S271493

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

4TH PETITION

LIBERTY UTILITIES (PARK WATER) CORP. and LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP.,
Petitioners,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Respondent.

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

Of the Public Utilities Commission of the State of California

PETITION FOR WRIT OF REVIEW AND MEMORANDUM OF POINTS AND AUTHORITIES

[Appendix of Exhibits (Vols. I-II) Filed Concurrently]

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PETITION FOR WRIT OF REVIEW

TO THE HONORABLE CHIEF JUSTICE OF THE STATE OF CALIFORNIA AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Liberty Utilities (Park Water) Corp. ("Liberty Park Water") and Liberty Utilities (Apple Valley Ranchos Water) Corp. ("Liberty Apple Valley") (together, "Liberty") petitions this Court to review Decision 20-08-047 (August 27, 2020) ("Decision") and Decision 21-09-047 (September 27, 2021) ("Rehearing Denial") of the California Public Utilities Commission ("Commission"). Copies of the Decision and the Rehearing Denial are attached hereto.

CERTIFICATE OF INTERESTED ENTITES OR PERSONS

Petitioner Liberty Apple Valley certifies that it is directly and wholly owned by Liberty Park Water. Petitioner Liberty Park Water certifies that it is a wholly owned subsidiary of Western Water Holdings LLC, which is owned by Liberty Utilities Co. ("LUCo"). LUCo owns electric, gas, water and sewer distribution utilities in the United States, Canada, Chile, and Bermuda, that as of December 31, 2020, provided distribution services to approximately 1,086,000 customer connections. Collectively, Liberty Park Water and Liberty Apple Valley serve approximately 49,000 customer connections with more than 700 miles of distribution mains in southeast Los Angeles County, Apple Valley and Victorville. Liberty certifies that it knows of no other entity or person who has a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves, beyond noting that other utilities (Golden State Water Company, California-American Water Company, and California Water Service Company) participated in the California Public Utilities Commission

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proceeding to which the Decision relates, and the outcome of this proceeding could affect those utilities.

Dated: October 27, 2021

Respectfully submitted,

PROSPERA LAW, LLP

By: *<u>/s/ Joni A. Templeton</u>*
Joni A. Templeton
Prospera Law, LLP
Attorneys for Liberty Utilities (Park Water) Corp., and Liberty Utilities (Apple Valley Ranchos Water) Corp.

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JURISDICTION

1. Jurisdiction over this Petition lies exclusively in this Court pursuant to California Public Utilities Code Section 1756(f),[1] which states that "review of decisions pertaining solely to water corporations shall be by petition for writ of review in the Supreme Court, except that review of complaint or enforcement proceedings may be in the court of appeal or the Supreme Court."

2. Pursuant to Section 1756(a), a party may petition for a writ of review in the Supreme Court "[w]ithin 30 days after the [C]ommission issues its decision denying [an] application . . . for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined." Liberty sought rehearing of the Decision on October 5, 2020 as did other water utilities. On September 27, 2021, the Commission denied all the applications for rehearing.

3. A petition under Section 1756 is the "sole means provided by law for judicial review of a [C]ommission decision." *Consumers Lobby Against Monopolies v. Pub. Util. Comm'n* (1979) 25 Cal.3d 891, 901. A court may not deny review of an apparently meritorious petition. *PG&E Corp. v. Pub. Util. Comm'n* (2004) 118 Cal.App.4th 1174, 1193.

[1] Unless otherwise stated, all statutory section references herein ("Section") are to the California Public Utilities Code ("Code").

PARTIES

4. Petitioners are California water corporations under Section 241 and public utilities under Section 216.

5. Respondent Commission is the administrative agency charged with regulating public utilities under Section 6 of Article XII and related provisions of the California Constitution and under the Public Utilities Act.

RELATED CASES

6. On May 28, 2021, Golden State Water Company filed a petition for writ of review of the Decision to this Court relating to similar issues as those raised in this petition (Case No. S269099). On June 15, 2021, this Court approved the Commission's request to hold Golden State Water Company's petition in abeyance pending resolution of several applications for rehearing of the Decision.

IMPORTANCE OF THE ISSUES RAISED BY THIS PETITION

7. Liberty asks this Court to review Ordering Paragraph 3 of the Decision ("Revocation Order"), revoking the Commission's prior authorization for water utilities to use certain regulatory mechanisms that are critical to promoting water conservation—the Water Revenue Adjustment Mechanism ("WRAM") and the Modified Cost Balancing Account ("MCBA"). Neither the Commission's order initiating Rulemaking proceeding 17-06-024

("Rulemaking") nor that proceeding's two Scoping Memos[2] contemplated revoking or even modifying the WRAM/MCBA. The Rulemaking had been underway for two years before the Commission's Public Advocates Office ("PAO") first proposed changing the WRAM/MCBA. By embracing PAO's proposal at the eleventh hour, the Commission improperly expanded the scope of the Rulemaking and failed to give proper notice of the expanded scope, thereby preventing parties from presenting evidence on the out-of-scope issue and imposing the Revocation Order without an evidentiary record.

8. In issuing the Revocation Order as it did, the Commission not only violated the due process rights of utilities using the WRAM/MCBA ("WRAM Utilities"), denied affected parties the right to an evidentiary hearing before revocation, and abandoned important water conservation mechanisms without the requisite analysis even though conservation is more important than ever. This Petition enables the Court to direct the Commission (i) that the due process clauses of the United States and California Constitutions require that the Commission give timely notice to parties, with opportunity to be heard, before it may alter, rescind, or amend a prior Commission order, and (ii) regarding the record

[2] In every proceeding, the Commission must issue a scoping memo "that describes the issues to be considered … and that, consistent with due process, public policy, and statutory requirements, determines whether the proceeding requires a hearing." Section 1701.1(b)-(c).

to be developed before the Commission abrogates rights and policies previously determined on a full evidentiary record.

