

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.

PETITIONERS' MOTION TO TAKE JUDICIAL NOTICE

After Decisions Nos. 20-08-047 and 21-09-047

Of the Public Utilities Commission of the State of California

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Pursuant to Evidence Code section 459 and Rule of Court 8.252, Petitioners Golden State Water Company, California-American Water Company, California Water Service Company, Liberty Utilities (Park Water) Corp. and Liberty Utilities (Apple Valley Ranchos Water) Corp., and the California Water Association respectfully request that the Court take judicial notice of the following four documents in connection with its consideration of Petitioners' Reply Brief:

1. National Association of Water Companies Motion for Party Status (Motion for Party Status)

The National Association of Water Companies (NAWC) filed this document with the Public Utilities Commission (Commission) in Rulemaking (R.) 17-06-024 (*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*) on July 22, 2020, after the assigned Commissioner for R.17-06-024 issued her proposed decision for the first phase of the proceeding (LIRA I) that included the order that would revoke the authority for the Petitioner utilities to use two accounting mechanisms, the Water Revenue Adjustment Mechanism (WRAM) and the Modified Cost Balancing Account (MCBA) (Revocation Order). In its Motion for Party Status, NAWC attempted to become a party to the entire proceeding docketed as R.17-06-024, such that it would have been able file comments on that proposed decision for LIRA I.

NAWC's Motion for Party Status is subject to judicial notice under Evidence Code section 452, subdivision (c) and Evidence Code section 452, subdivision (g), because Evidence Code section 452, subdivision (c) permits the Court to take judicial notice of the records and files of a state

administrative board and its contents and existence “are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (See, e.g., *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750 [“Evidence Code section 452, subdivision (c) permits the [] court to take judicial notice of the records and files of a state administrative board.”].)

NAWC’s Motion for Party status is relevant to these review proceedings because it is evidence of NAWC’s efforts to participate in LIRA I and be heard on the Revocation Order and, accordingly, the issues of public importance raised by this case. A true and correct copy of NAWC’s Motion for Party Status is attached to this Motion as **Exhibit A**.

2. Comments of the National Association of Water Companies on the Proposed Decision of Commissioner Guzman Aceves (Comments on the PD)

NAWC filed this document with the Commission in R.17-06-024 on July 27, 2020. Through these Comments on the PD, NAWC tried to express its concerns regarding the Revocation Order. Those concerns included that the Commission’s failure to identify the WRAM/MCBA as within the scope of R.17-06-024 deprived interested parties from participating in the Commission’s consideration of the issue.

NAWC’s Comments on the PD are subject to judicial notice under Evidence Code section 452, subdivision (c) and Evidence Code section 452, subdivision (g), because Evidence Code section 452, subdivision (c) permits the Court to take judicial notice of the records and files of a state administrative board and its contents and existence “are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (See, e.g., *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750 [“Evidence Code

section 452, subdivision (c) permits the [] court to take judicial notice of the records and files of a state administrative board.”].)

NAWC’s Comments on the PD are relevant to these review proceedings because they evidence the harm that occurs when the Commission fails to identify the issues to be considered in the scoping memo for a proceeding and, accordingly, the issues of public importance raised by this case. A true and correct copy of NAWC’s Comments on the PD is attached to this Motion as **Exhibit B**.

3. E-Mail Ruling Granting Party Status to National Association of Water Companies (Ruling)

Administrative Law Judge (ALJ) Camille Watts-Zagha filed this document with the Commission in R.17-06-024 on August 27, 2020. In this Ruling, the ALJ granted party status to NAWC only with respect to the second phase of R.17-06-024, thereby preventing consideration of NAWC’s Comments on the PD in LIRA I.

The Ruling is subject to judicial notice under Evidence Code section 452, subdivision (c) , and Evidence Code section 452, subdivision (g), because Evidence Code section 452, subdivision (c) permits the Court to take judicial notice of the records and files of a state administrative board and its contents and existence “are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (See, e.g., *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750 [“Evidence Code section 452, subdivision (c) permits the [] court to take judicial notice of the records and files of a state administrative board.”].)

The Ruling is relevant to these review proceedings because it is further evidence of the harm that occurs when the Commission fails to identify the issues to be considered in the scoping memo for a proceeding

and, accordingly, the issues of public importance raised by this case. A true and correct copy of the Ruling is attached to this Motion as **Exhibit C**.

4. Motion of the National Association of Water Companies for Reconsideration of the August 27, 2020 Administrative Law Judge Ruling Determination on Party Status and Motion to Shorten Time for Responses (Motion for Reconsideration)

NAWC filed this document with the Commission in R.17-06-024 on September 17, 2020. In its Motion for Reconsideration, NAWC requested that the Commission reconsider the ALJ's Ruling that granted party status to NAWC only for phase II of R.17-06-024.

NAWC's Motion for Reconsideration is subject to judicial notice under Evidence Code section 452, subdivision (c) and Evidence Code section 452, subdivision (g), because Evidence Code section 452, subdivision (c) permits the Court to take judicial notice of the records and files of a state administrative board and its contents and existence "are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (See, e.g., *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750 ["Evidence Code section 452, subdivision (c) permits the [] court to take judicial notice of the records and files of a state administrative board."].)

