

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Golden State Water Company,
Petitioner,

v.

Public Utilities Commission of the
State of California,
Respondent,

California-American Water
Company, California Water Service
Company, California Water
Association, and Liberty Utilities
Corp.,
Petitioners,

v.

Public Utilities Commission of the
State of California,
Respondent.

Case No. S269099

Commission Decisions
20-08-047 and 21-09-047

Case No. S271493

Commission Decisions
20-08-047 and 21-09-047

**RESPONDENT'S MOTION TO DISMISS
PETITIONS OR, IN THE ALTERNATIVE, TO
RECONSIDER THE ISSUANCE OF THE WRIT**

CHRISTINE HAMMOND, SBN 206768
DALE HOLZSCHUH, SBN 124673
*DARLENE M. CLARK, SBN 172812

Attorneys for Respondent
California Public Utilities Commission

505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1650
Facsimile: (415) 703-2262
Email: darlene.clark@cpuc.ca.gov

October 21, 2022

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	3
I. INTRODUCTION	4
II. STATEMENT OF FACTS/BACKGROUND	4
III. SENATE BILL 1469 RENDERS MOOT THE RELEVANT ORDER IN DECISION 20-08-047.....	7
IV. THE PETITIONS SHOULD BE DISMISSED BECAUSE THE COURT CANNOT GRANT EFFECTIVE RELIEF	9
V. RESPONDENT REQUESTS THAT THE COURT TAKE JUDICIAL NOTICE OF SB 1469 AND THE SENATE FLOOR ANALYSIS	13
VI. CONCLUSION	14
CERTIFICATE OF WORD COUNT	
EXHIBITS A-B	

TABLE OF AUTHORITIES

	<u>Page</u>
<u>California Rules of Court</u>	
Rule 8.54.....	4
<u>California Public Utilities Code</u>	
Section 727.5	6, 9 , 11
<u>Cases</u>	
<i>Building a Better Redondo, Inc. v. City of Redondo Beach</i>	
(2012) 203 Cal.App.4th 852	11, 13
<i>Equi v. San Francisco</i>	
(1936) 13 Cal.App.2d 140	9, 10, 11
<i>Harris v. Stampolis</i>	
(2016) 248 Cal.App.4th 484	11
<i>La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles</i>	
(2016) 2 Cal.App.5th 586.....	9, 10
<i>Los Angeles v. Pub. Util. Com.</i>	
(1975) 15 Cal.3d 680	12
<i>Madera v. Gendron</i>	
(1963) 59 Cal.2d 798	13
<i>Newsom v. Superior Court</i>	
(2021) 63 Cal.App.5 th 1099	9
<i>Roe v. Wade</i>	
(1973) 410 U.S. 113.....	13
<u>Commission Decisions</u>	
D.08-02-036 (2008).....	5

I. INTRODUCTION

Pursuant to Rule 8.54 of the California Rules of Court, Respondent California Public Utilities Commission (Commission) respectfully asks the Court to dismiss the petitions for writ of review (writ petitions) filed individually by Petitioners Golden State Water Company (Golden State), California-American Water Company (Cal. Am.), California Water Service Company (CWS or Cal Water), California Water Association (CWA), and Liberty Utilities Corp. (Liberty) (collectively Petitioners or WRAM Utilities). The writ petitions should be dismissed because the California Legislature has enacted legislation that renders moot the relevant issue in the petitions, such that it is impossible for the Court to grant Petitioners any effective relief.¹

In the alternative, should any residual matters remain, the Court should change its grant of review to denial as the issuance of the writ of review was based on pre-Senate Bill (SB) 1469 facts. (Sen. Bill No. 1469, approved by Governor, Sept. 30, 2022 (2021-2022 Reg. Sess.) §2 (SB 1469) (attached as Exhibit A).) In light of this subsequent legislation any residual issues are of no import.

II. STATEMENT OF FACTS/BACKGROUND

In this case, Petitioners, Class A water utilities² and their water association, challenge a Commission order in Decision (D.)

¹ This motion to dismiss does not address the merits of any allegations raised in the writ petitions or Petitioners' joint brief. The Commission files this motion to dismiss in order to address changed circumstances since the filing of the writ petitions.

² Class A water utilities are those water utilities with more than 10,000 service connections.