9. The stated focus of the Rulemaking was providing rate assistance to low-income customers, but the Commission made no effort to determine how the Revocation Order might affect those customers. In ignoring the economic impact of its action, the Commission abused its discretion and failed to discharge its duty. The Rehearing Denial attempts to obscure this failure by citing statements in the Decision that "there is no evidence that eliminating the WRAM will raise rates on low-income and low-use customers" and claiming that "the impact of the unanticipated WRAM surcharges on low-income and low-use customers is one component of the problems we have encountered with the WRAM." (Rehearing Denial at 27.) But there is "no evidence" on that front only because the Rulemaking never considered the matter.

10. The Revocation Order directly harms Liberty and other WRAM Utilities, but it also matters broadly to the State of California. The Revocation Order eliminates the utilities' ability to rely on the WRAM/MCBA to align their interests in providing water service with the public interest in conserving water in a region increasingly subject to drought and removes, without analysis, a progressive solution benefiting low-income customers and disadvantaged communities.

ALLEGATION OF LEGAL ERRORS PRESENTED FOR REVIEW

11. The Commission violated Liberty's due process rights under the United States and California Constitutions by failing to provide adequate notice and a meaningful opportunity for Liberty to be heard on the Revocation Order, and thereby failed to regularly pursue its authority.

12. The Commission abused its discretion by failing to develop an evidentiary record sufficient to support the Revocation Order and failing to consider the impacts of the Revocation Order on the low-income customers who were the subject of the proceeding, and thereby failed to regularly pursue its authority.

PRAYER FOR RELIEF

13. Liberty requests that this Court:

A. Issue a writ of review to Respondent Commission;

B. Direct the Commission to certify its record in the proceeding to this Court;

C. Inquire into and determine the lawfulness of the Revocation Order;

D. Enter judgment setting aside the Decision insofar as it prohibits the WRAM Utilities from proposing continuation of the WRAM/MCBA in future general rate cases; and

E. Grant any other relief this Court finds proper.

Dated: October 27, 2021

Respectfully submitted,

PROSPERA LAW, LLP

By: */s/ Joni A. Templeton*
Joni A. Templeton
Prospera Law, LLP
Attorneys for Liberty Utilities (Park Water) Corp., and Liberty Utilities (Apple Valley Ranchos Water) Corp.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE ISSUES

A. Whether the Commission's failure to provide adequate notice and an opportunity to be heard before issuing the Revocation Order violated Liberty's due process rights under the United States and California Constitutions (a failure of the Commission to regularly pursue its authority).

B. Whether the Commission abused its discretion by adopting the Revocation Order without developing an adequate evidentiary record, providing an opportunity for parties to present contrary evidence, or considering the impacts of that order on low-income customers (the subject of the proceeding), and thereby failed to regularly pursue its authority.

II. STANDARD OF REVIEW

14. This Court reviews Commission decisions under Section 1756(f). For "decisions pertaining solely to water corporations, the review shall not be extended further than to determine whether the commission has regularly pursued its authority . . . ." Section 1757.1(b). The Commission fails to "regularly pursue its authority" if its decision "violates any right of the petitioner under the Constitution of the United States or of this State." *Id.* This Court makes its determination based on the entire record certified by the Commission. *Toward Util. Rate Normalization v. Pub. Util. Comm'n* (1988) 44 Cal.3d 870, 880.

15. This Court "exercise[s] independent judgment on the law and the facts" when determining whether the Commission regularly pursued its authority and whether the Commission's decision violated a party's constitutional rights. Section 1760.

III. FACTUAL BACKGROUND

A. The Commission Initiates the Rulemaking to Address the Improvement of Low-Income Customer Assistance Programs.

16. On July 10, 2017, the Commission commenced the Rulemaking by issuing the "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." (Ex. N at 1.)[3] As set forth in the Scoping Memo dated January 9, 2018, the issues under consideration in the Rulemaking were set forth as follows:

(1) Consolidation of at-risk water systems by regulated water utilities, with associated sub-issues.

(2) Forecasting water sales, including questions regarding two sub-issues: (a) how to forecast sales to avoid regressive rates, and (b) guidelines or mechanisms the

[3] Exhibit references are to the concurrently filed Appendix of Exhibits.

Commission can implement to improve or standardize water sales forecasting for Class A water utilities.

(3) Regulatory changes the Commission should 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?

(Ex. T at 2-3.)

17. On July 9, 2018, an amended Scoping Memo added two issues to Phase 1:

(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.

(2) Whether the Commission should adopt criteria to allow for sharing of low-income customer data by regulated investor-owned energy utilities with municipal water utilities.

(Ex. C at 3.)

18. Throughout two years and multiple workshops, nothing in the proceeding introduced a modification of the WRAM/MCBA as an issue under consideration until September of 2019.

