rates adopted in this proceeding the rate impact of advice letters for projects approved in D.10-12-059 that are filed and approved between the time of the filing of the Application and the implementation of the first test year rates adopted in this proceeding;

[21] As discussed above, this proceeding will not consider Golden State's request to shorten the amortization recovery period for the WRAM and MCBA and related issues being addressed in WRAM-Related Amortization Proceeding.

j. Whether the Commission should approve Golden State's request to include both metered and flat rate customers in the Arden Cordova WRAM;

k. Whether the Commission should approve Golden State's request to incorporate into the final rates adopted in this proceeding the ratemaking treatment for the abandonment of Bay Point's Hill Street water treatment facility and the replacement water agreement with the Contra Costa Water District adopted in D.11-09-017;

l. Whether the Commission should approve Golden State's request to incorporate into the final rates adopted in this proceeding the amount authorized in Golden State's rate base offset request to be filed in connection with its General Office Remediation memorandum account;

m. Whether Golden State should be authorized to include the cost of purchased water in the recorded expenses included in the four-factor allocation methodology; and

n. Whether pension costs in the test year and escalation years should be based on the Statement of Financial Accounting Standards No. 87 calculation for pension contributions instead of the Employee Retirement Income Security Act.

3. Whether the operation and maintenance costs for proposed fluoridation systems in connection with the First 5 LA Oral Health Community Development Program for the period from 2013-2015 should be approved.

4. Whether Golden State's rate design is reasonable, including:

   a. Whether Golden State's rate design adequately addresses the allocation between service charge and commodity rate to more closely comply with the California Urban Water Conservation Council's Best Management Practice Number 1.4;

b. Whether Golden State's rate design provides more uniform tier width and price differentials between tiers, pursuant to the settlement adopted by D.10-12-059; and

c. Whether the tiered increasing block rate structure creates a potential for meter-reading errors.

5. A review of Golden State's conservation rate pilot program, including:

a. Whether the WRAMs/MCBAs are achieving their stated purpose (i.e., whether Golden State and its ratepayers are proportionally affected under conservation rates), and if not, what changes, if any, are needed to ensure the WRAMs/MCBAs achieve their stated purpose;

b. Whether the WRAMs/MCBAs have removed disincentives for Golden State to implement conservation rates and conservation programs by severing the relationship between sales and revenue;

c. Whether cost savings resulting from conservation are passed on to ratepayers; and

d. Whether overall water consumption by Golden State ratepayers has been reduced.

5. Standard of Review & Settlement

Golden State bears the burden of proof to show through a preponderance of the evidence that its requests are just and reasonable and the related ratemaking mechanisms are fair.

In order for the Commission to consider whether any proposed settlement(s) that may be submitted in this proceeding are in the public interest, the Commission must be convinced that the parties have a sound and thorough understanding of the Application and of all the underlying assumptions and data included in the record. This level of understanding of the Application and

development of an adequate record is necessary to meet our requirements for considering any settlement.[22]

In addition to the usual events on a procedural schedule, all active parties in this proceeding must participate in at least one mandatory settlement conference as described herein.[23] The purpose of the settlement conference is to conserve parties' resources by attempting to reduce the number of contested issues. Golden State must arrange the settlement conference(s), which may be telephonic. The mandatory settlement conference must be held no later than Monday, April 16, 2012.[24] Parties may have the services of a trained mediator to assist in any settlement conference(s).[25]

The Commission encourages parties to settle disputed issues when reasonably possible. As such, the schedule includes sufficient time so that parties may explore settlement opportunities.

Every party who serves written testimony, or who intends to cross-examine witnesses at the evidentiary hearing, must jointly prepare a Case Management Statement and Settlement Conference Report. Golden State must

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[22] "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." Rule 12.1(e).

[23] It is within the discretion of the assigned Commissioner to include a mandatory settlement process in the procedural schedule.

[24] Parties may wish to meet before rebuttal testimony is served.

[25] Any party wishing a mediator should contact the assigned ALJ as soon as practicable.

file and serve this report on behalf of all parties after the (final) settlement conference. The contents must include:

- A list identifying any issue the parties have settled or otherwise stipulated for this proceeding. This must include relevant citations to the parties' prepared testimony.
- A list identifying all remaining contested issues.
- Any other relevant matters.