NAWC's Motion for Reconsideration is relevant to these review proceedings because it is further evidence of the harm that occurs when the Commission fails to identify the issues to be considered in the scoping memo for a proceeding and, accordingly, the issues of public importance raised by this case. A true and correct copy of NAWC's Motion for Reconsideration is attached to this Motion as **Exhibit D**.

January 13, 2023

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing Motion to Take Judicial Notice contains 1128 words, according to the word processing program with which it was prepared.

January 13, 2023

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EXHIBIT A



**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)

NATIONAL ASSOCIATION OF WATER COMPANIES MOTION FOR PARTY STATUS

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

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

Rulemaking 17-06-024
(Filed June 29, 2017)

NATIONAL ASSOCIATION OF WATER COMPANIES MOTION FOR PARTY STATUS

Pursuant to Rule 1.4 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the National Association of Water Companies ("NAWC") respectfully moves for party status in Rulemaking 17-06-024.

I. NATIONAL ASSOCIATION OF WATER COMPANIES

NAWC represents regulated water and wastewater companies, as well as ones engaging in partnerships with municipal utilities. NAWC members provide 73 million Americans with safe and reliable water service every day and have an exceptional record of compliance with federal and state health and environmental regulations.

Founded in 1895 by a handful of small water companies, today NAWC has members located throughout the nation, ranging in size from large companies owning, operating or partnering with hundreds of utilities in multiple states to individual utilities serving a few hundred customers. Our members' businesses include ownership of state-regulated drinking water and wastewater utilities and many forms of public-private partnerships. Through NAWC, our members collaborate, share best practices and leverage their strengths to benefit the communities they serve.

II. NAWC'S INTEREST IN AND EXPECTED PARTICIPATION IN THIS PROCEEDING

NAWC's member companies share a deep understanding of the importance of uninterrupted delivery of quality water and wastewater services. Water plays an essential role in any thriving community and our nation's economy. Our water infrastructure systems are the backbone upon which communities survive and prosper. NAWC shares the Commission's interest in issues concerning affordability of clean, safe drinking water for low-income customers and disadvantaged communities.

Now more than ever, access to quality water and wastewater services is critical for the containment of COVID-19 and the preservation of public health and sanitation. Our member companies are working to combat the spread of COVID-19 by ensuring the communities they serve have unimpeded access to clean water in order to promote personal hygiene and overall public health. As the COVID-19 pandemic continues to evolve, NAWC is committed to the health of our nation's water systems by offering the information and resources we have at our disposal to communities in need. NAWC can draw upon the experience of member companies nationwide and provide insight as to industry best practices.

NAWC expects to file comments when given the opportunity and participate in workshops to the extent possible. NAWC's participation will not raise new issues in this proceeding, will not prolong or delay this proceeding, and will not adversely affect the interests of existing parties.

III. SERVICE

NAWC requests that the following individual be added to the service list as a party:

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IV. CONCLUSION

Based on the foregoing, NAWC respectfully requests that the Commission grant it party status and allow it to participate in this proceeding.

Respectfully submitted,

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July 22, 2020

EXHIBIT B



**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)

**COMMENTS OF THE NATIONAL ASSOCIATION OF WATER COMPANIES MOTION
ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**

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July 27, 2020

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

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

Rulemaking 17-06-024
(Filed June 29, 2017)

**COMMENTS OF THE NATIONAL ASSOCIATION OF WATER COMPANIES
ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**

I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC”),¹ the National Association of Water Companies (“NAWC”) respectfully submits these comments on the *Proposed Decision of Commissioner Guzman Aceves* (“Proposed Decision”).² NAWC’s membership includes regulated drinking water and wastewater utilities that collectively provide safe and reliable water services to more than 73 million Americans nationwide. Through NAWC, our members collaborate, share best practices and leverage their strengths to benefit the communities they serve.

¹ Assigned Administrative Judge Haga confirmed via email on July 6, 2020 that the deadline for opening comments is July 27, 2020 and the deadline for reply comments is August 3, 2020.

² NAWC filed a motion for party status on July 22, 2020. As of the date of this filing, no ruling has been issued on this motion.

NAWC shares the Commission's interest in issues concerning affordability of clean, safe drinking water for low-income customers and disadvantaged communities.³ NAWC and our members are accurately aware of how increasing rates impact our low-income customers, and we are committed to working with regulators and other key stakeholders to craft a holistic solution to this complex challenge. NAWC members are also committed to protecting the environment and to using our most precious resource – water – as wisely as possible. For water companies, sustainability is essential and NAWC members have a strong track record of helping communities improve their water conservation practices.

