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Supreme Court of California
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

GOLDEN STATE WATER COMPANY
Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Respondent.

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

Of the Public Utilities Commission of the State of California

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APPENDIX OF EXHIBITS VOLUME II TO AMENDED PETITION FOR WRIT OF REVIEW AND MEMORANDUM OF POINTS AND AUTHORITIES IN CASE S269099

[Petition for Writ of Review and Memorandum of Points and Authorities Filed Concurrently]

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EXHIBITS

The Appendix concurrently filed with this petition contains as exhibits true and correct excerpts (except Exs. B, C, E, F, K, T, and BB are included in their entirety) of the following:

Exhibit	Description	Pages
I	*Decision* 13-05-011 (May 9, 2013)	268-271
J	*Decision* 16-12-026 (December 9, 2016)	272-274
K	*Decision* 20-08-047 (Aug. 27, 2020)	275-387
L	*Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves* (July 27, 2020) (August 3, 2020)	388-390
M	*Comments of Golden State Water Company (U 133 W) on Proposed Decision and Order* (July 27, 2020) (July 27, 2020)	391-400

N	*Comments of the Public Advocates Office on Administrative Law Judge Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule* (July 10, 2019) (July 10, 2019)	401-406
O	*Reply Comments of California Water Association Responding to Administrative Law Judge's June 21, 2019 Ruling* (July 24, 2019)	407-411
P	*Comments of California Water Association Responding to Administrative Law Judge's September 4, 2019 Ruling* (September 16, 2019)	412-418
Q	*Comments of the Public Advocates Office on the Water Division's Staff Report and Response to Additional Questions* (September 16, 2019)	419-421
R	*Great Oaks Water Company's Comments to Proposed Phase I Decision* (August 3, 2020)	422-424

S *Joint Motion of California Water Association, California-American Water Company, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corp. and Liberty Utilities (Apply Valley Ranchos Water) Corp. for Oral Argument and Request to Shorten Time for Response* (August 20, 2020) 425-430

T Letter of *Catherine J.K. Sandoval, Associate Professor, Santa Clara University School of Law and Former Commissioner from Jan. 2011-Jan. 2017, with the subject line: "Re: Rulemaking 17-06-024, Legal and Factual Error in the Proposed Decision Undercuts Affordability"* (August 3, 2020) 431-437

U *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, and Affordability (July 7, 2017) ("OIR")	438-439
V	*Proposed Decision of Commissioner Martha Guzman Aceves* (July 3, 2020) ("PD")	440-442
W	*Revised Proposed Decision of Commissioner Martha Guzman Aceves (August 27, 2020)*	443-448
X	*Reply Comments of California Water Association Responding To Administrative Law Judge's September 4, 2019 Ruling* (September 23, 2019)	449-451
Y	*Reply Comments of Golden State Water Company (U 133 W) on Proposed Decision and Order (*August 3, 2020*)* *(*August 3, 2020)	452-458
Z	*Reply Comments of the Public Advocates Office on the Water Division's Staff Report and Response to Additional Questions* (September 23, 2019) (September 23, 2019)	459-463

AA. *Scoping Memo and Ruling of Assigned Commissioner* (January 9, 2018) ("Original Scoping Memo") 464-467

BB. *Second Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Directing Comments to Consider Potential Commission Response to Covid-19* (June 2, 2020) 468-475

CC *Application of Golden State Water Company for Rehearing of Decision 20-08-047* (October 5, 2020) 476-490

DD Reply Comments of the Public Advocates Office on the Proposed Decision of Assigned Commissioner (August 3, 2020) (August 3, 2020) 491-493

EE *D.21-09-047 Order Denying Rehearing of Decision 20-08-047, as Modified* (September 27, 2021) ("Rehearing Denial")....................... 494-528

Dated: October 27, 2021

Respectfully submitted,

WINSTON & STRAWN LLP

By: *_/s/ Joseph M. Karp_*
Joseph M. Karp
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EXHIBIT I

Decision 13-05-011 May 9, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of the Golden State Water Company (U 133 W) for an order authorizing it to increase rates for water service by $58,053,200 or 21.4% in 2013, by $8,926,200 or 2.7% in 2014; and by $10,819,600 or 3.2% in 2015.	Application 11-07-017 (Filed July 21, 2011)

(See Attachment 1 for Appearances)

DECISION ON THE 2011 GENERAL RATE CASE FOR GOLDEN STATE WATER COMPANY

applicants in each upcoming GRC proceeding to provide testimony that, at a minimum, addresses the following WRAM Options[96]:

Option 1: Should the Commission adopt a Monterey-style WRAM rather than the existing full WRAM?[97]

Option 2: Should the Commission adopt a mechanism that bands the level of recovery, or refund, of account balances based on the relative size of the account balance.[98]

Option 3: Should the Commission place WRAM/MCBA surcharges only on higher tiered volumes of usage, thereby benefiting customers who have usage only in Tier 1 or have reduced their usage in the higher tier levels?

Option 4: Should the Commission eliminate the WRAM mechanism?

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

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[96] D.12-04-048 authorizes the ALJ in this proceeding, among others, to require testimony on the WRAM Options as a part of the review of the WRAM and MCBA mechanisms. Pursuant to D.12-04-048, the WRAM Options were considered in this proceeding as part of the review of Golden State's conservation rate pilot programs. Golden State, DRA, and TURN submitted supplemental testimony on the WRAM Options.

[97] The Monterey-style WRAM is not a revenue decoupling mechanism as such, it is rather a revenue adjustment mechanism that allows the utility to true-up the revenue it actually recovers under its conservation rate design with the revenue it would have collected if it had an equivalent uniform rate design at actual sales levels.

[98] For example, an annual WRAM/MCBA under-collection/over-collection less than 5 percent of the last authorized revenue requirement would be amortized to provide 100 percent recovery/refund, balances between 5-10 percent would be amortized to provide only 90 percent recovery/refund, and balances over 10 percent would be amortized to provide only 80 percent recovery/refund.

developed and acknowledged that, under a worst case scenario in which no WAF payments materialized, ratepayers would pay all litigation costs.

72. The WRAMs/MCBAs established for Golden State are functioning as intended because the WRAMs/MCBAs have severed the relationship between sales and revenues and, as a result, have removed most disincentives for Golden State to implement conservation rates and conservation programs.

73. The cost savings resulting from conservation are being passed on to ratepayers because cost savings associated with purchased water, purchased power, and pump taxes (i.e. MCBA over-collections) are being properly returned to ratepayers; and increases in total costs associated with these items are passed through to ratepayers.

74. It is not possible at this time to determine how much of the reduction in water consumption is the result of conservation rates and conservation programs, and how much is due to other factors such as weather or economic conditions.

75. During the time that Golden State's conservation programs have been in effect, the consumption forecasting methodology set forth in the Revised Rate Case Plan adopted in D.07-05-062 has led to significant over-estimates of forecasted water consumption.

76. Large WRAM under-collections are the result of over-estimated sales forecasts but over-estimated sales forecasts result from underestimating reductions in consumption from factors such as weather, the economy, drought declarations, or conservation rates.

EXHIBIT J

Decision 16-12-026 December 1, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Addressing the Commission's Water Action Plan Objective of Setting Rates that Balance Investment, Conservation, and Affordability for Class A and Class B Water Utilities.	Rulemaking 11-11-008 (Filed November 10, 2011)

DECISION PROVIDING GUIDANCE ON WATER RATE STRUCTURE AND TIERED RATES

We conclude that, at this time, the WRAM mechanism should be maintained. There is a continuing need to provide an opportunity to collect the revenue requirement impacted by forecast uncertainty, the continued requirement for conservation, and potential for rationing or moratoria on new connections in some districts. These effects will render uncertainty in revenue collection and support the need for the WRAM mechanism to support sustainability and attract investment to California water IOUs during this drought period and beyond.

Concomitantly, we adopt steps to lessen resort to and impact of WRAMs by allowing for requests to institute a drought SRM and propose improvements to forecasting as discussed above. Poor consumption forecasts, with mismatches between forecasts and actual sales, is a primary driver of WRAM balances.

Since we order Tier 2 Advice letters for Class A and B water IOUs who apply to implement SRMs during the rate case cycle years in this drought period, and order proposals to adjust the forecast mechanisms in the next GRC, we decline to adjust the 10 percent cap on the WRAM at this time. The SRM should reduce WRAM balances, and adjustments to forecast mechanisms will further reduce those balances. Maintaining the 10 percent cap at this time is prudent but this cap can be negotiated in GRC or alternative application filings if a water utility wants to take advantage of the flexibility promoted by this decision. Neither do we adopt CWA's recommendation that the Commission authorizes amortization of all WRAM balances within 12 months in light of the potential rate impacts of a one-size-fits-all shortening of WRAM balance recovery and our focus on reducing WRAM balances by improving forecasts and rate design. Class A and B water IOUs may propose to change the 10 percent cap on the WRAM or the WRAM amortization period in their GRC as part of a rate design

EXHIBIT K

 Date of Issuance 9/3/2020

Decision 20-08-047 August 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

DECISION AND ORDER

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DECISION AND ORDER

Summary

This decision resolves Phase I issues in this proceeding. This decision evaluates the sales forecasting processes used by water utilities and concludes that, after years as a pilot program, the Water Revenue Adjustment Mechanisms have proven to be ineffective in achieving its primary goal of conservation. This decision therefore identifies other benefits the Water Revenue Adjustment Mechanisms provide that are better achieved through the Monterey-Style Water Revenue Adjustment Mechanisms and requires water utilities to propose Monterey-Style Water Revenue Adjustment Mechanisms in future general rate cases. This decision also:

(1) directs water utilities to provide analysis in their next general rate case to determine the appropriate Tier 1 rate breakpoint that aligns with the baseline amount of water for basic human needs for each ratemaking area;

(2) adopts consistent terminology for low-income rate assistance programs for all Commission-regulated water utilities and directs the creation of a low-income multi-family housing rate assistance pilot;

(3) authorizes a pilot program that provides a discount to water users in low-income multi-family dwellings that do not pay their water bill directly through the utility; and

(4) directs standardized reporting requirements to be followed by water utilities and provides direction with respect to specific information required to streamline consideration of consolidation requests.

This proceeding will remain open upon issuance of this decision to consider Phase II issues.

1. Background

1.1 Policy Background

In December 2005, the Commission adopted a Water Action Plan (Plan) setting forth its policy objectives for the regulation of investor-owned water utilities and highlighting the actions that the Commission anticipated or would consider taking in order to implement these objectives. The primary goal was two-fold: apply regulatory best practices from the energy utilities to the water utilities and to place water conservation at the top of the loading order as the best, lowest-cost supply.

Among the energy industry's best practices to be incorporated into the water industry was to assist low-income ratepayers struggling with payments for basic monthly water service. Similar to the Commission's practices in the telecommunications and energy industries, the Plan provides for the Commission to develop options to increase affordability of water service for these customers as well as provide specific emphasis on water conservation programs for low-income water customers.

In 2010, the Commission updated the Plan (2010 Update) in response to the severe drought conditions within the state. Among the action items added in the 2010 Update was to develop standardized tariff discounts and eligibility criteria for Class A water utilities' low-income rate assistance program.

Currently, there are nine Class A water utilities under the Commission's jurisdiction. They are: Liberty Utilities (Apple Valley Ranchos Water) Corp., California Water Service Company, California-American Water Company, Golden State Water Company, Great Oaks Water Company, Liberty Utilities

(Park Water) Corp., San Gabriel Valley Water Company, San Jose Water Company (SJWC), and Suburban Water Systems.[1]

1.2. Factual and Procedural Background

On June 29, 2017, the Commission opened this Order Instituting Rulemaking (OIR) to evaluate the Commission's objective of achieving consistency between Class A water utilities' low-income rate assistance programs, evaluate affordability, and providing rate assistance to all low-income customers of investor-owned water utilities.

Currently, each Class A water utility has an individualized low-income rate assistance program which was established on a case-by-case basis, as part of the utility's general rate case (GRC). There is no standardization among these programs.[2] Each program differs in its name, availability of monthly discounts, and recovery of costs. Therefore, one objective we set in this proceeding was to explore the feasibility of achieving consistency among low-income rate assistance program for of all the Class A water utilities and to examine whether allowing for greater pooling within utilities and across utilities could allow a more comprehensive low-income rate assistance program.[3]

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[1] Liberty Utilities Company acquired Class A water utilities Apple Valley Ranchos Water Company and Park Water Company at the end of 2015 (Decision (D.)15-12-029) and continues to operate them as distinctly separate Class A water utilities.

[2] *See,* Appendix A of Order Instituting Rulemaking (OIR) adopted June 29, 2017 (Rulemaking (R.) 17-06-024).

[3] We noted when we began this review that there were no rate-assistance programs for low-income ratepayers of most Class B, C, and D utilities. These small water utilities serve a total of about 50,000 customers, with many of these utilities serving very few customers. While estimating the number of low-income customers served is difficult in the aggregate for Class B,

Footnote continued on next page.

The Commission specifically sought input from water utilities regarding: (1) establishing a uniform low-income rate assistance program name for investor-owned utilities; (2) effectiveness of current programs; (3) the design of the monthly discount to low-income customers; and (4) recovery of program costs, as well as other issues regarding implementation, consolidation of systems, and administration for smaller water utilities in addition to the jurisdiction issues.[4]

On July 27, 2017, the assigned Administrative Law Judge (ALJ) noticed the first of five workshops to be held jointly with the State Water Resources Control Board (Board) on access and affordability of safe, clean, and reliable drinking water. These joint workshops were designed for the Board and the Commission to receive public input on how the current efforts could be strengthened and made more successful related to water utilities' low-income assistance programs, affordability, and consolidation efforts as a means of providing safe drinking

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C, and D water utilities, we hope those utilities will use the best practices identified by participants in this proceeding to best serve low-income customers of those Class B, C, and D utilities.

[4] *See,* Cal. Pub. Util. Code § 241 ("'Water corporation' includes every corporation or person owning, controlling, operating, or managing any water system for compensation within this State."), Cal. Pub. Util. Code § 261(a) ("'Public utility' includes every … water corporation … where the service is performed for, or the commodity is delivered to, the public or any portion thereof."), *Indep. Energy Producers Ass'n, Inc. v. State Bd. of Equalization*, 125 Cal. App. 4th 425, 442 (Cal. Ct. App. 2004) (*citing Allen v. R.R. Comm'n*, 179 Cal. 68, 85, 89, 175 P. 466 (Cal. 1918); *Associated Pipe Line Co. v. R.R. Comm'n* 176 Cal. 518, 523 (1917); *Frost v. R.R. Comm'n*, 197 Cal. 230, 236, 240 P. 26 (1925), *rev'd on other grounds*, 271 U.S. 583 (1926)) (there must be "a dedication to public use to transform [a] private business[] into a public utility.").

water. The first two workshops were held on August 17, 2017, and November 13, 2017.

A Staff Report summarizes the input received during the two initial workshops[5] and concluded that, as part of the effort to ensure the long-term sustainability of drinking water in California, consolidation has been and will continue to be an important tool to address the many issues struggling water systems face. That Staff Report also finds that to provide safe, reliable, and affordable drinking water for all of California, many tools will be needed, including consolidation and a stable funding source such as the Safe and Affordable Drinking Water Fund.[6]

Comments to the OIR were filed on August 16 and 21, 2017,[7] and reply comments on September 7, 2017.[8] On September 11, 2017, a prehearing

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[5] The Staff Report summarizing inputs from the two initial workshops was attached as Appendix B to the Scoping Memo issued on January 9, 2018, in this proceeding.

[6] *See,* Stats. 2019, ch. 120 (An act to add Section 53082.6 to the Government Code, to amend Sections 39719, 100827, 116275, 116385, 116530, 116540, and 116686 of, and to add Chapter 4.6 (commencing with Section 116765) to Part 12 of Division 104 of, the Health and Safety Code, and to add Chapter 7 (commencing with Section 8390) to Division 4.1 of the Public Utilities Code, relating to drinking water, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.).

[7] Opening Comments on the OIR were filed by California-American Water Company, California Water Association, Center for Accessible Technology, Consumer Federation of California Foundation, Golden State Water Company, Great Oaks Water Company, International Bottled Water Association and California Bottled Water Association, The Public Advocates Office of the Public Utilities Commission, San Gabriel Valley Water Company, and Southern California Edison Company.

[8] Reply Comments on the OIR were filed by California Water Association and Great Oaks Water Company.

conference (PHC) was held to determine parties, discuss the scope, the schedule, and other procedural matters. The assigned Commissioner issued the Scoping Memo and Ruling on January 9, 2018, and an Amended Scoping Memo and Ruling on July 9, 2018, to include two additional issues (Scoping Memo and Amended Scoping Memo, respectively). The Amended Scoping Memo also set the initial statutory deadline for this proceeding of January 8, 2020.

Comments on issues identified in the Scoping Memo and on the Staff Report on the two initial joint workshops were due February 23, 2018. Comments were filed by California-American Water Company, California Water Association, Center for Accessible Technology, Consumer Federation of California Foundation, Great Oaks Water Company, the Joint Advocates (Leadership Counsel for Justice and Accountability, Community Water Center, and the Pacific Institute for Studies in Development, Environment and Security),[9] The Public Advocates Office of the Public Utilities Commission (the Public Advocates), and San Gabriel Valley Water Company.

California Water Association, the Public Advocates, Great Oaks Water Company, the Joint Advocates (The Environmental Justice Coalition for Water, the Pacific Institute for Studies in Development, Environment and Security, National Resources Defense Council, Leadership Counsel for Justice and Accountability, Center for Accessible Technology, and Community Water Center), and Southern California Edison Company (SCE) also filed comments on

[9] Throughout this proceeding the Joint Advocates submitted comments in various combinations of parties; the specific signatories to each filing are identified herein with each comment.

the two additional issues included in the Amended Scoping Memo. Reply comments to the Amended Scoping Memo were filed by the California Water Association.

On December 18 and 19, 2018, the assigned ALJ issued rulings to provide notice of a joint workshop with the Board on January 14, 2019, to (a) receive information and assess issues pertaining to water sales forecasting, rising drought risks, and water conservation and impacts to water costs for customers, especially low-income customers; (b) determine how an improved, reliable water forecasting can enhance affordable pricing for low-income customers; and (c) receive public input on how to strengthen water forecasting and make affordability more successful.

On the same date as the workshop, January 14, 2019, a status conference was held to discuss the status of the proceeding, potential revisions to the proceeding scope, and the timeline for concluding the proceeding. On January 22, 2019, California Water Association and Eastern Municipal Water District submitted comments on the topics enumerated in the ruling setting the status conference.

Following the January 14, 2019, joint workshop, the Commission's Water Division staff prepared a Staff Report resulting from that workshop. On March 20, 2019, the assigned ALJ issued a ruling inviting comments on that Staff Report and noticed three additional workshops to be held in 2019. That Staff Report summarized the January 14, 2019, workshop presentations and concludes that as drought conditions are becoming the norm, water utility management of the drought impacts is critical. This third workshop highlighted the unique risks

to small water systems and noted the successes larger water utilities had managing drought impacts in their service areas. That Staff Report finds that (a) additional collaboration will be needed to improve sales forecasting in a way that accounts for the reality of decreasing water supplies and use in California, and does not place all the financial risk on the customers; and (b) continuing communication between the Commission and the Board will be necessary to provide safe, reliable, and affordable drinking water for all of California. The California Water Association filed comments on April 5, 2019, in response to that Staff Report.

On May 2, 2019, a fourth joint workshop was held focused on rate design and basic low-income water rates. Thereafter, the Commission's Water Division staff prepared another Staff Report resulting from that workshop on water rate design for a basic amount of water at a low quantity rate. On June 21, 2019, the assigned ALJ issued a ruling modifying the procedural schedule and inviting comments on this latest Staff Report. This Staff Report noted that the workshop had identified a number of challenges in determining a basic quantity due to varying income and household size, and master-metered properties. Parties at the workshop agreed that basic quantities are an important factor for improving water affordability for low-income customers. Though disagreeing on rate design for low-income customers, parties did provide many rate design ideas and issues for our consideration. Parties also agreed any low-income program for multi-family properties should be designed to ensure eligible customers directly receive the benefit, but there was no agreement on how that could be achieved. Participants agreed that there was a tension between conservation

pricing and affordability and offered different solutions to balance those considerations.

Comments were filed on July 10, 2019, by the California Water Association, the Center for Accessible Technology and Pacific Institute for Studies in Development, Environment, and Security (Joint Comments), the Public Advocates Office of the Public Utilities Commission, and Southern California Edison Company. Reply comments were filed on July 24, 2019, by the California Water Association, the Leadership Counsel for Justice and Accountability, Community Water Center, and Pacific Institute for Studies in Development, Environment, and Security (Joint Reply Comments), and the Public Advocates Office of the Public Utilities Commission.

On August 2, 2019, a fifth joint workshop was held focused on potential changes to enhance water affordability. This workshop consisted of three panels, the first focused on Low Income Rate Assistance (LIRA), the second addressed drought forecasting mechanisms, and the third discussed consolidation of small water systems. Another staff report was prepared by the staff of the Water Division following this fifth workshop. On September 4, 2019, the assigned ALJ issued a ruling inviting comments on the latest staff report as well as the Public Review Draft, Achieving the Human Right to Water in California, an Assessment of the State's Community Water Systems, issued in August 2019, by the Office of Environmental Health Hazards Assessment, California Environment Protection Agency.

Comments were filed on September 16, 2019, by California Water Association, Center for Accessible Technology, Public Advocates Office of the

Public Utilities Commission, and Southern California Edison Company. Reply comments were filed on September 23, 2019, by California Water Association and Public Advocates Office of the Public Utilities Commission.

On October 11, 2019, Rulemaking (R.) 17-06-024 was reassigned to ALJ Robert W. Haga. D.19-12-062 extended the statutory deadline in this proceeding from January 8, 2020, to July 8, 2020. On May 26, 2020, ALJ Camille Watts-Zagha was co-assigned to this proceeding.

On June 2, 2020, the assigned Commissioner and ALJ issued a Second Amended Scoping Memo and Ruling (Second Amended Scoping Memo) directing comments to consider potential Commission response to COVID-19. This Second Amended Scoping Memo added and initiated Phase II in this proceeding as we were already addressing many of the subjects impacted by the COVID-19 pandemic as part of this Rulemaking. The Second Amended Scoping Memo extends the statutory deadline for this proceeding to December 2, 2021.

2. Issues Before the Commission

The Commission launched this rulemaking to (1) better understand the differences between Class A water utilities' low-income rate programs; (2) evaluate whether consistency between the Class A water utilities' low-income rate programs is feasible; (3) if so, how such consistency can be attained; (4) assess whether other water companies meet the definition of a public utility under the Commission's jurisdiction; and (5) examine issues concerning affordability of clean and safe drinking water for low-income and disadvantaged communities, including greater pooling and consolidation.

As part of this rulemaking the Commission sought to continue its efforts consistent with Cal. Water Code Section 106.3 (Stats. 2012, ch. 524) and the human right to water for all Californians to ensure that low-income customers and disadvantaged communities have safe, clean, affordable, and accessible water adequate for human consumption, cooking and sanitary purposes.

After reviewing comments filed in response to the OIR as well as input from the first two joint workshops, PHC statements, and discussion at the prehearing conference, the January 9, 2018, Scoping Memo provided greater focus on the issues to be considered. Specifically, the Scoping Memo described the issues to be addressed in the proceeding included an examination of low-income rate assistance programs for Class A and B water utilities to determine whether consistency among low-income rate assistance programs for all low-income water ratepayers can be established. Further, an examination of regionalization and consolidation (including voluntary and virtual) of at-risk water systems by regulated water utilities, in addition to forecasting and affordability issues. The Scoping Memo also called for consideration of whether other water companies qualify as public utilities under the Commission's jurisdiction for purposes of assessing a public purpose surcharge. The Scoping Memo sought input from parties and respondent Class A and B water utilities on the following issues in the first phase of the proceeding:

1. Consolidation of at-risk water systems by regulated water utilities:
    a. How could the Commission work with the SWRCB and Class A and B water utilities to identify opportunities for consolidating small non-regulated systems within or

adjacent to their service territories that are not able to provide safe, reliable, and affordable drinking water? Should the Commission address consolidation outside of each utility's GRC?

b. In what ways can the Commission assist Class A and B utilities that provide unregulated affiliate and franchise services to serve as administrators for small water systems that need operations & maintenance support as proscribed by Senate Bill (SB) 552 (2016)?

2. Forecasting Water Sales:

a. How should the Commission address forecasts of sales in a manner that avoids regressive rates that adversely impact particularly low-income or moderate-income customers?

b. In D.16-12-026, adopted in R.11-11-008, the Commission addressed the importance of forecasting sales and therefore revenues. The Commission, in D.16-12-026, directed Class A and B water utilities to propose improved forecast methodologies in their GRC application[s]. However, given the significant length of time between Class A water utility GRC filings, and the potential for different forecasting methodologies proposals in individual GRCs, the Commission will examine how to improve water sales forecasting as part of this phase of the proceeding. What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?

3. What regulatory changes should the Commission consider to lower rates and improve access to safe quality drinking water for disadvantaged communities?

4. What if any regulatory changes should the Commission consider that would ensure and/or improve the health and safety of regulated water systems?

In addition, the Scoping Memo set forth the following issues would be addressed in 2019 workshops and additional comments from parties:

1. Program Name;
2. Effectiveness of LIRA Programs;
3. Monthly Discounts;
4. Program Cost Recovery;
5. Commission Jurisdiction Over Other Water Companies; and
6. Implementation of Any Changes to Existing LIRA Programs.

After the Scoping Memo was issued, Governor Brown signed Assembly Bill (AB) 1668 and Senate Bill (SB) 606 in 2018, codifying various water management planning criteria.[10] Specifically, Water Code Section 10609.4(a) established a 55 gallons per day per capita standard for indoor residential water use until January 1, 2025.[11] In addition, questions had been raised about municipal water company access to data needed to ensure discounts reach customers who need them. Therefore, the July 9, 2018, Amended Scoping Memo

[10] Stats. 2018, Ch. 14 (SB 606 requires the State Water Resources and Control Board (Board) and Department of Water Resources to adopt water efficiency regulations, outlines requirements for urban water suppliers including urban drought risk assessments, and implements penalties for violations.) Stats. 2018, Ch. 15. (AB 1668 codified the Governor's May 2016 Making Water Conservation a California Way of Life Executive Order B-37-16.)

[11] Cal. Water Code § 10609.4(a) (after 2025 the standard is reduced to 52.5 gallons per day per capita until 2030 when it is further reduced to 50 gallons per day per capita).

and Ruling added the following two issues for would be the focus of the 2018 portion of this proceeding:

1. How best to consider potential changes in rate design such that there is a basic amount of water that customers receive at a low quantity rate; and
2. Whether the … Commission should adopt criteria to allow for sharing of low-income customer data by regulated investor-owned energy utilities with municipal water utilities.

The Second Amended Scoping Memo, issued on June 20, 2020, added and initiated Phase II in this proceeding to consider potential Commission response to the COVID-19 pandemic. However, this decision will not be addressing and resolving those Phase II issues.

3. Coordination of Issues Between Statewide Water Legislation and Commission-Regulated Water Utilities

The resolution of three of the scoped issues in particular will be guided by adopted or pending legislation, or regulatory processes of other California regulatory agencies.

State policy through AB 685 (Stats. 2012, Ch. 524) aims to ensure universal access to water. In furtherance of that goal, AB 401, the LIRA Act (Stats. 2018, Ch. 662) requires the Board to develop a plan for funding and implementation of a statewide low-income water rate assistance program and report to the legislature on the feasibility, financial stability, and desired structure of the program, including and recommendations for legislative action that may need to be taken. On February 25, 2020, the Board released its final recommendations to

implement a statewide low-income water rate assistance program.[12] The Board recommends the creation of a statewide water rate assistance program funded through taxes on personal income, business income, and bottled water, as most systems are not able to fund low-income assistance programs. For qualifying customers, the program recommended by the Board will support bill discounts, crisis assistance, and a tax credit for renters who pay for their water indirectly through rent. These bill discounts are modeled on the low-income assistance program for customers of Commission-regulated energy utilities, and the crisis assistance is modeled on the federal energy crisis program known as Low-Income Heating and Assistance Program (LIHEAP). The Board estimates the first-year cost for the Board recommended program, including administrative costs, at $606 million.

In addition, in 2019, the Legislature adopted SB 200 (States. 2019, Ch. 120) which provides up to $130 million annually for the next 10 years to provide safe drinking water to disadvantaged communities that currently do not have access to safe drinking water. The Board will administer the program and will prioritize solutions for those most impacted by unsafe and unaffordable drinking water.

As discussed above, conservation legislation was also adopted in 2018, codifying the Governor's May 2016 Making Water Conservation a California

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[12] *See,* AB 401 Final Report: Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program, available at https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_report.pdf

Way of Life Executive Order.[13] In response, the Department of Water Resources (DWR) and the State Water Board developed new standards for: indoor residential water use; outdoor residential water use; commercial, industrial, and institutional (CII) water use for landscape irrigation with dedicated meters; water loss; and urban water suppliers annual water budgets. In addition, water suppliers will need to report on the implementation of new performance measures for CII water use.

The conservation legislation also made important changes to existing urban and agricultural water management planning, and enhanced drought preparedness and water shortage contingency planning for both urban water suppliers, as well as small water systems and rural communities.

DWR is responsible for numerous studies and investigations over the next three years, the development of standards, guidelines and methodologies, performance measures, web-based tools and calculators, data and data platforms, reports and recommendations to the State Water Board for adoption of new regulations.

All of these standards and tools are intended to help water suppliers to forecast their supplies and demands with greater accuracy, which will then benefit revenue forecasts.

4. Party Comments

Initial comments responding to the rulemaking and responding to the Scoping Memo and Amended Scoping Memo illuminated the benefits of

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[13] AB 1668 and SB 606.

adopting a consistent terminology for low-income rate assistance programs across water utilities.

Those comments also identified the Water Revenue Adjustment Mechanisms (WRAMs) as one way we could further adapt our policies to changing conditions while still allowing utilities the ability to earn a reasonable rate of return and keep rates just and reasonable.

In addition, parties highlighted the reality that drought is the new normal in California and that forecasts need to be more accurate so that WRAMs can be smaller, and that the Monterey-Style WRAM would provide better incentives for parties to more accurately forecast sales while still providing the utility the ability to earn a reasonable rate of return. Accordingly, we sought specific input on whether the Commission should allow all utilities to use Monterey-Style WRAMs with Incremental Cost Balancing Account (ICBA), and whether such a transition should occur in the context of the utilities' next GRC.

4.1. 2017 and 2018 Comments

The 2017 and 2018 comments are summarized below.

California-American Water Company set forth two considerations it saw as important in discussing a statewide low-income water program. First, the statewide program should not result in a reduction to current assistance California-American Water Company provides its low-income customers. Second, the statewide program should avoid any increased obligation for funding of California-American Water Company's other customers. California-American Water Company also identified sales forecasting as an important issue for this rulemaking to explore as the "long-standing problem of forecasting

future sales … has been heightened by periods of drought and issues related to very substantial balances in the Water Revenue Mechanism Accounts." California-American Water Company supported a uniform name for all water utility low-income customer assistance programs and identified program structure targeting extremely low-income customers for assistance, data sharing with energy utilities, and marketing, as keys to program effectiveness. California-American Water Company also expressed support for the monthly discount being calculated as a percentage of the monthly bill and that the current $1.21 per month surcharge to non-LIRA customers is reasonable and should not increase.

California-American Water Company expressed concern about the current process for obtaining authorization to acquire and consolidate smaller systems highlighting the importance of receiving authorization for consolidation during the acquisition approval process. California-American Water Company also stated that it cannot provide operation and maintenance services on a temporary basis in the current environment (*see*, SB 552), noting in particular the affiliate transaction rules discourage such actions.

California-American Water Company asked the Commission to allow it and other water utilities to recalculate its sales forecast on an annual basis rather than the current six-year cycle (from start to finish) based on the current GRC process. California-American Water Company also stated that common sense drives the use of smaller triggers and more complete adjustments as such changes will provide greater precision and accuracy in forecasting as drought years become more prevalent. California-American Water Company urged the

Commission to continue focusing on individual affordability while supporting needed investments to provide safe, clean water. California-American Water Company asked the Commission to continue to encourage acquisition and consolidation of systems that lack sufficient technical, managerial, or financial expertise, as well as addressing forecasting issues to improve price signals created by rates and authorizing reasonable rates of return to encourage prudent investment and acquisitions.

California-American Water Company asked that this Commission continue its support for water utility access to low-interest loans and grants where appropriate. Where California-American Water Company did not provide specific comment, it generally noted agreement with the comments of California Water Association on those matters.

California Water Association supported the goals of the OIR and stated the primary objective should be to balance the purpose of the benefits against the burdens to pay for and administer the programs. California Water Association urged coordination with the Board and Legislature to achieve the goal of establishing a uniform program meeting the needs of low-income customers.

California Water Association recommended the Commission adopt the nomenclature of the United States Environmental Protection Agency (EPA), the Water Foundation and water utilities in other states – Customer Assistance Program, or CAP. They recommended this program name as it avoids any stigma that might come from using "low-income" and avoids using the word "rates," which distracts from the underlying purpose of the program – assisting households that have trouble meeting essential living expenses, of which water is

just one. California Water Association urged the Commission to refrain from creating verification protocols used by energy utilities given the relative lack of economies-of-scale of the water utilities.

California Water Association noted the ease of both the fixed dollar discount and percentage discount methods though both methods come with different drawbacks. California Water Association stated that a flat discount calculated by the same method (*e.g.*, 20 percent of the typical residential bill in the service area) would capture the benefits and be advantageous for both customers and utilities and would have minimal impact on conservation messaging and programming. However, California Water Association cautioned that customers will not care about the methodology, but will focus on whether the method changes their current bill, and noted that any change will result in some customers seeing a decrease in benefits and surcharges, and an increase for others.

California Water Association urged caution in applying uniform standards for surcharges in multi-district Class A water utilities but supported establishment of a statewide low-income water customer assistance program. California Water Association did not support requiring Class B, C, and D water utilities to establish customer assistance programs. California Water Association noted the comments of other parties provided helpful information on existing low-income customer assistance programs, the challenges implementing these programs, and issues of concern. California Water Association supported workshops to explore and define the issues presented fully and carefully.

California Water Association urged the Commission to coordinate closely with the Board regarding the consolidation of systems that are not able to provide safe, reliable, and affordable drinking water. California Water Association noted it supports consolidation as a means to assist communities that are not able to provide safe, reliable, and affordable drinking water on their own, with proper incentives in place. California Water Association noted there have been more than 30 acquisitions of small systems by larger Commission-regulated water utilities over the past decade, and the Commission should focus its efforts in this areas on working to streamline the processes for physical and ratemaking consolidation, and ensuring proper incentives are provided for regulated water utilities to undertake such efforts. California Water Association noted the substantial risk that comes with acquiring troubled utility systems and the need for efficient and timely action by the Commission.

With respect to changes to water sales forecasting, California Water Association reiterated some of the recent history and changes to water sales forecasting and urged continuing the flexible alternative forecasting methodologies that take into account the impact of drought, conservation government mandated reductions, and economic developments. California Water Association urged the Commission remove restrictions on sales reconciliation mechanism implementation that tie to a drought period and allow utilities to implement a modified sales reconciliation mechanism that captures more of the revenue differences between earlier forecasts and actual sales.

California Water Association called for the removal of the five percent trigger and the fifty percent adjustment limitation. California Water Association

also called for folding the WRAM/Modified Cost Balancing Accounts (MCBA) recovery into base rates instead of surcharges. California Water Association argued these changes will send more accurate pricing conservation signals to customers, ameliorate intergenerational risk, help utilities avoid large WRAM/MCBA surcharges, and reduce confusion about cost-of-service ratemaking.

In addition, California Water Association argued there is no need to consider rate design changes to address the requirement for a basic amount of water at a low quantity rate as the concept is already part of existing water rate designs, and the issue should continue to be addressed in GRCs. California Water Association also expressed concern that adopting a single standard will have unintended consequences such as higher prices in upper tiers, greater fluctuations in revenue, larger WRAM balances, distorting price signals, and will miss many low-income individuals that live in multi-unit buildings that are not sub-metered.

California Water Association agreed with the privacy concerns expressed by Southern California Edison Company and thought the issue of sharing information with municipal utilities is best addressed by the Board in its rulemaking; to the extent it is pursued, the Commission should look to the framework it has already established for sharing such information with Commission-regulated water utilities.

Center for Accessible Technology supported the use of a uniform program name that is not LIRA, as it will help customers understand that the program is widely available, which is particularly useful for customers who move between

jurisdictions. Center for Accessible Technology advocated structuring discounts to provide essential supplies of water at reduced rates, while allowing higher rates for water supplies that go beyond basic needs, essentially reinforcing an inverted block rate structure. Center for Accessible Technology argued other subsidy options might be less effective in supporting the two policy goals of affordability for essential supplies of water and establishment of rates that promote conservation. Center for Accessible Technology argued for the creation of broad cost recovery with pooled funding as the most equitable and fair cost recovery option. Center for Accessible Technology also supported efforts to promote consolidation of water systems to improve water quality and address affordability.

Center for Accessible Technology urged the Commission to focus the use of its rate design authority to support affordable access to necessary supplies of drinking water. Center for Accessible Technology stated the existing inverted tier block structure, in particular, can be used to ensure the affordability of the first allocation of water, which should be sufficient, at minimum, to satisfy a household's essential indoor usage needs. Center for Accessible Technology argued it would be appropriate for the Commission to consider more targeted use of its rate design authority as an independent mechanism to support affordability.

Consumer Federation of California Foundation urged the Commission to consider proper cost allocation, appropriate definitions, the broad jurisdiction of the Commission, and various components of the assistance programs. Consumer Federation of California Foundation argued the Commission has broad authority

to create a program to assist low-income water customers and that include other water companies not regulated by the Commission. Consumer Federation of California Foundation argued such companies can be required to participate either directly or through selective jurisdiction in any public assistance program the Commission creates.

Consumer Federation of California Foundation agreed that a common name should be adopted and suggested either the California Alternative Rates for Water (CARW) or Water Rate Assistance Program (WRAP) as appropriate program names. Consumer Federation of California Foundation suggested the effectiveness of assistance programs be measured through metrics that include participation rate, the improvement in water burden, and positive impacts on arrearage and disconnection rates.

Consumer Federation of California Foundation stated that ultimate effectiveness will need to be shown through the impact on water affordability. Consumer Federation of California Foundation offered a range of affordability thresholds between 1.5-3 percent of income, and that an effective program will have a water burden no greater than the agreed-upon target value.

Consumer Federation of California Foundation noted the ease of both the fixed dollar discount and percentage discount methods though both methods come with different drawbacks. Consumer Federation of California Foundation advocated for the adoption of some form of rate similar to the communications Lifeline program wherein a discounted rate would apply to a basic service volume and agreed that it is more practical to administer the percentage/proportional approach.