20-08-047.³ The Commission determined that in future Class A water utilities' general rate cases, it would no longer allow the water utilities to request the continuation of a pilot program that authorized the water companies to track the difference between forecast revenues and actual revenues, generated from quantity sales, in a decoupling Water Revenue Adjustment Mechanism (WRAM). The accompanying Modified-Cost Balancing Account (MCBA) tracks the difference between forecast and actual variable costs (i.e., purchased power, water, and pump taxes). (Decision, p. 106, Ordering Paragraph #3.)

The goals of the WRAM/MBCA were to sever the relationship between sales and revenue to remove any disincentive for the utility to implement conservation rates and programs; ensure cost savings are passed on to ratepayers; and reduce overall water consumption. (D.08-02-036, p. 26.)

Based on the evidence presented, the Commission ordered that WRAM/MCBA, authorized for certain Class A water utilities, be discontinued in future rate cycles. Ordering Paragraph #3 of the Decision states that Petitioners (the water utilities with WRAM/MCBA authorization) shall not propose continuing to use their WRAM/MCBA in their next general rate case applications. (Decision, p. 106, Ordering Paragraph #3.) The Decision also addressed other matters not relevant here.

³ Unless otherwise noted, citations to Commission decisions issued since July 1, 2000 are to the official pdf versions, which are available on the Commission's website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

On October 27, 2021, Petitioners filed writ petitions requesting the Court to set aside the Decision insofar as it prohibits the WRAM Utilities from proposing continuation of the WRAM/MCBA in future general rate cases. They contend that the Commission's decision to discontinue future WRAM/MCBA authorization was based on defective procedures and that Petitioners were denied due process. (Golden State Amended Petition, pp. 27-45; Cal Water Petition, pp. 25-46; Cal. Am. Petition, pp. 26-44; Liberty Petition, pp. 25-40; and CWA Petition, pp. 29-40.) Respondent Commission filed its answer to the writ petitions on January 28, 2022.

On February 18, 2022, SB 1469 was introduced in the California legislature. Senate analyses indicates that four of the petitioners in this case are the source of the Senate Bill:

SUBJECT: Water corporations: rates

SOURCE: California American Water
California Water Service
Golden State Water Company
Liberty Utilities
San Jose Water Company

(Sen. Rules Com., Off. Of Sen. Floor Analyses, Sen. Floor Analysis – Unfinished Business, Sen. Bill No. 1469 (2021-2022 Reg. Sess.) as amended August 23, 2022, p. 1 (attached as Exh. B).) As discussed more fully below, SB 1469 requires the Commission to consider applications of Class A water companies to implement decoupling mechanisms, such as the WRAM/MBCA, in their future general rate case applications.

Subsequent to the introduction of SB 1469, on May 18, 2022, this Court issued a writ of review to hear the cases. Shortly thereafter it consolidated the cases and set a briefing schedule. Accordingly, Petitioners filed their opening brief on September 1, 2022. Twenty-nine days later the Governor signed SB 1469 into law. The Commission’s answer brief is currently due by November 15, 2022.

III. SENATE BILL 1469 RENDERS MOOT THE RELEVANT ORDER IN DECISION 20-08-047

On September 30, 2022, Governor Gavin Newsom signed SB 1469, legislation that supersedes the Commission’s discontinuance of the WRAM/MCBA pilot program in D.20-08-047. Effective January 1, 2023,⁴ SB 1469 modifies Public Utilities Code section 727.5 to insert language that requires the Commission to consider applications of Class A water companies to implement decoupling mechanisms, such as the WRAM/MBCA, which are the subject of the instant case before the Court:

(2) (A) Upon application by a water corporation with more than 10,000 service connections, the commission shall consider, and may authorize, the implementation of a mechanism that separates the water corporation’s revenues and its water sales, commonly referred to as a “decoupling mechanism.”

(Sen. Bill No. 1469, approved by Governor, Sept. 30, 2022 (2021-2022 Reg. Sess.) §2.)

⁴ None of the WRAM Utilities are scheduled to file their general rate case applications in the time period between Governor Newsom’s signing the bill and its effective date.

In their writ petitions, Petitioners raise multiple issues, all of which ultimately challenge the Commission’s order that the WRAM/MCBA utilities “in their next general rate case applications, shall not propose continuing existing Water Revenue Adjustment Mechanisms/Modified Cost Balancing Accounts” (Decision, p. 106, Ordering Paragraph #3.) For example, Golden State seeks a single remedy in its amended petition: “Enter judgment setting aside the Decision insofar as it prohibits the WRAM Utilities from proposing continuation of the WRAM/MCBA in future general rate cases.” (Golden State Amended Petition, p. 14.) Likewise, Cal Water Service’s prayer for relief requests that the Court “[e]nter judgment setting aside the Decision insofar as it prohibits CWS and the other WRAM Utilities from proposing the continuation of their existing WRAM/MCBA in future General Rate Cases.” (Cal Water Petition, p. 14.) The remaining three petitions contain almost identical requests. (Cal. Am. Petition, pp. 14-15; Liberty Petition, p. 13; CWA Petition, pp. 12-13.)