6. Schedule

The schedule for this proceeding is as follows:

Event	Date
Prehearing Conference	September 21, 2011
Application Update Served/Filed	October 31, 2011
Public Participation Hearings (See October 18, 2011 Administrative Law Judge (ALJ) ruling)	November 28 - December 8, 2011
DRA Testimony Served	February 6, 2012
Intervenor Testimony Served	February 20, 2012
Applicant Rebuttal Testimony Served	April 10, 2012
Mandatory Settlement Conference	April 16, 2012
Deadline for Applicant to submit cross-examination time estimates, proposed schedule of witnesses, and other information to ALJ (See Section 7, Hearing Preparation). Send to: rs1@cpuc.ca.gov.	April 23, 2012
Evidentiary Hearings Courtroom State Office Building 505 Van Ness Avenue San Francisco, CA 94102	April 30, 2012 – May 11, 2012 At 10:00 a.m.
End Settlement Negotiations	May 6, 2012

Concurrent Opening Briefs Filed/Served	June 4, 2012
Requests for Oral Argument	June 4, 2012
Deadline for Filing Motion Requesting Interim Rates	June 4, 2012
Mandatory Status Conference	June 5, 2012
Concurrent Reply Briefs Filed/Served	June 14, 2012
Water Div. Technical Conf.	July 5, 2012
Proposed Decision Issued	September 2012
1st Commission Meeting to Consider Decision	October 2012

The schedule may be adjusted, as necessary, by the ALJ or the assigned Commissioner.

7. Hearing Preparation

Golden State is directed to organize a telephonic meet-and-confer conference with all parties to identify the principal issues on which the hearings will focus, key disputes, and any stipulations or settlements. Parties should also use the meet-and-confer to discuss witness schedules, time estimates from each party for the cross-examination of witnesses, scheduling concerns, and the order of cross-examination.

Hearings are scheduled for April 30, 2012 – May 11, 2012. The first morning of hearings on April 30, 2012, will begin at 10:00 a.m. but the time may be adjusted on subsequent days according to the participants' needs.

If the hearings are to go forward as calendared, on or before Monday, April 23, 2012, Golden State must submit a list of the principal issues on which the hearings will focus, key disputes, any stipulations or settlements, time estimates from each party for the cross-examination of witnesses, and the order

of cross-examination to the Administrative Law Judge (ALJ) and serve this information to parties on the service list.

Before post-hearing briefs are filed, the parties must agree on a common outline, and use that outline for the briefs and reply briefs.

Finally, parties must comply with the Hearing Room Ground Rules set forth in Appendix A to this ruling.

8. Presiding Officer

ALJ Richard Smith is designated as the presiding officer pursuant to § 1701.3.

9. Discovery/Law and Motion Matters

Discovery will be conducted pursuant to the provisions of Article 10 and Rule 11.3. Rule 11.3 requires parties to meet and confer before bringing a formal motion. Parties are expected to engage in timely discovery well before deadlines and are expected to raise discovery issues in a timely fashion to avoid adverse impacts on the schedule.

10. Filing, Service and Service List

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service.

Parties must file certain documents as required by the Rules or in response to rulings by either the assigned Commissioner or the ALJ. All formally filed documents must be filed with the Commission's Docket Office and served on the service list for the proceeding. Article 1 of the Rules contains the Commission's filing requirements. Resolution ALJ-188 sets forth the interim rules for electronic filing, which replaces only the filing requirements, not the service requirements.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. Parties must follow the electronic service protocols in Rule 1.10 for all documents, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail.

In this proceeding, concurrent e-mail service to all persons on the service list for whom an e-mail address is available is required, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request. However, paper format copies, in addition to electronic copies, must be served on the assigned Commissioner and the ALJ.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: *A.11-07-017 – Golden State GRC Application.* In addition, the party sending the e-mail should briefly describe the attached communication; for example, "Brief."

The official service list for this proceeding is available on the Commission's web site.[26] Parties should confirm that their information on the service list is correct and should serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's web site meets that definition. Parties must e-mail courtesy copies

[26] www.cpuc.ca.gov.

of all served and filed documents on the entire service list, including those appearing on the list as "State Service" and "Information Only."

Anyone with questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

11. Procedure for Requesting Final Oral Argument

Pursuant to Rule 13.13(b), a party in a ratesetting proceeding has the right to make a final oral argument before the Commission if the final oral argument is requested within the time and manner specified in the scoping memo or later ruling. Pursuant to Rule 13.13, parties requesting final oral argument before the Commission in this proceeding must include that request in the opening line of their opening brief and should identify in the heading of the brief that the brief includes this request.

