

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

**OPPOSITION TO PETITIONERS' SECOND  
MOTION FOR JUDICIAL NOTICE**

CHRISTINE HAMMOND, SBN 206768  
\*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](mailto:darlene.clark@cpuc.ca.gov)

February 13, 2024

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Respondent California Public Utilities Commission (Commission) respectfully submits this opposition to *Petitioners' Second Motion to Take Judicial Notice* (Motion). The proffered pleadings are inadmissible because they post-date the challenged decisions and are not part of the record before the Commission for this case. Moreover, the pleadings are not relevant to the determination of mootness and thus not subject to judicial notice.

For these reasons, the Commission opposes the Motion and respectfully requests that it be denied.

**1. Public Utilities Code section 1757 limits the Court's review to the record before the Commission.**

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 request that the Court take judicial notice of five documents filed in California-American Water Company's General Rate Case proceeding before the Commission, Application (A.) 22-07-001. All five of the pleadings were served or filed in that proceeding between April 13, 2023 and January 9, 2024, well after the decisions at issue in this case and the Petitioners' 2021 filing of their petitions for writ of review in this case. In fact, the pleadings even post-date the submission of this case, January 18, 2023.

Petitioners' request for notice of the pleadings fails because the pleadings are not a proper subject for judicial notice. Public Utilities Code section 1757 limits the Court's review to the record before the Commission. (Pub. Util. Code, § 1757 subd. (a) ["No new or additional evidence shall be introduced upon review by the court."]; Pub. Util. Code, § 1757.1 subd. (c) [same language].) The pleadings, the first of which is dated April 13, 2023, were not before the Commission in its consideration of D.20-08-047 and D.21-09-047, the latter of which was issued September 27, 2021. Thus, the Court should deny Petitioners' request for judicial notice.

Moreover, the proffered filings introduce controversies that are being considered in an entirely separate and later proceeding. It is improper to place those future issues and controversies before the Court when the Court's current jurisdiction is only over the challenged decisions. (Pub. Util. Code, § 1757 subd. (a); Pub. Util. Code, § 1757.1 subd. (c).)

**2. The pleadings are not relevant to the Court's determination of whether the case is moot.**

Petitioners' request for notice of the pleadings also fails because the fact that future litigants in Commission proceedings may cite the challenged decision is not relevant to the Court's determination of whether the case is moot.<sup>1</sup> Relevance is a precondition for the taking of judicial notice. (*People ex rel. Lockyer v. Shamrock Foods Company* (2000) 24 Cal.4th 415, 422 fn. 2; *Aquila, Inc. v. Superior Court* (2007) 148 Cal. App. 4th 556, 575 [the appropriateness of a judicial notice request depends on a showing of substantive relevance, as well as procedural admissibility].) Moreover, Evidence Code section 350 states "No evidence is admissible except relevant evidence."

Contrary to Petitioners' assertions, the pleadings are not relevant. (Petitioners' Motion, p. 5.) As the Commission stated in its motion to dismiss, "[t]here 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

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<sup>1</sup> Public Advocates Office is an independent, statutorily created office within the Commission that advocates for the lowest possible bills for customers of California's regulated utilities consistent with safety, reliability and the state's climate goals.

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. [Citation.]” (Respondent’s Motion to Dismiss, pp. 10-11.) The fact that future litigants may cite the challenged decision is not one of the exceptions the courts have recognized. Therefore, whether or not parties to a subsequent Commission proceeding have cited D.20-08-047 is not relevant to this review proceeding.

Further, the Commission has not relied on the proffered pleadings as no decision has been issued in A.22-07-001. When that decision is final, the Commission may decide to authorize California-American Water Company to reinstate its water revenue decoupling mechanism, despite other parties’ reliance on D.20-08-047. Even if certain parties relied on the findings in D.20-08-047, parties’ assertions are not binding or precedential. Significantly, the Commission has not relied on the holdings in question; and it is not bound by precedent to do so. (Respondent’s Motion to Dismiss, p. 12.) In A.22-07-001, the water utilities had the opportunity to present their evidence and the Commission will issue its decision based on the evidence presented. Accordingly, the proffered pleadings lack relevance and thus are not subject to judicial notice.

The Commission respectfully requests that the Court disregard Petitioners’ discussion of these irrelevant pleadings and deny their request for judicial notice.

February 13, 2024

Respectfully submitted,

CHRISTINE HAMMOND, SBN 206768  
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 *Opposition to Petitioners' Second Motion for Judicial Notice* is 796 words in length. In completing this word count, I relied on the "word count" function of the Microsoft Word program.

Dated: February 13, 2024      By: /s/ DARLENE M. CLARK  
Darlene M. Clark

STATE OF CALIFORNIA  
Supreme Court of California

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COMMISSION**

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John Ellis Sheppard Mullin Richter & Hampton 269221	jellis@sheppardmullin.com	e-Serve	2/13/2024 10:21:02 AM
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Joseph Karp Sheppard Mullin Richter & Hampton LLP 142851	jkarp@sheppardmullin.com	e-Serve	2/13/2024 10:21:02 AM
Rocio Ramirez Winston & Strawn LLP	RERamirez@winston.com	e-Serve	2/13/2024 10:21:02 AM
Lori Dolqueist Nossaman LLP	ldolqueist@nossaman.com	e-Serve	2/13/2024 10:21:02 AM
Sarah Leeper Court Added	sarah.leeper@amwaer.com	e-Serve	2/13/2024 10:21:02 AM
Willis Hon Nossaman LLP 309436	whon@nossaman.com	e-Serve	2/13/2024 10:21:02 AM
Joseph Karp Winston & Strawn, LLP	JKarp@winston.com	e-Serve	2/13/2024 10:21:02 AM

142851			
Darlene Clark California Public Utilities Commission 172812	Darlene.clark@cpuc.ca.gov	e-Serve	2/13/2024 10:21:02 AM
Christine Hammond 206768	christine.hammond@cpuc.ca.gov	e-Serve	2/13/2024 10:21:02 AM

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Signature

Clark, Darlene (172812 )

Last Name, First Name (PNum)

California Public Utilities Commission

Law Firm