Consumer Federation of California Foundation supported the prospect of pooled low-income assistance funding, noting though that more information is needed to fully evaluate such a proposal. Consumer Federation of California Foundation agreed that any changes to the water sales forecasting process limit any annual rate increase to twice the demonstrated rate of median household income growth.

Golden State Water Company joined in the comments filed by California Water Association and added details about its low-income program and suggested that sales forecast changes be addressed in the "Balanced Rates" OIR and that the directions of D.16-12-026 be implemented before determining the need to revisit sales forecasting methodology in this proceeding.

Golden State Water Company expressed concern that a uniform program name may create potentially unmet customer expectations of a uniform level of assistance. Golden State Water Company stated that since the implementation of data sharing with the large Commission-regulated energy companies (D.11-05-020), its penetration rates have increased and that it believes its current program has been effective.

Golden State Water Company offered limited support for serving as administrators of small water systems that need operations and maintenance support, qualifying its support upon achieving no cost to the Class A water utilities' stakeholders.

Great Oaks Water Company also joined in the comments filed by California Water Association and provided additional comments of its own. Great Oaks Water Company urged coordination with the activities of the Board

under California Water Code § 189.5. Great Oaks Water Company argued the Commission and the Class A water utilities have long been leaders in ensuring the human right to water, and industry-wide solutions should not be assumed, as company-specific customer assistance needs should be examined closely. Great Oaks Water Company stated that assessing whether other water companies meet the definition of a public utility is not difficult but should be decided on a case-by-case determination of whether the company is dedicated to public use.

Great Oaks Water Company agreed that "Customer Assistance Program" would be an appropriate uniform name for all companies to use. Great Oaks Water Company stated the current methodology it uses is highly effective in identifying and enrolling eligible customers and was made more effective through the coordination with the California Alternate Rates for Energy (CARE) program enabled in D.11-02-020.

Great Oaks Water Company urged that whatever changes the Commission makes that simplicity in presenting the result to the customer should be an important component. Great Oaks Water Company argued that a flat dollar amount is most appropriate and easily administered by utilities and customers.

Great Oaks Water Company urged the Commission to closely coordinate with the Board with respect to the consolidation of systems that are not able to provide safe, reliable, and affordable drinking water and be cognizant of the measurable risk undertaken by the acquiring company. Great Oaks Water Company also urged the Commission to evaluate the results of D.16-12-026 with respect to sales forecasting before making additional changes in this proceeding.

Great Oaks Water Company reiterated that there is no "one size fits all" solution for reducing water use and that there are pros and cons to any sales forecasting methodology. Great Oaks Water Company urged the Commission to not adopt even more rigid rules simply to change the problems caused by the current set of rigid rules. Great Oaks Water Company also argued that any low-income financial assistance program is unworkable unless the resident/tenant of a multi-family location receives a bill from the water company. Great Oaks Water Company urged the Commission to consider rate design issues in GRCs and not in rulemakings. Finally, Great Oaks Water Company argued D.11-05-020 already addressed the data-sharing issues, and the Commission should not spend time addressing data sharing with non-jurisdictional municipal utilities.

International Bottled Water Association and California Bottled Water Association stated the Commission does not have jurisdiction over bottled water companies and therefore cannot impose public purpose or extraction fees on packaged bottled water products made by these businesses or bottled water end-users.

The Public Advocates Office of the Public Utilities Commission noted the statutory directives to the Commission with respect to communication and energy utilities are detailed and comprehensive, which contrast with the general and brief direction applicable to water utilities low-income rate assistance.[14] Nonetheless, the Public Advocates Office of the Public Utilities Commission

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[14] Pub. Util. Code §§ 739.1-739.5, 739.9, and §§ 871 *et. seq.*, *cf.*, Pub. Util. Code § 739.8.

argued that Pub. Util. Code § 739.8 provides valuable guidance in the development and evaluation of potential changes to existing low-income water programs. The Public Advocates Office of the Public Utilities Commission stated the need to consider the differences in water needs caused by geography, climate, and the ability of the community to support the programs that are unique to water utilities.

The Public Advocates Office of the Public Utilities Commission agreed that a common name for low-income water programs should be adopted and recommended including the term "water" in the program name to help distinguish it from other Commission low-income programs. The Public Advocates Office of the Public Utilities Commission also recommended specific guidance be provided with respect to any metrics adopted to measure the effectiveness of the program specifically recommending participation rate be calculated as a percentage of total residential customers. The Public Advocates Office of the Public Utilities Commission also argued that participation rate on its own is not a meaningful measurement of effectiveness and that the Commission should evaluate and refine the reporting requirement to ensure it can evaluate the effectiveness based on the community being served.

The Public Advocates Office of the Public Utilities Commission recommended the Commission continue to evaluate consolidation and operator/administrator situations on a case-by-case basis. The Public Advocates Office of the Public Utilities Commission recommended expanding the requirement for Class A water utilities to identify adjacent systems, and clarified that the requirement is to report more than just those that present opportunities

for interconnection or acquisition in order to get a better picture of potentially vulnerable systems. The Public Advocates Office of the Public Utilities Commission also recommended the Commission cross-check the adjacent system information provided by Class A water utilities with the Board's data set that summarizes the compliance status of drinking water systems throughout the state as a starting point for identifying possible acquisition or consolidation candidates.

Further, the Public Advocates Office of the Public Utilities Commission recommended that forecasting of customer demand should proceed independent of affordability programs, and that throughout the process, the Commission should maintain a focus on overall bill impacts. The Public Advocates Office of the Public Utilities Commission recognizes that forecast variance is inevitable in rate-of-return regulation, but that the impact on water utilities has been muted as the result of the WRAM decoupling mechanism in California. While the Public Advocates Office of the Public Utilities Commission recognized that large WRAM balances are not solely caused by a large variance in forecasted sales, it argued that by mitigating the consequences of inaccurate sales forecasts, WRAM and other decoupling mechanisms exacerbate the actual size of the variance. The Public Advocates Office of the Public Utilities Commission also urges the Commission to instruct regulated water systems to provide in GRCs the historical data on service interruptions in order to create a repository of information from which longitudinal studies of safety and reliability performance could be conducted.

Finally, the Public Advocates Office of the Public Utilities Commission recommended the Commission provide (1) a starting point for determining the per capita amount for a low quantity rate to be utilized as part of each GRC process, (2) guidance regarding methods for determining the appropriate assumption for household size in each ratemaking area, (3) guidance regarding tier breakpoints, and (4) guidance regarding the percent difference in pricing between tiers. The Public Advocates Office of the Public Utilities Commission also supported expanding data sharing between energy utilities and municipal water utilities to improve outreach and enrollment in low-income customer assistance programs, as long as it is done in compliance with Commission decisions[15] and state privacy requirements,[16] and proper cybersecurity measures are in place. The Public Advocates Office of the Public Utilities Commission agreed that those requirements are met when a customer consents to the data sharing and the Commission can modify the CARE application to specifically allow customers to opt-in to data sharing when they apply to CARE.

San Gabriel Valley Water Company provided a summary of its low-income rate assistance program and proposed moving cost recovery from the individual utility to a broad, more diverse population across the entire state. San Gabriel Valley Water Company stated that based on its high participation rates, it serves a lower-income customer base in each of its divisions when compared to other water utilities regulated by the Commission, and a more

[15] *Citing*, D.11-07-056, D.11-05-020, and D.14-05-016.

[16] *Citing*, Cal. Civ. Code §§ 1798.24, 1798.82, and Cal. Pub. Util. Code § 8380.

traditional means of low-income assistance or statewide customer assistance program would provide many benefits such as (1) a "one-stop shop" for all utility low-income programs would simplify the process and encourage greater participation, (2) a reduction in confusion about multiple applications, (3) comprehensive, coordinated outreach, (4) mitigate abuses by customers and streamline administration for utilities, and (5) remove duplicate administrative structures across utilities. Therefore, San Gabriel Valley Water Company supported consolidating utility low-income rate assistance programs.
San Gabriel Valley Water Company also supported a program where Class A and B water utilities would report to the Board all water purveyors within or adjacent to their service territories in order to identify high-cost, small-customer base water systems and purveyors unable to provide safe, reliable, and affordable drinking water for possible acquisition. San Gabriel Valley Water Company argued that the Commission should grant exemptions to the non-tariffed products and services rules in specific cases to encourage Class A and B water utilities to serve as administrators for small water systems pursuant to SB 552. Finally, San Gabriel Valley Water Company supported the Commission re-examining its current rate design policies as long as it did so with the goal of encouraging conservation, while at the same time providing a sufficient amount of water to meet essential needs at an affordable rate, and enabling the utility to generate its revenue requirement without unduly burdening one class of customer to the benefit of another. Further, San Gabriel Valley Water Company agreed that authorizing Sales Reconciliation Mechanisms during drought periods will help mitigate the regressive nature of rates caused

by amortizing high WRAM and Drought Lost Revenue Memorandum Account (DLRMA) balances.

Southern California Edison Company agreed a consistent naming convention would be beneficial to both utilities and customers. It uses the "CARE" name for its low-income program at its Catalina Water system to provide a consistent marketing message, name recognition, enrollment, and billing for customers across its electric, gas and water utilities on Catalina and recommends the CARE name would make sense for all other water utilities for those reasons. Southern California Edison Company acknowledged the various pros and cons to dollar-based and percentage-based discount methodologies, and noted that it currently utilizes a percentage discount on its water (and electric) rates and would need to consider how to shift customers to a flat dollar discount for its Catalina Water customers should such a change be required.

Southern California Edison Company stated that there is no one-size-fits-all answer when it comes to rate design and supported establishing guidelines for water utilities to consider when designing low-income rate assistance programs during each utilities' respective GRC proceedings. Further, Southern California Edison Company stated that it is important for each water utility to be given the flexibility to study its system and create a rate design, including establishing a Tier 1 amount reflective of the essential needs of customers in the system as part of a GRC.

Southern California Edison Company outlined a number of legal and policy hurdles in sharing customer data with municipal water systems and suggested a better approach would be to allow CARE customers to opt-in to data

sharing when they apply to CARE and permit the sharing of their names and addresses with other utilities or municipalities to enroll them in assistance programs. Finally, Southern California Edison Company argued that this proceeding was not the best forum to consider data access issues for municipalities because the Commission has specifically rejected the question,[17] and there is a process to overturn or reconsider Commission decisions.

The Joint Advocates (Leadership Counsel for Justice and Accountability, Community Water Center, and Pacific Institute) cautioned against privatization of public utilities and urged that when consolidation or acquisition does occur that appropriate language outreach and meaningful community involvement should occur. The Joint Advocates urged the Commission to work with the Board to create guidelines on best practices for consolidations and urged the Commission to independently explore opportunities for extension of service to residents currently served by domestic wells. The Joint Advocates encouraged coordination with the Board with respect to its information on systems that face affordability problems or challenged to meet the requirement to provide safe, reliable, and affordable drinking water.

In addition, the Joint Advocates encouraged the Commission to use the output of SB 244 commissions formed by cities, counties, and local agencies to identify disadvantaged communities within their jurisdiction and/or sphere of

[17] *Citing*, D.14-05-016 at 35-36

influence as a source to identify small rural communities that are struggling with failing water and wastewater services.

The Joint Advocates also called for moving to a system of consumption-based fixed rates, and if that isn't feasible, capping fixed charges at 30% of revenue, and pre-approving drought surcharges that could be enacted as soon as a drought begins, limited to the second tier of use and above. The Joint Advocates also sought additional indicators to measure affordability: First, the general system-level unaffordability metric would measure when the bill for meeting minimum indoor needs is unduly burdensome for median-income households in the service area; Second, the Low-Income System Unaffordability metric would measure when the bill for meeting minimum indoor needs is manageable for median-income households, but unduly burdensome for low-income households; and Third, the Household Unaffordability metric would measure when a household has difficulty paying their bill, regardless of whether it is affordable for others in their service area with higher incomes. They offer different strategies to address each of these measurements.

Additionally, the Joint Advocates (The Environmental Justice Coalition for Water, the Pacific Institute for Studies in Development, Environment and Security, National Resources Defense Council, Leadership Counsel for Justice and Accountability, Center for Accessible Technology, and Community Water Center) urged the Commission to develop a program to make water affordable to low-income customers without sacrificing conservation goals. The Joint Advocates also urged caution before enshrining a 55 gallons per capita per day standard for essential indoor water use as low-income households tend to be

low-volume users, and the average use in California is currently below that threshold.

They also encouraged the Commission when adopting any standard to consider special cases such as where some low-income households have higher-than-average water needs because of outdated appliances, unrepaired leaks, medical conditions, special work needs, or a large number of occupants. The Joint Advocates encouraged the Commission to expand the Energy Savings Assistance Program (ESAP) to water conservation and efficiency. Finally, the Joint Advocates found promise in sharing information with municipal water utilities, but sought safeguards to ensure personal information is not shared beyond the utilities serving a given customer before such sharing of information was allowed.

4.2. Comments on the 2019 Workshops and Workshop Reports

California Water Association, the Center for Accessible Technology and Pacific Institute for Studies in Development, Environment, and Security (Joint Comments), the Public Advocates Office of the Public Utilities Commission, and Southern California Edison Company submitted comments. Reply comments were filed on July 24, 2019, by the California Water Association, the Leadership Counsel for Justice and Accountability, Community Water Center, and Pacific Institute for Studies in Development, Environment, and Security (Joint Reply Comments), and the Public Advocates Office of the Public Utilities Commission.

4.2.1. Water Sales Forecasting Comments

The Public Advocates Office of the Public Utilities Commission called for the Commission to require each Class A Water utility in its GRC application to use a Sales Forecasting Model that accounts for at least the following factors:

- The impact of proposed revenue allocation and rate design on sales and revenue collection;
- The impact of planned conservation programs;
- Changes in customer counts;
- Previous and upcoming changes to building codes requiring low flow fixtures and other water-saving measures, as well as any other relevant code changes;
- Local and statewide trends in consumption;
- Demographics, climate, population density, and historic trends, by ratemaking area; and
- Past sales (of more than one year).

The Public Advocates Office of the Public Utilities Commission also called for ensuring that sales forecasting occur exclusively in GRCs, be done by ratemaking district, and include drought years when assessing historic data. The Public Advocates Office of the Public Utilities Commission sought to maintain transparency, accountability, and public participation opportunities for discussions of possible changes in sales forecasting process and procedures, and minimize rate changes outside of GRCs. The Public Advocates Office of the Public Utilities Commission encouraged the Commission to evaluate the accuracy of sales forecast models on an ongoing basis for continuous improvement. The Public Advocates Office of the Public Utilities Commission also sought to have sales addressed by tier, and possibly link Tier 1 breakpoints

to projected essential use quantities or assumed indoor water usage. The Public Advocates Office of the Public Utilities Commission stated that rates per tier should be assessed, and not determined exclusively as a percentage of Standard Quantity Rates (SQRs). The Public Advocates Office of the Public Utilities Commission encouraged the Commission to require water utilities to evaluate and measure the effectiveness of conservation programs. Further, the Public Advocates Office of the Public Utilities Commission stated the Commission should update the rate case plan to provide relevant guidance for sales forecasting, particularly since the rate case plan was last modified in 2007 and has not been updated to account for changes to sales forecasting due to recent drought events, legislation declaring conservation as a way of life, and the addition of WRAMs.

The Public Advocates Office of the Public Utilities Commission noted that it had recently recommended budget forecasts larger than those proposed by water utilities in GRCs in order to account for known and measurable cost increases that, in the utilities proposals, that would have resulted in rate increases via existing mechanisms that operate outside of GRCs. To increase the transparency of rate impacts, the Public Advocates Office of the Public Utilities Commission argues the Commission should reduce the number of alternative ratemaking mechanisms like WRAM rather than creating new ones like the Sales Reconciliation Mechanism (SRM). Further, the Public Advocates Office of the Public Utilities Commission argued utilities should not propose, and the Commission should not adopt sales forecasts with any particular rate outcome in mind. Instead of lowering noticed rate impacts with higher than reasonable sales

forecasts and allowing new mechanisms to "stagger the impact on customers into smaller increments" as suggested by California Water Association, the Public Advocates Office of the Public Utilities Commission suggested water utilities should propose accurate forecasts openly and transparently in GRCs. The Public Advocates Office of the Public Utilities Commission stated that customers should not be required to face the continued uncertainty of stealth rate increases that accompany the operation of existing—much less new—alternative rate mechanisms.

California Water Association called for the Commission to require each Class A Water utility in its GRC application to use a Sales Forecasting Model that accounts for at least the following factors:

- The impact of proposed revenue allocation and rate design on sales and revenue collection;
- The impact of planned conservation programs;
- Changes in customer counts;
- Previous and upcoming changes to building codes requiring low flow fixtures and other water saving measures, as well as any other relevant code changes;
- Local and statewide trends in consumption;
- Demographics, climate, population density, and historic trends, by ratemaking area; and
- Past sales (of more than one year).

The Joint Advocates (Center for Accessible Technology, Leadership Counsel for Justice & Accountability, Community Water Center, and Pacific Institute for Studies in Development, Environment, and Security) called for consideration of short-term sales forecasting (on a 3-5 year time horizon) and

long-term demand forecasting (on a time horizon of approximately 30 years) as distinct issues. The Joint Advocates claimed that there has been a historic tendency to overestimate future demand in long-term demand forecasting because of a failure to incorporate the effect of water efficiency standards and codes. The Joint Advocates stated that to account for efficiency improvements, forecasters should consider the various end uses of water by examining the stock and efficiency of appliances as well as behavioral aspects of water use, such as shower duration and frequency. They noted this approach is described in detail in the Water Research Foundation's 2018 report, Integrating Water Efficiency into Long-Term Demand Forecasting.

Southern California Edison Company called for the Commission to provide flexibility to water utilities to develop water sales forecasts based on individual water system characteristics, forecast period, data availability, and purpose of the forecast. Southern California Edison Company stated that multiple mechanisms are available for implementation that would improve the accuracy of sales forecasts and evaluate the potential for future drought when forecasting water sales. Southern California Edison Company noted that one option for improving the accuracy of a sales forecast is to shorten the forecast period. Southern California Edison Company also noted that an annual drought forecast approach is reasonable as predicting environmental and water conditions three years into the future is increasingly difficult. Southern California Edison Company claimed such an approach also supports utilities producing sales forecasts on an annual basis.

4.2.2. WRAM Comments

California Water Association argues that it is procedurally improper to seek to modify several final Commission Decisions in this proceeding, and that the WRAM/MCBA does not relate to the scope of this low-income proceeding. California Water Association strongly objects to reverting full WRAM/MCBA utilities to a Monterey-Style WRAM/ICBA ratemaking mechanism. California Water Association contends that the Monterey-Style WRAM does not fulfill the purpose of the full WRAM as it is a rate design tool and does not decouple sales from revenues. California Water Association explains that financial stability is supported by the existence of WRAM, and that it allows utilities to implement conservation rates.

However, California Water Association opines that if the Commission decided to revert existing WRAM/MCBA utilities to Monterey-Style WRAM/ICBA, that should occur in the context of each utility's GRC as each utility faces different circumstances. Accordingly, California Water Association recommends a showing that such specific circumstances warrant such a transition.

The Public Advocates Office of the Public Utilities Commission contended there should be a clear change in policy and existing WRAM/MCBA utilities should be converted to Monterey-Style WRAM/ICBA. The Public Advocates Office of the Public Utilities Commission also supported implementation of this proposed change in each utility GRC. The Public Advocates Office of the Public Utilities Commission argued that use of the Monterey-Style WRAM is superior as sales risk is not with ratepayers but with the utility. The Public Advocates

Office of the Public Utilities Commission further stated that a full WRAM/MCBA does not account for other impacts on sales such as economic cycles and weather, which should be considered a general business risk.

The Public Advocates Office of the Public Utilities Commission explained that because some fixed costs are included in the quantity revenues, that by providing total recovery of all quantity sales, WRAM is providing revenue recovery of estimated fixed costs, not actual. Consequently, when the estimated fixed cost portion of quantity rates does not occur, WRAM still provides recovery of these costs.

Southern California Edison Company recommended that changes in water decoupling programs should be on a case-by-case basis. Southern California Edison Company stated that implementing a change to a Monterey-Style WRAM may balance the benefits and risks of implementing a conservation rate design more equitably among stakeholders. Southern California Edison Company noted that WRAM is similar to energy sales programs and permits investment in infrastructure and conservation-related programs.

4.2.3. Tier 1 Water Usage and Water Baselines Comments

California Water Association recommends that the first tier in water usage would be set at a baseline rate for affordability and conservation purposes. However, California Water Association does not support setting a standard rate that would apply to all utilities noting that every utility, and even utility districts, is different with different use characteristics and average customer usage. California Water Association opposes setting this first-tier rate to reflect only variable costs, and no fixed costs, as this shifts all fixed cost recovery to higher

tiers and other customers. California Water Association would not request utilities to develop rates based on the household size as gathering and verifying household size and data and enforcing household size rules would be extremely difficult and contentious.

The Public Advocates Office of the Public Utilities Commission agreed with California Water Association regarding not setting the first-tier usage at a standard amount, which is a position also advocated by Southern California Edison Company. The Public Advocates Office of the Public Utilities Commission argued that the Commission should require utilities to provide analysis in their GRCs to determine the baseline amount that would be Tier 1 usage for a particular service area. The Public Advocates Office of the Public Utilities Commission argued that Tier 1 rates should consider not only variable costs but also whether an amount of fixed costs should also be included. The Public Advocates Office of the Public Utilities Commission opined that limiting the number of large households in higher tiers will help to provide essential usage to these customers.

Center for Accessible Technology supported a calculation of Essential Indoor Usage (EIU) based on household size and average usage in a water utility service area. The EIU would determine baseline amounts of water and would vary among utility service areas due to variances in local climates, demographics, and other factors. The baseline would always exceed a specified amount as an absolute baseline. Center for Accessible Technology recognizes that fixed costs may need to be included in Tier 1 rates; however the critical issue is providing a minimal amount of water necessary for human consumption.

Center for Accessible Technology also believed that despite setting a Tier 1 consumption and rate, the rate design should provide an opportunity for individual customers to request variances.

4.2.4. Low-Income Water Program Name Comments

California Water Association recommends adopting "Customer Assistance Program" or CAP, as the standardized name for low-income water programs offered by Class A water utilities. This is in line with program names and recommendations from US EPA, Water Research Foundation and other states, and avoids the stigma of including term "low-income" which may deter customer adoption.

The Public Advocates Office of the Public Utilities Commission does not suggest a specific name but agrees the name selected should be non-stigmatizing.

Southern California Edison Company recommends using the CARE acronym in order to align with energy utilities as it is synonymous with low-income assistance. Southern California Edison Company currently uses the CARE name for its water program on Catalina Island.

Center for Accessible Technology supports a uniform, non-stigmatizing name and notes that "LIRA" is bureaucratic and has no direct meaning to customers.

4.2.5. Low-Income Multi-Family Housing Pilots Comments

Center for Accessible Technology supports providing benefits to low-income tenants who do not directly pay a water bill through a pilot

program.[18] They did not suggest specific recommendations for implementation, but did discuss some of the options that had been considered in the State Water Resources Control Board's draft AB 401 report to deliver credit to these tenants, including delivering a credit through energy bills, the state's CalFresh program and an income tax credit.

The Public Advocates Office of the Public Utilities Commission supported waiting until the outcome of the AB 401 process before deciding how to assist low-income water users that do not pay their bill directly.[19] However, in the meantime, they recommended implementing several requirements to protect this population. These included: requiring water utilities to provide notification to tenants who do not directly pay their water bill if/when their bill is in default and service may be terminated, requiring water utilities to provide tenants, in the event their landlord is in default of a water bill, the opportunity to pay the bill directly and then deduct that amount from rent, and allowing multi-family housing units to qualify for LIRA programs if the housing is owned by a non-profit and are for the explicit purpose of providing affordable housing to low-income residents.

California Water Association supported allowing small-scale pilot programs to provide discounts to master metered low-income tenants but opposes any requirement that the benefits be passed on to low-income master

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[18] Center for Accessible Technology Comments dated September 16, 2019 (Center for Accessible Technology 2019 Comments) at 10-11.

[19] Public Advocates Office Comments dated September 16, 2019 at 8-9.

metered tenants.[20] They believed this requirement would be difficult to enforce and did not wish to be involved in landlord-tenant relationships. They suggested that CalFresh would be the best currently existing option to distribute benefits to tenants in multi-family dwellings, and any pilot program should be designed so that the benefit is delivered through CalFresh.

Southern California Edison Company opposed a requirement that benefits be passed on to low-income master metered tenants.[21] Instead, they recommended existing water low-income programs incorporate some tenant-level communications. This could include actions such as an approval or rejection letter issued directly to the tenant for enrollment in the program and a monthly listing of tenants receiving the discount to owners/operators.

California Water Association expressed concern that the Public Advocates' recommendations were administratively unworkable and not likely to achieve the desired result.[22] California Water Association opposed requiring the notification of low-income water users who do not directly pay their water bill if it is in default and argued that since the utility does not bill these users directly, a water utility does not know who they are or how to locate them. They similarly opposed requiring water utilities to provide tenants the opportunity to pay the bill directly and then deduct that amount from rent as they believe it is infeasible and landlord-tenant disputes are outside of the jurisdiction of the Commission.

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[20] California Water Association Comments dated September 16, 2019 at 21-23.

[21] Southern California Edison Company Comments dated September 16, 2019, at 7.

[22] California Water Association Reply Comments dated September 26, 2019 at 3-6.

Lastly, California Water Association argued allowing multi-family owned by non-profits and designated to provide affordable housing to low-income residents is better aligned with a pilot program approach than a greater Commission-wide requirement. California Water Association also opposed Southern California Edison Company's tenant enrollment approval/rejection proposal as infeasible and creating new privacy issues.

4.2.6. Reporting Mechanism Comments

California Water Association argued current reporting mechanisms are enough. Currently, Class A utilities regularly report on their low-income programs; those programs are reviewed as part of the utility's GRC; and Low Income Oversight Board (LIOB) includes a water utility representative.

The Public Advocates Office of the Public Utilities Commission suggested requiring water utilities with a low-income program to provide an evaluation of their respective program in their annual report and adopt a requirement that the final decision in each utility's GRC provide an ordering paragraph that details the required low-income program metrics for that utility to report in its annual report.

4.2.7. Water Consolidation Timeline Comments

California Water Association argued its expedited timeline should be adopted because the current schedule guidelines are often ignored. California Water Association said that if the Commission wants to update D.99-10-064's water system acquisition framework, such updates should be reasonable and facilitate speedy resolution of applications and advice letters. California Water Association stated the scoping memo rulings in recent acquisition proceedings

already included these requirements, adding, for example, reply briefs, the opportunity for comments and other more recent Commission procedures. California Water Association claimed the overall framework set out in D.99-10-064 still helps facilitate efficient and cost-effective consolidation of at-risk water systems and therefore does not require substantial overhauling.

The Public Advocates Office of the Public Utilities Commission suggested that the Commission not adopt a specific timeline like the one suggested by California Water Association because an expedited advice letter process already exists for small, distressed systems. The Public Advocates Office of the Public Utilities Commission said water utilities put auxiliary requests in their consolidation applications which often leads to them taking longer; therefore, the Commission should not be following a more restrictive schedule when processing these applications.

Center for Accessible Technology stated the Commission should not adopt California Water Association's timeline, especially since California Water Association objected to limiting the scope of requests in acquisition applications as proposed by the Public Advocates Office of the Public Utilities Commission. If a request raises new or more complex issues, an appropriate schedule should be set based on the issues raised.

4.2.8. Utility Affiliate Transaction Rule Comments

California Water Association stated current utility transaction rules are sufficient, and water utilities need the flexibility to use the administration framework that best addresses the issues the system is facing.

The Public Advocates Office of the Public Utilities Commission urged the Commission should maintain current ratepayer protections that require all incremental costs associated with providing non-tariffed (*i.e.* administrator) services to be allocated to unregulated operations and not reduce the portion of non-tariffed revenues that are credited to ratepayers.

4.2.9. Safe Drinking Water Loan Funds Comments

California Water Association recommended speedy approval of safe drinking water fund loan authorization requests and greater assistance from Commission staff in working with Board staff in the application and implementation process.

5. Water Sales Forecasting

All parties agreed that California's rising drought risks created new challenges for sales forecasting and water efficiency. However, the alternative solutions presented offered varying levels of specificity and little agreement among the parties.[23] California Water Association proposed no substantive change from the current method and advocated against any uniform requirements. The Public Advocates Office of the Public Utilities Commission provided the most persuasive approach, setting forth specific factors water utilities should use in their individual sales forecasts. Southern California Edison Company sought to move the sales forecast to an annual process, similar to the electric Energy Resource Recovery Account (ERRA) with annual updates, or

[23] California Water Association at 11-12, The Public Advocates Office of the Public Utilities Commission at 1-3, SCE at 2-4.

include the possibility for multiple forecasts to be approved in the GRC process with the water utility selecting the drought or non-drought option each year depending on more recent forecasts.

5.1. Requiring Specific Factors in Future Sales Forecasts

We have long recognized that sales forecasting is specific to each water utility and the areas they serve; however, in adopting the initial Water Action Plan in 2005, we determined that there were some uniform best practices that should be adopted to govern how all water utilities approach and work within the regulatory framework in California. After reviewing the comments and the record in this case, we are persuaded that additional guidance is needed to ensure water utilities incorporate the rising drought risk in California.

5.1.1. Short Term Forecasting

Specifically, we agree with the Public Advocates Office of the Public Utilities Commission that drought year data should be included in forecasting. Further, certain factors should be included in the sales forecasting model presented by a water utility in its GRC or equivalent. While water utilities may still choose their preferred water sales forecasting model, the following factors should be incorporated into the model they choose:

1. Impact of revenue collection and rate design on sales and revenue collection.
2. Impact of planned conservation programs.
3. Changes in customer counts.
4. Previous and upcoming changes to building codes requiring low flow fixtures and other water-saving measures, as well as any other relevant code changes.

5. Local and statewide trends in consumption, demographics, climate population density and historic trends by ratemaking area.
6. Past Sales Trends.

Thus, in any future GRC submitted after the effective date of this decision, a water utility applicant must discuss how these specific factors impact the sales forecast presented in the application.

5.2. Water Revenue Adjustment Mechanisms

The issue of adapting the sales forecast over time and matching as closely as possible the revenue generated by rates to the costs approved for the year is made more difficult as we consider the impacts of drought risks in each service area. Parties identified the WRAMs as one way we could further adapt our policies to changing conditions while still allowing utilities the ability to earn a reasonable rate of return and keep rates just and reasonable.[24] Southern California Edison Company's proposal to allow utilities to update sales forecasts yearly was an approach we considered, but we reject it at this time as this approach is intended to work in conjunction with a WRAM/MCBA counter to our preferred alternative.

The WRAM tracks the difference between the authorized quantity rate revenues and actual billed quantity-rate revenues over a calendar year period

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[24] Pub. Util. Code § 451. Cal-Am 2017 Comments at 3, California Water Association 2018 2018 Comments at 7-9, The Public Advocates Office of the Public Utilities Commission 2018 Comments at 7-8, San Gabriel Valley Water Company 2017 Comments at 8. *See also*, The Public Advocates Office of the Public Utilities Commission Sept. 2019 Comments at 5, California Water Association Sept. 2019 Comments at 13-16, SCE Sept. 2019 Comments at 3-5.

and recovers any shortfall or returns any over-collected amount via a quantity-based surcharge or a meter-based sur-credit, respectively. The WRAM was created to protect utilities from revenue shortfalls from lower than adopted sales due to conservation from implementation of conservation rate design (tiered rates) and conservation programs. The Monterey-Style WRAM tracks the difference in billed quantity-rate revenues at actual sales over a calendar year period between the adopted tiered rate design and a revenue-neutral uniform rate. The Monterey-Style WRAM was adopted to protect the utility from reduced revenues collected under tiered rates as compared to a uniform rate design. The MCBA is used in conjunction with the WRAM and replaced the ICBA and tracks the difference in authorized water production expenses (purchased water, purchased energy, and pump taxes) and actual water production expenses over a calendar-year period. Any over- or under-collection is netted against the WRAM in calculating revenue shortfalls or over collections. The MCBA was adopted in conjunction with the WRAM to offset revenue shortfall due to lower sales from conservation with the expected lower water production expenses arising from lower sales. The ICBA tracks differences in the authorized prices of water production components and actual water production price components. The ICBA is unrelated to the Monterey-Style WRAM and pre-dates both revenue protection mechanisms. The ICBA protects utilities from changes in the prices of water production components from what was adopted in establishing authorized rates. As tiered rates have been only adopted for residential tariffs, the Monterey-Style WRAM has only been applied to

residential revenues whereas the WRAM/MCBA applies to other customer classes such as commercial customers as well.

The WRAM/MCBA transfers risk for utility operations from shareholders to ratepayers, eliminates the incentives to efficiently manage water production expenses, and eliminates the incentive to accurately forecast sales in a GRC. Both the WRAM/MCBA and Monterey-Style WRAM with ICBA mechanisms are independent of low-income ratepayer impacts. Both mechanisms are independent of ratepayer conservation efforts that are primarily driven by rate design considerations.

Moreover, rate design and rate impacts are independent of whether a utility has a WRAM or Monterey-Style WRAM.

In order to achieve a goal of this proceeding to improve water sales forecasting, we agree with the Public Advocates Office of the Public Utilities Commission that water utilities that currently use a WRAM[25] may propose a Monterrey-Style WRAM in their next GRC.

5.2.1. Barring the Use of WRAM/MCBA in Future General Rate Cases

The January 9, 2018, Scoping Memo laid out the following issues to address in this proceeding:

2. Forecasting Water Sales

[25] Cal-Am, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corporation, and Liberty Utilities (Apple Valley Ranchos Water) Corporation. *See,* D.08-08-032, D.08-06-022, D.08-08-030, D.08-09-026, D.08-11-023, D09-05-005, D.09-07-021 and D.10-06-038.

a. How should the Commission address forecasts of sales in a manner that avoids regressive rates that adversely impact particularly low-income or moderate income customers?

b. In Decision (D.)16-12-026, adopted in Rulemaking 11-11-008, the Commission addressed the importance of forecasting sales and therefore revenues. The Commission, in D.16-12-026, directed Class A and B water utilities to propose improved forecast methodologies in their GRC application. However, given the significant length of time between Class A water utility GRC filings, and the potential for different forecasting methodologies proposals in individual GRCs, the Commission will examine how to improve water sales forecasting as part of this phase of the proceeding. What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?

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In comments to this Scoping Memo the California Water Association, among other suggestions, called for folding the WRAM/MCBA recovery into base rates instead of surcharges[26] while the Public Advocates Office of the Public Utilities Commission argued that the large variances in forecasted sales are exacerbated by the WRAM/MCBA process.[27] Accordingly, the August 2, 2019, workshop included a panel on drought sales forecasting that identified a number of problems with the WRAM/MCBA mechanism. The September 4, 2019, Ruling specifically sought comment on whether the Commission should convert utilities with a full WRAM/MBCBA mechanism to a Monterey-Style WRAM with an incremental cost balancing account.

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[26] CWA Comments dated February 23, 2018 at 9.

[27] Public Advocates Office Comments dated February 23, 2018 at 8.

The WRAM and MCBA were first implemented in 2008 and were developed as part of a pilot program to promote water conservation. The Commission adopted these mechanisms as part of conservation rate design pilot programs. The goals of the WRAM/MCBA are 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. The WRAM/MCBA also adjusts for all water consumption reductions, not just consumption reductions due to implementing conservation. The Commission recognizes that it is difficult to parse out consumption declines due to the sole effects of conservation programs and rate designs from other contributing factors such as weather, drought, economic effects, or inaccurate sales forecast, but the WRAM/MCBA goes beyond removing a utility's disincentive to promote conservation by taking all of these factors into account.

The revenue and rate impacts of WRAM/MCBA amounts are implemented through balancing accounts for recovery through surcharges. When actual sales are less than forecasted sales used in establishing a revenue requirement, the revenue shortfall, less offsetting marginal expenses, is surcharged to customers in addition to their regular tariffed rates. However, these balances rarely provide a positive balance (over-collected) but instead have been negative (under-collected).[28] Consequently, ratepayers experience not only the rate increase

[28] D.12-04-048 at 13.

attributable to GRC rate changes, including increases in attrition years, but also a subsequent rate increase due to amortizing negative WRAM balances. It is unlikely that the average customer understands how this regulatory mechanism works, consequently, customers experience frustrating multiple rate increases due to GRC test year, attrition year, WRAM/MCBA, and other offsets.[29]

The Commission adopted settlements between the Division of Ratepayer Advocates (currently the Public Advocates Office of the Public Utilities Commission) and various Class A water utilities in D.08-06-002, D.08-08-030, D.08-08-032, D.08-09-026, D.08-11-023, D09-05-005, D.09-07-021, and D.10-06-038. These settlements included conservation rate design and adoption of WRAM as a means of promoting conservation by decoupling sales from revenues. As explained in D.08-08-030, the Commission, while citing to the 2005 Water Action Plan, found that water utilities had a financial disincentive to conserve water. The Commission then concluded that to advance the goals of conservation, the Commission would need to remove that disincentive.[30] These decisions adopted WRAM 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. These five utilities are commonly called the "WRAM utilities." In addition, the Commission adopted a settlement between the precursor to the Public Advocates Office of the

[29] California Water Association 2018 Phase I Comments at 7-9.

[30] D.08-08-030 at 28.

Public Utilities Commission and San Jose Water Company, which is essentially the Monterey-Style WRAM.[31]

This Monterey-Style WRAM adjusts for the revenue effect of metered tiered rates compared to the revenue SJWC would have received from single uniform quantity rates if single uniform rates had been in effect. The Monterey-Style WRAM, a regulatory mechanism initiated in the Monterey District of California-American Water Company,[32] recognizes that with higher tiered-rate there is an unstable revenue effect on Monterey-Style utilities due to small changes in water usage.

When initiating the WRAM, the Commission recognized that quantity revenues would be offset by variable costs of water supply.[33] Consequently, the Commission adopted an offset to WRAM through the MCBA, which reflects costs such as purchased water, purchased power, pump taxes, chemicals, and similar costs which vary according to the amount of water sold.[34] As implemented by the non-WRAM utilities, the Monterey-Style WRAM amounts are also offset by variable costs due to changes in supply costs which are accounted for in the ICBA.[35]

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[31] D.08-08-030 at 22.

[32] D.96-12-005; *see also*, D.00-03-053.

[33] D.08-08-030 at 15.

[34] D.08-06-002, Appendix A, Section VIII at 7. (*See also*, D.08-08-030 at 26.)

[35] D.08-06-002, FoFs 4, 8-10. While the WRAM/MCBA is called a "pilot," there is no indication this program included goals, metrics, or other standards usually found in a pilot program.

Subsequently, in D.12-04-048, the Commission addressed the amortization of WRAM accounts, including determining the amounts and periods over which WRAM would be recovered. In D.12-04-048, the Commission also found that the WRAM/MCBA is part of pilot programs to promote water conservation. In addition, the Commission found that there was uncertainty over the success of adopting WRAM/MCBA programs and therefore ordered each affected utility in its next GRC to provide testimony that at a minimum addressing various options:

Option 1: Should the Commission adopt a Monterey-Style WRAM rather than the existing full WRAM?