Likewise, Petitioners are clear in their joint brief that they seek judicial review of just one order in D.20-08-047, Ordering Paragraph #3:

The Petitioners seek judicial review of Commission Decisions 20-08-047 and 21-09-047 (Decisions) with regard to one order in D.20-08-047. That order unlawfully prohibits the WRAM Utilities from continuing to use two ratemaking mechanisms referred to as the [WRAM/MCBA] that are critical elements of the tiered rate designs that those utilities use to promote water conservation [Ordering Paragraph #3 of D.20-08-047].

(Petitioners' Brief, p. 9, fn. omitted, emphasis added.)

Because SB 1469 has superseded that ordering paragraph, this case is moot. There is no need to continue this case. Petitioners have already achieved through the legislature the singular remedy they sought through this Court.

IV. THE PETITIONS SHOULD BE DISMISSED BECAUSE THE COURT CANNOT GRANT EFFECTIVE RELIEF

Well-settled law holds that an appeal is moot if events occur while the appeal is pending, which render it impossible for the appellate court to grant appellant any effective relief. (*Newsom v. Superior Court* (2021) 63 Cal.App.5th 1099, 1109-1110, citing *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2016) 2 Cal.App.5th 586, 590 (*La Mirada*)). Subsequent legislation is one type of event that can render a pending appeal moot. (*Ibid.*; see also *Equi v. San Francisco* (1936) 13 Cal.App.2d 140, 141–142 (*Equi*)). “It is well settled that an appellate court will decide only actual controversies. [A]n action which originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised therein have become moot by subsequent acts or events.” (*Ibid.*)

Here, it would make no difference if the Court were to conclude the Commission improperly discontinued its authority for water companies to apply for WRAM/MCBA because SB 1469, and its changes to Public Utilities Code section 727.5, supersede Ordering Paragraph #3. As a result of SB 1469, the water companies are now authorized to file for WRAM/MCBA protection in their future general rate case applications and the

Commission must consider that request. In other words, the Court is unable to provide effective relief, therefore the appeal of that issue is moot. (*La Mirada, supra*, 2 Cal.App.5th, p. 590.)

The effective relief limitation is applicable even where other issues remain in the case. In *Equi*, after declaring the case moot based on one issue, the court held that the remaining question of whether appellants “had the power to impose such a license tax for revenue have become abstract, academic and dead issues which no longer present any actual controversy between the parties. It therefore appears that the only issues presented by this appeal have become moot and that ‘the appeal should not be entertained solely for the purpose of entering an academic discussion of the legal questions presented.’ [Citations.]” (*Equi, supra*, 13 Cal.App.2d, p. 142.) As in *Equi*, even if some WRAM discussion remains in the Decision, any Court review of that discussion is now entirely academic because SB 1469 requires the Commission to “consider” utilities’ WRAM proposals anew. Because their remedy has been granted, any arguments the Petitioners may have about residual holdings are entirely academic.

However, the rules regarding mootness are not absolute; a court may exercise its discretion to hear a matter even if moot. There are three circumstances in which the courts may continue a case or action that would otherwise be moot: 1) when a material question remains for the court's determination; 2) when the case presents an issue of broad public interest that is likely to recur; and 3) when there may be a recurrence of the controversy

between the parties. (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 495.) Here, none of those exceptions apply.

As discussed above, no material question remains. The singular issue in this case is whether the Commission improperly discontinued its authorization for the water utilities to include WRAM/MCBA in their general rate case applications. With the new legislation reinstating that authorization, no controversy between the parties remains for the Court to decide. (*Equi, supra*, 13 Cal.App.2d, p. 142.) Moreover, this controversy is not likely to recur as Petitioners' rights have been codified and the Commission must comply with Public Utilities Code section 727.5.

Likewise, the case does not present a matter of broad public interest that is likely to recur and evade review. This case is a matter relevant only to the Class A water companies – whether the Commission improperly discontinued the WRAM utilities' ability to seek authorization for their WRAM/MCBAs, which is too fact specific to be of broad public interest. (*Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 867 [“[T]his case presents fact-specific issues that are unlikely to recur and thus does not justify our exercise of discretion to resolve moot questions.”].)

