

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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**CALIFORNIA WATER ASSOCIATION**  
*Petitioner,*

v.

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**  
*Respondent.*

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**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**  
**TO PETITION FOR WRIT OF REVIEW**  
**File 1 of 1– Vol. I – Exhibits A-U – Pages 1-243**

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**Exhibit A**

California Public Utilities Commission Rules of Practice and Procedure,  
20 Cal. Code Reg., Div. 1, ch. 1, Rule 7.3

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[Home Table of Contents](#)**§ 7.3. (Rule 7.3) Scoping Memos.**

20 CA ADC § 7.3

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations [Currentness](#)  
 Title 20. Public Utilities and Energy  
 Division 1. Public Utilities Commission  
 Chapter 1. Rules of Practice and Procedure  
 Article 7. Categorizing and Scoping Proceedings (Refs & Annos)

20 CCR § 7.3

**§ 7.3. (Rule 7.3) Scoping Memos.**

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 an adjudicatory or ratesetting proceeding in which there is evidentiary hearing, the scoping memo shall also designate the presiding officer. In a proceeding initiated by application or order instituting rulemaking, the scoping memo shall also determine the category. In a catastrophic wildfire proceeding, the assigned Commissioner shall issue the scoping memo within 30 days of the filing of the application.

Note: Authority cited: Sections 1701 and 1701.8, Public Utilities Code. Reference: Sections 1701, 1701.1 and 1701.8, Public Utilities Code.

**HISTORY**

1. Renumbering of former section 6.3 to new section 7.3, including amendment of section heading and section filed 9-13-2006; operative 9-13-2006 pursuant to Government Code section 11351(a) (Register 2006, No. 37).
2. Amendment of section and Note filed 1-30-2018; operative 4-1-2018. Submitted to OAL for limited review pursuant to Government Code section 11351 and Public Utilities Code section 311(h) (Register 2018, No. 5).
3. Amendment of section and Note filed 3-15-2021; operative 5-1-2021 pursuant to Government Code section 11343.4(b)(3). Submitted to OAL for limited review pursuant to Government Code section 11351 and Public Utilities Code section 311(h) (Register 2021, No. 12).

This database is current through 10/15/21 Register 2021, No. 42

20 CCR § 7.3, 20 CA ADC § 7.3

**END OF DOCUMENT**

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**Exhibit B**

*In the Matter of the Application of California Water Service Company (U60W), a California corporation, for an order 1) authorizing it to increase rates for water service by \$92,765,000 or 19.4% in test year 2014, 2) authorizing it to increase rates on January 1, 2015 by \$17,240,000 or 3.0%, and on January 1, 2016 by \$16,950,000 or 2.9% in accordance with the Rate Case Plan, and 3) adopting other related rulings and relief necessary to implement the Commission's ratemaking policies, Application 12-07-007, Decision 14-08-011 (August 18, 2014)*

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Decision 14-08-011 August 14, 2014

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

In the Matter of the Application of California Water Service Company (U60W), a California corporation, for an order 1) authorizing it to increase rates for water service by \$92,765,000 or 19.4% in test year 2014, 2) authorizing it to increase rates on January 1, 2015 by \$17,240,000 or 3.0%, and on January 1, 2016 by \$16,950,000 or 2.9% in accordance with the Rate Case Plan, and 3) adopting other related rulings and relief necessary to implement the Commission's ratemaking policies.

Application 12-07-007  
(Filed July 5, 2012)

**DECISION GRANTING JOINT MOTION TO ADOPT THE  
PROPOSED SETTLEMENT AGREEMENT AUTHORIZING  
CALIFORNIA WATER SERVICE COMPANY'S GENERAL RATE  
INCREASES FOR 2014, 2015, AND 2016**

### **3.5.5. Lancaster**

ORA responds that the proposed 36 CCF/month forecast is not based on facts presented in the proceeding, nor on any forecasting methodology or recorded values, but is instead “an artificial device to achieve the City of Lancaster’s desired level of Test Year rate increase by a short-term revenue deferral.”<sup>13</sup> Furthermore, adopting an unrealistically high sales forecast will perpetuate conditions requiring a large rate increase in the future.<sup>14</sup> ORA also faults, Lancaster for allegedly failing to provide complete information on the impacts of its proposal. There is no attempt to provide numerical estimates for Escalation Years’ rate increases if actual sales fall short of it estimates.<sup>15</sup>

### **3.6. Issues not Resolved by the Settlement**

#### **3.6.1. SRM**

Cal Water has proposed a SRM to compensate for the inaccuracy of forecasting estimate of consumption of water which results in large WRAM balances. According to Cal Water, the SRM “would adjust the adopted sales forecast for escalation years if recorded aggregates sales for the past year are more than 5% different (higher/lower) than adopted test year sales. The mechanism would make a 50% adjustment, so if, for example, sales are 6% above adopted, escalation years rates would be set based upon a 3% upward adjustment in sales forecast.”<sup>16</sup> Cal Water asserts that a SRM provides the following advantages:

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<sup>13</sup> ORA Reply at 5.

<sup>14</sup> *Id.* at 8.

<sup>15</sup> *Id.* at 9.

<sup>16</sup> Cal Water Opening Brief, at 4, quoting Direct Testimony of Thomas Smegal, Exhibit CWS-2 at 4.



- Tends to reduce WRAM/MCBA balances in the second and third years of a rate case cycle;
- Increases inter-generational equity by more quickly reflecting sales declines in rates;
- In the case of sales declines during the rate case period, the SRM increases the conservation price signals given to customers, while phasing in a necessary rate change over a longer period;
- Reduces sales-related increases in subsequent GRCs; and
- Incorporating the SRM into the Commission's process for escalation eliminates the need for an additional informal filing.<sup>17</sup>

ORA and TURN oppose the SRM on the grounds that it is "single-issue ratemaking," a concept that deviates from the Commission's GRC Plan for Class A Water Utilities such as Cal Water.<sup>18</sup> Instead, they assert that if Cal Water wants to utilize the SRM, it should petition for a modification of D.07-05-062 to ensure that general water rates are not set outside of the GRC process.<sup>19</sup>

After 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. We find that the SRM is in the public interest. The SRM benefits ratepayers as it would limit the revenue disparity that is tracked by the WRAM by changing rates, as opposed to applying surcharges and surcredits after the fact, when a disparity

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<sup>17</sup> Direct Testimony of Thomas Smegal at 5.

<sup>18</sup> ORA Opening Brief, at 2; Exhibit ORA-1 (Company-Wide Report referring to the SRM as in conflict with the Commission's rate case plan; Exhibit TURN-2 (Rubin Direct), at 34 (referring to the SRM as "single-issue ratemaking").

<sup>19</sup> ORA Opening Brief, at 2-4, citing ORA-1 (Rauschmeier), at 14-1, 14-3, 14-4, and Attachment B at 1.

between adopted and actual sales will contribute to the WRAM balance at the end of the year. Thus, if recorded sales are more than 5% different than adopted sales, Cal Water would adjust its overall sales forecast by 50% of the recorded sales variation, flow that change through the revenue requirement, and calculate rates based on the adjusted sales. Rather than benefit Cal Water as TURN claims, the SRM can mitigate the rate adjustments under the WRAM. Such a result would be consistent with the Commission's objective, expressed in D.12-04-048, to consider ways to bring revenue closer to the adopted revenue requirement.

Accordingly, and in light of the current drought, Cal Water will be authorized to implement the SRM as a pilot program for the second and third years of the rate case period by calculating the recorded sales for the period of the previous October through September for each district, and comparing the amounts to the sales adopted in this decision.

Finally, we authorize Cal Water to open a drought SRM Balancing Account to track any change in rates associated with the mechanism. This drought SRM Balancing Account will be subject to review in Cal Water's next general rate case.

### **3.6.2. Working Cash Methodology**

In D.13-05-010, the Commission explained that "working cash is a subset of working capital that is included in rate base, and is to compensate shareholders for providing funds to pay for the day-to-day operating expenses in advance of the receipt of offsetting revenues from customers."<sup>20</sup> Cal Water argues that the working cash methodology is consistent with the Commission's Water Division's standard practice (*i.e. Standard Practice*) for determining a company's working cash allowance. In fact, Cal Water claims that the working

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<sup>20</sup> Finding of Fact 399.

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

Of the Public Utilities Commission of the State of California

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**Exhibit C**

*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, Decision 16-12-026 (December 9, 2016) ("Balanced Rates Decision")*

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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**

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**Attachment A - Goals and Objectives for Balanced Rate Design**

between authorized revenue and sales demands action now to better align forecasted rates to recorded sales. Accordingly, this Decision orders Class A and B water IOUs that have a five percent or greater divergence between authorized and actual revenue during declared drought years in their current GRC cycle, to consider filing a Tier 2 Advice Letter requesting an SRM to conform water forecasts authorized in the GRC to recorded consumption in light of the circumstances faced in their districts. The SRM recalculates rates for the remainder of the GRC so that 50 percent of the divergence between authorized and actual revenues will be recovered in rates through the remainder of the GRC cycle, with the balance recovered through a WRAM if authorized for that IOU, or surcharges. The SRM may be proposed for an individual district, or a combination of districts, based on district circumstances.

As currently utilized, the SRM adjusts future usage according to recent recorded usage as part of the escalation year increases which occur in the two years following a GRC Test Year. The Advice Letter may request a delay or an update to the escalation factor filing (for escalation of rates during GRC cycle years) to consolidate the request for SRM and the escalation filing, or be filed and considered as a separate Tier 2 Advice Letter requesting authorization of an interim SMR is appropriate during this prolonged drought period and in light of the conservation record and in anticipation of ongoing conservation with the implementation of the B-36-16 regulations from Governor Brown's Executive Order and this Commission's anticipated and existing resolutions.

## **6.2. WRAM/MCBA**

### **6.2.1. Party Comments and Proposals**

Five investor-owned water utilities, Cal-Am, CWS, GSWC, Liberty Utilities (Park Water Company) and Liberty Utilities (Apple Valley Ranchos Water

Company) are currently authorized to use WRAM accounting mechanisms to track the difference between adopted revenue requirement and actual revenues. This difference is further adjusted for in the difference between authorized and actual variable costs for purchased water, purchased power, and pump tax.<sup>40</sup>

Water utilities that do not have an authorized WRAM may use a lost revenue memorandum account or similar mechanism to impose a surcharge on customers to recover authorized revenues when sales fall short of forecasts. Revenue shortfalls of 0-5 percent are collected over 12 months, shortfalls of 5-10 percent are collected over 24 months, and shortfalls of 10 percent or greater are collected over 36 months. Such collections appear as bill surcharges when the utility applies for recovery of the lost revenue.

CWS states that differences between sales forecasts and estimates of consumption levels per tier in the rate designs and actual sales and consumption per tier resulted in substantial under-collections and large WRAM balances during the early years when the rate designs were implemented. Cal-Am, CWS and CWA argue that the continuing drought increases the size of WRAM under-collections.

PPD's analysis of the WRAM mechanism concurs with the findings of substantial WRAM balances associated with economic downturn and drought.<sup>41</sup> WRAM balances grew with each divergence between forecasts and actual sales, whether caused by response to calls for conservation generally, the drought, economic conditions that led to water conservation, or other conditions. The drought that began in 2012 resulted in unforecasted levels of voluntary, then

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<sup>40</sup> See, D.12-04-048, adopted April 19, 2012.

<sup>41</sup> PPD, WRAM White Paper, *supra* note 21 at 7.



mandatory conservation, and prior consumption levels did not resume when mandatory consumption ended. As of October 2016, Class A and B water IOU consumption is down by approximately 24 percent compared to 2013 levels. Meanwhile, WRAM balances and surcharges grew with the reduction in water sales.

Customers under conservation directives who receive service from companies with WRAMs or revenue recovery surcharges are billed later, often years later, to collect authorized revenue as quantity consumption and actual revenue decline. PPD's White Paper Evaluating Forecast Methods, the WRAM, observed that the WRAM has been interpreted to allow "costs incurred in one year should be spread out over several years."<sup>42</sup> "While this type of price smoothing may reduce rate shock it does not reduce the overall cost and also sends confusing price signals to customers," PPD's White paper commented.<sup>43</sup> The WRAM and/or the surcharge produces a delayed signal about the cost of water service and the importance of conservation.

All parties noted problems with communicating with water utility customers about the WRAM/MCBA mechanism, its purpose, methodology, and why it is necessary. A surcharge following conservation is a difficult mechanism for customers to understand. Customer concerns have been expressed in Commission Public Participation Hearings, workshops, community meetings, and customer outreach programs. Customers continue to ask why their bills do not decrease when they consume less water, and are frustrated by mechanisms to collect authorized revenue regardless of conservation. Some customers

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<sup>42</sup> PPD WRAM White Paper, *supra* note 21 at 3.

<sup>43</sup> *Id.*

characterize the WRAM/MCBA as a mechanism to collect profit rather than authorized revenue. PPD's White Paper analyzing the WRAM mechanism observed that the WRAM "has left consumers confused and frustrated - as the cost for water consumed in one year is collected in following years."<sup>44</sup> All parties noted various frustrations faced by customers in understanding rate changes generally, tier structures, application of conservation restrictions, and related matters.

WRAMs and extended surcharges also result in inter-generational inequities as WRAM balances and surcharges are recovered long after lower water sales are booked. Though these water utility parties continue to support the WRAM/MCBA mechanisms and surcharges as effective tools to encourage conservation, they urge reform to forecast and rate recovery mechanisms to shrink WRAM and surcharge balances.

To encourage conservation and allow water utilities to recover revenue requirements despite reduced sales ORA proposes a Water Conservation Memorandum Account (WCMA) methodology. ORA would apply an earnings test to WRAM recovery, and a 20 basis point reduction in return on equity (ROE), to recognize what ORA characterizes as a reduction in sales risk to water utilities resulting from the WRAM.

In response to ORA, CWA argues against applying reductions in ROE to WRAM collections explaining that D.06-04-037 determined that such reductions were intended for water utilities that did not make regular GRC filings. That

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<sup>44</sup> Richard White, Principal author, Marzia Zafar, Editing Author, 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

*Footnote continued on next page*

matter was resolved with the regularly scheduled filings required for Class A water utilities under D.04-06-018. CWA contends that WCMA is not a viable conservation revenue recovery mechanism as it reflects past rate designs based on single volumetric rates. Cal-Am takes exception to referring to the WRAM as a risk management tool and instead characterizes it as a conservation tool. Cal-Am, CWS and CWA recommend lifting the current 10 percent cap on recovery of WRAM/MCBA under-collections established in D.12-04-048.<sup>45</sup> CWA urges the Commission to resolve the forecast mechanisms that drive WRAM balances and long recovery periods.

CWA and ORA disagree over the implications of the transfer of risk of revenue recovery as a consequence of the WRAM mechanism. CWA argues that the WRAM/MCBA corrects for customer growth and usage variations by the simple comparison of revenues recorded and revenues estimated. Consequently, the risk that customers will pay more for their water than is reasonable is balanced by the risk that the utility will receive less than their adopted revenues. CWA contends that the current WRAM interest rates do not compensate for the losses when revenues are not timely received. ORA points out that the Commission has not adjusted ROE to recognize the reductions in earnings risk that are compensated when a utility employs a WRAM//MCBA. ORA argues that earnings risk decreases as the WRAM/MCBA reduce the impact of revenue volatility. ORA notes that WRAM provides for revenues otherwise lost through

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balanced, [hereinafter "Evaluating Forecast Models White Paper"] Policy and Planning Division, California Public Utilities Commission, August 17, 2015, at 2.

<sup>45</sup> The cap represents the percentage of the last authorized revenue requirement that can be recovered in a year as a result of WRAM under-collections. WRAM under-collections exceeding the cap are recovered over periods exceeding a year.

pipeline leaks, and courtesy billing adjustments.<sup>46</sup> ORA argues for re-imposing the earnings test prior to authorizing WRAM recovery.

CWA proposes to increase the current 10 percent cap on WRAM recovery.<sup>47</sup> CWA cites the current drought and related mandatory reductions in water usage as creating significant declining sales that enlarge WRAM balances and delay collected for regulatory assets. CWA recommends that the Commission provide for amortizing all WRAM balances within 12 months.

ORA recommends that WRAM continue to be applied as it is currently, including the 10 percent cap, as this provides protection for ratepayers against bill spikes and would allocate some of the WRAM costs back to shareholders. ORA opposes the application of the cost of capital as the interest rate for WRAM balances, arguing that such rates elevate WRAM charges, effectively punishing water conservation.

Parties make differing recommendations regarding recovery of WRAM surcharges. ORA contends the Commission should reduce the number of rate and surcharge approvals outside of GRCs, while CWA suggests more frequent rate changes. CWS does not recommend changes to the current WRAM/MCBA process, and believes it incentivizes conservation. As a solution to reducing WRAM shortfalls, CWA proposes to utilize the SRM to update forecasts to recorded sales,<sup>48</sup> a proposal addressed herein and discussed above. CWA also

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<sup>46</sup> These are adjustments to customer's bills that provide forgiving a portion of a bill.

<sup>47</sup> CWA Comments on the Workshop at 25.

<sup>48</sup> SRM was adopted in D.14-08-011, ordering paragraph 43: "If recorded sales are more than 5 percent different than adopted sales, CWS is authorized to adjust its overall sales forecast by 50 percent of the recorded sales variation, flow that change through the revenue requirement (also proportionally changing production costs to match the proposed sales change), and calculate rates based on the adjusted sales." Customers must be provided a notice that the rate

*Footnote continued on next page*

proposes to increase the interest on WRAM balances to reflect the current rate of return on rate base by including it in the working cash calculation. CWS requests more frequent recovery of drought memorandum accounts by not requiring a two percent threshold for recovery of such accounts.

### **6.2.2. Discussion**

In D.12-04-048, we addressed WRAM/MCBA filings and related problems with under-collections, amortization schedules, changes in the WRAM mechanism, and related matters. Although the draft decision proposed that the WRAM cap be 7.5 percent, in response to comments citing financial accounting and cash flow impacts as well as intergenerational equity, D.12-04-048 adopted a cap of 10 percent.<sup>49</sup>

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.

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changes results from the SRM. The remaining 50 percent of the balance of the mismatch between sales as adopted in the GRC and actual sales is collected through surcharges imposed over the following months to years, as is customary with revenue recovery surcharges.

<sup>49</sup> D.12-04-048, Ordering Paragraph (OP) 3.

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

proposal including adjustments to forecast mechanisms to provide clearer price signals, more transparency, and to reflect better the cost of water service. Those proposals shall be analyzed for conformity to the principles of this Decision.

Likewise, at this time we decline to authorize cost of capital treatment for WRAM balances while we implement mechanisms to minimize WRAMs through authorization of drought SRMs, GRC proposals to improve forecasts, and collection of more rates through fixed rather than variable charges. We recognize the need to maintain financial integrity and the opportunity to earn a reasonable return on used and useful investment to attract capital for investment on reasonable terms for regulated water utilities as provided in Section 701.10, and to maintain sustainable water utility service. This issue is being litigated in Cal-Am's Application 15-07-019 and for Cal-Am will be addressed in that application. For other water IOUs with a WRAM, we will continue to apply the 90-day Commercial Paper Rate to water balancing accounts including the WRAM.

We will not adopt the alternative mechanism of using the WCMA methodology proposed by ORA. WCMA was one method for addressing changes in water usage and corresponding revenues. WCMA was developed at a time when water utilities charged a single quantity rate, a factor that is no longer in effect due to conservation and tiered rate design. This proposed method would add additional complexity to the process of recovering lost revenues through tiered rates.

As discussed below, we propose flexibility to account for individual district, utility, customer, water supply, and other circumstances, and allow Class A and B IOUs to propose an appropriate mix of fixed to variable rate charges with a floor of 40 percent revenue collected through fixed charges as discussed in

more detail below. Such proposals should achieve safe, reliable service at just and reasonable rates, equity for low-income rate-payers, reduce WRAM balances, signal conservation, and increase data availability for customer and water system management. Any proposed settlement that does not recommend a floor of 40 percent of recovery from fixed charges shall be accompanied by substantial analysis to show that the proposed rate structure is likely to reduce WRAM/MCBA balances, while providing timely conservation signals and promoting sustainability.

Proposals to increase recovery of rates through fixed as opposed to variable charges will also reduce WRAM balances when consumption declines. We will not adopt a uniform ratio between these two revenue recovery characteristics, but direct the utilities to propose adjustments to the percentage of revenue recovery collected from fixed charges with a 40 percent floor and up to 50 percent fixed charges, or submit alternative proposals reduce reliance on WRAM/MCBA balances, for those utilities that seek to adjust their current rate designs for collection of revenues through fixed rates as explained in more detail below. We expect that water utilities in their GRCs will propose some changes to existing ratios to promote transparency, sustainability, affordability, equity, and timely signals and data to customers as discussed in more detail below. SRMs, adjustments to forecast mechanisms, recovery of more rates through fixed rather than variable charges, and flexibility in tiers, with increased deployment of AMI and low-income programs are well-calculated to reduce reliance on high WRAM balances and delayed billing on ratepayers.



### **Findings of Fact**

1. An inclining tiered rate structure is designed to promote conservation, but must be accompanied by timely information to consumers to signal conservation.
2. Universal rate design for all water IOUs would not reflect the differences in operating, geographic, and water supply characteristics between various water utility districts.
3. It is reasonable to increase the percentage of fixed costs included in the service charge to reduce WRAM/MCBA balances and surcharges, provide greater certainty of revenue requirement recovery, and reduce inter-cycle and intergenerational rate recovery shifts.
4. Increases in service charges to recover more rates through fixed costs should not diminish the conservation incentive provided through increasing rate tiers for quantity usage.
5. A 10 percent cap on the amount of WRAM/MCBA revenue that can be recovered in a year will be reviewed in GRCs to protect against rate shock, particularly as other rate design changes are implemented to reduce WRAM/MCBA balances. Greater amounts are recovered over longer periods.
6. Many customers have expressed difficulty in understanding the WRAM/MCBA mechanism and its interaction with rates and revenue recovery, decreasing its effectiveness and increasing administrative burdens.
7. In D.08-02-036, the Commission stated that one of the goals of the WRAM was to sever the relationship between sales and revenue to remove the disincentive to implement conservation rates and conservation programs.
8. In D.13-05-011, the Commission found that in some service areas there were high WRAM balances that lead to high WRAM surcharges, due to the inaccuracy of forecasters' estimates of water consumption.

9. Authorizing Class A and B water IOUs to consider filing a Tier 2 advice letter requesting an SRM to conform water forecasts authorized in the GRC to actual consumption in light of the circumstances faced in their districts

10. Through an SRM, if recorded sales differ by more than 5 percent from adopted sales, an IOU is authorized to adjust its overall sales forecast by 50 percent of the recorded sales variation, flow that change through the revenue requirement, and calculate rates based on the adjusted sales for the remainder of the GRC rate case cycle years, and provide notice to customers that the rate change is due to the SRM, and collect the 50 percent balance of that difference through a WRAM or surcharge.

11. AMI reduces water leakage by providing real time information on water use to customers and system operators, reduce costs for meter reading, provides timely information about backwash incidents that may affect water quality, and improves system management.

12. AMI enables real-time information for customers and water managers that current water meters cannot provide.

13. It is reasonable to consider installing AMI for meter replacements, new construction, and for transitioning flat rate customers to metered customers to enable customers to receive closer to real-time water usage information than is available today.

14. It is reasonable to require Class A and B water utilities to propose in their GRC, or in separate, standalone applications, AMI meters for existing customers, and a schedule to transition existing customers to AMI.

15. It is reasonable to consider new forecasting methods to increase accuracy and reduce WRAM/MBCA balances.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit D**

*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")*

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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 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**

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**ORDER INSTITUTING RULEMAKING EVALUATING  
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LOW-INCOME RATE ASSISTANCE PROGRAMS, PROVIDING RATE  
ASSISTANCE TO ALL LOW-INCOME CUSTOMERS OF INVESTOR-OWNED  
WATER UTILITIES, AFFORDABILITY, AND SALES FORECASTING**

**Summary**

This Order Instituting Rulemaking (OIR) is issued consistent with the Commission Rules of Practice and Proceeding Article 6.<sup>1</sup> With this OIR, the California Public Utilities Commission (Commission) begins a review of the low-income rate assistance programs of the Class A water utilities under the Commission's jurisdiction to assess the feasibility of achieving program consistency across the Class A water utilities.<sup>2</sup> In addition, the Commission will investigate assistance to low-income customers of the Class B, C, and D water utilities. The Commission also will consider water affordability, and whether other public revenue sources within and outside of our jurisdiction can be generated to contribute to affordability, including potential revenue from bottled water. This will involve working with the State Water Resources Control Board on affordability, including pooling and consolidation opportunities. The proceeding will include two initial phases that will have separate scoping memos. The preliminary issues identified for each phase are set forth below.

In this OIR, we seek initial comments to assist the Commission in:

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<sup>1</sup> All references to Rules refer to the Commission Rules of Practice and Procedure unless otherwise noted.

<sup>2</sup> Class A water utilities includes every corporation or person owning, controlling, operating, or managing any water system for compensation within California having more than 10,000 service connections (Pub. Util. Code § 241 and Decision 85-04-076).

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

Information and determinations from this proceeding shall inform the follow-up proceedings on related issues to be adopted at a later date.

## **1. Safety Consideration**

This Order Instituting Rulemaking (OIR) is issued to continue the California Public Utilities Commission's (Commission) efforts consistent with Cal Water Code Section 106.3 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.<sup>3</sup>

## **2. Background**

In December of 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

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<sup>3</sup> Cal Water Code Section 106.3 (added by Stats. 2012, C.524, A.B.685).

utilities and to place water conservation at the top of the loading order as the best, lowest-cost supply.

Among the energy 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.

The 2005 Plan was adopted after one of the wettest winters in recent history. In 2010 the Commission updated the 2005 Plan (2010 Update) as a result of severe drought conditions within the state. The Commission found it was more important than ever to have in place the regulatory mechanisms to ensure that the principles and objectives set forth in the 2005 Plan were not compromised. 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, and Suburban Water Systems.<sup>4</sup>

Each of the Class A water utilities 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. As detailed in Appendix A to this OIR, there is no standardization among these programs. Each program differs in its name, availability of monthly discounts, and recovery of costs. Hence, we should explore the feasibility of achieving a consistent low-income rate assistance program for of all the Class A water utilities in this OIR.

Furthermore, there are no rate-assistance programs for low-income ratepayers of Class B, C, and D utilities. These small water utilities serve a total of about 62,000 customers. However, because many of these utilities serve very few customers, estimating the number of low-income customers served is difficult. The Commission therefore has limited information on how to best serve low-income customers of Class B, C, and D utilities.

The Commission also intends to examine whether allowing for greater pooling within utilities and across utilities affording a more comprehensive low-income rate assistance program.

Additionally, the Commission intends to examine the scope of jurisdiction over other water companies as public utilities for the sole purpose of imposing public purpose charges to support low-income assistance water programs. The Commission will consider which water companies qualify as a "water

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<sup>4</sup> Class A water utilities Apple Valley Ranchos Water Company and Park Water Company acquired by Liberty Utilities Company, pursuant to Decision (D.) 15-12-029, dated December 17, 2017, continue to operate as distinctly separate Class A water utilities.

corporation” that owns controls, operates, or manages a “water system”;<sup>5</sup> performs a service, or delivers a commodity to, the public;<sup>6</sup> and dedicates its water supply or water system to public use.<sup>7</sup> In addition, the Commission intends to consider whether this jurisdiction should provide that additional water companies support low-income water programs. Related issues are further discussed in **Section 3.2 Issues**, including imposition of extraction fees, and bottled water end user fees.

In order that this Rulemaking proceeds in a timely manner, the parties are directed to provide comments on the questions presented as to water companies and the Commission’s jurisdiction early in the proceeding, as the Commission’s resolution of this matter may have subsequent implications, including the funding of low-income customer programs.

## **2.1. Eligibility Requirement**

The eligibility requirement is the only consistent aspect of the Class A water utilities’ low-income rate assistance programs. To qualify for the program: (1) the water bill must be in the customer’s name; (2) customer may not be claimed as a dependent on another person’s tax return; and (3) customer’s total

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<sup>5</sup> 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.”).

<sup>6</sup> Cal. Pub. Util. Code § 216(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.”).

<sup>7</sup> *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.”).

household income must be below an amount established by the Commission.

This consistent low-income eligibility requirement for the Class A water utilities satisfies the 2010 Update action item of developing a standardized eligibility criteria and need not be addressed in this OIR.

## **2.2. Program Name**

The low-income rate assistance program is being offered to Class A water utilities' low-income customers under four different names, dependent on which service territory that low-income customers reside. As detailed in Appendix A to this OIR, the program is being offered under the names: California Alternative Rates for Water, Low-Income Ratepayer Assistance (LIRA), Low-Income Customer Assistance Program, or Water Rate Assistance Program.

Customers are made aware of the low-income programs through various means including but not limited to bill inserts, public participation hearings, and company websites. However, the majority of low-income customers have been automatically enrolled into the low-income programs through the Commission-authorized biannual customer data exchange between water and energy utilities (D.11-05-020). Customers who receive automatic enrollment are sent notices by the utilities of their enrollment with an option to opt out of the low-income program.

## **2.3. Monthly Discounts**

Monthly discounts available to low-income customers also differ by Class A water utility. As detailed in Appendix A to this OIR, three of the utilities provide different fixed dollar credits, two provide 50% off the service charge, one provides 15% of the total bill, one provides varied credits across its districts, and another provides 20% off the service and quantity charges.

#### **2.4. Program Costs Recovery**

The Class A water utilities recover program revenue through surcharges and track the difference between discounts offered and surcharges collected in either a memorandum or balancing account for latter amortization. As detailed in Appendix A, surcharges are based on a variety of factors (fixed amount, percent of service and quantity charges, or an amount per water usage). The degree to which water corporations are permitted to pool among a portion or all of their districts may also be examined as a way to provide more revenue for LIRA programs.