Option 2: Should the Commission adopt a mechanism that bands the level of recovery, or refund, of account balances based on the relative size of the account balance?

Option 3: Should the Commission place WRAM surcharges only on higher tiered volumes of usage, thereby benefiting customers who have usage only in Tier 1 or have reduced their usage in the higher tier levels?

Option 4: Should the Commission eliminate the WRAM mechanism?

Option 5: Should the Commission move all customer classes to increasing block rate-design and extend the WRAM mechanism to these classes?[36]

A review of subsequent GRC filings shows that while utilities included testimony addressing WRAM/MCBA options as ordered in D.12-04-048, the

[36] D12-04-048, OP 4.

proceedings were resolved by settlements that did not specifically adjudicate the questions raised in D.12-04-048. Consequently, the policy to continue the use of WRAM/MCBA has not been adjudicated, and the use of WRAM/MCBA continued for the five WRAM utilities.

While the Commission concluded that the WRAM mechanism should be maintained in D.16-12-026 (in R.11-11-008), the Commission noted the uncertainty of sales forecasts, the need for conservation, and that WRAM provided a means to support sustainability and attract investment during a current drought period and beyond.[37] The Commission also ordered that if utilities proposed adjusting the fixed cost portion of revenues in rates, WRAM utilities also submit alternative proposals to reduce reliance on the WRAM/MCBA balances and surcharges.[38]

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

[37] D.16-12-026 at 41.

[38] D.16-12-026 at OP 13.

in the context of the utilities' next GRC.[39] Therefore, consideration of changes to the WRAM/MCBA is and has always been within the scope of this proceeding as part of our review of how to improve water sales forecasting.

5.2.2. GRC Decisions Subsequent to D.12-04-048 Have Not Resolved Whether to Continue Implementing the WRAM/MCBA Mechanism

While the Commission has chosen not to change the existing WRAM mechanisms, it also did not endorse the continuation of the "pilot" program in an adjudicated proceeding or rulemaking. This is the first time the Commission has taken input to consider the foundational issue of whether WRAM/MCBA should continue, and if so, in what form it should continue. In addition, we note that there is no indication in the proceedings since D.12-04-048 that parties quantified the risk attributable to having a WRAM or not having a full WRAM, and no party presented any such quantification.[40] Furthermore, there is no legal basis upon which WRAM/MCBA is required or necessary in water utility regulation. Thus, it has become clear during the course of this proceeding that

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[39] Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions, September 4, 2019, at 3.

[40] In July 27, 2020, comments on the proposed decision, Golden State Water Company argues that the Commission did consider such risks as part of approving a settlement in D.13-05-011. However, as D.13-05-011 adopts a settlement it cannot be cited in such a manner. D.13-05-011 at 49 ("Adoption of a settlement does not bind or otherwise impose a precedent in this or any future proceeding," and Golden State Water Company "must, therefore, fully justify every request and ratemaking proposal without reference to, or reliance on, the adoption of the Settlement."). D.13-05-011 at 49. *See also*, July 27, 2020, Joint Comments of Liberty Utilities citing the settlement adopted in D.15-11-030.

review of the WRAM/MCBA is an important component of our consideration of ways to improve water sales forecasting.

The continuation of WRAM/MCBA as a regulatory tool to encourage conservation, yet account for the differences between forecasted sales and actual sales, engenders other negative consequences. One that is often heard in public participation hearings is the phrase, "I continue to conserve but my bill continues to increase."[41] One explanation is that the WRAM balancing account under-collections are surcharged through the quantity rates. Thus, the declining use of water through the WRAM mechanism results in shortfalls in revenue, which includes a portion of fixed costs that must be then surcharged to customers for recovery. As this shortfall in revenue is then surcharged to customers in the quantity rates, the quantity rate increases, and customers conserve further by using even less water at these higher rates, and the WRAM under-collection increases.

In 2012, the Commission observed, in reference to WRAM balances, that "After the WRAM/MCBA mechanisms were first adopted in 2008, there have primarily been under-collections, and these under-collections are often quite substantial."[42] Subsequently, the WRAM balances have continued to be significantly large and under-collected.[43] Although some of these under-

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[41] *See, e.g.*, D.16-12-026 at 36.

[42] D.12-04-048 at 3.

[43] *See, e.g.*, D.13-05-011 at 67-68 ("Whatever the cause, the large revenue under-collections result in large WRAM surcharges that customers perceive as punishment for conserving water.")

collected balances reflect droughts in 2014, 2015, and 2016, a review of WRAM utility balancing accounts over the past years rarely indicates an over-collected balance.

5.2.3. The WRAM/MCBA Ratemaking Mechanism is Not Necessary to Achieve Conservation

The California Water Association argues that the WRAM/MCBA mechanisms allow utilities to implement conservation rates and other policy initiatives of the Commission, without undermining their financial stability. However, we are persuaded that the conservation benefits attributed to the WRAM/MCBA have been supplemented by other conservation requirements. While the WRAM/MCBA mechanism adjusts for differences between sales forecasts and actual sales, it is less certain that WRAM is necessary to promote conservation. Conservation is not done by the utility but instead is accomplished by the customers. The utility does not save water or use less water, but instead, the utility through its rates, especially tiered rates that increase the cost per unit of quantity, provides a signal to customers that increased usage will result in increased costs per unit consumed. This basic supply and demand message based on cost is further enhanced by consistent messages to customers to conserve a precious resource, as well as conservation programs such as low-flow showerheads, toilets, sod removal programs and other conservation messages, executive orders, Board orders, and new laws. While both the utilities and the customers should take pride in their conservation accomplishments, it is the customers that have made the choices to use less water encouraged by tiered rates or state executive orders, Board orders, and state statute.

At the August 2019 Workshop the second panel was summarized as follows:

> GSWC began by addressing a drought forecasting mechanism. GSWC stated that they continue to work with CalPA to create more accurate sales forecasts. GSWC argued that while setting accurate forecasts is a top priority, it is futile to establish low forecasts if the intention is to be more accurate. Adjustments between the GRC years will assist in accuracy of the forecasts, as opposed to a steep increase in rates due to under-forecasting. Steep and sudden increases may shock customers, whereas more frequent smaller rate adjustments may be less unsettling.
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> GSWC believes that the Sales Reconciliation Mechanisms (SRM) in conjunction with escalation filings are necessary to obtain a better gauge on increases for the utility's rates. GSWC submits SRMs and escalation filings concurrently to prevent multiple rate increases from appearing on customer bills. SRMs are calculated when a 10% difference between actual and forecasted sales is reached. SRMs improve the accuracy of rates to customers. Sometimes the Water Revenue Adjustment Mechanism (WRAM) provides money back to customers or alternatively creates a balance that is charged to customers.
>
> CWA stated that since the GRC process began, differences between forecasts from CalPA and IOUs have gotten smaller as they collaborate and reach agreements. However, sales forecasts based on the New Committee Method (NCM) and other older forecasting methods were not very good. Current methods are producing more accurate three-year forecasting. Still, if government agencies wish to move toward a longer forecasting period (e.g. 5 or 10 years), there is an inherent difficulty, for no forecasting method can account for natural disasters or other fundamental changes. CWA believes such events can only be considered when they occur. SRMs assist utilities in using recent accurate data to update rates based on current events such as increases in purchased power or purchased water expenses.

In addition, SRMs are the best possible option to adjust rates and enhance the accuracy of rates on a timely basis.

Regarding future climate change and effects on drinking water, CWA stated that IOUs have limited information. The few programs in place are pilot programs, and their results – when they come – will only be understood when evaluated. It will take a long time before we can reach firm conclusions. Even so, IOUs are reviewing methods for water conservation as a top priority by reviewing alternatives like ground water storage. IOUs can plan for the projects, but depending on the longevity of the project, the forecasts may not be accurate.

CalPA began their discussion by stating that in recent years the NCM has played less of a role in sales forecasts. Recent forecasts have improved, but there is still room for further improvements. In the past, IOUs used average data, but CalPA suggested using better data and models to create better forecasts. The new forecasting model will account for the utilities' actions encouraging customers to switch to more water efficient appliances by evaluating control group experiences to model the data and analytically explain the effects in the future.

CalPA disagrees with the use of the WRAM due to drastic reductions in public participation. CalPA asserted that WRAMs address a single issue for rate making, namely "how did sales change". A major flaw with the current method is that the WRAM does not analyze whether the utility spent the amount they proposed. CalPA posed the question of why utilities should be protected from sales changes if the funds were not spent, and the customers did not benefit? Why should utilities be allowed to request more money if the changes in sales are not the result of beneficial programs? During drought years, Sale Reconciliation Mechanisms (SRMs) can be used to adjust depending on actual sales compared to forecasted results. However, the main issue is that the WRAM balances are so high. CalPA is opposed to adding another mechanism to counter the WRAM balances. CalPA explains that the

> IOUs' main risk is the sales variability. If the sales variability is removed as an impediment to financial stability, along with rate of return, the impact on affordability would be greatly reduced.
>
> CalPA provided some background on SRMs stating that the mechanism was originally a pilot program that would be used as an assistance to step filings. When WRAMs were introduced, they made the step filings more complex and as a result SRMs became more complex. While SRMs and step filings are occurring at the same time, the public may not realize that the rate changes are occurring at the same time, and the trend is that rates are generally increasing. A suggestion from CalPA was to not only look at the previous year's sales but analyze other factors such as the capital budget, leak adjustments, and uncollectable expense. If there are mistakes in the capital budget, the IOUs are shifting the problem from the company to the customers by increasing rates….[44]

In its September 2019 Comments the California Water Association sought to add to the workshop report that it

> explained during the workshop that the WRAM helps the Commission further certain policy goals, such as conservation, low-income support and affordability. For the latter two, achieving the low-income support through low first-tier rates requires more revenue to be recovered in the upper tiers, which leads to more revenue instability, thus necessitating a WRAM.[45]

[44] Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions, September 4, 2019, Attachment A at 4-6.

[45] California Water Association September 2019 Comments at 7.

In addition, the California Water Association reiterated its argument that converting from the existing WRAM process to Monterey-Style WRAMs is procedurally improper[46] and further argued that

> the Monterey-style WRAM does not fulfill the same purpose as the full WRAM/MCBA. Instead, the Monterey-style WRAM is only a rate design tool limited to mitigating the uncertainty associated with rate design changes (as opposed to uncertainty associated with utility revenue more generally). Additionally, the Monterey-style WRAM does not decouple sales from revenues and therefore fails to address the perverse incentive for water utilities to increase water sales and discount conservation efforts. Over time, for the majority of the Class A water utilities the Commission has moved away from Monterey-style WRAMs and towards adoption of full WRAMs due to the shortcomings of the former. The full WRAM/MCBA mechanisms allow utilities to implement conservation rates and other policy initiatives of the Commission, without undermining their financial stability.[47]

CWA also stated that as D.16-12-026 determined that at that time the WRAM mechanism should be maintained and that the suggestion in this proceeding to consider changing to Monterey-Style WRAMs with incremental cost balancing accounts came as a surprise to CWA and its member water utilities.

CWA argues that if the Commission decides to consider converting from the WRAM/MCBA mechanisms to Monterey-Style WRAMs with incremental cost balancing accounts that it should do so in the context of each utilities GRC.

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[46] *Id.* at 13, *citing,* Reply Comments of California Water Association Responding to Administrative Law Judge's June 21, 2019 Ruling (July 24, 2019) at 2-3.

[47] *Id*. at 13-14.

Replying to the comments of the California Water Association, the Public Advocates Office of the Public Utilities Commission argued that the annual change in average consumption per metered connection for Class A water utilities with full decoupling WRAM is very similar to the same consumption by Class A water utilities without a full decoupling WRAM. In support of this contention, the Public Advocates Office of the Public Utilities Commission argued that the annual change in average consumption per metered connection is almost the same during the last eight years for both WRAM and Non-WRAM utilities.[48]

Based on the discussion at the workshop and the comments of the parties on the workshop report and issues listed, we are not persuaded that continuing the WRAM/MCBA for strictly conservation purposes is beneficial to ratepayers. While Great Oaks Water Company claims that actual sales are the result of successful conservation efforts, it provides no support for its conclusion and we cannot find any in the record. Great Oaks Water Company also argues that the Public Advocates Office of the Public Utilities Commission conclusion that the annual change in average consumption per metered connection is almost the same during the last eight years for both WRAM and Non-WRAM utilities is erroneous as it did not take into account the fact that it was authorized a Conservation Lost Revenue and Expense Memorandum Account in 2014 that serves the same basic purpose as a WRAM/MCBA. We disagree. The Public

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[48] The Public Advocates Office of the Public Utilities Commission Sept. 2019 Reply Comments at 7.

Advocates Office of the Public Utilities Commission made its recommendations based on the Class A water utilities' annual reports to the Commission from 2008 to 2016. The Conservation Lost Revenue and Expense Memorandum Account for Great Oaks Water Company was authorized for only a small part of the period used by the Public Advocates Office of the Public Utilities Commission. Further, there is no discernable difference between the period before it was authorized and the end of the period when it was authorized.

We agree with the Public Advocates Office of the Public Utilities Commission that requiring WRAM utilities to transition to the Monterey-Style WRAM will not decrease conservation incentives for customers. Further, there is no evidence that eliminating the WRAM will raise rates on low-income and low-use customers.[49] However, the impact of the unanticipated WRAM surcharges on low-income and low-use customers is one component of the problems we have encountered with the WRAM. Further, rate design is the ultimate determinant of impacts to low-income and low-use customers, and water utilities can and will propose rate structures in their next GRC application where the Commission will ensure low-income and low-use customers are not adversely impacted.

However, all of the arguments made in comments against ending the WRAM/MCBA and allowing companies to instead use a Monterey-Style WRAM with an ICBA going forward miss the fundamental point that no party has

[49] Reply Comments of the Public Advocates Office of the Public Utilities Commission on the Proposed Decision at 2-3.

presented evidence or arguments that persuade us that the pilot WRAM/MCBA mechanism provides discernable benefits that merit its continuation. We continue to believe that other actions by companies, the Legislature, the State Water Resources Control Board, and the Commission have, and continue to do more to achieve conservation requirements and that the flaws and negative customer experience with the WRAM/MCBA outweigh any benefits it does achieve. While we do not agree that there should be no "mechanism to adjust rates mid-year or end of year if shortfalls occur, even during drought years,"[50] we are persuaded that the pilot WRAM/MCBA mechanism is not preferred. We are also not persuaded that the WRAM/MCBA adjusts for consumption reductions due to implementing conservation, but we recognize that the WRAM/MCBA goes beyond removing a utility's disincentive to promote conservation by taking other factors such as sales forecasting, drought, and economic effects into account.

Accordingly, we determine that it is not necessary for a utility to have a full WRAM/MCBA mechanism in order for their customers to conserve water. Instead, it appears that over the years since WRAM/MCBA mechanisms were adopted, including drought years in 2014, 2015, and 2016, customers have heeded the continuing message and mandates that water is a precious resource that should not be wasted. These efforts heed the message from former Governor Brown's Executive Orders during our drought years from 2013-

[50] July 2019 Comments of the Public Advocates Office of the Public Utilities Commission at 11.

2017 that declared a drought state of emergency in 2014;[51] called for a statewide 25 percent reduction in urban water usage in 2015;[52] and set forth actions in 2016[53] to make conservation a California way of life.

5.2.4. Because the WRAM/MCBA Mechanism is Implemented Through a Balancing Account, there are Intergenerational Transfers of Costs

When WRAM balances, which have been significant and under-collected, are recovered through the WRAM/MCBA mechanism, the recovery payments may be made by a different group of ratepayers than those incurring the costs. Some customers may have moved and been replaced by others or may be new customers. In addition, usage patterns may have changed. These effects in the WRAM/MCBA mechanism implementation mean that different customer groups will be paying for the costs generated by an earlier customer group.[54] While such intergenerational transfers may not be significant over long periods of time, we seek to minimize such transfers when possible in order to keep rates just and reasonable. We therefore find that 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.

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[51] Executive Order B-17-2014.

[52] Executive Order B-29-2015.

[53] Executive Order B-37-16.

[54] D.16-12-026 at 37.

5.2.5. Allowing Water Utilities to a Monterey-Style WRAM

In view of the foregoing, we believe that it is an appropriate time to move to eliminate the option for water utilities to use the full WRAM/MCBA mechanism. However, to account for the consequences of inaccurate forecasts, it is reasonable that these former WRAM utilities be provided an opportunity to establish Monterey-Style WRAMs offset by ICBAs. The option to use the Monterey-Style WRAM grants water utilities a rate adjustment mechanism that is more limited and allows water utilities to recover lost revenues constrained to the difference between conservation tiered rates and single, uniform rates.

In comments on the proposed decision, water companies claim that the Monterey-Style WRAM serves a different purpose and does not provide the same benefits as the traditional WRAM/MCBA.[55] However, no water company or any other party offered any alternative to the WRAM/MCBA process other than allowing companies to use a Monterey-Style WRAM in future GRCs.[56] Further, the WRAM was never imposed upon water utilities, as the pilot was created to allow water utilities an alternative to traditional sales forecasting and ratemaking. Similarly, we are not requiring water utilities to use a Monterey-

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[55] July 27, 2020, Comments of Great Oaks Water Company at 10-11, July 27, 2020, Comments of California Water Service Company at 10-11, July 27, 2020, Comments of Golden State Water Company at 13-14, July 27, 2020, Comments of California-American Water Company at 8-9. July 27, 2020, Comments of California Water Association at 7-9, July 27, 2020, Comments of Liberty Utilities at 8-10.

[56] *E.g.*, July 2019 Reply Comments of California Water Association at 13-14.

Style WRAM and ICBA, but rather, allow water utilities to use it in proposals for future GRCs.

We also recognize that a reasonable phase out of the option for water utilities to use the full WRAM/MCBA mechanism would be fair to ratepayers and water utilities. Therefore, we establish a gradual phase-out the WRAM/MCBA mechanism. Current rates for WRAM utilities are based on adopted forecasts, which anticipate that corrections between forecasted and actual sales will be resolved through WRAM balances. To establish reasonable new rates based on forecasts that do not include this assumption, a new sales forecast should be developed and applied to rates, including a tiered rate structure for each utility.

Because the WRAM/MCBA mechanism has been used for over 10 years by the five WRAM utilities, and as there are many individual associated factors such as accounting, billing, and other related issues for these WRAM utilities, we agree with California Water Association that such a change should not be implemented immediately. Further, as noted, each WRAM utility may face different circumstances in the implementation of this major change. Therefore, as California Water Association recommends, we are ordering the transition off of using the WRAM/MCBA, and allow utilities to utilize Monterey-Style WRAM/ICBA in the context of each WRAM utility's GRC. This means, our adoption of this significant policy change will not be implemented immediately but rather in the context of the next GRC for each of the five WRAM utilities. Therefore, any GRC application filed after the effective date of this decision may

not include a proposal to continue the WRAM/MCBA mechanism, but rather may include a proposal for a Monterey-Style WRAM with ICBA.

5.2.6. For Utilities Without WRAM/MCBA Mechanisms, Accurate Forecasts of Water Sales in General Rate Cases Places Added Significance on the Reliability of the Adopted Forecasts

The Commission has stated, "Forecasted sales drive rates as they determine how authorized revenue (based on determination of costs, return on equity, and other factors) are to be recovered through quantity rates."[57] As discussed elsewhere in this decision, both utilities and their customers rely on forecasts that are as accurate as possible. Without a WRAM/MCBA mechanism, the forecast determines how all rates, both service charge and quantity rates, are established for the future. It will be incumbent upon the parties in each GRC to determine that the recommended forecasts are as accurate as possible. The consequences of inaccuracy can be significant to both the water utility and the customer. The WRAM/MCBA mechanism removes most of those consequences from the water utility and removes most of the risk from customers, by adding a means to adjust future rates to meet the approved revenue requirement. The earlier settlements reached in GRCs for California-American Water Company, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corp., and Liberty Utilities (Apple Valley Ranchos Water) Corp. which established WRAMs for these utilities allude to the transfer of risk,

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[57] D.16-12-026 at 18.

but there is no evidence that this change was ever given a value to be included in determining the cost of equity for any utility. We believe this is true because, as pointed out by California-American Water Company, we cannot quantify that risk as it does not exist in a vacuum but as one element within many risks, such as the economy or weather.[58] Consequently, while we are allowing the utilities with WRAMs to use Monterey-Style WRAMs, we cannot also conclude that there is a measurable change in the perceived risk component.

5.2.7. Lost Revenue Due to Reduced Sales During Droughts

During the Governor declared drought emergencies, the Commission has adopted appropriate measures which allowed utilities without a WRAM/MCBA to track lost revenues due to reductions in water use due to both voluntary and mandatory customer reductions. As described in Resolution W-4976 adopted February 27, 2014, these measures provide that a utility without a WRAM/MCBA was authorized to establish a Lost Revenue Memorandum Account to track revenue shortfalls.[59] All non-WRAM utilities availed themselves of the opportunity to establish such accounts and thus were able to recover lost revenues caused as a result of the declared drought emergencies. If, in the future, there are Governor declared droughts, we expect that water utilities that no longer have WRAM/MCBA for tracking lost drought revenues will be

[58] D.08-08-030 at 28-29.

[59] *See*, Resolution W-4976, adopted February 27, 2014 at 11.

provided an opportunity to establish similar lost revenue memorandum accounts during the time of declared drought.[60]

5.2.8. Modifications are needed to improve water sales forecasting process to allow rate adjustments between GRCs

We conclude that in order "to improve water sales forecasting" the WRAM/MCBA mechanism cannot continue. We are not persuaded that the primary reasons for adopting the WRAM/MCBA mechanism, to remove thefinancial disincentive on the part of the utility and to promote the conservation of water, are best attained through the WRAM/MCBA. We recognize that it is difficult to parse out consumption declines due to the sole effects of conservation programs and rate designs from other contributing factors such as inaccurate sales forecast, but the WRAM/MCBA goes beyond removing a utility's disincentive to promote conservation by taking a multitude of factors into account. Furthermore, our experience has been that employing the WRAM/MCBA mechanism has certain negative effects on customers and that there should be a fundamental change in policy regarding this subject. At the same time, we have identified some of the benefits to the WRAM/MCBA are captured through the Monterey-Style WRAM with ICBA with fewer negative effects on customers than the traditional WRAM. Consequently, we believe there is good reason to allow WRAM utilities to stop using this mechanism and that a policy change eliminating WRAM/MCBA is a reasonable outcome.

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[60] D.16-12-026 at 35-36.

As discussed herein, such a change should not occur immediately as we are cognizant that this change has many implications. In the next GRCs for each of the five utilities with a WRAM/MCBA, the utilities may propose Monterey-Style WRAM with ICBAs. While we are ordering this change in the next GRCs for WRAM utilities, we are also providing an opportunity for these five utilities to establish Monterey-Style WRAM with ICBAs upon the end of the existing WRAM/MCBA mechanisms.

6. Tier 1 Water Usage and Water Baselines

Adoption of any baseline amount to provide a minimal amount of water at an affordable rate, which can be defined as the Tier 1 usage and rate, requires utilities to develop and propose a methodology to determine this amount and rate. The difficulty, as explained by California Water Association, is determining the number of residents in any household, is a matter of privacy and other potential concerns. The development of the proposed methodology should include determining a minimal amount of water per person, such as a calculation of an EIU or other methodology that reflects the necessary water for basic human needs. Application of this methodology to develop the Tier 1 usage and rates should include the local demographics of the water utility service area. We will not adopt a specific method that does or does not include a portion of fixed costs in the Tier 1 rates as the consequent effects would be shifting these costs totally to those customers using water above the Tier 1 usage.

While we will not require a specific methodology, we direct the investor owned utilities to provide analysis in their next GRC to determine the appropriate Tier 1 breakpoint that is not lower than the baseline amount of water

for basic human needs for each ratemaking area. This analysis for establishing a baseline should consider and not be set below both the EIU of 600 cubic feet per household per month, as stated in the Affordability Rulemaking (R.18-07-006) and the average winter use in each ratemaking district. At 600 cubic feet per household per month, households water usage baseline will be roughly 4,488 gallons per month.[61]

In comparison to Cal. Water Code § 10609.4(a) which established a 55 gallons per day per capita standard for indoor residential water use, this baseline water usage covers up to a 3-person household.

Person(s) Per Household	Calculation	Monthly Baseline Usage	EIU Baseline (R.18-07-006)
1	1*30*55	1,650 gallons of water	4,488 gallons of water
2	2*30*55	3,300 gallons of water	4,488 gallons of water
3	3*30*55	4,950 gallons of water	4,488 gallons of water

7. Consistent Terminology All Water Utilities Should Use for Low-Income Water Programs

As part of this rulemaking, we also evaluated and took input on ways to standardize, coordinate, and evaluate the different low-income water programs implemented by water utilities. Much of that input was incorporated by the Board as part of its AB 401 recommendations. We also evaluated and took input on the value of a uniform name for the program discount offered to customers

[61] 1 cubic foot of water = 7.48 US gallons of water.

qualifying for assistance on the basis of their income. Currently, each Commission-regulated Class A water utility utilizes a name of its own design for its low-income program.[62]

Commenters were generally indifferent to the new name,[63] though some preferred to be allowed to retain the existing name of their program. For example, Southern California Edison Company proposed to continue its current title CARE for its water assistance program on Catalina Island and recommended that the value of the familiarity of the CARE acronym outweighs any concern that the acronym is particular to energy, not water.[64]

One concern raised was that a uniform name suggests a uniform program structure, as is the case for the statewide assistance programs administered by Commission-regulated energy companies (CARE) and telephone companies (LifeLine).[65] However, we have previously determined that while the structure of the program discount varies, the criteria for qualification in the program, and the method of qualification, is uniform among the Commission-regulated water

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[62] While the structure of the discount across Class A water utilities also varies, we have deferred consideration of consistency of the structure of those programs.

[63] California Water Association 2019 Comments at 20. Great Oaks Water Company 2017 Comments at 8. The Public Advocates Office of the Public Utilities Commission 2017 Comments at 17. SCE 2017 Comments at 3-4. Golden State Water Company 2017 Comments at 4. Consumer Federation of California 2017 Comments at 4-5.

[64] SCE 2019 Comments at 6.

[65] The Public Advocates Office of the Public Utilities Commission 2017 Comments at 17, Center for Accessible Technology 2017 Comments at 2.

utilities and the Commission-regulated energy utilities.[66] Thus, a single, straight-forward name will aid outreach to consumers and statewide coordination in the delivery of assistance to low-income consumers.[67]

California Water Association recommends the Commission require regulated water utilities use the name "Customer Assistance Program, or CAP," for their low-income water programs in California. California Water Association states that this name is also used by the United States Environmental Protection Agency, the Water Research Foundation, and water utilities in other states.[68]

We agree and adopt the Customer Assistance Program (CAP) as the name to be used for all Commission-regulated water utilities for their low-income water assistance programs. On the theory that it is best to align with an existing program name specific to water, we choose the name Customer Assistance Program pending alignment of the assistance programs themselves.

We have coordinated closely with the State Water Resources Control Board AB 401 proceeding during this rulemaking and agree with parties that broader changes made to either the funding or the structure of the assistance will happen through the statewide process. Thus, while specific changes to individual water utilities may occur as part of their regular GRC process, broader standardization of funding and assistance may be considered in the future.

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[66] *See* OIR at 6 ("The eligibility requirement is the only consistent aspect of the Class A water utilities' low-income rate assistance programs.").

[67] California Water Association 2017 Comments at 5.

[68] California Water Association 2017 Comments at 6.

However, we need not wait to move forward on adopting a uniform program name. We hereby require all water utilities to adopt this new name in their next GRC.

By adopting this phased approach to the uniform name, we minimize the costs passed on to ratepayers of changing a program name in the middle of a GRC cycle. Therefore, a water utility that has a pending or to be filed rate case before the Commission should adopt the Customer Assistance Program name for its low-income water assistance program when implementing the Commission's decision in that case.

Water utilities with low-income programs shall describe their programs in filings and public outreach with the name "Customer Assistance Program." Water utilities may use the CAP acronym where appropriate.

8. Low-Income Multi-Family Housing Pilots

We agree with the Center for Accessible Technology and California Water Association that small-scale pilot programs offer a good opportunity to test delivering benefits to low-income renters in multi-family buildings that do not pay a water bill directly.

We acknowledge the Public Advocates' position on waiting on legislation, as the AB 401 process could be very lengthy. In the meantime, while we are waiting to see whether there will be a state-funded, statewide low-income rate assistance program, small pilots could provide some immediate relief to struggling tenants and allow us to gather information on better serving those tenants.

We believe California-American Water Company's Advice Letter 1221 for establishing a tariff that provided a discount to low-income multi-family renters through their housing providers is a good starting point for a pilot. This was also discussed in the August 2, 2019, workshop.[69]

Accordingly, we direct California-American Water Company to file a Tier 3 advice letter, within 120-days of the issuance of this decision, outlining a pilot program based on AL 1221 that provides a discount to water users in low-income multi-family through their housing providers. All other Class A water utilities interested in a similar pilot program should file a Tier 3 advice letter that includes at least the same level of detail.

The Advice Letter must outline and address the following:

- Locations and size of pilots.
- How the utility will identify the tenants who meet the income eligibility (200% of federal poverty level)?
- How the utility will trace the program benefit directly to the users who do not receive water bills?
- Proposed evaluation plan including program audit provisions. The pilots should be evaluated after no later than two years.
- How to address tenant turnover in the program administration?
- Proposed budget including all administrative and audit costs.
- Provisions for how the pilot program is to be funded.

[69] Staff Report at 3

Lastly, we agree with the Public Advocates that multi-family housing units should qualify for LIRA programs if the housing is owned by a non-profit and are for the explicit purpose of providing affordable housing to low-income residents. We direct Class A water utilities with existing LIRA programs to update their eligibility to reflect this change.

9. Reporting Mechanisms

We agree with parties that GRCs are the appropriate proceedings to consider low-income programs and affordability issues within their systems, as well as each utility's ability to achieve Water Action Plan item 6 (balancing conservation, affordability, and investment.) That said, as GRCs occur approximately every three to five years, the data submitted in Annual Reports provide timely updates and information to gauge and track the progress, if any, toward our goals.[70] We realize that, currently, the reporting requirements can be found in various decisions, and parties could not point to a single location summarizing the reporting requirements. To achieve our goal during the GRCs, to use both the data from Annual Reports and the Minimum Data Requirements to develop the comprehensive assessment of progress toward meeting our statutory requirements and goals, we find that it would be helpful to reiterate the current reporting requirements as discussed and summarized below.

Specifically, D.11-05-004 ordered Class A water utilities to begin including Conservation Data Reports and Low-Income Data Reports in their Annual Reports. Further, the Low-Income Data Reports were to include the average bill

[70] D.11-05-004 is the most recent update to data requirements of the Annual Reports.

impact of surcharges resulting from the amortization of WRAM/MCBAs on participating low-income program customers. Further, D.14-10-047 required multi-district utilities to include in their next GRC filings a district-based rate review to assess whether high-cost and affordability problems exist in any of its districts.[71] In addition, D.12-04-048, ordering paragraph (OP) 4 set forth a number of requirements for water utilities to provide options related to WRAM during their GRC, which are superseded by this decision to allow water utilities using a WRAM to use Monterey-Style WRAMs in the future.

D.16-12-026 was intended to spawn a number of trials and evaluations of how to improve the balance of conservation, investment, and affordability through a variety of means. OPs 9 and 10 directed proposals for Advanced Metering Infrastructure (AMI), and these directives have appeared most often in subsequent GRC applications. However, it does not appear that the requirements of OP 8 to evaluate the results of AMI pilots have been fully completed. Similarly, evidence that OPs 11-14 directing more attention and creative approaches to rate design cannot be consistently identified.

Finally, in the Amended Scoping Memo initiating Phase II of this proceeding, we initiated a reporting requirement to better track the impact the COVID-19 pandemic is having on water customers and water utilities for the past few months to at least the middle of 2021.

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[71] D.14-10-047, OPs 1, 2.

For ease of reference, we summarize here all of the requirements, and indicate whether they are confirming prior requirements or expanding on prior requirements:

- Annual reporting requirements from D.11-05-004.
- To each Annual Report, attach Minimum Data Requests submitted in the prior-year period as part of 1) GRC filing, 2) applications for acquisitions (or expansion based on new requirements in this decision).
- Compliance, and associated data and analysis with orders from D.16-12-026.
- Inclusion of disconnection and payment behaviors required in this proceeding beginning in June, 2020 through June, 2021.

Taken together, these existing requirements, if faithfully followed and enforced, will provide the needed foundational data, and allow analysis by which progress toward affordability for low-income and all customers can be evaluated.

Finally, we commit to providing in each utility's GRC an OP that details the required low-income program metrics and data for that utility to report in its annual report.

10. Water Consolidation Timelines

Through this Rulemaking, we have attempted to comprehensively evaluate the connections between consolidation, safety, and affordability by examining issues concerning affordability of clean, safe drinking water for low-

income and disadvantaged communities, including greater pooling and consolidation.[72]

Consolidation has been and continues to be a tool to remedy systems failing water quality health and safety standards. Consolidation may also be a means to improve affordability, by leveraging greater economies of scale and scope, and by importing best, or better, practices related to operating a water utility, as well as designing rates to allow recovery of reasonable expenses. It is incumbent upon this Commission to ensure the process to achieve consolidation is as effective and efficient as possible. Accordingly, we incorporate the multiple perspectives of the parties and workshop participants to make minor adjustments to ensure an effective and efficient consolidation timeline.

10.1. Existing Guidance for Water Consolidation Timelines

Simply from an expediency angle, the answer to the Scoping Memo's question 1a asking whether the Commission should consider consolidations outside of GRCs is an unequivocal yes. No party argued that we should limit such consideration to GRCs. Commission-regulated utilities should continue to

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[72] The terms acquisition and consolidation have been used interchangeably by both the Legislature and the Commission and we continue to use them interchangeably here. *See*, D.99-10-064, discussing the Consolidation Act that specifically addresses the acquision of water systems ("the Legislature enacted Senate Bill 1268 to add Pub. Util. Code §§ 2718, et seq., the Public Water System Investment and Consolidation Act, effective January 1, 1998" to address a "water corporation acquiring a public water system."). *See also*, Comments of the Public Advocates Office on the Proposed Decision at 9-10, Reply Comments of Liberty Utilities on the Proposed Decision at 5.

file standalone applications and advice letters relating to acquisitions, as necessary.

The current Commission consolidation guidance is old but not outdated. D.99-10-064 adopted an agreement between California Water Association, the Commission's Water Division,[73] and several Commission-regulated water utilities that were not opposed by the Public Advocates Office of the Public Utilities Commission or others.[74] The agreement lays out a 245-day schedule for completing consolidation applications generally, and 100 days for at-risk systems.[75] The agreement also noted that Commission approval is not a requirement for a private utility to acquire a public system, but only for the approval of the long-term financing involved in the acquisition, if different than current approval[76] and to set rates for the acquired system.[77] The agreement builds upon prior guidelines from D.92-03-093.

The State of California has pending legislation, AB 1751, the Consolidation for Safe Drinking Water Act of 2019, that would establish criteria, procedures,

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[73] The Ratepayer Representation Branch (RRB) within the Commission's Water Division filed the joint motion for settlement with California Water Association. This branch no longer exists.

[74] D.99-10-064 at 3.

[75] The aspirational schedule was agreed to by the parties more than twenty years ago. D.99-10-064 at 6. Also *see* Section 3 in Appendix D to D.99-10-065 defining an inadequately operated and maintained small water utility as "any operation serving under 2,000 customers that is subject to an outstanding order of the Department of Health Services to implement improvement."

[76] D.99-10-064 at 6.

[77] D.99-10-064 at 11, CoL 5, OP 2.

and timelines for deciding water utility requests to acquire water systems that may be different from D.99-10-064, although according to California Water Association the schedule of AB 1751 is intended to mirror D.99-10-064.[78] Thus, for our purposes, the legislation, as proposed, should have little impact on our consolidation timelines. While we may revisit this issue again in Phase II, as the legislation is still pending, we will move forward now with affirming the Commission's current consolidation timelines in this decision.

The Commission also established consolidation guidelines in D.14-10-047 that contain important rationale for consolidation to mitigate affordability issues. Although that decision pertained exclusively to consolidation within companies, its requirements for examining cost and affordability considerations district-by-district are consistent with our overall acquisition and consolidation consideration and timelines.

10.2. Streamlining Requirements

We take further steps here based on parties' proposed modifications designed to streamline consideration of the applications for consolidation. Both California Water Association and the Public Advocates Office of the Public Utilities Commission[79] recommended the practice in GRCs and cost of capital filings[80] of Minimum Data Requirements (MDRs) also apply to applications for mergers and acquisitions, although they differ on which data should be

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[78] California Water Association 2019 Reply Comments at 5.

[79] The Public Advocates Office of the Public Utilities Commission July 2019 Comments at 4, California Water Association July 2019 Comments at 10.

[80] D.07-05-062, Appendix A, Attachments 1-2.

included. As California Water Association identified, several Public Advocates Office of the Public Utilities Commission recommendations were already contained within the D.99-10-064. The only reason to include these here was for ease of reference.

The current agreed-upon data elements approved by D.99-10-064 and affirmed in the instant proceeding by both the Public Advocates Office of the Public Utilities Commission and California Water Association are:

- A copy of the purchase agreement;[81]
- A copy of any appraisals conducted in the past five years;[82]
- A forecast of the results of operation for (1) the acquiring utility, (2) the acquired utility, and (3) the combined operation;[83]
- A list of all assets funded by the state or federal government and other contributions;[84]
- Assets funded by contributions;[85] and
- Indication of compliance orders for failures to meet drinking water standards[86]

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[81] Required to ensure compliance with Pub. Util. Code Sections 851 – 854.

[82] Section 2.05 to Appendix A of D.99-10-064 requires just one appraisal. The Public Advocates Office of the Public Utilities Commission proposed specifying that this requirement be limited to any appraisal in connection with the sale. We are not persuaded to make such a change in this proceeding.

[83] Section 2.04 to Appendix A of D.99-10-064.

[84] Section 2.06 to Appendix A of D.99-10-064.

[85] Section 2.07 to Appendix A of D.99-10-064.

[86] Implicit in Sections 3.01 and 3.02 to Appendix A of D.99-10-064. In Reply Comments dated July 24, 2019 at 5, California Water Association recommends this indication be included as well

Both the Public Advocates Office of the Public Utilities Commission and California Water Association proposed additional items to be submitted with the application that we adopt. We agree that if all of the documents required for an acquisition are filed as requested, and there is no controversy over the statements or facts then there should be an acceleration in processing the application or advice letter. These nonduplicative items proposed by both California Water Association (1-2, 4-5)[87] and the Public Advocates Office of the Public Utilities Commission (all items except 9, 10)[88] are approved and listed below:

1. Estimate the potential monthly incremental cost impact on existing and acquired customers following the actual results of the Buyer's most recently authorized tariffs.
    a. If a Buyer has pending request before the Commission to change rates, it must also calculate the above using data as proposed in its pending request.
2. If the Buyer is seeking authority to increase the acquired system's rates to a certain level, please state the basis for the targeted rate and period of time for such targeted rate to be implemented.
3. Provide the annual depreciation expense using the proposed rate base of the acquired assets. If the exact depreciation expense is not available, provide the best estimate of the annual depreciation expense. Show how the depreciation expense is calculated.
4. Provide an estimate of the annual revenue requirement of the system proposed to be acquired. Provide the

[87] California Water Association July 2019 Reply Comments at 5.