Petitioners may argue this case is about conservation and is therefore a matter of public interest, however, they have remaining only particular procedural allegations regarding the process that led to the WRAM/MCBA discontinuation, which is

now superseded. Any remaining abstract or academic procedural issues do not relate to conservation matters.

Moreover, those remaining procedural issues can be addressed in future Commission proceedings because SB 1469 requires the Commission to “consider” the future WRAM proposals. Such consideration would occur in the context of individual general rate case proceedings which would include evidentiary hearings. (Pub. Util. Code § 728.) In their general rate cases, parties will present their cases and on the basis of the record evidence, the Commission will issue its decision. The Commission is not bound by the holdings and orders of past decisions. Courts have held that particular circumstances may warrant departure from prior decisions. (*Los Angeles v. Pub. Util. Com.* (1975), 15 Cal.3d 680, 698.) Here, new legislation has created changed circumstances that require the Commission to depart from D.20-08-047. The Commission can and will in this context, reconsider its holdings. (See Pub. Util. Code § 1708.) Accordingly, none of the alleged procedural deficiencies with respect to the Commission’s WRAM/MCBA determinations could reoccur.

Further, the Commission’s process decisions are not likely to evade review. Petitioners and other parties can challenge the Commission’s process in the future, as they have in this case, should they think the Commission has violated procedural rules. Moreover, Commission proceedings do not have the limited-time constraints that the courts have recognized when exercising discretion to hear an otherwise moot matter. (See, e.g.,

Roe v. Wade (1973) 410 U.S. 113 [pregnancy would reach full term before effective appellate review]; *Madera v. Gendron* (1963) 59 Cal.2d 798 [although defendant lost re-election during appeal, public interest question remains for future office holders].)

Even if Petitioners oppose this motion to dismiss the case as moot and request that the Court address the underlying issues in the abstract or academically, the Court should reject their request. Courts have held that “[a]ppellants cannot maintain an appeal that their own discretionary decisions have rendered nonappealable and nonjusticiable.” (*Building a Better Redondo, Inc. v. City of Redondo Beach, supra*, 203 Cal.App.4th, 867.) Petitioners made the decision to seek legislation to overturn Ordering Paragraph #3 of the Decision before the Court had time to decide the issues in this case. If Petitioners wanted Court review, they could have waited for the Court to decide this case before seeking legislation, but they did not. (See *Ibid.*)

V. RESPONDENT REQUESTS THAT THE COURT TAKE JUDICIAL NOTICE OF SB 1469 AND THE SENATE FLOOR ANALYSIS

The Commission respectfully requests that the Court take judicial notice of SB 1469 and the August 30, 2022 Senate Floor Analysis, as permitted under Evidence Code sections 451 subdivision (a) regarding statutory law and 452 subdivisions (a) and (c) regarding official acts of the legislature, as they address new legislation directly related to the issues in this case, which was enacted after the Court granted the writ of review.

VI. CONCLUSION

Petitioners' requested remedy in these petitions is to set aside the Commission's order that the WRAM/MCBA utilities shall not propose continuing their existing WRAM/MCBA in their next general rate case applications. That is precisely what SB 1469 does. Because the Court cannot provide effective relief in this mooted case, and no exceptions apply that would require judicial discretion, the Court should dismiss the writ petitions. In the alternative, if the Court does not dismiss the writ petitions, the Commission requests that it reconsider its issuance of the writ of review because the issues originally presented are no longer of import. The Commission also requests that the Court take judicial notice of SB 1469 and the Senate Floor Analysis, attached to this motion as Exhibits A and B, respectively.

October 21, 2022

Respectfully submitted,

CHRISTINE HAMMOND, SBN 206768
DALE HOLZSCHUH, SBN 124673
*DARLENE M. CLARK, SBN 172812

By: /s/ DARLENE M. CLARK
DARLENE M. CLARK

505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1650

Attorneys for Respondent
California Public Utilities Commission

CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing Respondent’s Motion to Dismiss Petitions or, in the Alternative, to Reconsider the Issuance of the Writ is 2500 words in length. In completing this word count, I relied on the “word count” function of the Microsoft Word program.

Dated: October 21, 2022 By: /s/ DARLENE M. CLARK
DARLENE M. CLARK

Exhibit A

>>

[Comments To Author](#)

>>

[Track Bill](#)

>>

[Add To My Favorites](#)

>>

SHARE THIS:

 [share this bill in Facebook](#)

 [share this bill in Twitter](#)

Bill Start

Date Published: 10/03/2022 02:00 PM

Senate Bill No. 1469

CHAPTER 890

An act to amend Section 727.5 of the Public Utilities Code, relating to water corporations.