#### **2.5. Forecasting Water Sales**

Forecasts of sales can have significant impacts on ratepayers. In D.16-12-026, adopted in Rulemaking 11-11-008, the Commission addressed the importance of forecasting sales. The Commission, in D.16-12-026, directed Class A and B water utilities to propose improved forecast methodologies in their General Rate Case (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 in a separate phase of this proceeding will examine standardizing water sales forecasting.

### **3. Preliminary Scoping Memos**

This OIR will be conducted in accordance with Article 6 of the Commission's Rules of Practice and Procedure (Rules). As required by Rule 7.1, this order includes a Preliminary Scoping Memo as set forth below.

### **3.1. Category of Proceeding and Need for Hearing**

Rule 7.1(d) requires that an OIR preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is a “quasi-legislative” proceeding, as that term is defined in the Commission’s Rules of Practice and Procedure, Rule 1.3(d). It is contemplated that this proceeding shall be conducted through initial written comments and later evidentiary hearings on issues identified in comments.

Anyone who objects to the preliminary categorization of this OIR as “quasi-legislative,” or to the preliminary hearing determination, must state the objections in opening comments to this OIR. If the person believes hearings are necessary, the comments must state: (a) the specific disputed fact for which hearing is sought; (b) justification for the hearing (e.g., why the fact is material); (c) what the party would seek to demonstrate through a hearing; and (d) anything else necessary for the purpose of making an informed ruling on the request for hearing.

After considering any comments on the preliminary scoping memo, the assigned Commissioner may issue a Scoping Memo that, among other things, will make a final category determination; this determination is subject to appeal as specified in Rule 7.6(a). The assigned Commissioner and Administrative Law Judge (ALJ) may also determine the need for and extent of further procedural steps that are necessary to develop an adequate record to resolve this OIR, and shall issue rulings providing guidance to parties, as warranted.

### **3.2. Issues**

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 water utilities to determine whether a consistent low-income rate assistant program for all low-income water ratepayers can be established. This proceeding will also consider whether other water companies qualify as public utilities under the Commission's jurisdiction for purposes of assessing a public purpose surcharge. Respondent Class A water utilities are required, Class B, C and D water utilities are encouraged, and interested parties are invited, to answer the following questions and include associated explanations for each response:<sup>8</sup>

**Question 1 - Program Name**

- a. Which of the current low-income rate assistance programs (California Alternative Rates for Water, Low-Income Ratepayer Assistance, Low-Income Customer Assistance Program, and Water Rate Assistance Program) best describes the low-income rate assistance program?
- b. Is there a more appropriate program name that identifies the low-income rate assistance program?
- c. What are the advantages and disadvantages of establishing a uniform program name for a low-income rate assistance program for all eligible customers of investor-owned water utilities?

**Question 2 - Effectiveness of Assistance Programs**

- a. How effective are the current programs in reaching eligible low-income customers?
- b. How can effectiveness be improved?

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<sup>8</sup> 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."

*Question 3 - Monthly Discounts*

- a. What are the advantages and disadvantages of providing a flat dollar discount to low-income customers? Also, what impact does it have on water conservation?
- b. What are the advantages and disadvantages of providing a percentage off of a low-income customer's total bill? Also, what impact does it have on water conservation?
- c. What are the advantages and disadvantages of providing a percentage off of a low-income customer's service charge? Also, what impact does it have on water conservation?
- d. What are the advantages and disadvantages of providing a percentage off of a low-income customer's service charge plus Tier 1 and Tier 2 usage? Also, what impact does it have on water conservation?
- e. What are the advantages and disadvantages of establishing a company-wide discount method (such as: a flat dollar amount, percentage off of service charge or total bill, percentage off of service charge, plus Tier 1 and Tier 2)?
- f. What are the advantages and disadvantages of establishing a fund to provide rate assistance to all low-income customers of investor-owned water utilities (such as: a flat dollar amount, percentage off of service charge or total bill, percentage off of service charge, plus Tier 1 and Tier 2)?
- g. What is the appropriate discount method if a uniform discount method is implemented for all investor-owned water utilities?
- h. What are the advantages and disadvantages of implementing a company-wide dollar and/or percentage rate discount? If implemented, how should that dollar and/or percentage rate be determined?
- i. What are the advantages and disadvantages of implementing a uniform dollar and/or percentage rate discount for all investor-owned water utilities' low-income customers? If implemented, how should that dollar and/or percentage rate be determined?

- j. What are the advantages and disadvantages of implementing a maximum discount amount for the low-income rate assistance program? If a maximum discount amount is implemented how should that amount be calculated and should it be uniform for all Class A water utilities?

**Question 4 - Program Cost Recovery**

- a. Should the Commission require uniform standards for LIRA surcharges in the multi-district Class A utilities?
- b. What are the advantages and disadvantages of recovering program costs through a fixed dollar surcharge amount?
- c. What are the advantages and disadvantages of recovering program costs through a fixed surcharge amount per water usage?
- d. Is there a more appropriate method to recover program costs?
- e. Should the Commission require that LIRA programs for Class B, C, & D utilities be funded by surcharges on all non-low-income customer bills across all the utilities? How would this pooled LIRA fund be administered?
- f. What are the advantages and disadvantages of recovering program costs on a district and/or region basis? What if a majority of customers in a district and/or region are qualified low-income customers?
- g. What are the advantages and disadvantages of recovering program costs through a company-wide and/or uniform Class A water utilities' method?

**Question 5 - Commission Jurisdiction over other Water Companies**

- a. What is the Commission's jurisdiction over water companies for the purpose of imposing public purpose fees to support LIRA programs?
- b. Should the Commission consider (funding LIRA or pooling via) a water extraction fee?



- c. Should the Commission consider (funding LIRA or pooling via) a water end user fee?

**Question 6 - Consolidation in Support of LIRA**

- a. How should the Commission identify further opportunities for consolidating systems that are not able to provide safe, reliable and affordable drinking water?
- b. Should Class A utilities serve as administrators for small water systems that need operations & maintenance support as proscribed by Senate Bill 552 (2016)?

**Question 7 - Implementation of Any Changes**

- a. How should any changes to the low-income rate assistance programs resulting from this OIR be implemented? For example: next general rate case proceeding, advice letter, or other method.
- b. If the Commission creates a single program to provide uniform rate assistance for all investor-owned utility low-income ratepayers, how will that program be administered?
- c. How should investor-owned low-income rate assistance program changes be implemented in response to development of a statewide low-income rate assistance program resulting from legislation pursuant to Assembly Bill 401 (2015)?

**3.3. Schedule**

The preliminary schedule for Phase 1 is set forth below. We delegate to the assigned Commissioner and the assigned ALJ the authority to set other dates in the proceeding or modify those below as necessary. Phase 1 is divided into two sub-phases: a) consolidation of low-income water assistance programs; and b) Commission jurisdiction over other water companies. Participants in the proceeding should also provide comments on the proposed schedule, included

4. This proceeding is preliminarily determined to need evidentiary hearings.

5. All Class A water utilities under the California Public Utilities Commission's jurisdiction are named respondents to this Order Instituting Rulemaking.

6. Class B, C and D water utilities, The Office of Ratepayer Advocates, the California Water Association, The Utility Reform Network, the California Bottled Water Association, individual California water bottlers, and the Low-Income Oversight Board are invited to participate as parties to the Order Instituting Rulemaking.

7. The outcome of this Order Instituting Rulemaking will be applicable to all water utilities under the Commission's jurisdiction, as defined in Pub. Util. Code § 2701.

8. Any person or representative of an entity who wishes to become a party to this proceeding must send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, CA 94102 (or [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)) to be placed on the official service list for this proceeding. The docket number of this proceeding must be included in the request.

9. Persons and representatives of an entity who wish to monitor this proceeding but not participate as an active party shall be added to the "Information-Only" section of the official service list upon request, for electronic service of all documents filed in this proceeding. A request to be placed on the "Information-Only" service list for this proceeding must be sent to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, CA 94102 (or [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)). The docket number of this proceeding and designation of "Information Only" party status must be included in the request.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION

*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit E**

*Scoping Memo and Ruling of Assigned Commissioner* (January 9, 2018)  
("Scoping Memo")

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MGA/eg3 1/9/2018

**FILED**  
01/09/18  
02:58 PM

**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.<sup>1</sup>

**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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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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."

D water companies and other parties participating in the proceeding consistent with the schedule set forth below.

### **3. Categorization**

The Commission in the OIR, issued on July 10, 2017, preliminarily determined that the category of the proceeding is quasi-legislative.

This Scoping Memo confirms the categorization. Anyone who disagrees with this categorization must file an appeal of the categorization no later than ten days after the date of this scoping ruling. (*See* Rule 7.6.)

### **4. Need for Hearing**

The Commission in the OIR preliminarily determined that hearings are not required.

This scoping memo confirms that hearings are not required at this time. If at a later date or in a later phase hearings are required, an amended scoping memo will be issued, and subsequent scoping memos for later phases in the proceeding may find that hearings are needed and will indicate accordingly.

### **5. Ex Parte Communications**

In a quasi-legislative proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the assigned Administrative Law Judge (ALJ) are permitted without restriction or reporting as described at Public Utilities Code Section 1701.4(b) and Article 8 of the Rules.<sup>3</sup>

### **6. Intervenor Compensation**

Pursuant to Public Utilities Code Section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by October 11, 2017, 30 days after the PHC.

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<sup>3</sup> Interested persons are advised that, to the extent that the requirements of Rule 8.1 *et seq.* deviate from Public Utilities Code Sections 1701.1 and 1701.4 as amended by SB 215, effective January 1, 2017, the statutory provisions govern.

**7. Assigned Commissioner and Assigned Administrative Law Judge**

Martha Guzman Aceves is the assigned Commissioner and Darcie L. Houck is the assigned Administrative Law Judge.

**8. Filing, Service and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

**9. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).



**10. Schedule**

The adopted schedule is:

| <b>EVENT</b>  | <b>DATE</b>                           |
|---|---------------------------------------|
| Workshop #1 – Joint Workshop with SWRCB – Consolidation   | November 13, 2017                     |
| Party comments on Phase I issues identified above and Workshop #1 Staff Report attached as Appendix B to this Scoping Memo                                  | February 23, 2018                     |
| Status Conference – 10:00 a.m.<br><b>California State Personnel Board - Auditorium</b><br><b>801 Capitol Mall, Room 150</b><br><b>Sacramento, CA 95814.</b> | March 12, 2018                        |
| Workshop #2 – SB 623 Joint Workshop with SWRCB  | TBD                                   |
| Party Comments Workshop #2  | TBD                                   |
| Workshop #3 – Water Forecasting, AB 401 Report  | TBD                                   |
| Party Comments Workshop #3  | TBD                                   |
| Public Participation Hearing(s) (PPH) location(s) to be determined  | TBD                                   |
| Staff Report with Proposed Recommendations for Outcomes   | Within 30 days from last Workshop/PPH |
| Party Comments on Staff Report  | TBD                                   |
| Reply Comments on Staff Report  | TBD                                   |
| Workshop#4 and Status Conference addressing consolidation and forecasting   | TBD                                   |
| Proposed Decision   | TBD                                   |
| Comments and Reply Comments on Proposed Decision  | TBD                                   |
| Commission Vote   | TBD                                   |

The assigned Commissioner or assigned ALJ 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 this proceeding was initiated. This deadline may be extended by order of the Commission. (Public Utilities Code Section 1701.5(a).)

Notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

#### **11. Settlement and Alternative Dispute Resolution**

While the schedule does not include specific dates for settlement conferences it does not preclude parties from meeting at other times provided notice is given consistent with our Rules.

The Commission offers Alternative Dispute Resolution (ADR) services consisting of mediation, facilitation, or early neutral evaluation. Use of ADR services is voluntary, confidential, and at no cost to the parties. Trained ALJs serve as neutrals. The parties are encouraged to visit the Commission's ADR webpage at <http://www.cpuc.ca.gov/adr>, for more information.

If requested, the assigned ALJ will refer this proceeding, or a portion of it, to the Commission's ADR Coordinator. Alternatively, the parties may contact the ADR Coordinator directly at [adr\\_program@cpuc.ca.gov](mailto:adr_program@cpuc.ca.gov). The parties will be notified as soon as a neutral has been assigned; thereafter, the neutral will contact the parties to make pertinent scheduling and process arrangements. Alternatively, and at their own expense, the parties may agree to use outside ADR services.

#### **12. Outreach Pursuant to Public Utilities Code Section 1711(a)**

Public Utilities Code Section 1711(a) states:

Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in

that proceeding. The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.

The Commission's Outreach Office conducted outreach pursuant to Public Utilities Code Section 1711(a) by working with the SWRCB to ensure that governmental entities and community groups that work with communities with at risk water systems, and low income customers were informed of the proceeding. Outreach will continue throughout the proceeding and a number of public participation hearings will be scheduled throughout the state.

**IT IS RULED** that:

1. The category of this proceeding is quasi-legislative. Appeals as to category, if any, must be filed and served within ten days from the date of this Scoping Memo.
2. The scope of the issues for this proceeding is as stated in "Section 2. Scope" of this ruling.
3. Hearings may be necessary.
4. The schedule for the proceeding is set in "Section 10 Schedule" of this ruling. The assigned Commissioner or Administrative Law Judge may adjust this schedule as necessary for efficient management and fair resolution of this proceeding.
5. *Ex parte* communications are permitted without restriction or reporting as described at Public Utilities Code Section 1701.4(c) and Article 8 of the Rules.
6. A party shall submit request for Final Oral Argument in its opening briefs, but the right to Final Oral Argument ceases to exist if a hearing or briefing is not needed.
7. Parties shall submit all testimony and other types of documents to supporting documents as described in Appendix A.

Dated January 9, 2018, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES

Martha Guzman Aceves  
Assigned Commissioner

## APPENDIX A

*The following text may be attached as an appendix or included as appropriate (e.g. the filing of supporting documents is anticipated shortly after issuing the Scoping Memo). If included within the text of the Scoping Memo it is suggested it follow section 8.*

### **Electronic Submission and Format of Supporting Documents**

The Commission's web site now allows electronic submittal of supporting documents (such as testimony and work papers).

Parties shall submit their testimony or workpapers in this proceeding through the Commission's electronic filing system.<sup>1</sup> Parties must adhere to the following:

- The Instructions for Using the "Supporting Documents" Feature, (<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=158653546>) and
- The Naming Convention for Electronic Submission of Supporting Documents (<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=100902765>).
- The Supporting Document feature does not change or replace the Commission's Rules of Practice and Procedure. Parties must continue to adhere to all rules and guidelines in the Commission's Rules of Practice and Procedures including but not limited to rules for participating in a formal proceeding, filing and serving formal documents and rules for

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<sup>1</sup> These instructions are for submitting supporting documents such as testimony and work papers in formal proceedings through the Commission's electronic filing system. Parties must follow all other rules regarding serving testimony.

Any document that needs to be formally filed such as motions, briefs, comments, etc., should be submitted using Tabs 1 through 4 in the electronic filing screen.

written and oral communications with Commissioners and advisors (i.e. “ex parte communications”) or other matters related to a proceeding.

- The Supporting Document feature is intended to be solely for the purpose of parties submitting electronic public copies of testimony, work papers and workshop reports (unless instructed otherwise by the Administrative Law Judge), and does not replace the requirement to serve documents to other parties in a proceeding.
- Unauthorized or improper use of the Supporting Document feature will result in the removal of the submitted document by the CPUC.
- Supporting Documents should not be construed as the formal files of the proceeding. The documents submitted through the Supporting Document feature are for information only and are not part of the formal file (i.e. “record”) unless accepted into the record by the Administrative Law Judge.

All documents submitted through the “Supporting Documents” Feature shall be in PDF/A format. The reasons for requiring PDF/A format are:

- Security – PDF/A prohibits the use of programming or links to external executable files. Therefore, it does not allow malicious codes in the document.
- Retention – The Commission is required by [Resolution L-204](#), dated September 20, 1978, to retain documents in formal proceedings for 30 years. PDF/A is an independent standard and the Commission staff anticipates that programs will remain available in 30 years to read PDF/A.
- Accessibility – PDF/A requires text behind the PDF graphics so the files can be read by devices designed for those with limited sight. PDF/A is also searchable.

Until further notice, the “Supporting Documents” do not appear on the “Docket Card”. In order to find the supporting documents that are submitted electronically, go to:

- Online documents, choose: “[E-filed Documents](#)”,

- Select “Supporting Document” as the document type, ( do not choose testimony)
- Type in the proceeding number and hit search.

Please refer all technical questions regarding submitting supporting documents to:

- Kale Williams ([kale.williams@cpuc.ca.gov](mailto:kale.williams@cpuc.ca.gov)) 415 703- 3251 and
- Ryan Cayabyab ([ryan.cayabyab@cpuc.ca.gov](mailto:ryan.cayabyab@cpuc.ca.gov)) 415 703-5999

(END OF APPENDIX A)

**APPENDIX B**

Report on Joint Agency Workshop

Water System Consolidation & SB 623

California Public Utilities Commission and State Water Resources Control Board

R.17-06-024

Water Division

December 15, 2017

## Summary

On November 13, 2017 in Sacramento, a joint California Public Utilities (Commission) and State Water Resources Control Board (Board) workshop was held. At the workshop, speakers from the Board, the Commission, Community Water Center, Regional Water Authority, Self-Help Enterprises, Lake County Special District, Cobb Area Water District, Somach Simmons & Dunn, California Water Service Company, and members of the public discussed the consolidation of small and troubled water systems and proposed legislative funding sources. In attendance were representatives of investor owned utilities (IOUs), municipals and public agencies, mutual water companies, non-profit organizations and consumers. Participants discussed the drivers, tools, and obstacles for prior and future consolidations and their views on the potential impact of pending legislation.

The SWRCB's Division of Drinking Water (DDW) described the progression of steps required that can eventually allow for mandatory consolidation. DDW regularly sends inspection letters to water systems so that the systems can address issues before the issues become critical and DDW informs water systems of upcoming regulatory changes. DDW noted that they provide outreach for training and technical support and they can assist water systems with contacting the Division of Financial Assistance (DFA) for capital intensive projects. They may also recommend consolidation and can provide consolidation trainings and outreach. DDW stated that Minimum Contaminant Level (MCL) or monitoring violations result in citations or compliance orders that require corrective actions or are otherwise subject to fines collected by the Attorney General. When fines and citations fail then the public is notified of drinking water violations, the water system may enter receivership, and mandatory consolidation may result.

DDW described the technical, managerial, and financial (TMF) warning signs of troubled water systems. These warning signs include irregular monitoring, failing infrastructure, managers and operators with insufficient knowledge, and inadequate revenue. When these issues become critical DDW can then issue Compliance Orders under California Health and Safety Code (CHSC) 116655 that direct preventive action be taken subject to fines or DDW may amend permits. DDW stated that the requirements for mandatory consolidation under SB-88/552 include: a viable water system nearby, consultations with other agencies (CPUC, LAFCO, Counties, etc.), previous recommendation for voluntary consolidation, public meetings, a disadvantaged community in an unincorporated area, mobile home park, or service by a mutual water company, consistent failures to provide adequate and safe drinking water, and a lack of more effective or cost-effective alternatives. DDW noted that some limitations of SB-88 include public schools in non-disadvantaged communities and water systems with TMF issues that have no mcl violations.

DDW stated that some of the lessons learned from past consolidations include: 1) voluntary consolidations are highly preferable, 2) mandatory consolidations have a large workload, 3) communicating the message to residents is difficult, 4) DDW or Local Primacy Agency (LPA) will need to bring the systems together, and 5) consolidation may be the best option available. DDW is working on a pilot for a Safe Drinking Water Partnership Plan that will check each county for out of compliance water systems, water systems with inadequate TMF, clusters of water systems that could consolidate or form partnerships, groundwater areas with known contamination, and areas served by individual wells. DDW will then rank partnership opportunities with input from counties, cities, and LAFCO water systems. DDW concluded by highlighting their current consolidation efforts and noting anticipated challenges from water supply applications for cannabis production.



The Commission's Water Division gave an overview of past acquisitions of IOUs. Water Division explained that there have been 34 IOU acquisitions since 2007 and that 33 of them were small utilities that served less than 2000 connections and one was a large utility that became public. Water Division noted that IOU acquisition authority is governed by Public Utilities (PU) Code Sections 2718-2720, Commission Rulemaking 97-10-048, and Commission Decision 99-10-064 and that in 1997 there were 200 CPUC regulated water systems. Water Division stated that fair market value can be used if the acquisition is fair and reasonable with regard to reliability, health and safety, economies of scale, and its effect on customers. On October 2014, the Commission issued Decision No. 14-10-047 that required utilities to assess whether high-cost and affordability problems exist in any of its districts, report on their findings in their General Rate Cases, and to propose consolidation projects. Water Division summarized several of its pending acquisitions and noted the challenges of operation and maintenance expenses. Water Division then discussed that with financial support for operations and maintenance, like those proposed in SB 623, some municipal water systems lacking TMF expertise frequently seek to enter into operations agreements with IOUs rather than to consider consolidation.

The non-profit Community Water Center discussed the need for safe and affordable water in California and noted that many drinking water contaminants disproportionately affect low-income and Latino communities. Community Water Center highlighted several of the policy tools that have been created to address water such as the 2012 Human Right to Water Act, the Proposition 1 Water Bond, the Office of Sustainable Water Solutions, new consolidation powers, the Sustainable Groundwater Management Act, dairies and irrigated lands regulatory programs, and school water testing and funding programs. Community Water Center stated water system funding shortfalls persist for operations and maintenance, capital, planning, technical assistance, and for emergency replacement water. Community Water Center also noted that the enactment of Assembly Bill 401 in 2014 directed the SWRCB to propose a statewide water low-income assistance program. Community Water Center presented the Lanare community as an example of a water system unable to sustain the operations and maintenance funding required to supply treated water.

Community Water Center next discussed their proposed SB 623 Safe and Affordable Drinking Water Fund (Fund) pending in the Legislature and SB 623's ability to cover funding gaps for operations and maintenance and secure long-term sustainability. SB 623 prioritizes disadvantaged communities and low-income domestic well users that consistently fail to provide adequate drinking water at affordable rates and lack other sources of funding. The bill would provide transparency through an annual needs assessment, regular public review and assessment of the Fund, and a Fund implementation developed and adopted in consultation with stakeholders. Sustained funding authorized in SB 623 would, in part, come from a sales fee on fertilizer & dairy and a new fee on non-dairy concentrated animal feeding operations (CAFO) that are estimated to raise \$30M annually for 15 years and \$10M annually thereafter. SB 623 funding would mainly come from a new drinking water fee assessed monthly on drinking water bills that is capped at \$0.95 for most water users, with an exemption for low-income households (below 200% of the Federal poverty level). Community Water Center noted that the combined fees would raise an estimated \$140M annually for the first two years and thereafter the Board may reduce fees based on an annual needs assessment.

SB 623 would also require local data collection and analysis of private wells and small water systems in order to identify high risk areas and support outreach & well testing for low-income households. Community Water Center concluded by stating that SB 623 has wide support from organizations in

agriculture, environmental justice, environmental groups, labor, public health, cities, water districts, and counties. Community Water Center also stated that polling shows Californians support a small monthly fee around \$1 to support non-local drinking water projects.

Somach Simmons & Dunn represented agricultural stakeholders (Ag Stakeholders) and highlighted their support for SB 623 and its ability to balance access to drinking water with the use of synthetic fertilizers and manure production by the agricultural industry. The Ag Stakeholders noted that California agriculture is an integral part of the economy and that fertilizer use is essential to the industry. The industry continues to make significant advances in fertilizer use with research universities in order to reduce nitrogen levels in groundwater. The Ag Stakeholders noted that SB 623 provides \$30M of funding per year directly from agriculture and time limited protections from groundwater enforcement by the Board regarding nitrogen standards if agricultural operations meet mitigation requirements.

Self-Help Enterprises discussed their water and wastewater project training and technical assistance in San Joaquin Valley counties. They have assisted over 150 communities in the Central Valley with TMF training, private well and sewer surveys, income surveys, and subcontracting. They have also assisted over 60 communities with consolidating systems for water and sewer service with current efforts that could result in the consolidation of 50 additional communities. Self-Help Enterprises noted that when Cameron Creek Colony private wells stopped producing water they were able to assist with emergency funding to build and connect a water distribution system to the city of Farmersville. Self-Help Enterprises also presented examples of obstacles that these projects can encounter. For Monterey Park Tract Community Services District (CSD) and Las Deltas CSD (CSD), there were issues with the willingness of nearby municipals to take responsibility for helping the troubled systems. After agreements were reached, the sustainability of operating systems with increasing costs at affordable rates has become a major issue.

Lake County Special Districts provided a presentation of the water systems serving Lake County and gave examples of recent consolidation projects in the county. Lake County has 87 public water systems and 56 community water systems with 45 of them serving less than 1,000 connections and with the majority in disadvantaged communities. In 1989, the area of North Lakeport began consolidating 41 struggling systems and the project was completed in 1991 with funding from the Board. Since the consolidation, the system of North Lakeport has performed well and \$716,000 in regulator fees and laboratory fees have been saved. North Lakeport currently has the ability to perform capital improvements without increasing rates by accumulating \$1.2 million in capital improvements reserves. A similar project occurred in Soda Bay where 15 water systems were consolidated in the 1980s which allowed economies of scale to keep rates affordable. Currently, there is a consolidation project between Paradise Valley and Clearlake Oaks County Water District. Clearlake Oaks is disadvantaged while Paradise Valley is not and funding is provided from Lake County. Lake County noted that there is great interest to consolidate in Lake County but the challenge is to begin formal discussions with systems in need of consolidating.

Cobb Area Water District presented on the impact to the Lake County area by the 2015 Valley fire and how consolidation is helping in the recovery. The fire completely depleted the water reserves and some districts lost 90% of their customer base. To address these issues, there is currently a project for the Cobb Area to consolidate seven water systems; \$17-20 million is needed for upgrading and replacing infrastructure. Funding is coming from a variety of resources: Prop 1, State Revolving Fund (SRF), the Board, and the Community Development Block Grant, while customers have seen a 37% increase in rates. Technical assistance is also being provided from the Rural Community Assistance Corporation,

Sacramento State, and UC Davis. The project has been ongoing for over 2 years with about a year left to complete.

Cal Water Service discussed the physical consolidation of West Goshen Mutual Water Company and the non-physical ratemaking consolidation of Lucerne. West Goshen Mutual Water Company (West Goshen) in Tulare County served a population of 500 and had a history of water quality issues. In 2012, West Goshen wells began failing and it experienced a complete loss of service in 2013 when 350-foot section of a distribution main collapsed. Cal Water's Visalia District, located a mile away from West Goshen worked with several non-profits along with the County and State to install 2 miles of main to connect Cal Water to West Goshen and provide water. The project received funding of \$3 million from the State Revolving Fund and was completed in 2014. In Lucerne, Cal Water has served the community of 3,000 residents since 2000. As Lucerne is a disadvantaged community and in need of significant infrastructure improvements, water rates became relatively high. To provide rate relief, in 2016, Cal Water combined the ratemaking area of Lucerne with the much larger Bayshore District which serves portions of the Bay Area. This ratemaking consolidation allowed for the sharing of costs spread among a larger customer base. This consolidation greatly reduced the rates in Lucerne by 30% while increasing the rates slightly in Bayshore. Lastly, Cal Water mentioned the need for streamlining consolidation to address the often tedious process of applying and receiving approvals and funding for such projects.

During public comment, several spoke in opposition to SB 623. The Association of California Water Agencies (ACWA,) which represents 440 public water agencies, does not support SB 623 and labeled the fee to fund the Safe and Affordable Drinking Water Fund as a "tax on drinking water." ACWA stated that this tax works against affordability and recommended using the general fund to address the issues of operating a water system. An environmental group, the Otter Project, spoke against SB 623 with concerns on the potential negative impacts to the environment. The Otter Project fears that a restriction of water quality enforcement on agricultural operations will lead to more groundwater pollution.

### **Conclusion**

As this workshop has shown, ensuring the long-term sustainability of drinking water in California is critical. Consolidation has been and continues to be a great tool to address the vast issues many struggling water systems are facing. Another potential tool providing a stable funding source to assist water systems with high operation and maintenance costs. This workshop demonstrated that consolidation has proven beneficial and that However, more time and effort is still required to initiate and increase the efficiency of the consolidation process. Consolidation and additional funding proposals, like SB 623, are just two of many tools needed to provide safe, reliable, and affordable drinking water for all of California.

(END OF APPENDIX B)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit F**

*Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative  
Law Judge (July 9, 2018) (“Amended Scoping Memo and Ruling”)*

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Association***



MGA/DH7/rp4 7/9/2018

**FILED**  
07/09/18  
04:44 PM

**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

**AMENDED SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER  
AND ADMINISTRATIVE LAW JUDGE**

**Summary**

This ruling amends the Scoping Memo issued on January 9, 2018 to include two additional issues: 1) whether the California Public Utilities Commission (Commission) should adopt criteria to allow for sharing of low-income customer data by regulated investor-owned energy utilities with municipal water utilities; and 2) 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.

**1. Background**

On June 29, 2017, the Commission issued an Order Instituting Rulemaking (OIR) to address 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. A prehearing conference (PHC) was held on September 11, 2017 in Sacramento, California. The scoping memo in this proceeding was issued on January 9, 2018. Parties provided initial comments in February of 2018.

Since February, the Commission has become aware that municipal water utilities may need more information to identify customers that qualify for discounted rates based on income.

On May 31, 2018, Governor Brown signed Assembly Bill 1668 (Ch. 15 Statutes of 2018) which codified various water management planning criteria implementing the Governor's May 2016 Executive Order B-37-16 (Making Water Conservation a California Way of Life). In particular, Section 10609.4(a) has been added to the Water Code establishing 55 gallons per day per capita as the standard for indoor residential water use until January 1, 2025. Beginning January 1, 2025, the indoor residential water use standard will be reduced to 52.5 gallons per day per capita with a further reduction to 50 gallons per day per capita beginning January 1, 2030.