B. THE WRAM/MCBA Is A Conservation Mechanism with Longstanding Commission Approval.

19. Because water utilities recover their costs through sales, there is a disincentive associated with demand side management (*i.e.*, a successful campaign to reduce water use leads to less revenue and less profit). In 2008, the Commission adopted the WRAM and MCBA to break the link between water sales and revenues (*i.e.*, decoupling), thereby encouraging conservation and ensuring that water providers can receive the state authorized revenue amount needed to cover operating expenses even when customers use less water, such as during a drought. The WRAM tracks the under- or over-collection in state-authorized water revenue due to lower or higher water usage. The MCBA tracks any savings or increases in water supply operating costs (purchased water, pump taxes and energy costs).

20. As with other WRAM Utilities, Liberty's WRAM/MCBA was evaluated and approved in its general rate case[4] ("GRC") proceedings. For example, in the 2015 GRC decision for Liberty Apple Valley, (A.14-01-002), the Commission specifically endorsed the WRAM mechanism. D.15-11-030 states:

> In addition, this decision reviews the Water Revenue Adjustment Mechanism (WRAM) and Modified Cost Balancing Account (MCBA) revenue decoupling mechanisms pursuant to Decision (D.)

[4] A GRC is a regularly scheduled proceeding in which the Commission reviews the rates and terms of service offered by a utility and adopts new rates for implementation until the next GRC.

> 12-04-048. This decision finds that the WRAMs/MCBAs are achieving their stated purpose by severing the relationship between sales and revenue and removing most disincentives for Apple Valley Ranchos Water Company to implement conservation rates and conservation programs, and that overall water consumption by its ratepayers has been reduced.

(Ex. E at 3.)

21. The Commission had also evaluated and endorsed the WRAM as a conservation mechanism on other occasions. The Decision itself cites another example of a Commission decision that endorses the continuation of the WRAM. D.16-12-026 found that there was a "need for the WRAM mechanism to support sustainability and attract investment to California water IOUs during this drought period and beyond." (Decision at 59)

C. The First Introduction of Proposed Modifications to the WRAM/MCBA Occurs in July 2019 Through the Public Advocates Office's Comments on a Workshop Report.

22. On June 21, 2019, the assigned Administrative Law Judge ("ALJ") requested comments on a report summarizing a May 2019 workshop, "Water Rate Design for a Basic Amount of Water at a Low Quantity Rate." (Ex. A.) While the WRAM/MCBA was not discussed at the workshop or in the report, the ALJ's ruling asked whether there should be a mechanism to adjust rates semi-annually or annually, especially in drought years. (Ex. A at 4 (Question C).) The Public Advocates Office ("PAO") responded that, rather than consider such mechanisms, the Commission

should assess whether the WRAM/MCBA remain necessary and recommended that WRAM Utilities convert to a Monterey-Style Water Revenue Adjustment Mechanism/Incremental Cost Balancing Account ("M-WRAM/ICBA").[5] (Ex. H at 12-13.) Replying to PAO, the California Water Association ("CWA") stated that this recommendation fell well outside the Rulemaking's scope. (Ex. P at 2.)

23. On September 4, 2019, the ALJ issued a ruling asking eighteen additional questions. Question #6 was: "For utilities with a full [WRAM/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?" (Ex. B at 3.) This question did ***not*** ask about revoking the WRAM/MCBA or converting them to the M-WRAM/ICBA, but whether the Commission should "consider" doing so and, if so, whether consideration should occur in the context of each utility's GRC (or, presumably, in some other future proceeding). Thus, none of the WRAM Utilities understood the question to mean that the Commission was considering revoking the WRAM/MCBA in *this* Rulemaking.

[5] The M-WRAM is not a revenue decoupling mechanism like the WRAM. It is a revenue adjustment mechanism permitting a water utility to true-up revenue recovered under tiered conservation rates with revenue that the utility would have collected under an equivalent uniform rate design.

24. CWA submitted a two-page response explaining why the M-WRAM/ICBA do not fulfill the same purpose as the full WRAM/MCBA and reiterating that these mechanisms have nothing to do with providing assistance to low-income customers and fall outside the scope of the Rulemaking. (Ex. I at 13-15.) PAO's six-sentence response to this question asserted the superiority of M-WRAMs over WRAMs, but included no data or other evidence supporting its position. (Ex. J at 5.)

25. On September 23, 2019, CWA submitted reply comments that it "vehemently disagrees with PAO's recommendation" to convert WRAMs to M-WRAMs, calling the proposal "a step backwards that eliminates the benefits that full WRAMs offer in contrast to [M-WRAMs]." (Ex. Q at 2.)

26. The same day, PAO submitted reply comments, including a graph that PAO claimed showed that the M-WRAM was as effective in promoting conservation as the WRAM (the "PAO Graph"). (Ex. S at 6-7.) Because PAO submitted its graph in reply comments, the parties had no meaningful opportunity to review and respond to the PAO Graph or PAO's asserted conclusion.

27. After the PAO Graph appeared in late September 2019, there were no other workshops or comments addressing the WRAM issue. Indeed, between October 2019 and June 2020, there were no workshops or comments in the proceeding at all.

D. The Parties Are Blindsided by the Sudden Emergence of a Proposed Decision Declaring the Elimination of the WRAM.

28. After eight months of dormancy, on May 26, 2020, a new ALJ was assigned to the Rulemaking. On June 2, 2020, a second amended Scoping Memo was issued. Despite the existence of the PAO Graph from September of 2019, the new Scoping Memo did not address the WRAM, focusing instead on issues for consideration in the next phase of the proceeding and the COVID-19 pandemic. (Ex. U)

29. On July 3, 2020, the Commission issued its Proposed Decision ("PD"), which eliminated the WRAM/MCBA through the Revocation Order. The PD relied almost entirely on the PAO Graph as its evidentiary support for the Revocation Order despite the fact that the parties had not been provided with an opportunity to respond to the PAO Graph.[6] (Ex. O)

E. Comments on the Proposed Decision Highlight Overwhelming Procedural and Substantive Flaws.

30. Per the Commission's Rule of Practice and Procedure 14.3, parties had 20 days to provide comments on the PD. In their comments, Liberty—and the other WRAM Utilities—expressed their shock at the Revocation Order, emphasizing that revocation of the WRAM/MCBA was outside the Rulemaking's scope, the

[6] The PD also relied on an alleged "Table A" as evidentiary support. The Commission never produced "Table A," and it was ultimately deleted from the Decision.