NAWC is concerned with the CPUC's proposal to eliminate the water revenue adjustment mechanism/modified cost balancing account ("WRAM/MCBA") for several reasons. First, the issue of elimination of the WRAM/MCBA was never identified as part of the scope of this proceeding, therefore preventing interested parties from participating in the CPUC's consideration of this issue. Second, eliminating the WRAM/MCBA will deprive the CPUC and the water utilities it regulates of a highly successful conservation tool that is considered an industry best practice. Third, the transition to less aggressive conservation rate designs will result in rate increases for low-income customers and efficient water users, while rewarding customers with higher water usage. The shift in costs to low-income customers will constitute an ongoing burden for those who are most vulnerable. NAWC recommends that the Commission

³ NAWC has demonstrated its commitment to affordability through its advocacy before Congress for a federal support program for water customers, similar to the current federal Low Income Home Energy Assistance Program (LIHEAP). The National Association of Regulatory Utility Commissioners (NARUC) Board of Directors also recently adopted a resolution in support of a LIHEAP-like program for water. <https://pubs.naruc.org/pub.cfm?id=B28DF0A6-155D-0A36-3159-E406229FC71A>

revise the Proposed Decision to allow the continued use of the decoupling WRAM/MCBA. To the extent the CPUC believes that it needs to further consider this issue, it should open a separate proceeding to allow all interested parties to participate.

II. SCOPE

In its Order Instituting Rulemaking for this proceeding, the CPUC indicated that it was beginning a review of the existing low-income customer assistance programs of the Class A water utilities in order to assess consistency and potential expansion to small CPUC-regulated water utilities.⁴ Additionally, the CPUC stated that it would consider potential revenue sources to assist with affordability, including revenue from bottled water, and that it would also work with the State Water Resources Control Board.⁵ The CPUC also stated that it would “examine standardizing water sales forecasting” in a subsequent phase.⁶

The Proposed Decision claims that by mentioning forecasting, interested entities should have known that the CPUC would consider eliminating the WRAM/MCBA.⁷ Elimination of the WRAM/MCBA does not standardize water sales forecasting, however. Therefore, nothing in this Order provided notice to potential parties that the CPUC might eliminate the WRAM/MCBA as part of this proceeding.

⁴ *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.

⁵ *Id.*

⁶ *Id.*, p. 8.

⁷ Proposed Decision, p. 52.

The initial scoping memo issued in this proceeding similarly omits any mention of the WRAM/MCBA.⁸ While the adopted forecast is one of the inputs to the WRAM calculation, the WRAM/MCBA itself is not a forecasting mechanism. Including the issue of the “guidelines or mechanisms” the Commission can “put in place to improve or standardize water sales forecasting for Class A water utilities”⁹ does not provide an indication that the Commission might consider elimination of the WRAM/MCBA.

The subsequently issued amended scoping memo is similarly silent on the WRAM/MCBA issue.¹⁰ The amended scoping memo added two new issues to the proceeding: (1) designing rates to provide a basic amount of water at a low quantity rate, and (2) sharing of low-income customer data by regulated investor-owned energy utilities with municipal water utilities.¹¹ Neither of these issues are related to the possible elimination of the WRAM/MCBA.

Under the CPUC’s rules, the purpose of the scoping memo is to determine the schedule and issues to be addressed.¹² The scoping memo is particularly important in providing transparency for parties who may appear before the CPUC less frequently and may not have the resources to participate in multiple proceedings or monitor every document issued by the CPUC. The CPUC’s failure to disclose in its scoping memos that it might eliminate the WRAM/MCBA deprived interested entities of the opportunity to participate in CPUC’s process.

⁸ *Scoping Memo and Ruling of the Assigned Commissioner*, January 9, 2018.

⁹ *Id.*, p. 3.

¹⁰ *Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge*, July 9, 2018.

¹¹ *Id.*, p. 3.

¹² CPUC Rule 7.3.

III. CONSERVATION

NAWC has long taken a leadership role in promoting constructive and effective regulatory practices for the water industry across the country. Decoupling conservation adjustments are viewed as a best practice by NAWC and the usage of these mechanisms has been expanding each year. Currently, water decoupling mechanisms have been adopted in Arizona, Connecticut,¹³ Maine, New York, Nevada, Illinois, Pennsylvania, and Rhode Island.

Acting as responsible stewards of scarce water resources will increase financial pressure on water service providers as fixed costs must still be recovered despite decreasing per capita sales volumes. Decoupling rates from sales volumes can help address both the need to more efficiently use water while keeping the utility financially sound. If we want utilities to aggressively promote conservation and efficiency, we must remove the disincentives to them for doing so.

Despite the claims made in the Proposed Decision,¹⁴ the Monterey-style WRAM does not provide the same benefits as the WRAM/MCBA because it does not decouple sales from revenues. Since it does not address fluctuations in usage, it does not provide the same incentives for water utilities to aggressively target high-usage customers through tiered rate designs.

The California water companies with WRAM/MCBAs achieved remarkable conservation results before, during, and after the most recent drought. If the decoupling WRAM/MCBA is eliminated, however, these companies will likely modify their current

¹³ Due its success as a conservation tool, expansion of decoupling to municipal water utilities is also being considered in Connecticut.

¹⁴ Proposed Decision, p. 59.

rate designs so that they are less dependent on revenue recovery from the highest tiers. This will lessen the incentive for these customers to conserve, leading to increased consumption. Water utilities and their customers are increasingly facing water supply issues related to drought, severe weather conditions and the effects of climate change. The Commission should not eliminate such an important conservation tool.