[Approved by Governor September 30, 2022. Filed with Secretary of State
September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1469, Bradford. Water corporations: rates.

Existing law requires the Public Utilities Commission, in establishing rates for water service, to consider separate charges for costs associated with customer service, facilities, variable operating costs, or other components of the water service provided to water users. Existing law requires the commission to consider, and authorizes the commission to authorize, a water corporation to establish programs, including rate designs, for achieving conservation of water and recovering the cost of these programs through the rates.

This bill would, upon application by a water corporation with more than 10,000 service connections, require the commission to consider, and authorize the commission to authorize, the implementation of a mechanism that separates the water corporation's revenues and its water sales, as provided.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the above provision would be part of the act and a violation of a commission action implementing this bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Digest Key

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

- (1) Adequate water supply reliability for all uses is essential to the future economic and environmental health of California.
- (2) California is in a severe drought, and in 2021 the Governor issued executive orders declaring a drought emergency.
- (3) Droughts in California are expected to become more frequent and more severe as a result of climate change.
- (4) The frequency of droughts highlights the continued importance of encouraging both water suppliers and their customers to practice water conservation as the most cost-effective means of ensuring that there are adequate water supplies for the environment and people in the state.
- (5) Because water suppliers have very significant fixed costs that do not fluctuate with changes in consumption patterns, they have a financial disincentive to encourage water conservation as reductions in water consumption directly translate into cost recovery challenges.
- (6) The Legislature has addressed this same financial challenge for electricity suppliers by requiring that changes in demand do not result in material overcollections or undercollections of revenue.

(b) It is the intent of the Legislature to ensure that water corporations are authorized to establish revenue adjustment mechanisms that provide for a full decoupling of sales and revenue in order to further incentivize water conservation efforts.

SEC. 2. Section 727.5 of the Public Utilities Code is amended to read:

727.5. (a) In establishing rates for water service, the commission shall consider, and may establish, separate charges for costs associated with customer service, facilities, variable operating costs, including fixed and variable costs associated with supplying the water, or other components of the water service provided to water users.

(b) The commission shall consider, and may authorize, a water corporation to assess a fee for future water service, or a reservation charge for future water service, for persons or entities occupying or owning property within the service territory of the water corporation.

(c) 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.

(d) (1) The commission shall consider, and may authorize, a water corporation to establish programs, including rate designs, for achieving conservation of water and recovering the cost of these programs through the rates.

(2) (A) Upon application by a water corporation with more than 10,000 service connections, the commission shall consider, and may authorize, the implementation of a mechanism that separates the water corporation's revenues and its water sales, commonly referred to as a "decoupling mechanism."

(B) An authorized decoupling mechanism shall be designed to ensure that the differences between actual and authorized water sales do not result in the overrecovery or underrecovery of the water corporation's authorized water sales revenue.

(C) An authorized decoupling mechanism shall not enable the water corporation to earn a revenue windfall by encouraging higher sales.

(D) The water corporation may only submit an application to the commission pursuant to this paragraph as part of its triennial general rate case application described in Section 455.2, unless the commission and the water corporation mutually agree for the application to be otherwise submitted.

(e) In establishing rates for recovery of the costs of used and useful water plant, the commission may use a capital structure and payback methodology that maintains the reliability of water service, minimizes the long-term cost to ratepayers, provides equity between present and future ratepayers, and affords the utility an opportunity to earn a reasonable return on its used and useful investment, attract capital for investment on reasonable terms, and ensure the financial integrity of the utility.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Exhibit B

UNFINISHED BUSINESS

Bill No: SB 1469
Author: Bradford (D) and Becker (D), et al.
Amended: 8/23/22
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 11-0, 4/18/22
AYES: Hueso, Becker, Bradford, Dodd, Eggman, Gonzalez, Hertzberg, McGuire,
Min, Rubio, Stern
NO VOTE RECORDED: Dahle, Borgeas, Grove

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 36-0, 5/23/22
AYES: Allen, Bates, Becker, Borgeas, Bradford, Cortese, Dahle, Dodd, Durazo,
Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Kamlager, Laird,
Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan,
Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Archuleta, Atkins, Caballero, Hertzberg

ASSEMBLY FLOOR: 75-0, 8/29/22 - See last page for vote

SUBJECT: Water corporations: rates

SOURCE: California American Water
California Water Service
Golden State Water Company
Liberty Utilities
San Jose Water Company

DIGEST: This bill requires the California Public Utilities Commission (CPUC) to consider whether to authorize, upon application by a water corporation, implementation of a utility rate mechanism that separates a water corporation's revenues and its water sales, commonly referred to as a "decoupling mechanism."