## **2. Amended Scope**

Based on the new developments described above, there is a need to ensure that water utilities can identify customers that may qualify for discounted rates based on their income. Municipal water utilities do not currently have access to the data they need to ensure discounts reach customers who need them. There is also a need to ensure that low income customers receive affordable water service

even as total water sales are reduced due to statewide water conservation efforts.

We therefore include the following issues within the scope 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 California Public Utilities Commission (Commission) should adopt criteria to allow for sharing of low-income customer data by regulated investor-owned energy utilities with municipal water utilities.

The first issue is to analyze how water utilities could design rates such that there is a basic amount of water which a customer will receive at a low quantity rate. For purposes of comments, parties should assume 4 persons per connection, and the water use of 55 gallons/person/day. Parties are to provide comments on this issue by July 31, 2018. In providing comments, parties should consider how such a rate design will address fixed cost recovery, impacts to low-and moderate-income customers' bills, and assisting low-income residential customers behind a master meter in receiving the intended benefits from the proposed rate design change

The second issue added to the scope addresses whether the Commission should adopt criteria to allow for access by municipal water utilities to investor-owned energy utilities data concerning low-income customers. In this regard, the Commission-jurisdictional energy utilities (San Diego Gas & Electric Company, Southern California Gas Company, Southern California Edison Company, and Pacific Gas & Electric Company) have been served a copy of this Ruling and are encouraged to submit comments on this issue. Parties are to provide comments on this issue by July 31, 2018. The parties' comments should

consider pros and cons of information sharing low-income customer data between investor-owned energy utilities and municipal water utilities.

Comments should address how data sharing can promote comprehensive low-income programs to better assist low-income customers of the Commission-jurisdictional energy utilities and provide more efficient management of municipal water utilities' low-income programs.

### **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 provide comments regarding the two additional issues added to the scope of this proceeding by July 31, 2018. An additional workshop will be set in the fall to consider Phase 1 issues.

The assigned Commissioner or assigned ALJ 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 issues set forth in “Section 2. Scope” of this ruling.
2. Hearing is not necessary at this time.
3. The schedule for the proceeding to be concluded has been extended by 18 months as set forth in Section 4 of this ruling.
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 submit comments on the additional issues added to the scope of this proceeding as set forth in this ruling by July 31, 2018.
6. The January 9, 2018 scoping memo remains as issued with the addition of the issues set forth in this ruling and the extension of schedule as set for thin this ruling.

Dated July 9, 2018, at San Francisco, California.

/s/ MARTHA GUZMAN-ACEVES

Martha Guzman-Aceves  
Assigned Commissioner

/s/ DARCIE L. HOUCK

Darcie L. Houck  
Administrative Law Judge

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

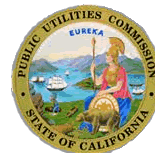
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**Exhibit G**

*Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative  
Law Judge (July 9, 2018) (“Amended Scoping Memo and Ruling”)*

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California 94111-5894  
Telephone: (415) 398-3600  
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***Attorneys for California Water  
Association***



DH7/gp2 12/18/2018

**FILED**

12/18/18  
03:55 PM

**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

**ADMINISTRATIVE LAW JUDGE'S RULING NOTICING JOINT  
WORKSHOP ON WATER SALES FORECASTING  
AND RISING DROUGHT RISK**

This ruling provides notice that the California Public Utilities Commission (Commission) and the State Water Resources Control Board (Board) will hold a joint public workshop on access and affordability of safe, clean, reliable drinking water. The workshop will address access, water sales forecasting and rising drought risk, as well as water conservation legislation that will impact water forecasting. The workshop will be held:

**Thursday, January 14, 2019 at 11:00 a.m. - 5:00 pm  
Joe Serna Jr. - CalEPA Headquarters Building  
Coastal Room  
1001 I Street  
Sacramento, CA 95814**

The Workshop is open to the public, and Parties to the proceeding are encouraged to attend.

## **1. Workshop Overview**

The workshop will focus on and include presentations on water sales forecasting and drought risk. The panels will be followed by public comments and Board member and Commissioner discussion. While a quorum of the Board and Commission including Board members and Commissioners may be present, this will be an informational workshop only, and the Board and Commission will take no formal action.

The workshop agenda will be as follows:

### **Water Sales Forecasting and Rising Drought Risk**

|                              |  |
|------------------------------|--|
| <b>11:00 a.m.</b>            | <b>Introductions</b>   |
| <b>11:15 a.m.-12:15 p.m.</b> | <b>Rising Risk of Drought</b>  |
| <b>12:15 p.m-1:30 p.m.</b>   | <b>Lunch Break</b>   |
| <b>1:30 p.m.-1:45 p.m.</b>   | <b>Water Conservation Legislation Update</b>   |
| <b>1:45 p.m.-3:30 p.m.</b>   | <b>Improving Water Sales Forecasting and Adjustments, given likelihood of Drought and new Water Conservation Legislation</b> |
| <b>3:30-4:00 p.m.</b>        | <b>Next steps and closing</b>  |

## **2. Purpose of Workshop**

The purpose of the joint public workshop is to provide 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, and how an improved, reliable water forecasting can enhance affordable pricing for low-income customers; and to receive public input on how to strengthen water forecasting and make affordability more successful.

### **3. Telephonic Participation**

Parties and the public may also participate by telephone. To participate by telephone, use the following call-in information:

**Call-in number: 877-820-7831**

**Participant Code: 212296**

### **4. Parking and Accessibility**

For directions to the CalEPA Building and public parking information, please refer to the map on the State Water Board website:

<http://www.calepa.ca.gov/EPAbldg/location.html>.

The CalEPA Building is accessible to persons with disabilities. Individuals requiring special accommodations are requested to call (916) 341-5880 at least 5 working days prior to the meeting. TDD users may contact the California Relay Service at (800) 735-2929 or voice line at (800) 735-2922.

All visitors to the CalEPA Building are required to sign in and obtain a badge at the Visitor Services Center located just inside the main entrance (10th Street entrance). Valid picture identification may be required. Please allow up to 15 minutes for receiving security clearance.

All visitors must check-in upon arrival to CalEPA and then proceed to the meeting room. Individuals who require special accommodations are requested to contact the Clerk to the Board at (916) 341-5600.

### **5. Additional Information**

Please direct other questions about this notice to Adenike Adeyeye at [Adenike.Adeyeye@cpuc.ca.gov](mailto:Adenike.Adeyeye@cpuc.ca.gov), 415-703-2005 or Marina MacLatchie at [Marina.MacLatchie@cpuc.ca.gov](mailto:Marina.MacLatchie@cpuc.ca.gov) 916-823-4782.

**IT IS SO RULED.**

Dated December 18, 2018 at San Francisco, California.

/s/ DARCIE L. HOUCK  
Darcie L. Houck  
Administrative Law Judge

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit H**

*Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report on Joint Agency Workshop; and Noticing Additional Proceeding Workshops (March 20, 2019), including Attachment A, Report on Joint Agency Workshop: Water Sales Forecasting and Rising Drought Risk*

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***Attorneys for California Water  
Association***



**FILED**  
03/20/19  
10:23 AM

**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

**ADMINISTRATIVE LAW JUDGE'S RULING INVITING COMMENTS  
ON WATER DIVISION STAFF REPORT ON  
JOINT AGENCY WORKSHOP; AND  
NOTICING ADDITIONAL PROCEEDING WORKSHOPS**

This ruling invites parties to comment on the California Public Utilities Commission's (Commission's) Water Division Report on Joint Agency Workshop- Water Sales Forecasting and Rising Drought Risk (Staff Report) held on January 14, 2019. This was a joint workshop between the Commission and the California State Water Resources Control Board (SWRCB). This ruling also provides notice of additional workshops for the proceeding in the area of low-income customer data sharing; rate design; and the SWRCB's Draft Assembly Bill (AB) 401 Report.

**1. Joint Agency Workshop Staff Report**

On January 14, 2019 a joint agency workshop between the Commission and SWRCB was held in Sacramento. A cross section of interested parties participated in the workshop with presentations from the SWRCB, Commission, investor owned water utilities, the Public Advocates Office of the California



Public Utilities Commission, and community-based organizations. Staff subsequently prepared a report summarizing the workshop. The Staff Report is attached to this ruling as Attachment A. Parties are invited to provide comment on the attached Staff Report by April 5, 2019.

## **2. Future Joint Agency Workshops**

At the January 14, 2019 workshop parties discussed the topics and need for additional workshops to complete the proceeding. Three additional workshops will be held addressing: 1) rate design; 2) low income electricity customer data sharing with municipal water utilities; and 3) SWRCB Draft AB 401 Report. The first two workshop topics were added to the scope of the proceeding on July 9, 2018.

This ruling directs the Commission's Process Office to serve this ruling to the following referenced proceedings as the parties to these proceedings have an interest in issues concerning low-income programs and policies concerning the sharing of energy utilities low-income customer data:

- A.14-11-007;
- A.14-11-009;
- A.14-11-010;
- A.14-11-011;
- A.15-02-001;
- A.15-02-002;
- A.15-02-003;
- A.15-02-013;
- A.15-02-024;
- A.15-03-004; and
- R.15-03-010.

Any party to the above referenced proceedings may submit comments or questions to be considered as to the relevant workshop. Parties may submit comments or questions in advance of the workshops and such comments or questions should be submitted no later than April 5, 2019 in order to be considered in development of the workshop agendas.

**3. Schedule**

Three workshops will be held on the following days.

| <b>Workshop</b>  | <b>Date</b>    | <b>Location</b>  |
|--|----------------|--|
|  |                |  |
| Data sharing (electric IOUs and municipal water companies) | April 12, 2019 | Joe Serna Jr. – CalEPA Headquarters Building<br>Sierra Hearing Room<br>1001 I Street<br>Sacramento, CA 95814 |
| Rate Design  | May 2, 2019    | California Energy Commission<br>Imbrecht Hearing Room<br>1516 9 <sup>th</sup> St.<br>Sacramento, CA          |
| Draft AB 401 Report  | TBD            | TBD  |

**IT IS RULED** that:

1. Commission staff will host three workshops consistent with the topics and schedule set forth in this ruling.
2. Parties may submit comments on the Staff Report attached to this ruling by no later than April 5, 2019.
3. Parties may submit comments or questions pertaining to the three workshops to be held consistent with this ruling no later than April 5, 2019 for comments to be considered in finalizing the workshop agendas.

4. The Commission Process Office shall serve notice of this ruling and the workshops scheduled herein on the following proceedings: A.14-11-007; A.14-11-009; A.14-11-010; A.14-11-011; A.15-02-001; A.15-02-002; A.15-02-003; A.15-02-013; A.15-02-024; A.15-03-004; R.15-03-010

Dated March 20, 2019, at San Francisco, California.

          /s/ DARCIE L. HOUCK            
Darcie L. Houck  
Administrative Law Judge



**FILED**  
03/20/19  
10:23 AM

# Attachment A

# **Report on Joint Agency Workshop**

Water Sales Forecasting and Rising Drought Risk

*California Public Utilities Commission and State Water  
Resources Control Board*

*R.17-06-024*

Prepared by:  
Jeremy Ho, Utilities Engineer  
Jefferson Hancock, Utilities Engineer  
Water Division, CPUC

January 18, 2019

## Summary

The California Public Utilities (Commission) and the State Water Resources Control Board (Board) held a workshop on January 14, 2019. At the workshop, speakers from the Board, the Department of Water Resources (DWR), the Public Policy Institute of California (PPIC), the Public Advocates' Office (PAO), California American Water, California Water Service, and Golden State Water Company discussed the conditions of drought as the new normal in California, the effects of the changing weather and climate conditions on water systems, and the role of sales forecasting methods as part of how water utilities adapt to drought. Representatives from investor-owned utilities (IOUs) and nonprofit groups as well as municipal water utility representatives were in attendance. Participants discussed the drivers, tools, and obstacles for improving sales forecasts, accounting for new changes in water-related legislation, and predicting and coping with drought conditions.

DWR presented its findings on managing water systems in the event of a drought. DWR discussed how the impacts of drought are defined primarily by geography and by who is impacted—for example, drought impacts tend to be greater in areas at risk of catastrophic wildfire, or in areas economically dependent on rangeland grazing, or in areas with water systems where the primary source is fractured rock groundwater. The variability of these impacts can make drought, as a concept, hard to define—for example, 2017 was an extremely wet year relative to the previous five years, but still recorded low groundwater recovery levels. DWR addressed how drought conditions disproportionately affect small water systems and discussed in depth the role of drought conditions on the risk of catastrophic wildfire. DWR then led into the thought process for utilities to begin forecasting and planning to incorporate the effects of wildfires in their systems. Three key aspects of drought contingency planning were highlighted: 1) vulnerability factors for a given water system; 2) planning; and 3) improving resilience. Small water systems rate especially high on vulnerability factors such as rural location, fewer connections, limited interconnection with outside systems, and so on. This combined with the economic difficulty for small water systems of adequate planning and recovering after drought conditions makes clear the risks of small water during drought conditions. The last major part of the drought contingency planning discussed by DWR was the role of safety factors and ensuring that supplies are diversified, a supply reserve is built, and complacency is avoided in case of a drought that is longer than predicted.

PPIC presented its findings on managing drought in changing climates. There are 5 main issues related to climate changes: 1) warming temperatures; 2) shrinking snowpack; 3) shorter wet seasons; 4) volatile precipitations; and 5) rising seas. Many of these factors are related—for example, in recent years the overall quantity of precipitation has been higher than previous years, but more of the precipitation occurs in winter relative to spring and autumn, which negatively impacts snowpack levels. Many utilities did not plan for a drought then flood which caused runoffs from the system into the ocean. The runoffs caused rising sea levels which compromised the delta by allowing more salt water to enter the system.

PPIC presented four essential reforms needed to within water utility systems: plan ahead, upgrade water grid, update water allocation rules, and find the money. In order to be adequately prepared, utilities need to strengthen their urban water management plans, create an effective ground water sustainability plan, develop drinking water plans for rural communities, and prepare ecosystem plans. Upgrades to the existing water grid is essential to prepare for future drought years for the following reasons: 1) Allows utilities to manage the system with different snowpack years, 2) Improve conveyance and storage capacity to show the community that actions are being taken to store for drought years, 3) Modernize and integrate operations to provide better technology to reduce water use in homes and business. With respect to water allocation rules, PPIC as well as several of the IOUs addressed the

challenges with water transfers, which need better rules to prioritize transfers during wet periods to promote groundwater recharge. PPIC also advocated streamlining water trading and banking across utilities, allocating a water budget for the environment, and improving water rights administration overall.

The Board discussed changes in water conservation legislation, most notably the urban water budgets that begin in 2023. The budgets mandate specific caps for indoor use, outdoor use, and water loss. The Board expanded on how each budget will be developed and phased in over the coming years. Next, the Board discussed new legislation related to drought planning, including extending the drought contingency forecast from three years to five. These changes also include annual water supply and demand assessments beginning in 2022, and ways to support the most vulnerable small water systems. The Board also discussed their compliance and enforcement approach to the legislative changes, as well as plans for information and engagement opportunities with stakeholder groups. The IOUs and Public Advocates' Office gave feedback on the Board's presentation, and conclusions were reached explaining that the water budgets will be in the aggregate over a utility's given service area. Also discussed was the role of utilities in iteratively defining caps for outdoor and water loss budgets and collaborating with the Board in the years before the budgets go into effect. Commissioner Guzman-Aceves tied the discussion to sales forecasts, noting that it will be important for the parties to be more conservative with sales forecasts as a direct response to the water budget legislation.

The Commission's Water Division moderated a panel consisting of representatives from Class A utility companies (California American Water, Golden State Water, and California Water Service Company) and PAO to discuss findings on sales forecasts using the New Committee Method (NCM). Golden State Water discussed the methodology of the NCM, and the Parties subsequently discussed the NCM's advantages and drawbacks. PAO stated that the NCM was created during the first GRCs in 2004 and hasn't been updated since the creation, with the original NCM using a 10-year period for data. PAO suggested to use a shorter time frame for the GRC to reduce overprediction, which will reduce water utilities to overbill and create more accurate forecasting. The IOUs generally agreed with the assessment that a longer time frame may not be as representative as recent years—that said, the Parties did not in general advocate for a total removal of the NCM, but instead favored increased flexibility for modified versions of the NCM in sales forecasting. Also discussed were the effects of mid-year corrections, water revenue adjustment mechanisms (WRAMs) and sales reconciliation methods (SRMs), which the IOUs claimed allow them to institute more accurate and equitable rates, but which PAO claimed reduce scrutiny of company expenses and are burdensome to ratepayers.

In summary, drought conditions are becoming a way of life in California and management of drought impacts by water utilities is critical. The workshop highlighted the unique risks to small water systems, but also noted the success that larger IOUs have had in managing drought impacts in their service area. With the water conservation legislation changes discussed, it is more important than ever to improve sales forecasting in a way that accounts for the reality of decreasing water supplies and use in California. More time and effort are still required to determine specifically what sales forecasting methods to adopt, but the Parties were able to work together regarding flexibility in variations of the NCM and that collaboration is expected to continue. Going forward, continuing communication between the Board, the Commission, and systems both large and small will be necessary to provide safe, reliable, and affordable drinking water for all of California.

# Agenda: Water Sales Forecasting & Rising Drought Risk

California Public Utilities Commission and State Water Resources Control Board Joint Public Workshop  
January 14, 2019 /// Coastal Room, CalEPA, Sacramento, CA /// 11am – 4pm  
Call-in number: 877-820-7831 Participant Code: 212296

## **11am // Introduction**

- Commissioner Guzman Aceves, California Public Utilities Commission

## **11:15am-11:55am // The Rising Risk of Drought**

- Caitrin Chappelle, PPIC Water Policy Center (Presenting on Managing Drought in a Changing Climate)
- Jeanine Jones, Department of Water Resources (presenting on drought risk and water resource management)

## **11:55am-12:15pm // Public Discussion**

## **12:15pm – 1:30pm // LUNCH BREAK**

## **1:30pm – 1:45pm // Water Conservation Legislation Update**

- Max Gomberg, State Water Resources Control Board

## **1:45pm – 2:45pm // Improving or Standardizing Water Sales Forecasts**

- What guidelines or mechanisms can the Commission put in place to improve or standardize incorporation of drought years and new conservation mandates into sales forecasting for Class A water utilities? Should there be mid-year corrections (April 1<sup>st</sup>)?
- Evan Jacobs, California American Water
- Suzie Rose, Public Advocates Office
- Keith Switzer, Golden State Water
- Greg Milleman, California Water Service
- Moderator: Raminder Kahlon, Water Division, California Public Utilities Commission

## **2:45pm – 3:45pm // Public Discussion**

## **3:45pm – 4pm // Next steps and closing**



IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

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*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit I**

Comments of California Water Association on Water Sales Forecasting and Rising  
Drought Risk Staff Report (April 5, 2019)

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

**FILED**

04/05/19  
04:59 PM

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

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

**COMMENTS OF CALIFORNIA WATER ASSOCIATION  
ON WATER SALES FORECASTING  
AND RISING DROUGHT RISK STAFF REPORT**

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Attorneys for California Water Association

April 5, 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)

**COMMENTS OF CALIFORNIA WATER ASSOCIATION  
ON WATER SALES FORECASTING  
AND RISING DROUGHT RISK STAFF REPORT**

In accordance with Rule 6.2 of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission ("Commission") and the instructions set forth in the *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report on Joint Agency Workshop; And Noticing Additional Proceeding Workshops* issued on March 20, 2019 ("Ruling"), California Water Association ("CWA") hereby submits these comments on the *Report on Joint Agency Workshop – Water Sales Forecasting and Rising Drought Risk* ("Staff Report"). CWA makes this filing as a party to this proceeding, and on behalf of the Class A water utilities named as respondents.<sup>1</sup>

**I. INTRODUCTION**

CWA is a statewide association representing the interests of investor-owned water utilities subject to the Commission's jurisdiction that serve reliable, high-quality drinking water to more than 6 million Californians. CWA has long been an active participant in Commission

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<sup>1</sup> 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.

proceedings on the issues of sales forecasting and drought,<sup>2</sup> and appreciates the Commission's continued commitment to ensuring that its policies and guidance in this subject area meet current challenges and conditions. CWA and CWA-member companies attended and actively participated in the January 14, 2019 sales forecasting workshop ("Joint Workshop") jointly hosted by the Commission and the State Water Resources Control Board ("Water Board").

## II. COMMENTS

### A. Overall Impressions

The Staff Report provides a high-level summary of the day's presentations and discussions, particularly in respect of the Commission's concerns about the effects of drought (in the recent past and into the future in consideration of California's changing climate) on the forecasting of water sales. Overall, the Staff Report accurately describes – in a summary fashion – positions taken by CWA and the individual water utility participants. In particular, CWA appreciates that the Staff Report properly observes the water utilities' goal of achieving more accurate forecasts,<sup>3</sup> rather than simply "reduced," or more "conservative," estimates – notwithstanding the fact that current climate trends and regulatory developments generally support lower customer usage. Whether the forecasts adopted in any given GRC are high, low, or somewhere in between is not dispositive of whether that forecast is good or bad. The goal for the water utilities, their customers, and the Commission is, and should continue to be, forecasts that match actual sales as closely as possible.<sup>4</sup>

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<sup>2</sup> The proceedings to which CWA refers include the 2011-2016 "Balanced Rates" Rulemaking ("R.") Proceeding (R.11-11-008) that generated Commission Decision ("D.") 16-12-026, which authorized and encouraged the investor-owned water utilities to propose new and improved forecast methodologies in their general rate case ("GRC") applications or in standalone applications to the Commission, in specific consideration of drought-impacted consumption trends.

<sup>3</sup> Staff Report, p. 2, paragraph 2.

<sup>4</sup> See, e.g., D.16-12-026, at 6 [The Commission recognized that current methodologies produced forecasts that were "wildly off" during economic downturns and periods of drought, resulting in higher Water Revenue Adjustment Mechanism ("WRAM") balances, and noted: "Inaccurate forecasts provide the air that balloons the WRAM and surcharges."]

## **B. Next Steps**

As CWA indicated in its January 22, 2019 *Comments in Response to Administrative Law Judge's Ruling Setting Status Conference*, CWA does not believe that the Commission needs to implement any industry-wide reforms in respect of sales forecasting at this time. That there is disagreement among stakeholders about sales forecasting methodologies and related mechanisms is clear from the workshop, but those issues are better addressed on a case-by-case basis in individual ratesetting proceedings. Instead, the Commission should build on its recent record of more accurate forecasts by:

- (1) Endorsing the move away from the rigid application of the New Committee Method accelerated by the adoption of D.16-12-026;
- (2) Affirming and continuing to support the use of new methodologies that rely on more representative data to produce particular forecasts in general rate case proceedings ("GRCs");
- (3) Affirming the value of implementing Sales Reconciliation Mechanisms in individual cases; and
- (4) Closely monitoring the work of the Department of Water Resources ("DWR") and the State Water Resources Control Board ("State Water Board") in their work to develop water efficiency standards (as required by statute), which are likely to guide sales forecasts in future GRCs.

## **C. Technical Corrections**

CWA respectfully requests that, for clarity and consistency, the Staff Report be revised as follows:

- (1) In the first paragraph of the Summary: Specify that representatives from the "investor-owned water utilities" attended the workshop (so as to make it clear that the CPUC-regulated energy utilities, for example, did not attend).
- (2) In the first paragraph of page 1 and the second full paragraph of page 2 of the Summary: Provide the complete company names of the Class A water utility companies that participated as panelists. Specifically, "California-American Water Company" should replace "California American Water" and "Golden State Water Company" should replace "Golden State Water."

- (3) In the second full paragraph of page 2 of the Summary: "Sales reconciliation methods" should be replaced by "sales reconciliation mechanisms."
- (4) In the second full paragraph of page 4 of the Summary: "PAQ suggested to use a shorter time frame for the GRC to reduce over prediction, which will reduce water utilities to overbill and create more accurate forecasting." The wording is confusing and the use of the word "overbill" is inaccurate. Reliance on longer time frames generally has created an undercollection problem, not an overbilling problem. Accordingly, the sentence should be revised to read: "PAQ suggested that a shorter time frame for GRC sales forecasts be used to reduce inaccuracies, reduce the magnitude of after-the-fact billing adjustments, and create more accurate adopted sales forecasts."

### III. CONCLUSION

CWA appreciates the opportunity to provide these comments on the Staff Report. For the reasons discussed above, CWA submits that the Commission has adequately examined and addressed the sales forecasting issue as scoped for Phase I of this proceeding. We look forward to the upcoming workshops on the topics of rate design and the Water Board's Draft AB 401 Report, scheduled for later this quarter and year.<sup>5</sup>

Respectfully submitted,

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Attorneys for CALIFORNIA WATER  
ASSOCIATION

April 5, 2019

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<sup>5</sup> Per the electronic mail ruling of Administrative Law Judge ("ALJ") Houck, issued on April 5, 2019, the April 12, 2019 workshop on data-sharing has been cancelled.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit J**

*Administrative Law Judge's Ruling Inviting Comments on Water Division's Staff Report and Modifying Proceeding Schedule (June 21, 2019) ("June 2019 ALJ's Ruling"), including Attachment A, Report on Low-Income Workshop: Water Rate Design for a Basic Amount of Water at a Low Quantity Rate*

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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

**ADMINISTRATIVE LAW JUDGE'S RULING INVITING COMMENTS  
ON WATER DIVISION STAFF REPORT AND  
MODIFYING PROCEEDING SCHEDULE**

This ruling invites parties to comment on the California Public Utilities Commission's (Commission's) Water Division Report on Low-Income Workshop- Water Rate Design for a Basic Amount of Water at a Low Quantity Rate (Staff Report) held on May 2, 2019. This ruling also presents questions for the parties to respond to and provides notice of modifications to the proceeding schedule and additional workshops for completing the proceeding record.

**1. Workshops, Staff Reports, and Next Steps**

The proceeding was initiated in June of 2017. The scoping memo for the proceeding was issued on January 9, 2018 setting forth the issues to be addressed in the proceeding. To date joint workshops have been held with the State Water Resources Control Board (SWRCB) addressing the following areas: 1) access, affordability of safe, clean, reliable drinking water; 2) consolidation of water



systems; 3) water forecasting and rising drought risk; and 4) water rate design for a basic amount of water at a low quantity rate.

The first workshop was held on August 17, 2017 at the California Environmental Protection Agency (CalEPA) Building, in Sacramento. This was a joint workshop between the Commission and the SWRCB. This workshop provided an overview of the joint concerns and purposes of the proceeding, including water quality, affordability and consolidation efforts by the Commission and the State Water Resources Control Board (SWRCB) as a means of providing safe drinking water.

A second workshop was held on November 13, 2017. This workshop was also a joint workshop between the Commission and the SWRCB and was held at the State Personnel Board in Sacramento. The workshop addressed access and affordability of safe, clean reliable drinking water with a focus on consolidation of water systems in areas that lack safe access to water. A staff report was completed and attached to the scoping memo issued on January 9, 2018.

A third workshop was held on January 14, 2019 to address water sales forecasting and rising drought risk. This workshop was held at the CalEPA Building in Sacramento. A ruling issued on March 20, 2019 included the staff report for this workshop and party comments on the staff report were received on April 5, 2019.

A fourth workshop was held on May 2, 2019. This workshop was held at the California Energy Commission in Sacramento and addressed rate design and basic low-income water rates. Staff subsequently prepared a report summarizing the workshop. The Staff Report is attached to this ruling as Attachment A. Parties are invited to provide comment on the attached Staff Report consistent with this ruling.

An additional workshop will be held on August 5, 2019 to discuss comments received on the matters set out during the proceeding including: 1) consolidation of at-risk systems; 2) forecasting; and 3) rate design. The SWRCB Draft Assembly Bill (AB) 401 Report has not been finalized. The Commission will continue to monitor progress on finalizing the report and any subsequent legislation that results later as to a statewide low-income water program. However, the recently enacted 2019-2020 state budget includes \$130 million and AB 72, an early appropriation signed by the Governor includes \$26 million to address failing water systems. This funding presents an opportunity for public utilities to potentially consolidate or manage these failing systems.

The proposed decision in this proceeding may include amendments to the Commission's program rules in the areas of consolidation, forecasting, rate design, and other implementation measures to enhance water affordability, including low-income programs. In order to ensure a complete record for consideration in this proceeding the parties, in addition to commenting on the attached Staff Report, are to respond to the questions set out below. Parties may also provide comments on any other relevant matter within the scope of this proceeding. Comments and responses are to be provided no later than July 10, 2019 with responses to comments due on July 17, 2019.

A workshop to discuss potential changes to enhance water affordability, including the existing low-income programs, will be held on August 5, 2019. Parties are directed to provide response to the questions presented below which will be discussed at the August 5, 2019 workshop.

## 2. Questions Presented for Party Comment

Parties are to provide comment on the attached Staff Report (Attachment A to this ruling) in addition to responding to the following questions:

- A. Should the Commission review and consider any changes to the current rules and guidelines for acquisitions and mergers of water companies set out in D.99-10-064 for purposes of ensuring that its processes allow for efficient and cost-effective consolidation of at-risk small water systems?
  - a. If the answer to the above question is yes, what changes are recommended to allow for efficient and cost-effective consolidation of at-risk investor owned small water systems?
  - b. Are there specific existing or new processes that should be developed to maximize the Commission's work with the SWRCB's priority failing systems or for acquisition and mergers of failing public water systems by investor owned water utilities?
- B. What if any changes should the Commission consider as to its water forecasting? How do we include the potential for drought in forecasting future sales, or what other mechanism can be implemented to ensure a more accurate forecast?
- C. Should there be a mechanism to adjust rates mid-year or end of year as the shortfalls occur, especially during drought years?
- 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?
- G. Should the Commission direct class B, C, and D water utilities to adopt low-income programs? If so, how should it be paid for; *i.e.* should there be one low-income water program that applies across all water utilities?
- H. Should there be a standardized monthly discount rate or amount across all water IOUs low income programs? If so, how should it be determined?
- I. Should the low-income program discount amount be based on a customer's ability to pay? How should the customer's ability to pay be measured?
- J. How should the low-income water program ensure that low-income water users that rent and do not directly pay their water bill are the beneficiary of the programs discount rather than the landlord or building owner?
  - a. Provide examples of how the program works now and whether it provides savings to low-income renters that do not directly pay their water bills; and what recommended changes to the program could provide direct savings to these water users.
  - b. Should there be a pilot program to test potential mechanisms to implement proposals?
- K. What mechanisms should be included to monitor the low-income water program to assess what works and what does not in ensuring that low-income customers are able to access sufficient quantities of quality water for human consumption?