[88] The Public Advocates Office of the Public Utilities Commission July 2019 Comments at Attachment 1.

assumptions for the annual revenue requirement, including expected rate of return, expected depreciation expense, O&M expenses, etc.

5. Other than the revenue requirement data requested above, separately identify all other approved and/or intended impacts to customer bills (*i.e.,* surcharges, passthrough fees, etc.).
6. Provide a listing of any entities that currently receive free service from the acquired utility.
7. If the acquired utility has increased rates in the last year, please state the date of the increase and provide a copy of the new rate schedule and the total annual revenues projected under the new rates.
8. Are there any leases, easements, and access to public rights-of-way that Buyer expects to be needed in order to provide service which will not be conveyed at closing? If yes, identify when the conveyance will take place and whether there are expected to be additional costs involved.
9. Provide a breakdown of the estimated transaction and closing costs. Provide invoices to support any transaction and closing costs that have already been incurred.
10. Describe known and anticipated general expense savings and efficiencies under Buyer's ownership. State the basis for assumptions used in developing these savings and efficiencies and provide all supporting documentation for the assumptions.
11. Provide a copy of the Seller's request for proposals (if there was one) and any accompanying exhibits with respect to the proposed sale of the water system or water system assets.
12. Provide a copy of the response to the request for proposals (if there was one) of the Buyer for the purchase of the acquired water system or water system assets.

13. For each Utility Valuation Expert (UVE) providing testimony or exhibits, please provide the following:
    a. A list of valuations of utility property performed by the UVE in the last two years;
    b. A list of appraisals of utility property performed by the UVE in the last two years;
    c. A list of all dockets in which the UVE submitted testimony to a public utility commission or regulatory authority related to the acquisition of utility property in the last two years; and
    d. An electronic copy of or electronic link to written testimony in which the UVE testified on public utility fair value acquisitions in the past two years.
14. Explain each discount rate used in the appraisals and valuations, including explanations of the capital structure, cost of equity and cost of debt. State the basis for each input. Provide all sources, documentation, calculations and/or workpapers used in determining the inputs.
15. Explain whether the appraisal/valuation used replacement cost or reproduction cost and why that methodology was chosen.
16. Explain the basis for any comparable acquisitions used in the appraisal/valuation including the purchase price and number of customers for each comparable acquisition.
17. Are there any outstanding compliance issues, including but not limited to water quality violations, that the Seller's system has pending with the Board's Division of Drinking Water? If yes, provide the following information:
    a. Identify the compliance issue(s);
    b. Provide an estimated date of compliance;

c. Explain Buyer's anticipated or actual plan for remediation;

d. Provide Buyer's estimated costs for remediation; and,

e. Indicate whether the cost of remediation was or is anticipated to be factored into either or both fair market valuation appraisals offered in this proceeding.

18. Are there any outstanding compliance issues that the Seller's system has pending with the US Environmental Protection Agency? If yes, provide the following information:

    a. Identify the compliance issue(s);

    b. Provide an estimated date of compliance;

    c. Explain Buyer's anticipated or actual plan for remediation;

    d. Provide Buyer's estimated costs for remediation; and

    e. Indicate whether the cost of remediation was or is anticipated to be factored into either or both fair market valuation appraisals offered in this proceeding.

19. Provide copies of all notices of a proposed acquisition given to affected customers.

20. Provide copies of all disclosures and customer notices required by Pub. Util. Code § 10061 related to the sale and disposal of utilities owned by municipal corporations.

21. Describe other requests to be included in the application, including but not limited to requests for approval of:

    a. Consulting, transition of service, water wholesaling, or other agreements;

    b. Interim rate increases outside of a general rate case proceeding or other special rate treatment (*e.g.*, CPI-U rate increases, or rate increases under Class C/D requirements);

    c. Facilities construction;

d. Memorandum or Balancing Accounts.

22. Identify the ratepayer benefits that accrue to current ratepayers of the system being acquired due to this transaction.
23. Identify all actions the applicant has taken with governmental agencies related to obtaining required permits and/or approvals to effectuate the acquisition.
24. Provide all workpapers that support the testimony for each of the witnesses that accompany the application, in native format where possible.

In addition to the items listed above, we find the following information, when presented as part of the application or with the MDR and subsequently included in the record will help streamline consideration of an application for consolidation:

- A list of recommended, proposed or required capital improvements to the acquired water system known at the time of the application, with cost estimates, if available;
- If applicable, supporting documentation for the designation of Disadvantaged Community; and
- If applicable, documents required by Pub. Util. Code Section 10061(c).

The use of MDRs balances the need for speedy consideration of the applications and advice letters with our statutory requirements.

10.3. Maintenance of At-Risk Timeline

The Public Advocates Office of the Public Utilities Commission and California Water Association agreed that time has caused certain Commission procedural requirements to conflict with the 245-day and 100-day schedules.

Both the Public Advocates Office of the Public Utilities Commission[89] and California Water Association[90] noted that D.99-10-064's 245-day timeline does not allow for a Scoping Memo, as required by Pub. Util. Code Section 1701.5(b)(1). The Public Advocates Office of the Public Utilities Commission recommended the timeline in D.99-10-064 should be modified to comport with Pub. Util. Code Section 1701.5(b)(1), Commission Rules 2.6(a) and Rule 2.6(e), and General Order (GO) 96-B (General Rules 7.4.1 and 7.4.3), with specific timelines at the beginning of applications that allow for public input and participation. Both California Water Association and the Public Advocates Office of the Public Utilities Commission acknowledged that there is no way to both stay within the current timelines and accommodate these procedural requirements.

We distinguish here between the urgency when a system is at-risk and out-of-compliance with Section 116655 of the Health and Safety Code for failure to meet primary or secondary drinking water standards, as defined in Section 116275 of the Health and Safety Code. The Public Advocates Office of the Public Utilities Commission stated that only one recent Commission water acquisition was for a troubled system, which appears consistent with the examples California Water Association provided of Commission-approved

[89] The Public Advocates Office of the Public Utilities Commission Comments dated July 10, 2019 at 6.

[90] California Water Association Comments dated July 10, 2019 at 9. Also *see* at 11, where California Water Association simultaneously recommends against any extension of the 245-day schedule.

acquisitions of troubled systems.[91] As noted in the Staff Report on the Workshop held on December 15, 2017, over 30 water acquisitions have occurred over the last decade. However, according to the California's Office of Environmental Health Hazard Assessment (OEHHA) draft report attached to the September 4, 2019 Ruling, approximately one-third of the 2,903 community water systems were out-of-compliance for the presence of one contaminant. From a composite water quality score established by OEHHA, 9% had scores meriting concern.[92] In the spirit of all current and pending legislation incentivizing and streamlining consolidation to address these safety issues, the Commission should be encouraging Commission-regulated utilities to thoroughly consider acquiring at-risk systems. Those applications are processed through Advice Letter, therefore eliminating the need for a Scoping Memo. As outlined by the Public Advocates Office of the Public Utilities Commission, incorporating the required protest periods mean that 2.5 months of the 4 months (which is already more than 100 days) are consumed by required timeframes, leaving approximately 1.5 months for consideration.[93] Because safety is a stake, we will not extend this timeline any further and instead emphasize that these applications should be given the highest priority.

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[91] California Water Association Comments on Scoping Memo of February 23, 2018 at 3.

[92] OEHHHA Draft Report, August 2019, at 40 and Table 17. The Public Advocates Office of the Public Utilities Commission Comments of February 23, 2018 at 3 provided that the Board identified a total of 332 out-of-compliance systems serving 513,794 connections as of February 1, 2018.

[93] The Public Advocates Office of the Public Utilities Commission 2019 Comments at 8.

Non-troubled systems may still be ripe for consolidation purposes, especially when the affordability issues are identified and customer benefits conclusively demonstrated.[94] Communities designated as disadvantaged should be prioritized. However, these timelines can and should incorporate minor modifications to bring the timelines established by D.99-10-064 in line with subsequent Commission and Board actions. Specifically, we will modify the timeline to standardize initial steps in the proceedings[95] and change the language of coordination between Commission authorization and the State Water Resources Control Board's permitting process. We decline to limit the scope of the applications as recommended by the Public Advocates Office of the Public Utilities Commission,[96] as this is an activity more properly performed in each proceeding as the Scoping Memo is developed.

10.3.1. Identification of Opportunities for Consolidation

While consolidations should be considered outside of GRC timelines, we should also enhance GRC requirements to consider in a more comprehensive manner consolidation as a remedy for safety and affordability concerns. The current requirement in GRCs is for utilities to identify adjacent mutual, or Class C or D companies, for potential consolidation.[97] The Public Advocates

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[94] California Water Association 2019 Comments at 13-14.

[95] California Water Association 2019 Comments at 11.

[96] The Public Advocates Office of the Public Utilities Commission 2019 Comments at 5.

[97] D.07-05-062, Appendix A, Attachment 1 (Minimum Data Requirements for Utility General Rate Case Application and Testimony), Section II.K.3.

Office of the Public Utilities Commission recommended utilities be required to perform a "cross check" with the Board's most current list of drinking water systems statewide that are out of compliance with drinking water standards.[98] Even though GRCs will occur every three years at the most, this requirement provides an opportunity for routine oversight of Water Action Plan item 6. However, we will remove the word adjacent from the requirement, and include all types of out-of-compliance systems regardless of geographic proximity.

11. Utility Affiliate Transaction Rules and Safe Drinking Water Loan Funds

We agree with parties that no changes are needed to our affiliate transaction or safe drinking water loan fund rules at this time. Both the Public Advocates Office of the Public Utilities Commission and California Water Service Company argued the existing affiliate transaction rules established in D.10-10-019 provide enough flexibility to allow for Commission-regulated utilities to administer failing systems and also provide important consumer protections that guard against ratepayer subsidization of nonregulated services.[99] California Water Association sought greater assistance from Commission staff in working with Board staff in the application and implementation process.

We will, therefore, maintain current utility affiliate transaction rules. We did not identify any specific suggestions to improve our processes as they relate

[98] https://www.waterboards.ca.gov/water_issues/programs/hr2w/docs/data/inventory_map_summary.xls

[99] The Public Advocates Office of the Public Utilities Commission Comments dated September 16, 2019 at 11, California Water Association Comments dated September 16, 2019 at 25. Also *see* The Public Advocates Office of the Public Utilities Commission and California Water Association Comments of February 23, 2018.

to safe drinking water loans. We agree with California Water Association that Commission staff should continue to provide as much assistance as possible in the safe drinking water application process.

12. Next Steps

12.1. Phase II Scoping Memo and Ruling Directing Covid-19 Related Reporting

On June 2, 2020, Second Amended Scoping Memo and Ruling was issued in this proceeding to gather information and consider additional Commission responses to the COVID-19 pandemic.

On March 16, 2020, Governor Newsom issued Executive Order N-28-20 requesting the Commission monitor measures undertaken by public and private utilities to implement customer service protections in response to COVID-19 pandemic.

On March 17, 2020, the Commission's Executive Director, Alice Stebbins, issued a letter to Class A and B water utilities ordering immediate protections for water utility customers, including a moratorium on disconnections. The Commission subsequently ratified that order through Resolution M-4842.

On April 2, 2020, Governor Newsom issued Executive Order N-42-20 affirming the Commission's moratorium on water disconnections and additional customer protections.

These actions are just some of the initial steps in responding to this emergency and in order to assess the impact of these actions, the overall impact of the emergency, and to help us formulate our next steps, we have opened a new phase in this proceeding as this Rulemaking already deals with many of the subjects impacted by the COVID-19 pandemic. Therefore, we have expanded the

scope of this existing rulemaking proceeding to add a Phase II to seek input on the impact of the COVID-19 pandemic on water utilities and their customers to formulate our next step(s).

This proceeding will remain open to address these Phase II issues upon issuance of this decision.

12.2. Alignment with Statewide Programs and Processes

There remain several issues that may be affected by pending statewide legislative action. Most prominently, the low-income assistance programs may be funded and structured consistently statewide.[100] The Board's final recommendation is to fund assistance programs through general taxes. Additionally, the Board proposes to help renters who are not directly customers of water utilities through a tax credit. We do not know the timeline for implementation of the Board's final recommendation, yet we want to accommodate parties' ability to adapt as necessary the current water rate assistance programs.

13. Conclusion

This decision summarizes our review of the low-income rate assistance programs for Class A water utilities under the Commission's jurisdiction and ensures consistency in program terminology for the different utilities. In addition, the decision concludes our initial review of sales forecasting that in order to keep rates just and reasonable we must preclude use of the

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[100] https://innovation.luskin.ucla.edu/wp-content/uploads/2020/02/Recommendations-Low-Income-Water-Rate-Assistance-Program.pdf

WRAM/MCBA mechanism in future GRCs, while continuing to allow use of the Monterey-style WRAM with an ICBA. Further, we require water utilities to provide analysis in their next GRC to determine the appropriate Tier 1 breakpoint that aligns with the baseline amount of water for basic human needs for each ratemaking area. This decision also identifies areas of reporting that has been inconsistent and requires water utilities to provide consistent reporting in the future, and provides direction for a small scale pilot programs to test delivering benefits to low-income renters in multi-family buildings that do not pay a water bill directly. Finally, we have initiated a Phase II in this proceeding to address the impact of the COVID-19 pandemic on water utilities and their customers to formulate our next step(s) addressing those impacts.

14. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on July 27, 2020, by California-American Water Company, Golden State Water Company, California Water Service Company, Center for Accessible Technology, Public Advocates Office of the Public Utilities Commission, Joint Advocates, Liberty Utilities, California Water Association and Great Oaks Water Company and reply comments were filed on August 3, 2020, by California Water Service Company, Golden State Water Company, Public Advocates Office of the Public Utilities Commission, Natural Resources Defense Council, California Water Association, Liberty Utilities, and California-American

Water Company. In response to comments, changes have been made throughout the decision to improve clarity.

15. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Robert Haga is the assigned ALJ in this proceeding.

Findings of Fact

1. The WRAM/MCBA ratemaking mechanism provides that when actual water sales are less than adopted, the difference in sales revenue will be recovered though a balancing account as a surcharge on customer bills.

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

3. WRAM/MCBA ratemaking mechanisms were adopted by settlements in GRCs for California-American Water Company, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corp., and Liberty Utilities (Apple Valley Ranchos Water) Corp. in 2008.

4. The major purpose of adopting WRAM/MCBA was to decouple sales from revenues and thus promote conservation.

5. The MCBA provides that variable costs are reduced when there is a reduction in water quantity sales and in supply costs.

6. The ICBA provides that variable costs are reduced under the Monterey-Style WRAM mechanism when there is a reduction in supply costs.

7. The WRAM/MCBA also adjusts for all water consumption reductions, not just consumption reductions due to implementing conservation. It is difficult to

parse out consumption declines due to the sole effects of conservation programs and rate designs from other contributing factors such as weather, drought, economic effects, or inaccurate sales forecast, but the WRAM/MCBA goes beyond removing a utility's disincentive to promote conservation by taking all of these factors into account.

8. The various options for modifying or eliminating WRAM/MCBA as ordered by D.12-04-048 were not adjudicated and resolved in subsequent GRC proceedings.

9. Although D.16-12-026 concluded that the WRAM/MCBA ratemaking mechanism should be continued at that time, it noted the reasons for continuing WRAM included forecast uncertainty, conservation, and the need for investment during the drought.

10. The quantification of changes in risk due to the existence or elimination of WRAM/MCBA has not been adjudicated since the WRAM/MCBA was adopted.

11. While the WRAM/MCBA was adopted to encourage conservation, the application of this ratemaking mechanism has led to substantial under-collections and subsequent increases in quantity rates.

12. Conservation of water use is by customers, not the utility.

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

14. Conservation for WRAM utilities measured as a percentage change during the last 5 years is less than conservation achieved by non-WRAM utilities,

including Class B utilities as evidenced in water utility annual reports filed from 2008 through 2016.

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

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

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

18. The Monterey-Style WRAM combined with the ICBA is a method to account for lesser quantity sales and adjust rates.

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

20. No quantification of the risk effects of using the WRAM/MCBA mechanism is evident in past GRC proceedings.

21. During a governor declared drought emergency, it is reasonable to provide utilities not using a WRAM/MCBA mechanism an option to establish lost revenue memorandum accounts.

22. A single, straight-forward name will aid outreach to consumers and statewide coordination in the delivery of assistance to low-income consumers.

23. California-American Water Company's Advice Letter 1221 for establishing a tariff that provided a discount to low-income multi-family renters through their housing providers establishes a good starting point for a pilot.

24. The information delineated in Section 10, Water Consolidation Timelines, above is a reasonable minimum amount of information required to begin a streamlined review of the proposed consolidation transaction.

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 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.

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

5. As WRAM utilities have individual factors affecting their implementation of a Monterey-Style WRAM mechanism immediately, this change should be implemented in each WRAM utilities' respective next GRC applications.

6. A reasonable transition to the new uniform name should be adopted.

7. The Customer Assistance Program (CAP) name should be used for all Commission-regulated water utilities for their low-income water assistance programs.

8. It is reasonable to allow each water utility to adopt the uniform CAP name as part of its next general rate case.

9. The process to achieve consolidation should be as effective and efficient as possible.

10. Water utilities should provide analysis in their next GRC case to determine the appropriate Tier 1 breakpoint that aligns with the baseline amount of water for basic human needs for each ratemaking area.

11. Water utilities should consider and provide analysis for establishing a baseline not set below both the Essential Indoor Usage of 600 cubic feet per household per month, as stated in the Affordability Rulemaking (R.18-07-006) and the average winter use in each ratemaking district.

12. California-American Water Company should be directed to file a Tier 3 advice letter, within 120-days of the issuance of this decision, outlining a pilot program based on AL1221 that provides a discount to low-income multi-family dwellings through their housing providers.

13. All other Class A water utilities interested in creating a low-income multi-family pilot program should file a Tier 3 advice letter that includes at least the same level of detail.

14. All pending motions in this proceeding not specifically addressed in this decision, or not previously addressed, should be denied as moot.

15. This proceeding should remain open to consider Phase II issues.

O R D E R

IT IS ORDERED that:

1. In any future general rate case applications filed after the effective date of this decision, a water utility must discuss how these specific factors impact the sales forecast presented in the application:

(a) Impact of revenue collection and rate design on sales and revenue collection;

(b) Impact of planned conservation programs;

(c) Changes in customer counts;

(d) Previous and upcoming changes to building codes requiring low flow fixtures and other water-saving measures, as well as any other relevant code changes;

(e) Local and statewide trends in consumption, demographics, climate population density, and historic trends by ratemaking area; and

(f) Past Sales Trends.

2. Water utilities shall provide analysis in their next general rate case applications to determine the appropriate Tier 1 breakpoint that is not less than the baseline amount of water for basic human needs for each ratemaking area.

3. California-American Water Company, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corporation, and Liberty Utilities (Apple Valley Ranchos Water) Corporation, in their next general rate case applications, shall not propose continuing existing Water Revenue Adjustment Mechanisms/Modified Cost Balancing Accounts but may propose to use Monterey-Style Water Revenue Adjustment Mechanisms and Incremental Cost Balancing Accounts.

4. Commission regulated water utilities shall name or rename their respective low-income water assistance program as "Customer Assistance Program" as part of their next general rate case applications. Water utilities with low-income programs shall describe their programs in filings and public

outreach with the name "Customer Assistance Program." Water utilities may use the CAP acronym where appropriate.

5. California-American Water Company shall file a Tier 3 advice letter, within 120-days of the issuance of this decision, outlining a pilot program that provides a discount to water users in low-income multi-family through their housing providers.

6. Each water utility shall comply with existing reporting requirements as summarized below:

- Annual reporting requirements from Decision (D.) 11-05-004.
- To each Annual Report, reference Minimum Data Requests submitted in the prior year period as part of 1) General Rate Case (GRC) filing, 2) applications for acquisitions (or expansion based on new requirement in this decision).
- Compliance, and associated data and analysis with orders from D.14-10-047, and D.16-12-026 in each GRC filing.
- Inclusion of disconnection and payment behaviors required in this proceeding beginning in June 2020 through June 2021.

7. In any application by a water utility for consolidation or acquisition of another system, the utility shall provide the information identified in Section 10, Water Consolidation Timelines, above as part of the application or with the Minimum Data Request in order to help streamline consideration of its application.

8. All pending motions in this proceeding not specifically addressed in this decision, or not previously addressed, are denied.

9. Rulemaking 17-06-024 remains open to consider Phase II issues.

This order is effective today.

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

MARYBEL BATJER
President
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners

I will file a dissent.

LIANE M. RANDOLPH
Commissioner

DECISION 20-08-047
RULEMAKING 17-06-024

DISSENT OF COMMISSIONER RANDOLPH

I dissent from the majority in this Decision. The Decision correctly identifies an issue of inaccurate sales forecasts leading to large Water Revenue Adjustment Mechanism (WRAM) balances. However, instead of focusing on improving sales forecasts as we recently did in Decision 16-12-026, the Decision eliminates the WRAM. Companies with a WRAM are allowed to propose a Monterey-style WRAM (M-WRAM) in their next General Rate Case application.

Despite the similar wording, an M-WRAM does not achieve decoupling as does a WRAM. Therefore, companies that have an M-WRAM are presented with a perverse incentive to increase sales in drought as well as non-drought years.

No one likes a WRAM surcharge, especially when those surcharges become large. However, simply eliminating a WRAM surcharge does not make water more affordable. This Decision is not a magic bullet slaying high bills. Indeed, it removes a revenue adjustment mechanism. Without that mechanism, companies will still need to design rates to match their revenue requirement.

While this Decision does not make changes to any company's rate design, there will be an increasing need for the water companies to limit sales risk due to the removal of the WRAM. They are very likely to propose higher service charges as well as having flatter tiers or else face a very real risk of not meeting their revenue requirement. Such an outcome would lead to increasing the bills of low-usage customers which correlates with low-income customers. This outcome is exactly opposite of this proceeding's intent by harming low-income customers. Such a rate design would also blunt the conservation signal.

Now, one could argue that such a rate design has neither been proposed nor approved. Hypothetically, assume that in the future the Commission does not allow higher service charges or the flattening of tiers. If such a rate design were to be approved, then the water companies will likely argue that they should increase their rates of return on equity as their business risk is increased. This will lead to higher rates for everyone.

I believe the majority's decision is made in good faith to lower bills; however, I fear that this Decision will have the opposite effect.

Dated September 3, 2020, at San Francisco, California

/s/ LIANE M. RANDOLPH
Liane M. Randolph
Commissioner
California Public Utilities Commission

EXHIBIT L

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 CALIFORNIA WATER SERVICE COMPANY (U 60 W)
ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES

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Attorney for California Water Service Company

July 27, 2020

implemented with decoupling is favorable for lower-income customers for the reasons discussed below.

Following the long-standing approach in the energy industry for energy conservation,[8] the Commission advocated use of the WRAM/MCBA to decouple water usage from the revenue collected, thereby enabling water utilities to implement aggressive conservation rates that discouraged wasteful or excessive water usage. Water rates were recalculated using two principles. First, moving away from the industry standard of collecting 50% of revenues from service charges and 50% of revenues from quantity rates, the decoupled companies changed rates to collect more revenues through quantity rates.[9] Second, for residential customers, decoupled companies designed quantity rates consisting of increasing tiered rates (or inclining block rates) so that higher water users pay more for additional units of water.

In contravention of the water conservation goals espoused by the Commission and the state of California, the PD moves away from these conservation-oriented rate design principles by eliminating decoupling and supporting a rate structure that "minimizes the percentage of households in [ ] higher tiers."[10] The result will be more "flattened" tiers[11] and increases in the service charge.[12] Reverting back to these more traditional rate design elements will mute the conservation signals, cause customers using the *least* amount of water to experience the *largest* bill increases, and *financially benefit the highest-volume water users*.

As mentioned above, the distinguishing characteristic between Cal Water's low-income customers and other residential customers is that high-usage customers tend not to be low-

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[8] *See, e.g.,* D.93887 (adopting Energy Rate Adjustment Mechanism ("ERAM") for Pacific Gas and Electric Company); D.93892 (adopting ERAM for San Diego Gas & Electric Company); D.82-12-055 (adopting ERAM for Southern California Edison Company).

[9] *See, e.g.,* D.08-02-036, p. 15. This shift can also be described as increasing the percentage of fixed costs (not to be confused with the fixed rate, which is the service charge) that is recovered through the variable rates (also known as the quantity or commodity charges or rates). If provided the opportunity, Cal Water can present data demonstrating that the rate designs of companies *without* decoupling currently collect a higher percentage of revenues from service charges, as compared to companies *with* decoupling.

[10] PD, p. 60.

[11] In order to minimize the households in the higher tiers, the amount of usage in the higher blocks are decreased. If less usage is calculated to be recovered from higher blocks, the rates for the lower blocks must be increased. The result is a tiered rate design that is more "flattened."

[12] If service charges are increased so that less revenue is collected through quantity rates, cost recovery is spread out more evenly among customers regardless of the amount of water used, which results in a net benefit to customers with high water usage.

EXHIBIT M

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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

COMMENTS OF GOLDEN STATE WATER COMPANY (U 133 W)
ON PROPOSED DECISION AND ORDER

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July 27, 2020

Accordingly, the Commission reviewed—and granted—the SRM request in the context of the WRAM, stating "[a]fter having weighed the pros and cons, as well as the policy implications both sides have raised, the Commission will give Cal Water the opportunity to deploy the SRM as a means to mitigate against a high WRAM balance."[27] The Commission's conclusion of the SRM to be "in the public interest" necessarily encompassed consideration of the WRAM/MCBA mechanisms. That is, the Commission could only find an SRM intended to be a companion mechanism to the WRAM/MCBA mechanisms to be warranted if maintenance of the WRAM/MCBA mechanisms were also warranted.

For all of the foregoing reasons, the PD's characterization of the WRAM/MCBA as a pilot program[28] that the Commission has failed to re-evaluate in the dozen years that the mechanisms have been in place is wrong on all counts. The Commission has scrutinized the WRAM and MCBA mechanisms in proceedings dedicated to conservation objectives and undertaken thorough analyses of whether there is any better alternative—including whether an M-WRAM/ICBA approach would be superior. Each time, the Commission has concluded that the WRAM/MCBA mechanisms should remain in place. All of this prior work should not be undone in a proceeding in which this is an ancillary topic and in which no meaningful record was established to support the dramatic shift in policy. Such an outcome would constitute an abuse of discretion.[29]

B. The PD Fails to Consider the Unintended Consequences on Low-Income Customers of Requiring Replacement of the WRAM/MCBA with the M-WRAM/ICBA

As the original objectives of this proceeding were directed at achieving effective rate assistance programs in order to improve affordability for low-income customers, it is critical that any policy changes adopted in this proceeding be considered in the context of the effects on low-income customers. Nothing in this proceeding's record addresses how forcing utilities to convert from WRAM/MCBA to M-WRAM/ICBA mechanisms will impact low-income customers. And there is reason to believe that elimination of the WRAM would be detrimental to those customers. Within a week of the PD's issuance, Jonathan Reeder, a highly respected regulatory analyst, released an equity research analysis of the PD's proposal to require WRAM/MCBA utilities to switch to an M-WRAM/ICBA approach. Mr. Reeder stated that approval of the PD would be viewed as "a decidedly negative development" that "would further call into question the constructiveness of the CA regulatory environment."[30]

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[27] *Id*. at 19.
[28] PD at 2.
[29] *See, supra,* note 4.
[30] Jonathan Reeder, *CPUC PD Would End Traditional Water Decoupling Mechanism* (Jul. 10, 2020) (hereinafter "Reeder Analysis") at 1.

Accordingly, because potential investors would view investment in California water utilities as a riskier enterprise, adoption of the PD's recommendations regarding the WRAM/MCBA would likely result in a higher cost of capital, particularly as revenue decoupling mechanisms are one of the risk mitigation factors that investors take into account.[31] That higher cost of capital would flow through to all utility customers—including low income customers. Moreover, Mr. Reeder recognizes that converting to an M-WRAM/ICBA may be detrimental to low income customers, in particular. That is, an M-WRAM rate design typically includes higher monthly service charges and tiered rate structures that affect affordability for low-income customers who tend to be low-usage customers. Mr. Reeder states:

> the volumetric risk that utilities are exposed to under the M-WRAM actually supports a higher percentage of the revenue requirement being recovered under fixed charges (versus volumetric charges) which often results in higher bills for low income customers ([who]typically have lower usage levels) which would be counterintuitive to the rulemaking docket's intended purpose – for instance CWT [a WRAM utility] only recovers ~30% of the revenue requirement through the fixed charge versus SJW [an M-WRAM utility] at ~40%.[32]

In sum, the PD recommends this policy change without any information in the record regarding unintended consequences for low-income customers. It is imperative that the Commission decline to adopt this extraordinary policy shift unless and until a meaningful record, including with regard to impacts on low-income customers, has been established that actually supports the change.

C. The Utilities had no Opportunity to Review or Respond to the Data upon which the PD Relies and that Data Does Not Demonstrate what the PD Concludes

The PD concludes that the WRAM/MCBA utilities should be required to switch to an M-WRAM/ICBA approach based on (i) a graph provided by Cal PA that purports to show that the annual change in average consumption per metered connection is almost the same during the last eight years for both WRAM and Non-WRAM utilities, and (ii) a review of reported annual consumption from the State Water Resources Control Board ("SWRCB") that the PD asserts shows that, over time, utilities with a WRAM/MCBA conserve water at about the same rate, or even less, than water utilities without a WRAM.[33] The Commission should reject the use of this data for this purpose both because (i) the parties to this proceeding were afforded no opportunity to review and respond to this data prior to its inclusion in the PD, and (ii) as a substantive matter, the data does not demonstrate that use of the M-WRAM/ICBA is as effective as the WRAM/MCBA in promoting conservation objectives, as the PD

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[31] Exh. GSWC-03 (*Prepared Direct Testimony of Paul R. Moul*) in A.17-04-001 et. al) at 7 (describing the WRAM as one of the risk mitigation factors considered by investors as part of a utility stock price).
[32] Reeder Analysis at 1.
[33] PD at 55.

concludes. Thus, reliance on this data is flawed on both procedural and substantive grounds.

As to procedure, the graph provided by Cal PA was submitted for the first time in Cal PA's last reply comments filed in this proceeding, such that the other parties had no opportunity to vet or respond to the data. The Commission must not ignore that there were five workshops in this proceeding but Cal PA did not present this data in any of the workshops, and Cal PA also failed to include this data in any set of comments that would have afforded the other parties an opportunity to dissect and comment on the information. By employing this strategy, Cal PA denied GSWC and the other utilities any ability to provide evidence demonstrating the flaws in Cal PA's analysis. Adoption of the extraordinary policy change recommended by the PD in reliance on this one-sided perspective, without giving GSWC and the other WRAM utilities any ability to refute the data, would violate these parties' due process rights.

Section 1708 of the California Public Utilities Code, which governs all proceedings before the Commission,[34] requires "notice to the parties, and with opportunity to be heard as provided in the case of complaints" before a Commission order may alter, rescind, or amend any prior Commission decision or order.[35] The California Supreme Court has determined that the mere opportunity to provide comments on a proposal does not satisfy the requirement of Section 1708 that a prior order be altered only after "opportunity to be heard."[36] Rather, the Court has found that "[t]he phrase "opportunity to be heard' implies at the very least that a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal."[37] Further, the Court has determined that "[a] statute calling for the adoption of administrative orders upon public notice and hearing implies that the evidence supporting the order be disclosed and made part of a hearing record with opportunity for refutation."[38] The parties here were denied the "opportunity for refutation" that due process requires. Thus, adopting the PD's recommendations regarding the WRAM/MCBA would constitute legal error.

Reliance on the SWRCB data would be even more improper. That data has never been presented in this proceeding, and the PD failed to include the "Table A" that is purportedly based on this data and that is claimed to show conservation by utilities without WRAMs exceeding conservation by utilities with WRAMs. Page 55 of the PD references Table A as though it is included in the PD, but there is no

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[34] Cal. Pub. Util. Code § 1701 ("All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission . . . ."); *see also Cal. Motor Transport Co. v. Pub. Util. Com.*, 59 Cal. 2d 270, 272 (1963).
[35] Cal. Pub. Util. Code § 1708.
[36] *Cal. Trucking Assoc. v. Pub. Util. Com.*, 19 Cal. 3d 240, 243-244 (1977).
[37] *Id*. at 244.
[38] *Cal. Assoc. of Nursing Homes, etc. v. Williams*, 4 Cal. App. 3d 800, 810-11 (1970).

such table. In response to questions about the missing table, ALJ Haga stated that the reference to Table A was "a clerical error" and that this will be fixed "following the review of all comments to the PD."[39] Incredibly, the parties are still being denied any opportunity to review and respond to the purported evidence being relied upon in the PD. This cannot be consistent with the Commission's due process obligations.

As to substance, neither the Cal PA graph nor, to the best that we can surmise without seeing Table A, the SWRCB data, supports any finding that use of the M-WRAM/ICBA is as effective as the WRAM/MCBA in promoting conservation objectives. The Cal PA graph purports to compare the historical change in consumption (use per customer) for the WRAM companies and the M-WRAM companies for the period 2008 to 2016. Cal PA contends, and the PD accepts, that the Cal PA graph demonstrates that there is no difference between the two mechanisms in terms of their impact on conservation. There are three problems with Cal PA's graph that makes Cal PA's contention wrong.

The first problem is that the graph compares the annual rate of change in average usage. This is an issue because even small differences in the annual rate of change compound and cumulate over time, becoming significant differences in average usage. A more appropriate analysis would be comparing the actual, cumulative percentage change in average usage over time, which uncovers the compounding effect on average usage that is lost in Cal PA's graph. The chart below provides this comparison:[40]

Comparison of WRAM and M-WRAM Companies
Percent Change in Usage per Customer
2008-2018

	Year over Year Percent Change		Cumulative Percent Changed Since 2008		Ratio of Aggregate Reduction In Usage from 2008 to 2018: WRAM companies compared To M-WRAM companies
	M-WRAM (1)	WRAM (2)	M-WRAM (3)	WRAM (4)	(5) (4)/(3)
2008					
2009	-8.1%	-8.6%	-8.14%	-8.56%	5.21%
2010	-6.5%	-8.8%	-14.08%	-16.61%	17.96%
2011	-1.2%	-2.2%	-15.14%	-18.48%	22.11%
2012	5.8%	5.1%	-10.17%	-14.36%	41.15%
2013	1.3%	1.2%	-9.01%	-13.36%	48.30%
2014	-5.7%	-5.8%	-14.21%	-18.41%	29.52%
2015	-18.0%	-17.1%	-29.67%	-32.36%	9.09%
2016	-2.2%	-0.9%	-31.21%	-33.01%	5.74%
2017	5.7%	3.7%	-27.27%	-30.51%	11.92%
2018	4.1%	4.2%	-24.28%	-27.60%	13.67%

As shown in the first two columns of this table, the annual change in average usage per customer for the

[39] Email from ALJ Haga sent to all Parties to R.17-06-024 on July 8, 2020.
[40] The data in this chart is calculated using a weighted average of consumption based upon the relative size of each utility. In contrast, the Cal PA graph uses a simple average of consumption across the various utilities.

M-WRAM and WRAM companies has generally moved in concert with one another, the difference being less than 1% in 6 of the 8 years. This is the data that the Cal PA graph reflects. However, the third and fourth columns of this table highlight the compounding effect of these small differences over time, and the cumulative differences in per capita usage are quite different. For the period from 2008 to 2014, which, for the reasons explained below, is the period that is indicative of actual WRAM versus M-WRAM effects (as opposed to other factors affecting conservation outcomes), the annual change in per capita consumption favors the WRAM companies (either larger declines or smaller increases) every year. Between 2008 and 2014, the difference in the annual percentage change in per capita usage averaged 0.9% in favor of the WRAM companies. This meant that by the end of 2014, the cumulative change in per capita consumption was only 14.2% for the M-WRAM companies, compared to 18.4% for the WRAM companies. As reflected in the fifth column, this cumulative decrease in per capita consumption was almost 30% greater for the WRAM companies by 2014. In other words, the reduction in usage per customer for the WRAM companies from 2008 to 2014 was almost 30% greater than the reduction in usage per customer for the M-WRAM companies.

The second problem with the Cal PA graph is that it fails to take into account critical factors that impacted the conservation outcomes of the WRAM versus M-WRAM companies. One of those factors was the imposition of mandatory water usage reduction targets by then Governor Brown in 2015. In response to the Governor's Emergency Declaration, the SWRCB adopted specific targets for water conservation for each water provider, which were intended to reduce statewide urban water consumption by 25% from 2013 levels. The targets varied by water system and were set based on system-specific average residential use per customer in 2013. The targets were based on 2013 usage in order to recognize the varying levels of conservation already taking place in different water systems. For GSWC, the initial targets in 9 of the 18 systems reviewed by the SWRCB were below 20%.[41] In contrast, only 1 of the 6 targets for the M-WRAM companies was less than 20%.[42] In response to these mandated conservation targets, all of the investor-owned water utilities implemented customer usage reductions (both voluntary and mandatory) as authorized by their Rule 14.1 tariff schedule. The logical conclusion is that usage data from that time period is not a valid comparison of conservation effects of WRAM versus M-WRAM, because conservation during this period was driven by the mandatory usage restrictions and the utilities were subject to differing mandatory usage restrictions.

Thus, although the above table shows a change in annual consumption that favors M-WRAM

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[41] June 2014-May 2020 Urban Water Supplier Monthly Reports, available at: https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/conservation_reporting.html.
[42] *Id.*

companies in the years 2015 to 2016 (i.e., larger decreases in both years for the M-WRAM companies versus the WRAM companies) those reductions are not valid indicators of the effectiveness of the M-WRAM or the WRAM mechanism. Rather, the impressive reductions in average usage per customer during this period (both for the M-WRAM companies and the WRAM companies) are a reflection of their abilities to comply with the Governor's directive to achieve mandatory usage reductions. As a result of the 2015 and 2016 reductions, the aggregate reduction in usage of WRAM companies as compared to M-WRAM companies declined to only 5.74% by the end of 2016 (as opposed to 29.52% at the end of 2014)). The last two lines of the table include data for 2017 and 2018, data which was not included in the Cal PA graph. These last two years are revealing because the mandated restrictions that affected customer usage in 2015 and 2016 ended in early 2017. Importantly, the table indicates that once the Governor's directive ceased to be in effect, the pendulum swung back the other way. That is, the difference in the cumulative percentage change in per capita consumption between the WRAM and the M-WRAM companies started to increase again. And by the end of 2018, the cumulative decrease in per capita consumption for the WRAM companies was 13.67% greater than for the M-WRAM companies. In other words, by 2018, the reduction in usage per customer for the WRAM companies from 2008 was 13.67% greater than the reduction experienced by the M-WRAM companies over that same time period. Accordingly, unlike what appears from Cal PA's graph, the data shows that customers of WRAM companies do in fact conserve more than customers of M-WRAM companies.