The request for final oral argument must state the subjects to be addressed at oral argument, the amount of time requested, any recommended procedure and order of presentations, and all other relevant matters. The request must contain all the information necessary for the Commission to make an informed ruling on the request and to provide an efficient, fair, equitable, and reasonable final oral argument.

Responses to requests for final oral argument may be filed. If no hearings are held in this proceeding, Rule 13.13(b) provides that a party's right to make a final oral argument ceases to exist. As provided for in Rule 13.13(a), the Commission may, on its own motion or upon the recommendation of the assigned Commissioner or ALJ, schedule a final oral argument.

12. Assistance in Participation in Commission Proceedings

The Commission's Public Advisor can assist persons who have questions about the Commission's procedures and how to participate in the Commission's proceedings. The Public Advisor's office may be reached by mail at the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, by e-mail at public.advisor@cpuc.ca.gov, or by telephone at (415) 703-2074. A calendar of hearing dates, the Commission Rules, and other helpful information is also available on our website at http://www.cpuc.ca.gov.

13. Intervenor Compensation

A party who intends to seek an award of compensation pursuant to Public Utilities Code §§ 1801-1812 must file and serve a notice of intent to claim compensation no later than 30 days after the September 21, 2011, prehearing conference. § 1804(a)(1). Under the Commission's Rules, future opportunities may arise for such filings but such an opportunity is not guaranteed.

14. Rules Governing Ex Parte Communications

This proceeding is subject to § 1701.3(c), which means that *ex parte* communications are prohibited unless certain statutory requirements are met. *Ex parte* communications are subject to Article 8 of the Rules.

An *ex parte* communication is defined as "any oral or written communication between a decisionmaker and a person with an interest in a matter before the Commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter." § 1701.1(c)(4). Commission Rules further define the terms "decisionmaker" and "interested person" and only off-the-record communications between these two entities are "*ex parte* communications."

The law permits Commissioners to engage in *ex parte* communications if all interested parties are invited with no less than three business days' notice. If a Commissioner agrees to meet with an individual party, the Commissioner must grant all other parties individual *ex parte* meetings of a substantially equal period of time. The law permits written *ex* parte communications provided that those who provide the letter to a decisionmaker must provide a copy of the communication to each party on the same day.[27] Parties must report *ex parte* communications as specified in Rule 8.3. *See* also Rule 8.5 regarding reporting *ex parte* communications with commissioners' personal advisors.

15. Exhibits

The parties must comply with Rule 13.7 regarding exhibits.

16. Prepared Testimony

The parties must comply with Rule 13.8 regarding prepared testimony. In addition, all Interested Parties serving testimony in this proceeding must include a table summarizing all proposed recommendations with citation(s) to the proposed exhibit(s) and work papers. All recommendations must be listed in descending order of monetary impact.

Parties should show in separate columns:

(a) Sequential number of recommendation;

(b) Short caption of recommendation (including applicable region and service area/district);

(c) Monetary impact, e.g., total value of an adjustment or cost reallocation;

[27] § 1701.3(c); Rule 8.2.

(d) Exhibit(s) page citation(s) for the primary discussion of the recommendation; and

(e) Exhibit(s) page citation(s) for the primary presentation of the monetary impact.

Therefore, **IT IS RULED** that:

1. The October 26, 2011, motion of Golden State Water Company (Golden State) for authority to modify Application 11-07-017 to request authorization for costs in connection with water fluoridation implemented pursuant to Golden State's participation in the First 5 LA Oral Health Community Development Program is granted.

2. The scope and schedule of this proceeding are set forth in Sections 4 and 6 of this ruling, respectively. The schedule may be modified by the Administrative Law Judge or the assigned Commissioner, as necessary.

3. This ruling confirms the Commission's preliminary finding in Resolution ALJ 176-3278, issued July 28, 2011, that the category for this proceeding is ratesetting and that hearings are necessary. This ruling, only as to category, is appealable under the procedures in Rule 7.6.

4. *Ex parte* communications are subject to Article 8 of the Commission's Rules of Practice and Procedure.