Commission had not developed a record supporting it, the parties did not have any meaningful opportunity to provide input on the PAO Graph, and the Commission made no inquiry into the impacts of the Revocation Order on low-income customers—the central focus of the Rulemaking.

31. The WRAM Utilities' comments pressed the need for the Commission to collect evidence. Parties used the limited time for responses to the unexpected PD to explain that the data relied on by PAO does not support PAO's conclusions. Liberty recommended that a new proceeding or additional phase of this proceeding be initiated with evidentiary hearings to establish a robust, complete, and transparent examination of decoupling before a Commission decision eliminates the decoupling mechanism for the water industry. (Exs. K and L.)

32. The WRAM Utilities' comments showed the impacts that abandonment of the WRAM/MCBA could have on low-income customers. (See, *e.g.*, Ex. L at 1-2.) Also, Former Commissioner Catherine Sandoval submitted a letter highlighting the Commission's failure to meaningfully litigate the impacts of its WRAM/MCBA orders, including on low-income customers. (Ex. M at 5-6.)

33. In reply comments, PAO doubled down, claiming that through their comments on the PD and the unvetted PAO Graph, the WRAM Utilities were trying to "unlawfully include new evidence in their Opening Comments" and the Commission "should strike any new evidence, references to new evidence, and

conclusions drawn from new evidence from the record." (Ex. R at 5.)

34. On August 26, 2020, the Commission revised the PD, adding language purporting to include the Revocation Order under the "Forecasting Water Sales" item in the Original Scoping Memo.

35. The next day, August 27, 2020, the Commission issued the Decision.

36. The Revocation Order prohibits the WRAM Utilities from proposing to continue their existing WRAM/MCBAs in future GRCs.

37. Ultimately, the Decision relies on the PAO Graph and ignores contradictory information from the WRAM Utilities' comments. The Commission states that comments on the PD came after the evidentiary record closed. (Rehearing Denial at 15.)

38. Commissioner Liane Randolph's dissent to the Decision summarized the problem the Revocation Order created for low-income customers:

> While this Decision does not make changes to any company's rate design, there will be an increasing need for the water companies to limit sales risk due to the removal of the WRAM. They are very likely to propose higher service charges as well as having flatter tiers or else face a very real risk of not meeting their revenue requirement. Such an outcome would lead to increasing the bills of low-usage

> customers which correlates with low-income customers. This outcome is exactly opposite of this proceeding's intent by harming low-income customers. (Decision Dissent at 1.)

F. Liberty's Application for Rehearing Contends that the Revocation Order is Unlawful.

39. Liberty's Application for Rehearing explained that the Revocation Order is unlawful because the Commission did not provide parties with a meaningful opportunity to be heard on the issue; the Revocation Order is not supported by evidence; the elimination of the WRAM was not in the scope of the proceeding; and the Revocation Order is inconsistent with prior Commission decisions, but no evidentiary hearings were permitted. (Ex. D)

40. Applications for Rehearing detailing the many legal and factual errors in the Decision were filed by other WRAM Utilities.

G. The Rehearing Denial Fails to Address the Flaws in the Decision.

41. The Commission denied rehearing, reiterating that "[t]he issue of the decoupling WRAM was included in the Original Scoping Memo as part of the water sales forecasting issue" and asserting that the WRAM "is inextricably tied to water sales forecasting." (Rehearing Denial at 4, 5.)

42. The fundamental premise of the Decision is that the WRAM/MCBA "had proven to be ineffective in achieving its primary goal of conservation" (Rehearing Denial at 1)—based entirely on the PAO Graph that was submitted in the last set of reply comments.

43. The Rehearing Denial asserts (at 13) that the WRAM Utilities had an opportunity to provide evidence by refuting PAO's Graph—even though the WRAM Utilities were not on notice of any need to present evidence on the WRAM's effectiveness for promoting conservation until the Commission included the Revocation Order in its PD, which closed the record.

IV. ARGUMENT: THE COMMISSION FAILED TO REGULARLY PURSUE ITS AUTHORITY IN ISSUING THE REVOCATION ORDER

In abolishing the WRAM/MCBA, the Commission disregarded its own rules and procedures, denied the WRAM Utilities due process, and violated California law. By eliminating the WRAM/MCBA without the necessary evidentiary record, the Commission created a substantial risk that its new policy will frustrate the Rulemaking's stated purposes—providing rate assistance to low-income customers and affordability. Under Section 1760, this Court must determine, without deference to the Commission's findings or conclusions, whether the Revocation Order must be set aside.

A. The Commission Exceeded the Scope of the Rulemaking and Violated the WRAM Utilities' Due Process Rights.

Although the Commission "may establish its own procedures," it must follow due process. Cal. Const., Art. XII, § 2. "Due process as to the commission's initial action is provided by the requirement of adequate notice to a party affected and an opportunity to be heard before a valid order can be made." *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 632.