IV. LOW-INCOME CUSTOMERS

If the current WRAM/MCBA water utilities modify their rate designs to recover less revenue from the highest tiers, more cost recovery will shift to the lower tiers. As a result, many low-income customers will experience increased rates. The COVID-19 emergency has highlighted the need for access to safe and reliable water service. The CPUC should ensure that its actions do not create added hardship for people who have lost their jobs or are otherwise suffering economically due to COVID-19.

NAWC sympathizes with the concerns expressed in the PD regarding customer confusion and intergenerational inequity.¹⁵ Given the substantial harm that would ensue with the elimination of the WRAM/MCBA, particularly to low-income customers, the Commission should consider other options to address these issues, such as increased customer education and more timely recovery of WRAM balances.

¹⁵ Proposed Decision, pp. 48-49, 56.

V. CONCLUSION

For the reasons discussed above, NAWC respectfully requests that the Commission modify the Proposed Decision to allow for the continuation of the decoupling WRAM/MCBA. If the Commission wishes to consider issues associated with the WRAM/MCBA it should do so in a separate proceeding to allow all interested parties to participate.

Respectfully submitted,

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July 27, 2020

ATTACHMENT 1

FINDINGS OF FACT

~~13. The WRAM/MCBA mechanism is not the best means to minimize intergenerational transfers of costs when compared to an alternative available to the utilities and the Commission.~~

~~Tiered rate design causes customers to use less water at increased costs per unit consumed; thus, use of tiered rate design is a reasonable means to stabilizing revenues.~~

~~14. The Monterey Style WRAM combined with the ICBA is a method to account for lesser quantity sales and stabilize revenues.~~

~~Implementation of a Monterey Style WRAM means that forecasts of sales become very significant in establishing test year revenues.~~

CONCLUSIONS OF LAW

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

~~2. Consideration of changes to the WRAM/MCBA is and has always been **not** within the scope of this proceeding as part of our review of how to improve water sales forecasting.~~

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

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

EXHIBIT C



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ALJ/KWZ/kz1 8/27/2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Rulemaking 17-06-024

**E-MAIL RULING GRANTING PARTY STATUS TO
NATIONAL ASSOCIATION OF WATER COMPANIES**

Dated August 27, 2020, at San Francisco, California.

/s/ CAMILLE WATTS-ZAGHA

Camille Watts-Zagha
Administrative Law Judge

From: Watts-Zagha, Camille <Camille.WattsZagha@cpuc.ca.gov>

Sent: Thursday, August 27, 2020 7:55 AM

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Cc: ALJ_Support ID <alj_supportid@cpuc.ca.gov>; ALJ Docket Office <ALJ_Docket_Office@cpuc.ca.gov>; ALJ Process <alj_process@cpuc.ca.gov>
Subject: R.17-06-024: Email Ruling Granting Party Status to National Association of Water Companies

To the service list of Rulemaking (R.) 17-06-024:

This ruling grants party status to the National Association of Water Companies.

A second amended Scoping Memo was issued on June 2, 2020, initiating Phase II of this proceeding to consider the Commission's response to the COVID-19 pandemic.

On July 22, 2020, the National Association of Water Companies filed a Motion for Party Status describing how its expertise would enhance consideration of Phase II issues and highlighted its "interest in issues concerning the affordability of clean, safe drinking water for low-income customers and disadvantaged communities."

Ruling 1.4 of our Rules of Practice and Procedure states the requirements for becoming a party to a proceeding. Specifically, under Rule 1.4(b):

A person seeking party status by motion....shall:

- (1) Fully disclose the persons or entities in whose behalf the filing, appearance or motion is made, and the interest of such persons or entities in the proceeding; and
- (2) State the factual and legal contentions that the person intends to make and show that the contentions will be reasonably pertinent to the issues already presented.

I find that the National Association of Water Companies has complied with our rules with respect to Phase II of this proceeding and therefore grant them party status to participate in Phase II of this proceeding. This ruling does not extend the time for any filing in this proceeding.

The Commission's Docket Office shall formally file this ruling.

Camille Watts-Zagha
Administrative Law Judge
California Public Utilities Commission
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EXHIBIT D



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

FILED
09/17/20
04:59 PM

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)

**MOTION OF THE NATIONAL ASSOCIATION OF WATER COMPANIES FOR
RECONSIDERATION OF THE AUGUST 27, 2020 ADMINISTRATIVE LAW JUDGE
RULING DETERMINATION ON PARTY STATUS AND MOTION TO SHORTEN TIME
FOR RESPONSES**

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September 16, 2020

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

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

Rulemaking 17-06-024
(Filed June 29, 2017)

**MOTION OF THE NATIONAL ASSOCIATION OF WATER COMPANIES FOR
RECONSIDERATION OF THE AUGUST 27, 2020 ADMINISTRATIVE LAW JUDGE
RULING DETERMINATION ON PARTY STATUS AND MOTION TO SHORTEN TIME
FOR RESPONSES**