The third problem with Cal PA's analysis is that it fails to take into account that, during the time period covered by Cal PA's graph, three of the M-WRAM companies benefited from other rate decoupling mechanisms, such as Drought Lost Revenue Memorandum Accounts and Water Conservation Memorandum Accounts, which were intended to mitigate the effects of not having a full WRAM.[43] The practical effect of these rate decoupling mechanisms was to convert the M-WRAM into a full WRAM for these companies during the effective time period. This point was highlighted in San Jose Water Company's ("SJW") latest GRC. In response to arguments made by Cal PA (then the Office of Ratepayer Advocates ("ORA")) against the request of SJW to convert from an M-WRAM to a full WRAM during SJW's 2018 GRC, SJW's witness testified regarding this very issue, explaining:

> [T]he Commission has recognized the relationship between conservation and full decoupling, by authorizing temporary decoupling like mechanisms in water

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[43] *See, e.g.,* AL 484 (filed Jul. 18, 2016) (San Gabriel Water Company request to amortize the net under-collected balance in its Drought Lost Revenue Memorandum Account and Drought Surcharge Revenue Memorandum Account for Jun 1, 2015 to June 30, 2016); AL 486 (effective Apr. 26, 2016) (authorized recovery by San Jose Water Company of its under-collected Water Conservation Memorandum Account balance for Jan. 1 to Dec. 31, 2015); AL 272-W (filed May 31, 2018) (Great Oaks Water Company request to offset the adjusted balance in its Conservation Lost Revenue and Expense Memorandum Account, which had been in effect since 2014).

> conservation memorandum accounts for water utilities without decoupling mechanisms during periods of mandatory conservation/drought. **The impressive conservation figures for SJWC cited in ORA's testimony largely resulted from periods during which such mechanisms, as well as price signals, were in place**.[44]

Accordingly, Cal PA's graph does not support that an M-WRAM is as effective as a full WRAM for promoting conservation.

With regard to the SWRCB data, as noted above, the PD relies heavily on data that was never part of the record and is not in the PD itself, making it exceedingly difficult to address the validity of the conclusions reached. From the research that GSWC conducted trying to figure out what data Table A purports to summarize, the SWRCB data cannot be used to analyze the comparative effects of M-WRAM versus WRAM mechanisms on conservation outcomes. One problem is that, after 2016, the SWRCB did not collect data for systems under a certain size, so the data is incomplete. The more critical problem is that, (as with the data used in the Cal PA graph), the time frame for the SWRCB data includes the years of differing mandatory use restrictions and conservation targets that resulted in differing conservation outcomes among the utilities. Generally, the SWRCB collected usage data on urban water usage by system. The SWRCB set usage reduction targets for each system based on average usage for residential customers within the system in 2013 and reported on usage/conservation results compared to those 2013 usage levels and reduction targets. For example, GSWC provides service in 18 systems designated as urban systems and had reduction targets ranging from 8% to 36%.[45] Half of our systems had targets that were below 20%; in contrast, only 1 of the six systems served by the M-WRAM companies had a target below 20%.[46] This is pertinent because the targets were set based on 2013 usage levels in a manner that recognized systems that had already achieved a certain conservation level by 2013. Critically, the conservation targets and results reflected in the SWRCB data were mandated by the Governor and had nothing to do with the relative effectiveness of the WRAM versus the M-WRAM. The PD's conclusion to the contrary is wrong. The most that can be deduced from the SWRCB data is that the CPUC-jurisdictional utilities succeeded in achieving the mandated conservation. Nothing more.

D. The PD Fails to Take into Account Critical Differences between a Full WRAM and an M-WRAM

The PD's conclusion that the M-WRAM is just as effective in promoting conservation as the full WRAM is erroneous not only because the data on which the PD relies fails to support this conclusion,

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[44] Exh. SJW-4 in Docket A.18-01-004 (*Rebuttal of SJW to the ORA Report and Recommendations on Revenues and Rate Design, Revenue Decoupling and Refunds*) at 6 (emphasis added).
[45] *See, supra, note 41.*
[46] *Id.*

but because the PD fails to recognize that the M-WRAM does not remove a utility's disincentive to promote conservation. That is, the M-WRAM does not track lost revenues due to changes in usage; rather it tracks the difference between (a) the revenues collected from actual usage billed at the actual tiered conservation rates versus (b) the revenues that would have been collected from the same actual usage if it had been billed under a standard single quantity rate. By ignoring the difference between actual sales revenues and adopted sales revenues, the M-WRAM does not remove the disincentive for a utility to promote conservation.

In the Balanced Rates proceeding, the Commission explained that the purpose of the WRAM is "to sever the relationship between sales and revenues in order to remove any disincentives for the water utility to implement aggressive conservation rates and conservation programs."[47] And in Resolution W-5192 recently issued for SCE's Catalina Water System, the Commission explained that the decoupling of water sales from revenues "is intended to facilitate water conservation while providing adequate financial resources to water utilities to operate their systems safely and reliably."[48] Because the WRAM truly decouples sales and revenues and the M-WRAM does not, the mechanisms are not substitutes for one another. In sum, the PD errs by ordering WRAM/MCBA utilities to convert to M-WRAM/ICBA mechanisms without taking all of these critical differences into account.

E. The PD Relies on Incomplete and Out-of Date WRAM Balance Data

Because the record purported to support discontinuance of the WRAM/MCBA is woefully incomplete, the PD relies on out-of-date information with regard to WRAM/MCBA balances. The PD asserts that the WRAM/MCBA amounts are implemented through balancing accounts that "rarely provide a positive balance (over-collected) but instead have been negative (under-collected)."[49] But the PD cites Decision 12-04-048 for this premise, and that decision relies on stale data from 2010-2012.[50] If a record with current data had been established in this proceeding, it would have become apparent that GSWC's WRAM balances have generally declined over the past several years and that GSWC refunded many over-collections in its ratemaking areas in recent years, including in both the Arden Cordova and Simi Valley service areas, which had over-collected WRAM balances in each of the last 3 years.[51]

For all of the foregoing reasons the PD's Findings of Fact, Conclusions of Law and Ordering

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[47] Decision 16-12-003 at 18.
[48] Resolution W-5192 at Finding of Fact #13.
[49] PD at 18.
[50] Decision 12-04-048 at Appendices B and C.
[51] *See* AL 1813-W (filed Mar.18, 2020), AL 1766-W (filed Mar. 21, 2019) and AL 1741-W (filed Mar. 23, 2018), each of which was submitted with WRAM over-collections in Arden Cordova and Simi Valley.

EXHIBIT N

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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

COMMENTS OF THE PUBLIC ADVOCATES OFFICE ON ADMINSITRATIVE LAW JUDGE RULING INVITING COMMENTS ON WATER DIVISION STAFF REPORT AND MODIFYING PROCEEDING SCHEDULE

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July 10, 2019

        - D.16-12-026, which provides additional direction in sales forecasting
    - Water IOUs have generally not been utilizing the methods specified in Rate Case Plan to adopt sales forecasts
    - The direction provided in the Rate Case Plan for Step Increase Filings also needs updating – this has not been modified since the introduction of WRAM, and results in confusion as to how Step Increase Filings should be modified for IOUs with WRAM.

C. Should there be a mechanism to adjust rates mid-year or end of year as the shortfalls occur, especially during drought years?

Here, we will refer to concept of mechanisms to adjust rates mid-year or end of year to address inaccurate sales forecasts as an SRM – sales reconciliation mechanism.

There should not be a mechanism to adjust rates mid-year or end of year if shortfalls occur, even during drought years. Mid-year adjustments decrease transparency of rates, and decrease the incentive to provide accurate sales forecasts in GRCs, among other issues. Existing SRMs, including Drought SRMs, should be eliminated.

SRMs have numerous shortcomings, including but not limited to the following:

- SRMs result in more frequent rate changes for customers. More frequent rate changes should be avoided whenever possible, because:
    - Frequent rate changes (increases) make it more difficult for customers (especially lower income customers) to budget for their water bills, which may result in disconnections and requests for payment plans.
    - Rate changes occurring outside of GRCs make it harder for the Commission to see full impact of cumulative rate changes
- SRMs rely on Single Issue Ratemaking
    - SRM adjustments ONLY assess water sales, not other sources of revenue, IOU expenditures, changes to expenses, etc.
    - Capital projects can fall behind schedule resulting in expenditures not occurring at the anticipated times. Therefore, the need for revenue (as determined when calculating rates in GRCs) changes.

The Water IOUs' need for revenue is not assessed in SRMs and not taken into account when rates are changed outside of GRCs

- SRMs rely on a limited timeframe for sales forecast adjustments. This:
  - Decreases transparency
  - Requires adjustments to be based on limited analysis
  - Could place too much significance on sales in past year without taking other appropriate factors into consideration
- SRMs decrease the incentive to provide accurate sales forecasting in GRCs. This is problematic because:
  - When sales forecasts decrease, rates increase
  - IOUs could provide a high forecast in GRCs when there is a higher level of public participation and transparency regarding rates, then have those forecasts adjusted downwards (and rates upward) by an SRM when there is less public attention and scrutiny.
- SRMs can result in frequent rate adjustments via the Advice Letter (AL) process. This is problematic because:
  - ALs are designed for ministerial, non-controversial requests
  - ALs provide significantly less transparency for the general public than GRCs, as ALs:
    - Provide limited opportunity for public participation
    - Do not have public participation hearings
    - Are not subject to ex parte rules
    - Do not provide for evidentiary hearings to dispute facts.
      - ALs are generally processed in a much shorter timeframe that GRCs, with a reduced time for review. This limited timeframe is only appropriate for straightforward rate adjustments with less complexity than those associated with SRMs

It appears that the Commission is considering the question of establishing SRMs in response to customer concerns and dis-satisfaction regarding surcharges resulting from high WRAM balances. However, establishing new mechanisms (e.g. SRMs) as a means to alleviate concerns associated with the WRAM is not an effective solution. The Commission should instead assess whether existing water decoupling mechanisms (such as the WRAM/Modified Cost Balancing Account (MCBA)) are still necessary,

particularly in light of recent enacted state legislation and a Governor Executive Order declaring conservation as a way of life in California.

Since compliance with conservation mandates is now legally required,[20] continuing to employ decoupling mechanisms is no longer necessary to remove the disincentive to develop and implement Water IOU-run conservation programs. Moreover, the Commission could explore the option of employing independent third-party contractors to develop and implement conservation programs in Water IOU service territories to address disincentives to advancing conservation on the part of Water IOUs.

In reality, the appropriate response to alleviate customer concerns regarding surcharges resulting from high WRAM balances is to improve sales forecasting (as discussed above), and to evaluate, modify, and potentially eliminate the WRAM/MCBA mechanisms for all Water IOUs. At a minimum, any decoupling mechanism should be directly related to the effect of conservation on consumption, and should not provide a "guaranteed revenue" that insulates Water IOUs from general business risks like a downturn in the economy. Specifically, the Commission should expediently convert all existing full WRAM/MCBA mechanisms to 1) Monterey Style WRAMs, which are directly tied to conservation rate design, with 2) an incremental cost balancing account. Once the Commission has established improvements to sales forecasting, the Commission should eliminate decoupling mechanisms entirely.

If the Commission continues to utilize decoupling mechanisms for Water IOUs, it should recognize that the primary risk that water utilities face is forecasting (that is, forecasting expenses, water sales, etc.). Therefore, decoupling mechanisms result in significantly diminished risks for Water IOUs. If the Commission continues these programs, this diminished risk should be recognized, and any decoupling mechanism should be accompanied by a corresponding reduction in utilities' rates of return – as was

[20] Senate Bill 606 (Hertzberg) and Assembly Bill 1668 (Friedman), both signed by Governor Brown on May 31, 2018

originally recognized when these decoupling mechanisms were established, but has yet to be realized in utilities' rates of return.[21]

D. Should the Commission set a specific baseline quantity of water at a low-cost to ensure that low-income customers have sufficient quantities of water?

a. Should this rate be based on a flat fee?

b. Should this rate be based on the number of people in a household?

E. If the answer to the above question is yes, what (or how) should this quantity be (determined)? Should this baseline low-cost water apply only to low-income customers or to all customers?

F. Should the low-income water program be adjusted to account for the number of individuals residing in a household? How would the water utilities determine the number of people in a household?

The following response addresses Questions D., E., and F.

The Commission should require Water IOUs to provide a baseline quantity of water at low-cost for all customers. This concept is consistent with California Water Code Section 106.3, in which the state statutorily recognizes that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."

Providing a baseline quantity of water at low-cost for all customers ensures that lower income customers not eligible for low income rate assistance (LIRA) programs have access to a low quantity of water at affordable rates. This is critical to realizing the

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[21] In D.08-08-030 for the Conservation OII (Investigation (I.) 07-01-022), the Commission found that WRAMs decoupling of sales from revenues eliminate almost all variations in earnings due to sales fluctuations, while the MCBAs ensure predictable cost recovery (FOF 13), concluding that implementation of these mechanisms may also reduce shareholder risk relative to ratepayers risk (COL 3) and that a Return on Equity (ROE) adjustment should be considered in the utilities' next cost of capital proceeding (COL 4). In the 2008 cost of capital proceeding for Cal Water, California American Water, and Golden State Water Company, the Commission affirmed in D.09-05-019 that WRAM/MCBA reduce utilities' revenue recovery risk (p.34), but did not make a corresponding ROE adjustment, finding that it could not quantify the risk reduction with sufficient precision (FOF 25). A decade after D.09-05-019, the Commission has still not completed any in-depth evaluation or reexamination about whether ratepayers should be compensated for assuming the revenue recovery risk as a result of granting utilities a WRAM/MCBA mechanism.

EXHIBIT O

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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 CALIFORNIA WATER ASSOCIATION RESPONDING TO ADMINISTRATIVE LAW JUDGE'S JUNE 21, 2019 RULING

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July 24, 2019

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 CALIFORNIA WATER ASSOCIATION RESPONDING TO ADMINISTRATIVE LAW JUDGE'S JUNE 21, 2019 RULING

In accordance with the instructions set forth in the *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule* issued on June 21, 2019 ("Ruling"), California Water Association ("CWA") hereby submits these reply comments in response to issues raised by parties in their opening comments on the Ruling. CWA makes this filing as a party to this proceeding, and on behalf of the Class A water utilities named as respondents.[1] Pursuant to the July 16, 2019 ruling by Assistant Chief Administrative Law Judge Michelle Cooke, the deadline to file these reply comments was extended to July 24, 2019. Therefore, these reply comments are timely.

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[1] The Class A water utilities named as respondents to this proceeding are as follows: California Water Service Company, California-American Water Company, Golden State Water Company, Great Oaks Water Company, Liberty Utilities (Apple Valley Ranchos Water) Corp., Liberty Utilities (Park Water) Corp., San Gabriel Valley Water Company, San Jose Water Company, and Suburban Water Systems.

I. REPLIES TO PUBLIC ADVOCATES OFFICE'S COMMENTS

A. PAO makes numerous arguments that go well beyond the appropriate scope of the questions presented for the upcoming August 2, 2019 workshop.

In its opening comments, Public Advocates Office ("PAO") makes a number of arguments that go well beyond the appropriate scope of the questions presented for the upcoming August 2, 2019 workshop. In several instances, PAO's arguments appear to be attempts to re-litigate positions and proposals rejected by the Commission in other proceedings.

For example, as explained below, PAO included in its opening comments the radical proposal that, as part of this proceeding, the Commission should convert all Water Revenue Adjustment Mechanisms ("WRAM") to "Monterey-style" WRAMs and otherwise eliminate all existing decoupling mechanisms currently in place.[2] This extremely broad and misguided recommendation is at best only tangentially related to the questions posed in the Ruling. The WRAM is merely a mechanism used to offset the deficiencies in sales forecasting and enable the utility (as appropriate) to timely receive from or return to customers its Commission-approved revenues (and recover its Commission-approved costs). Each WRAM now in place has been authorized by the Commission in proceedings in which all relevant information was considered, and in which PAO participated. Proposing to convert existing WRAMs, the balances of which have been decreasing steadily in recent years, to "Monterey-style" WRAMs in this rulemaking proceeding is a procedurally improper method for seeking to modify several final Commission Decisions and falls well outside the scope of this proceeding.

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2 PAO Opening Comments, p. 13.

The types of sweeping changes proposed by PAO have nothing to do with the rulemaking's expressed purpose of achieving consistency in utility low income ratepayer assistance programs. Nor do they have anything to do with providing assistance to low-income customers, or even with affordability, the latter of which is addressed through rate design and the LIRA programs. PAO's maneuverings distract from the important work that the parties and the Commission are seeking to accomplish in this proceeding.

B. If the Commission wants to update D.99-10-064's water system acquisition framework, such updates should be reasonable and facilitate speedy resolution of applications and advice letters.

In its opening comments, PAO argues the Commission "should also modify Decision (D.) 99-10-064 (Decision) because its procedures and timelines do not comply with Public Utilities (Pub. Util.) Code § 1701.5(b)(1) [*sic*], Rule 2.6(a) of the Commission's Rules of Practice and Procedure and General Order (GO) 96-B."[3] These requirements, relating to scoping memos and opportunities for comments or protests, were enacted after the adoption of D.99-10-064, and should eventually be reviewed.[4] Indeed, the scoping memos in recent acquisition proceedings already included these requirements, adding, for example, reply briefs, the opportunity for comments and other more recent Commission procedures.[5] This makes clear the overall framework set out in D.99-10-064 still helps facilitate efficient and cost-effective consolidation of at-risk water systems and therefore does not require substantial overhauling. Instead of

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[3] PAO Opening Comments, p. 3. Throughout its opening comments, PAO cites to Pub. Util. Code Section "1701.5(b)(1)," which does not exist. CWA believes that the intended reference is to Pub. Util. Code Section 1701.1(b)(1).

[4] CWA also noted that today's ratemaking proceedings require the issuance of a scoping memo. CWA Opening Comments, pp. 9-10 fn. 11.

[5] *See, e.g.,* A.17-12-006, Scoping Memo and Ruling of Assigned Commissioner (March 28, 2018).

EXHIBIT P

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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 CALIFORNIA WATER ASSOCIATION
RESPONDING TO ADMINISTRATIVE LAW JUDGE'S SEPTEMBER 4, 2019 RULING**

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September 16, 2019

GRCs for all utilities. Instead, utilities and other stakeholders should be directed to utilize the best tools and data available to collaboratively develop the most accurate forecasts **on a district-by-district basis**. Water supply and customer usage patterns are far from uniform across California and do not easily lend themselves to a rigid, pre-ordained approach.

Nonetheless, despite the best efforts of the Commission and stakeholders, no forecasting methodology can guarantee accuracy in light of drought, natural disasters, or other unforeseen events. Therefore, it is also imperative that the Commission allow utilities to utilize tools such as Sales Reconciliation Mechanisms to ensure that the effective rates continue to reflect actual conditions experienced through the attrition years of the GRC cycle.

CWA Response to Questions 4-5:

4. **How should a sales forecasting model incorporate revisions in codes and standards related to water efficiency?**

5. **How are penetration rates over time recognized in sales forecast models to account for changes to codes and standards related to water efficiency?**

Trends in water consumption attributable to changes in codes and standards relating to water use efficiency are difficult to discretely measure and typically occur gradually as infrastructure and consumer appliances and fixtures are upgraded over time. Therefore, except for changes in codes or standards that will cause an abrupt and drastic change in water consumption, the impact of most codes and standards changes will be adequately reflected in the historical water consumption data that underlies sales forecast models. Accordingly, the Commission generally does not need to provide for a discrete or express modification or adjustment in its sales forecast models to reflect

changes in applicable codes or standards. Where abrupt and drastic changes are anticipated, these unique circumstances should be addressed on a case-by-case basis.

CWA Response to Question 6:

> **6. For utilities with a full Water Revenue Adjustment Mechanism (WRAM)/Modified Cost Balancing Account (MCBA), should the Commission consider converting to Monterey-style WRAM with an incremental cost balancing account? Should this consideration occur in the context of each utility's GRC?**

No, the Commission should **not** consider reverting full WRAM/Modified Cost Balancing Account ("MCBA") mechanism to Monterey-style WRAMs with incremental cost balancing accounts in this proceeding. As previously explained by CWA,[26] proposing to convert existing WRAMs, the balances of which have been decreasing steadily in recent years, to Monterey-style WRAMs in this rulemaking proceeding is a procedurally improper method for seeking to modify several final Commission Decisions and falls well outside the scope of this proceeding. These mechanisms do not have anything to do with providing assistance to low-income customers.

Despite the similarity in name, the Monterey-style WRAM does not fulfill the same purpose as the full WRAM/MCBA. Instead, the Monterey-style WRAM is only a rate design tool limited to mitigating the uncertainty associated with rate design changes (as opposed to uncertainty associated with utility revenue more generally). Additionally, the Monterey-style WRAM does not decouple sales from revenues and therefore fails to address the perverse incentive for water utilities to increase water sales and discount conservation efforts. Over time, for the majority of the Class A water utilities the

[26] *Reply Comments of California Water Association Responding to Administrative Law Judge's June 21, 2019 Ruling* (July 24, 2019), pp. 2-3.

Commission has moved away from Monterey-style WRAMs and towards adoption of full WRAMs due to the shortcomings of the former. The full WRAM/MCBA mechanisms allow utilities to implement conservation rates and other policy initiatives of the Commission, without undermining their financial stability.

The Commission just recently affirmed this and other benefits associated with the full WRAM/MCBA mechanisms in D.16-12-026.[27] Therefore, the suggestion that the Commission should evaluate whether to revert such mechanisms back to Monterey-style WRAMs with incremental cost balancing accounts comes as an unwelcome surprise for CWA and its member water utilities. The goal should be to build upon the existing framework, not take a step backwards.

If, despite the reasons outlined above, the Commission nonetheless decides to consider reverting existing WRAM/MCBA mechanisms to Monterey-style WRAMs with incremental cost balancing accounts, it should consider doing so solely in the context of each utility's GRC. Each utility before the Commission faces widely varying circumstances and, accordingly, it would be inappropriate to broadly impose such a major change across the entire water utility sector. For such a change to be imposed against the request of the utility, it must be shown that the specific circumstances facing

[27] D.16-12-026, pp. 40-41 ("The MCBA accounts for lower costs associated with reduced water sales. With demand reduction, water utilities purchase less water from its purchased water sources, use less energy to pump water through the system, buy and use fewer chemicals to provide safe drinking water. Wholesale water costs have increased during the drought as competition for scarcer water supplies drove up prices. Pumping of groundwater increased for some water IOUs as they were unable to obtain purchased water when the SWRCB severely curtailed, and for a time ceased State Water Project deliveries. Reductions in water consumption did not always result in commensurate cost reductions for the water IOU, and the MCBA accounted for the cost effects. We conclude that, at this time, the WRAM mechanism should be maintained. There is a continuing need to provide an opportunity to collect the revenue requirement impacted by forecast uncertainty, the continued requirement for conservation, and potential for rationing or moratoria on new connections in some districts. These effects will render uncertainty in revenue collection and support the need for the WRAM mechanism to support sustainability and attract investment to California water IOUs during this drought period and beyond.").

the utility in question warrant such a change. In lieu of that showing, which cannot be made on a wholesale basis, the Commission should not consider reverting full WRAM/MCBAs to Monterey-style WRAM and incremental cost balancing accounts.

CWA Response to Question 7:

> **7. Should any amortizations required of the Monterey-style WRAM and incremental cost balancing accounts be done in the context of the GRC and attrition filings?**

As a preliminary matter, CWA understands this question to be directed as to Monterey-Style WRAMs and incremental cost balancing accounts specifically, as opposed to general full WRAM/MCBA mechanisms. The CPUC's required methodology for amortizing water utility balancing accounts is prescribed by Standard Practice U-27-W, Standard Practice for Processing Rate Offsets and Establishing and Amortizing Memorandum Accounts ("U-27-W"). U-27-W's prescribed method of amortization is uniform for all kinds of balancing accounts, including Monterey-style WRAMs and incremental cost balancing accounts. The procedure for amortizing balancing accounts is clearly stated, allowing amortization, in addition to GRCs, by advice letter:[28]

> 43. Reserve account amortization for Class A utilities will be part of the General Rate Case or may be by advice letter when the account over or under collection exceeds 2%, at the utility's option.

The existing disposition mechanisms and triggers for amortizing reserve accounts have been carefully tailored to balance the need to alleviate burgeoning cumulative under- and over-collections with the need to avoid an excessive number of

[28] Standard Practice U-27-W, p.10

rate changes over a short period of time. In proposing the manner in which the amortizations of balances in those types of accounts occur, each water utility must balance these same considerations in light of the circumstances the utility and its customers are facing. For example, the circumstances might warrant prompt amortization of a balance in the Monterey-style WRAM and incremental cost balancing account between a GRC and attrition filing. There is no basis for carving out Monterey-style WRAMs and incremental cost balancing accounts from U-27-W for more restrictive recovery treatment.

CWA Response to Questions 8-10:

8. **Should Tier 1 water usage for residential be standardized across all utilities to recognize a baseline amount of water for basic human needs?**

9. **Should water usage for basic human needs be based on daily per capital consumption levels specified in Water Code Section 10609.4 or some other standard or criteria?**

10. **To achieve affordability of water usage for basic human needs, should the rate for Tier 1 water usage be set based on the variable cost of the water (i.e., no fixed cost recovery should be included in Tier 1 rates)?**

As a preliminary matter, for the purposes of this proceeding, CWA refers to "Tier 1" water usage as the consumption-related rate at which customers are billed for a prescribed initial amount of water use. Customers who limit their water consumption to this tier typically pay the base service charge plus volumetric charges for Tier 1 usage.

As previously outlined, CWA believes that a baseline rate should be implemented as a uniform first tier rate rather than a flat fee.[29] The baseline quantity of water would

[29] *Comments of California Water Association Responding to Administrative Law Judge's June 21, 2019 Ruling* (July 10, 2019), pp. 14-15.

EXHIBIT Q

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

COMMENTS OF THE PUBLIC ADVOCATES OFFICE ON THE WATER DIVISION'S STAFF REPORT AND RESPONSE TO ADDITIONAL QUESTIONS

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September 16, 2019

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easier to examine forecasting and water use trends. The WRF report provides a variety of other useful suggestions in determining penetration rates over time for changes to codes and standards related to water efficiency.

6. For utilities with a full Water Revenue Adjustment Mechanism (WRAM)/Modified Cost Balancing Account (MCBA), should the Commission consider converting to Monterey-style WRAM with an incremental cost balancing account? Should this consideration occur in the context of each utility's GRC?

Yes. However, the Commission should provide the clear and unambiguous policy direction in this Rulemaking that utilities should convert full WRAMs to Monterey-style WRAMs. Implementation of this policy can then proceed efficiently in pending and future GRCs of all Class A water utilities.

More importantly, however, the Monterey-style WRAM is superior because it operates without transferring sales risk to ratepayers. Unlike Monterey-style WRAMs, the blunt operation of a full WRAM is incapable of distinguishing between the effects of conservation rate design and other impacts to utility revenue such as weather and general economic cycles. Since most revenue impacts are normal business risks for which investor-owned water utilities earn a commensurate return, it is inequitable for ratepayers to suffer such risk through operation of a full WRAM while utility shareholders realize the return.

7. Should any amortizations required of the Monterey-style WRAM and incremental cost balancing accounts be done in the context of the GRC and attrition filings?

Yes. In order to have Monterey-Style WRAM amortizations be consistent with amortization of other reserve accounts addressed on page 10 of Standard Practice U-27, the "amortization for Class A utilities will be part of the General Rate Case or may be by advice letter when the account over or under collection exceeds 2%, at the utility's option."

The above guidance from the Standard Practice balances the interest of maintaining the GRC as the venue for comprehensive assessment of cumulative rate

EXHIBIT R

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 the 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 No. 17-06-024 Filed: June 29, 2017

GREAT OAKS WATER COMPANY'S COMMENTS TO PROPOSED PHASE I DECISION

Date: July 27, 2020

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D. Eliminating WRAMs does not address water sales forecasting inaccuracies.

Commission-regulated water utilities recover their costs of providing water service through the rates authorized by the Commission. Rates are a method of cost recovery. Costs fall into two general categories: fixed costs and variable costs. Fixed costs are incurred regardless of how much water is sold to/used by customers. Variable costs are dependent upon how much water is sold/used by customers. Cost recovery does not include a category of "profits" and never has, despite what some often say.[12] Cost recovery does include the cost of capital, which may not be denied without due process of law[13] and is the subject of periodic Cost of Capital proceedings.[14]

At present, despite the directives of D.16-12-026, Class A water utility rate designs approved by the Commission provide for only a partial recovery of fixed costs through monthly service charges. In its most recent GRC, Great Oaks requested a rate design with 100 percent fixed cost recovery in its service charges.[15] Ultimately, Great Oaks and the Public Advocates Office (Cal PA) settled upon a rate design with 75 percent fixed cost recovery in service charges.[16] Other Class A water utilities recover less than 75 percent of fixed costs in their service charges.

What this means is that for all Class A water utilities, fixed cost recovery is always partially dependent upon selling enough water to match forecasted/adopted sales forecasts. If less water is sold than was forecasted/adopted by the Commission, the utilities do not recover their fixed costs. It is that simple. This is an inherent regulatory financial risk resulting from Commission-authorized rate designs, despite the Proposed Decision's factually-deficient suggestion that there is no real financial risk involved.[17]

Great Oaks is a strong advocate for accurate sales and customer forecasting. Accurate sales forecasting is the best way to reduce (but not eliminate) this regulatory financial risk, together with accurate customer forecasting (forecasting the number of customers in each category, e.g., single-family residential, commercial, etc.). Great Oaks and all Commission-

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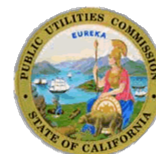
[12] Any intervenor or other party that refers to "profits" only does so for political purposes in an effort to label Commission-regulated water utilities as greedy capitalists. This is a dishonest tactic.
[13] *See, e.g.*, *Federal Power Commission v. Hope Natural Gas Co.* (Hope), 320 U.S. 591 (1944), *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia* (Bluefield), 262 U.S. 679 (1923).
[14] D.07-05-062: Opinion Adopting Revised Rate Case Plan for Class A Water Utilities.
[15] A.18-07-002.
[16] D.19-09-010.
[17] Proposed Decision, at p. 58.

EXHIBIT S



**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)

JOINT MOTION OF CALIFORNIA WATER ASSOCIATION, CALIFORNIA-AMERICAN WATER COMPANY, CALIFORNIA WATER SERVICE COMPANY, GOLDEN STATE WATER COMPANY, LIBERTY UTILITIES (PARK WATER) CORP. AND LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP. FOR ORAL ARGUMENT AND REQUEST TO SHORTEN TIME FOR RESPONSE

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(Additional appearances are listed on the following page)

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BEFORE THE PUBLIC UTILITIES COMMISSION
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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)

JOINT MOTION OF CALIFORNIA WATER ASSOCIATION, CALIFORNIA-AMERICAN WATER COMPANY, CALIFORNIA WATER SERVICE COMPANY, GOLDEN STATE WATER COMPANY, LIBERTY UTILITIES (PARK WATER) CORP. AND LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP. FOR ORAL ARGUMENT AND REQUEST TO SHORTEN TIME FOR RESPONSE

In accordance with Rules 11.1 and 13.13 of the Commission's Rules of Practice and Procedure, California Water Association, California-American Water Company, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corp. and Liberty Utilities (Apple Valley Ranchos Water) Corp. (together the "Joint Parties") hereby respectfully move for the Commission to direct the presentation of oral argument before it regarding potential factual, legal or technical errors in the Proposed Decision of Commissioner Guzman Aceves filed July 3 and served July 6, 2020 ("Proposed Decision") relating to the Proposed Decision's proposed requirement that the five water utilities that join in the present Motion discontinue their employment of the full decoupling Water Revenue Adjustment Mechanism/Modified Cost Balancing Account ("decoupling"). As the Proposed Decision currently appears for consideration on the agenda for the Commission's upcoming August 27, 2020 voting meeting, the Joint Parties request that the normal fifteen-day period for submission of responses to this motion be shortened to **5 days,** so that responses will be due by August 25,

2020. This will enable the Commission to consider the merits of this request as it determines whether and how to address the Proposed Decision at its August 27, 2020 voting meeting.

Oral argument is appropriate and warranted in this proceeding because it is apparent that there remain substantial disputes among the parties to this proceeding regarding alleged factual, legal and technical errors in the Proposed Decision relating to its proposed elimination of decoupling. The Commissioners each recently publicly discussed decoupling issues arising out of the Proposed Decision during their August 6, 2020 voting meeting. While parties have filed opening and reply comments on the Proposed Decision, the Joint Parties believe that an oral argument regarding those alleged factual, legal or technical errors would be the most efficient and equitable manner for the Commission to evaluate fully and fairly whether there are factual, legal or technical errors in the Proposed Decision's consideration of decoupling that must be corrected.

Accordingly, the Joint Parties respectfully request that the Commission direct the presentation of oral argument by parties regarding the discussion of decoupling and related factual, legal and technical issues in the Proposed Decision. The Joint Parties also request that the time for responses to this motion be shortened, as described above, in order that the Commission may consider the merits of this motion as it determines whether and how to act on the Proposed Decision at its August 27, 2020 voting meeting.

Respectfully submitted,

August 20, 2020

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Service List for RM 17-06-024

Re: Rulemaking 17-06-024, Legal and Factual Error in the Proposed Decision Undercuts Affordability

I am writing in my personal capacity as a California water ratepayer and in my individual capacity as a Law Professor at Santa Clara University School of Law to express my support for the California Public Utilities Commission's (CPUC) work to make water bills more affordable for low-income customers by opening Order Instituting Rulemaking (OIR) 17-06-024. I am concerned, however, that the Proposed Decision (PD) issued in this rulemaking on July 3, 2020 may undermine affordability by proposing to order utilities that employ a Water Revenue Adjustment Mechanism (WRAM) to switch to a Monterey-style Water Revenue Adjustment Mechanism (Monterey-Style WRAM), an issue not within this proceeding's scope and thus not fully litigated in this proceeding. The PD commits legal and factual error by conflating forecasting with WRAM, Modified Cost Balancing Account (MCBA), and Monterey-Style WRAM.

The PD fails to recognize the functional difference between forecasting (a set of tools used to project water consumption and assist in rate-setting) the WRAM and MCBA (mechanisms to collect rates and track the difference between authorized rates and revenues, intended to decouple revenues from rates to promote conservation) and the Monterey-Style WRAM (a rate design mechanism intended to equalize the revenue generated by tiered rates as compared to revenues a uniform quantity rate would have produced). To allow ratepayers, parties, and the CPUC the opportunity to properly address these important issues that directly affect rates, affordability, and conservation incentives, the CPUC should withdraw the PD issued on July 3 in 17-06-024. After revising the PD to address issues properly within this proceeding's scope, the CPUC can amend the OIR to include analysis of WRAM, MCBA, and Monterey-Style WRAM, and afford the public an opportunity to comment on those important issues.

WRAM, MCBA, and Monterey-Style WRAM were neither listed in the OIR for RM 17-06-024, nor in its three scoping memos. The PD contends that "consideration of changes to the WRAM/MCBA is and has always been within the scope of this proceeding as part of our review of how to improve water sales forecasting." (PD, RM 17-06-024, p. 52, Conclusions of Law, 2). *This conclusion commits legal and factual error by conflating forecasting with revenue collection and rate design mechanisms*. Revenue collection mechanisms such as WRAM and MCBA, and rate design mechanisms such as the Monterey-Style WRAM are not a subset of forecasting. Reference to forecasting in the proceeding's scoping memos and discussion of WRAM and the Monterey-Style WRAM in a Workshop are legally insufficient to bring those revenue collection and rate design issues into this proceeding's scope.

The CPUC previously recognized the distinction between forecasting and revenue collection mechanisms such as WRAM and MCBA in RM 11-11-008 for which I had the honor of serving as the Assigned Commissioner. RM 11-11-008 developed a record "to better understand the effects of our current policies regarding tiered rates, conservation rates, forecasting, data and technology, metering and billing, accounting mechanisms and other programs and how to improve these policies and mechanisms." (CPUC Decision 16-12-026, p. 2). Decision 16-12-026 explained that "[f]orecasted sales drive rates as they determine how authorized revenue (based on determination of costs, return on equity, and other factors) are to be recovered through quantity rates. Through ―forecasts the costs required to deliver that level of water service are estimated and consequently the revenue requirement to support those costs is established." (*Id.* at 18). CPUC Decision 16-12-026 described WRAM as "a mechanism used to collect authorized revenues months or even years after the events occurred that caused the disjunction between authorized and actual revenue." (*Id.* at 6).

D. 16-12-026 distinguishes between forecasting and WRAM balances by noting that forecasting mechanisms and their embedded assumptions drive WRAM balances. "Inaccurate forecasts escalate WRAM balances and surcharges when actual sales do not match the forecast adopted in the GRC," CPUC Decision 16-12-026 observed. (*Id.* at 18-19). "Improving forecasting methodologies is key to reducing WRAM and surcharge balances. Inaccurate forecasts provide the air that balloons the WRAM and surcharges." (*Id.*)

The CPUC's Policy and Planning Department (PPD) Report, Evaluating Forecast Models, the Water Revenue Adjustment Mechanism, achieving an efficient urban water

economy requires that the nexus between water rates, water consumption, and water revenues are well balanced, [hereinafter ―Evaluating Forecast Models White Paper][1] distinguished between forecasting and revenue collection mechanisms such as the WRAM. PPD's Report observes that in California, "water demand forecast models are used to derive water rates for Investor Owned water Utilities (IOUs). Given some forecasted water demand, water rates are then designed that provide sufficient revenue to recover the cost to service that demand."[2] PPD's Report observes that the CPUC uses the WRAM "as a means to account for the difference between revenue forecasts and actual revenue collected."[3] Forecasting is distinct from mechanisms to collect authorized revenue, to decouple rates from revenue to incentivize conservation, or rate design mechanisms such as the Monterey-style WRAM.

The PD in 17-06-024 addresses forecasts in Ordering paragraph 1 requiring "In any future general rate case applications filed after the effective date of this decision, a water utility must discuss how these specific factors impact the sales forecast presented in the application:

> (a) Impact of revenue collection and rate design on sales and revenue collection;
> (b) Impact of planned conservation programs;
> (c) Changes in customer counts;
> (d) Previous and upcoming changes to building codes requiring low flow fixtures and other water-saving measures, as well as any other relevant code changes;
> (e) Local and statewide trends in consumption, demographics, climate population density, and historic trends by ratemaking area; and
> (f) Past Sales Trends.