5. Administrative Law Judge Richard Smith is the presiding officer in this proceeding.

6. Parties must follow the hearing preparation instructions as set forth in Section 7 of this ruling.

7. Parties may proceed with discovery as set forth in Section 9 of this ruling.

8. Parties must follow the filing, service, and service list rules as set forth in Section 10 of this ruling.

9. The parties must follow the procedures set forth in Section 11 of this ruling for requesting final oral argument.

10. The parties must comply with Rule 13.7 regarding exhibits.

11. The parties must comply with Rule 13.8 regarding prepared testimony. All Interested Parties must follow the procedures set forth in Section 16 of this ruling regarding prepared testimony.

12. Parties must comply with the Hearing Room Ground Rules set forth in Appendix A attached to this ruling.

Dated November 2, 2011, at San Francisco, California.

/s/ CATHERINE J.K. SANDOVAL
Catherine J.K. Sandoval Assigned Commissioner

/s/ RICHARD SMITH
Richard Smith
Administrative Law Judge

APPENDIX A

Hearing Room Ground Rules

1. All prepared written testimony must be served on all appearances and state service on the service list, and on the assigned Commissioner's office and on the assigned Administrative Law Judge (ALJ). Prepared written testimony must not be filed with the Commission's Docket Office.

2. Each party sponsoring an exhibit must, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room. If the exhibit is testimony that has already been served on the ALJ, the ALJ only needs to be provided with one copy for Central Files. The upper right hand corner of the first page of the exhibit must be blank for the ALJ's exhibit stamp. If there is not sufficient room in the upper right hand corner for an exhibit stamp, a cover sheet must be attached to the exhibit.

3. As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.

4. To the extent possible, exhibits should be distributed before the proceeding "goes on the record" so that parties are prepared to go forward with cross-examination when the ALJ goes "on the record." Breaks can also be used for the distribution of documents.

5. Generally, corrections to an exhibit should be made in advance and not orally from the witness stand, and only corrections of a substantive nature will be allowed from the witness stand. Corrections must be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be shown in strikethrough font and the replacement or added text underlined. Each correction page must be marked with the word "revised" and the revision date.

6. Each witness's testimony must be separately bound. Do not combine multiple witnesses' testimony as chapters or sections of a single document.

7. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.

8. Partial documents or excerpts from documents must include a title page or first page from the source document. Excerpts from lengthy documents must include a table of contents page covering the excerpted material.

9. Motions to strike prepared testimony must be made at least two working days before the witness appears, to allow the ALJ time for review of the arguments and relevant testimony.

10. Notices, compliance filings, or other documents may be marked as reference items. They need not be served on parties.

11. Food and beverages are permitted in the hearing room. However, you must dispose of containers and napkins properly.

(END OF APPENDIX A)

JOINT APPENDIX OO

CASE NOS. S269099 and S271493

In the Supreme Court of the State of California

GOLDEN STATE WATER COMPANY
(Petitioner in Case No. S269099),

CALIFORNIA-AMERICAN WATER COMPANY,
CALIFORNIA WATER SERVICE COMPANY,
CALIFORNIA WATER ASSOCIATION, AND
LIBERTY UTILITIES CORP.
(Petitioners in Case No. S271493)

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
(Respondent in Cases Nos. S269099 and S271493).

STIPULATION AND PROPOSED ORDER RE THE RECORD ON REVIEW

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

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Attorneys for California Public Utilities Commission

This consolidated proceeding arises on direct review of a decision by the California Public Utilities Commission (Commission) under California Public Utilities Code section 1756(f). On June 1, 2022, the Court issued an order stating that "[t]he parties appear to have provided a sufficient record of the proceedings before the Commission as they relate to the petitions. Accordingly, unless a party serves and files a written objection within 15 days from the date of this order, the exhibits submitted by the parties will constitute the record under review, and the Commission need not certify the record."

The parties have conferred and agree that they do not object to considering the exhibits already submitted as the record on review, provided that the record is supplemented with a copy of the Commission's Docket Card in the proceeding on review and the page count in the administrative record prior to the Commission's July 3, 2020, Proposed Decision in Phase 1. The parties may rely on the Commission's Docket Card and administrative page count to demonstrate the existence of all documents before the Commission and the scope of what the Commission and the parties considered in the proceedings below.

Accordingly, the parties stipulate that the following constitutes the record on review: 1) the exhibits filed in connection with the petitions for writ of review, the answer to those petitions, and the replies to the answer, 2) the Commission's Docket Card, a true and correct copy of which is attached as Exhibit 1 to this stipulation (with the Phase 1 materials highlighted in yellow), and 3) the fact that there were approximately 2,150 pages of documents in the administrative record prior to the Commission's July 3, 2020, Proposed Decision in Phase 1. The stipulated page count includes all comments, rulings, and other materials, including service lists, in the administrative record prior to July 3, 2020.