I. INTRODUCTION

Pursuant to Rule 11.1(a) of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC"), the National Association of Water Companies ("NAWC") moves for the Commission to reconsider the August 27, 2020 email ruling by the Administrative Law Judge Camille Watts-Zagha ("Ruling") on NAWC's Motion for Party Status filed in this proceeding, in which NAWC was granted party status for Phase II of this proceeding. NAWC respectfully requests that the Commission reconsider the Ruling and, in addition to the authorization granted for Phase II, authorize NAWC to participate as a party in Phase I of the proceeding such that (1) its comments on the Phase I Proposed Decision that ultimately became Decision ("D.") 20-08-047 would be accepted for filing and made part of the record in the proceeding and (2) it may potentially file an Application for Rehearing of D.20-08-047, and to participate as a party in any subsequent phases of the proceeding beyond

Phase II. Given the quickly approaching deadline of October 5, 2020 to file an Application for Rehearing of D.20-08-047, NAWC also respectfully requests that the Commission shorten the time for responses to this motion to **September 28, 2020** and expeditiously rule on this motion so that, if granted, NAWC would have sufficient time to potentially prepare a timely Application for Rehearing.

II. BACKGROUND

NAWC filed and served its Motion for Party Status in this proceeding on July 22, 2020. On July 27, 2020, NAWC filed and served its opening comments on the Phase I Proposed Decision issued in this proceeding (**Attachment A** to this motion). On August 3, 2020, NAWC filed its reply comments on the Phase I Proposed Decision (**Attachment B** to this motion). At its August 27, 2020 voting meeting, the Commission voted to adopt a revised draft of the Phase I Proposed Decision, which was later issued as D.20-08-047 on September 3, 2020.

On August 27, 2020, the Assigned Administrative Law Judge issued the Ruling addressing NAWC's Motion for Party Status, finding "that the National Association of Water Companies has complied with our rules with respect to Phase II of this proceeding and therefore grant them party status to participate in Phase II of this proceeding."¹ However, the Ruling did not expressly address whether NAWC was authorized to participate in Phase I of the proceeding or subsequent phases beyond Phase II.

¹ *E-Mail Ruling Granting Party Status to National Association of Water Companies* (August 27, 2020), p. 4.

On September 8, 2020, NAWC received an email from the Commission's Administrative Law Judge Division, Records Management Unit (**Attachment C** to this Motion) indicating that the Ruling authorized NAWC to participate in Phase II of the proceeding only and that its reply comments on the Phase I Proposed Decision should not have been accepted for filing and is therefore removed from the filing record. The email further explained that the "Comments and Reply Comments on the Phase I Proposed Decision are not accepted for filing and are not a part of the record in the Proceeding."²

III. DISCUSSION

The issues in both Phase I and II of this proceeding are of great importance to NAWC and its member companies nationally. When it filed its Motion for Party Status, it was always NAWC's intent to participate in all phases of this proceeding, as evidenced by its attempts to timely file and serve opening and reply comments on the Phase I Proposed Decision on the same date as other parties to the proceeding. Indeed, in both NAWC's opening and reply comments on the Phase I Proposed Decision, it drew from the experience of its member companies nationwide and provided insights as to industry best practices, just as it had explained it would do in the Motion for Party Status.³

In particular, NAWC focused on the Phase I Proposed Decision's elimination of the Water Revenue Adjustment Mechanism, highlighting the fact that such

² See **Attachment C**.

³ See *National Association of Water Companies Motion for Party Status* (July 22, 2020), p. 2 ("NAWC can draw upon the experience of member companies nationwide and provide insight as to industry best practices.").

decoupling conservation adjustments have been viewed as a water industry best practice and that the implementation of such progressive water conservation mechanisms has expanded nationally, particular in states where water is scarce and in other states where conservation is an important public policy.⁴ This issue is one of critical importance for NAWC and its member companies as other states often look towards California for leadership on innovative water conservation policies.

Moreover, to the extent that the Commission explores additional issues in subsequent phases, it is likely that they will be of similar interest to NAWC and its member companies. NAWC should not have to separately file for party status in subsequent phases of the proceeding, a burden that would not apply to other parties.

Accordingly, NAWC respectfully requests that the Commission reconsider the Ruling to instead expressly authorize it to participate in all phases of this proceeding. This would allow the valuable and unique national perspective provided by NAWC's opening and reply comments on the Phase I Proposed Decision to be incorporated into the record and to afford NAWC an opportunity to potentially file an Application for Rehearing of D.20-08-047 to alert the Commission of legal errors in that decision.

IV. CONCLUSION

For the reasons discussed above, NAWC respectfully requests that the Commission reconsider the ruling to instead grant NAWC express authorization to participate in all phases of this proceeding, such that its earlier opening and reply comments on the Phase I Proposed Decision be made part of the record in this

⁴ Attachment A, p. 5 (explaining that water revenue decoupling mechanisms are viewed as a water industry best practice that is being implemented in an increasing number of states); Attachment B, p. 3 (highlighting the national trend states adopting water revenue decoupling mechanisms)

proceeding and that it may potentially file an Application for Rehearing of D.20-08-047. Given the pending deadline for a timely Application for Rehearing, NAWC also respectfully requests that the Commission shorten the time for responses to this motion and to act expeditiously on it.