This Ordering paragraph seems to recognize, without discussion, the differences between forecasting and revenue collection or rate design mechanisms such as WRAM, MCBA, and the Monterey-Style WRAM. The PD, however, commits legal error in treating WRAM, MCBA, and the Monterey-Style WRAM as if they were subcategories of forecasting, erroneously suggesting that any discussion of forecasting includes revenue collection and rate design mechanisms. A public utilities commission can adopt forecasting methodologies to help establish rates without adopting rate collection or rate design mechanisms such as WRAM, MCBA, and the Monterey-Style WRAM.

The July 3, 2020 PD states that "[t]he scope of this proceeding includes consideration of "how to improve water sales forecasting," an issue raised in the first scoping memo issued on January 9, 2019, (RM 17-06-024, First Scoping memo, p.3). The First Scoping Memo in RM 17-06-024 does not mention WRAM or Monterey-Style WRAM as an issue in this proceeding. The Amended Scoping Memo adopted on July 9, 2020, states that the OIR was adopted "to address

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[1] CPUC Decision 16-12-026, n. 44 (citing Richard White, Principal author, Marzia Zafar, Editing Author, Evaluating Forecast Models, Policy and Planning Division, California Public Utilities Commission, August 17, 2015, at 2).
[2] Evaluating Forecast Models, *supra* note 1, at 3.
[3] *Id.*

consistency among Class A water company low-income programs, affordability, forecasting, whether other water companies (such as water bottler companies) qualify as public utilities, and coordination with the State Water Resources Control Board (SWRCB) regarding consolidation of water companies where a water company is unable to provide affordable, clean water to its customers." The Amended Scoping Memo does not mention WRAM or Monterey-Style WRAM as an issue in this proceeding. The Second Amended Scoping Memo issued on July 2, 2020 added affordability issues raised by the COVID-19 pandemic. The Second Amended Scoping Memo does not mention WRAM or Monterey-Style WRAM as topics in the proceeding's scope.

The July 3, 2020 PD at p. 52 states that "based on the discussion at the workshop on ways to improve water sales forecasting, the ruling specifically called for party input on whether the Commission should change all utilities to use Monterey-Style WRAMs with ICBA, and whether such a transition should occur in the context of the utilities' next GRC." The PD cites Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions, September 4, 2019, at 3. That ALJ ruling asked questions about the WRAM and Monterey-Style WRAM:

> Question 6. For utilities with a full Water Revenue Adjustment Mechanism (WRAM)/Modified Cost Balancing Account (MCBA), should the Commission consider converting to Monterey-style WRAM with an incremental cost balancing account? Should this consideration occur in the context of each utility's GRC?
>
> 7. Should any amortizations required of the Monterey-style WRAM and incremental cost balancing accounts be done in the context of the GRC and attrition filings?

No amendment to the proceeding's scoping memo was issued to clarify the Assigned Commissioner's and ALJ's interpretation that "consideration of changes to the WRAM/MCBA is and has always been within the scope of this proceeding as part of our review of how to improve water sales forecasting." (PD, RM 17-06-024, p. 52, Conclusions of Law, 2). Had such a proposition been advanced prior to the PD, the public would have had an opportunity to submit comments on whether the WRAM, MBCA, and Monterey-Style WRAM were within the proceeding's scope. Those comments could have highlighted the distinction between forecasting and revenue collection and rate design mechanisms, and the affordability issues raised by the Monterey-Style WRAM.

The PD in 17-06-024 Ordering Paragraph 3 proposes that utilities using a WRAM "in their next general rate case applications, shall transition existing Water Revenue Adjustment Mechanisms to Monterey-Style Water Revenue Adjustment Mechanisms." The PD states on p. 59 "we have identified some benefit to the WRAM/MCBA process with respect to decoupling sales from revenues and that the Monterey-Style WRAM captures the identified benefits without the negative effects on customers of a traditional WRAM." The PD does not explain why it asserts that the Monterey-Style WRAM captures the identified benefits without the negative

effects on customers of a traditional WRAM. Ordering Paragraph 3 and the PD's comments about the relative merits of the WRAM and MCBA as compared to the Monterey-Style WRAM fail to recognize that the Monterey-Style WRAM performs a different function as a rate design mechanism, despite its similar name to the WRAM. Since those issues were not within this Rulemaking's scope, they were not fully litigated in a manner that would have highlighted these distinctions and created an opportunity to investigate the impact of this proposal on all affected ratepayers including low-income ratepayers.

The CPUC initially adopted a Monterey-style WRAM for California American Water Company in 1996 in D.96-12-005. CPUC Resolution W-4910 adopted on March 22, 2012, p. 3, observes that "Monterey-style WRAM only tracks and allows for the potential amortization of the difference between revenue the utility receives for actual metered sales through the tiered volumetric rate and the revenue the utility would have received through a uniform, single quantity rate if such a rate had been in effect." Resolution W-4910 explains that the Monterey-style WRAM "will track the actual water amount sold in a month and apply the single quantity rate to result in an adjusted revenue amount for that month. The difference between the adjusted revenue and the actual revenue will be reflected in the balancing account [i.e., Monterey-style WRAM]. The account will not track revenues recovered through the service charge." (*Id.* citing D.08-08-030, footnote 30; D.10-04-031, footnote 107).

Since the WRAM, MCBA, and the Monterey-Style WRAM were not within the scope of RM 17-06-024, that proceeding did not explore the differences between the function of the WRAM, MCBA, and the Monterey-Style WRAM. As a consequence of these omissions, the PD in 17-06-024 fails to analyze affordability issues raised through implementation of a Monterey-style WRAM.

The Monterey-style WRAM must be analyzed in the context of rate design, rate tiers, and conservation mechanisms. Its application may vary in different service areas as the Monterey-style WRAM seeks to equalize revenue generated by tiered rates as compared to revenues a uniform quantity rate would have produced. This analysis is service-area specific and will vary with the tiered rate structure used in a service territory (if tiered rates are employed), and other factors that influence the rates a uniform quantity rate would have produced in that area.

The effect of a Monterey-style WRAM on affordability, rates, and conservation must be examined in a proceeding that properly places those issues within their scope to allow for analysis and record development of those important issues. CPUC Decision 16-12-026, p. 62, notes that the "Monterey Region [where the Monterey-style WRAM was first authorized] is replete with stories of $1,000 or more water bills, many of which are due to leaks later discovered." D. 16-12-026, p. 51 recognized that "steep tiers such as those that have been used in Monterey have resulted in very high bills for many customers. If a customer has a leak the water bills can easily reach into the thousands." The PD in RM 17-06-024 lacks the record foundation to support its order to switch from a WRAM to a Monterey-Style WRAM and fails to investigate the affordability impacts of this proposal.

I urge the CPUC to withdraw the PD issued on July 3, 2020 in 17-06-024 and revise it to eliminate discussion, findings of fact, conclusions of law, and ordering paragraphs regarding the

out-of-scope issues: WRAM, MCBA, and the Monterey-Style WRAM. The scope of RM 17-06-024 includes several important issues that affect water affordability including forecasting. An amended PD in RM 17-06-024 should analyze those issues within its current scope and provide an opportunity to comment on that analysis.

The CPUC should amend the OIR in RM 17-06-02 to add WRAM, MCBA, and the Monterey-Style WRAM, and then issue a scoping memo that gives ratepayers and all interested parties an opportunity to explore the impact of those revenue collection and rate-design mechanisms on rates, rate design, conservation, and affordability. That amended rulemaking must consider whether that proceeding should be classified as ratemaking as WRAM, MCBA, and the Monterey-Style WRAMs are closely tied to rates and the rate design in a fashion that may vary in different areas utilities serve. Hearings may be necessary to fully develop the record on those issues and create the opportunity for testimony, briefing, and oral argument that the public was not afforded in this proceeding. The PD in 17-06-024 advances the CPUC's work on forecasting but commits legal error when it conflates forecasting with rate design and rate collection mechanisms such as WRAM, MCBA, and the Monterey-Style WRAM. The PD in 17-06-024 should be withdrawn and revised to address issues within its scope. The OIR in RM 17-06-02 should subsequently be amended to add WRAM, MCBA, and the Monterey-Style WRAMs so the public has an opportunity to comment on the affordability and conservation impacts of those revenue collection and rate design mechanisms.

Sincerely,

// Catherine J.K. Sandoval //

Catherine J.K. Sandoval
Associate Professor
Santa Clara University School of Law

Former Commissioner, California Public Utilities Commission (Jan. 2011-Jan. 2017)

EXHIBIT U

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 the Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability.	FILED PUBLIC UTILITIES COMMISSION JUNE 29, 2017 SAN FRANCISCO, CALIFORNIA RULEMAKING 17-06-024

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

EXHIBIT V

Decision **PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**
(Mailed 7/3/2020)

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

DECISION AND ORDER

works, consequently, customers experience frustrating multiple rate increases due to GRC test year, attrition year, WRAM/MCBA, and other offsets.[27]

The Commission adopted settlements between the Division of Ratepayer Advocates (currently the Public Advocates Office of the Public Utilities Commission) and various Class A water utilities in D.08-06-002, D.08-08-030, D.08-08-032, D.08-09-026, D.08-11-023, D09-05-005, D.09-07-021, and D.10-06-038. These settlements included conservation rate design and adoption of WRAM as a means of promoting conservation by decoupling sales from revenues. As explained in D.08-08-030, the Commission, while citing to the 2005 Water Action Plan, found that water utilities had a financial disincentive to conserve water. The Commission then concluded that to advance the goals of conservation, the Commission would need to remove that disincentive.[28] These decisions adopted WRAM 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. These five utilities are commonly called the "WRAM utilities." In addition, the Commission adopted a settlement between the precursor to the Public Advocates Office of the Public Utilities Commission and San Jose Water Company, which is essentially the Monterey-Style WRAM.[29]

This Monterey-Style WRAM adjusts for the revenue effect of metered tiered rates compared to the revenue SJWC would have received from single flat quantity rates if single flat rates had been in effect. The Monterey-Style WRAM, a regulatory mechanism initiated in the Monterey District of California-

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[27] California Water Association 2018 Phase I Comments at 7-9.

[28] D.08-08-030 at 28.

[29] D.08-08-030 at 22.

EXHIBIT W

Decision **PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**
(Mailed 7/3/2020)

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

DECISION AND ORDER

b. In what ways can the Commission assist Class A and B utilities that provide unregulated affiliate and franchise services to serve as administrators for small water systems that need operations & maintenance support as proscribed by Senate Bill (SB) 552 (2016)?

2. Forecasting Water Sales:

   a. How should the Commission address forecasts of sales in a manner that avoids regressive rates that adversely impact particularly low-income or moderate-income customers?

   b. In D.16-12-026, adopted in R.11-11-008, the Commission addressed the importance of forecasting sales and therefore revenues. The Commission, in D.16-12-026, directed Class A and B water utilities to propose improved forecast methodologies in their GRC application[s]. However, given the significant length of time between Class A water utility GRC filings, and the potential for different forecasting methodologies proposals in individual GRCs, the Commission will examine how to improve water sales forecasting as part of this phase of the proceeding. What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?

3. What regulatory changes should the Commission consider to lower rates and improve access to safe quality drinking water for disadvantaged communities?

4. What if any regulatory changes should the Commission consider that would ensure and/or improve the health and safety of regulated water systems?

In addition, the Scoping Memo set forth the following issues would be addressed in 2019 workshops and additional comments from parties:

1. Program Name;
2. Effectiveness of LIRA Programs;
3. Monthly Discounts;

Both the WRAM/MCBA and Monterey-Style WRAM with ICBA mechanisms are independent of low-income ratepayer impacts. Both mechanisms are independent of ratepayer conservation efforts that are primarily driven by rate design considerations.

Moreover, rate design and rate impacts are independent of whether a utility has a WRAM or Monterey-Style WRAM.

In order to achieve a goal of this proceeding to improve water sales forecasting, we agree with the Public Advocates Office of the Public Utilities Commission that water utilities that currently use a WRAM[25] shouldmay propose a Monterrey-Style WRAM in their next GRC. As discussed below, we find that the problems identified in the current WRAM/MCBA process are minimized in a Monterrey-Style WRAM without reducing the benefits we seek to achieve through the use of the WRAM process.

5.2.1. Transitioning WRAM Utilities to Monterey-Style WRAM5.2.1. Barring the Use of WRAM/MCBA in Future General Rate Cases

The January 9, 2018, Scoping Memo laid out the following issues to address in this proceeding:

2. Forecasting Water Sales

a. How should the Commission address forecasts of sales in a manner that avoids regressive rates that adversely impact particularly low-income or moderate income customers?

b. In Decision (D.)16-12-026, adopted in Rulemaking 11-11-008, the Commission addressed the importance of forecasting sales and therefore revenues. The Commission, in D.16-12-026, directed Class A and B water utilities to propose improved forecast methodologies

[25] Cal-Am, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corporation, and Liberty Utilities (Apple Valley Ranchos Water) Corporation. *See,* D.08-08-032, D.08-06-022, D.08-08-030, D.08-09-026, D.08-11-023, D09-05-005, D.09-07-021 and D.10-06-038.

in their GRC application. However, given the significant length of time between Class A water utility GRC filings, and the potential for different forecasting methodologies proposals in individual GRCs, the Commission will examine how to improve water sales forecasting as part of this phase of the proceeding. What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?

…

In comments to this Scoping Memo the California Water Association, among other suggestions, called for folding the WRAM/MCBA recovery into base rates instead of surcharges[26] while the Public Advocates Office of the Public Utilities Commission argued that the large variances in forecasted sales are exacerbated by the WRAM/MCBA process.[27] Accordingly, the August 2, 2019, workshop included a panel on drought sales forecasting that identified a number of problems with the WRAM/MCBA mechanism. The September 4, 2019, Ruling specifically sought comment on whether the Commission should convert utilities with a full WRAM/MBCBA mechanism to a Monterey-Style WRAM with an incremental cost balancing account.

The WRAM and MCBA were first implemented in 2008 and were developed as part of a pilot program to promote water conservation. The Commission adopted these mechanisms as part of conservation rate design pilot programs. The goals of the WRAM/MCBA are 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. The WRAM/MCBA also adjusts for all water consumption reductions, not just consumption reductions due to implementing conservation. The Commission recognizes that it is difficult

[26] CWA Comments dated February 23, 2018 at 9.
[27] Public Advocates Office Comments dated February 23, 2018 at 8.

to parse out consumption declines due to the sole effects of conservation programs and rate designs from other contributing factors such as weather, drought, economic effects, or inaccurate sales forecast, but the WRAM/MCBA goes beyond removing a utility's disincentive to promote conservation by taking all of these factors into account.

The revenue and rate impacts of WRAM/MCBA amounts are implemented through balancing accounts for recovery through surcharges. When actual sales are less than forecasted sales used in establishing a revenue requirement, the revenue shortfall, less offsetting marginal expenses, is surcharged to customers in addition to their regular tariffed rates. However, these balances rarely provide a positive balance (over-collected) but instead have been negative (under-collected).[26][28] Consequently, ratepayers experience not only the rate increase attributable to GRC rate changes, including increases in attrition years, but also a subsequent rate increase due to amortizing negative WRAM balances. It is unlikely that the average customer understands how this regulatory mechanism works, consequently, customers experience frustrating multiple rate increases due to GRC test year, attrition year, WRAM/MCBA, and other offsets.[27][29]

The Commission adopted settlements between the Division of Ratepayer Advocates (currently the Public Advocates Office of the Public Utilities Commission) and various Class A water utilities in D.08-06-002, D.08-08-030, D.08-08-032, D.08-09-026, D.08-11-023, D09-05-005, D.09-07-021, and D.10-06-038. These settlements included conservation rate design and adoption of WRAM as a means of promoting conservation by decoupling sales from revenues. As explained in D.08-08-030, the Commission, while citing to the 2005 Water Action

[26][28] D.12-04-048 at 13.
[27][29] California Water Association 2018 Phase I Comments at 7-9.

EXHIBIT X

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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 CALIFORNIA WATER ASSOCIATION RESPONDING TO ADMINISTRATIVE LAW JUDGE'S SEPTEMBER 4, 2019 RULING

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September 23, 2019

I. REPLIES TO PUBLIC ADVOCATES OFFICE'S COMMENTS

1. The Commission should reject PAO's recommendation to order utilities to convert all WRAMs to Monterey-style WRAMs.

CWA vehemently disagrees with PAO's recommendation that "utilities should convert full [water revenue adjustment mechanisms ("WRAMs")] to Monterey-style WRAMs."[5] As outlined in CWA's opening comments on the Ruling, the reversion to Monterey-style WRAMs would be a step backwards that eliminates the benefits that full WRAMs offer in contrast to Monterey-style WRAMs.[6] The two mechanisms are very different and serve different purposes: the full WRAM is a **revenue** adjustment mechanism, based on the variance between adopted and actual sales; the Monterey WRAM is a **rate** adjustment mechanism, based on the variance between revenues yielded by tiered rates versus uniform rates — it has nothing to do with variances in sales. Accordingly, conflating the two in a rulemaking that should have no bearing on the rate design of Class A water companies beyond consideration of a baseline quantity rate is misguided.

PAO asserts that "the Monterey-style WRAM is superior because it operates without transferring sales risk to ratepayers."[7] This is false, because it mischaracterizes how the full WRAM works. The fact is that the WRAM reduces the risk of sales uncertainty affecting the utility's recovery of fixed costs without a shortfall or a windfall, while the absence of a WRAM (with or without a Monterey-style WRAM) leaves in place the risk of a shortfall or a windfall in fixed cost recovery due to actual sales variations from adopted sales quantities approved in a utility's general rate case. If "sales risk" is defined as the risk of a revenue requirement shortfall or windfall due to realized sales variations, then putting a WRAM in place reduces sales risk for

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[5] PAO Opening Comments, p. 5.

[6] *Comments of California Water Association Responding to Administrative Law Judge's September 4, 2019 Ruling* (September 16, 2019) ("CWA Opening Comments"), pp. 39-41.

[7] PAO Opening Comments, p. 5.

EXHIBIT Y

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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

REPLY COMMENTS OF GOLDEN STATE WATER COMPANY (U 133 W)
ON PROPOSED DECISION AND ORDER

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August 3, 2020

REPLY COMMENTS OF GOLDEN STATE WATER COMPANY (U 133 W) ON PROPOSED DECISION AND ORDER

I. INTRODUCTION

Pursuant to Rule 14.3(d) of the Commission's Rules of Practice and Procedure, Golden State Water Company ("GSWC") submits these reply comments identifying (i) the misrepresentations of fact and condition of the record in the comments of the Public Advocates Office ("Cal PA") on the Proposed Decision ("PD") in respect of the WRAM/MCBA and Monterey-style WRAM ("M-WRAM")/ICBA, and (ii) how the comments of the Joint Advocates[1] demonstrate the unintended negative consequences, including affordability concerns, associated with converting a WRAM/MCBA to an M-WRAM/ICBA.

GSWC, and almost every other party, disagrees with Cal PA's recommendations on the WRAM/MCBA and M-WRAM/ICBA. But there is one related point on which there is unanimity: The PD fails to support adequately any order requiring conversion from a WRAM/MCBA to an M-WRAM/ ICBA. Cal PA worked hard to explain away this failing as inconsequential. GSWC and the other parties demonstrated the contrary; this failure is fatal, both because no record was established that supports this dramatic shift in policy and because the PD fails to address the negative consequences likely to result from this change. Accordingly, Cal PA's suggested "clarifications" to the PD should be rejected and the Commission should decline to order the conversion from a WRAM/MCBA to an M-WRAM/ICBA.

II. CAL PA'S COMMENTS REGARDING THE WRAM/MCBA SHOULD BE REJECTED

A. The Record Does Not Support Conversion to M-WRAM/ICBA Mechanisms

The Commission should reject Cal PA's recommendation to modify the PD to "[r]eflect that the record demonstrates that the WRAM/MCBA Ratemaking Mechanism is not necessary to achieve conservation" because the underlying premise is false. Cal PA identifies three data sets that it claims support this premise; none of this data actually does, and two of the data sets are not even in the record.

The first "data set" is a graph submitted by Cal PA in its final reply comments prior to the PD's issuance,[2] which strategy denied the other parties any opportunity to evaluate and rebut the data, as is required by due process before the Commission may change its orders in reliance on this data.[3] Cal PA's graph fails to demonstrate that the M-WRAM/ICBA are as effective as the WRAM/MCBA in promoting conservation because that data (i) fails to show the substantial cumulative effects of the conservation efforts in WRAM utility service areas, which during the most indicative six-year period resulted in a

[1] Collectively Pacific Institute for Studies in Development, Environment, and Security, the Leadership Counsel for Justice and Accountability, the Community Water Center, and the Natural Resources Defense Council.
[2] Referred to by Cal PA as "eight years of annual change in average consumption for WRAM and non-WRAM utilities, showing almost identical patterns of change in consumption" (Cal PA Comments on PD at 4).
[3] *See* Comments of Golden State Water Company (U 133 W) on Proposed Decision and Order (hereinafter "GSWC Comments on PD") at notes 34-38 and accompanying text.

reduction in usage per customer for WRAM utilities that was almost 30% greater than for M-WRAM utilities,[4] and (ii) fails to reflect that during the two-year period in which M-WRAM customers significantly reduced consumption (A) they were subject to mandatory conservation orders imposed by governmental authorities, and once those orders were lifted, the conservation outcomes of M-WRAM utilities reverted to being materially worse than those of the WRAM utilities,[5] and (B) three of the four M-WRAM utilities benefitted from revenue decoupling mechanisms that effectively turned their M-WRAMs into full WRAMs.[6] Had Cal PA's graph been subject to evaluation and rebuttal, it would be clear that this data fails to support Cal PA's and the PD's conclusion.

The other two data sets to which Cal PA points[7] suffer from the same flaws as the Cal PA graph and also are problematic because the data only covers water utility customers in "urban" service territories.[8] But more critically for purposes of responding to Cal PA's recommendation, neither of these data sets is in the record in this proceeding. Rather, they were discussed for the first time in the PD by reference to a certain "Table A" that was supposed to have been included in the PD but was omitted due to a "clerical error."[9] Even if "Table A" had been included in the PD, the data would not be in the record as it would have appeared for the first time in the PD—after the evidentiary record was closed.[10]

Because there is no evidence that "the WRAM/MCBA Ratemaking Mechanism is not necessary to achieve conservation," the Commission should reject Cal PA's requested modification of the PD.

B. Cal PA's Factual Assertions regarding the WRAM/MCBA are False

Cal PA falsely claims that the WRAM incentivizes utilities to over-forecast consumption and propose rates that are artificially low during general rate cases ("GRCs").[11] This is wrong. Due to the time-value of money, WRAM companies ultimately lose money when there are significant under-collections. This is because WRAM balances accrue interest at the very low 90-day commercial paper rate[12] and WRAM surcharges are capped at 10% of the last authorized revenue requirement.[13] So if

[4] *Id*. at 10-11.
[5] *Id*. at 11-12.
[6] *Id*. at 12-13.
[7] Referred to by Cal PA as (i) five years of water savings percentages from WRAM utilities versus M-WRAM utilities that show cumulative water savings for M-WRAMs exceeding cumulative water savings from WRAM utilities and (ii) five years of conservation data from Class B non-WRAM utilities showing conservation for non-WRAM utilities exceeding conservation for WRAM and M-WRAM utilities (Cal PA Comments on PD at 4).
[8] GSWC Comments on PD at 13.
[9] *Id*. at note 39 and accompanying text.
[10] Decision 19-06-039 at 5 (explaining that all proceedings "must have a point where the evidence is considered submitted and no more evidence is accepted without a motion or request," and that this process "ensures that all parties have an opportunity to comment upon the evidence thereby ensuring due process").
[11] Cal PD Comments on PD at 2.
[12] Standard Practice U-27-W at 9.
[13] *See* Decision 12-04-048 at 41, Ordering Paragraph #3.

there are large WRAM under-collections, the period of time over which the utility can recapture those under-collections is very long, and the minimal interest that accrues on WRAM balances is insufficient to compensate the utility for that lost value. GSWC is also fully aware that neither the Commission nor our customers like large WRAM balances; we strive to forecast sales as accurately as possible in our GRCs so as to keep our WRAM balances low and to avoid Commission and customer concern.

Cal PA also falsely claims that the WRAM provides an opportunity "for Water IOUs to significantly increase rates outside of the GRC process via WRAM surcharges."[14] WRAM surcharges are in no way "outside of the GRC process." Rather, they allow utilities to recover the revenue requirement that was authorized during the GRC if and only if the authorized revenue requirement would not otherwise be recovered because actual sales are lower than the forecasts approved, after litigation or settlement, in the GRC. And if actual sales are higher than forecasted sales, the utility credits or refunds to its customers the amount earned in excess of its revenue requirement. This relates directly to Cal PA's other false assertion: that the WRAM/MCBA benefits utilities to the detriment of customers. Cal PA argues that "MRAM/MCBA results in inaccurate forecasts and transfers risks from the Water IOUs to customers."[15] To the contrary, the WRAM/MCBA are two-way balancing accounts that reduce forecast-error risk for both customers and utilities. When amounts are under-collected, customers are surcharged and when amounts are over-collected, customers receive a credit or refund. Within the last four years, GSWC has had many over-collections that resulted in credits or refunds.[16]

Finally, Cal PA's claim that the WRAM/MCBA enables utilities to collect their forecasted fixed costs even "[i]f estimated fixed costs do not materialize"[17] is misguided and misleading. It is misguided because utilities' rates are set based upon two related expectations: (i) within a given GRC period, utilities will recover their estimated fixed costs whether they materialize or not, and (ii) if utilities spend more on capital projects than their estimated fixed costs within the GRC period, they will not recover the overspend during the relevant period. Moreover, because the WRAM/MCBA also return funds to customers if sales forecasts turn out to have been too low, the mechanisms protect customers against possibly paying more towards a utility's fixed costs than authorized in the GRC. As such, there would be nothing wrong with a WRAM/MCBA resulting in utility recovery of estimated fixed costs within a given rate case period, if that is what were to transpire based on the underlying circumstances.

Cal PA's claim is misleading because it fails to address the Commission's pro-forma earnings

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[14] Cal PA Comments on PD at 2.
[15] *Id*. at 3.
[16] *See* AL 1694-W (filed Mar. 13, 2017), AL 1740-W (filed Mar. 14, 2018), AL 1741-W (filed Mar. 23, 2018), ALs 1767-W and 1766-W (filed Mar. 21, 2019), and AL 1813-W (filed Mar.18, 2020) (submitted with WRAM over-collections in Region 3, Arden Cordova and Simi Valley).
[17] Cal PA Comments on PD at 8.

test. Recognizing that a utility's revenue requirement is developed based on forecasts that may not prove accurate, the Commission instituted the pro forma earnings test to ensure that a utility does not get to implement an attrition year rate increase if it already is earning more than its authorized rate of return. Underspending on its capital budget would be a likely cause of a utility's earnings test failure. In such a case, the pro forma earnings test would operate to limit the utility's ability to recover, during the second and third year of the rate cycle, those estimated fixed costs that did not materialize.

Given Cal PA's failure to grasp the basic principles of test-year ratemaking and the protections afforded by the pro forma earnings test, the Commission should give no weight to Cal PA's claim that the WRAM/MCBA enable utilities to charge customers for "fixed costs [that] do not materialize".

C. If GSWC were Required to Convert to an M-WRAM/ICBA in A.20-07-012, the Application Would Require Extensive Changes

The Commission should reject Cal PA's request that GSWC transition to an M-WRAM in our current GRC. Such an order would (i) require that we re-do a huge portion of A.20-07-012, (ii) be very costly, (iii) significantly delay the GRC and (iv) lead to customer confusion. The PD acknowledges that converting to an M-WRAM/ICBA would be a "major change" that will take time to implement.[18] Cal PA's statement that the application was filed "only two weeks ago" ignores the year of work and considerable utility resources dedicated to preparing A.20-07-012 and the extensive changes (and time to make the changes) that would be required were the WRAM eliminated. As the WRAM is a critical underpinning of GSWC's conservation rates, GSWC would be unduly and unlawfully prejudiced if required to convert to an M-WRAM in our current GRC without an opportunity to make other changes.

There is no question that, if required to convert to an M-WRAM, GSWC would propose an entirely different rate design that mitigates the loss of revenue decoupling. To illustrate: (i) in our WRAM districts, we recover only 42% of our fixed costs in the service charge, but in Clearlake, which is not a WRAM district, we recover 50% of fixed costs in the service charge, and (ii) Great Oaks Water Company (an M-WRAM utility) recovers 75% of its fixed costs in services charges.[19] Our conservation rate tier breaks, number of tiers, and the rate differential between tiers would also require reassessment. Those rate design changes would directly impact our forecasted sales and thus indirectly impact virtually every aspect of the application, including re-evaluation of our water supply needs and capital projects.

In sum, A.20-07-012 was premised on the WRAM/MCBA remaining in effect. Without those mechanisms, we would need to re-do much of the application, resulting in a costly waste of utility resources and a significantly delayed GRC. And GSWC has already published and will soon mail the

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[18] PD at 57.

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

customer notices regarding the requested rate increases in A.20-07-012. If we are required to re-do the application, GSWC would need to re-notice all of our customers, which would undoubtedly create customer confusion. Accordingly, if the Commission requires GSWC to convert from a WRAM/MCBA to an M-WRAM/ICBA, we should only be required to do so in our next GRC, not in A.20-07-012.

III. THE JOINT ADVOCATES' COMMENTS REVEAL THE DETRIMENTAL EFFECTS OF ABANDONING THE WRAM/MCBA

The Joint Advocates neither endorse nor reject the PD's proposal to require conversion to an M-WRAM/ICBA, but their observations reveal the detrimental effects of such a conversion on low-use customers and conservation. Although not stated explicitly, the Joint Advocates' recommendations reflect that the rate designs of M-WRAM utilities are both less affordable for low-use customers and less effective in incentivizing conservation. The Joint Advocates argue:

> [A]ny proposed rate structure that increases the share of total revenues to be derived from traditional fixed charges, or that proposes unaffordable Tier 1 rates, should not be approved by the Commission in the GRCs, and the Commission should clearly adopt policies that prevent rate structures that eliminate or reduce conservation incentives.[20]

As discussed above in connection with GSWC's existing GRC, it would not be reasonable to expect that WRAM utilities will be able to maintain their more progressive rate designs if forced to abandon the revenue decoupling mechanisms that support those rates. Were the Commission to order conversion to an M-WRAM/ICBA, the rate design changes of concern to the Joint Advocates would need to be part of the conversion. This is a key reason that ordering such a conversion would be a mistake.[21]

IV. CONCLUSION

For the foregoing reasons, GSWC requests that the Commission revise the PD as set forth in GSWC's comments on the PD.

August 3, 2020

Respectfully submitted,

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[20] Joint Advocates' Comments on Proposed Decision and Order (Phase I) at 6-7.

[21] The Joint Advocates also make a recommendation that contemplates maintaining the WRAM: establishing pre-approved drought contingency rates as a means of avoiding excessive WRAM balances. As stated in GSWC's comments on the PD, if the Commission believes it necessary to reconsider maintaining the WRAM/MCBA, the Commission should do so in a separate proceeding or in a separate phase of this proceeding during which options such as drought contingency rates may be considered.

EXHIBIT Z

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

REPLY COMMENTS OF THE PUBLIC ADVOCATES OFFICE ON THE WATER DIVISION'S STAFF REPORT AND RESPONSE TO ADDITIONAL QUESTIONS

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September 23, 2019

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final decision for each utility's GRC authorizes yearly Step Filings via Advice Letter.[16] The Rate Case Plan provides the following example language for a sample Ordering Paragraph for escalation year increases: "An escalation advice letter, including workpapers, *may* be filed in accordance with General Order (GO) 96-B no later than 45 days prior to the first day of the escalation year." (emphasis added).[17] If the final decision utilizes the example language from the Rate Case Plan, the utility could choose to only file an advice letter for a Step Increase when it is not overearning, thereby ensuring that rates are only adjusted if the filing results in a rate increase, and avoiding filing if it would result in a rate decrease. Therefore, a utility with an SRM may not even have to perform a Pro Forma earning test each year. Altogether, CWA's claim that the existing Pro Forma earnings test protects customers from rate increases associated with an SRM is patently false.

The Commission should not allow utilities to utilize tools such as SRMs. CWA's arguments in support of SRMs are inaccurate and unsupported. However, in the event that the Commission decides to allow utilities to utilize tools such as SRMs, at a minimum the Commission should require an earnings test to ensure that rates are not increased when a utility is already overearning.

V. THE COMMISSION SHOULD DISREGARD CWA AND SCE'S INACCURATE AND MISLEADING ARGUMENTS IN SUPPORT OF WRAM

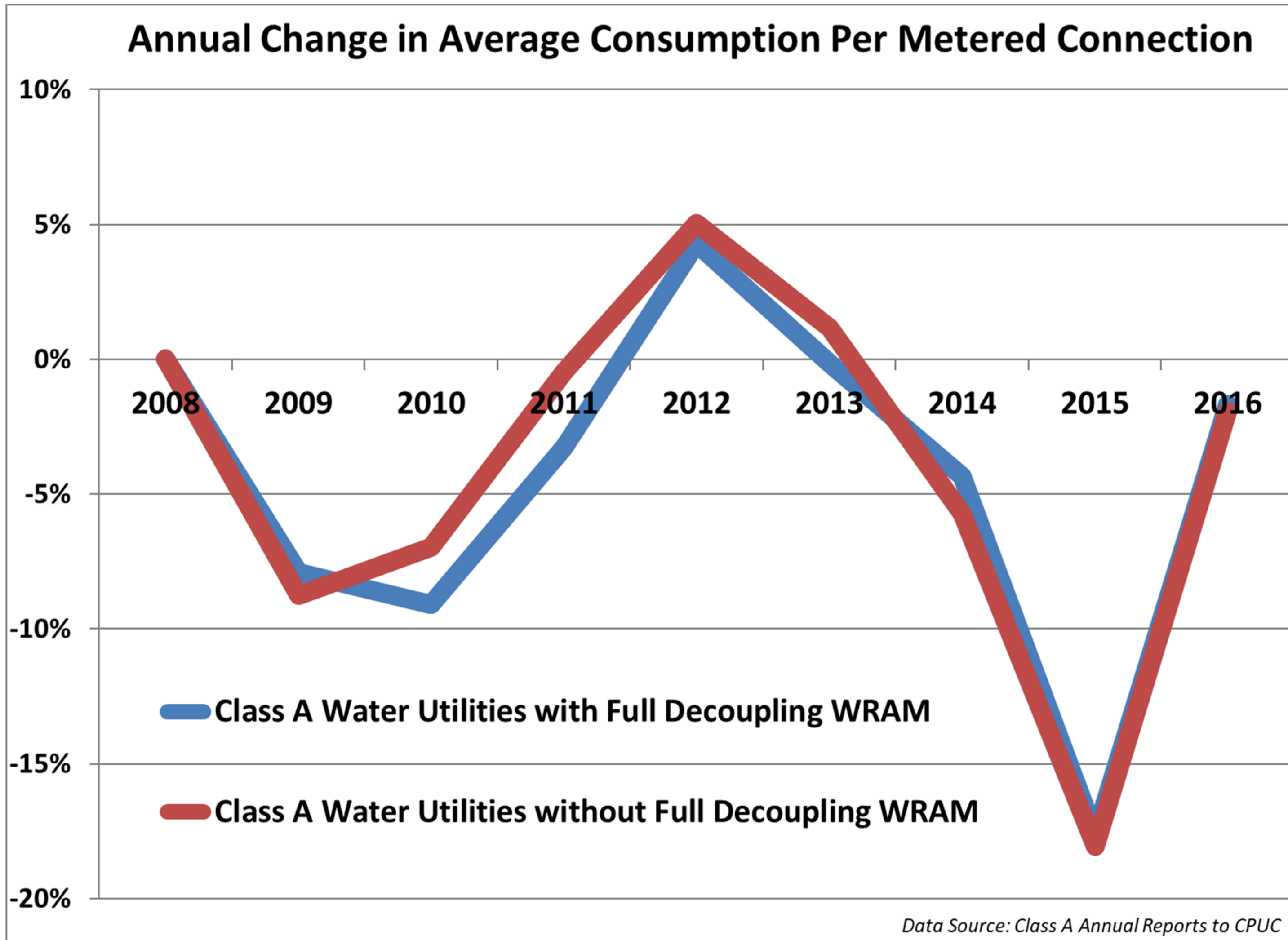
CWA claims in its Comments that "the Monterey-style WRAM does not decouple sales from revenues and therefore fails to address the perverse incentive for water utilities to increase water sales and discount conservation effort."[18] However, this statement is not supported by actual data. As shown by the graph below, water utilities with and without full decoupling WRAM have shown almost identical trends in annual sales

[16] Appendix A to D. 07-05-062 states at p. A-13: "In addition to relevant issues raised in the proceeding, each decision...unless deviation is otherwise expressly justified in the decision, shall include standard ordering paragraphs providing for escalation year increases subject to an earnings test.

[17] Ibid, at footnote 4.

[18] CWA Comments at p. 13.

fluctuations. CWA's claim that the Monterey-style WRAM (or lack of a full decoupling mechanism) adversely affects conservation efforts is contradicted by a simple examination of Class A water utilities' Annual Reports to the Commission.



CWA also incorrectly states that "the WRAM itself does not make rates more or less affordable."[19] Southern California Edison Company (SCE) similarly argues that WRAMs "permit the utilities to collect the authorized revenue requirement to invest in infrastructure and conservation programs while passing along savings in volume-related production expense to customers."[20] These statements are misleading. WRAM provides

[19] CWA Opening Comments at p. 7.

[20] SCE Opening Comments at p. 5.

a guaranteed recovery of nearly the entire authorized revenue requirement, and the authorized revenue requirement includes the utilities' profits, or authorized rates of return. Therefore, WRAM shifts a significant portion of the risk of a utility earning authorized profits to customers, without adjusting rates of return for this reduced risk. Consequently, WRAM can in fact have a significant impact on affordability.

Furthermore, contrary to CWA's assertion that WRAM is dealing with fixed cost amounts that have already been authorized to be recovered, the WRAM actually tracks *estimated* fixed costs. If estimated fixed costs do not materialize—as is common when a utility underspends authorized capital budgets—the WRAM is incapable of detecting this variance. For customers, this adds insult to injury since WRAM surcharges are then added to bills not only for sales that did not occur but for costs that did not occur either. Thus, there should be little surprise at the widespread dissatisfaction with WRAM amongst all but the utilities who unreasonably profit from their existence.

The Commission should disregard CWA and SCE's inaccurate and misleading statements in support of WRAM and should end the experiment with full revenue decoupling for water utilities.

VI. CONCLUSION

The Public Advocates Office appreciates the opportunity to respond to the comments of other parties to this proceeding, and respectfully requests that the Commission adopt its recommendations.