The parties respectfully request that the Court adopt their stipulation and enter the proposed order submitted with this stipulation.

Respectfully submitted,

June 16, 2022 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: /s/ John D. Ellis
Joseph M. Karp
John D. Ellis
Attorneys for Golden State Water Company

June 16, 2022 NOSSAMAN LLP

By: /s/ Lori Anne Dolqueist
Lori Anne Dolqueist
Attorneys for California-American Water Company, California Water Service Company and California Water Association

June 16, 2022 PROSPERA LAW, LLP

By: /s/ Joni A. Templeton
Joni A. Templeton
Attorneys for Liberty Utilities (Park Water) Corp. and Liberty Utilities (Apple Valley Ranchos Water) Corp.

June 16, 2022

CALIFORNIA PUBLIC UTILITIES COMMISSION

By: /s/ Darlene M. Clark

Darlene M. Clark
Attorney for California Public Utilities Commission

JOINT APPENDIX PP

State of California
California Public Utilities Commission

Rules of Practice and Procedure

California Code of Regulations
Title 20, Division 1, Chapter 1

TITLE 20. PUBLIC UTILITIES AND ENERGY

DIVISION 1. PUBLIC UTILITIES COMMISSION

CHAPTER 1. RULES OF PRACTICE AND PROCEDURE

ARTICLE 1. GENERAL PROVISIONS

1.1. (Rule 1.1) Ethics.

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

1.2. (Rule 1.2) Construction.

These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. In special cases and for good cause shown, and within the extent permitted by statute, the Commission may permit deviations from the rules.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

1.3. (Rule 1.3) Definitions.

(a) "Adjudicatory proceedings" are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

(b) "Catastrophic wildfire proceedings" are proceedings in which an electrical corporation files an application to recover costs and expenses pursuant to Public Utilities Code Section 451 or 451.1 related to a covered wildfire as defined in Public Utilities Code Section 1701.8.

(c) "Category," "categorization," or "categorized" refers to the procedure whereby a proceeding is determined to be an "adjudicatory," "ratesetting," "quasi-legislative," or “catastrophic wildfire” proceeding.

(d) “Financial interest” means that the action or decision on the matter will have a direct and significant financial impact, distinguishable from its impact on the public generally or a significant segment of the public, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code.

(e) "Person" means a natural person or organization.

(f) "Quasi-legislative proceedings” are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry, even if those proceedings have an incidental effect on ratepayer costs.

(g) "Ratesetting proceedings” are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). Ratesetting proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. Other proceedings may be categorized as ratesetting, as described in Rule 7.1(e)(2).

(h) "Scoping memo" means an order or ruling describing the issues to be considered in a proceeding and the timetable for resolving the proceeding, as described in Rule 7.3.

Note: Authority cited: Sections 1701 and 1701.8, Public Utilities Code. Reference: Sections 1701,1701.1, and 1701.8, Public Utilities Code.

1.4. (Rule 1.4) Party Status.

(a) A person may become a party to a proceeding by:

(1) filing an application (other than an application for rehearing pursuant to Rule 16.1), petition, or complaint;

(2) filing (i) a protest or response to an application (other than an application for rehearing pursuant to Rule 16.1) or petition, or (ii) comments in response to an order instituting rulemaking;

JOINT APPENDIX QQ

Catherine J.K. Sandoval
Associate Professor
Santa Clara University School of Law
500 El Camino Real
Santa Clara, CA 95053
Csandoval@scu.edu

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Via email to:
CPUC President Marybel Batjer
CPUC Commissioner Liane Randolph
CPUC Commissioner Martha Guzman Aceves
CPUC Commissioner Cliff Rechtschaffen
CPUC Commissioner Genevieve Shiroma
CPUC Executive Director Alice Stebbins
CPUC General Counsel Arocles Aguilar
CPUC Public Advisor
CPUC Advisors and Staff:
Bruce DeBerry
Jonathan Koltz
Shannon O'Rourke
Alex Pineda
Christine Powell
Terence Shia
Sean A. Simon
Leuwam Tesfai
Lester Wong
Service List for RM 17-06-024

Re: Rulemaking 17-06-024, Legal and Factual Error in the Proposed Decision Undercuts Affordability