Respectfully submitted,

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September 17, 2020

Attachment A

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

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

Rulemaking 17-06-024
(Filed June 29, 2017)

**COMMENTS OF THE NATIONAL ASSOCIATION OF WATER COMPANIES MOTION
ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**

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July 27, 2020

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

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

Rulemaking 17-06-024
(Filed June 29, 2017)

**COMMENTS OF THE NATIONAL ASSOCIATION OF WATER COMPANIES
ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**

I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC"),¹ the National Association of Water Companies ("NAWC") respectfully submits these comments on the *Proposed Decision of Commissioner Guzman Aceves* ("Proposed Decision").² NAWC's membership includes regulated drinking water and wastewater utilities that collectively provide safe and reliable water services to more than 73 million Americans nationwide. Through NAWC, our members collaborate, share best practices and leverage their strengths to benefit the communities they serve.

¹ Assigned Administrative Judge Haga confirmed via email on July 6, 2020 that the deadline for opening comments is July 27, 2020 and the deadline for reply comments is August 3, 2020.

² NAWC filed a motion for party status on July 22, 2020. As of the date of this filing, no ruling has been issued on this motion.

NAWC shares the Commission's interest in issues concerning affordability of clean, safe drinking water for low-income customers and disadvantaged communities.³ NAWC and our members are accurately aware of how increasing rates impact our low-income customers, and we are committed to working with regulators and other key stakeholders to craft a holistic solution to this complex challenge. NAWC members are also committed to protecting the environment and to using our most precious resource – water – as wisely as possible. For water companies, sustainability is essential and NAWC members have a strong track record of helping communities improve their water conservation practices.

NAWC is concerned with the CPUC's proposal to eliminate the water revenue adjustment mechanism/modified cost balancing account ("WRAM/MCBA") for several reasons. First, the issue of elimination of the WRAM/MCBA was never identified as part of the scope of this proceeding, therefore preventing interested parties from participating in the CPUC's consideration of this issue. Second, eliminating the WRAM/MCBA will deprive the CPUC and the water utilities it regulates of a highly successful conservation tool that is considered an industry best practice. Third, the transition to less aggressive conservation rate designs will result in rate increases for low-income customers and efficient water users, while rewarding customers with higher water usage. The shift in costs to low-income customers will constitute an ongoing burden for those who are most vulnerable. NAWC recommends that the Commission

³ NAWC has demonstrated its commitment to affordability through its advocacy before Congress for a federal support program for water customers, similar to the current federal Low Income Home Energy Assistance Program (LIHEAP). The National Association of Regulatory Utility Commissioners (NARUC) Board of Directors also recently adopted a resolution in support of a LIHEAP-like program for water. <https://pubs.naruc.org/pub.cfm?id=B28DF0A6-155D-0A36-3159-E406229FC71A>

revise the Proposed Decision to allow the continued use of the decoupling WRAM/MCBA. To the extent the CPUC believes that it needs to further consider this issue, it should open a separate proceeding to allow all interested parties to participate.

II. SCOPE

In its Order Instituting Rulemaking for this proceeding, the CPUC indicated that it was beginning a review of the existing low-income customer assistance programs of the Class A water utilities in order to assess consistency and potential expansion to small CPUC-regulated water utilities.⁴ Additionally, the CPUC stated that it would consider potential revenue sources to assist with affordability, including revenue from bottled water, and that it would also work with the State Water Resources Control Board.⁵ The CPUC also stated that it would “examine standardizing water sales forecasting” in a subsequent phase.⁶

The Proposed Decision claims that by mentioning forecasting, interested entities should have known that the CPUC would consider eliminating the WRAM/MCBA.⁷ Elimination of the WRAM/MCBA does not standardize water sales forecasting, however. Therefore, nothing in this Order provided notice to potential parties that the CPUC might eliminate the WRAM/MCBA as part of this proceeding.

⁴ *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.

⁵ *Id.*

⁶ *Id.*, p. 8.

⁷ Proposed Decision, p. 52.

The initial scoping memo issued in this proceeding similarly omits any mention of the WRAM/MCBA.⁸ While the adopted forecast is one of the inputs to the WRAM calculation, the WRAM/MCBA itself is not a forecasting mechanism. Including the issue of the “guidelines or mechanisms” the Commission can “put in place to improve or standardize water sales forecasting for Class A water utilities”⁹ does not provide an indication that the Commission might consider elimination of the WRAM/MCBA.

The subsequently issued amended scoping memo is similarly silent on the WRAM/MCBA issue.¹⁰ The amended scoping memo added two new issues to the proceeding: (1) designing rates to provide a basic amount of water at a low quantity rate, and (2) sharing of low-income customer data by regulated investor-owned energy utilities with municipal water utilities.¹¹ Neither of these issues are related to the possible elimination of the WRAM/MCBA.

Under the CPUC’s rules, the purpose of the scoping memo is to determine the schedule and issues to be addressed.¹² The scoping memo is particularly important in providing transparency for parties who may appear before the CPUC less frequently and may not have the resources to participate in multiple proceedings or monitor every document issued by the CPUC. The CPUC’s failure to disclose in its scoping memos that it might eliminate the WRAM/MCBA deprived interested entities of the opportunity to participate in CPUC’s process.