At a proceeding's commencement, the assigned Commissioner "shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and . . . that, consistent with due process, public policy, and statutory requirements, determines whether the proceeding requires a hearing." Section 1701.1(c); *see also* Commission's Rules of Practice and Procedure Rule 7.3.

Here, neither the OIR, nor the Original or Amended Scoping Memos, suggested that this proceeding would address revocation of the WRAM/MCBA. The Commission concedes that there was no specific inclusion of the WRAM/MCBA in the OIR or any of the Scoping Memos in the proceeding. (Rehearing Denial, at 4-5) However, the Commission argues that "the issue of the decoupling WRAM was included in the original Scoping Memo as part of the water sales forecasting issue" because "[t]he decoupling WRAM is inextricably tied to water sales forecasting." (*Id.*) Yet none of the Scoping Memos delineated the WRAM as a sub-area under the umbrella of water sales forecasting. In fact, the proceeding began and continued for two years without consideration of the WRAM.[7] It was only in

[7] The Rehearing Denial attempts to bolster its argument that the WRAM was always an issue in the proceeding by citing isolated references to the WRAM in comments discussing forecasting and statements made by the PAO during an August 2, 2019, workshop. (Rehearing Denial at 6-7.) But these statements merely suggest that inaccurate forecasting may ultimately lead to WRAM-related surcharges or surcredits, not that the WRAM leads to inaccurate forecasting. Sporadic references to the WRAM did not bring it within the scope of the proceeding or alert the parties that revocation of the WRAM was at issue.

the September 4, 2019 Ruling that a single question (among eighteen) first asked if the Commission should consider converting the WRAM/MCBA to the M-WRAM/ICBA. (Ex. B.) Then, in reply comments to that Ruling, the PAO submitted the PAO Graph, answering that the Commission should consider converting the WRAM to the M-WRAM. (Ex. S.)

If the Commission was considering eliminating the WRAM/MCBA based on the PAO Graph, then the PAO Graph should have been the beginning of discussions, workshops, comments and evidentiary hearings to examine, among other things, whether WRAM Utilities generate forecasts that are more or less accurate than utilities that do not use the WRAM/MCBA, whether the M-WRAM/ICBA provides the same benefits to customers as the WRAM/MCBA, whether the WRAM is necessary to support water conservation efforts, and whether elimination of the WRAM may result in increased rates for low-income customers and actually benefit high-volume water users. Instead, after eight months of inaction in the proceeding, the Commission simply issued the PD relying on the unvetted PAO Graph and foregoing any meaningful examination of the evidence or the consequences regarding the elimination of the WRAM.

The Commission blames the parties for the lack of examination of the evidence because "[t]he parties at any time could have filed a motion to request hearings" but "[n]o party did." (Rehearing Denial at 8) ***The fact that <u>not one</u> of the WRAM Utilities filed a motion to request hearings regarding the elimination of the WRAM/MCBA only***

demonstrates that <u>not one</u> of the WRAM Utilities understood that the elimination of the WRAM/MCBA was at issue in the proceeding. The Commission's argument that elimination of the WRAM was always within the scope because the WRAM is tangentially related to "sales forecasting" defies basic common sense. Obviously, none of the WRAM utilities thought that the elimination of the WRAM was within the scope of the Rulemaking. The introduction of the PAO Graph in PAO's response to a single question (out of eighteen) in the September 4, 2019 Ruling did not suddenly bring the elimination of the WRAM into scope. The PAO Graph did not even alert the parties that the Commission was going to begin to consider the elimination of the WRAM in the Rulemaking, let alone that the PAO Graph would constitute both the beginning and the end of all discussion on the issue.

If the Commission believed that the elimination of the WRAM/MCBA was within the scope of the Rulemaking, then the proper next step after the introduction of the PAO Graph would have been to seek comments from the parties regarding the topic. That step would have at least alerted the parties that the elimination of the WRAM/MCBA was at issue from the Commission's perspective, and numerous parties would have undoubtedly asked for hearings. But the Commission did nothing in the Rulemaking for many months and nothing whatsoever related to the WRAM before issuing the PD with the Revocation Order. Parties had no choice but to scramble and try to explain in comments why elimination of the WRAM was not

within the scope of the Rulemaking and explaining the potential negative consequences of the Revocation Order. Those comments, however, were wholly rejected because, with the PD, the Commission closed the evidentiary record. As the Commission states in the Rehearing Denial, it places all the blame for an inadequate evidentiary record on the parties:

> Applicants had the opportunity to provide substantive comments in response to the questions in the September 4, 2019 ALJ Ruling Inviting Comments, but declined to do so. They cannot now complain that the record is devoid of evidence.

(Rehearing Denial at 12)

The Commission cannot simply blame the parties for the failure to establish a meaningful evidentiary record or contend that the parties should have made a motion asking for the opportunity to be heard if it wanted one. The Commission has an obligation to provide parties with a meaningful opportunity to respond to topics at issue. *Southern Cal. Edison Co. v. Pub. Util. Comm'n* (2006) 140 Cal.App.4th 1085 ("*Edison*"). In *Edison*, the Commission initiated a proceeding to consider rules governing utility contracting. The scoping memo addressed issues related to "bid shopping" and "reverse auctions" and sought comments on specific proposals. Thirteen months into the proceeding, the Southern California District Council of Laborers filed comments offering new proposals tangential to the scoping memo proposals and 400 pages of supporting materials. *Id*. at 1105-06. Although some parties argued that the preliminary scoping memo was "sufficiently broad to encompass the…[new] proposal," and the

ALJ "apparently amended the scope of issues to include the new proposals" and provided another opportunity for the parties to address the associated issues, the Court of Appeal concluded that the Commission erred in adopting the new proposals. The Commission's decision exceeded the scope of issues identified in the scoping memo, and the Commission violated its own rules by considering the new issue and providing insufficient time for the parties to respond. Citing Section 1757.1, the court annulled portions of the decision, holding that the Commission had "failed to proceed in the manner required by law and that the failure was prejudicial." *Id*. at 1106.