Assembly Amendments are minor and make explicit that the CPUC is required to consider a water corporation's application.

ANALYSIS:

Existing law:

- 1) Establishes and vests the CPUC with regulatory authority over water corporations. (Article XII of the California Constitution)
- 2) Requires all charges demanded or received by any public utility for any product or commodity furnished or any service rendered shall be just and reasonable. (Public Utilities Code §451)
- 3) Requires the CPUC in establishing rates for water service to consider separate charges for costs associated with customer service, facilities, variable operating costs, or other components of the water service provided to water users. Requires the CPUC to consider, and authorizes the CPUC to authorize, a water corporation to establish programs, including rate designs, for achieving conservation of water and recovering the cost of these programs through the rates. (Public Utilities Code §727.5)

This bill:

- 1) Requires the CPUC to consider whether to authorize, upon application by a water corporation, the implementation of a utility rate mechanism that separates the water corporation's revenues and its water sales, commonly referred to as a "decoupling mechanism."
- 2) Requires that an authorized mechanism to be designed to ensure that the differences between actual and authorized water sales do not result in the over-recovery or under-recovery of the water corporation's authorized water sales revenue.
- 3) Prohibits an authorized decoupling mechanism from enabling the water corporation to earn a revenue windfall by encouraging higher sales.

Background

CPUC-regulated water utilities. The CPUC has jurisdiction over water utility corporations, or investor-owned water utilities (IOUs), that provide water service to about 16 percent of California's residents. Approximately 95 percent of those residents are served by nine large water IOUs, known as Class A water utilities,

each serving more than 10,000 service connections. Combined, the nine largest utilities serve nearly 1.2 million customers. The majority of the CPUC-regulated water utilities (92) have service connections of 2,000 or less, and 87 of those have service connections of 500 or less.

CPUC water utility rates. As with other IOUs, the CPUC regulates the rates of water utilities (known as water corporations or water IOUs) under its jurisdiction to ensure rates are just and reasonable. Class A water utilities file a formal General Rate Case (GRC) application for the CPUC every three years that includes information to justify any proposed rate changes. Class A water utility rates have two main components: a service meter charge and a use charge. The service charge is a monthly (or bi-monthly) charge applied to all customers regardless of how much water is used. The service charge allows water utilities to recover up to 50 percent of the total fixed costs to operate and maintain water utility systems. The use charge is a charge for actual water used during the utility billing period, calculated by multiplying the usage by the quantity rate. Quantity rates are tiered to allow for different prices per unit of water depending on the amount used. Utilities utilize tiered rate structures to account for a lower tier for the basic amount of service needed (in this case water) and to help encourage conservation by pricing higher volumes of usage (in this case water) at a higher rate.

Water Revenue Adjustment Mechanism (WRAM). WRAMs are ratemaking mechanisms developed by the CPUC to incentivize Class A water IOUs to conserve water. WRAM balances are not included in service or use charges. Instead, WRAMs are recovered through a separate surcharge on customer water utility bills. The CPUC has instituted two types of WRAMS: full WRAM and Monterey-style WRAM. Full WRAM is a full sales and revenue decoupling mechanism whereby when actual sales are less than those adopted in the GRC sales forecasts, uncollected revenues may be recovered through a surcharge. When sales are more than the amount adopted in the GRC sales forecasts, over-collected revenues may result in a refund to customers. Monterey WRAM calculates sales differences due to increasing tiered, quantity rates, also referred to as “conservation rate design.” The sales differences come from comparing the revenue collected through the tiered rates, and those that would have been collected if there were no tiered rate structure, resulting in a revenue adjustment tracked through the Monterey WRAM.

CPUC pilot program of full WRAM (full decoupling mechanism). Full WRAMS were first implemented in 2008 and were developed as part of a pilot program to promote water conservation. The CPUC adopted several settlements between various Class A water utilities and the Public Advocates Office (previously known

as the Office of Ratepayer Advocates). These settlements included conservation rate designs and adoption of full WRAM as a means of promoting conservation by decoupling sales from revenues. Specifically, the settlement decisions adopted full WRAM (decoupling) mechanisms for California Water Service Company, California-American Water Company, Golden State Water Company, Liberty Utilities (Park Water) Corp., and Liberty Utilities (Apple Valley Ranchos Water) Corp. In contrast, San Jose Water Company and California American's Monterey district have Monterey-style WRAMS.

