

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

SUPPLEMENTAL BRIEF OF RESPONDENT

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DISCUSSION

Respondent files this Supplemental Brief in compliance with California Rule of Court Rule 8.520, subd. (d) to call to this Court's attention a recent decision of the Court of Appeal, Second Appellate District, Division Four, [*Securus Technologies, LLC v. Public Utilities Com. \(2023\) 88 Cal.App.5th 787*](#) (*Securus*). The Court of Appeal issued *Securus* on February 1, 2023; therefore, it was unavailable at the time the Respondent filed its Answer Brief on December 9, 2022.

Securus supports two arguments made by the Respondent in its merits briefing filed with this Court.

First, *Securus* affirms the Respondent's assertion that, if a party is entitled to a hearing, a party may waive that right by failing to assert it. (Respondent's Brief, pp. 48-50.) In *Securus*, the telephone provider had challenged a Commission Decision adopting interim rate relief for incarcerated persons calling services in California, in a rulemaking proceeding. The telephone provider, who had participated extensively in the proceeding, had not requested evidentiary hearings, but argued it did not give up that legal challenge because the Scoping Memo had stated hearings would be held in Phase II and it did not know it needed to request them in Phase I. (*Securus, supra*, 88 Cal.App.5th 787, 800.)

The Court of Appeal cites [*California Trucking Assn. v. Public Utilities Commission \(1977\) 19 Cal.3d 240, 245, fn. 7*](#), observing that this Court noted "there is nothing remarkable in the concept that one who is entitled to a hearing may waive his

right hereto by failing to assert it.” (*Securus, supra*, 88 Cal.App.5th 787, 800.) The Court of Appeal held that because the telephone provider could have requested a hearing in Phase I but did not do so, it forfeited its right to assert error based on lack of hearing. (*Id.* at 801.)

Second, *Securus* affirms Respondent’s assertion that the Respondent is not responsible for the Petitioner’s failure to put evidence in the record when Petitioner had an opportunity to do so, but did not. (Respondent’s Brief, p. 43, Respondent’s Answer, pp. 31-33.)

In *Securus*, the telephone provider thought it could not and/or need not submit cost data in Phase I because the Scoping Memo and Ruling indicated the Commission would not consider evidence until Phase II. The Commission did not prohibit parties from offering evidence and other parties submitted evidence upon which the Commission relied. *Securus* determined that the telephone provider did not show the Commission was responsible for the omission of evidence. (*Securus, supra*, 88 Cal.App.5th 787, 800, 803-804)

Securus is relevant because it supports arguments raised in Respondent’s merits briefs and was unavailable at the time of their filing.

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Dated: April 19, 2024

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

STATE OF CALIFORNIA
Supreme Court of California

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