I am writing in my personal capacity as a California water ratepayer and in my individual capacity as a Law Professor at Santa Clara University School of Law to express my support for the California Public Utilities Commission's (CPUC) work to make water bills more affordable for low-income customers by opening Order Instituting Rulemaking (OIR) 17-06-024. I am concerned, however, that the Proposed Decision (PD) issued in this rulemaking on July 3, 2020 may undermine affordability by proposing to order utilities that employ a Water Revenue Adjustment Mechanism (WRAM) to switch to a Monterey-style Water Revenue Adjustment Mechanism (Monterey-Style WRAM), an issue not within this proceeding's scope and thus not fully litigated in this proceeding. The PD commits legal and factual error by conflating forecasting with WRAM, Modified Cost Balancing Account (MCBA), and Monterey-Style WRAM.

The PD fails to recognize the functional difference between forecasting (a set of tools used to project water consumption and assist in rate-setting) the WRAM and MCBA (mechanisms to collect rates and track the difference between authorized rates and revenues, intended to decouple revenues from rates to promote conservation) and the Monterey-Style WRAM (a rate design mechanism intended to equalize the revenue generated by tiered rates as compared to revenues a uniform quantity rate would have produced). To allow ratepayers, parties, and the CPUC the opportunity to properly address these important issues that directly affect rates, affordability, and conservation incentives, the CPUC should withdraw the PD issued on July 3 in 17-06-024. After revising the PD to address issues properly within this proceeding's scope, the CPUC can amend the OIR to include analysis of WRAM, MCBA, and Monterey-Style WRAM, and afford the public an opportunity to comment on those important issues.

WRAM, MCBA, and Monterey-Style WRAM were neither listed in the OIR for RM 17-06-024, nor in its three scoping memos. The PD contends that "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." (PD, RM 17-06-024, p. 52, Conclusions of Law, 2). *This conclusion commits legal and factual error by conflating forecasting with revenue collection and rate design mechanisms*. Revenue collection mechanisms such as WRAM and MCBA, and rate design mechanisms such as the Monterey-Style WRAM are not a subset of forecasting. Reference to forecasting in the proceeding's scoping memos and discussion of WRAM and the Monterey-Style WRAM in a Workshop are legally insufficient to bring those revenue collection and rate design issues into this proceeding's scope.

The CPUC previously recognized the distinction between forecasting and revenue collection mechanisms such as WRAM and MCBA in RM 11-11-008 for which I had the honor of serving as the Assigned Commissioner. RM 11-11-008 developed a record "to better understand the effects of our current policies regarding tiered rates, conservation rates, forecasting, data and technology, metering and billing, accounting mechanisms and other programs and how to improve these policies and mechanisms." (CPUC Decision 16-12-026, p. 2). Decision 16-12-026 explained that "[f]orecasted sales drive rates as they determine how authorized revenue (based on determination of costs, return on equity, and other factors) are to be recovered through quantity rates. Through ―forecasts the costs required to deliver that level of water service are estimated and consequently the revenue requirement to support those costs is established." (*Id.* at 18). CPUC Decision 16-12-026 described WRAM as "a mechanism used to collect authorized revenues months or even years after the events occurred that caused the disjunction between authorized and actual revenue." (*Id.* at 6).

D. 16-12-026 distinguishes between forecasting and WRAM balances by noting that forecasting mechanisms and their embedded assumptions drive WRAM balances. "Inaccurate forecasts escalate WRAM balances and surcharges when actual sales do not match the forecast adopted in the GRC," CPUC Decision 16-12-026 observed. (*Id.* at 18-19). "Improving forecasting methodologies is key to reducing WRAM and surcharge balances. Inaccurate forecasts provide the air that balloons the WRAM and surcharges." (*Id.*)

The CPUC's Policy and Planning Department (PPD) Report, Evaluating Forecast Models, the Water Revenue Adjustment Mechanism, achieving an efficient urban water

economy requires that the nexus between water rates, water consumption, and water revenues are well balanced, [hereinafter ―Evaluating Forecast Models White Paper][1] distinguished between forecasting and revenue collection mechanisms such as the WRAM. PPD's Report observes that in California, "water demand forecast models are used to derive water rates for Investor Owned water Utilities (IOUs). Given some forecasted water demand, water rates are then designed that provide sufficient revenue to recover the cost to service that demand."[2] PPD's Report observes that the CPUC uses the WRAM "as a means to account for the difference between revenue forecasts and actual revenue collected."[3] Forecasting is distinct from mechanisms to collect authorized revenue, to decouple rates from revenue to incentivize conservation, or rate design mechanisms such as the Monterey-style WRAM.