Respectfully submitted,

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September 23, 2019

EXHIBIT AA

MGA/eg3 1/9/2018

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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

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Summary

This Scoping Memo sets forth the category, issues, need for hearing, schedule, and other matters necessary to scope this proceeding pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.[1]

1. Background

On July 10, 2017, the California Public Utilities Commission (Commission) issued an Order Instituting Rulemaking (OIR) to address consistency among Class A and B water companies' low income programs, affordability of rates, forecasting of rates and whether other water companies (such as water bottler companies) qualify as public utilities. In addition the OIR seeks coordination with the State Water Resources Control Board (SWRCB) regarding consolidation of water companies where a water company is unable to provide affordable, clean water to its customers. A prehearing conference (PHC) was held on September 11, 2017 in Sacramento, California.

The PHC was held to determine parties, discuss the scope, the schedule, and other procedural matters.

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[1] California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

2. Scope

Based on the preliminary issues set forth in the OIR, information presented and comments received during two joint workshops with the SWRCB, PHC statements, and discussion at the PHC.

The issues to be addressed in this proceeding relate to a review of low-income rate assistance programs for water utilities under the Commission's jurisdiction. The OIR will examine low-income rate assistance programs of the Class A and B water utilities to determine whether consistent low-income rate assistance programs for all low-income water ratepayers can be established. This OIR will examine regionalization and consolidation (including voluntary and virtual) of at-risk water systems by regulated water utilities, forecasting and affordability issues. This proceeding will additionally consider whether other water companies qualify as public utilities under the Commission's jurisdiction for purposes of assessing a public purpose surcharge. The proceeding will be divided into two phases. Phase I of the proceeding will address the following issues:

1. Consolidation of at risk water systems by regulated water utilities
   a. How could the Commission work with the SWRCB and Class A and B water utilities to identify opportunities for consolidating small non-regulated systems within or adjacent to their service territories that are not able to provide safe, reliable and affordable drinking water? Should the Commission address consolidation outside of each utility's general rate case (GRC)?
   b. In what ways can the Commission assist Class A and B utilities that provide unregulated affiliate and franchise services to serve as administrators for small water systems that need operations & maintenance support as proscribed by Senate Bill (SB) 552 (2016)?
2. Forecasting Water Sales
   a. How should the Commission address forecasts of sales in a manner that avoids regressive rates that adversely impact particularly low-income or moderate income customers?
   b. In Decision (D.)16-12-026, adopted in Rulemaking 11-11-008, the Commission addressed the

importance of forecasting sales and therefore revenues. The Commission, in D.16-12-026, directed Class A and B water utilities to propose improved forecast methodologies in their GRC application. However, given the significant length of time between Class A water utility GRC filings, and the potential for different forecasting methodologies proposals in individual GRCs, the Commission will examine how to improve water sales forecasting as part of this phase of the proceeding. What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?

3. What regulatory changes should the Commission consider to lower rates and improve access to safe quality drinking water for disadvantaged communities?
4. What if any regulatory changes should the Commission consider that would ensure and/or improve the health and safety of regulated water systems?

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

5. Program Name;
6. Effectiveness of LIRA Programs;
7. Monthly Discounts;
8. Program Cost Recovery;
9. Commission Jurisdiction Over Other Water Companies; and
10. Implementation of Any Changes to Existing LIRA Programs.

Respondent Class A and B water utilities are required, Class C and D water utilities are encouraged, and interested parties are invited to provide comments and participate in the proceeding.[2] Comments addressing the Phase I issues identified above shall be provided by Class A and B water utilities, and may be provided by Class C and

[2] Pursuant to Rule 6.2 "[A]ll comments which contain factual assertions shall be verified. Unverified factual assertions will be given only the weight of argument."

EXHIBIT BB

MGA/RWH/jnf 6/2/2020

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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

SECOND AMENDED SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE DIRECTING COMMENTS TO CONSIDER POTENTIAL COMMISSION RESPONSE TO COVID-19

Summary

This ruling further amends the Scoping Memo issued on January 9, 2018, and the July 9, 2018, amended scoping memo to request comments to consider potential Commission response to the COVID-19 pandemic and initiates Phase II of the Order Instituting Rulemaking (OIR) Rulemaking (R.) 17-06-024. A proposed decision closing out all Phase I issues will be issued separately from the proposed decision on the Phase II issues set forth in this ruling.

1. Background

On March 16, 2020, Governor Newsom issued Executive Order N-28-20 requesting the California Public Utilities Commission (Commission) monitor measures undertaken by public and private utilities to implement customer service protections in response to COVID-19 pandemic.

On March 17, 2020, the Commission's Executive Director, Alice Stebbins, issued a letter to Class A & B water utilities ordering immediate protections for water utility customers, including a moratorium on disconnections. The Commission subsequently ratified that order through Resolution M-4842.

On April 2, 2020, Governor Newsom issued Executive Order N-42-20 affirming the Commission's moratorium on water disconnections and additional customer protections.

These actions are just some of the initial steps in responding to this emergency and in order to assess the impact of these actions, the overall impact of the emergency, and to help us formulate the our next steps, we are opening a new phase in this proceeding as it already addresses many of the subjects impacted by the COVID-19 pandemic.

As the COVID-19 pandemic and our collective response thereto continue, by this ruling, we expand the scope of this existing rulemaking proceeding by adding Phase II to it and to seek input on the impact on water utilities and their customers to formulate our next step. In addition, we are also seeking to add regular reports on the status of water customer billing and collection impacts from Class A water utilities.

2. Second Amended Scope (Phase II)

In addition to the actions already taken regarding disconnections and customer protections, the Commission is directing the parties to this proceeding to gather and file responses to this ruling which sets forth the following information on the effects of the COVID-19 pandemic on both customers and water utilities and the recovery from it.

A. Due to the Loss of Employment Caused by The Economic Impact of COVID-19, Many water customers will face the inability to pay utility bills, and as a result, water utilities may begin to accumulate unpaid bills (Arrearages). Provide comments on the following questions:

1) Is your utility experiencing a significant increase in arrearages by residential and non-residential customers?

2) How significant are these increases on a month to month basis?

3) Do you anticipate that water bills will become unmanageable for some customers?

4) What criteria would you propose in identifying those customers needing assistance?

5) Has your utility taken any preliminary actions to assist customers in reducing their unpaid bills? If yes, then what were these actions?

B. What can, and should the Commission do to assist customers with these large arrearages?

1) Should arrearage management plans be adopted that establish longer-term payment plans? Would a 12-month plan be a reasonable payment term?

2) Should arrearage management plans be adopted that includes a debt forgiveness element? If so, should a plan similar to that proposed in the Disconnections Proceeding (R.18-07-005) be adopted here?

3) Should certain months of arrearages be forgiven across the board?

4) How should these arrearage management plans be tracked and accounted for by utilities?

C. How are the current unpaid bills accounted for in a utility's system of accounts? Are they being recorded in uncollectibles? Or tracked in a separate account?

D. A certain amount of unpaid bills is considered during the general rate case process. What was that percentage in your last general rate case? Do you expect the actual percentage to be greater than that amount, and if so by how much?

E. Does a fixed monthly bill amount capped at an affordable level for a utilities' most vulnerable customers provide relief and recovery for customers impacted by the COVID-19 pandemic? Should such a monthly bill be set at a minimum quantity use plus a fixed service charge?

F. How should the current Low-income Rate Assistance Program Application process be improved?

1) Should the current paper application process be converted to an online process?

2) How should the eligibility requirements be improved on?

G. With regard to California Alternate Rates for Energy (CARE) data sharing between energy and water utilities, how can this process be improved to capture customers affected by the COVID-19 pandemic?

1) Should this CARE data sharing occur on a more frequent basis rather than the current bi-annual process?
2) How quickly can the water utilities process and increase enrollment if this data sharing is increased? If it occurs on a monthly or weekly basis?

In addition to the above questions, the Commission directs the Class A water utilities to gather and file responses to this ruling which sets forth the following additional information to better track the impact the COVID-19 pandemic is having on water customers; the following information must be broken down by month between January 2019 – April 2020:

- Number of customers requesting bill assistance;
- Number of newly enrolled customers to your low-income rate assistance program;
- Number of overall enrolled customers in your low-income rate assistance program;

- Number of customers late or behind on their bill;
- Average arrearage amount;
- Median arrearage amount;
- Range of arrearage amount;
- Overall arrearage amount; and
- Number of customers making partial payments.

In order to continue to monitor and assess the impact over both the next few months and beyond, we direct Class A water utilities to provide ongoing biweekly reports of the data requested above to the Water Division through the end of September 2020.

Finally, starting October 2020, we direct Class A Water Utilities to provide ongoing monthly reports (instead of biweekly reports) of the data requested above to the Water Division through the end of, and including data for, June 2021.

3. Categorization

The January 19, 2018, Scoping Memo confirmed the categorization of the proceeding as quasi-legislative, and the proceeding remains categorized as such.

4. Schedule

Parties are to file comments regarding the additional issues added to the scope of this proceeding by June 30, 2020. Reply comments are due by July 14, 2020.

Class A water utilities are required to make additional biweekly and monthly reporting requirements as set forth in Section 2 of this ruling. Additional workshop(s) may also be set to consider Phase II issues.

The assigned Commissioner or assigned Administrative Law Judge may modify this schedule as necessary to promote the efficient management and fair resolution of this proceeding.

It is the Commission's intent to complete this proceeding within 18 months of the date of this amended scoping memo. This deadline may be extended by order of the Commission. (Public Utilities Code § 1701.5(a).)

Notice of workshops or hearings will be posted on the Commission's Daily Calendar. Parties shall check the Daily Calendar regularly for such notices.

IT IS RULED that:

1. The scope of the issues for this proceeding is amended to include the additional Phase II issues set forth in Section 2 of this ruling.

2. Schedule for Phase II of this proceeding is set forth in Section 4 of this ruling and is adopted.

3. Hearings are not necessary at this time.

4. *Ex parte* communications are permitted without restriction or reporting as described at Public Utilities Code § 1701.4(c) and Article 8 of the Rules.

5. Parties shall file comments on the additional issues added to the scope of this proceeding, as set forth in Section 2 of this ruling by June 30, 2020, and reply comments by July 14, 2020.

6. Class A Water Utilities shall submit to the Water Division their biweekly reports of the data listed above in Section 2 of this ruling beginning on June 12, 2020 through the end of September and monthly thereafter through the end of June 2021.

7. The January 9, 2018, scoping memo and the July 9, 2018, amended scoping memo remain as issued with the addition of the Phase II issues set forth in this ruling and the extension of schedule as set forth in this ruling.

Dated June 2, 2020, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES	/s/ ROBERT HAGA
Martha Guzman Aceves	Robert Haga
Assigned Commissioner	Administrative Law Judge

EXHIBIT CC

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

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low – Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024

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

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October 5, 2020

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

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

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

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

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

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

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

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

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

Specifically, PU Code Section 1708, which governs all proceedings before the Commission,[72] requires "notice to the parties, and with opportunity to be heard as provided in the case of complaints" before a Commission order may alter, rescind, or amend any prior Commission decision or order.[73] The California Supreme Court has determined that the mere opportunity to provide comments on a proposal does not satisfy the requirement of Section 1708 that a prior order be altered only after "opportunity to be heard."[74] Rather, the Court has found that "[t]he phrase 'opportunity to be heard' implies at the very least that a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal."[75] And the California Court of Appeal has determined that "[a] statute calling for the adoption of administrative orders upon public notice and hearing implies that the evidence supporting the order be disclosed and made part of a hearing record with opportunity

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[70] Cal. Pub. Util. Code § 1708 (stating: "The commission may at any time, ***upon notice to the parties, and with opportunity to be heard as provided in the case of complaints***, rescind, alter, or amend any order or decision made by it.") (emphasis added)).

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

[72] Cal. Pub. Util. Code § 1701 ("All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission . . . ."); *see also Cal. Motor Transport Co. v. Pub. Util. Com.*, 59 Cal. 2d 270, 272 (1963).

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

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

[75] *Id*. at 244.

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

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

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

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

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

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

[78] *Id*. (emphasis added)

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

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

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

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

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

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

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

[82] *Id*. at Conclusion of Law #88 (stating: "Because the WRAMs/MCBAs established for Golden State are functioning as intended, none of the WRAM Options set forth in D.12-04-048 should be adopted at this time.").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[91] *Id*.

M-WRAM versus WRAM mechanisms in promoting conservation, because 75% of the M-WRAM utilities were effectively full WRAM utilities during that two-year period. As GSWC explained in its comments on the PD, this point was highlighted in San Jose Water Company's ("SJW") latest GRC. In response to arguments made by Cal PA (then the Office of Ratepayer Advocates ("ORA")) against the request of SJW to convert from an M-WRAM to a full WRAM during SJW's 2018 GRC, SJW's witness testified regarding this very issue, explaining:

> [T]he Commission has recognized the relationship between conservation and full decoupling, by authorizing temporary decoupling like mechanisms in water conservation memorandum accounts for water utilities without decoupling mechanisms during periods of mandatory conservation/drought. **The impressive conservation figures for SJWC cited in ORA's testimony largely resulted from periods during which such mechanisms, as well as price signals, were in place**.[92]

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

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

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[92] *GSWC Comments on PD* at 12-13 (citing Exh. SJW-4 in Docket A.18-01-004 (*Rebuttal of SJW to the ORA Report and Recommendations on Revenues and Rate Design, Revenue Decoupling and Refunds*) at 6 (emphasis added)).

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

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

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

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

One of the key reasons that the Decision concludes that the WRAM/MCBA should be eliminated is its determination that "this ratemaking mechanism has led to substantial under-collections and subsequent increases in quantity rates"[95], but the record does not include any current data that supports this finding. Rather, because the record purported to support discontinuance of the WRAM/MCBA is woefully incomplete, the Decision relies on out-of-date information with regard to WRAM/MCBA balances. The Decision asserts that the WRAM/MCBA amounts are implemented through balancing accounts that "rarely provide a positive balance (over-collected) but instead have been negative (under-collected)."[96] But the Decision cites Decision 12-04-048 for this premise, and that decision relies on stale data from 2010-2012.[97] As GSWC explained in comments on the PD, if a record with current data had been established in this proceeding, it would have become apparent that GSWC's WRAM balances have generally declined over the past several years and that GSWC refunded many over-collections in its ratemaking areas in recent years, including in both the Arden Cordova and Simi Valley service areas, which had over-collected WRAM balances in each of the last 3 years.[98]

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

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

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

[96] *Id*. at 55.

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

[98] *See GSWC Comments on PD* at 14 (citing AL 1813-W (filed Mar.18, 2020), AL 1766-W (filed Mar. 21, 2019) and AL 1741-W (filed Mar. 23, 2018), each of which was submitted with WRAM over-collections in Arden Cordova and Simi Valley).

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

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

As the original objectives of this proceeding were directed at achieving effective rate assistance programs in order to improve affordability for low-income customers, it is critical that any policy changes adopted in this proceeding be considered in the context of the effects on low-income customers. Nothing in this proceeding's record addresses how forcing WRAM Utilities to abandon their WRAM/MCBA mechanisms will impact low-income customers. As PU Code 321.1(a) requires the Commission to assess the consequences of its decisions, including

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[99] Decision 20-08-047 at Finding of Fact #15 (stating: "Since WRAM/MCBA is implemented through a balancing account for recovery, there are intergenerational transfers of costs") and Finding of Fact #16 (stating: "The WRAM/MCBA mechanism is not the best means to minimize intergenerational transfers of costs when compared to an alternative available to the utilities and the Commission.").

[100] *Id*. at 70.

[101] *Id*.

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

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

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

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

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

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

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

[106] *See, e.g.*, *Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves* at 4 (stating: "If provided the opportunity, Cal Water can present data demonstrating that the rate designs of companies *without* decoupling currently collect a higher percentage of revenues from service charges, as compared to companies *with* decoupling.").

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

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

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

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

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

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

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

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

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

IV. REQUEST FOR ORAL ARGUMENT

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

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

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

[114] *Id*.

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

V. CONCLUSION

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

October 5, 2020

Respectfully submitted,

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

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

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

EXHIBIT DD

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

REPLY COMMENTS OF THE PUBLIC ADVOCATES OFFICE ON THE PROPOSED DECISION OF ASSIGNED COMMISSIONER

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through settlement agreements without conducting evidentiary hearings. Rulemaking 11-11-008, which CWA cited in its Comments,[20] also did not have evidentiary hearings. Here, the water utilities' due process rights are not abridged without the addition of evidentiary hearings.

The California Court of Appeals has emphasized that "due process is flexible and calls for such procedural protections as the particular situation demands"[21] and "…not all situations calling for procedural safeguards call for the same kind of procedure."[22] The Commission provided the water utilities' notice and an opportunity to be heard. Parties had the opportunity to introduce any and all evidence regarding impacts of transitioning from the WRAM to the M-WRAM in Comments and Reply Comments to the Sept. 4, 2019 Ruling that specifically requested responses regarding whether this transition should occur. It is a misrepresentation of facts to now claim that there was not an opportunity to provide evidence on the record regarding a switch from WRAM to the M-WRAM.

E. Parties' Comments Unlawfully Attempt to Introduce New Evidence Into the Record.

Numerous parties unlawfully include new evidence in their Opening Comments in this proceeding. The Commission cannot lawfully rely on such evidence to support its decision and should strike any new evidence, references to new evidence, and conclusions drawn from new evidence from the record of this proceeding. Cal Advocates' Motion to Strike provides specific instances of these unlawful inclusions.[23]

III. CONCLUSION

For the reasons discussed above, the water utilities' opening comments are without merit and should be disregarded. Cal Advocates respectfully requests that the Commission adopt the PD, with the modifications proposed in Cal Advocates' opening comments.

[20] CWA PD Comments, p. 5.

[21] *Southern California Edison Company v. Public Utilities Commission*, 101 Cal.App.4th 982, 995.

[22] Id. at 996.

[23] Cal Advocates Motion to Strike, filed August 3, 2020.

EXHIBIT EE

L/mal

Date of Issuance
September 27, 2021

Decision 21-09-047 September 23, 2021

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

ORDER DENYING REHEARING OF DECISION 20-08-047, AS MODIFIED

I. SUMMARY

This decision addresses the applications for rehearing of Decision (D.) 20-08-047 (or "Decision") filed jointly by Liberty Utilities (Park Water) Corp. and Liberty Utilities (Apple Valley Ranchos Water) Corp. (together, Liberty); and separately by California-American Water Company (Cal-Am); California Water Association (CWA); California Water Service Company (Cal Water); and Golden State Water Company (Golden State) (together referred to as Applicants). In D.20-08-047[1] we evaluated the sales forecasting processes used by water utilities and concluded that the Water Revenue Adjustment Mechanism/Modified Cost Balancing Account (WRAM/MCBA) had proven to be ineffective in achieving its primary goal of conservation. To keep rates just and reasonable, we precluded the continued use of the WRAM/MCBA mechanism in future general rate cases (GRC) but continued to allow use of the Monterey-style WRAM with an Incremental Cost Balancing Account (ICBA). We

[1] 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.

also adopted other requirements relating to Class A water utilities' low-income rate assistance programs.

In its application for rehearing, Liberty alleges the elimination of the WRAM in D.20-08-047 is unlawful because (1) the Commission did not provide parties with a meaningful opportunity to be heard on this issue; (2) it is not supported by record evidence; (3) the issue was not in the scope of the proceeding; and (4) it is inconsistent with prior Commission decisions. Liberty requests oral argument.

Cal-Am alleges the elimination of the WRAM is unlawful because (1) the Commission violated Public Utilities Code section 1701.1 subdivision (c)[2] and Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules)[3] by including in the Decision an issue outside the scope of the proceeding; (2) the Commission failed to regularly pursue its authority by failing to fully examine and develop a record on the elimination of the decoupling WRAM and to consider all of the facts and issues; (3) the Decision impedes Cal-Am from having a fair opportunity to earn a reasonable rate of return; (4) the Decision lacks necessary evidentiary support; (5) certain findings of fact and conclusions of law are not supported by record evidence; (6) the Decision lacks necessary findings of fact and conclusions of law; and (7) the Decision departs from Commission precedent without adequate explanation. Cal-Am requests oral argument.

CWA alleges the elimination of the WRAM in D.20-08-047 is unlawful because (1) elimination of the decoupling WRAM was not within the established scope of this proceeding; (2) parties were denied a meaningful opportunity to be heard and respond to the proposed discontinuation of the decoupling WRAM, in violation of statutory requirements and constitutional due process; (3) the eleventh-hour revisions to the Proposed Decision constituted an alternate proposed decision for which additional opportunity for public review and comment was required pursuant to section 311

[2] Subsequent section references are to the Public Utilities Code unless otherwise noted.

[3] Subsequent rule references are to the Commission's Rules of Practice and Procedure unless otherwise noted.

subdivision (e); and (4) certain findings of fact are not supported by record evidence. CWA requests oral argument.

Cal Water alleges the elimination of the WRAM is unlawful because (1) the Commission violated section 1701.1 subdivision (c), Rule 7.3, and Cal Water's due process rights by eliminating the WRAM/MCBA decoupling mechanism without including examination of the decoupling WRAM in any of the three scoping memos; (2) the Commission violated section 1708 by modifying prior Commission decisions addressing the decoupling WRAMs without providing Cal Water an opportunity to be heard; (3) the Commission unlawfully mischaracterized the proceeding as quasi-legislative rather than as ratesetting, thereby depriving Cal Water of procedural rights available only in ratesetting proceedings; (4) the Commission violated sections 728 and 729 by eliminating the decoupling WRAM because it effectively fixed water utility rates and rate mechanisms without first holding a hearing; (5) certain findings of fact, conclusions of law, and discussion on the elimination of the decoupling WRAM and/or intergenerational transfer costs are not based on record evidence; (6) the Commission violated section 1705 by failing to hear all evidence that might bear on the exercise of its discretion and to demonstrably weigh that evidence; (7) the Decision unlawfully binds the discretion of future Commission actions by precluding Cal Water from proposing to continue the decoupling WRAM in future GRCs; (8) the preemptive denial precluding a future WRAM violates the Legislative directive under section 727.5 subdivision (c); and (9) the elimination of the decoupling WRAM and preemptive prohibition on rate design changes unlawfully impairs the ability of Cal Water to earn an adequate rate of return in violation of the constitution. Cal Water requests oral argument.

Golden State alleges the elimination of the WRAM is unlawful because: (1) the Commission violated section 1701.1 subdivision (c), Rule 7.3, and Golden State's due process rights by ordering revocation of the WRAM/MCBA without having included this issue in any scoping memo; (2) the Commission violated section 1708 and Golden State's due process rights because it had no meaningful opportunity to analyze or refute the evidence relied upon; (3) the Commission violated section 1708 by failing to have

evidentiary hearings before revoking the WRAM mechanism; (4) the revocation of the WRAM/MCBA and related findings of fact are not supported by the record evidence; (5) the Decision violates section 1705 because it does not contain findings of fact on the effect the elimination of the WRAM/MCBA mechanisms will have on low-income customers; and (6) the Decision violates section 321.1 subdivision (a) by failing to consider the consequences of the Decision on all ratepayers and on low-income customers. Golden State requests oral argument.

The Public Advocates Office at the California Public Utilities Commission (Public Advocates) filed a response opposing the applications for rehearing.

We have carefully considered the arguments raised in the applications for rehearing and do not find grounds for granting rehearing. However, we will modify D.20-08-047 to remove a Finding of Fact that is not based on the evidentiary record and make some clarifying edits. Rehearing of D.20-08-047, as modified, is denied.

II. DISCUSSION

A. The elimination of the WRAM was within the scope of the proceeding.

Applicants contend that the Decision was unlawful because it eliminated the WRAM in violation of section 1701.1, subdivision (c) and Rule 7.3 by addressing an issue that was not within the scope of the proceeding. Specifically, Applicants allege that the elimination of the WRAM/MCBA decoupling mechanism (decoupling WRAM) was not included in any of the scoping memos issued in the proceeding. (Golden State at p. 14-17, CWA at pp. 6-12, Cal-Am at pp. 2-7, Cal Water at pp. 7-20, Liberty at pp. 3-4.) Applicants are not correct. The issue of the decoupling WRAM was included in the original Scoping Memo as part of the water sales forecasting issue. (*Scoping Memo and Ruling of Assigned Commissioner*, January 9, 2018, at pp. 2-3.) We did not violate our own rules or fail to regularly pursue our authority.

Section 1701.1, subdivision (c) provides, in relevant part, that "[t]he assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution . . . ."

Rule 7.3, in relevant part, provides:

> The assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date), issues to be addressed, and need for hearing. . . . In a proceeding initiated by application or order instituting rulemaking, the scoping memo shall also determine the category. . . .

(Cal. Code of Regs., tit. 20, § 7.3.) Section 1701.1(b) and Rule 7.3 require the Scoping Memo to include the issues to be addressed in the proceeding but does not require it to list all possible outcomes to a proceeding.

The Scoping Memo in this proceeding identified water sales forecasting as an issue to be addressed in the proceeding, specifically asking "What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?" (*Scoping Memo and Ruling of Assigned Commissioner*, January 9, 2018, at pp. 2-3.) Water sales forecasting was included in this proceeding because of its effect on WRAM balances and the effect of those balances on customer rates. The decoupling WRAM is inextricably tied to water sales forecasting.[4] One of the main reasons that water sales forecasting is important to the Commission is that when forecast sales are higher than actual sales, the WRAM utilities recover that difference in revenue through surcharges on customer's bills. Therefore, the risk of inaccurate forecasting is borne by the ratepayers. For non-WRAM utilities, if the water sales forecast is higher than actual sales, there is no mechanism to true-up the difference, therefore the risk is borne by the utility. Our concern about water sales forecasting and its effect on rates is, therefore, heightened because of the WRAM. This is illustrated in D.16-12-026, where the Commission found: "[t]he record of substantial WRAM balances or surcharges imposed over months or years on Class A and B water IOUs customers due

[4] CWA points out that D.16-12-026 distinguishes between forecasting and WRAM/MCBA as Section 6.1 is entitled Forecasting and Section 6.2 is entitled WRAM/MCBA. (CWA at p. 11, fn. 32.) However, in Section 6.1. Forecasting, the acronym WRAM is mentioned 42 times.

to mismatches between authorized revenue and sales demands action now to better align forecasted rates to recorded sales." (D.16-12-026 at p. 37.)

Here, the Decision explained that the WRAM issue, as it relates to water sales forecasting, was part of this OIR from the beginning. It discusses the comments made by parties throughout the proceeding that show the linkage between the WRAM and sales forecasting:

> California-American Water Company also identified sales forecasting as an important issue for this rulemaking to explore as the "long-standing problem of forecasting future sales … has been heightened by periods of drought and issues related to very substantial balances in the Water Revenue Mechanism Accounts."

(Decision at p. 18, quoting Cal-Am's comments to the Order Instituting Rulemaking 17-06-024, p. 3.)

> In comments to this Scoping Memo the California Water Association, among other suggestions, called for folding the WRAM/MCBA recovery into base rates instead of surcharges[5] while the Public Advocates Office of the Public Utilities Commission argued that the large variances in forecasted sales are exacerbated by the WRAM/MCBA process.[6] Accordingly, the August 2, 2019, workshop included a panel on drought sales forecasting that identified a number of problems with the WRAM/MCBA mechanism. The September 4, 2019, Ruling specifically sought comment on whether the Commission should convert utilities with a full WRAM/MBCBA mechanism to a Monterey-Style WRAM with an incremental cost balancing account.

(Decision at p. 50, fns. in original.)

> The Public Advocates Office of the Public Utilities Commission recognizes that forecast variance is inevitable in rate-of-return regulation, but that the impact on water utilities has been muted as the result of the WRAM decoupling

[5] CWA Comments dated February 23, 2018 at p. 9.

[6] Public Advocates Office Comments dated February 23, 2018 at p. 8.

> mechanism in California. While the Public Advocates Office of the Public Utilities Commission recognized that large WRAM balances are not solely caused by a large variance in forecasted sales, it argued that by mitigating the consequences of inaccurate sales forecasts, WRAM and other decoupling mechanisms exacerbate the actual size of the variance.

(Decision at p. 30.) These comments illustrate that WRAM issues were an integral part of the discussions on sales forecasting throughout the proceeding.

The above notwithstanding, the Applicants cite *Southern California Edison Company v. Public Utilities Commission* (2006) 140 Cal.App.4th 1085 (*Edison*) to support their scoping memo arguments. (Golden State at pp. 15-17, CWA at pp. 8-11, Cal-Am at pp. 4-6, Cal Water at p. 8.) However, this reliance on *Edison* is misplaced. In *Edison*, the issue in controversy was unrelated to the issues listed in the scoping memo. (*Edison*, *supra*, 140 Cal.App.4th 1085, 1104-1105.) Here, as explained above, water sales forecasts were included in the list of issues in the Scoping Memo and because the WRAM and water sales forecast are inextricably linked, we did not violate our own rules. *Edison* has no relevance here.

Additionally, Cal Water and CWA cite *City of Huntington Beach v. Public Utilities Commission* (2013) 214 Cal.App.4th 566 (*Huntington Beach*) to support their argument. Like *Edison*, this case is not relevant to the instant proceeding. In *Huntington Beach*, the Commission had concluded a construction project preempted local ordinances where "[t]hroughout the PUC proceedings, the parties and the [C]ommission emphasized that a court, not the [C]ommission, would adjudicate the validity of the City's municipal ordinances." (*Huntington Beach*, *supra*, 214 Cal.App.4th 566, 570.) In the present case, there was no stipulation or express language in the Scoping Memo equivalent to that in *Huntington Beach*.

Cal Water cites *Calaveras Telephone Co. v. Public Utilities Commission* (2019) 39 Cal.App.5th 972 for the proposition that the Commission may not disregard its own rules. (Cal Water at p. 8.) This case is inapposite. As discussed above, because water forecasting includes WRAM issues, and was identified as an issue in the scoping

memo, we are in compliance with our rules.

Golden State and Cal Water argue if they would have had any notice that the Commission would consider revoking their authority to use their WRAM and MCBA mechanisms they would have advocated for hearings. (Golden State at p. 15, Cal Water at pp. 18-19.) Nothing in the Scoping Memo precluded the WRAM Utilities from requesting hearings. In fact, the Scoping Memo stated that hearings are not required at this time. It further stated that if hearings are required at a later date, an amended scoping memo would be issued. (*Scoping Memo and Ruling of Assigned Commissioner*, January 9, 2018, at p. 4.) The parties at any time could have filed a motion to request hearings. No party did. Even after the September 4, 2019 Administrative Law Judge's (ALJ) Ruling specifically asked for comments on whether the WRAM should be replaced with the Monterey-Style WRAM, no party requested hearings. (*Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions*, September 4, 2019, at p. 3 (September 4, 2019 ALJ Ruling.) More than ten months elapsed, after the parties filed their reply comments to that ALJ Ruling, before the Proposed Decision (PD) was issued. The parties had adequate time to file a motion requesting hearings after the ALJ Ruling requested comments on that issue.

Moreover, the parties had notice that, as a pilot program, the continuation of the WRAM and MCBA was regularly under consideration. Since the WRAMs were authorized, the Commission regularly evaluated whether the WRAM and MCBA should be continued. In D.12-04-048 the Commission ordered "a more vigorous review of the [WRAM/MCBA] mechanisms and options to the mechanisms, as well as sales forecasting, be conducted [in] each applicant's pending or next [GRC] proceeding." It further ordered the utilities to address five options in those proceedings, including whether the Commission should adopt a Monterey-Style WRAM rather than the existing full WRAM and whether the Commission should eliminate the WRAM mechanism. (D.12-04-048 at pp. 42-43.) In D.16-12-026 the Commission stated: "We conclude that, **at this time**, the WRAM mechanism should be maintained." (D.16-12-026 at p. 41, emphasis added.) Finally, the Applicants' rehearing applications themselves show the

Commission's ongoing evaluations of the viability of the WRAM in their individual GRC, and other, proceedings. (Golden State at pp. 9-13, CWA at pp. 3, 13.)

B. Applicants were afforded due process.

Applicants contend they were denied due process because they were not given a meaningful opportunity to be heard and to respond to the discontinuation of the decoupling WRAM in violation of statutory requirements and constitutional due process. Golden State, Cal Water, Liberty, Cal-Am and CWA contend the Decision violated section 1708 by failing to have an evidentiary hearing before discontinuing the WRAM. More specifically, they argue that the Decision's order to refrain from seeking WRAM/MCBAs in their next general rate case proceedings rescinds previous Commission decisions without affording parties a meaningful opportunity to address the relevant issues as required by section 1708. (Golden State at pp. 17-20, Cal Water at pp. 20-32, Liberty at pp. 2-3, 6, Cal-Am at p. 21, fn. 65, and CWA at pp. 13-14.) CWA explains that WRAMs authorized in the utilities' various GRCs and in the balanced rates rulemaking decision, D.16-12-026, affirmed the decoupling WRAM as a ratemaking mechanism for ongoing use. Therefore, CWA argues, the Commission may not rescind, alter, or amend these decisions without providing the parties an opportunity to be heard through hearings. (CWA at p.13-14.)

Section 1708 provides the Commission discretion to rescind, alter, or amend any order or decision made by it:

> The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

The Applicants are incorrect in their argument that Section 1708 provides the right to evidentiary hearings in this proceeding. The Decision does not rescind, alter, or amend any prior decision. The Decision specifically stated that the policy decision to discontinue the use of the decoupling WRAM would be implemented in the utilities' next

GRCs. (Decision at p. 76.) The Decision does not reopen any prior Commission decisions. Nonetheless, we address the issues raised by the Applicants below.

CWA, Golden State, and Cal Water contend that there was no such opportunity to present evidence or to cross-examine witnesses on the WRAM issues in this proceeding. CWA, Golden State, and Cal Water cite *California Trucking Association v. Public Utilities Commission* (1977) 19 Cal.3d 240, 244 (*California Trucking*) for the proposition that "a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal." (CWA at p. 14, Golden State at pp. 18-19, Cal Water at p. 25.) However, *California Trucking* does not support Applicants' claim that the Commission denied the parties' due process rights by failing to provide the parties with an opportunity to present evidence or to cross-examine witnesses. In *California Trucking*, the petitioner had requested a hearing on two separate occasions but the Commission refused those requests. (*California Trucking Assn. v. Pub. Util. Com*., *supra*,19 Cal.3d 240, 242-243.) In the instant proceeding, the parties did not request that the Commission schedule hearings. The Court, in *California Trucking* held that "[i]f no party seeks to challenge a proposed order except by merely submitting written comments on its merits, the commission is not required to hold a hearing." (*Id*. at p. 245.) Further, the Court found that "there is nothing remarkable in the concept that one who is entitled to a hearing may waive his right thereto by failing to assert it." (*Id*. at p. 245, fn. 7.) As discussed above, we disagree that Section 1708 provides the right to evidentiary hearings in this proceeding. But even if Applicants had such a right, because no party asked for evidentiary hearings, we did not violate the Applicants' due process rights.

Golden State argues that the Decision's conclusion that WRAMs are no more effective at conservation than Monterey-Style WRAMs is based singularly on Public Advocates' graph and because it had no opportunity to analyze or refute this data, the Commission violated section 1708 and the WRAM utilities' due process rights. (Golden State at p. 17-18.) Golden State cites *Brewer v. Railroad Commission of California* (1922) 190 Cal. 60, 77-78 to support its claim that the Decision's "reliance on

this one-sided perspective" without giving the WRAM utilities the ability to refute the data violates their due process rights. However, *Brewer* does not support Golden State's claim. In *Brewer*, during hearings, the Commission excluded evidence proffered by petitioner because it was duplicative. (*Brewer v. Railroad Com. of Cal., supra,* 190 Cal. 60, 76-77.) Here, we sought comments from the parties. The Decision relied on the evidence in the record and the comments received by the parties. It did not rely on a one-sided record, and the WRAM utilities had their own opportunity to provide its own perspective for the record.

Golden State's reliance on *California Association of Nursing Homes, etc. v. Williams* (1970) 4 Cal.App.3d 800 is equally unavailing. (Golden State at pp. 18-19.) In that case, the defendant agency, required by statute to create Medi-Cal reimbursement rates for nursing homes, failed to produce an evidentiary record for the court to review and the defendant agency based its decision on off-the-record, private negotiations with select affected businesses, rather than public hearings as required by statute. (*Cal. Assoc. of Nursing Homes, etc. v. Williams, supra*, 4 Cal.App.3d 800, 810-812.) Here, the entire record is available to the parties on the Commission's website, all parties were entitled to attend the workshops and file opening and reply comments, and there are no allegations of private negotiations.

Next, CWA and Cal Water claim it was never incumbent on the parties to seek greater opportunities to weigh in on the WRAM matter because the issue was never reasonably encompassed in any scoping memo. (CWA at p. 15, Cal Water at p. 32.) CWA claims the "deficiency of the evidentiary record is the Commission's failure, as it does not meet the procedural standard mandated for the protection of the parties." (CWA at p. 15.) To support this contention, CWA cites the *Edison* holding that the court "cannot fault the parties for failing to respond to the merits of proposals that were not encompassed in the scoping memo absent an order amending the scope of issues to include the new proposals." (*Edison*, *supra*, 140 Cal.App.4th 1085, 1106.)

As discussed briefly above, the facts in *Edison* can be distinguished from the facts in the instant proceeding. In *Edison*, a party, joining the proceeding late, filed

opening comments 10 months after opening comments were due. The comments included 400 pages of supporting materials and offered new proposals, that were not described in the scoping memo, for the first time in the proceeding. The ALJ ruling gave parties three business days (excluding the weekend and a legal holiday) to file supplemental reply comments. (*Id*. at pp. 1105-1106.) In contrast, in the instant proceeding, as discussed above, WRAM issues were encompassed in the sales forecasting issue included in the original scoping memo. (*Scoping Memo and Ruling of Assigned Commissioner*, January 9, 2018, at p. 1-3.) There were no late-filed comments or voluminous attachments. The parties had twelve days to file opening comments and another seven days to file reply comments. (*Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions*, September 4, 2019, at p. 5.) Once the ALJ's ruling issued, the parties had ample time to submit comments, and parties did file both opening and reply comments.

A recent Court of Appeal decision, *BullsEye Telecom, Inc. v. Public Utilities Commission* (2021) 66 Cal.App.5th 301 (*BullsEye Telecom*), is more on point. In that decision the court distinguished *Edison* from the facts in *BullsEye Telecom* and found the petitioners had the opportunity to present evidence but had not done so. The Court of Appeal discussed that the petitioners asserted that their "evidentiary showing would have been quite different if the Scoping Memo in 2012 reflected the Commission's current view that only differences in cost-of-service could provide a 'rational basis for different rates.'" (*BullsEye Telecom*, *supra*, 66 Cal.App.5th 301, 327.) The Court held that petitioners failed to show that cost was excluded as an issue by the Scoping Memo, especially in light of the legal position taken by the Real Party in Interest. The Court of Appeal held: "[i]f petitioners had relevant evidence to present on that issue but failed to do so, that was their own strategic decision and they cannot now be heard to complain." (*Ibid*.) Likewise, in the present case, Applicants had the opportunity to provide substantive comments in response to the questions in the September 4, 2019 ALJ Ruling Inviting Comments, but declined to do so. They cannot now complain that the record is devoid of evidence.