CPUC eliminates decoupling cites lack of conservation benefits and customer complaints. In CPUC proceeding R. 17-06-024 related to water affordability issues, the CPUC adopted a decision (D. 20-08-047) in Phase 1 that, among other provisions, eliminated the use of full WRAMs (decoupling) beginning in the next GRC cycle for each of the Class A water utilities and authorized the utilities to petition for a Monterey-style WRAM mechanism. The CPUC's decision noted that the 10-year pilot program of full WRAMs did not provide the anticipated benefits, especially in light of the issues it created. Specifically, the CPUC decision noted the full WRAMs did not result in more conservation of water than those without them. The decision noted that customers may see their bills increase when they conserve more under full WRAMs, full WRAMs resulted in major under-collections and large balances, and rarely credits to customers. The CPUC stated the Monterey-style WRAMs are authorized to provide for recovery of revenue, other mechanisms are available to address loss revenue (including Lost Revenue Memorandum Account as utilized by some of the utilities not using WRAMs) and that the elimination of the full WRAMs would better induce the water utilities to provide more accurate sales forecasts and accurate tiered rates (including those authorized by the Monterey-style WRAMs) also incentivize conservation.

Water IOUs petition California Supreme Court. After the CPUC decision to eliminate full decoupling (the full WRAMs), several of the water utilities petitioned the CPUC for rehearing. Prior to a rehearing decision, Golden State Water filed a petition with the Supreme Court of California for writ of review. The Court granted the CPUC's request to hold the court case in abeyance until a decision on rehearing was issued. In September 2021, the CPUC issued a decision denying rehearing. Subsequently, Golden State Water filed an amended petition with the California Supreme Court and a separate petition was filed by several of the water utilities. The Court has since combined the petitions, but has not issued a decision on the matter, as the cases remain pending.

CPUC regulatory flexibility. Many of the water utilities supporting this bill disagree with the CPUC decision to eliminate the full WRAM (decoupling). They argue that decoupling provides stability despite changes in water use and ensures that water suppliers only receive the funds they need to safely operate and upgrade the water system. Those opposed to this bill argue that the decision on whether to decouple water utility rates is best left to the CPUC. They note that the issues in determining just and reasonable rates for customers are complex and involve multiple variables, particularly as it relates to encouraging conservation. They oppose this bill as it would overturn a CPUC decision and could limit regulatory flexibility. They express concerns that the surcharges imposed by full WRAMs lack transparency, create customer complaints, and can saddle customers with costs for extended periods.

Related/Prior Legislation

SB 29 (Kehoe, Chapter 8, Statutes of 2001), among many provisions of the bill, decoupled electricity sales with revenue recovery for electrical corporations.

AB 2815 (Moore, Chapter 549, Statutes of 1992) authorized the CPUC, in establishing rates for water service, to establish separate charges for costs associated with customer service, facilities, and fixed and variable operating costs, as specified.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

Unknown with latest amendments.

SUPPORT: (Verified 8/29/22)

California American Water (co-source)
California Water Service (co-source)
Golden State Water Company (co-source)
Liberty Utilities (co-source)
San Jose Water Company (co-source)
Acterra: Action for a Healthy Planet
Alliance for Water Efficiency
Alliance to Save Energy
American Council for an Energy-efficient Economy
Bay Area Council
Bay Area Water Supply and Conservation Agency
California Community Economic Development Association
California Labor Federation

California Water Efficiency Partnership
California Water Utility Council Locals: 160, 160C, 160D, 205, 283, & 484
California-Nevada Conference of Operating Engineers
California-Nevada Section, American Water Works Association
Central Valley Business Federation
Chamber of Commerce: California Hispanic, Carson, Commerce Industrial
Council, Cupertino, East Los Angeles, Greater Bakersfield, Greater Stockton,
Hawthorne, Hermosa Beach, Los Angeles Area, Livermore Valley, Lomita,
Menlo Park, Montebello, Palos Verdes Peninsula, Redondo Beach, San Joaquin
County Hispanic, San Jose, San Mateo Area, and Visalia
City of Salinas
City of San Mateo
El Concilio
Friends of the River
ICON CDC
International Federation of Professional & Technical Engineers - Local 26
International Union of Operating Engineers Local 3
Natural Resources Defense Council
Regional Water Authority
Santa Clara Valley Water District
Silicon Valley Leadership Group
South Bay Association of Chambers of Commerce
Steve McShane, Salinas City Council Member
Sustainable Silicon Valley
Tuolumne River Trust
West Basin Water Association