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# Attachment A

# Report on Low-Income Workshop

## Water Rate Design for a Basic Amount of Water at a Low Quantity Rate

*A California Public Utilities Commission Workshop*

*Imbrecht Hearing Room, 1516 9<sup>th</sup> St, Sacramento, CA*

*May 2, 2019*

*R.17-06-024*

Report Prepared by:  
Marc Hutton, Utilities Engineer  
Jeremy Ho, Utilities Engineer  
Water Division, CPUC

May 16, 2019

## Summary and Introduction

On May 2, 2019, the California Public Utilities (Commission) held a workshop related to Rulemaking R.17-06-024 at the California Energy Commission's Imbrecht Hearing Room at 1516 9<sup>th</sup> Street, Sacramento. The workshop was directed by Commissioner Martha Guzman Aceves and Administrative Law Judge Darcie Houck. The purpose of the workshop was to discuss "Water Rate Design for a Basic Amount of Water at a Low Quantity Rate." The workshop consisted of both morning and afternoon sessions.

Speakers at the workshop included representatives of Commission Water Division (WD) represented by Director Raminder Kahlon, the California Water Association (CWA) represented by Jack Hawks, Nossaman LLP (Nossaman) represented by Mari Davidson, Public Advocates Office (PAO) represented by Suzie Rose, Leadership Counsel for Justice and Accountability (LCJA) represented by Michael Claiborne, and Community Water Center (CWC) represented by Debi Ores. In attendance were primarily representatives from investor-owned utilities (IOUs) and nonprofit groups, as well as from municipal water utility representatives. There also was a telephone line open for participants by phone.

After the Commissioner's introduction, WD presented an overview. There was a morning panel that discussed "Defining the Goals: Basic Quantity and Low Rate and Retaining Balanced Rates for Conservation and Investment." The afternoon panel discussed "Potential Rate Design Ideas and Potential Low-Income Program Design. Finally, the Commissioner and the Administrative Law Judge concluded the workshop and indicated the next steps going forward.

## Water Division Overview

WD presented the evolution of water low-income programs starting in 1993 with Section 739.8 added to the Public Utilities Code. The progression led to water action plans in 2005 and 2010, and eventually to Decision (D) 11-05-020 in 2012. Over time, the Commission was able to double the participation rates in low-income programs for the water utilities and the energy utilities. WD provided information on current low-income rate designs between the Class A water utilities. Next WD discussed the water action plans from 2005 and 2010 and whether tasks were completed. A short explanation was provided describing the difficulties faced with the action items that were not completed, which are to address multi-family housing and to standardize water low-income programs. WD presented information on two decisions in Rulemaking (R.)11-11-008: Phase 1 decision D.14-10-047 created a rate support fund and fostered intra-utility consolidation. Phase 2 decision D.16-12-026 fostered a Sales Reconciliation mechanism, steep tiered rates along with a super-user charge, and a change in the fixed charge portion of rates from 30% to 40% of revenue. Finally, WD discussed the recommendations from the January 2019 Draft Report of the State Water Resources Control Board from Assembly Bill 401. The recommendations include that there be one statewide water low-income program set to aid all households below 200% of the Federal Poverty Level. There should be discounts to three tiers of usage. The report estimated that the program would cost on the order of \$606 million per year.

## Morning Panel: Defining the Goals: Basic Quantity and Low Rate and Retaining Balanced Rates for Conservation and Investment

The first panelist, representing LCJA discussed the need to apply Water Code Section 106.3, which is to provide “every human being ... the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” The panelist considered water rates to be affordable when no tradeoffs are present based on household income. Varying rates across different utilities can cause stress on households in the low-income bracket. LCJA provided examples of households that faced tradeoffs in order to pay for their water bills, such as the tradeoff between drinking contaminated river water and paying water utility for clean drinking water, cities needing to use bottle water, or paying high monthly bills that are unaffordable for the area. The next topic was whether a basic quantity is necessary. LCJA discussed that State Water Resources Control Board report on AB 401 provided a range between 6 Centum Cubic Feet (CCF) and 12 CCF, but it may be difficult to choose a value between that range. Instead, the basic quantity should be determined by essential indoor use and tailored based on household size and geography.

The PAO representative stated that water bills are increasing at a rate faster than inflation, which correlates to the amount of revenue utility companies want to make as opposed to affordable rates. A data driven approach will target a long-term view of rate increases for a given utility. PAO proposed that utilities should use a cost reporting tool to track their rate increases over a 10-year period. General Rate Cases (GRC) were the main contributor for rate increases. Using the cost reporting tool will allow the Commission to obtain data on the rate increases over the years. In addition, there are rate increases between GRCs through the Water Revenue Adjustment Mechanism (WRAM) advice letters. PAO suggested that basic quantity rates should be either a low quantity rate that is affordable for all users or a separate tier. Having a basic quantity as a tier captures households that are unable to apply for low-income programs by automatically enrolling said customers. Another topic was super-high usage, regarding which PAO suggested that super-users cause a high strain on the water systems and can cause higher costs due to their excessive usage of water. As a result, super-users should bear those costs. A possible solution is creating a separate tier for excessive usage. PAO provided research in the form of an article from the Pacific Institute in September 2018 titled *Measuring Progress Toward Universal Access to Water and Sanitation in California*. That article recommends 43 gallons per capita daily (gpcd) instead of 55 gpcd, reduces a household from 4 people to 2.5 people, and reduces the monthly essential usage to 5 CCF per month instead of 12 CCF per month as stated in State Water Resources Control Board *Options for Implementation of a Statewide Low Income Water Rate Assistance Program* report. To help low-income users reach this monthly threshold, PAO suggested assistance programs to replace existing appliances with water-efficient appliances, which both addresses conservation and reduces customer bills.

CWA and Nossaman collaborated on a presentation which discussed basic quantity considerations and impacts. A key question was whether the purpose of this rulemaking is a change to the existing LIRA Program or a change to the rate designs. In addition, the presentation provided questions on the definition of basic quantity: 1) should a basic quantity provide a reduced rate or no-charge rate? 2) Is the



basic quantity for all customers or strictly low-income eligible customers? 3) Separate rate design for LIRA eligible and non-LIRA eligible customers? 4) What is the basis for basic quantity rates (e.g. indoor use, average winter, minimum health and safety needs, etc.)? In addition, to provide transparency to customers, the presenters asked how utilities can display the subsidies, basic quantity charges, service charges, and other charges on customer bills. CWA and Nossaman asked whether the basic quantity should be a percentage of average customer usage or a flat rate. Also, CWA and Nossaman presented questions based on the impacts of creating a basic quantity among water utilities. Another question presented by CWA and Nossaman was a utility's recovery of revenue requirement on sales after the basic quantity usage. They stated that non-eligible customers would pay more regardless of how a percentage discount for basic quantity is applied and regardless of recovery methods decided in any particular proceeding.

During the discussion period, Commissioner Guzman Aceves and representatives from San Jose Water Company, Great Oaks Water Company, Liberty Utilities, Golden State Water Company, Center for Accessible Technology, California American Water Service, and PAO presented their ideas on the morning session.

Commissioner Guzman Aceves stated that in Pennsylvania, they use an "ability to repay" program which allows customers with an income at or below 150 percent of the federal poverty level to pay two to four percent of their income. She also noted that the ability to repay method may work in Pennsylvania due to their abundance of water but does not enforce the use of conservation which California is trying to enforce.

### Afternoon Panel: Potential Rate Design Ideas and Potential Low-Income Program Design

CWA and Nossaman presented first during the afternoon. They began with a discussion of the principles of rate design, the so-called "Bonbright Principles," including avoiding waste, yielding revenue recovery, providing revenue stability and practical rate attributes, fairness among classes of customers, and avoiding undue discrimination among customers. They added that state policies also include protections for low-income customers and balancing affordability, necessary investment, and conservation.

The first topic of discussion was marginal-cost pricing for water utility rates. Specifically, the dialogue focused on tiered rates, indoor vs. outdoor water use, a fixed quantity associated with the lowest-tier rate, and an increased percentage of revenue from service charges. Next, the participants discussed the benefits of reducing bill volatility. Related subjects included annual true-ups, the CARE system, the impact of steep tiers on bill volatility, and water-budget rate structures. Third, low-income programs for multi-family properties were deliberated. Specifically, parties considered if multi-family properties that cater to low-income customers should receive low-income discounts, and if larger meter rates should consider tenant income level. Finally, the representatives exchanged views on the impact of conservation water pricing on affordability for low-income customers.

CWA presented rate design ideas and potential designs for low-income programs. Regarding the benefit of reducing bill volatility, CWA noted that recovering revenue shortfall in volumetric rates exacerbates

bill volatility. Furthermore, CWA identified outdoor water use as a source of bill volatility. CWA proposed annual true-ups and uniform rate design as solutions to bill volatility. Reducing bill volatility would also decrease backlash from rate changes, much of which comes from non-low-income customers frustrated by complicated bills and continuously changing rates. Ultimately, CWA advised combining uniform rate design with fixed cost recovery in the service charge and annual sales true-ups to promote revenue stability, bill stability, simplicity, and transparency.

CWA discussed the usefulness of the CARE program, steep tiers, and water-budget rate structures. First, CWA believes the CARE system is an appropriate model for low-income customers, except when the level of low-income-eligible customers equals or surpasses the number of non-eligible customers. In such a case, CWA believes the model would require increased granularity. Second, steep tiers are believed to reduce bill volatility only when customers modify their behavior to avoid the higher tiers. Finally, water-budget rate structures are expected to be useful when advanced meter infrastructure is deployed and/or when the new conservation regulations become effective in 2023.

Finally, CWA presented its considerations for low-income programs for multi-family properties. A topic of great interest is how rate subsidies to low-income customers can be provided to those customers in apartment buildings and any other places where the residents do not have a utility meter and account but, instead may be submetered and charged by the landlord, or may pay their water costs through their rent. CWA asserted that the primary consideration for multi-family housing is ensuring low-income tenants receive the benefits. CWA recommended that the LIRA benefit for low-income customers in multi-family properties be distributed through the tenant's electric bill when customers are individually metered by an energy utility because energy utilities already have the information to determine CARE-eligibility. CWA acknowledged that some energy utilities would resist the responsibility of administering low-income benefits for water utilities and would prefer a statewide program instead. Regardless, CWA believes that providing low-income discounts to landlords of master-metered multi-family properties and expecting the benefits to be passed on to low-income tenants would be neither effective nor enforceable. Currently, there is a lack of regulation that requires landlords to pass the low-income discounts of master-metered properties to low-income tenants, which would allow the landlords to keep the discounts if they were provided one. A representative of San Diego Gas & Electric Company strongly objected to the idea of using electric (or other) utility accounts as mechanisms to provide subsidies to water users without individual water accounts. The point was made that the energy utility companies do not wish to be administrators for such a program.

Nossaman presented ideas for rate design and low-income programs. Nossaman did not discuss marginal-cost pricing in detail, focusing on fixed costs instead. Nossaman argued that fixed cost recovery should be concentrated within the service charge and advocated to limit the basic quantity to indoor water use only. However, Nossaman cautioned that if a basic quantity rate were set uniformly for both low-income and non-low-income customers, low-income customers would likely experience increased service charges as a result, offsetting the desired effects of the discounted basic quantity rate. Also, Nossaman warned of the administrative complexity of using separate rate designs for low-income customers and unintended consequences of under-collecting revenue, which could lead to surcharges and "intergenerational inequity".

Nossaman noted that bill volatility results from the effect of quantity rates being applied to changes in water usage. Greater reliance on steep tiers would result in greater bill volatility in the presence of even small changes in usage. A member of the audience noted that high tiered rates produce not only bill volatility for customers, but also greater revenue volatility to a utility in the presence of even small changes in customer usage. To a degree, the WRAM process protects the utility company from the volatility. But without a WRAM, revenue volatility can be very difficult for the utility company and may result in revenue losses and higher cost of capital.

Nossaman agreed with CWA that the main consideration for low-income programs for multi-family properties is to ensure that the tenants receive the benefits. Referring to AB 401, Nossaman proposed that low-income programs for multi-family units may be easier to administer at a statewide level than through the Commission, noting that some utilities have considered switching from the CPUC program to a statewide program.

PAO presented next, providing thoughts on rate design and low-income programs. PAO maintained that the first steps in keeping affordable rates are to reduce discretionary spending and ensure all plant additions are reasonable and prudent. That is, the biggest thing we can do to increase affordability of water service is to reduce the revenue requirement to the minimum needed to provide safe, reliable service that is cost-effective.

As a general principle, PAO does not support marginal-cost pricing as a tool for conservation because there are more effective methods to reduce consumption. Nevertheless, PAO believe utilities should evaluate the costs of the next available sources of water and base higher tier rates on these costs, where high-users bear a greater proportion of the costs.

PAO echoed the sentiment that the conservation rate design paradigm of recovering a large portion of fixed costs through quantity rates has increased revenue volatility because most water utilities have a large proportion of fixed costs. PAO asserted that Water Revenue Adjustment Mechanisms (WRAM) and/or decoupling can contribute to bill volatility. PAO claimed that increasing the proportion of fixed costs recovered through quantity rates could increase bill volatility for low-income customers because most utilities have WRAM. Thus, especially for low-income customers, there may be a tradeoff between volatile bills and higher but more stable bills, depending on how fixed costs are allocated between service charges and quantity charges. However, recovering too little of revenue through quantity rates could result in undesirable conservation impacts, especially if service charges make up over 80% of a customer's bill.

PAO argued that better forecasting, not annual true-ups, are needed to reduce revenue volatility. Accurate forecasting can reduce revenue volatility, even with steep tiers. Furthermore, when customers understand their billing structure, bill volatility can be reduced. PAO asserted that constant rate changes make it difficult for customers to plan and control their utility bills. PAO proposed discontinuing WRAM considering its effect on bill volatility, or at least restricting it to conservation-related revenues.

PAO stated that what customers want is control over their bills, so understanding the rate structure can be helpful to customers. We assume that high usage tiers do result in conservation. Providing intra-month usage information to customers to help keep on track would require frequent automated meter

readings. That would be very expensive and probably not cost effective. It might be possible to provide text messages if the utility sees the likelihood of leaks. In energy utilities, where most people already have access to intra-month information (even daily information) very few customers look up the information.

CWC made the final presentation in the session, focusing on the issue of low-income programs for multi-family properties. CWC agreed with CWA and Nossaman that distributing low-income benefits directly to customers is a key consideration for program design. CWC proposed an income tax credit to administer low-income benefits to customers but noted that it may not send the same price signals as CARE does. Nevertheless, a tax credit would effectively achieve the goal of helping low-income customers pay their water bills without making serious tradeoffs.

CWC addressed the impact of conservation pricing on affordability for low-income customers in multi-family housing. Conservation pricing can harm low-income customers if not paired with programs that help customers save water, especially because renters generally don't have authority to make major upgrades. CWC recommended that landlords of multi-family properties with low-income tenants should promote appliance and fixture upgrades. Furthermore, CWC argued that conservation rates should consider other factors such as geographic location, climate, occupation, and household size when determining an appropriate basic quantity.

In the discussion period that followed the presentations, there was discussion of the goal of a statewide program for low-income customers. It was noted that it would be very difficult for the publicly owned water utilities to participate in a statewide program. Commissioner Guzman Aceves noted that there can be consolidation of districts within utility companies for a multi-district company to have its low-income program spread across all of its service area, including multiple districts. And it may be possible to do an IOU-Wide program across all CPUC-jurisdictional utility companies. A questioner from the audience asked if the Commissioner was recommending a fund that would take money from customers of one utility company to provide aid to customers of another utility company. The response was that such a program might be more like the Lifeline model used in communication, and less like the CARE model used by the energy utilities.

An audience member noted that the discussion of water utility rates and rate design for the jurisdictional utilities had left out any reference to the public agencies that provide water service. Benchmarking IOU rate design against POU rate design shows that the IOU rates have not increased at a higher rate in general. And regarding such rate-design alternatives as a free allowance, hardly any POUs use that mechanism. Many POUs are increasing the service charge and decreasing the first-tier rate.

This workshop provided valuable discussion about establishing a basic quantity and low rates for low-income customers as well as potential rate design ideas and low-income program designs. There are challenges in determining the basic quantities due to varying income levels across the state, number of people in households, and master-metered properties, but all parties determined that basic quantities are an important factor for improving water affordability for low-income customers. While parties disagreed on rate design for low-income customers, the discussion provided many rate design ideas and considerations. Parties generally agreed on sources of revenue volatility and bill volatility but recommended different solutions. The consensus on low-income program design for multi-family

properties is that benefits should be distributed directly to eligible customers, though parties disagreed on the specific means. Finally, participants agreed on the tension between conservation pricing and affordability but offered different solutions to balance the two. Going forward, continuing communication between the Board, the Commission, and systems both large and small will be necessary to provide safe, reliable, and affordable drinking water for all of California.

### Wrap Up: Next Steps and Closing

Commissioner Guzman Aceves stated that we have hit a lot of important topics today at this workshop. The Commission will not be making decisions based on what is said at the workshop, and we have not reached conclusions about future actions at this workshop.

Administrative Law Judge Houck explained that the next step is to receive the PowerPoint presentations and the Staff Workshop Report. A ruling will attach the report and will ask for comments. The ruling will ask for process recommendations as well as recommendations on substance.

The workshop was then adjourned.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit K**

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 2019 PAO Comments”)

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

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

Rulemaking 17-06-024

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

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July 10, 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

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

**I. INTRODUCTION**

Pursuant to Administrative Law Judge Darcie Houck's (ALJ) June 21, 2019 Ruling Inviting Comments on Water Division's Staff Report and Modifying Procedural Schedule (Ruling), the Public Advocates Office at the California Public Utilities Commission (Public Advocates Office) submits these comments. The Ruling requests party comments on the California Public Utilities Commission's (Commission's) Water Division Report on Low-Income Workshop- Water Rate Design for a Basic Amount of Water at a Low Quantity Rate (Staff Report) held on May 2, 2019, as well as questions in eleven topic areas.

The Public Advocates Office responds to questions posed in the Ruling and makes the following recommendations:

1. The Commission should modify Decision (D.) 99-10-064 because the procedures and timelines do not comply with Public Utilities (Pub. Util.) Code § 1701.5(b)(1), or Rule 2.6(a) of the Commission's Rules of Practice and Procedure and General Order 96-B.



2. If Assembly Bill (AB) 1751 is enacted, D.99-10-064 must be rescinded or modified to comply with the time frames and other requirements AB 1751 would establish for acquisition-related advice letters and applications.
3. The Commission should establish and implement procedures to streamline and more efficiently process acquisition requests, regardless of whether AB 1751 is enacted. Minimum Data Requirements and Checklists would help with this efficiency goal.
4. In addition to adopting the proposed Acquisition Application/Advice Letter MDR and Checklist, the Commission should limit the scope of what may be requested in an acquisition application/advice letter to only those matters necessary to comply with the requirements of Pub. Util. Code § 2720.
5. The Commission should rely on the State Water Resources Control Board's Division of Drinking Water to identify troubled systems that require expedited processing and be careful and deliberate in processing applications for water systems that are not troubled systems to ensure that such acquisitions are in the public interest.
6. There should not be a mechanism like Sales Reconciliation Mechanisms (SRMs) to adjust rates mid-year or at the end of the year. The Commission should eliminate existing SRMs, including Drought SRMs.
7. The Commission should, in the intermediate term, order conversion of full Water Revenue Adjustment Mechanisms (WRAMs) to Monterey-style WRAMs, which are directly tied to the impact of conservation efforts on water consumption. The Commission should then explore eliminating any and all decoupling mechanisms because compliance to conservation mandates is now required by law, addressing any disincentives utilities might have to achieve conservation outcomes.
8. The Commission should require Water IOUs to provide a baseline quantity of water at low-cost for all customers.
9. The Commission should allow Water IOUs with existing Low Income Rate Assistance (LIRA) programs to continue until a state-funded, statewide LIRA program is adopted and implemented.
10. The Commission should await the outcome of the AB 401 process regarding a state-funded, statewide LIRA program before addressing how to meet the needs of low-income water users that do not pay their water bill directly.
11. The Commission should look at various factors to assess how effective low income programs are, such as service disconnections and non-payment of bills.

- 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 than 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,<sup>20</sup> 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

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<sup>20</sup> 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.<sup>21</sup>

- 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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<sup>21</sup> 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.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit L**

Reply Comments of California Water Association Responding to Administrative  
Law Judge's June 21, 2019 Ruling (July 24, 2019)

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



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

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

**REPLY COMMENTS OF CALIFORNIA WATER ASSOCIATION  
RESPONDING TO ADMINISTRATIVE LAW JUDGE'S JUNE 21, 2019 RULING**

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July 24, 2019

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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**

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.<sup>1</sup> 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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<sup>1</sup> 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.<sup>2</sup> 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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<sup>2</sup> PAO Opening Comments, p. 13.

platforms with a larger water utility, the breadth of employee expertise available at the larger water utility, and supporting a level of expertise required to navigate often complex requirements for government programs such as grant funds and revolving fund loans. Consolidation also allows larger utilities to offer low-income customer assistance programs to small customer bases that would not be able to implement such programs on their own. Therefore, the Commission should strive to process all applications for acquisitions expeditiously.

**G. The Commission should authorize sales reconciliation mechanisms and other mechanisms to adjust rates mid-year or end of year.**

PAO argues that “[t]here should not be a mechanism to adjust rates mid-year or end of year if shortfalls occur, even during drought years.”<sup>28</sup> PAO addresses such mechanism as Sales Reconciliation Mechanisms (“SRMs”) and argues that “[e]xisting SRMs, including Drought SRMs, should be eliminated.”<sup>29</sup> Doing this would not benefit customers (low-income or otherwise) and would instead exacerbate the volatility of adopted revenue recovery. Instead, for the reasons previously outlined by CWA<sup>30</sup> and other parties,<sup>31</sup> the Commission should seek to expand the use of SRMs to allow water utilities to institute more accurate and equitable rates and to avoid the intergenerational inequity and other harms resulting from accumulated balancing account undercollections. In turn, these effects will increase the accuracy of price signals, and provide more transparency to the customer about the real cost of water service.

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<sup>28</sup> PAO Opening Comments, p. 11.

<sup>29</sup> *Id.*

<sup>30</sup> CWA Opening Comments, p. 13.

<sup>31</sup> See Section III.A below regarding the recommendation of Southern California Edison for more frequently updated sales forecasts for ratemaking purposes.

The Commission recently articulated the arguments in favor of SRMs when it adopted Resolution W-5192, granting the Southern California Edison (“SCE”) Catalina Water System a pilot program to implement a Consumption Adjustment Mechanism (“CAM”) that functioned as an SRM:<sup>32</sup>

These updated rates will also provide more rate and customer bill stability with improved pricing information to customers so that conservation rate signals are more timely and consistently provided to customers. This will also address intergenerational equity concerns with more timely recovery of costs in rates (i.e. not deferring cost recovery of large lost revenue balances to future customers, but improving the alignment of that cost recovery with current customers). In addition, reduced interest costs will result from shortening the period that the lost revenue balances accrue interest. It will be reasonable for the CAM to use the latest annual consumption numbers because customer usage has been, and continues to be, unpredictable. This is due to many factors including promoted conservation activities and increased customer response to conservation rates. The annual true-up adjustment process will use updated consumption data to improve revenue recovery and stabilize rates compared to existing procedures. Overall, this mechanism will moderate the lost revenue balances that have continued to accrue for SCE.

In light of the Commission’s recent findings supporting the CAM in that resolution, which was adopted just recently at the May 16, 2019 Commission meeting, PAO’s blanket recommendation against SRMs is directly contrary to Commission policy and should be rejected. Additionally, the individual arguments set forth by PAO in support of its recommendation to eliminate all SRMs are unreasonable and unpersuasive.

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<sup>32</sup> Resolution W-5192, p. 13.

First, PAO argues that “SRMs result in more frequent rate changes for customers.”<sup>33</sup> However, SRM adjustments (when triggered) can be incorporated into existing annual step rate filings. Moreover, adjusting sales forecasts more often than once per three-year GRC cycle would provide customers more accurate price signals to appropriately adjust their behavior. Additionally, utilities could align rate changes associated with SRMs to other rate changes that might occur, such as anticipated step increases for the two attrition years of the GRC cycle. The concerns raised by PAO<sup>34</sup> regarding low-income customers are more appropriately addressed by the mechanisms being considered in this proceeding.

Second, PAO objects to the fact that an SRM would amount to single-issue ratemaking by only assessing water sales. Such a mechanism focused on sales forecasts is appropriate because they are difficult to predict on a three-year scale, in contrast to other aspects of a water utility’s GRC. To the extent that other aspects warrant re-evaluation and incorporation into rates more frequently than the three-year GRC cycle, the Commission could similarly provide for such a process to adjust for those factors.

Third, PAO argues that “SRMs rely on a limited timeframe for sales forecast adjustments.”<sup>35</sup> However, this feature of SRMs is exactly what allows it to reflect the most up-to-date conditions and generate the most accurate sales forecast.

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<sup>33</sup> PAO Opening Comments, p. 11.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*, p. 12.

Fourth, PAO argues that “SRMs decrease the incentive to provide accurate sales forecasting in GRCs.”<sup>36</sup> PAO asserts that “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.”<sup>37</sup> These assertions are absurd and unsupported by facts.

Water utilities provide sales forecasts in their GRCs pursuant to the accepted approaches outlined by the Commission based upon actual historical data. And, PAO has an opportunity within each GRC to fully examine the forecast and forecasting methodology, as well as to offer alternatives if PAO believes a forecast is too high or too low.

SRMs subsequently operate based on the actual data observed during the relevant time period. Contrary to PAO’s allegations, water utilities are not able to control the actual sales data so as to manipulate the SRMs in the way that PAO suggests. PAO’s allegations of impropriety are completely baseless and inflammatory, and they should be disregarded.

Lastly, PAO objects to the fact that the SRM may operate through an advice letter process and raises several arguments on that point.<sup>38</sup> These arguments misunderstand how the Commission authorizes a utility to implement an SRM. It is in the GRC process that the methodology and specific mechanisms of the SRM are evaluated, decided, and authorized by the Commission. However, once these are set,

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

the water utility merely provides the actual data observed and runs the calculations mandated by the Commission in establishing the SRM. The utility then implements the rate adjustments, exactly as directed by the SRM methodology. There is no discretionary act here – it is completely ministerial and appropriate for an advice letter. To the contrary, what PAO is seeking to do is to re-litigate the merits of the SRM at each advice letter filing, which would be improper and wasteful of Commission and utility resources.

For the reasons outlined above, the Commission should disregard PAO’s arguments regarding SRMs. Instead, the Commission should seek to encourage and expand the use of SRMs to allow for more accurate sales forecasts to be used in developing rates that reflect the true cost of service.

**H. PAO’s recommendation regarding water revenue adjustment mechanisms and other decoupling mechanisms is beyond the scope of this proceeding and unsupported.**

PAO takes the opportunity presented by the Commission’s questions regarding whether to implement a mechanism to adjust rates mid-year or end of year to discuss Water Revenue Adjustment Mechanisms (“WRAMs”) and Modified Cost Balancing Accounts (“MCBAs”) that have been in place for several of the Class A water utilities for more than a decade. Specifically, PAO argues that 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.”<sup>39</sup> Additionally, PAO argues that “[o]nce the Commission has established improvements to sales forecasting, the Commission should eliminate

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<sup>39</sup> *Id.*, p. 13.



decoupling mechanisms entirely.”<sup>40</sup> These arguments regarding WRAMs and other decoupling mechanisms go well beyond the scope of the question asked and are therefore outside the scope of issues appropriate for these comments and the upcoming workshop. Moreover, these arguments are contrary to the Commission’s established policies regarding these mechanisms adopted in D.16-12-026 and amount to an improper attempt by PAO to once again re-litigate its same (previously rejected) arguments against WRAMs and other decoupling mechanisms. At a minimum, PAO’s recommendations for the Commission to “expediently” convert existing WRAMs to Monterey-style WRAMs and discontinue all decoupling mechanism are improper to consider in the manner presented by PAO here. If the Commission chooses to re-open consideration of the merits of these established mechanisms for the utilities previously authorized to employ them, the Commission must carefully evaluate the arguments relating to these WRAMs, review the specific circumstances of each utility, and provide a fair opportunity for each utility to respond.

PAO asserts that “[s]ince compliance with conservation mandates is now legally required, continuing to employ decoupling mechanisms is no longer necessary to remove the disincentive to develop and implement Water IOU-run conservation programs.”<sup>41</sup> However, PAO misunderstands the import of the two laws it cites, Senate Bill 606 (Hertzberg, 2018) and Assembly Bill 1668 (Friedman, 2018).<sup>42</sup> First, these two laws do not go fully into effect until January 1, 2024, and urban water suppliers don’t begin to file reports on their progress towards achieving their urban water use objectives

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* (footnote omitted).

<sup>42</sup> *Id.*, p. 13 fn. 20.

until November 1, 2023. Second, despite these two laws, without a decoupling mechanism such as a WRAM, the financial incentive of utilities would still not be properly aligned with conservation goals. The Commission has previously recognized that the “purpose of 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.”<sup>43</sup> Accordingly, these decoupling mechanisms are still as necessary, if not more, as ever.