⁸ *Scoping Memo and Ruling of the Assigned Commissioner*, January 9, 2018.

⁹ *Id.*, p. 3.

¹⁰ *Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge*, July 9, 2018.

¹¹ *Id.*, p. 3.

¹² CPUC Rule 7.3.

III. CONSERVATION

NAWC has long taken a leadership role in promoting constructive and effective regulatory practices for the water industry across the country. Decoupling conservation adjustments are viewed as a best practice by NAWC and the usage of these mechanisms has been expanding each year. Currently, water decoupling mechanisms have been adopted in Arizona, Connecticut,¹³ Maine, New York, Nevada, Illinois, Pennsylvania, and Rhode Island.

Acting as responsible stewards of scarce water resources will increase financial pressure on water service providers as fixed costs must still be recovered despite decreasing per capita sales volumes. Decoupling rates from sales volumes can help address both the need to more efficiently use water while keeping the utility financially sound. If we want utilities to aggressively promote conservation and efficiency, we must remove the disincentives to them for doing so.

Despite the claims made in the Proposed Decision,¹⁴ the Monterey-style WRAM does not provide the same benefits as the WRAM/MCBA because it does not decouple sales from revenues. Since it does not address fluctuations in usage, it does not provide the same incentives for water utilities to aggressively target high-usage customers through tiered rate designs.

The California water companies with WRAM/MCBAs achieved remarkable conservation results before, during, and after the most recent drought. If the decoupling WRAM/MCBA is eliminated, however, these companies will likely modify their current

¹³ Due its success as a conservation tool, expansion of decoupling to municipal water utilities is also being considered in Connecticut.

¹⁴ Proposed Decision, p. 59.

rate designs so that they are less dependent on revenue recovery from the highest tiers. This will lessen the incentive for these customers to conserve, leading to increased consumption. Water utilities and their customers are increasingly facing water supply issues related to drought, severe weather conditions and the effects of climate change. The Commission should not eliminate such an important conservation tool.

IV. LOW-INCOME CUSTOMERS

If the current WRAM/MCBA water utilities modify their rate designs to recover less revenue from the highest tiers, more cost recovery will shift to the lower tiers. As a result, many low-income customers will experience increased rates. The COVID-19 emergency has highlighted the need for access to safe and reliable water service. The CPUC should ensure that its actions do not create added hardship for people who have lost their jobs or are otherwise suffering economically due to COVID-19.

NAWC sympathizes with the concerns expressed in the PD regarding customer confusion and intergenerational inequity.¹⁵ Given the substantial harm that would ensue with the elimination of the WRAM/MCBA, particularly to low-income customers, the Commission should consider other options to address these issues, such as increased customer education and more timely recovery of WRAM balances.

¹⁵ Proposed Decision, pp. 48-49, 56.

V. CONCLUSION

For the reasons discussed above, NAWC respectfully requests that the Commission modify the Proposed Decision to allow for the continuation of the decoupling WRAM/MCBA. If the Commission wishes to consider issues associated with the WRAM/MCBA it should do so in a separate proceeding to allow all interested parties to participate.

Respectfully submitted,

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July 27, 2020

ATTACHMENT 1

FINDINGS OF FACT

~~13. The WRAM/MCBA mechanism is not the best means to minimize intergenerational transfers of costs when compared to an alternative available to the utilities and the Commission.~~

~~Tiered rate design causes customers to use less water at increased costs per unit consumed; thus, use of tiered rate design is a reasonable means to stabilizing revenues.~~

~~14. The Monterey Style WRAM combined with the ICBA is a method to account for lesser quantity sales and stabilize revenues.~~

~~Implementation of a Monterey Style WRAM means that forecasts of sales become very significant in establishing test year revenues.~~

CONCLUSIONS OF LAW

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

~~2. Consideration of changes to the WRAM/MCBA is and has always been **not** within the scope of this proceeding as part of our review of how to improve water sales forecasting.~~

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

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

Attachment B

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

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

Rulemaking 17-06-024
(Filed June 29, 2017)

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF WATER COMPANIES
ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**

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August 3, 2020

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

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

Rulemaking 17-06-024
(Filed June 29, 2017)

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF WATER COMPANIES
ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**

I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC"),¹ the National Association of Water Companies ("NAWC") respectfully submits these reply comments in response to the opening comments filed on the *Proposed Decision of Commissioner Guzman Aceves* ("Proposed Decision").² NAWC's membership includes regulated drinking water and wastewater utilities that collectively provide safe and reliable water services to more than 73 million Americans nationwide. Through NAWC, our members collaborate, share best practices and leverage their strengths to benefit the communities they serve.

¹ Assigned Administrative Law Judge Haga confirmed via email on July 6, 2020 that the deadline for opening comments is July 27, 2020 and the deadline for reply comments is August 3, 2020.

² NAWC filed a motion for party status on July 22, 2020. As of the date of this filing, no ruling has been issued on this motion.