OPPOSITION: (Verified 8/29/22)

Public Advocates Office
Public Water Now

ARGUMENTS IN SUPPORT: According to the author:

SB 1469 is seeking to memorialize a long-held practice of ratemaking that has been used to encourage conservation. Decoupling has been in place for energy utilities since the 1980s and the Legislature made the program permanent in 2001 as part of the policies and practices established after the 2000 energy crisis. Utility rate decoupling works – Los Angeles Department of Water and Power, the largest municipal utility in the United States, serving four million residents and businesses implemented decoupling for its water utility in

2016... SB 1469 reinstates rate decoupling to ensure that both costs savings and conservation benefits continue to be available for customers throughout California.

Many of the supporters of this bill note the need to ensure decoupling of water sales and revenues. In support of this bill, California American Water states: “a proven way to encourage water conservation is through the best-practice of decoupling... Decoupling allows water suppliers to encourage maximum water conservation while having assurance they will have sufficient revenues to safely and reliably deliver water.”

ARGUMENTS IN OPPOSITION: In opposition to this bill, the Public Advocates Office states that SB 1469 does not advance of the goals of promoting conservation or keeping water rates affordable. They note that the CPUC eliminated decoupling after 10 years of experience with a pilot project. The Public Advocates Office opposes decoupling as it “charges customers for any reduction in sales, even those unrelated to conservation, such as economic downturn...”, limits transparency on cumulative bill impacts, removes the incentive for water utilities to accurately forecast sales and costs, and unfairly transferring forecasting risks to customers.

Those opposed to this bill express concerns that the full WRAM punishes customers for conservation by billing them with additional surcharges unrelated to their water usage. Public Water Now states that “because WRAM calculates the difference between estimated and actual sales, and not the difference between actual sales and the sales necessary to achieve a reasonable shareholder return WRAM surcharges will often allow a water utility to exceed its authorized rate of return.”

ASSEMBLY FLOOR: 75-0, 8/29/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Davies, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Berman, Daly, Flora, Irwin, Voepel

Prepared by: Nidia Bautista / E., U. & C. / (916) 651-4107
8/30/22 12:59:06

**** **END** ****

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **GOLDEN STATE WATER COMPANY v. PUBLIC UTILITIES
COMMISSION**

Case Number: **S269099**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **Darlene.clark@cpuc.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
MOTION	Case Nos S269099 and S271493 (GSWC v PUC) Motion to Dismiss

Service Recipients:

Person Served	Email Address	Type	Date / Time
Patricia Waters Winston & Strawn LLP	pwaters@winston.com	e-Serve	10/21/2022 4:12:03 PM
Joni Templeton Prospera Law, LLP 228919	jtempleton@prosperalaw.com	e-Serve	10/21/2022 4:12:03 PM
John Ellis Sheppard, Mullin, Richter & Hampton LLP 269221	jellis@sheppardmullin.com	e-Serve	10/21/2022 4:12:03 PM
Joseph Karp Sheppard, Mullin, Richter & Hampton LLP 142851	jkarp@sheppardmullin.com	e-Serve	10/21/2022 4:12:03 PM
Rocio Ramirez Winston & Strawn LLP	RERamirez@winston.com	e-Serve	10/21/2022 4:12:03 PM
Dale Holzschuh California Public Utilities Commission 124673	dah@cpuc.ca.gov	e-Serve	10/21/2022 4:12:03 PM
Willis Hon Nossaman LLP 309436	whon@nossaman.com	e-Serve	10/21/2022 4:12:03 PM
Joseph Karp Winston & Strawn, LLP 142851	JKarp@winston.com	e-Serve	10/21/2022 4:12:03 PM
Arocles Aguilar California Public Utilities Commission	arocles.aguilar@cpuc.ca.gov	e-Serve	10/21/2022 4:12:03 PM
Darlene Clark California Public Utilities Commission 172812	Darlene.clark@cpuc.ca.gov	e-Serve	10/21/2022 4:12:03 PM
Rachel Gallegos	rachel.gallegos@cpuc.ca.gov	e-	10/21/2022 4:12:03

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

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

10/21/2022

Date

/s/Rachel Gallegos

Signature

Clark, Darlene (172812)

Last Name, First Name (PNum)

California Public Utilities Commission

Law Firm