PAO’s arguments are also incompatible with the aforementioned Resolution W-5192 for SCE’s Catalina Water System. In addition to implementing the CAM as described above, the Commission by that Resolution also established a pilot program to decouple water sales from the revenue requirement consisting of a WRAM/MCBA. First, the Commission found that “[t]he Commission’s policy for decoupling of water revenues from sales is intended to facilitate water conservation while providing adequate financial resources to water utilities to operate their systems safely and reliably.”<sup>44</sup> The Commission also stated that it “previously outlined these goals for decoupling when it authorized these decoupling mechanisms for its Class A Water Utilities” and that Santa Catalina’s proposed WRAM/MCBA “should be adopted consistent with the amortization schedule adopted in D.12-04-048.”<sup>45</sup> The recently adopted resolution also outlines the goals for decoupling as follows:<sup>46</sup>

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<sup>43</sup> D.16-12-003, p. 18.

<sup>44</sup> Resolution W-5192, Finding of Fact 13.

<sup>45</sup> *Id.*, Finding of Fact 14, 15.

<sup>46</sup> *Id.*, p. 13.

1. Eliminate the relationship between sales and revenues to remove any disincentive for [water utilities] to promote water conservation rates and programs.
2. Provide a mechanism to ensure that water utilities and their customers are proportionately impacted when conservation rates are implemented.
3. Ensure any cost savings resulting from conservation (i.e., purchased power, purchased water) are passed on to ratepayers.
4. Reduce overall water consumption by water customers.

PAO's arguments against WRAM mechanisms are directly in conflict with the reasoning and outcome in Resolution W-5192.

For the reasons outlined above, the Commission should disregard PAO's arguments and recommendations regarding WRAMs and other decoupling mechanisms as outside the scope of these comments, contrary to Commission policy, and simply wrong.

**I. CWA plans to review the information being compiled by PAO that it intends to make available for discussion at the upcoming August workshop in this proceeding.**

PAO argues that "[t]he Commission should require Water IOUs to provide a baseline quantity of water at low-cost for all customers."<sup>47</sup> PAO indicates that it "is currently assessing data obtained from Class A Water IOUs to assist the Commission in determining the appropriate amount and cost of basic quantity rates."<sup>48</sup> PAO indicates that it expects to have such data available at the upcoming August workshop in this

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<sup>47</sup> PAO Opening Comments, p. 14.

<sup>48</sup> *Id.*, p. 15.

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

Of the Public Utilities Commission of the State of California

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**Exhibit M**

*Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions* (September 4, 2019) ("September 2019 ALJ's Ruling"), including Attachment A, Report on Low-Income Workshop: LIRA Program, Drought Forecasting Mechanisms, Small Water System

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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

**ADMINISTRATIVE LAW JUDGE'S RULING INVITING COMMENTS  
ON WATER DIVISION STAFF REPORT AND RESPONSES  
TO ADDITIONAL QUESTIONS**

This ruling invites parties to comment on the California Public Utilities Commission's (Commission's) Water Division Report on Low-Income, LIRA Program, Drought Forecasting Mechanisms, Small Water System Consolidation (Staff Report) held on August 2, 2019. The Staff Report is attached to this ruling as Attachment A. This ruling also presents additional questions for the parties to address.

**1. Workshops, Staff Reports, and Next Steps**

The last proceeding workshop was held on August 2, 2019 to address outstanding issues and party comments received on the following topics: 1) consolidation of at-risk systems; 2) forecasting/ drought; and 3) rate design. The State Water Resources Control Board (SWRCB) Draft AB 401 Report has not yet to be finalized. The Commission continues to work collaboratively with the SWRCB and will also continue to monitor progress on finalizing the report and

any subsequent legislation that results later as to a statewide low-income water program.

As noted in previously rulings, the proposed decision in this proceeding may include amendments to the Commission's program rules in the areas of consolidation, forecasting, rate design, and other implementation measures to enhance water affordability, including low-income programs. In order to ensure a complete record for consideration in this proceeding the parties, in addition to commenting on the attached Staff Report, are to respond to the questions set out below. Parties may also provide comments on any other relevant matter within the scope of this proceeding. Responses to the below questions are to be provided no later than September 16, 2019 with replies to responses due on September 23, 2019.

## **2. Questions Presented for Party Comment**

Parties are to provide comment on the attached Staff Report in addition to responding to the following questions. Parties in answering the below questions should consider the information set out in the Public Review Draft, *Achieving the Human Right to Water in California, an Assessment of the State's Community Water Systems*,<sup>1</sup> issued in August 2019 by the Office of Environmental Health Hazards Assessment, California Environment Protection Agency, attached to this ruling as Attachment B. Parties may also include any other relevant comments as to how information in Attachment B should be considered for purposes of issues within the scope of the proceeding.

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<sup>1</sup> <https://oehha.ca.gov/media/downloads/water/report/achievinghr2w08192019.pdf>

1. How should utilities incorporate drought-year sales into forecasted sales?
2. What weight should be assigned to drought-year sales in a forecast model?
3. Should the Commission adopt a specific sales forecasting model to be used in GRCs?
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?
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?
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)?
11. Should individual household budgets be developed for setting Tier 1 usage or should the average household size in the ratemaking area be the basis for establishing Tier 1

- usage, and if so, how would large-size households be protected from high water bills?
12. If the Commission adopts a uniform name for utility low-income programs, what should this name be?
  13. How should a pilot program be designed that provides a low-income benefit to water users who are not customers of the utility in multi-family buildings?
  14. What mechanism in the pilot program design (Question 13) will ensure that the low-income benefits flow to the benefit of the water user as opposed to the utility customer?
  15. Should a reporting mechanism be established to evaluate the success of current and future iterations of utility low-income programs in delivering affordable water service to low-income households? What metrics should be reported (*e.g.*, rate of non-payment of monthly water bills by low-income customers, rate of service disconnection among low-income customers, number of late payments and or requests for payment plans among low-income customers, enrollment penetration among the population of eligible low-income households)
  16. Should the Commission adopt a specific timeline, such as suggested by CWA, in processing water system consolidation requests by Commission-jurisdictional utilities?
  17. Are current utility affiliate transaction rules sufficient for utilities to take on the administration of failing water systems identified by the Water Board? If not, what changes to the rules are needed to facilitate utilities assuming an administrative oversight role for failing water systems?
  18. Should the Commission's staff role in implementing recovery in rates for safe drinking water funding loans for utilities be changed or expanded?



### 3. Service of Ruling on Related Proceedings

This ruling directs the Commission's Process Office to serve this ruling to the following referenced proceedings:

- Application (A.) 14-11-007;
- A.14-11-009;
- A.14-11-010;
- A.14-11-011;
- A.15-02-001;
- A.15-02-002;
- A.15-02-003;
- A.15-02-013;
- A.15-02-024;
- A.15-03-004; and
- Rulemaking 15-03-010.

Any party to the above referenced proceedings may submit comments or questions to be considered as to the relevant matters consistent with the filing dates for party responses and replies.

**IT IS RULED that:**

1. Parties may submit comments on the Staff Report attached to this ruling Attachment A and responses to the questions presented in this ruling no later than September 16, 2019.

2. Parties may submit replies to the comments and responses of other parties no later than September 23, 2019.

3. The Commission Process Office shall serve notice of this ruling on the following proceedings: Application (A.) 14-11-007; A.14-11-009; A.14-11-010; A.14-11-011; A.15-02-001; A.15-02-002; A.15-02-003; A.15-02-013; A.15-02-024; A.15-03-004; Rulemaking 15-03-010

Dated September 4, 2019, at San Francisco, California.

/s/ DARCIE L. HOUCK

Darcie L. Houck  
Administrative Law Judge

# **ATTACHMENT A**

# Report on Low-Income Workshop

## LIRA Program, Drought Forecasting Mechanisms, Small Water System Consolidation

*A California Public Utilities Commission Workshop  
Imbrecht Hearing Room, 1516 9<sup>th</sup> St, Sacramento, CA  
August 2, 2019*

*R.17-06-024*

Prepared by:  
Jeremy Ho, Utilities Engineer  
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August 27, 2019

## Summary and Introduction

On August 2, 2019, the California Public Utilities (Commission) held a workshop in Rulemaking R.17-06-024 at the California Energy Commission's Imbrecht Hearing Room at 1516 9<sup>th</sup> Street, Sacramento. The workshop was directed by Commissioner Martha Guzman Aceves, Commissioner Genevieve Shiroma, and Administrative Law Judge Darcie Houck. The purpose of the workshop was to discuss the Low Income Rate Assistance (LIRA) Program, drought forecasting mechanisms, and consolidation of small water systems. Topics were addressed by three panels as explained below. The workshop began at approximately 10 am and concluded at about 4 pm.

Speakers at the workshop included representatives of the California Water Associate (CWA) represented by Jack Hawks and Lori Dolqueist, Public Advocates Office (CalPA) represented by Suzie Rose and Richard Rauschmeier, Del Oro Water Company (Del Oro) represented by Janice Hanna, California American Water Company (Cal-Am) represented by Evan Jacobs and Nick Subias, State Water Resource Control Board (SWRCB) represented by Max Gomberg, Pacific Institute represented by Laura Feinstein, Golden State Water Company (GSWC) represented by Jenny Darney-Lane, A&N Technical Services (A&N) represented by Thomas Chesnutt, Leadership Counsel for Justice and Accountability (LCJA) represented by Michael Claiborne, and Community Water Center (CWC) represented by Debi Ores. In attendance were primarily representatives from investor-owned utilities (IOUs) and nonprofit groups, as well as municipal water utility representatives. There was also a telephone line available for participants.

After the Commissioners' introductions, the first panel discussed LIRA programs. The second panel discussed drought forecasting mechanisms, and the third panel discussed consolidation of small water systems. The Commissioners and the Administrative Law Judge concluded the workshop and indicated the next steps moving forward.

## First Panel: LIRA Programs

The morning panel consisted of representatives from Del Oro, CalPA, Cal-Am, SWRCB, and Pacific Institute and were provided a series of questions on the ability-to-pay, number of people per household, Tier-1 baseline, or a standard monthly discount rate/dollar value for the entire state.

Del Oro began by stating that Class C and D water systems would have difficulty funding LIRA programs mainly due to the size of their served customers. Class C and D water systems contain less than 2,000 water connections each. In addition, some of the water systems are located in low-income areas and include up to 95% low-income households. Under such circumstances the 5% of households that are not low-income households would have to offset the cost of the LIRA programs for the 95% that would participate in the LIRA programs. That would cause the bills of the few non-LIRA customers to increase dramatically. Instead of using a LIRA program for each utility, Del Oro proposes to use a statewide program to have a larger pool of participants to help achieve assistance for low-income customers.

Next, Cal-Am addressed the questions by stating that IOU rates will continue to see upward pressure to assist with increasing updates in infrastructure and new water quality challenges. The current structure for Cal-Am's billing system is an inclining tiered-rate system which assists in conservation by increasing

quantity rates as more water is used. In addition, Cal-Am already provides a LIRA program, allowing users to receive a 20% discount on the first two tiers that the customer is billed. Cal-Am explained that creating a dollar amount LIRA program could cause large variability with recovery costs. For example, if ratepayers with low water bills would participate in the low-income program and the discount is larger than the water bill, then the ratepayer may not pay anything for their utility bill. Cal-Am's main concern with the ability-to-pay method are the privacy issues connected to customer personal information being hacked similar to recent events with Capital One.

Commissioner Guzman Aceves questioned Cal-Am regarding their advice letter for establishing a tariff that provided a discount to low-income multi-family renters. She suggested that such a program might work better as a pilot in the Water Affordability proceeding. Parties were generally open to this idea, especially with conditions to show a direct benefit to those customers.

SWRCB discussed updates to the AB401 draft report that was released in January 2019. After receiving much input from commenters, SWRCB is considering reducing the essential service amount of water from 12 Hundred Cubic Feet (CCF) to 6 CCF, an amount that would be associated with indoor usage only. If a Tier-1 baseline were to be used, it should reflect the indoor essential usage of 6 CCF and may be adjusted depending on extreme circumstances such as household size or medical reasons or geographical differences.

SWRCB stated that measuring the number of people in a household would be very difficult and might not yield correct results for the affordability crisis. While California has an affordability crisis for water, there are other crises occurring, such as the housing crisis. The SWRCB noted that the majority of low-income households in California are renters whose water costs are included in their rent paid to the landlord. SWRCB suggested providing a rental credit which could be received through income taxes.

Determining a comprehensive ability-to-pay approach would be too difficult to administer by including all necessary household costs without explaining cost details. Instead, SWRCB proposed using an income-based approach as opposed to enumerating other expenses. In addition, a third-party can facilitate a community-based program that will aid households in crisis of facing a water disconnection. Such a program would emulate a program similar to that of energy utilities, the Energy Crisis Intervention Program (ECIP) which is part of the federally funded Low-Income Heating Assistance Program (LI-HEAP), which assists households who have been disconnected or are on the verge of disconnection for electricity or gas. To address a program's efficacy, SWRCB requires utilities to submit Electronic Annual Reports which report the number of disconnections, amounts of delinquency, and length of delinquency.

CalPA stated that if a Tier-1 baseline cost were implemented, the rate should be as low as possible regardless of the effect on the revenue requirement. The other tiers should be adjusted as necessary through the GRC process to provide the necessary revenue. The baseline should be applied to all customers to assist with the Human Right to Water Act. In addition, the discount would assist with customers that are currently low-income but are not enrolled in existing low-income programs to automatically enroll them in the discount program. CalPA was opposed to the idea of considering

essential usage on a “per-capita” basis and believes that the Commission should create a methodology that addresses household-size variability within the state. Providing discounts based on the household size is difficult to gauge. Some households might under-report the number of residents due to legal reasons. Others might exaggerate the number to receive a larger baseline amount and game the system. Of course, such gaming would penalize the honest households. Determining whether a program is operating efficiently would require collecting information on the rate of non-payment bills, rate of late payments, and number of low-income households in the LIRA program.

CalPA believes that consolidation is not an adequate method to create more affordable rates. PAO pointed out that while consolidation can make expensive rates cheaper, it will also cause cheaper rates to become more expensive. At Public Participation Hearings, the primary topic for consolidation of water systems is how the low-cost community’s rates will increase. In addition, there is a risk during consolidation that a low-cost district will become a high-cost district if a pollutant is to be addressed through regulation at any point in time. There are better methods, from CalPA’s point of view, to help provide affordable rates than consolidation of utility systems. Such methods include IOUs providing their own discount programs or instituting a statewide program across utility systems.

CalPA presented a preliminary analysis of water usage within California and whether limiting water on a “per-capita” basis or on a household basis would be more appropriate. The report analyzed data from 2013 to 2017 and focused primarily on consumption during the winter months as a representation of indoor usage, which assumes that households do not use as much outdoor irrigation during these months. A majority of the data was provided for connections in the South Coast region which consists of the Los Angeles County region. The data showed no clear correlation between LIRA vs non-LIRA household water usage. For example, in one district, LIRA households may use less water, while in another district, LIRA households use more water. During the winter months viewed, water usage ranged anywhere between 4 CCF to 13 CCF with an average usage of 6-8 CCF. CalPA suggests reviewing water bills at the connection level which would help to mitigate privacy issues when providing a discount to low-income households.

## Second Panel: Drought Forecasting Mechanisms

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.

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.

A&N believes there are better ways for drought forecasting. However, IOUs need to be able to adjust due to environmental changes, not only due to droughts, but also wildfires and earthquakes. Any unconditional forecasts will not be getting more accurate and may get more inaccurate in the future. A&N suggested that reconciliation and adjustments can help drive the forecasts, however, IOUs need to go a step further by relaying information to their customer base to reduce water usage. What doesn't work is telling customers to reduce water usage and then realizing that revenue is down. A&N presented an article by Financing Sustainable Water on *Building Better Water Rates for an Uncertain World*.<sup>1</sup>

A&N asserted that the best method to deal with a water shortage and customer costs is not to have a water shortage in the first place. IOUs weren't allowed to invest in water use efficiency up to a level of cost effectiveness. The correct focus should be on the customers and customer focused bills. Cost effectiveness programs reduce customer bills in the long term. A study for the Los Angeles Department of Water and Power found that savings of 26% of water were possible. CalPA stated we should work for more water efficiency programs.<sup>2</sup>

### Third Panel: Consolidation of Small Water Systems

LCJA began the third panel by explaining the need for a community-driven solution to safe drinking water. Since LCJA works with small water communities of 200 water connections or less, many of the small water communities are open to the idea of consolidation to make their rates more affordable. In order to make rates more affordable, consolidation has moved slowly in the past, and immediate actions are needed to provide safe drinking water to these communities. The Commission and communities should continue to find solutions to safe and reliable drinking water together.

CWC agrees with LCJA that community involvement is necessary in providing safe drinking water and the consolidation process. Yet we should keep in mind that rates need to be affordable for all systems that are being consolidated. In some cases, when small water systems were consolidated, the rates became unaffordable. That circles back the issue of human right to water and the need to ensure that rates are fair. CWC also stated that the consolidation process is too slow for small water systems. CWC believes that the Commission is understaffed and advocates for more people to assist in speeding up the process. CWC answered the question of whether having an IOU assist with operations, as opposed to acquiring the system, by stating that while owners of at-risk systems generally do not want the system back, sometimes the views of the owners do not align with the views of the customers.

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<sup>1</sup> <https://www.financingsustainablewater.org/tools/building-better-water-rates-uncertain-world>

<sup>2</sup> Alliance for Water Efficiency: LADWP Rates Conservation Report  
<<http://www.allianceforwaterefficiency.org/ladwpratesnr.aspx>>

To expand on the discussion between LCJA and CWA on the time required for the consolidation process, CWA presented a proposed timeline for the Commission to review and approve consolidation of at-risk systems of both private and public utilities. Currently IOUs file advice letters when acquiring Class C and D water systems for \$5 million or less but need to file an application for obtaining a water system for more than \$5 million. While Senate Bill (SB) 88 and Assembly Bill (AB) 2501 implement very good customer notices, most IOUs tend to go beyond these requirements by holding public participation hearings on consolidating water systems.<sup>3,4</sup>

CWA continued by addressing changes to Decision (D).99-10-064 and the need for an at-risk assessment. CWA anticipates a large influx of work to be conducted by Class A and B water utilities to assist with AB 2501 and SB 200 which requires an administrator to assist at-risk water systems.<sup>5,6</sup> Once the risks are mitigated, the administrator will return the water system back to the original owners. In some instances where a large water system is assisting an at-risk system, the owner of the at-risk system no longer wants the system and tries to sell the system.

Cal-Am agreed with the discussion topics from CWA and added that during the acquisitions of smaller systems, there is a need to improve and implement data requirements. The current process for at-risk water systems includes notice to customers, proposed rates and sales forecasts, appraisal of the system, and one-year and five-year forecasts of operations costs of the system. But even with all these provisions, there is still much uncertainty that needs to be discussed between parties before acquiring the systems. Cal-Am discussed a need to have the Commission and the SWRCB collaborate and discuss the administration positions discussed in AB 2501 and SB 200

CalPA stated that there is no regulation from the Commission when an IOU moves to acquire a publicly owned utility but needs to submit documents for a CPCN and rate design with the Commission after the publicly owned utility is acquired. CalPA voiced concern regarding CWA's proposal to consolidate processes for acquiring a struggling public system and acquiring an investor-owned system. CalPA acknowledges that the process takes time, but this occurs because time is necessary for a thorough review of the information provided by the acquiring and the acquired utilities. D.99-10-064 focuses on systems that have violations, but CalPA advocates to prioritize troubled or soon-to-be troubled systems in order to provide water to all of California at an affordable price.

## Wrap Up: Next Steps and Closing

Commissioner Guzman Aceves and Commissioner Shiroma thanked all the panelists for their insights on the topics discussed during the workshop and the people in attendance.

Administrative Law Judge Houck explained that the next steps are to receive the Staff Workshop Report. A ruling will attach the report, additional questions, and request comments from parties. A proposed

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<sup>3</sup>Senate Bill 88 <[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB88](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB88)>

<sup>4</sup>Assembly Bill 2501 <[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2501](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2501)>

<sup>5</sup>D99-10-064 <<http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>>

<sup>6</sup>Senate Bill 200 <[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB200](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB200)>

decision will be drafted and submitted for comments before the final decision will be submitted to the Commissioners for voting.

The workshop was then adjourned.

**(END OF ATTACHMENT A)**

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit N**

Comments of the Public Advocates Office on the Water Division's Staff Report and  
Response to Additional Questions (September 16, 2019)  
("September 16, 2019 PAO Comments")

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**  
09/16/19  
04:59 PM

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

Rulemaking 17-06-024

**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

## **I. INTRODUCTION**

Pursuant to Administrative Law Judge (ALJ) Houck's *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions* (Ruling) issued on September 4, 2019, the Public Advocates Office at the California Public Utilities Commission submits these comments.

## **II. COMMENTS ON WATER DIVISION STAFF REPORT**

The Water Division's Staff Report contains a number of inaccuracies regarding the Public Advocates Office's comments and positions at the August 2, 2019 Workshop. The responses to the ALJ's questions below provide the Public Advocates Office's positions for the topics associated with the Staff Report.

## **III. RESPONSES TO ADDITIONAL QUESTIONS**

### **1. How should utilities incorporate drought-year sales into forecasted sales?**

When a utility forecasts sales as a part of its General Rate Case (GRC) application, it should analyze historical trends and past sales. As a part of this process, the utility should take into account drought-year and non-drought-year sales. The Rate Case Plan for Class A Water Utilities provides for the standard forecasting methodology using the New Committee Method, and discounting drought-year sales.<sup>1</sup> Whether utilizing the New Committee Method or other forecasting methodologies, drought-year sales should not be discounted.

### **2. What weight should be assigned to drought-year sales in a forecast model?**

It is appropriate for utilities to include the data from drought years when assessing historic data; however utilities should not provide additional weight to this data. The Commission already has mechanisms in place to ensure that, in the event of a drought or other instance where a utility suffers a water shortage, utilities are able to change existing rate structures, and track lost revenue from reduced sales due to conservation or

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<sup>1</sup> D.07-05-062.

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

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

Of the Public Utilities Commission of the State of California

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**Exhibit O**

Comments of California Water Association Responding to Administrative Law  
Judge's September 4, 2019 Ruling (September 16, 2021)

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

**FILED**

09/16/19  
04:59 PM

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

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

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

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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**

In accordance with the *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions* issued on June 21, 2019 ("Ruling"), California Water Association ("CWA") hereby submits these comments on the accompanying Staff Report and its responses to the questions posed in the Ruling. As directed by the Ruling, CWA has considered the information set out in the *Public Review Draft, Achieving the Human Right to Water in California, an Assessment of the State's Community Water Systems* ("OEHHA Report") in answering the questions posed. CWA makes this filing as a party to this proceeding, and on behalf of the Class A water utilities named as respondents.<sup>1</sup>

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<sup>1</sup> 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. INTRODUCTION**

CWA is a statewide association representing the interests of investor-owned water utilities subject to the Commission's jurisdiction that serve reliable, high-quality drinking water to nearly 6 million Californians. CWA has actively participated in this proceeding and again reiterates its appreciation for the Commission's continued commitment to ensuring that its policies and guidance in this subject area meet current challenges and conditions. CWA and CWA-member companies attended and actively participated in the August 2, 2019 workshop on the Low-Income Rate Assistance ("LIRA") programs, drought forecasting mechanisms, and consolidation of small water systems ("Workshop").

## **II. COMMENTS ON STAFF REPORT FOR AUGUST 2, 2019 WORKSHOP**

The Staff Report summarizes the presentations and discussion during the August 2, 2019 Workshop. CWA appreciates having had the opportunity to present at that August workshop and hear from stakeholders in this proceeding. CWA offers the following recommendations to clarify certain parts of the Staff Report and to respond to points that were made during the workshop and noted in the Staff Report.

### **CWA Comments on Summary of Panel 1: LIRA Programs**

- The Staff Report states that "some of the water systems are located in low-income areas and include up to 95% low-income households."<sup>2</sup> This statement should be clarified to explain that some of the water systems serve customer

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<sup>2</sup> Staff Report, p. 2.

bases in which a large percentage of the customer base, as high as 95%, qualifies as low-income households.

- The Staff Report states that “[i]nstead of using a LIRA program for each utility, Del Oro proposes to use a statewide program to have a larger pool of participants to help achieve assistance for low-income customers.”<sup>3</sup> CWA previously addressed challenges with smaller water systems implementing low-income customer assistance programs and suggested that a better solution would be for the Commission-approved programs to be replaced by a larger statewide program (including both investor-owned utilities and public agencies) that would spread the burden across a statewide pool of contributors.<sup>4</sup>
- The Staff Report states “Cal-Am explained that creating a dollar amount LIRA program could cause large variability with recovery costs.”<sup>5</sup> CWA previously expressed this same concern and recommended that the Commission adopt a standardized monthly discount rate (*i.e.*, a percentage of the overall customer bill amount or a percentage of the monthly service charge) rather than a standardized dollar amount.<sup>6</sup>
- The Staff Report states “SWRCB stated that measuring the number of people in a household would be very difficult and might not yield correct results for the

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<sup>3</sup> *Id.*

<sup>4</sup> *Comments of California Water Association Responding to Administrative Law Judge’s June 21, 2019 Ruling* (July 10, 2019), pp. 16-17.

<sup>5</sup> Staff Report, p. 3.

<sup>6</sup> *Comments of California Water Association Responding to Administrative Law Judge’s June 21, 2019 Ruling* (July 10, 2019), p. 17.

affordability crisis.”<sup>7</sup> CWA agrees with the State Water Resources Control Board’s (“SWRCB”) assessment of the challenge.<sup>8</sup>

- The Staff Report states “SWRCB proposed using an income-based approach as opposed to enumerating other expenses.”<sup>9</sup> CWA agrees with this SWRCB recommendation.
- The Staff report outlines some of the arguments raised by the Public Advocates Office (“Cal PA”) in opposition to consolidation.<sup>10</sup> CWA disagrees with these arguments and believes that they are shortsighted and misplaced. As previously explained, among the other benefits associated with consolidations, they allow larger utilities to offer low-income customer assistance programs to small customer bases for which such programs would not be sustainable on their own.<sup>11</sup>

### **CWA Comments on Summary of Panel 2: Drought Forecasting Mechanisms**

- The Staff Report states “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.”<sup>12</sup> This should be clarified to explain simply that it does not make sense to establish very low sales or high sales forecasts if they are not likely to

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<sup>7</sup> Staff Report, p. 3.

<sup>8</sup> *Comments of California Water Association Responding to Administrative Law Judge’s June 21, 2019 Ruling* (July 10, 2019), pp. 15-16.

<sup>9</sup> Staff Report, p. 3.

<sup>10</sup> Staff Report, p. 4.

<sup>11</sup> *Reply Comments of California Water Association Responding to Administrative Law Judge’s June 21, 2019 Ruling* (July 17, 2019), pp. 13-14.

<sup>12</sup> Staff Report, p. 4.

be accurate. Instead, CWA emphasizes the need to be flexible with respect to the choice of forecasting method, focusing instead on the goal of achieving the most accurate sales forecast possible.

- The Staff Report states that “[a]djustments between the GRC years will assist in accuracy of the forecasts, as opposed to a steep increase in rates due to under-forecasting.”<sup>13</sup> This should be clarified to explain that adjustments to the adopted sales within the GRC cycle will assist in generating the appropriate price signals – and therefore, appropriate rates, surcharges or surcredits within that GRC cycle – and will prevent a steep increase or decrease in future surcharges/surcredits and rates in the next GRC due to over or under-forecasting sales in the current GRC.
- The Staff Report summarizes the discussion by Golden State Water Company regarding the Sales Reconciliation Mechanism (“SRM”) and Water Revenue Adjustment Mechanism (“WRAM”).<sup>14</sup> However, the Staff Report fails to capture some of the nuances associated with those mechanisms, most notably the fact that they can go both ways and possibly return refunds to customers. CWA recommends that this paragraph be revised to the following:

GSWC believes that the Sales Reconciliation Mechanisms (SRM) filed in conjunction with escalation filings are useful to adjust rates based on more accurate sales forecasts. In fact, GSWC submits its SRMs and escalation filings concurrently, which prevents multiple rate adjustments from appearing on customer bills. Based on the pilot SRM adopted by the CPUC in GSWC’s 2014 GRC, the SRMs are triggered for the following year when a 10%

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<sup>13</sup> Staff Report, p. 4.

<sup>14</sup> Staff Report, pp. 4-5.



or greater difference between actual and forecasted sales is reached (the trigger is now at 5%, effective with GSWC's 2017 GRC decision). The adopted sales forecasts are adjusted by 50% of the difference. SRMs help rectify the inaccuracy of sales forecasts and by extension the rates charged to customers. Sometimes the balance in the Water Revenue Adjustment Mechanism (WRAM) is over-collected and money is refunded back to customers. Alternatively, when there is an under-collection, these previously approved revenues are recovered from customers. Use of the SRM helps to reduce the size of under- or over-collections in the WRAM.

- The Staff Report states “CWA stated that since the GRC process began, differences between forecasts from CalPA and IOUs have gotten smaller as they collaborate and reach agreements.”<sup>15</sup> CWA stated during the workshop that this trend started after the WRAM was first implemented by water utilities (the GRC process began decades ago), so the words “WRAM implementation” should be substituted for “the GRC process” in the Staff report.
- The Staff Report states “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.”<sup>16</sup> The point CWA made was that the GRC process utilized by the Commission incorporates forecasts that are as many as five years out; thus, it is difficult to create forecasts with a high degree of accuracy. Additionally, forecasting methods are unable to account not only for natural disasters and

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<sup>15</sup> Staff Report, p. 5.

<sup>16</sup> *Id.*

drought, but also simply more variable and extreme weather events, which can just as dramatically affect water sales.