Like in *Edison*, the WRAM/MCBA issue arose as a new proposal in response to an issue inserted late in the proceeding (even later than in *Edison*)—over two years after the OIR. In *Edison*, the party making the new proposal submitted 400 pages of evidence and other parties at least had three business days to respond; here, the only evidence in the record supporting revocation of the WRAM/MCBA is a single graph submitted by PAO that the WRAM Utilities had ***no*** opportunity to refute. (*See*, *e.g*., Decision at 67.) The Commission tries to distinguish *Edison* by claiming that the WRAM/MCBA were part of the Original Scoping Memo as part of the "water sales forecasting" issue. As explained above, that contention has no merit.

The Commission attempts to invoke *BullsEye Telecom, Inc. v. Public Utilities Comm'n* (2021) 66 Cal.App.5th 301 to support the Decision. (Rehearing Denial at 12.) *BullsEye* involved a very different scenario. There, the real party in interest alleged that

local carriers (petitioners) impermissibly charged it higher rates for certain services than competing long-distance carriers. The scoping memo delineated the underlying issue as whether "there was a rational basis for different treatment." 66 Cal.App.5th at 306. Petitioners sought rehearing claiming the Commission improperly limited the "rational basis" analysis to a single factor—a difference in the cost-of-service. Denying rehearing, the Commission concluded (and the Court of Appeal agreed) that the scoping memo allowed the Commission to limit its "rational basis" analysis to a single factor because the scoping memo "did not specify any particular factors that would be considered…[therefore] that certain factors were not relevant was not contrary." *Id*. at 317-18, 325.

The facts here align with *Edison*, not *BullsEye*. Here, a new issue was inserted at the end of the Rulemaking, denying the WRAM Utilities an opportunity to adequately respond. In *BullsEye*, petitioners knew about the potential issue ("a," i.e., any, "rational basis") for many years, the real party in interest having argued in its opening brief that "only a difference in the cost of providing the service could justify different rates." *Id*. at 320. That record showed "extensive discovery," including testimony and hundreds of exhibits. *Id*. at 306. Because that scoping memo "does *not* specify what can constitute a rational basis…it does *not* limit the range of factors regarding which the parties could present evidence." *Id*. at 320 (emphasis in original). Given the breadth of the scoping memo, the denial "did *not* resolve issues not encompassed by the Scoping Memo," and there

was "adequate opportunity to provide evidence on the issues addressed in the rehearing decision." *Id.* at 327 (emphasis in original).

Eliminating the WRAM/MCBA was outside the scoping memo, and the WRAM Utilities had no reason to suspect this issue might be considered in the proceeding. When the PAO did raise eliminating the WRAM/MCBA, unlike petitioners in *BullsEye*, the WRAM Utilities were unable to present record evidence.

As in *Edison*, pursuant to Section 1757.1, the Commission violated its own Rules and the due process rights of the WRAM Utilities, and thus failed to regularly pursue its authority.

B. Liberty Had a Right to an Evidentiary Hearing Before WRAM Revocation.

For the Commission to "rescind, alter, or amend any order or decision made by it," it ***must*** give notice to interested parties and, if an interested party requests a hearing, the Commission ***must*** also provide that party with an adequate opportunity to be heard "as provided in the case of complaints." Section 1708.[8] The Rehearing Denial asserts (at 9-10) that "the Decision does not rescind, alter or amend any prior decision" because discontinuance of the WRAM "would be implemented in the utilities' next GRCs." But the Revocation Order prohibits WRAM Utilities from proposing to use the WRAM/MCBA they are

[8] At a complaint hearing the parties "shall be entitled to be heard and to introduce evidence." Section 1705.

currently using in their next GRCs and, as such, strips them of existing rights.

The Rehearing Denial contends (at 8, 10) that there was no violation of due process because no party requested an evidentiary hearing. Accepting that contention would require this Court to find that the WRAM Utilities were provided adequate notice that revocation of the WRAM/MCBA was under consideration in the Rulemaking. The WRAM Utilities cannot be faulted for not having requested an evidentiary hearing on an issue that they could not know was under consideration until the PD proposing the Revocation Order was issued—and the evidentiary record simultaneously closed.

The Rehearing Denial asserts (at 12) that "Applicants had the opportunity to provide substantive comments in response to" the questions posed in the ALJ's September 4, 2019 Ruling, and that "the parties had adequate time to file a motion requesting hearings" (at 8). This presupposes, however, that the parties could reasonably have understood that the Commission was contemplating revoking the WRAM/MCBA. To the contrary, because (i) this topic was not in the Original or Amended Scoping Memos, (ii) the question suggested that this was something that might be "considered" in a future proceeding, and (iii) no evidence on the efficacy of the WRAM/MCBA or the effects of its elimination had been collected in the Rulemaking (unlike prior proceedings in which extensive evidentiary records were developed), the WRAM Utilities had no reason to imagine that

the Commission would eliminate the WRAM/MCBA in the Rulemaking.