Golden State further argues that even if the parties are not entitled to evidentiary hearings, their due process rights have been violated because they "were denied any opportunity to submit any evidence as to the importance of not having their WRAM/MBCA mechanisms revoked and to refute Cal PA's graph." (Golden State at p. 20.) Similarly, CWA takes issue with the graph provided by Public Advocates in its reply comments during the proceeding, claiming it never had the opportunity to respond to the graph until the issuance of the PD. (CWA at p. 16.)

It is well established that due process requires "adequate notice" and an opportunity to be heard. "Due process as to the commission's initial action is provided by the requirement of adequate notice to a party affected and an opportunity to be heard before a valid order can be made." *People v. Western Airlines, Inc*. (1954) 42 Cal.2d 621, 632.

Discontinuation of the WRAM/MBCA was raised throughout the proceeding and the opportunity to file opening and reply comments on this specific issue was provided in the September 4, 2019 ALJ Ruling. The graph at issue was provided in Public Advocates' reply comments in response to CWA's opening comments. (Public Advocates September 23, 2019 Reply Comments at p. 7.) During the proceeding, in the ten months between Public Advocates' introduction of the graph and the issuance of the PD, CWA never sought the opportunity to respond to the graph. CWA and the other parties could have filed a motion to strike the graph or a motion requesting the opportunity to respond to the graph. As discussed above, the parties did not avail themselves of the opportunity to address the graph; they "cannot now be heard to complain." CWA and Golden State have not shown that we failed to proceed in the manner required by law.

C. The Decision is supported by record evidence.

Applicants contend that elimination of the WRAM is not supported by record evidence. For the most part, the allegations are based on differences of opinion and the Applicants have not shown the determinations lack evidentiary support.

1. The Findings of Fact and Conclusions of Law are supported by record evidence.

Applicants contend that certain findings of fact and conclusions of law are not supported by record evidence in violation of Section 1757.1(a)(1). (Golden State at pp. 20-28, CWA at pp. 19-22, Cal-Am at pp. 19-27, Cal Water at pp. 40-46, Liberty at pp. 4-5.)

Cal Water identified a typographical error in Finding of Fact #2, which states:

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

The underlined surcharge should read sur-credit. Accordingly, we will modify D.20-08-047 to reflect this correction.

CWA argues that the statement in Finding of Fact #8, that subsequent GRC proceedings did not adjudicate the WRAM/MCBA options ordered in D.12-04-048 because those proceedings were resolved by settlement, is incorrect because the Commission approved those settlements. (CWA at p. 20.) This Finding of Fact simply makes the point that the Commission, for the water industry as a whole, did not resolve each issue, but rather, approved the settlements with the knowledge that there is give and take in negotiation and that overall, the settlement was reasonable. Finding of Fact #8 is correct.

Golden State argues that Finding of Fact #11, which states that the WRAM/MCBA has led to substantial under-collections and subsequent increases in quantity rates, is unsupported by current data because the Decision cites to a 2012 Commission decision for that proposition. However, the Decision also cites to two later decisions, D.13-05-011 and D.16-12-026. (Decision at p. 61.) It also discusses comments of the parties regarding high WRAM balances and subsequent rate increases. Cal-Am commented that the "long-standing problem of forecasting future sales. . . has been heightened by periods of drought and issues related to very substantial balances in

the Water Revenue Mechanism Accounts." (Decision at p. 19.) In its comments, "San Gabriel Water Valley Water Company agreed that authorizing Sales Reconciliation Mechanisms during drought periods will help mitigate the regressive nature of rates caused by amortizing high WRAM and Drought Lost Revenue Memorandum Account (DLRMA) balances." (*Id*. at pp. 32-33.) Public Advocates explained that "the main issue is that the WRAM balances are so high." (*Id*. at p. 65.) Finding of Fact #11 is adequately supported by the record.

Golden State alleges that its comments on the PD provided more current data reflecting it had over-collections in two of its service areas in recent years. However, its comments on the PD are not included in the evidentiary record.[7] Additionally, the proffered data addresses Golden States' two service areas, but the Decision considers the WRAM balances of all the service territories of all the WRAM utilities.

Golden State, Cal Water, Cal-Am and CWA contend that a critical determination in the Decision's discontinuation of the WRAM/MCBA is its finding that the mechanisms are no more effective in promoting conservation than the Monterey-Style WRAM/ICBA mechanisms, as stated in Findings of Fact #13 and #14. (Golden State at pp. 21-23, Cal Water at p. 40, Cal-Am at pp. 23-25, CWA at pp. 20-21.)

Findings of Fact #13 and #14 state:

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

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[7] Under Rule 14.3 of the Commission's Rules of Practice and Procedure, comments on the Proposed Decision are required to focus on factual, legal or technical errors in the proposed decision, making specific reference to the record or applicable law. Comments which fail to do so will be accorded no weight. Furthermore, comments on Proposed Decisions are filed after the evidentiary record has been closed, and thus, are not considered part of the evidentiary record. (See, e.g., Rules 13.14, 14.2, and 14.3.)

14. Conservation for WRAM utilities measured as a percentage change during the last 5 years is less than conservation achieved by non-WRAM utilities, including Class B utilities as evidenced in water utility annual reports filed from 2008 through 2016.

Golden State alleges Finding of Fact #13 is solely based on the graph submitted in Public Advocates' September 2019 reply comments. Golden State further argues that because the WRAM utilities were not provided "any opportunity to counter CAL PA's graph" no valid record was established on the issue of whether the WRAM/MBCA should be discontinued. (Golden State at pp. 21-23.) To support this claim, it cites *The Utility Reform Network v. Public Utilities Commission* (2014) 223 Cal.App.4th 945, 959 (*TURN*) and summarizes the holding as "evidence not subject to cross-examination cannot be the sole support for a finding of fact." (Golden State at p. 23, fn. 93.) Golden State misconstrues this decision. In fact, the Court stated: "Consequently, the issue before us is a narrow one. May the Commission base a finding of fact solely upon hearsay evidence where the truth of the extrarecord statements is disputed? The answer is no." (*TURN*, *supra*, 223 Cal.App.4th 945, 959.)

In *TURN*, PG&E submitted the evidence in dispute, a hearsay declaration from an executive of the California Independent System Operator (the CAISO) and a petition the CAISO had filed with a federal agency. Neither the CAISO executive nor the authors of the petition testified in the Commission's proceedings. Because of their hearsay nature, the presiding ALJ ruled these materials could not be used as evidence of the need for the project in question. Then the Decision overruled the ALJ's ruling and approved the project solely upon that evidence. (*TURN*, *supra*, 223 Cal.App.4th 945, 949.)

TURN is not relevant to this proceeding. The evidence at issue here is based on data provided to the Commission by the utilities in their annual reports. (*Reply Comments of the Public Advocates Office on the Water Division's Staff Report and Response to Additional Questions*, September 23, 2019 at p. 7.) Further, as discussed above, after Public Advocates provided the graph in its reply comments, the parties never

sought permission to respond to the graph they now dispute or to have the graph stricken from the record.

Next, Golden State argues that there are three problems with Public Advocates' graph but the Commission refused to consider the information provided in the WRAM utilities' comments on the PD opposing the data in Public Advocates' graph. It cites *United States Steel Corporation v. Public Utilities Commission* (1981) 29 Cal.3d 603, 608-609 (*U.S. Steel*) to support this contention. However, *U.S. Steel* is not on point. In that case, the Supreme Court annulled the Commission's decision because the Commission refused to consider the economic effect of authorizing different rates for similar services over similar routes. In the instant proceeding, Golden State and Cal Water are arguing that the Commission erred because it refused to consider the utilities' comments on the PD, which were filed after the close of the evidentiary record. However, each of the problems Golden State and Cal Water identified is related to the measurement or interpretation of the data provided in Public Advocates' graph. Neither Golden State nor Cal Water argue that the data are inaccurate. (Golden State at pp. 21-23, Cal Water at p. 41.) Nonetheless, the Decision addresses those concerns and discusses why, in weighing the evidence, it determined that Public Advocates' arguments were credible. (Decision at pp. 62-70.) Golden State and Cal Water simply disagree with the way the Commission weighed the evidence; they have not identified legal error.

CWA argues that Findings of Fact #13 and #14 are unsupported by the record because they contain data that was not placed into evidence in the proceeding or made available to the parties for review. (CWA at p. 20-21.) Finding of Fact #13 addresses the data, from the annual reports that the water companies submit to the Commission, that underlies the graph that Public Advocates filed in its September 2019 reply comments. However, because this data was not included in the evidentiary record and is not necessary, we will delete this finding of fact. In contrast, it is clear from the wording of Finding of Fact #14 that the data are from the aforementioned graph provided in Public Advocates' September 2019 reply comments. In reviewing this finding, it became apparent that the wording is not clear. To clarify, the we will modify Finding of

Fact #14 to indicate that the "last 5 years" refers to the last 5 years of the data provided in the graph contained in Public Advocates' September 2019 reply comments. With this change, Finding of Fact #14 is supported by the record.

Cal-Am relies on *California Manufacturers Assoc. v. Public Utilities Commission* (1979) 24 Cal.3d 251 and *Camp Meeker Water System, Inc. v. Public Utilities Commission* (1990) 51 Cal.3d 845 to support its claim that the Commission commits legal error when it issues a decision which is unsupported by evidence before it. (Cal-Am at p. 19.) However, that is not the situation in this proceeding. Cal-Am's rehearing application provides several reasons for its belief that the evidence relied on by the Decision is faulty, however, it fails to provide references to any evidence in the record that contradicts that evidence. (Cal-Am at pp. 23-27.) Cal-Am is merely arguing about the way in which the Commission weighed the evidence. It has not shown legal error.

Next, Cal-Am claims that the Commission did not make any conclusion of law regarding the impact of the decoupling WRAM on conservation. (Cal-Am at p. 23.) It does not provide any reason or analysis as to why this is necessary. In fact, the Commission is not required to make such a conclusion of law. Section 1705 requires conclusions of law "on all issues material to the order or decision." It is within the Commission's discretion to identify the factors that are material to its decision. (*Clean Energy Fuels Corp. v. Pub. Util. Com.* (2014) 227 Cal.App.4th 641, 659.) The conclusions of law in the Decision satisfy this requirement.

Cal Water argues that the Commission's conclusion "that continuation of the decoupling WRAM for conservation purposes will not benefit customers" is unsupported by the record. (Cal Water at p. 42.) However, the Decision states "we are not persuaded that continuing the WRAM/MCBA for strictly conservation purposes is beneficial to ratepayers." (Decision at p. 67.) The previous five pages of the Decision discuss the comments of the parties to provide the basis for this conclusion. Part of that discussion addressed the graph provided by Public Advocates, which they argue showed the annual change in average consumption per metered connection is almost the same

during the last eight years for both WRAM and non-WRAM utilities. (*Id.*) The inference is clear; if non-WRAM utilities achieve similar annual change in average consumption as WRAM utilities, other factors must come into play. The Decision identifies some of those factors on page 69. This Finding of Fact is supported by the record.

Golden State contends that Findings of Fact #15 and #16, regarding intergenerational transfers of cost associated with the WRAM, have no factual basis in the record. More specifically, it states: "In reality, the Commission has no basis for conducting any such quantification or analyzing the significance of intergenerational transfers in the short or long term, because there is no data in the record regarding the under-collections that would lead to intergenerational transfers or the intergenerational transfers themselves." (Golden State at pp. 24-25.)

As discussed above, there is evidence in the record regarding under-collections and the resulting surcharges. To the extent that Golden State is arguing that it is improper for the Commission to address its concern about intergenerational transfers because it cannot quantify those costs, it is mistaken. The Decision cites D.16-12-026, which addresses intergenerational transfers associated with WRAM balances collected in surcharges long after the under-collection occurred. (Decision at p. 70.) It is well established that the Commission is concerned with minimizing intergenerational transfers of costs associated with the WRAM balances. (*See* D.18-12-021 at pp. 234-235 and D.12-04-048 at p. 8.)

Cal Water contends that the statement in Finding of Fact #15 could be said of any balancing account, therefore, the fact that there are intergenerational transfers of cost associated with the WRAM, does not support the Commission's decision to eliminate it. (Cal Water at pp. 45-46.) The Decision explains that the WRAM balances have been significant and under-collected and the Commission seeks to minimize such transfers, when possible, to keep rates just and reasonable. (Decision at p. 70.) This is one of various reasons we identified to support our decision to discontinue the WRAM. The balances in other balancing accounts are not relevant to this proceeding. Cal Water's

statement does not identify legal error, it is a disagreement with the way in which we weighed the evidence.

Similarly, Cal Water and CWA argue that Finding of Fact #16 lacks support in the record. Specifically, they allege the Decision does not analyze how the Monterey-Style WRAM mechanism would better minimize intergenerational transfers of cost. (Cal Water at p. 46, CWA at p. 21.) The Decision explains that the option to use the Monterey-Style WRAM mechanism is more limited than the decoupling WRAM and that no other option was put forth by the parties. Based on these two options, the more limited Monterey-Style WRAM mechanism would better minimize intergenerational transfers of cost:

> We therefore find that 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.
>
> **5.2.5. Allowing Water Utilities to [Use] a Monterey-Style WRAM**
>
> In view of the foregoing, we believe that it is an appropriate time to move to eliminate the option for water utilities to use the full WRAM/MCBA mechanism. However, to account for the consequences of inaccurate forecasts, it is reasonable that these former WRAM utilities be provided an opportunity to establish Monterey-Style WRAMs offset by ICBAs. The option to use the Monterey-Style WRAM grants water utilities a rate adjustment mechanism that is more limited and allows water utilities to recover lost revenues constrained to the difference between conservation tiered rates and single, uniform rates.
>
> In comments on the proposed decision, water companies claim that the Monterey-Style WRAM serves a different purpose and does not provide the same benefits as the traditional WRAM/MCBA.[8] However, no water company or

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[8] July 27, 2020, Comments of Great Oaks Water Company at 10-11, July 27, 2020, Comments of California Water Service Company at 10-11, July 27, 2020, Comments of Golden State Water Company at 13-14, July 27, 2020, Comments of California-American Water Company at 8-9. July 27, 2020, Comments of California Water Association at 7-9,

> any other party offered any alternative to the WRAM/MCBA process other than allowing companies to use a Monterey-Style WRAM in future GRCs.[9]

(Decision at pp. 70-71, fns. in original.) The Applicants have not established an abuse of discretion with respect to Finding of Fact #16.

CWA argues that Finding of Fact #17 is incorrect in finding that "[t]iered 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." (CWA at p. 21, citing Decision at p. 103.) However, CWA makes no citation to the evidentiary record to support its argument. It does cite to Commissioner Randolph's dissent to the Decision, but the dissent is not part of the evidentiary record. Rule 16.1 (c) requires rehearing applicants to make specific references to the record or law. CWA has failed to prove legal error.

Cal-Am alleges Finding of Fact #19 and Conclusion of Law #4 are unsupported by the record. Finding of Fact #19 states:

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

Conclusion of Law #4 states:

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

Cal-Am and Cal Water argue that there is no evidence in the record to support the claim that eliminating the WRAM/MCBA will improve forecasting. (Cal-Am at p. 21, Cal Water at p 43.) However, the Decision does not find that eliminating the WRAM/MCBA will improve forecasting. As shown above, Conclusion of Law #4 states that eliminating the WRAM/MCBA will provide *better incentives* to more

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July 27, 2020, Comments of Liberty Utilities at 8-10.

[9] *E.g.,* July 2019 Reply Comments of California Water Association at 13-14.

accurately forecast sales. This Conclusion of Law is based on the language in the Decision on page 18, which reads:

> In addition, parties highlighted the reality that drought is the new normal in California and that forecasts need to be more accurate so that WRAMs can be smaller, and that the Monterey-Style WRAM would provide better incentives for parties to more accurately forecast sales while still providing the utility the ability to earn a reasonable rate of return.

Upon review, it has come to our attention that no citation was provided for that statement. This statement was based on the following record evidence:

Public Advocates' Comments on Phase 1 Issues, February 23, 2018, at pp. 7-8:

> In fact, the risk that a forecast may be inaccurate is the sole economic basis for providing regulated utilities with rates of return greater than a risk-free rate.[fn.] . . . [W]ith revenue decoupling for water utilities,[fn.] the impact on water utilities of forecast variance is muted since nearly all revenue forecast risk has been transferred from utility investors to ratepayers. As a result of the WRAM decoupling mechanism in California, variance in forecasted revenues manifests not as the normal business risk underpinning rate-of-return regulation but as the perceived cause of large WRAM balances and increased customer surcharges.
>
> By mitigating the consequences of inaccurate sales forecasts, WRAM and other decoupling mechanisms can be reasonably assumed to not only reflect variances in sales forecasts but to exacerbate the actual size of the variance.

And Southern California Edison Comments on Staff Report, September 16, 2019, at pp. 3-5:

> In certain situations, implementing a Monterey-Style WRAM with a MCBA may balance the benefits and risks of implementing a conservation rate design more equitably among stakeholders. However, implementing a Monterey-Style WRAM as opposed to a full decoupling WRAM requires shareholders may be required to make up the difference for any shortfalls in authorized revenue not related to the use of a conservation rate design that far exceeds

> normal business risk. [fn.]

Accordingly, we will modify the Decision to insert a footnote with a citation to these comments.

Cal-Am further argues that the limited evidence in the record appears to contradict the Commission's conclusion on this issue. First it cites the staff report on the January 14, 2019 workshop which states that the water utilities claim WRAMs "allow them to institute more accurate and equitable rates." (Cal-Am at p. 21.) However, the report states that mid-year corrections and WRAMs allow them to institute more accurate and equitable rates. Moreover, this claim addresses rates, not accurate sales forecasting. The report also noted that Public Advocates claimed this reduced scrutiny of company expenses and is burdensome to ratepayers. Next Cal-Am cites the workshop report for the second workshop held on August 2, 2019, which observes that CWA and Public Advocates agreed that forecasts have been improving. (*Id*. at p. 21.) However, the report notes that Public Advocates said that "[r]ecent forecasts have improved, but there is still room for further improvements." Finally, it cites Southern California Edison's comments that claimed inaccurate forecasts were not the result of WRAM, but of a general forecast methodology. (Cal-Am at p. 22.) Public Advocates' comments contradict Southern California Edison's assertion. In its reply comments, Public Advocates addressed incentives to develop accurate forecasts:

> [T]he Public Advocates Office strongly supports the development of forecasts that are as accurate as possible for both revenues and expenses. When revenue variances are tracked in decoupling mechanisms (i.e., Water Revenue Adjustment Mechanisms (WRAMs)), and/or expenses are tracked in balancing and memorandum accounts, it reduces the financial repercussions to the utility of inaccurate forecasts. This, in turn, reduces the utility's incentive to develop accurate forecasts. This can result in misguided attempts by Water IOUs to lower rate increases in General Rate Cases (GRCs) with artificial forecasts that are deliberately inaccurate (e.g. higher adopted sales quantities or lower proposed expenses), with the resulting variances recovered through different mechanisms between GRC cycles

that provide for rate increases via a less transparent process.

(*Reply Comments of The Public Advocates Office on Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule*, July 24, 2019, at pp. 2.)

Public Advocates also addressed the manipulation of forecasts:

> Utilities should not propose and the Commission should not adopt sales forecasts with any particular rate outcome in mind. Instead of lowering noticed rate impacts with [higher] than reasonable sales forecasts and allowing new mechanisms to "stagger the impact on customers into smaller increments" as suggested by CWA, the water utilities should propose accurate forecasts openly and transparently in GRCs. Customers should not be required to face the continued uncertainty of stealth rate increases that accompany the operation of existing—much less new—alternative rate mechanisms.

(*Id*. at p. 3.) Additionally, Public Advocates' response to the rehearing applications identifies many other places in the record that contain evidence to support the Decision's determination that elimination of the WRAM will provide better incentives to more accurately forecast sales. (*Response of the Public Advocates Office to California-American Water Company, California Water Service Company, Golden State Water Company, Liberty Utilities Corp., and California Water Association's Rehearing Applications of Decision 20-08-047*, October 20, 2020, at pp. 8-9.) Cal-Am simply disagrees with our weighing of the evidence; it has failed to show legal error.

Similarly, Cal-Am and Cal Water erroneously argue that there is nothing in the record of this proceeding that addresses whether sales forecasts are more significant with the Monterey-Style WRAM. (Cal-Am at p. 22, Cal Water at 44.) The language quoted above that states when revenue variances are tracked in decoupling mechanisms like the WRAM, it reduces the financial repercussions to the utility of inaccurate forecasts, contradicts their arguments. Logic dictates that where there is no revenue protection for inaccurate forecasts, forecasting becomes more significant, both to the utility and the ratepayer. Moreover, Cal-Am provides no citations to the record to

support its allegation, but refers to evidence in its comments to the PD, which were filed after the record in this proceeding was closed and cannot be considered as part of the evidentiary record.

2. The Commission developed a record on the elimination of the WRAM.

Cal-Am contends the Commission failed to pursue its authority by failing to fully examine and develop a record on the elimination of the WRAM and to consider all of the facts and issues. Cal Water contends the Commission violated section 1705 by failing to hear and weigh all of the evidence. Section 1705 provides in pertinent part that a Commission order or decision "shall contain, separately stated, findings of fact and conclusions of law ... on all issues material to the order or decision."

More specifically, Cal-Am and Cal Water contend the Commission failed to adequately weigh the evidence, consistent with relevant case law. (Cal-Am at pp. 7-18, Cal Water at 46-47, citing *United States Steel Corporation v. Public Utilities Commission* (1981) 29 Cal.3d 603, 608 (*U.S. Steel*).) It is well established that an agency's duty is to weigh the relevant evidence provided in a proceeding. Cal-Am and Cal Water offer nothing to show that we failed to consider all the relevant evidence in this proceeding. For example, they assert we failed to consider the potential rate design impacts of eliminating the WRAM. (Cal-Am at pp. 7-18, Cal Water at pp. 48-50.) Next, they argue that in failing to consider rate design, we failed to consider the effect of changed rate design on conservation and low-income customers. (Cal-Am at pp. 13-18, Cal Water at pp. 48-50.) To support their arguments, Cal Water and Cal-Am cite to the parties' comments on the PD, Commissioner Randolph's dissent, and other documents, none of which are in the evidentiary record of this proceeding. An application for rehearing is not a permissible vehicle to merely reargue the issues or to ask the Commission to reweigh the evidence. The Commission has complied with section 1705 by considering the material facts and weighing the relevant evidence provided in this proceeding.

Additionally, Cal Water contends that by discontinuing the WRAM, the

Decision binds the discretion of future Commission actions. (Cal Water at p. 47.) Cal Water argues this violates section 727.5 subdivision (c), which states 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." Cal Water explains that the Decision's precluding the utilities from requesting WRAMs in future GRCs also precludes the Commission from considering whether the water utilities may establish a WRAM balancing account in violation of section 727.5 subdivision (c). However, the Commission has already considered and authorized the water utilities to use WRAM balancing accounts; section 727.5 subdivision (c) does not prohibit the Commission from rescinding that authorization. Moreover, the Decision did not preclude the utilities from requesting any other balancing accounts, in fact, it encouraged utilities to seek Monterey-Style WRAMs. (Decision at pp. 71-72.) The Decision did not violate section 727.5 subdivision (c).

D. The Decision is in compliance with section 321.1 subdivision (a).

Golden State contends that the Decision violates section 321.1 subdivision (a) by failing to consider the consequences of the Decision on all ratepayers and on low-income customers. More specifically, it argues that nothing in the record addresses how elimination of the WRAM will impact low-income customers. (Golden State at pp. 25-28.) As the Commission stated in D.06-12-042, "[t]he plain language of the statute only requires the Commission to 'assess' the economic effects of a decision. It does not require the Commission to perform a cost benefit analysis or consider the economic effect of its decision on specific customer groups or competitors." (D.06-12-042 at pp. 17-18.)

The relevant part of section 321.1 subdivision (a) requires the Commission to assess the economic effects of its decisions:

> It is the intent of the Legislature that the commission assess the consequences of its decisions, including economic effects . . . as part of each ratemaking, rulemaking, or other

> proceeding, and that this be accomplished using existing resources and within existing commission structures.

In the Decision, after discussing the elimination of the WRAM and its effect on ratepayers, the Commission concluded:

> We agree with the Public Advocates Office of the Public Utilities Commission that requiring WRAM utilities to transition to the Monterey-Style WRAM will not decrease conservation incentives for customers. Further, there is no evidence that eliminating the WRAM will raise rates on low-income and low-use customers. However, the impact of the unanticipated WRAM surcharges on low-income and low-use customers is one component of the problems we have encountered with the WRAM. Further, rate design is the ultimate determinant of impacts to low-income and low-use customers, and water utilities can and will propose rate structures in their next GRC application where the Commission will ensure low-income and low-use customers are not adversely impacted.[¶] . . . We continue to believe that other actions by companies, the Legislature, the State Water Resources Control Board, and the Commission have, and continue to do more to achieve conservation requirements and that the flaws and negative customer experience with the WRAM/MCBA outweigh any benefits it does achieve.

(Decision at pp. 68-69, fn. omitted.) We have complied with the requirements of section 321.1 subdivision (a); accordingly, Golden State has not shown legal error.

E. The Decision allows the utilities the opportunity to earn a fair rate of return.

Cal-Am and Cal Water contend that the Decision unlawfully impeded on their ability to earn a reasonable rate of return. Specifically, they suggest that the Commission's efforts to ensure low-income and low-use customers are not adversely impacted by the new rate designs may impact their ability to earn a reasonable rate of return. (Cal-Am at pp. 18-19, Cal Water at pp. 50-52.) To support this claim, Cal-Am and Cal Water cite *Hope Natural Gas, Duquesne Light,* and *Bluefield*, which hold that ratesetting must not lead to confiscatory rates. (*FPC v. Hope Natural Gas Co.* (1944)

320 U.S. 591; *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia* (1923) 262 U.S. 679, *Duquesne Light Co. v. Barasch (1989)* 488 U.S. 299.) These cases are not relevant here because this is not a ratesetting proceeding and we did not set rates for any utility. This was a quasi-legislative proceeding in which we ended a pilot program that afforded water companies the opportunity to receive balancing account treatment to account for the shortfall between forecast sales and actual sales.

F. The Revised Proposed Decision is not an alternate proposed decision.

CWA contends that the revisions to the PD were substantial and therefore constituted an alternate proposed decision for which additional public review was required pursuant to section 311, subdivision (e). More specifically, CWA alleges that the factual support drawn from workshop discussions and water utility annual reports comprised a substantive revision that materially changed how the PD reached that result. CWA further argues that revisions to the findings of fact, conclusions of law and ordering paragraphs of the PD violate section 311, subdivision (e). (CWA at p. 18.)

While section 311, subdivision (e), does impose a 30-day notice and comment period for "alternate" decisions, the Decision was not an "alternate" within the meaning of section 311, subdivision (e) or the Commission's rules, which implement the statute. Section 311, subdivision (e), defines an "alternate" as:

> [E]ither a substantive revision to a proposed decision that materially changes the resolution of a contested issue, or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs.

(Pub. Util. Code, § 311, subd. (e).)

Further, section 311, subdivision (e), directs the Commission to adopt rules to implement the statute. Accordingly, the Commission adopted Rule 14.1, which states:

> (d) "Alternate" means a substantive revision by a Commissioner to a recommended decision not proposed by that Commissioner or to the draft resolution which either:
>
> (1) materially changes the resolution of a contested issue,

or

(2) makes any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs.

(Cal. Code of Regs., tit. 20, § 14.1, subd. (d).)

The revisions in the Revised PD were not substantive revisions by a Commissioner to a recommended decision not proposed by that Commissioner. The Revised PD was a result of revisions made by the assigned ALJ and/or the assigned Commissioner based on comments to the Proposed Decision. Thus, it was not a change constituting an "alternate" under Rule 14.1, subdivision (d).

CWA argues "there is no basis in the unambiguous wording of section 311, subdivision (e), for limiting the definition of an "alternate" to a revision by a Commissioner to a proposed decision not proposed by that Commissioner. Any 'substantive revision' is an alternate and an opportunity to submit comments must be allowed." (CWA at p.18, fn. 54.)

However, the legislative history for section 311, subdivision (e), affirms that Rule 14.1 is lawful. It shows that the Legislature intended "alternates" to be substantive changes made by another Commissioner, not revisions made by the assigned Commissioner or the assigned ALJ. After considering comments of the parties, the Commission specifically addressed this issue in D.00-01-053:

> Specifically, TURN agrees with the Commission's discussion of the history and use of "alternate" (See D.99-11-052 mimeo. at 3-4.)[fn.] and asserts that:
>
> > "Everyone involved in the legislative process that resulted in SB 779 knew the Commission's longstanding definition of 'alternate' and the term was used in that traditional context. If the legislature had meant to change that longstanding definition, it would have done so explicitly, but it did not." (TURN, Comments on Bilas/Neeper Alternate at 4.)

(D.00-01-053 at p. 8.)

In D.99-11-052, the Commission discussed its reasoning for adopting its definition of "alternate" decision:

> At the time that the term 'alternate' was enacted into the Public Utilities Code [§ 311(e), added in 1994 by Assembly Bill 2850 (Escutia), Ch. 1110 of Stats. 1998], and for many years before the enactment, the Commission used that term in distributing agenda materials internally and in publishing its agenda. Under this Commission practice, to which § 311(e) expressly refers, the Commission has applied the term to a revision not prepared or accepted by the presiding officer who originally prepared the decision to be revised. In contrast, a revision that the presiding officer makes or accepts simply replaces the order as originally proposed, since that order no longer has a sponsor and therefore is not before the Commission or on its agenda. In implementing the statutory term 'alternate,' the Commission followed this established practice . . . .

(D.99-11-052 at p. 3, fn. omitted, emphasis in original.)

The Commission explained in D.00-01-053 that "[n]othing in SB 779 indicates that the Legislature intended to expand 'alternate' beyond this historical usage; rather, the Legislature's intent was to expand the kinds of decisions (including alternates to those decisions) that would be issued for comment." (D.00-01-053 at p. 8, fn. 8.) That decision, which adopted the current definition of "alternate" in the Commission's rules, considered parties' comments and is now final and not subject to appeal.

Proposed Decisions present outcomes recommended by the assigned ALJ in a proceeding. They are subject to change and do not become binding unless adopted by the Commission. It is normal practice for decisions to contain changes made by an ALJ following comments on the Proposed Decision. That practice is consistent with section 311, subdivision (d), which allows the Commission to adopt, modify, or set aside all or part of a proposed decision without any additional review or comment.

G. The proceeding was properly categorized.

Cal Water contends that the Commission unlawfully characterized the proceeding as quasi-legislative rather than ratesetting, thus depriving it of certain procedural rights. First, Cal Water claims that eliminating the WRAM is an unlawful ratesetting action, so it was improper for the Commission to categorize the proceeding as

quasi-legislative. Section 1701.1 subsection (d)(1) defines quasi-legislative cases as cases that establish policy, including, but not limited to, rulemakings and investigations that may establish rules affecting an entire industry. This case was an order instituting rulemaking proceeding that established rules for the entire water industry. It is not a ratesetting case because it is not a case in which rates are established for a specific company. (Section 1701.1 subd. (d)(3).) No rates were set in this proceeding. The elimination of the WRAM was a policy decision applied to all water companies. The ordering paragraph identified the utilities that currently employ the WRAM, however, the policy is applicable to all water utilities.

Moreover, Rule 7.1, subdivision (e), provides the Commission discretion to determine which category appears most suitable to the proceeding when a proceeding may fit more than one category. Therefore, there is no legal error in addressing issues from more than one category in a single quasi-legislative proceeding.[10]

Further, once the Commission has categorized a proceeding, Section 1701.1 subsection (a) states "the decision as to the nature of the proceeding shall be subject to a request for rehearing within 10 days of the date of that decision or of any subsequent ruling that expands the scope of the proceeding. Only those parties who have requested a rehearing within that time period shall subsequently have standing for judicial review . . . ." Cal Water claims the parties had no opportunity to appeal the designation of the proceeding because the issue was only raised in the PD. (Cal Water at pp. 35-36.) As discussed above, the issue was explicitly presented in the September 4, 2019 ALJ Ruling Inviting Comments. At that time CWA, on behalf of the water utilities, filed comments regarding that issue but declined to seek rehearing on the categorization within 10 days. The parties may not now challenge the categorization of the proceeding.

[10] In May of 2021 the rules were modified and Rule 1.3, subdivision (e), which defines quasi-legislative proceedings became Rule 1.3, subdivision (f). The original definition was unchanged, but the Commission added clarifying language that states "even if those proceedings have an incidental effect on ratepayer costs." Thus, the Rules recognize that proceedings may not always fit perfectly into one category.

Finally, Cal Water argues that it was denied procedural protections as a result of the improper categorization. (Cal Water at pp. 36-38.) As discussed above, the proceeding was not miscategorized, therefore no procedural protections were denied.

H. The Decision did not fix water rates.

Cal Water contends that the Commission violated sections 728 and 729 by eliminating the WRAM because it effectively fixed water rates without holding a hearing. (Cal Water at pp. 38-39.) Cal Water's contention is not correct. Section 728 and 729 address the Commission's authority to fix rates. Section 728 orders the Commission, when it finds that rates charged by a public utility are unjust, to fix just and reasonable rates. In this proceeding, we did not hold hearings to evaluate any utility's rates. Cal Water's contention regarding section 729 is equally unavailing. Section 729 permits the Commission to investigate the rates of a public utility and establish new rates. No investigation of rates occurred in this proceeding. Here, we made a policy decision to discontinue a pilot program that protected certain water utilities' revenue when forecast sales were higher than actual sales. No rates were set for any utility.[11] This was not a ratesetting proceeding; it was a quasi-legislative proceeding, making general policy decisions for all water utilities. Cal Water has not shown legal error.

I. Oral argument is not necessary.

Applicants request oral argument pursuant to Commission Rule 16.3 (Cal. Code Regs., tit. 20, Rule 16.3). CWA contends that oral argument is appropriate because it will materially assist the Commission in resolving its rehearing application by providing a forum for interested parties to answer the Commissions questions. (CWA at p. 23.) Applicants argue it is appropriate because the Decision departs from precedent (Golden State at p. 28, Cal-Am at pp. 27-28, Liberty at p. 6.) and raises issues of

[11] Cal Water cites caselaw to show that "these statutory provisions have been construed by the California Supreme Court as requirements for the Commission to hold hearings prior to the implementation of new rates." (Cal Water at p. 39.) Because rates were not set in this proceeding, these cases are not on point.

exceptional controversy, complexity, or public importance. (Cal-Am at pp. 28-30, Cal Water at p. 52-53, CWA at p. 23.)

Rule 16.3 provides that requests for oral argument for applications for rehearing shall demonstrate oral argument would materially assist the Commission in resolving the application and that the challenged decision:

(1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation;

(2) changes or refines existing Commission precedent;

(3) presents legal issues of exceptional controversy, complexity, or public importance; and/or

(4) raises questions of first impression that are likely to have significant precedential impact.

The Commission has complete discretion to determine the appropriateness of oral argument in any particular matter. (Commission Rule 16.3, subdivision (a), Cal. Code Regs., tit. 20, Rule 16.3, subd. (a).) Applicants have had ample opportunity to explain their positions on the Decision's holdings while participating in workshops and in filed comments during the proceeding, in response to the PD, as well as in their applications for rehearing. An oral argument would not materially assist us in resolving those concerns. While the holdings are of public importance, the Decision explains why it is appropriate to depart from precedent to discontinue the WRAM. For these reasons, oral argument would not materially assist in the resolution of the application for rehearing and is therefore not warranted.

III. CONCLUSION

For the reasons discussed above, we modify D.20-08-047 to remove a Finding of Fact that is not based on the evidentiary record and make some clarifying edits. Rehearing of D.20-08-047, as modified, is denied as no legal error has been shown.

THEREFORE, IT IS ORDERED that:

1. D.20-08-047 is modified as follows:

   A. On page 18, line 11, after the sentence ending with "ability to earn a reasonable rate of return." the following footnote is inserted:

      Public Advocates' Comments on Phase 1 Issues, February 23, 2018, at pp. 7-8, Southern California Edison Comments on Staff Report, September 16, 2019, at pp. 3-5.

   B. Finding of Fact #2 is modified to replace "surcharge" with "sur-credit" as follows:

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

   C. Finding of Fact #13 is deleted.

   D. Finding of Fact #14 is modified to insert "(2012-2016)" to more specifically identify "the last 5 years":

      14. Conservation for WRAM utilities measured as a percentage change during the last 5 years (2012-2016) is less than conservation achieved by non-WRAM utilities, including Class B utilities as evidenced in water utility annual reports filed from 2008 through 2016.

2. With these modifications, rehearing of D.20-08-047 is denied.

3. This proceeding, Rulemaking 17-06-024, remains open.

This order is effective today.

Dated September 23, 2021 at San Francisco, California.

MARYBEL BATJER
President
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
Commissioners

DECLARATION OF SERVICE

Golden State Water Company

v.

Public Utilities Commission of the State of California

I, Lisa Schuh, hereby declare that I am a citizen of the United States, am over 18 years of age, and am not a party in the above-entitled action. I am employed in the City and County of San Francisco, State of California. My business address is 101 California Street, 35th Floor, San Francisco, California 94111-5894.

On October 27, 2021, I served the following document(s) entitled:

1. **AMENDED PETITION FOR WRIT OF REVIEW AND MEMORANDUM OF POINTS AND AUTHORITIES**

2. **APPENDIX OF EXHIBITS VOLUME I & II TO AMENDED PETITION FOR WRIT OF REVIEW AND MEMORANDUM OF POINTS AND AUTHORITIES**

VIA FEDERAL EXPRESS: by placing copies of the documents listed above in envelopes designated as FedEx Express–Overnight Delivery and addressed to the persons as set forth below.

Arocles Aguilar, General Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102-3214

Rachel Peterson, Executive Director
California Public Utilities Commission
505 Van Ness Avenue
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I am readily familiar with the firm's business practice for collection and processing of correspondence for delivery by FedEx Express–Overnight Delivery. On the same day, as referenced above, correspondence is placed for collection by FedEx Express–Overnight Delivery, with whom we have a direct billing account for payment of said delivery, to be delivered to the office of the addressees as set forth below on the next business day.

VIA ELECTRONIC MAIL: by transmitting an electronic mail message to each of the parties identified on the below Service List, through their attorneys of record as identified by the service list and corresponding email list provided in proceeding R.17-06-024 before the California Public Utilities Commission and/or as directed by the party(ies) and/or as directed by the California Rules of Court and Public Utilities Code. That email provided a link to an FTP site where the documents have been made available. Additionally, I stated in my email that if the recipient requested a physical copy of the documents my office would provide one.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Declaration of Service was executed on October 27, 2021 in San Francisco, California

/s/ *Lisa Schuh*
Lisa Schuh

SERVICE LIST

See Attached Service List from California Public Utilities Commission and list of email addresses

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists

PROCEEDING: R1706024 - CPUC - OIR EVALUATIN
FILER: CPUC
LIST NAME: LIST
LAST CHANGED: OCTOBER 13, 2021

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