- The Staff Report also completely omits many of the factual statements made by CWA regarding the WRAM. First, CWA 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. Second, it is necessary to note that Cal PA's assertions about the financial risk have been raised repeatedly over the last 10 years, and the Commission has rejected those assertions each and every time. Lastly, the WRAM itself does not make rates more or less affordable, since it is dealing with recovery of fixed cost amounts that have already been authorized to be recovered as just and reasonable, except to the extent that it helps the Commission pursue affordability programs. It should be noted that all of these points apply to companies without WRAMs, but who have Lost Revenue Memorandum Accounts and recover those balances when they reach Commission-approved thresholds.
- The Staff Report states that Cal PA claimed, without reference to any evidence or other basis, that "[w]hen WRAMs were introduced, they made the step filings more complex and as a result SRMs became more complex."<sup>17</sup> Contrary to Cal PA's claim, the calculation of the step increase was never affected by the

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<sup>17</sup> Staff Report, p. 5.

implementation of the WRAM. Likewise, it is unclear what is meant by the WRAMs making SRMs “more complex.” Cal PA’s claims on this point are meritless and confusing and should be disregarded completely.

- The Staff Report summarizes Cal PA’s argument that “[i]f there are mistakes in the capital budget, the IOUs are shifting the problem from the company to the customers by increasing rates.”<sup>18</sup> If this is Cal PA’s argument, it is factually incorrect. As stated by the Golden State Water Company representative during the workshop, the Pro Forma earnings test for escalation year step increases protects customers from rate increases if the adopted capital improvements have not been made.

### **CWA Comments on Summary of Panel 3: Consolidation of Small Water Systems**

- The Staff Report states: “Currently IOUs file advice letters when acquiring Class C and D water systems for \$5 million or less but need to file an application for obtaining a water system for more than \$5 million.”<sup>19</sup> This is not correct. The representative from California Water Association proposed this approach as a procedural improvement in order to remove the distinction between acquisitions of Commission-regulated water utilities and all other types of public water system acquisitions and to provide for a more expedited process for acquisitions of smaller, at-risk water systems either failing to provide safe, reliable drinking water to their customers or nearing the point where they will not be able to supply safe, reliable drinking water. This proposal was based on the current statutory

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<sup>18</sup> *Id.*, p. 6.

<sup>19</sup> *Id.*, p. 7.

requirements set forth Section 851 of the Public Utilities Code, which requires an order from the Commission (hence, an application) when a Commission-regulated utility is disposing of equipment or property, or selling itself when the transaction is valued at more than \$5 million. For the same transaction parameters, but at values of less than \$5 million, an advice letter filing for Commission approval will suffice, unless the Commission determines that the transaction requires a more comprehensive review (at which time it can require an application). Furthermore, under the settlement agreement approved by the Commission in D.99-10-064, Commission-regulated utilities may also file an advice letter for approval of the purchase of an inadequately operated and maintained small water utility.<sup>20</sup> Finally, when a Commission-regulated utility acquires a publicly owned water system, it may file an advice letter to place rates into effect (Commission approval is not required for the acquisition itself).<sup>21</sup> As representatives for California-American Water Company and Del Oro Water Company explained at the workshop, utilities are often directed to file full applications for certain acquisitions, rather than being allowed to use the approved advice letter processes.

- The Staff Report states “Cal-Am agreed with the discussion topics from CWA and added that during the acquisitions of smaller systems, there is a need to improve and implement data requirements.”<sup>22</sup> This incorrectly paraphrases what

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<sup>20</sup> D.99-10-064, Appendix D, §3.02. “An ‘inadequately operated and maintained small water utility’ is any operation serving under 2,000 customers that is subject to an outstanding order of the Department of Health Services to implement improvement.” *Id.*, Appendix D, §3.01.

<sup>21</sup> *Id.*, Appendix D, §§4.01-4.02.

<sup>22</sup> *Id.*

was stated at the workshop. The point made here was that there is a general need to make the process more efficient and improve the delays associated with the acquisition of smaller systems. With respect to data requirements, the representative of California-American Water concurred with CWA's recommendation that the Commission should establish a standard data request protocol for consolidation applications based upon the generally applicable data requests that it has observed in multiple proceedings before the Commission.<sup>23</sup> The Commission should not adopt the overbroad and often inapplicable set of requirements proposed by Cal PA, which was adapted from policies established by the Pennsylvania Public Utilities Commission under very different circumstances (i.e., for mergers or acquisitions of very large utilities).<sup>24</sup>

- The Staff Report states “Cal-Am discussed a need to have the Commission and the SWRCB collaborate and discuss the administration positions discussed in AB 2501 and SB 200.” This is accurate and CWA concurs with the recommendation for collaboration, but suggests that the term “administration” used in the Staff Report be changed to “administrator” for clarity in order to match the terminology used in those bills.

### **III. RESPONSES TO QUESTIONS PRESENTED FOR PARTY COMMENT**

#### **CWA Response to Questions 1-3:**

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<sup>23</sup> *Reply Comments of California Water Association Responding to Administrative Law Judge's June 21, 2019 Ruling* (July 24, 2019), pp. 8-9.

<sup>24</sup> *Id.*, pp. 6-8.

- 1. How should utilities incorporate drought-year sales into forecasted sales?**
- 2. What weight should be assigned to drought-year sales in a forecast model?**
- 3. Should the Commission adopt a specific sales forecasting model to be used in GRCs?**

In recent years, nearly all the large water utilities before the Commission have incorporated drought-year sales into their forecasted sales as part of their GRCs in some form or another. As outlined by CWA representatives during the August 2, 2019 workshop, sales forecasts based on the “New Committee Method” and other older forecasting methods have become less reliable as water utilities have sought to achieve advances towards meeting mandatory conservation goals. One reason for this is that the impacts of drought and the associated customer response can vary greatly not only between water utilities, but even between districts within the same company. For example, certain districts subject to water supply restrictions unrelated to weather or drought may be affected differently than other districts between drought and non-drought years.<sup>25</sup> Consequently, the manner in which a utility should incorporate drought-year sales into forecasted sales will necessarily vary from district to district, including with respect to the appropriate weight assigned to drought-years. The variability among customers in each district is not limited to drought either – utilities can face challenges associated with wildfires and other disasters that can greatly impact forecasted sales in certain regions, but leave others untouched. Therefore, the Commission should avoid imposing a specific sales forecasting model to be used in

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<sup>25</sup> See, e.g., D.18-09-017, pp. 18-19 (describing restrictions on water supply imposed by the SWRCB for California-American Water Company’s Monterey District).

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,<sup>26</sup> 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

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<sup>26</sup> *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.<sup>27</sup> 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

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<sup>27</sup> 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:<sup>28</sup>

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

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<sup>28</sup> 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.<sup>29</sup> The baseline quantity of water would

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<sup>29</sup> *Comments of California Water Association Responding to Administrative Law Judge’s June 21, 2019 Ruling* (July 10, 2019), pp. 14-15.

be billed at that first-tier rate. Setting the first-tier rate at a baseline level provides a “discounted” price, yet preserves the conservation signal intended to address drought conditions and promote water-efficient behaviors. While CWA recommends this general approach, CWA recommends against setting a standard rate for Tier 1 usage and against setting a standard breakpoint between Tier 1 and Tier 2 usage. The circumstances facing each utility within each of their districts varies greatly across the State – based on differences in climate, water supply availability and other factors. Therefore, the parameters of the baseline rate design for each utility should be based upon the actual conditions for the customers to whose water service it is to be applied.

Water Code Section 10609.4 sets forth a statewide standard for indoor residential water and was recently codified into law under Assembly Bill 1668 (2018, Friedman) (“AB 1668”). That section also sets forth a mechanism for the SWRCB and the Department of Water Resources to conduct studies and jointly recommend to the Legislature a standard for indoor residential water use in lieu of the numbers currently established in the statute.<sup>30</sup> However, AB 1668 was meant to establish “long-term standards for the efficient use of water” as a broad statewide policy goal.<sup>31</sup> As highlighted above, the actual customer water use habits for each water utility currently vary greatly between different parts of the State, even between districts of the same company. Therefore, it is appropriate to continue to establish the baseline water usage for basic human needs for rate design purposes based upon the current average usage at the district level.

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<sup>30</sup> Water Code § 10609.4(b).

<sup>31</sup> Assembly Bill 1668 (2018, Friedman), Legislative Counsel's Digest, available at [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB1668](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1668).

Generally, with respect to “should the rate for Tier 1 water usage be set based on the variable cost of the water,” doing so may present practical challenges. Most important, such a rule would necessarily require all of the fixed costs of utility service assigned for recovery in Tier 1 volumetric charges to then be recovered in the upper tiers. Not only will this potentially steep discount to a significant percentage of the utility’s sales create substantial volatility and instability in the recovery of approved revenues, as usage in the higher tiers may not allow for full recovery, but also this approach effectively creates a potentially excessive amount of costs to customers who happen to require usage in the higher tiers. CWA recalls the difficult lessons learned from the Commission’s experience with water Lifeline rates in the 1970s and 1980s.<sup>32</sup>

CWA recommends that the Commission allow each utility the flexibility to design and propose rate design frameworks that are appropriate to the specific customer base in each district. The effectiveness of a water utility’s rate design in providing a basic quantity of water at a low-income rate is best determined during each water utility’s respective GRC process.

While the Commission should rightfully strive to set forth general principles and goals for the utilities to achieve in this proceeding, many of the details of implementation are going to depend on the specific circumstances for each utility district and so should be addressed on a district-by-district basis. This will require a careful and nuanced approach.

**CWA Response to Question 11:**

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<sup>32</sup> *Comments of California Water Association Responding to Administrative Law Judge’s June 21, 2019 Ruling* (July 10, 2019), pp. 13-14; D.86-05-064, pp. 8-9 (providing history of Lifeline rates for water).

**11. Should individual household budgets be developed for setting Tier 1 usage or should the average household size in the ratemaking area be the basis for establishing Tier 1 usage, and if so, how would large-size households be protected from high water bills?**

As previously outlined, CWA recommends that if the Commission establishes a specific baseline quantity of water at a low-cost, it should be consumption-based rather than based on household size.<sup>33</sup> CWA has raised grave concerns regarding the gathering, verification, and enforcement of information on the number of people residing in a customer household. A low-income customer assistance program based upon a water utility verification of household size for purposes of determining a water use budget would be burdensome, extremely complex and very difficult to administer. Policing the number of residents in a household goes well beyond the scope of what a water utility does as a part of its routine operations. Moreover, there is no effective manner of policing a system based on people in a household without infringing upon the privacy of customers. Unlike other examples of public agencies that may have access to sources of information such as customer tax returns, Commission-regulated water utilities do not easily have access to such information (nor should such access be granted).<sup>34</sup>

Nonetheless, the question posed in the Ruling raises a real concern: how large-size households should be protected from high water bills. This issue is currently being studied as part of the AB 401 report. Therefore, more generally, CWA recommends

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<sup>33</sup> *Comments of California Water Association Responding to Administrative Law Judge's June 21, 2019 Ruling* (July 10, 2019), p. 15.

<sup>34</sup> D.18-07-010, pp. 16-17.

that the Commission adopt an approach that is consistent with the approach ultimately adopted as policy for the State of California.

**CWA Response to Question 12:**

**12. If the Commission adopts a uniform name for utility low-income programs, what should this name be?**

As previously explained in this proceeding,<sup>35</sup> CWA recommends the Commission adopt the nomenclature used by the U.S. Environmental Protection Agency, the Water Research Foundation and water utilities in numerous other states: Customer Assistance Program.

Using this name better reflects the purpose of the program and avoids two immediate issues – the stigma associated with the phrase, “low income” and the unwarranted attention to rates. Use of the term “rates” in the name unnecessarily distracts from the underlying purpose of the program. Programs to enable households to better afford and pay water bills are driven not by rates, but by the incomes of the households requiring assistance. Rates charged by the Class A water utilities are reviewed and authorized by the Commission every three years. By law, those rates must be “just and reasonable,”<sup>36</sup> and in every Commission Decision authorizing rates, there is a specific finding that the rates are “just and reasonable.” It is inappropriate to use the term “rates” or any iteration thereof in the name of a program that does not address “rates.”

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<sup>35</sup> *Opening Comments of California Water Association on Order Instituting Rulemaking* (August 21, 2017), pp. 6-7.

<sup>36</sup> Public Utilities Code §451.

The real purpose of low-income assistance programs is to assist those households that have trouble meeting essential living expenses, of which water is just one. Accordingly, CWA considers the word “customer” to be the more accurate reference. It is the customer who is being assisted, not the rate itself. Additionally, the term “customers” rather than “ratepayers” better describes the true goal of the programs – to help customers who need broader access to existing or new social welfare programs designed to assist them in paying their bills.

**CWA Response to Questions 13-14:**

- 13. How should a pilot program be designed that provides a low-income benefit to water users who are not customers of the utility in multi-family buildings?**
- 14. What mechanism in the pilot program design (Question 13) will ensure that the low-income benefits flow to the benefit of the water user as opposed to the utility customer?**

CWA generally supports the Commission allowing small-scale pilot programs upon the request of a water utility in circumstances where the utility has determined that it would be appropriate to provide discounted bills to master-metered low-income housing facilities under certain conditions. However, as previously explained in this proceeding,<sup>37</sup> CWA does not think it would be effective or enforceable to give discounts to master-meter customers with a requirement that those benefits be passed on to low-income tenants living in those multi-family properties. The challenges of administering and adjudicating landlord-tenant relationships go well beyond the service responsibilities and capabilities of water utilities. Additionally, the cost of implementing

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<sup>37</sup> *Comments of California Water Association Responding to Administrative Law Judge’s June 21, 2019 Ruling* (July 10, 2019), p. 7.



complete sub-metering in all those multi-family properties would likely dwarf the potential savings from any low-income customer assistance program.

Previously, CWA suggested that the water customer assistance benefit could potentially be delivered through a tenant's energy bill in those instances where the same user is individually metered or sub-metered by the energy utility.<sup>38</sup> This idea was also evaluated in the State Water Resources Control Board's *Options for Implementation of a Statewide Low-Income Water Rate Assistance Program Report* issued January 3, 2019 ("AB 401 Draft Report").<sup>39</sup> However, several energy utilities have raised serious concerns and major programmatic challenges with that proposal, which were recently outlined in the comments and reply comments filed by those parties in this proceeding.<sup>40</sup>

Therefore, CWA now recommends that the water customer assistance benefit be delivered through a specific program established through new legislation or through an existing state-administered assistance program. CWA concurs with the suggestion by SDG&E and SoCalGas that the CalFresh program may be the best existing option to distribute customer assistance benefits due to there being a current mechanism to deliver benefits to tenants and an existing state agency with considerable experience

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<sup>38</sup> *Id.*

<sup>39</sup> *Options for Implementation of a Statewide Low-Income Water Rate Assistance Program* (January 3, 2019) ("Draft AB 401 Report"), p. 24.

<sup>40</sup> *Joint Comments of San Diego Gas & Electric Company (U 902 M) and Southern California Gas Company (U 904 G) on Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Modifying the Procedure Schedule* (July 10, 2019); *Opening Comments of Pacific Gas and Electric Company on Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule* (July 10, 2019); *Reply Comments of Pacific Gas and Electric Company on Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule* (July 17, 2019).

managing such a program.<sup>41</sup> Thus, any potential pilot program should be designed to distribute benefits to tenants in multi-family buildings through CalFresh or one of the other existing programs suggested in the AB 401 Draft Report, as opposed to trying to provide benefits through water or energy bills.<sup>42</sup>

**CWA Response to Questions 15:**

- 15. Should a reporting mechanism be established to evaluate the success of current and future iterations of utility low-income programs in delivering affordable water service to low-income households? What metrics should be reported (e.g., rate of non-payment of monthly water bills by low-income customers, rate of service disconnection among low-income customers, number of late payments and or requests for payment plans among low-income customers, enrollment penetration among the population of eligible low-income households)**

As previously explained in this proceeding, the mechanisms currently in place are sufficient for monitoring the existing low-income water customer assistance programs.<sup>43</sup> Each Class A water utility with a customer assistance program provides information to the Commission regarding that program on a routine basis. Additionally, the administration and efficacy of the customer assistance programs of each individual Class A water utility are periodically reviewed as a part of each utility's General Rate Case proceeding. Also, the Commission's Low-Income Oversight Board, which includes a water utility representative, advises the Commission regarding low-income issues and serves as a liaison for low-income customers and representatives.

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<sup>41</sup> *Id.*, p. 3.

<sup>42</sup> Draft AB 401 Report, p. 25.

<sup>43</sup> *Comments of California Water Association Responding to Administrative Law Judge's June 21, 2019 Ruling* (July 10, 2019), pp. 20-21.

## **CWA Response to Questions 16**

**16. Should the Commission adopt a specific timeline, such as suggested by CWA, in processing water system consolidation requests by Commission-jurisdictional utilities?**

Yes. The Commission currently has specific timelines for processing water system consolidation requests by Commission-jurisdictional water utilities as set forth in D.99-10-064.<sup>44</sup> However, as previously highlighted by CWA,<sup>45</sup> these schedules are often ignored. It is currently taking much too long for customers to realize the benefits of a consolidation associated with safe and reliable water service, including access to the low-income assistance and conservation programs that support the main subject of this rulemaking proceeding. Timelier processing of authorizations for acquisitions consistent with the Commission-approved timelines under D.99-10-064 would greatly facilitate beneficial consolidation of at-risk water systems. CWA looks forward to working with the Commission and other parties at the upcoming workshop to develop a reasonable schedule for acquisition proceedings that will allow customers to realize the benefits of such transactions in a more timely and efficient manner.

## **CWA Response to Questions 17:**

**17. Are current utility affiliate transaction rules sufficient for utilities to take on the administration of failing water systems identified by the Water Board? If not, what changes to the rules are needed to**

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<sup>44</sup> D.99-10-064, Appendix D, pp. 4-6.

<sup>45</sup> *Comments of California Water Association Responding to Administrative Law Judge's June 21, 2019 Ruling* (July 10, 2019), p. 8.

**facilitate utilities assuming an administrative oversight role for failing water systems?**

The current affiliate transaction rules applicable to Commission jurisdictional water utilities<sup>46</sup> provide a sufficient baseline set of rules to allow for water utilities to take on the administration of failing water systems identified by the SWRCB. The failing water systems identified by the SWRCB each present different challenges that will be unique to the individual circumstances of that system. Accordingly, the Commission should allow its jurisdictional water utilities the flexibility to utilize the framework that is best suited to address the specific issues relevant to the troubled system.

For example, in some cases, it may make sense for a water utility to use a non-jurisdictional affiliate to take on administration of that system. In other cases, it may be more efficient for the water utility to directly take on administration of the system through non-tariffed products and services (NTP&S) using any excess capacity of resources.<sup>47</sup> The current affiliate transaction rules anticipate both scenarios and provide adequate safeguards and robust oversight components to protect utility ratepayers. To the extent that a different process is needed for individual circumstances of a troubled system that are not sufficiently addressed by the affiliate transaction rules, the Commission should address such scenarios on a case-by-case basis with the goal of facilitating the water utility's administration of the failing water systems.

**CWA Response to Questions 18:**

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<sup>46</sup> D.10-10-019, Appendix A (Rules for Water and Sewer Utilities Regarding Affiliate Transactions and the Use of Regulated Assets for Non-Tariffed Utility Services).

<sup>47</sup> *Id.*, pp. A-12 to A-15 (setting forth rules for "Provision of Non-tariffed Products and Services (NTP&S)").

**18. Should the Commission’s staff role in implementing recovery in rates for safe drinking water funding loans for utilities be changed or expanded?**

The Commission previously analyzed this issue in proceeding R.04-09-002, which resulted in decision D.06-03-015 setting forth general rules to govern the receipt and use of state grant funds, including safe drinking water funding loans, for water utilities. The Commission currently evaluates requests for authorization for utilities to enter into safe drinking water funding loans and, in many cases, implement surcharges or other ratemaking mechanisms to pay for those loans. The Commission has found that such loans “provide a much lower cost of capital than either equity or other forms of debt.”<sup>48</sup> In addition, the Commission has found that, in conjunction with its own oversight, the conditions set by the SWRCB for the safe drinking water funding loans “ensure proper accounting and handling of the loan proceeds and surcharges collected.”<sup>49</sup> Thus, the Commission should strive to facilitate the use of such safe drinking water funding loans where possible.

Aside from recommending speedy approval of safe drinking water funding loan authorization requests, CWA does not have any specific concerns to raise here regarding the role of the staff in that process at the Commission. In many instances, however, it would be helpful for water utilities to have the assistance of Commission staff in interfacing with SWRCB staff through the application process and

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<sup>48</sup> Resolution W-5168, p. 8; *see also* D.08-09-002, p. 20 (“A zero or low interest SDWSRF loan, and the associated surcharge to repay it, is the least expensive and therefore most reasonable option for financing the construction of the Lucerne Treatment Plant.”); D.05-01-048, p. 8 (“Because long-term borrowings under the SDWSRF generally represent a much lower interest rate than equity or other forms of debt, it is to the utility’s advantage and that of its customers to avail itself of such funds.”).

<sup>49</sup> Resolution W-5168, p. 8.

implementation of such loans. Having greater coordination between the two agencies and the utility enables everyone to work more efficiently and allows customers to have the benefits of this low-cost financing option.

#### **IV. CONCLUSION**

CWA appreciates having been afforded the opportunity to provide these comments on the Staff Report and in response to the questions posed in the Ruling.

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September 16, 2019

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit P**

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 PAO Comments")

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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

**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



## I. INTRODUCTION

Pursuant to Administrative Law Judge (ALJ) Houck's *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions* (Ruling) issued on September 4, 2019, the Public Advocates Office at the California Public Utilities Commission submits these reply comments.

## II. THE COMMISSION SHOULD GIVE NO WEIGHT TO UNSUPPORTED CLAIMS BY THE CALIFORNIA WATER ASSOCIATION (CWA), AND SHOULD INSTEAD USE A DATA-DRIVEN PROCESS IN CONSIDERING POLICY CHANGES

In its September 16, 2019 Opening Comments, CWA makes various claims that are unsupported by any evidence or authority.

First, CWA states "adjustments to the adopted sales within the GRC cycle will assist in generating the appropriate price signals – and therefore, appropriate rates, surcharges or surcredits within that GRC cycle – and will prevent a steep increase or decrease in future surcharges/surcredits and rates in the next GRC due to over or under-forecasting sales in the current GRC."<sup>1</sup> However, CWA fails to provide any support for this claim. Adjustments to adopted sales within the GRC cycle will *only* generate appropriate price signals and prevent steep increases or decreases in future rates *if* the most recent year of recorded sales provide a more accurate sales forecast than the forecast generated in the GRC.<sup>2</sup> The forecast generated in a utility's GRC can (and should) take more variables into account than one year of past sales, and therefore can (and should) result in a more accurate forecast than the proposed adjustments within the GRC cycle.<sup>3</sup>

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<sup>1</sup> CWA Opening Comments at p. 5.

<sup>2</sup> For example, when the pilot Sales Reconciliation Mechanism (SRM) adopted in D. 14-08-011 (Ordering Paragraph 43, at p. 111) for California Water Company is triggered for any ratemaking area, the new sales forecast for that ratemaking area is changed for the following year to be equal to an average of the sales forecast adopted in the GRC (50% weight) and the sales from the prior year (50% weight). Therefore, 50% of the new sales forecast does not take any other variables into account except for the previous year's sales forecast. Other existing pilot SRMs operate in essentially the same manner.

<sup>3</sup> For a detailed recommendation of what sales forecasts should include, see the Public Advocates Office July 10, 2019 Comments on the ALJ Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule at pp. 9-10.

final decision for each utility's GRC authorizes yearly Step Filings via Advice Letter.<sup>16</sup> 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).<sup>17</sup> 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."<sup>18</sup> 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

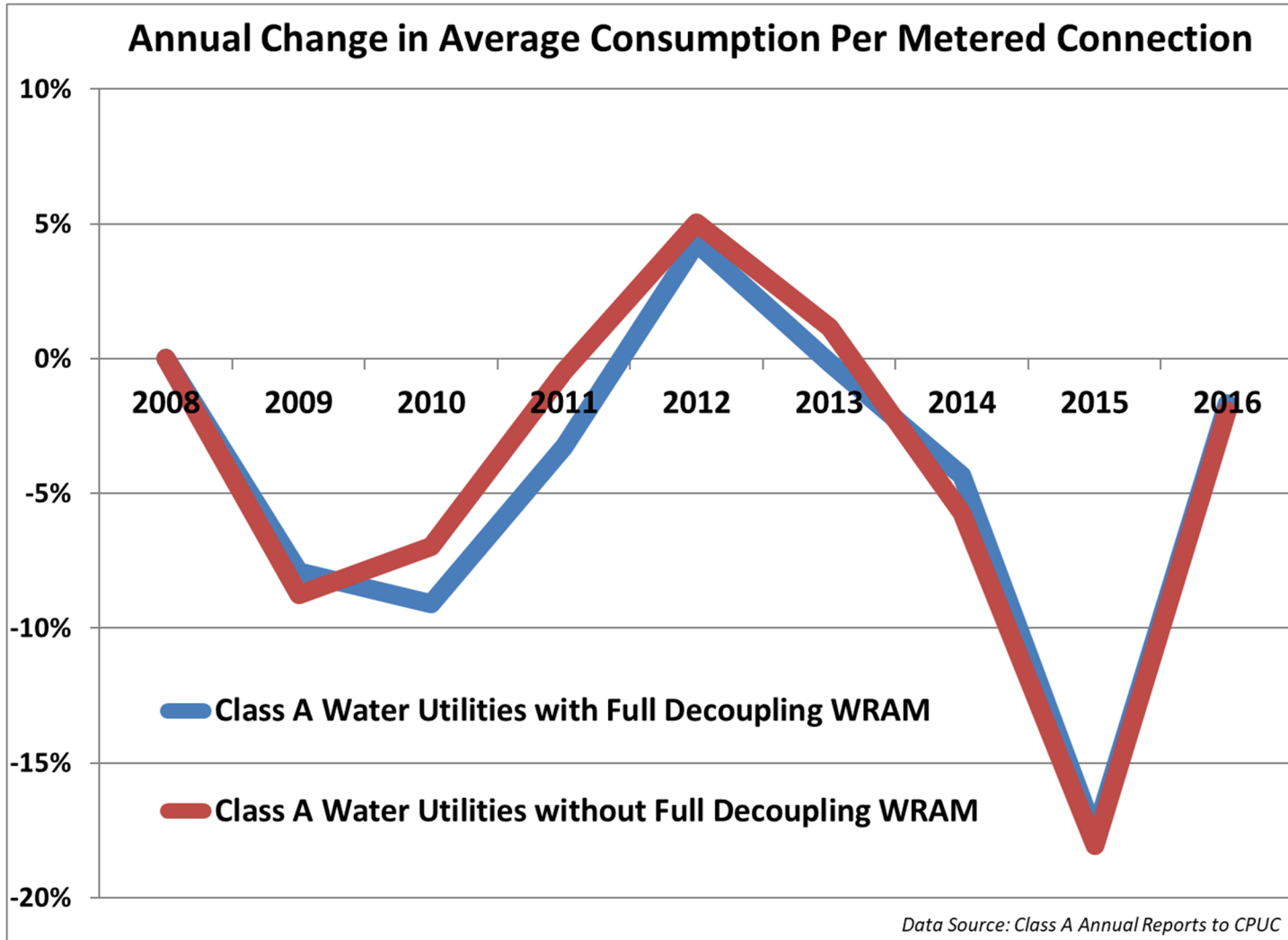
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<sup>16</sup> Appendix A to D. 07-05-062 states at p. A-13: "In addition to relevant issues raised in the proceeding, each decision...unless deviation is otherwise expressly justified in the decision, shall include standard ordering paragraphs providing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

<sup>17</sup> Ibid, at footnote 4.

<sup>18</sup> 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.”<sup>19</sup> 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.”<sup>20</sup> These statements are misleading. WRAM provides

<sup>19</sup> CWA Opening Comments at p. 7.

<sup>20</sup> 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

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit Q**

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) (“Second Amended Scoping Memo”)

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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;

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

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*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit R**

*Proposed Decision of Commissioner Guzman Aceves (July 3, 2020)*

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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**

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

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.<sup>24</sup> 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 it is more cumbersome than our preferred alternative.

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<sup>25</sup> should propose a

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<sup>24</sup> 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.

<sup>25</sup> 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, D.09-05-005, D.09-07-021 and D.10-06-038.

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 WRAM**

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 revenue and rate impacts of WRAM/MCBA amounts are implemented through balancing accounts. 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).<sup>26</sup> 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

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<sup>26</sup> D.12-04-048 at 13.

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

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, D.09-05-005, 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.<sup>28</sup> 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.<sup>29</sup>

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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<sup>27</sup> California Water Association 2018 Phase I Comments at 7-9.

<sup>28</sup> D.08-08-030 at 28.

<sup>29</sup> D.08-08-030 at 22.

American Water Company,<sup>30</sup> recognizes that with higher rate tiers 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.<sup>31</sup> 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.<sup>32</sup> As implemented by the non-WRAM utilities, the Monterey Style WRAM amounts are also offset by variable costs which are accounted for in the ICBA.<sup>33</sup>

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

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<sup>30</sup> D.96-12-005; *see also*, D.00-03-053.

<sup>31</sup> D.08-08-030 at 15.

<sup>32</sup> D.08-06-002, Appendix A, Section VIII at 7. (*See also*, D.08-08-030 at 26.)

<sup>33</sup> 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.



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?<sup>34</sup>

A review of subsequent GRC filings shows that while utilities included testimony addressing WRAM/MCBA options as ordered in D.12-04-048, the 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.<sup>35</sup> 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.<sup>36</sup>

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<sup>34</sup> D12-04-048, OP 4.

<sup>35</sup> D.16-12-026 at 41.

<sup>36</sup> D.16-12-026 at OP 13.