The PD in 17-06-024 addresses forecasts in Ordering paragraph 1 requiring "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.

This Ordering paragraph seems to recognize, without discussion, the differences between forecasting and revenue collection or rate design mechanisms such as WRAM, MCBA, and the Monterey-Style WRAM. The PD, however, commits legal error in treating WRAM, MCBA, and the Monterey-Style WRAM as if they were subcategories of forecasting, erroneously suggesting that any discussion of forecasting includes revenue collection and rate design mechanisms. A public utilities commission can adopt forecasting methodologies to help establish rates without adopting rate collection or rate design mechanisms such as WRAM, MCBA, and the Monterey-Style WRAM.

The July 3, 2020 PD states that "[t]he scope of this proceeding includes consideration of "how to improve water sales forecasting," an issue raised in the first scoping memo issued on January 9, 2019, (RM 17-06-024, First Scoping memo, p.3). The First Scoping Memo in RM 17-06-024 does not mention WRAM or Monterey-Style WRAM as an issue in this proceeding. The Amended Scoping Memo adopted on July 9, 2020, states that the OIR was adopted "to address

[1] CPUC Decision 16-12-026, n. 44 (citing Richard White, Principal author, Marzia Zafar, Editing Author, Evaluating Forecast Models, Policy and Planning Division, California Public Utilities Commission, August 17, 2015, at 2).
[2] Evaluating Forecast Models, *supra* note 1, at 3.
[3] *Id.*

consistency among Class A water company low-income programs, affordability, forecasting, whether other water companies (such as water bottler companies) qualify as public utilities, and coordination with the State Water Resources Control Board (SWRCB) regarding consolidation of water companies where a water company is unable to provide affordable, clean water to its customers." The Amended Scoping Memo does not mention WRAM or Monterey-Style WRAM as an issue in this proceeding. The Second Amended Scoping Memo issued on July 2, 2020 added affordability issues raised by the COVID-19 pandemic. The Second Amended Scoping Memo does not mention WRAM or Monterey-Style WRAM as topics in the proceeding's scope.

The July 3, 2020 PD at p. 52 states that "based on the discussion at the workshop on ways to improve water sales forecasting, the ruling specifically called for party input on whether the Commission should change all utilities to use Monterey-Style WRAMs with ICBA, and whether such a transition should occur in the context of the utilities' next GRC." The PD cites Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions, September 4, 2019, at 3. That ALJ ruling asked questions about the WRAM and Monterey-Style WRAM:

> Question 6. For utilities with a full Water Revenue Adjustment Mechanism (WRAM)/Modified Cost Balancing Account (MCBA), should the Commission consider converting to Monterey-style WRAM with an incremental cost balancing account? Should this consideration occur in the context of each utility's GRC?
>
> 7. Should any amortizations required of the Monterey-style WRAM and incremental cost balancing accounts be done in the context of the GRC and attrition filings?

No amendment to the proceeding's scoping memo was issued to clarify the Assigned Commissioner's and ALJ's interpretation that "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." (PD, RM 17-06-024, p. 52, Conclusions of Law, 2). Had such a proposition been advanced prior to the PD, the public would have had an opportunity to submit comments on whether the WRAM, MBCA, and Monterey-Style WRAM were within the proceeding's scope. Those comments could have highlighted the distinction between forecasting and revenue collection and rate design mechanisms, and the affordability issues raised by the Monterey-Style WRAM.

The PD in 17-06-024 Ordering Paragraph 3 proposes that utilities using a WRAM "in their next general rate case applications, shall transition existing Water Revenue Adjustment Mechanisms to Monterey-Style Water Revenue Adjustment Mechanisms." The PD states on p. 59 "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." The PD does not explain why it asserts that the Monterey-Style WRAM captures the identified benefits without the negative

effects on customers of a traditional WRAM. Ordering Paragraph 3 and the PD's comments about the relative merits of the WRAM and MCBA as compared to the Monterey-Style WRAM fail to recognize that the Monterey-Style WRAM performs a different function as a rate design mechanism, despite its similar name to the WRAM. Since those issues were not within this Rulemaking's scope, they were not fully litigated in a manner that would have highlighted these distinctions and created an opportunity to investigate the impact of this proposal on all affected ratepayers including low-income ratepayers.