The Commission had the ability to scope and conduct a meaningful evidentiary inquiry here, as required by Section 1708, but did not do so. "A statute calling for the adoption of administrative orders upon public notice and hearing implies that the evidence supporting the order be disclosed and made part of a hearing record with opportunity for refutation." *Cal. Ass'n of Nursing Homes, etc. v. Williams* (1970) 4 Cal.App.3d 800, 810-11. The Rehearing Denial argues (at 11) that *Nursing Homes* is not relevant because the agency's failure in that case was basing its decision on off-the-record private negotiations rather than public hearings as required by statute. But a fundamental principle in *Nursing Homes*—that evidence must be made available for rebuttal by affected parties (*Nursing Homes* at 811)—applies equally here. The only evidence in the record to support the Revocation Order is the single graph submitted by PAO that no other party had any record opportunity to rebut. Parties should have had the opportunity to present evidence questioning the validity of the PAO Graph and addressing the elimination of the WRAM/MCBA. Therefore, the Decision violates Section 1708.

C. Failure to Establish an Evidentiary Record Supporting the Revocation Order Was an Abuse of Discretion.

An agency action lacking evidentiary support will not stand. *California Hotel and Motel Ass'n v. Indus. Welfare Comm'n* (1979) 25 Cal.3d 200, 212. The Court "must ensure that an

agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." *Id*.

Revocation of the WRAM/MCBA has significant implications for the WRAM Utilities, as the Decision acknowledges (at 72). Because of the late stage at which this topic was introduced, the Revocation Order relies on an unvetted graph that supports neither PAO's claims nor the Commission's conclusions and relies on outdated data from an unrelated 2012 decision, as discussed below. By revoking authority to use the WRAM/MCBA without establishing a record supporting such a policy reversal, the Commission abused its discretion. *See* Section 1757.1(a)(1); *see also* Code of Civ. Proc. § 1094.5(b) (for purposes of administrative mandamus, "[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence").

1. The WRAM Utilities Were Improperly Denied the Opportunity to Vet the PAO Graph.

The Commission must proceed based on findings of fact. *See* Section 1705 (decisions must "contain, separately stated, findings of fact . . . on all issues material to the order or decision"), Section 1757.1(a)(4) (requiring decisions to be "supported by the findings"). *Utility Reform Network v. Pub. Util. Comm'n* (2014) 223 Cal.App.4th 945 ("*TURN*") holds that the Commission cannot base its finding of fact solely on hearsay evidence where the truth asserted in those statements was

disputed. While hearsay evidence is generally admissible in administrative proceedings, an agency's decision must be supported by substantial evidence consisting of "at least 'a residuum of legally admissible evidence[.]'" *Id.* at 959 (evidence not subject to cross-examination cannot be the sole support for a finding of fact). The Commission's claim that *TURN* is inapposite misconstrues the court's statement therein on the issue before it being a "narrow one." (Rehearing Denial at 16.) The court's point was that the question was not whether hearsay evidence was admissible in Commission proceedings, but whether the Commission may rely only on disputed evidence that has not been subject to cross-examination. The answer to that question was no. Yet that is precisely what the Commission did here.

The Revocation Order depends on the finding that the WRAM/MCBA and M-WRAM/ICBA are equally effective in promoting conservation. (Decision at 67, Finding of Fact 13.) The only support for this determination is the unvetted PAO Graph (*id.* at 67) that the Rehearing Denial asserts "is based on data provided to the Commission by the utilities in their annual reports." (Rehearing Denial at 16.) The PAO Graph was never subject to challenge, and in their comments on the PD, the WRAM Utilities disputed how the PAO Graph purported to use their data and did not support PAO's (and the Commission's) conclusions.

The last-minute injection of the PAO Graph into the record meant that the flaws in the graph were not exposed before issuance of the PD, and the Commission disregarded the WRAM

Utilities' subsequent comments as untimely. The Commission's due process violations resulted in the WRAM Utilities being prevented from presenting evidence and the Commission acting on unvetted, unreliable evidence. Because the PAO Graph does not support a finding that use of the M-WRAM/ICBA is as effective as the WRAM/MCBA in promoting conservation, no valid evidentiary record was established on this point, leaving the Revocation Order unsupported by the findings as required by Section 1757.1(a)(4).

The Rehearing Denial asserts that the parties "could have filed a motion to strike the graph or a motion requesting the opportunity to respond to the graph." (Rehearing Denial at 13.) But because the WRAM Utilities had no notice that changes to the WRAM were within the Rulemaking 's scope, they were not made aware of the need to establish a record regarding efficacy of the WRAM/MCBA at promoting conservation before the PAO Graph was sprung on them at the last second. The Commission's efforts to shift the blame to the WRAM Utilities for not seeking leave to challenge the PAO Graph are unjustified and are nothing more than an disingenuous attempt to concoct an explanation for denying the WRAM Utilities due process and for why the WRAM/MCBA was eliminated on a faulty and thin evidentiary record. It is inconceivable that all the WRAM Utilities—each with experience in proceedings before the Commission— simply failed to care enough about the elimination of the WRAM/MCBA to make a motion asking to challenge the PAO Graph, especially when their subsequent comments on the PD and Applications for

Rehearing demonstrate their willingness to thoroughly examine the issue. The truth is that the WRAM/MCBA issue was never in the scope of the Rulemaking, and the Commission rashly adopted the Revocation Order based on insufficient evidence that the parties were not permitted to evaluate.