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 in the context of the utilities’ next GRC.<sup>37</sup> 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. 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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<sup>37</sup> Administrative Law Judge’s Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions, September 4, 2019, at 3.

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.”<sup>38</sup> 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.”<sup>39</sup> Subsequently, the WRAM balances have continued to be significantly large and under-collected. Although some of these under-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.

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<sup>38</sup> See, e.g., D.16-12-026 at 36.

<sup>39</sup> D.12-04-048 at 3.

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

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.

The Public Advocates Office of the Public Utilities Commission in its reply comments 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 provided a graph showing 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.<sup>40</sup>

Similarly, a review of reported annual consumption from the State Water Resources Control Board 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. As shown in Table A, Water Savings Percentages, derived from public information available from the State Water Resources Control Board, during the period between 2015 and 2019, the cumulative water savings for the five WRAM utilities varied between 17 and 24%. During the same period, 2015-2019, the cumulative water savings for the four utilities with Monterey-Style WRAMs varied between 19% and 26%. That is, the water savings, or conservation, by utilities without WRAMs actually exceeded the conservation for those utilities with WRAMs.

In addition, as shown in Table A, the conservation exhibited by Class B utilities that have neither WRAM/MCBA mechanisms, nor Monterey-Style WRAMs for this period between 2015 and 2019 is between 19% and 32%, which exceeds WRAM and non-WRAM utilities. While individual water utility characteristics might explain some of these differences, it appears customer conservation is accomplished independently of whether a utility does or does not maintain a WRAM/MCBA mechanism.

These factors lead us to believe that it is not necessary for a utility to have a full WRAM/MCBA mechanism in order that their customers 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

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<sup>40</sup> The Public Advocates Office of the Public Utilities Commission Sept. 2019 Reply Comments at 7.

heeded the continuing message that water is a precious resource that should not be wasted.

**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.<sup>41</sup> 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.

**5.2.5. Transition to a Monterey-Style WRAM**

In view of the foregoing, we believe that it is an appropriate time to move to eliminate 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 ICBAAs.

In ordering this transition, we are aware that an immediate transition is unreasonable as current rates for WRAM utilities are based on adopted forecasts,

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<sup>41</sup> D.16-12-026 at 37.

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 this transformation from WRAM/MCBA to Monterey-Style WRAM/ICBA to occur 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 each GRC for each of the five WRAM utilities.

**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."<sup>42</sup> 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

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<sup>42</sup> D.16-12-026 at 18.

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, 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.<sup>43</sup> Consequently, while we are ordering the utilities with WRAMs to transition to 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

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<sup>43</sup> D.08-08-030 at 28-29.



Account to track revenue shortfalls.<sup>44</sup> 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 provided an opportunity to establish similar lost revenue memorandum accounts during the time of declared drought.<sup>45</sup>

#### **5.2.8. Modifications are needed to the WRAM Process for it to Continue**

We conclude that the primary reasons for adopting the WRAM/MCBA mechanism, to remove the financial disincentive on the part of the utility and to promote the conservation of water, are no longer applicable. 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 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. Consequently, we believe there is good reason for transitioning WRAM utilities away from this mechanism and that a policy change eliminating WRAM/MCBA is a reasonable outcome.

As discussed herein, such a change should not occur immediately as we are cognizant that this transition has many implications. In the next GRCs for each of the five utilities with a WRAM/MCBA, the utilities shall transition to Monterey-Style WRAMs. While we are ordering these transitions in the next

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<sup>44</sup> See, Resolution W-4976, adopted February 27, 2014 at 11.

<sup>45</sup> D.16-12-026 at 35.

GRCs for WRAM utilities, we are also providing an opportunity for these five utilities to establish Monterey-Style WRAMs upon the end of the existing WRAM/MCBA mechanisms. Allowing Monterey-Style WRAMs for these five utilities recognizes that increased rate tiers will reduce sales that would otherwise occur at a single quantity rate.

## **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 it would be difficult to determine the actual household size, we are concerned about the affordability of water rates on large households. Therefore, we expect the utilities in proposing an adopted water rate design will minimize the number of households requiring greater water usage by setting breakpoints between tiers above Tier 1 that minimize the percentage of households in these higher tiers.

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

17. A single, straight-forward name will aid outreach to consumers and statewide coordination in the delivery of assistance to low-income consumers. California-American Water Company's Advice Letter 1221 for establishing a tariff that provided a discount to low-income multi-family renters provides a good starting point for a pilot.

18. 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.

The Monterey-style WRAM provides better incentives to more accurately forecast sales while still providing the utility the ability to earn a reasonable rate of return.

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

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

**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 aligns with 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 transition existing Water Revenue Adjustment Mechanisms to Monterey-Style Water Revenue Adjustment Mechanisms.

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

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

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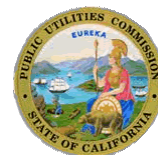
**Exhibit S**

Comments of California Water Association on the Proposed Decision of  
Commissioner Guzman Aceves (July 27, 2020)

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Association***

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



**FILED**

07/27/20  
04:59 PM

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

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

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

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July 27, 2020

**E. Data Requirements the Proposed Decision Would Impose for Consolidation Proposals Would Defeat the Goal of Expediting Such Matters.**

With the stated intention of speeding up water system consolidation proceedings, the Proposed Decision adopts a list of MDRs to be filed with such applications. Cal Advocates proposed an extensive list of items and CWA proposed a much more targeted list. The Proposed Decision’s adopted list includes *all* the items proposed by either party and additional items as well, and would require them for all new water system consolidations applications. This, as well as other aspects of the Proposed Decision’s data requirements, would not serve the goal of expediting water system consolidation proceedings and would be seriously burdensome and problematic for reasons CWA will explain.

**II. THE PROPOSED DECISION’S DISPOSITION OF THE WRAM/MCBA MECHANISM IS PROCEDURALLY DEFICIENT AND REFLECTS A SERIOUS MISUNDERSTANDING OF THE MONTEREY WRAM ALTERNATIVE.**

The Proposed Decision finds that “[t]he major purpose of adopting WRAM/MCBA was to decouple sales from revenues and thus promote conservation,<sup>9</sup> but asserts that such WRAMs “have proven to be ineffective in achieving its primary goal of conservation.” The Proposed Decision then compares the decoupling WRAM/MCBA with the so-called “Monterey-Style” WRAM, concluding that other benefits the WRAM/MCBA provides are better achieved through the Monterey-Style WRAM, and on that basis requires water utilities to propose Monterey-Style WRAMs in future GRCs.<sup>10</sup> The Proposed Decision’s evaluation of the WRAM/MCBA and its performance lacks a sufficient procedural and evidentiary basis, and its treatment of the Monterey-Style WRAM as a substitute for the decoupling WRAM/MCBA is flawed.

**A. The Proposed Decision Lacks a Sufficient Procedural and Evidentiary Basis for Requiring Abandonment of the WRAM/MCBA.**

Cal Advocates introduced the WRAM issue to this proceeding, proposing mandatory conversion of decoupling WRAM/MCBAs to Monterey-Style WRAMs, in comments filed July 10,

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<sup>9</sup> Proposed Decision, p. 83 (Finding of Fact 3).

<sup>10</sup> Proposed Decision, p. 2.

2019 – more than two years after the Commission initiated this rulemaking regarding low-income customer assistance programs. In reply comments filed two weeks later, CWA stressed that this issue was “outside the scope” of issues set for comments and was “contrary to the Commission’s established policies regarding these mechanisms adopted in D.16-12-026.”<sup>11</sup>

The Proposed Decision recognizes that D.16-12-026 (the Balanced Rates Decision in R.11-11-008) “concluded that the WRAM mechanism should be maintained.”<sup>12</sup> But the Proposed Decision later asserts that “[t]his 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.”<sup>13</sup> These statements are *inconsistent*. In fact, the latter one is *false*.

The Commission did squarely address “the foundational issue of whether WRAM/MCBA should continue” in the Balanced Rate proceeding and specifically concluded in D.16-12-026 that “the WRAM mechanism should be maintained.” The decision went on to explain:

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.<sup>14</sup>

D.16-12-026 was adopted in one of the last years of a severe, extended statewide drought, six months after Governor Brown had issued Executive Order B-37-16, encouraging major state water agencies, including the Commission, to take a range of actions aimed to make water conservation a California way of life.<sup>15</sup> The Commission determined to maintain the WRAM/MCBA mechanism in

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<sup>11</sup> Reply Comments of California Water Association Responding to Administrative Law Judge’s June 21, 2019 Ruling, filed July 24, 2019, p. 19. Consequently, the Proposed Decision’s conclusion that “[c]onsideration 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” is contrary to fact. See, Proposed Decision, p. 85 (Conclusion of Law 2).

<sup>12</sup> Proposed Decision, p. 51.

<sup>13</sup> Proposed Decision, p. 52-53.

<sup>14</sup> *Rulemaking 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*, D.16-12-026, adopted December 1, 2016, p.40.

<sup>15</sup> Governor Edmund G. Brown, Executive Order B-37-16, issued in May 2016.



the context of that water conservation priority but also recognized a need for that decoupling mechanism “during this drought period and beyond.”

For the Commission now to abandon a key policy determination of D.16-12-026 and, in effect, to change that decision, based on nothing more than an exchange of comments on a topic injected by one party into a proceeding initiated to address a substantially different set of issues (aimed to improve programs benefiting low-income customers), is contrary to the spirit, and possibly the letter, of Public Utilities Code Section 1708, which *limits* the Commission’s discretion to change its prior decisions by providing as follows:

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.

There was no opportunity to present evidence or to cross-examine witnesses “as provided in the case of complaints” on the WRAM/MCBA issue in this proceeding. Instead, from a graph that first appeared in Cal Advocates’ reply comments not subject to rebuttal, supplemented from an unexplained source associated in some way with the State Water Resources Control Board, the Proposed Decision derives calculations of water conservation by customers of water utilities with WRAM/MCBAs, Monterey-Style WRAMs, and neither mechanism, stating that “it appears customer conservation is accomplished independently of whether a utility does or does not maintain a WRAM/MCBA mechanism.” This assertion leads the Proposed Decision to conclude that “it is not necessary for a utility to have a full WRAM/MCBA mechanism in order that their customers conserve water.”<sup>16</sup>

This analysis relies on references to data stated as being summarized in Table A, a compilation of “water saving percentages, derived from public information available from the State Water Resources Control Board, during the period between 2015 and 2019.”<sup>17</sup> The referenced Table A, however, was neither included in nor attached to the Proposed Decision. When asked about it, ALJ Haga stated that the reference to Table A was “a clerical error.”<sup>18</sup>

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<sup>16</sup> Proposed Decision, p. 55.

<sup>17</sup> *Id.*

<sup>18</sup> See electronic message of Robert Haga to Willis Hon, *et al.*, sent July 8, 2020, 8:36 pm, attached hereto as Appendix B.

That's not good enough. The "record" described provides no basis for findings of fact comparing water conservation impacts. Five Class A water utilities that have implemented and depended on the decoupling WRAM/MCBA for up to a dozen years should not be compelled to abandon that mechanism based on such a flimsy, unsubstantiated factual "showing."

**B. The Proposed Decision Reflects a Serious Misunderstanding of What the Monterey WRAM Does and Does Not Do.**

The Proposed Decision's requirement that the WRAM utilities eliminate the decoupling WRAM/MCBA is contingent on providing them "an opportunity to establish Monterey-Style WRAMS offset by ICBA's."<sup>19</sup> The Proposed Decision observes:

[W]e 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. Consequently, we believe there is good reason for transitioning WRAM utilities away from this mechanism and that a policy change eliminating WRAM/MCBA is a reasonable outcome."<sup>20</sup>

The Proposed Decision recognizes that the Monterey-Style WRAM "adjusts for the revenue effect of metered tiered rates compared to the revenue [the utility] would have received from single flat quantity rates if single flat rates had been in effect."<sup>21</sup> There is no basis for the Proposed Decision's assumption that the Monterey-Style WRAM "captures the benefit" of decoupling sales from revenues.

CWA explained as much in comments filed last September:

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 . . . ."<sup>22</sup>

In simple terms, revenue equals price times quantity of goods sold. Conservation affects both the price and quantity components of the equation but in different ways. Conservation drives

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<sup>19</sup> Proposed Decision, p. 56.

<sup>20</sup> Proposed Decision, p. 59.

<sup>21</sup> Proposed Decision, p. 49.

<sup>22</sup> Comments of California Water Association Responding to Administrative Law Judge's September 4, 2019 Ruling, filed September 16, 2019, p. 13.

lower sales (*i.e.*, quantity), especially reducing sales at higher tier rates, which leads to a lower average price. The lower average price is a much smaller component of the impact on utility revenue than the quantity difference. The Monterey-Style WRAM is purely a pricing side mechanism and so addresses only a small part of the overall equation. It does not address the variation in sales (*i.e.*, quantity), which has a much larger impact on utility revenue. In short, the Monterey-Style WRAM does not decouple revenue from sales. .

The Proposed Decision asserts that, just as the MCBA works with the WRAM to offset variable costs of water supply against changes in quantity revenue, so “the Monterey Style WRAM amounts are also offset by variable costs which are accounted for in the ICBA.”<sup>23</sup> There is no factual basis for this assertion. The findings in D.08-06-002 that the Proposed Decision cites to support it makes no mention of the ICBA.<sup>24</sup> In fact, the ICBA adjusts for varying unit costs of water supplies but has nothing to do with the differential rate tiers for which the Monterey-Style WRAM adjusts.

The Proposed Decision also includes a dubious assertion that allowing Monterey-Style WRAMs for the five WRAM/MCBA utilities “recognizes that increased rate tiers will reduce sales that would otherwise occur at a single quantity rate.”<sup>25</sup> While a goal of tiered rate design is to induce customers to conserve water in order to avoid paying the relatively high upper tier rates, thereby reducing sales, there is simply no connection between this potential sales reduction and the functioning of a Monterey-Style WRAM – which adjusts for rate differentials but *not* for fluctuations in sales.

The Proposed Decision’s findings of fact relating to the WRAM issue are similarly murky and inaccurate. Finding 13 refers vaguely to “an alternative” that would better “minimize intergenerational transfers of costs” than the WRAM/MCBA mechanism, but it is hard to conceive that the Monterey-Style WRAM would be that alternative. The same Finding 13 also asserts that “use of tired [*sic*] rate design is a reasonable means to stabilizing revenues,” which is patently untrue, since a

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<sup>23</sup> Proposed Decision, p. 50.

<sup>24</sup> See, *California American Water Company*, D.08-06-002 (Decision Adopting a Conservation Rate Design Settlement), pp. (Findings of Fact 4-10). This was the decision that first authorized CalAm to implement a WRAM/MCBA. Neither the Monterey-Style WRAM nor the ICBA is mentioned anywhere in the decision.

<sup>25</sup> Proposed Decision, p. 60.

tiered rate design, with a high marginal rate, presents greater risk of revenue shortfall as compared to a uniform quantity rate. Finding 14 is similarly imprecise – it is the elimination of the decoupling WRAM/MCBA rather than implementing a Monterey-Style WRAM that will increase the significance – and controversy – of sales forecasts in setting test year revenues.<sup>26</sup>

In sum, the Proposed Decision’s treatment of the WRAM/MCBA reflects a hasty and superficial review that fails to come to terms with fundamental differences between the decoupling WRAM/MCBA and the Monterey-Style WRAM – which serve different purposes and should be evaluated by different criteria. In past decisions, especially D.16-12-026, the Commission has recognized the need to address the WRAM/MCBA in each company’s GRC. If the Commission wishes to address company-specific WRAM/MCBA issues on their merits, rather than accepting settlements that punt the issue to subsequent GRCs, it may announce that preference in the present decision, placing the utilities and other parties on notice of that intent. However, a broad policy conclusion like that attempted in the Proposed Decision – complete elimination of the decoupling mechanism – should only be considered after all parties have the opportunity to develop a complete record, whether in a new rulemaking or in a third phase of this rulemaking. Either of these procedures will allow for a fact-based analysis of the WRAM/MCBA, warts and all, can provide an opportunity for creative collaboration to address low-income affordability without sacrificing decoupling, and can be expected to produce a fairer and better result.

### **III. THE PROPOSED DECISION SHOULD SET POLICY BUT NOT RIGID LIMITS TO GOVERN WATER RATE DESIGN.**

As noted in Section I of these comments, CWA supports the Proposed Decision’s direction to the utilities to make proposals in their next GRCs to set Tier 1 breakpoints that align with a baseline amount of water sufficient for basic human needs for each ratemaking area. But, as also stated above, CWA is concerned by the Proposed Decision’s requirement that every utility’s baseline analysis

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<sup>26</sup> See, Proposed Decision, p. 84 (Findings of Fact 13 and 14). It may be noted that there are some 50 Class A ratemaking districts for which sales forecasting will become a critical and controversial issue in GRCs if the WRAM/MCBA is eliminated.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
*Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
*Respondent.*

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

Of the Public Utilities Commission of the State of California

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**Exhibit T**

Great Oaks Water Company's Comments to Proposed  
Phase I Decision (July 27, 2020)

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

Order Instituting Rulemaking evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between 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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**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.

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) Rulemaking No. 17-06-024

) Filed: June 29, 2017

**GREAT OAKS WATER COMPANY’S COMMENTS  
TO PROPOSED PHASE I DECISION**

**I. Introduction**

This Rulemaking proceeding began more than two years ago, ostensibly for the purpose of evaluating whether the Commission’s 2010 Water Action Plan objectives pertaining to Class A low-income rate assistance programs and affordability have been met. The Proposed Decision of Commissioner Guzman Aceves (Proposed Decision) does not address most of the identified Phase I issues, but instead includes a number of dramatic and unnecessary departures from Commission policies and prior Commission Decisions. In fact, the Proposed Decision includes wholesale changes to the Commission’s policies and prior decisions on conservation, not low-income programs. The Proposed Decision then closes Phase I of this proceeding and, by doing so, leaves most questions about whether the low-income program objectives of the 2010 Water Action Plan have been met completely unanswered.

As noted in the caption of this proceeding, this Rulemaking is supposed to evaluate whether the objectives related to low-income rate assistance programs as set forth in the Commission’s 2010 Water Action Plan have been met. Those objectives included: tracking

shutoffs for non-payment for low-income ratepayers; work with the Low Income Oversight Board; develop standardized tariff discounts and eligibility criteria; increase penetration rates of existing programs; and enhance the CPUC website to prominently feature low-income programs.<sup>1</sup> The Proposed Decision closing Phase I addresses none of the low-income objectives of the 2010 Water Action Plan. In this regard, the Proposed Decision represents a complete failure to address the stated purpose of this Rulemaking.

Instead of evaluating whether the low-income program objectives of the 2010 Water Action Plan have been achieved, the Proposed Decision would make major changes to Commission water conservation policies that have been considered by national and state water industries to be “best practices,” all without adequate factual support. This suggests that this Rulemaking was more focused on issues other than low-income programs.

The Proposed Decision would also alter or cancel prior Commission Decisions without adequate factual and legal predicate. This should be deeply concerning to the Commission, as the Proposed Decision produces extreme inconsistencies in Commission practice that will make regulation even more difficult to discern in the future.

All of the Class A water utilities, Great Oaks Water Company (Great Oaks) included, must make decisions and proposals based upon Commission policies and precedents, together with applicable law. The Proposed Decision adversely affects the ability to do so and should be held, withdrawn, rejected, and/or fully reconsidered at this early stage to avoid the uncertainty and significantly negative consequences of including sweeping policy changes having nothing to do with low-income programs in what was thought to be a Rulemaking to evaluate the effectiveness of low-income programs.

In these comments, Great Oaks Water Company (Great Oaks) focuses on the factual, legal, or technical errors of the Proposed Decision as they pertain to low-income rate assistance programs, as well as the errors in the dramatic and premature policy changes on other, non-low-income program issues included in the Proposed Decision.

## **II. Comments on the Proposed Decision**

### **A. The Proposed Decision adopts a uniform name for Class A water utility low-income ratepayer assistance programs.**

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<sup>1</sup> See 2010 Water Action Plan, pp. 34 – 35.



IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA WATER ASSOCIATION  
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*Respondent.*

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

Of the Public Utilities Commission of the State of California

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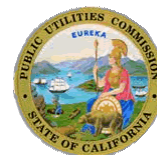
**Exhibit U**

Application of California Water Association for Rehearing of Decision 20-08-047  
(October 5, 2020)

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



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

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

**APPLICATION OF CALIFORNIA WATER ASSOCIATION  
FOR REHEARING OF DECISION 20-08-047**

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October 5, 2020

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

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

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

**APPLICATION OF CALIFORNIA WATER ASSOCIATION  
FOR REHEARING OF DECISION 20-08-047**

Pursuant to Rule 16.1(a) of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission ("Commission"), California Water Association ("CWA") hereby applies for rehearing of Decision ("D.") 20-08-047 ("Phase I Decision"), which was issued on September 3, 2020. CWA submits this Application for Rehearing as a party to this proceeding. CWA is the statewide association representing the interests of water utilities subject to the jurisdiction of the Commission. CWA's members provide safe, reliable, high-quality drinking water to approximately six million Californians.

**I. INTRODUCTION**

The Commission opened this proceeding with the issuance of an Order Instituting Rulemaking ("OIR") in July 2017, which stated that it was beginning "a review of the low-income rate assistance programs of the Class A water utilities under the Commission's jurisdiction to assess the feasibility of achieving program consistency across the Class A water utilities" among other related water policy goals.<sup>1</sup> The scope of the Rulemaking was modified

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<sup>1</sup> *Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency Between the Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, Affordability, and Sales Forecasting* (July 10, 2017), p. 1.

over the last three years, but it was not until the issuance of the proposed Phase I Decision that the Commission disclosed to the parties that it was considering an order to prohibit five specifically identified water utilities from proposing to continue the use of the Water Revenue Adjustment Mechanism/Modified Cost Balancing Account (“decoupling WRAM”) in their next general rate cases.<sup>2</sup>

CWA and many other parties were surprised to find this major shift in Commission water ratemaking policy included in the *Proposed Decision of Commissioner Martha Guzman Aceves* issued on July 3, 2020 (“Proposed Decision”). CWA and its member water utilities had objected to such a proposal on both procedural and substantive grounds when it was previously raised in this proceeding, the scope of which had been focused on low-income water rate assistance programs. Indeed, prohibition of the decoupling WRAM was never formally identified as within the scope of this rulemaking.

Instead, abandonment of the decoupling WRAM was first proposed in this proceeding by the Public Advocates Office (“Cal Advocates”) in comments filed on July 10, 2019 – more than two years after the Commission initiated this rulemaking to address low-income customer assistance programs for Class A water utilities.<sup>3</sup> In reply comments filed two weeks later, CWA objected to Cal Advocates’ recommendation on the WRAM as outside the established scope of this proceeding.<sup>4</sup> Notwithstanding CWA’s objection, the assigned Administrative Law Judge issued a ruling on September 4, 2019 soliciting party input on a

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<sup>2</sup> Phase I Decision, p. 106, Ordering Paragraph 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.”).

<sup>3</sup> *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), p. 13.

<sup>4</sup> *Reply Comments of California Water Association Responding to Administrative Law Judge’s June 21, 2019 Ruling* (July 24, 2019), p. 19 (“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.”).

number of issues, including whether the Commission should consider converting decoupling WRAMs to Monterey-Style WRAMs (a non-decoupling mechanism that adjusts revenue based on a comparison of water sales revenues from tiered rates and what those revenues would have been under a single uniform rate).<sup>5</sup> CWA again objected to presentation of this question as beyond the established scope of this proceeding in opening comments filed September 16, 2019,<sup>6</sup> and responded to arguments on this issue made by other parties in reply comments filed a week later, on September 23, 2019.<sup>7</sup>

Adequate consideration of Cal Advocates' challenge to the decoupling WRAM would have required a complex factual inquiry. As will be referenced below, five of the Class A water utilities have employed decoupling WRAMs, with the Commission's authorization, for more than a decade, the Commission has considered detailed expert testimony both critical and supportive of these mechanisms in numerous general rate cases ("GRCs") for these companies, and the Commission has conducted at least two generic inquiries evaluating performance of the decoupling WRAM, in all instances sustaining its continued use. The hasty consideration of this issue upon its injection by Cal Advocates into the current proceeding did not allow

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<sup>5</sup> Notwithstanding the similar name, the Monterey-Style WRAM is a wholly distinct mechanism that is not designed to decouple sales from revenues as the decoupling WRAM does, but instead merely trues up such revenues to what they would have been if uniform volumetric rates had been in effect. *See Re California Water Service Co.*, D.06-08-011, p. 16 fn. 15 ("The WRAM balancing account for California-American Water Company's Monterey Division is not intended to true up the utility's steeply ascending, multiple-block revenues to the GRC estimate, but rather to what the revenues would have been had each customer been billed on the Commission standard rate design described earlier. Thus, it does not relieve California-American Water Company of its normal revenue risk due to sales variation, but rather returns it to that normal risk level from the extreme revenue risk it would otherwise face under the steeply ascending, multiple-block rate structure the Commission has established to meet water production constraints placed on the utility by the California Water Resources Control Board.").

<sup>6</sup> *Comments of California Water Association Responding to Administrative Law Judge's September 4, 2019 Ruling* (September 16, 2019), p. 13 ("As previously explained by CWA,<sup>26</sup> 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.").

<sup>7</sup> *Reply Comments of California Water Association Responding to Administrative Law Judge's September 4, 2019 Ruling* (September 23, 2019), pp. 2-3.

development of a sufficient evidentiary record to support an order mandating discontinuance of the decoupling WRAM and scant evidence was submitted in this regard.

At no point did the Commission or the Assigned Commissioner ever amend the established scope of this proceeding to formally include consideration of Cal Advocates' recommendation to abandon the decoupling WRAM. Notwithstanding this procedural failure and the scant evidentiary record on the matter, the Proposed Decision, released July 3, 2020, overrode both procedural and substantive objections by ordering the conversion of the five companies' decoupling WRAMs to Monterey-Style WRAMs in their next general rate cases. CWA and other parties again raised objections to the Proposed Decision's mandate to discontinue the decoupling WRAM in opening and reply comments, including substantive criticisms of the purported evidence identified therein to support that outcome.

On the day before the August 27, 2020 Commission voting meeting<sup>8</sup> at which the Proposed Decision was to be considered, the Commission posted Revision 1 to the Proposed Decision on its website, revising several aspects of the Proposed Decision including a wholesale rewrite of the alleged evidentiary basis for discontinuing the decoupling WRAM.<sup>9</sup> The next day, the Commission voted 4-1 to adopt the Phase I Decision, with Commissioner Randolph filing a dissent explaining her disagreement with the mandatory discontinuance of the decoupling WRAM.

Given the complexity, controversy, and significant public interest in the WRAM issue been in this and past Commission proceedings, the hasty elimination of the mechanism in the Phase I Decision is remarkable, troubling, and unlawful, as demonstrated by the issues addressed in this Application for Rehearing:

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<sup>8</sup> The late issuance of "Revision 1" to the Proposed Decision violated the Commission's own Policies and Guidelines for Voting Meetings. See Policy 8.b. at <https://www.cpuc.ca.gov/General.aspx?id=1187>.

<sup>9</sup> The redline version showing the changes between the original July 3, 2020 Proposed Decision and the August 27, 2020 Revision 1 is attached hereto as **Attachment A**. The document comparison summary appended to the last page of Revision 1 indicates that there were 346 insertions and 368 deletions between the two versions.

- The Commission prejudicially failed to proceed in the manner required by law because considering elimination of the decoupling WRAM was not within the established scope of this proceeding.
- The Commission denied parties 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.
- The eleventh-hour revision to the Proposed Decision constituted an alternate proposed decision for which additional opportunity for public review and comment was required pursuant to Public Utilities Code Section 311(e).
- The Findings of Fact in the Phase I Decision material to discontinuing the decoupling WRAM are not supported by relevant evidence in the record.

The Commission should adopt and revise utility ratemaking policies only based on careful legal analysis and informed by a robust evidentiary record, particularly for an issue as important and controversial as the WRAM. The Phase I Decision critically misses the mark. Unfortunately, the hurried process in this proceeding leading up to the Phase I Decision suggests that the determination to discontinue the decoupling WRAM may have been predetermined, with references to factual material – much of it not meriting consideration as evidence – haphazardly gathered to support that determination without notice and after the fact, a process by which the decision determines the evidence, rather than properly having the evidence and law determine the outcome.

Even in the best light, the Commission has unlawfully taken shortcuts in its rulemaking processes and failed to afford parties notice and a meaningful opportunity to be heard on issues relating to the WRAM. This is particularly troublesome because the Phase I Decision takes the extreme step of not just disfavoring the decoupling WRAM, but mandating its discontinuance by prohibiting the five specified water utilities from proposing continued use of that mechanism in their next GRCs.



Therefore, for the reasons this Application for Rehearing will make clear, CWA respectfully urges the Commission to grant this Application for Rehearing and correct the legal errors outlined below. At minimum, the decoupling WRAM deserves a fair and robust analysis by the Commission, as that has not been provided in this rulemaking, unlawfully denying a meaningful opportunity for parties to be heard.