II. DISCUSSION

NAWC writes to respond to the assertions in the Opening Comments of the Public Advocates Office (“Cal Advocates”) on the Proposed Decision that “the [Water Revenue Adjustment Mechanism/Modified Cost Balancing Account (“WRAM/MCBA”)] mechanism removes all financial consequences of inaccurate sales forecasting from the water utility and transfers this risk to its customers.”³ According to Cal Advocates, this purportedly “all but guarantees the WRAM-utilities their authorized revenue requirement, at the expense of customers, regardless of other impacts to utility revenue such as weather, general economic cycles, and normal business risks.”⁴ These statements are unsupported and severely downplay the risk that water utilities face in their day-to-day operations.⁵ Even more importantly, Cal Advocates’ argument fails to acknowledge the central role that these decoupling mechanisms serve towards facilitating and encouraging robust water conservation programs and policies.

The central purpose of decoupling measures is not to insulate water utilities from sales fluctuations and normal business risks as Cal Advocates alleges, but instead to eliminate the inherent financial disincentive for utilities against conservation naturally arising out of the basic structure of utility ratemaking. As NAWC outlined in its opening comments on the Proposed Decision,⁶ it is for this reason that decoupling conservation

³ *Comments of the Public Advocates Office on the Proposed Decision of Assigned Commissioner* (July 27, 2020), p. 6.

⁴ *Id.*, pp. 6-7.

⁵ With water scarcity issues, increasingly stringent environmental standards, declining customer usage, an immense aging infrastructure issue, and steep capital investment needs, water utilities face an extreme amount of risk in their daily operations regardless of decoupling measures.

⁶ *Comments of the National Association of Water Companies on the Proposed Decision of Commissioner Guzman Aceves* (July 27, 2020), p. 5.

adjustments are viewed nationally as a best practice for utility ratemaking. Indeed, for the electric and gas industry, many states (including California) have long implemented such decoupling mechanisms as a structural fix necessary to properly align the utility's financial incentives with the state conservation and goals. In adopting them, those states have found that decoupling mechanisms are justified because they make possible the accomplishments that we have seen in energy efficiency and conservation that we have seen in that industry over the past few decades.

More recently, decoupling mechanisms for water utilities have been adopted or are being considered in a growing number of states for the same exact purpose, including here in California through the WRAM/MCBA.⁷ It is quite notable that the states that have done so have primarily been located in the West where water is scarce and in other states where conservation is an important public policy. These states with water decoupling mechanisms, including California, are currently at the forefront of progressive water conservation policies that others are looking to as a model for developing their own policies. The Proposed Decision's elimination of the WRAM would be a major step backwards for California. For these reasons, NAWC respectfully implores the Commission to keep these important considerations in mind and to reject the misplaced assertions of Cal Advocates regarding the purpose that the WRAM is intended to serve as part of a conservation-focused ratemaking framework for water utilities.

⁷ *Id.* (identifying "Arizona, Connecticut, Maine, New York, Nevada, Illinois, Pennsylvania, and Rhode Island" as states where water decoupling mechanisms have been adopted).

III. CONCLUSION

For the reasons discussed above, NAWC respectfully reiterates its request that the Commission modify the Proposed Decision to allow for the continuation of the decoupling WRAM/MCBA. If the Commission wishes to consider issues associated with the WRAM/MCBA it should do so in a separate proceeding to allow all interested parties to participate.

Respectfully submitted,

By: /S/ April A. Ballou
April A. Ballou

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August 3, 2020

Attachment C

Dolqueist, Lori Anne

From: Binns, David <David.Binns@cpuc.ca.gov>
Sent: Tuesday, September 8, 2020 6:16 AM
To: Dolqueist, Lori Anne; april@nawc.com
Cc: ALJ Docket Office; Haga, Robert; Watts-Zagha, Camille; Williams, Kale
Subject: [External] Inadvertent Acceptance of Filing in Proceeding R1706024 (Water)

Good morning National Association of Water Companies (NAWC),

The Ruling for Party Status to NAWC allowed for their participation in Phase II ONLY. Therefore the submitted "Reply Comments of the National Association of Water Companies on the Proposed Decision of Commissioner Guzman Aceves" filed 08/03/20 04:49PM should not have been accepted and is therefore REMOVED from the filing record. The Comments and Reply Comments on the Phase I Proposed Decision are not accepted for filing and are not a part of the record in the Proceeding.

Apologies for the confusion.

Sincerely,

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Staff Services Manager I
ALJ Division, Records Mgmt Unit
California Public Utilities Commission
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David.Binns@cpuc.ca.gov



"Wear a Mask. Slow the Spread"

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CERTIFICATE OF SERVICE

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

On January 13, 2023, I served a true and correct electronic copy of the above Petitioners' Motion to Take Judicial Notice on all parties by electronically filing and serving the documents via True Filing and/or email:

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I provided the document listed above electronically on the TrueFiling Website for electronic service to the persons on the above service list and/or sent the document to the persons on the above service list by e-mail.

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

Executed on January 13, 2023 in San Francisco, California.

/s/ John D. Ellis

John D. Ellis

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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COMMISSION**

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

1/13/2023

Date

/s/John Ellis

Signature

Ellis, John (269221)

Last Name, First Name (PNum)

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