The CPUC initially adopted a Monterey-style WRAM for California American Water Company in 1996 in D.96-12-005. CPUC Resolution W-4910 adopted on March 22, 2012, p. 3, observes that "Monterey-style WRAM only tracks and allows for the potential amortization of the difference between revenue the utility receives for actual metered sales through the tiered volumetric rate and the revenue the utility would have received through a uniform, single quantity rate if such a rate had been in effect." Resolution W-4910 explains that the Monterey-style WRAM "will track the actual water amount sold in a month and apply the single quantity rate to result in an adjusted revenue amount for that month. The difference between the adjusted revenue and the actual revenue will be reflected in the balancing account [i.e., Monterey-style WRAM]. The account will not track revenues recovered through the service charge." (*Id.* citing D.08-08-030, footnote 30; D.10-04-031, footnote 107).

Since the WRAM, MCBA, and the Monterey-Style WRAM were not within the scope of RM 17-06-024, that proceeding did not explore the differences between the function of the WRAM, MCBA, and the Monterey-Style WRAM. As a consequence of these omissions, the PD in 17-06-024 fails to analyze affordability issues raised through implementation of a Monterey-style WRAM.

The Monterey-style WRAM must be analyzed in the context of rate design, rate tiers, and conservation mechanisms. Its application may vary in different service areas as the Monterey-style WRAM seeks to equalize revenue generated by tiered rates as compared to revenues a uniform quantity rate would have produced. This analysis is service-area specific and will vary with the tiered rate structure used in a service territory (if tiered rates are employed), and other factors that influence the rates a uniform quantity rate would have produced in that area.

The effect of a Monterey-style WRAM on affordability, rates, and conservation must be examined in a proceeding that properly places those issues within their scope to allow for analysis and record development of those important issues. CPUC Decision 16-12-026, p. 62, notes that the "Monterey Region [where the Monterey-style WRAM was first authorized] is replete with stories of $1,000 or more water bills, many of which are due to leaks later discovered." D. 16-12-026, p. 51 recognized that "steep tiers such as those that have been used in Monterey have resulted in very high bills for many customers. If a customer has a leak the water bills can easily reach into the thousands." The PD in RM 17-06-024 lacks the record foundation to support its order to switch from a WRAM to a Monterey-Style WRAM and fails to investigate the affordability impacts of this proposal.

I urge the CPUC to withdraw the PD issued on July 3, 2020 in 17-06-024 and revise it to eliminate discussion, findings of fact, conclusions of law, and ordering paragraphs regarding the

out-of-scope issues: WRAM, MCBA, and the Monterey-Style WRAM. The scope of RM 17-06-024 includes several important issues that affect water affordability including forecasting. An amended PD in RM 17-06-024 should analyze those issues within its current scope and provide an opportunity to comment on that analysis.

The CPUC should amend the OIR in RM 17-06-02 to add WRAM, MCBA, and the Monterey-Style WRAM, and then issue a scoping memo that gives ratepayers and all interested parties an opportunity to explore the impact of those revenue collection and rate-design mechanisms on rates, rate design, conservation, and affordability. That amended rulemaking must consider whether that proceeding should be classified as ratemaking as WRAM, MCBA, and the Monterey-Style WRAMs are closely tied to rates and the rate design in a fashion that may vary in different areas utilities serve. Hearings may be necessary to fully develop the record on those issues and create the opportunity for testimony, briefing, and oral argument that the public was not afforded in this proceeding. The PD in 17-06-024 advances the CPUC's work on forecasting but commits legal error when it conflates forecasting with rate design and rate collection mechanisms such as WRAM, MCBA, and the Monterey-Style WRAM. The PD in 17-06-024 should be withdrawn and revised to address issues within its scope. The OIR in RM 17-06-02 should subsequently be amended to add WRAM, MCBA, and the Monterey-Style WRAMs so the public has an opportunity to comment on the affordability and conservation impacts of those revenue collection and rate design mechanisms.

Sincerely,

// Catherine J.K. Sandoval //

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Former Commissioner, California Public Utilities Commission (Jan. 2011-Jan. 2017)

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/s/ John D. Ellis
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STATE OF CALIFORNIA
Supreme Court of California

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ADDITIONAL DOCUMENTS	Vol. 2 Appendices Q-W to Opening Brief 4894-8041-0672 v.3
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9/1/2022

Date

/s/John Ellis

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