## II. **DISCUSSION**

### A. **The Commission Failed to Proceed in the Manner Required by Law Because Considering Elimination of the Decoupling WRAM Was Beyond the Established Scope of This Proceeding and That Failure Was Prejudicial.**

In adopting the Phase I Decision, the Commission failed to regularly pursue its authority and proceed in the manner required by law, because considering elimination of the decoupling WRAM was beyond the established scope of this proceeding, in violation of statutory requirements and the Commission's own procedures requiring it to expressly identify the issues to be considered in a quasi-legislative rulemaking proceeding in a scoping memo. In past cases, the appellate courts have annulled Commission decisions for considering and purporting to resolve issues outside of the established scope of the proceeding where such failure has resulted in prejudice to the parties. For example, in City of Huntington Beach v. Pub. Util. Com., the Court of Appeal annulled a telecommunications decision where the Commission had addressed a preemption issue at the petition for modification phase that its earlier scoping memo rulings had expressly determined to be outside the scope of the proceeding.<sup>10</sup>

As relevant here, Public Utilities Code Section 1701.1(c) provides in part that in a quasi-legislative proceeding the "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 and that, consistent with due process, public policy, and statutory requirements,

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<sup>10</sup> See City of Huntington Beach v. Pub. Util. Com., 214 Cal. App. 4th 566 (2013).

determines whether the proceeding requires a hearing.”<sup>11</sup> Accordingly, Rule 7.1(c) provides for the Commission to issue a preliminary scoping memo in a rulemaking proceeding and provide for objections to the preliminary scoping memo.<sup>12</sup> The Assigned Commissioner then must make a ruling in a scoping memo that “shall determine the schedule (with projected submission date) and issues to be addressed” in the rulemaking proceeding.<sup>13</sup> The underlying purpose of these rules requiring the issuance of a scoping memo is to apprise potential stakeholders of the issues at stake in a proceeding in order to afford them fair notice and an opportunity to meaningfully participate.

In this proceeding, neither the OIR nor any of the scoping memos issued in this proceeding reasonably indicated that the scope of issues to be addressed in this proceeding included consideration of whether to prohibit water utilities from continuing to employ the decoupling WRAM. The original scoping memo, issued on January 9, 2018, outlined several specific policy issues to be considered in this proceeding, but nothing therein gave any indication or notice that discontinuance of the decoupling WRAM or other revenue or rate adjustment mechanisms would be considered in this proceeding.<sup>14</sup> Similarly, the first amended scoping memo, issued on July 9, 2018, added only two more discrete issues, neither of which could reasonably be interpreted to include discontinuance of the WRAM.<sup>15</sup> Most recently, a second amended scoping memo, issued on June 2, 2020, focused on the impacts of the current

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<sup>11</sup> Cal. Pub. Util. Code § 1701.1(c).

<sup>12</sup> Rule 7.1(c).

<sup>13</sup> Rule 7.3.

<sup>14</sup> See *Scoping Memo and Ruling of Assigned Commissioner* (January 8, 2018), pp. 2-4 (expressly identifying issues to be considered in this proceeding).

<sup>15</sup> See *Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* (July 9, 2018), p. 3 (“We therefore include the following issues within the scope 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 California Public Utilities Commission (Commission) should adopt criteria to allow for sharing of low-income customer data by regulated investor-owned energy utilities with municipal water utilities.”).

COVID-19 pandemic and pertains to a second phase of the proceeding currently underway.<sup>16</sup> Most critically, neither the OIR nor any of the three scoping memos satisfies the purpose of reasonably apprising potential stakeholders that revenue decoupling matters and related ratemaking mechanisms, including mandatory discontinuance of the WRAM, would be under consideration in this proceeding. The Commission simply cannot show that the WRAM issue was stated or otherwise noticed in any of the scoping memos issued in this proceeding.

Given prior consideration of the decoupling WRAM in ratesetting proceedings for particular Class A water utilities as well as the Commission’s extensive review of the WRAM as a specific and discrete (and contentious) issue in previous rulemaking proceedings,<sup>17</sup> the conspicuous absence of any direct mention of the decoupling WRAM or other revenue or rate adjustment mechanisms led the parties to understand that those issues were not issues to be considered in this proceeding. In fact, the terms “Water Revenue Adjustment Mechanism,” “WRAM,” or even “decoupling” were never even expressly mentioned in anywhere in the OIR or any of the three scoping memos issued to date. This lack of forewarning is particularly relevant when contrasted with the Phase I Decision’s extensive discussion of the WRAM and numerous findings of facts and conclusions of law attempting to support its determination to discontinue it. The Phase I Decision’s disposition of the decoupling WRAM was simply outside the established scope of this proceeding, thereby prejudicing the parties and other stakeholders by depriving them of adequate notice of that issue and denying them a meaningful opportunity to provide evidence in support of their positions.

In Southern California Edison Co. v. Pub. Util. Com.,<sup>18</sup> the Court of Appeal addressed a decision the Commission issued in a rulemaking proceeding regarding bid

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<sup>16</sup> See *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), pp. 2-5 (expressly identifying issues to be considered in Phase II of this proceeding relating to the COVID-19 pandemic).

<sup>17</sup> See, e.g., D.16-12-026 (addressing the WRAM in the context of Rulemaking 11-11-008).

<sup>18</sup> Southern California Edison Co. v. Pub. Util. Com., 140 Cal. App. 4th 1085 (2006) (“Edison”).

shopping and reverse auctions for energy utilities.<sup>19</sup> Several months into the proceeding, one of the parties made a proposal regarding prevailing wages to which other parties objected as outside the scope of that proceeding.<sup>20</sup> The Commission, as it did here, issued further rulings seeking input on those proposals, but never expressly stated that it “intended to modify the scope of issues in the proceeding to include the new proposals.”<sup>21</sup> Upon review, the Court of Appeal found that the last-ditch attempts by the assigned Administrative Law Judge in that proceeding to amend the scope and allow feedback on the prevailing wage proposals just before the Commission proceeded to adopt those proposals in a formal decision were procedurally insufficient.<sup>22</sup> Concluding that the Commission had “failed to proceed in the manner required by law ... and that the failure was prejudicial,”<sup>23</sup> the court annulled the Commission’s decision.<sup>24</sup> The same result will apply here unless rehearing is granted on this issue.

The defective procedural steps taken in this proceeding track the same troubled path as the proceeding at issue in the Edison case. Notwithstanding CWA’s repeated objections that the proposal to mandate discontinuance of the WRAM was outside the stated scope of this proceeding, the Phase I Decision baldly asserts the contrary in Conclusion of Law 2 by stating that “[c]onsideration 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.”<sup>25</sup> Each of the arguments set forth in the Phase I Decision to support this Conclusion of Law is fatally flawed and unsupported as a legal matter.

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<sup>19</sup> *See id.*, at 1091–1092.

<sup>20</sup> *See id.*, at 1092–1093, 1105–1106.

<sup>21</sup> *Id.*, at 1106.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, at 1107.

<sup>25</sup> Phase I Decision, p. 104, Conclusion of Law 2.

First, while not addressing the problem directly, the Phase I Decision alludes to a number of procedural developments in this proceeding to suggest that consideration of discontinuing the decoupling WRAM had been within the scope of this proceeding:<sup>26</sup>

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 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. 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/MCBA mechanism to a Monterey-Style WRAM with an incremental cost balancing account.

The Phase I Decision's reliance on the CWA and Cal Advocates comments, the August 2, 2019 workshop, and even the September 4, 2019 Administrative Law Judge's Ruling is entirely misplaced. Both the statutory framework<sup>27</sup> and the Commission Rules<sup>28</sup> expressly vest the authority and responsibility to set the scope of issues solely in the Assigned Commissioner, with that authority to be exercised by issuance of scoping memos. Thus, discussion of WRAM issues among the parties and even the actions of the assigned Administrative Law Judge were all procedurally and legally insufficient to expand the formal scope of this proceeding.

In the Edison case discussed above, the Court of Appeal found that neither the discussion of the prevailing wage proposal by the parties nor the attempt by the Administrative

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<sup>26</sup> Phase I Decision, p. 54 (footnotes omitted); *see also*, p. 59 (“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.”).

<sup>27</sup> Cal. Pub. Util. Code § 1701.1(c) (“The **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 and that, consistent with due process, public policy, and statutory requirements, determines whether the proceeding requires a hearing.”) (emphasis added).

<sup>28</sup> Rule 7.3 (“The **assigned Commissioner** shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and issues to be addressed.”) (emphasis added).

Law Judge in that proceeding to amend its scope to include that issue were sufficient to cure the fact that the prevailing wage proposal was beyond the scope of issues identified in the Assigned Commissioner’s scoping memo.<sup>29</sup> Thus, only the Assigned Commissioner could have formally amended the scoping memo to include consideration of the WRAM in this proceeding – an action that never was taken here.

Second, the Phase I Decision contends that the issue of whether to discontinue the decoupling WRAM fell under the consideration of “how to improve water sales forecasting,”<sup>30</sup> a topic that was included in the original scoping memo in this rulemaking. Specifically, the original scoping memo, issued on January 9, 2018, identified the following issue to be considered as item 2.b:<sup>31</sup>

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?

The Phase I Decision takes an overly broad reading of this previously “scoped” issue that undermines the basic purposes for which the scoping memo is required. Sales forecasting methodology is a wholly distinct issue from whether to eliminate the decoupling WRAM – the latter issue does not concern the “methodologies” that may be used to forecast water sales, but instead decouples the revenues from sales after the fact.<sup>32</sup> Indeed, consideration of whether to

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<sup>29</sup> See Edison, at 1106.

<sup>30</sup> Phase I Decision, p. 59.

<sup>31</sup> *Scoping Memo and Ruling of Assigned Commissioner* (January 8, 2018), pp. 2-3.

<sup>32</sup> It is noteworthy that D.16-12-026, referenced in Item 2.b of the January 2018 scoping memo, was a Commission decision that addressed “forecasting” and the “WRAM/MCBA” as distinct issues. Compare D.16-12-026 Section 6.1 titled “Forecasting” with Section 6.2 titled “WRAM/MCBA” therein.

discontinue the decoupling WRAM did not arise in this proceeding until Cal Advocates made such a proposal in comments filed in July 2019, 18 months after issuance of the January 2018 scoping memo.

The critical question here is not whether this issue can reasonably be understood, retrospectively, as encompassed within one of the scoping memo items, but instead whether the issues expressly identified in the scoping memo reasonably apprised the parties that this particular issue would be under consideration in this proceeding. The clear answer to that question is no. Given this tenuous linkage and the outsized focus the Commission has historically placed on the WRAM relative to other water ratemaking policy matters, it is inconceivable that the Commission would have intended for such a major issue to be inconspicuously subsumed in a scoping memo item on sales forecasting that does not mention the terms “WRAM” or “decoupling” at all. For the sake of due process and reasoned decision-making, the Commission had a legal responsibility to provide notice to the parties that discontinuance of the WRAM would be considered in this proceeding, but failed to do so.<sup>33</sup>

In summary, the Phase I Decision is unlawful and, if necessary, will be annulled through judicial review, because mandatory discontinuance of the WRAM was never adequately or properly identified in any scoping memo as an issue to be considered in this proceeding as required by statute and the Commission’s own rules. This error was prejudicial to the parties in this proceeding by depriving them of notice and meaningful opportunity to respond to that issue.

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<sup>33</sup> Until the issuance of the Proposed Decision, the Commission did not directly address CWA’s multiple objections that the consideration of this issue was outside the scope of this proceeding.

**B. The Commission Denied Parties a Meaningful Opportunity to Respond to the Proposal to Discontinue the Decoupling WRAM in Violation of Statutory Requirements and Due Process.**

The key element supporting the Phase I Decision’s discontinuance of the WRAM is an assertion that the decoupling WRAM is not necessary to achieve conservation.<sup>34</sup> Not only is this conclusion substantively incorrect for the reasons outlined in the comments filed by CWA and other parties on the Proposed Decision, but the manner in which the Commission reached it effectively denied parties a meaningful opportunity to respond to Cal Advocates’ proposal to discontinue the WRAM, in violation of statutory requirements and due process. The procedural steps taken in this proceeding are legally deficient in at least two respects.

First, the Commission failed to afford parties a meaningful opportunity to address the relevant issues concerning the WRAM over the course of the proceeding leading up to the issuance of the Proposed Decision. Each of the decoupling WRAMs currently being utilized was authorized in Commission decisions issued in ratesetting proceedings,<sup>35</sup> and subsequently reauthorized in a succession of GRCs.<sup>36</sup> The most recent generic Commission review of the decoupling WRAM came in the balanced rates rulemaking decision, D.16-12-026, which affirmed the decoupling WRAM as a ratemaking mechanism for ongoing use. Public Utilities Code Section 1708 limits the Commission’s discretion to change its prior decisions by providing that 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.”<sup>37</sup> There was no such opportunity to present evidence or to cross-

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<sup>34</sup> Phase I Decision, p. 67 (“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.”).

<sup>35</sup> See, D.08-02-036, D.08-06-002, D.08-08-030, D.08-09-026, D.08-11-023, D.09-05-005, D.09-07-021, and D.10-06-038.

<sup>36</sup> See, e.g., D.10-12-017, D.14-08-011, and D.16-12-042 for California Water Service Company; D.12-11-006 and D.15-04-007 for California-American Water Company; D.10-11-035, D.13-05-011, and D.16-12-067 for Golden State Water Company), D.09-12-001 and D.13-09-005 for Park Water Company; and D.12-09-004 and D.15-11-030 for Apple Valley Ranchos Water Company.

<sup>37</sup> Cal. Pub. Util. Code § 1708.



examine witnesses “as provided in the case of complaints” on the WRAM issue in this proceeding.

Instead, the Phase I Decision apparently relies solely upon the discussion regarding this issue during the August 2, 2019 workshop and the subsequent limited set of opening and reply comments filed by parties in September 2019. This was a woefully and legally insufficient basis for reversing a prior Commission decision, D.16-12-026, which had thoroughly and definitively addressed criticisms of the decoupling WRAM and had determined that at that time “the WRAM mechanism should be maintained.”<sup>38</sup> In reaching that prior decision, the Commission analyzed many of the same criticisms of the decoupling WRAM mentioned in the current Phase I Decision, but instead directed water utilities at the time to propose solutions in their next general rate cases that would help to mitigate the downsides of the decoupling WRAM.<sup>39</sup> The Phase I Decision cuts off that process prematurely, as the solutions derived from D.16-12-026 are only now being implemented and the full effects have not yet been studied completely.

In California Trucking Assn. v. Pub. Util. Com., the California Supreme Court construed the phrase “an opportunity to be heard” under Section 1708 as implying “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.”<sup>40</sup> In particular, the Court held that

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<sup>38</sup> D.16-12-026, p. 41 (“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.”).

<sup>39</sup> *Id.*, pp. 42-43.

<sup>40</sup> California Trucking Assn. v. Pub. Util. Com., 19 Cal.3d 240, 244 (1977).

Section 1708 required a proceeding “at which parties are entitled to be heard and to introduce evidence...”<sup>41</sup> This procedural requirement was never met in this proceeding.<sup>42</sup>

It was never incumbent on CWA or other parties to seek greater opportunities to weigh in on the WRAM matter, as the issue was never reasonably encompassed in any of the scoping memos issued in this proceeding. For Commission proceedings, the appellate courts have definitively held that it is inappropriate to “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.”<sup>43</sup> Thus, the thinness of the evidentiary record on the merits or demerits of the decoupling WRAM that was developed in this proceeding is not the fault of CWA or other parties interested in defending that revenue adjustment mechanism. To the contrary, the deficiency of the evidentiary record is the Commission’s failure, as it does not meet the procedural standard mandated for the protection of such parties.

Second, the steps taken from when the Proposed Decision was first issued to the adoption of the Phase I Decision during the August 27, 2020 Commission business meeting are equally troubling, if not more so. The initial version of the Proposed Decision issued on July 3, 2020 identified two bits of factual information to support the key conclusion that “it is not necessary for a utility to have a full WRAM/MCBA mechanism in order that their customers

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<sup>41</sup> *Id.*

<sup>42</sup> Section 1708.5(f) provides a limitation to Section 1708 allowing the Commission to “adopt, amend, or repeal a regulation using notice and comment rulemaking procedures, without an evidentiary hearing.” (Emphasis supplied.) Authorization of the decoupling WRAM in the rate decisions set forth in notes 33 and 34, *supra*, was not a “regulation” subsequently “repealed” by the Phase I Decision. Those authorizations were specific to particular utilities, were not applicable to any broad class of utilities, and were not adopted by rulemaking procedures. Thus, the Section 1708.5(f) exception to the application of Section 1708 does not apply.

<sup>43</sup> Edison, at 1106 (“Most of the responsive comments were limited to objections that the new proposals were beyond the scope of issues identified in the scoping memo. Those objections were appropriate in our view. We 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.”).

conserve water.”<sup>44</sup> The first was a graph that first appeared in Public Advocates Office’s September 23, 2019 reply comments for which CWA and other parties were never afforded an opportunity to respond until it was mentioned and relied upon in the Proposed Decision.<sup>45</sup> The second was an opaque reference to “water saving percentages, derived from public information available from the State Water Resources Control Board, during the period between 2015 and 2019.”<sup>46</sup> The Proposed Decision indicated that the data from the latter source were “shown in Table A,”<sup>47</sup> but no “Table A” was to be found in or accompanying the Proposed Decision.<sup>48</sup> In comments on the Proposed Decision, CWA and other parties objected to the Proposed Decision’s reliance on these sources of factual support for discontinuing the WRAM due to the lack of any reasonable opportunity to verify their accuracy or meaningfully respond to them. Rather than address these concerns, the Commission exacerbated the factual deficiency of the Proposed Decision when it issued Revision 1 the day before considering the Proposed Decision at the August 27 Commission business meeting.<sup>49</sup> First, Revision 1 incorporated a lengthy summary of the August 2, 2019 workshop not found in the earlier Proposed Decision. Second, Revision 1 removed the suspect references to the purported State Water Resources Control Board data entirely and substituted an equally opaque reference to data purportedly drawn from “water utility annual reports filed from 2008 through 2016” (which had never previously been mentioned either in the course of the rulemaking or in the original Proposed Decision).<sup>50</sup> As with the earlier State Water Resources Control Board data, no explanation was

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<sup>44</sup> Proposed Decision, p. 55.

<sup>45</sup> *Id.*, pp. 54-55.

<sup>46</sup> *Id.*, p. 55.

<sup>47</sup> *Id.*

<sup>48</sup> In response to inquiries shortly after issuance of the Proposed Decision, the assigned Administrative Law Judge indicated that the reference to “Table A” was included in error and that the Proposed Decision would be revised simply to remove such reference.

<sup>49</sup> A copy of Revision 1 is attached as **Attachment A** here.

<sup>50</sup> See **Attachment A**, p. 60 (deleting discussion of State Water Resources Control Board data), p. 92 (adding references to water utility annual reports in Findings of Fact 13 and 14).

provided as to how any analysis of the water utilities' annual reports had been conducted or what specific data from these voluminous sources were relied upon. Moreover, as this key basis for ordering discontinuance of the decoupling WRAM was introduced on the eve of the Commission's vote, there was never any meaningful opportunity for CWA to verify its accuracy, let alone provide a response to it. This clear break from proper and lawful Commission procedure resulted in obvious prejudice to the affected parties.

The Phase I Decision ultimately explains that it agrees "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."<sup>51</sup> This conclusory finding fails to inform the parties or any reviewing court of the Commission's logic in reaching that conclusion. While the Phase I Decision asserts that "there is no evidence that eliminating the WRAM will raise rates on low-income and low-use customers,"<sup>52</sup> the Commission never provided parties a meaningful opportunity to present such evidence.

Therefore, at minimum, the Commission should grant this Application for Rehearing to remedy the procedural deficiencies relating to how the Phase I Decision was reached and afford parties a meaningful opportunity to evaluate and respond to the conclusory claims relating to the water utility annual reports. As mandated by Public Utilities Code Section 1708, the Commission must grant the parties notice and "opportunity to be heard as provided in the case of complaints."

**C. The Eleventh-Hour Revision to the Proposed Decision Constituted an Alternate Proposed Decision for Which Additional Opportunity for Public Review and Comment Was Required Pursuant to Public Utilities Code Section 311(e).**

In addition to depriving parties of a meaningful opportunity to respond to a new rationale for its determination to discontinue the decoupling WRAM and a new source of

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<sup>51</sup> Phase I Decision, p. 68.

<sup>52</sup> *Id.*

allegedly supporting that determination, the eleventh-hour revision of the Proposed Decision also constituted an Alternate Proposed Decision for which additional opportunity for public comment was required, but not provided. Public Utilities Code Section 311(e) requires that “[a]ny item appearing on the commission’s public agenda as an alternate item to a proposed decision... shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon.”<sup>53</sup> The statute defines “alternate” to mean “either 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.”<sup>54</sup>

In particular, as explained above, the last-minute Revision 1 to the Proposed Decision introduced a new explanation relating to workshop remarks and water utility annual reports as the purported factual basis for requiring discontinuance of the decoupling WRAM. While the end result of mandating discontinuance of the WRAM was the ultimately the same, the novel allegations of factual support drawn from workshop discussions and water utility annual reports comprised a substantive revision that materially changed **how** that result was reached. Moreover, Revision 1 specifically included substantive revisions to the findings of fact, conclusions of law, and ordering paragraphs of the Proposed Decision.<sup>55</sup> Thus, the Commission failed to comply with the requirements of Public Utilities Code Section 311(e), as the Commission did, in fact, issue an Alternate Proposed Decision, but did not formally serve the that Alternate Proposed Decision on the parties and did not reschedule the vote on the

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<sup>53</sup> Cal. Pub. Util. Code § 311(e).

<sup>54</sup> *Id.* Rule 14.1(d) defines “Alternate proposed decision” as “a substantive revision by a Commissioner to a proposed decision or draft resolution not proposed by that Commissioner 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.” However, there is no basis in the unambiguous wording of Public Utilities Code Section 311(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.

<sup>55</sup> See especially **Attachment A**, pp. 91-96 (Findings of Fact 7, 13 and 14, Conclusions of Law 4 and 5, and Ordering Paragraph 3).

matter to allow at least 30 days for comment and review. This proved to be prejudicial as it effectively denied parties any reasonable opportunity to review and respond to the conclusory findings purportedly draft from the water utility annual reports referenced in the Phase I Decision, thereby undermining the primary purpose of the requirement established under Public Utilities Code Section 311(e).

The failure to comply with Section 311(e) is yet another procedural deficiency requiring that the Commission grant this Application for Rehearing to remedy.

**D. The Findings of Fact in the Phase I Decision That Were Material to Discontinuing the Decoupling WRAM Are Not Supported by Evidence in the Record.**

Public Utilities Code Section 1705 mandates that every Commission decision “shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision.”<sup>56</sup> Separately, Public Utilities Code Section 1701.1(e)(8) mandates that the Commission “shall render its decisions based on the law and on the evidence in the record.”<sup>57</sup> Together, these statutory provisions require the Commission to support its disposition of every material issue with Findings of Fact that are in turn supported by evidence in the record. The Phase I Decision critically fails to meet this statutory obligation because the inadequate evidentiary record developed in this proceeding on the proposal to discontinue the decoupling WRAM fails to support the most critical Findings of Fact on which the discontinuance of the WRAM is premised.

Finding of Fact 8 of the Phase I Decision asserts that “[t]he various options for modifying or eliminating WRAM/MCBA as ordered by D.12-04-048 were not adjudicated and resolved in subsequent GRC proceedings.”<sup>58</sup> This assertion is based on a mischaracterization of prior Commission decisions resolving those General Rate Case proceedings. While the

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<sup>56</sup> Cal. Pub. Util. Code § 1705.

<sup>57</sup> Cal. Pub. Util. Code § 1701.1(e)(8).

<sup>58</sup> Phase I Decision, p. 102, Finding of Fact 8.

Phase I Decision admits that a “review of subsequent GRC filings shows that . . . utilities included testimony addressing WRAM/MCBA options as ordered in D.12-04-048,” it contends that because such cases were resolved by settlement, “the policy to continue the use of WRAM/MCBA has not been adjudicated.”<sup>59</sup> This is not correct. Rule 12.1(d) of the Commission’s own rules provides that the “Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.”<sup>60</sup> The Commission routinely includes findings and conclusions in its decisions approving and adopting settlements consistent with that Rule. Thus, by adopting the final decision in each General Rate Case approving a settlement agreement addressing the issues concerning the decoupling WRAM specified by D.12-04-048, the Commission expressly determines that the resolution (which in each case was to continue the decoupling WRAM) is “reasonable in light of the whole record, consistent with law, and in the public interest.” Therefore, Finding of Fact 8 is refuted by the Commission’s own decision making process.

Finding of Fact 13 of the Phase I Decision finds that “[a]verage 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.”<sup>61</sup> Similarly, Finding of Fact 14 of the Phase I Decision finds that “[c]onservation 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.”<sup>62</sup> As discussed above, the references to the water utility annual reports in these Findings of Fact were introduced for first time only upon the issuance of the Revision 1 on the eve of the Commission’s adoption of the

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<sup>59</sup> Phase I Decision, pp. 58-59.

<sup>60</sup> Rule 12.1(d).

<sup>61</sup> Phase I Decision, p. 102, Finding of Fact 13.

<sup>62</sup> Phase I Decision, pp. 102-103, Finding of Fact 14.

Phase I Decision. Moreover, the opaque and conclusory reference to water utility annual reports precluded any party from substantively verifying the accuracy of these findings, let alone responding to them, in a timely way. As the purported analysis of the water utility annual reports was never placed into evidence in this proceeding or made available to the parties for review, those reports or any related analysis cannot be construed as record evidence supporting Findings of Fact 13 and 14.

Finding of Fact 16 of the Phase I Decision finds 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.”<sup>63</sup> This finding, too, lacks evidentiary support in the record. As a preliminary matter, the vague reference to “an alternative available to the utilities and the Commission” precludes an analysis based on evidence of whether the unspecified “alternative” would be a better means of minimizing intergenerational transfers of cost compared to the decoupling WRAM. Even if that “alternative” were presumed to be the Monterey-Style WRAM, the Phase I Decision does not explain how that mechanism would better minimize intergenerational transfers of cost nor does it identify any evidence in the record that would support that finding. Therefore, Finding of Fact 16 must be set aside.

Finding of Fact 17 of the Phase I Decision finds that “[t]iered rate design causes customers to use less water at increased costs per unit consumed; thus, use of tiered [*sic*] rate design is a reasonable means to stabilizing revenues.”<sup>64</sup> This Finding of Fact patently incorrect based on the limited record evidence presented, but its reference to “stabilizing revenues” points to one of the primary reasons why the decoupling WRAM is beneficial to conservation. Tiered water rate designs feature increased rates for higher tiers of usage. Thus, the marginal rate is higher than a uniform volumetric rate would be, presenting greater risk of revenue

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<sup>63</sup> Phase I Decision, p. 103, Finding of Fact 16.

<sup>64</sup> Phase I Decision, p. 103, Finding of Fact 17.



shortfall as compared to a uniform volumetric rate. This simple fact contradicts the assertion of Finding of Fact 17 that use of tiered rates stabilizes revenues – its likely effect is just the opposite. More fundamentally, the Phase I Decision overlooks the fact that the decoupling WRAM was introduced beginning in 2008 specifically to facilitate implementing conservation-oriented tiered rate designs. It is abundantly clear from the many decisions cited in the Phase I Decision that the decoupling WRAM and these tiered rate designs were adopted in tandem.<sup>65</sup> The conservation benefits of tiered rate designs enabled by the decoupling WRAM justify maintaining its use. Commissioner Randolph’s dissent addresses this very issue involving revenue stability in explaining her disagreement with the Phase I Decision’s discontinuance of the WRAM.<sup>66</sup>

In summary, the Phase I Decision is unlawful because it discontinues the decoupling WRAM based on a series of Findings of Fact that are not supported by the limited and profoundly deficient evidentiary record in this proceeding, in violation of 1701.1(e)(8). The Commission must reevaluate those determinations or, at minimum, allow the parties to supplement the inadequate evidentiary record to allow the determination of appropriate Findings of Fact on a sufficient evidentiary basis.

### **III. REQUEST FOR ORAL ARGUMENT ON APPLICATION FOR REHEARING**

Pursuant to Rule 16.3(a), CWA respectfully requests that that Commission hold oral arguments on the issues presented in this Application for Rehearing of the Phase I Decision. The reasons supporting oral argument here satisfy the criteria set forth in Rule 16.3.

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<sup>65</sup> See Phase I Decision, p. 56 (citing “D.08-06-002, D.08-08-030, D.08-08-032, D.08-09-026, D.08-11-023, D.09-05-005, D.09-07-021, and D.10-06-038”).

<sup>66</sup> Phase I Decision, *Dissent of Commissioner Randolph* (September 3, 2020), p. 1 (“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.”).

First, oral argument would materially assist the Commission in resolving this Application for Rehearing by providing a public forum for Commissioners to work through the complex issues presented herein in a public discussion that allows interested parties adequate opportunity respond directly to concerns and questions posed by Commissioners.<sup>67</sup> While the Commissioners previously engaged in discussion of the Proposed Decision that ultimately became the Phase I Decision during the August 6, 2020 Commission business meeting, there was no such opportunity for the Commissioners to evaluate the issues now implicated in this Application for Rehearing with the input of the parties in a transparent and public manner. Oral argument is the most efficient and equitable way to engage with the complex issues presented by this Application for Rehearing.

Second, oral argument is appropriate because this Application for Rehearing raises issues of major significance for the Commission. As CWA has explained, the Phase I Decision “departs from existing Commission precedent without adequate explanation” and “presents legal issues of exceptional controversy, complexity, or public importance.”<sup>68</sup> Specifically, as detailed above, the Phase I Decision departs from earlier Commission decisions evaluating and authorizing the WRAM and instead abruptly reverses that Commission policy by prohibiting future continuation of the WRAM in the next general rate cases of five water utilities. The justification the Phase I Decision provides for this drastic requirement is plainly inadequate, as it relies on conclusory assertions about and on vague references to data drawn from outside the record of this proceeding. Given the complex nature of the decoupling WRAM and its critical importance to conservation rate design, the Commission should at minimum give further consideration to the summary elimination of that ratemaking mechanism ordered by the Phase I Decision.

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<sup>67</sup> Rule 16.3(a).

<sup>68</sup> *Id.*

Therefore, CWA respectfully requests that that Commission grant oral argument on the issues presented in this Application for Rehearing of the Phase I Decision.

**IV. CONCLUSION**

For the reasons set forth above, CWA respectfully requests that the Commission grant this Application for Rehearing of the Phase I Decision to correct the legal errors specified above.

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October 5, 2020

**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
Supreme Court of California

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COMMISSION**

Case Number: **S271493**

Lower Court Case Number:

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