2. The Commission Established No Record on the Consequences for Low-Income Customers of WRAM/MCBA Revocation.

The Commission must assess the consequences of its decisions, including economic effects, as part of each proceeding. Section 321.1(a). Given the Rulemaking's stated objectives—consistency among low-income rate assistance programs, rate assistance to low-income customers, and affordability—one would expect policy changes to be considered in light of their effects on low-income customers, but nothing in the record addresses the Revocation Order's impacts on those customers. Adopting this policy change, without establishing and considering such a record was legal error. S*ee U.S. Steel Corp. v. Pub. Util. Comm'n* (1981) 29 Cal.3d 603, 615 (annulling decision where Commission failed to assess the economic impact of its action, under its duty to consider all facts that might bear on the exercise of its discretion).

Before the Decision was issued, multiple parties identified risks to low-income customers from this change and urged the Commission to develop an evidentiary record. Stakeholders raised this concern because of the relationship between the WRAM's revenue decoupling and progressive rate designs that benefit low-income customers.

Former Commissioner Sandoval criticized the Commission's failure to litigate the impacts of the Revocation Order and provide an opportunity to investigate the impacts on all affected customers: "[The PD] lacks the record foundation to support its order to switch from a WRAM to a Monterey-Style WRAM and fails to investigate the affordability impacts of this proposal." (Ex. M at 5-6.) Commissioner Randolph's dissent warned that the Revocation Order's likely "outcome is exactly opposite of this proceeding's intent by harming low-income customers." (Decision Dissent at 1.)

Despite these concerns, the Commission chose not to develop a record on potential impacts on low-income customers, summarily asserting that "water utilities can and will propose rate structures in their next GRC applications where the Commission will ensure low-income and low-use customers are not adversely impacted." (Decision at 68.) Comments on the PD filed by the WRAM Utilities and others reflect that, without the revenue decoupling afforded by the WRAM, rate design changes are unavoidable, and likely to be detrimental to low-income customers. Water utilities that do not use WRAM/MCBA (including water utilities using M-WRAM/ICBA) necessarily put more costs into the fixed, monthly service charge that every customer pays, which harms low-income customers. Without the WRAM's revenue decoupling, WRAM Utilities must propose the same or risk not recovering their revenue requirements.

The Rehearing Denial asserts (at 27) that there is no evidence in the record that eliminating the WRAM will raise low-

income customers' rates. That is true. There is basically no evidence at all in the record regarding the consequences of eliminating the WRAM. This overwhelming lack of evidence underscores one of the key problems with the Decision: parties were given no opportunity to provide evidence demonstrating the numerous negative impacts that the elimination of the WRAM is likely to cause.

V. CONCLUSION

In adopting the Revocation Order, the Commission departed from the defined scope of the proceeding and failed to accord the affected utilities due process. The Commission allowed one party to introduce flawed evidence on a new issue outside the scope of the proceeding without permitting other parties to address that evidence, failed to hold evidentiary hearings, and failed to develop the necessary record. Instead of taking the opportunity to address its errors, the Commission's Rehearing Denial doubled down on its position, arguing that the utilities' failure to be heard was their own fault and that the lack of an evidentiary record supports the Commission's argument that there is no evidence that the Revocation Order will have negative impacts. The Commission's ill-considered abandonment of the WRAM/MCBA puts California's water conservation efforts in jeopardy and places low-income Californians at risk of bearing the negative effects of this unsupported Decision. This Court's intervention is needed. The Revocation Order must be set aside.

Dated: October 27, 2021

Respectfully submitted,

PROSPERA LAW, LLP

By: */s/ Joni A. Templeton*
Joni A. Templeton
Prospera Law, LLP
Attorneys for Liberty Utilities (Park Water) Corp., and Liberty Utilities (Apple Valley Ranchos Water) Corp.

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rules 8.204, 8.504, 8.486)

The text of the Amended Petition for Writ of Review and supporting Memorandum of Points and Authorities consists of 7,959 words (including footnotes), as counted by the Microsoft Word word-processing program used to generate the document.

Dated: October 27, 2021

Respectfully submitted,

PROSPERA LAW, LLP

By: */s/ Joni A. Templeton*
Joni A. Templeton
Prospera Law, LLP
Attorneys for Liberty Utilities (Park Water) Corp., and Liberty Utilities (Apple Valley Ranchos Water) Corp.

VERIFICATION

I, Christopher G. Alario, state:

I am the Chief Financial Officer of Liberty Utilities (Park Water) Corp. and Liberty Utilities (Apple Valley Ranchos Water) Corp., the petitioners in the foregoing Petition, and I make this verification on their behalf. I have read the foregoing Petition for Writ of Review and Memorandum of Points and Authorities and know the contents thereof. The facts stated in the Petition and Memorandum are true to the best of my knowledge, information, and belief.

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

Executed on October 27, 2021 at Downey, California.

Christopher G. Alario
Chief Financial Officer
LIBERTY UTILITIES (PARK WATER) CORP.
And
LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP.

LIST OF DOCUMENT EXCERPTS INCLUDED IN CONCURRENTLY FILED APPENDIX

The Appendix concurrently filed with this petition contains as exhibits true and correct excerpts (except Exs. A, C-D, F-G, K-M and U, which are included in their entirety) of the following:

A. *Administrative Law Judge's Ruling Inviting Comments on Water Division's Staff Report and Modifying Proceeding Schedule* (June 21, 2019) ("June 21, 2019 Ruling")

B. *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions* (September 4, 2019) ("September 4, 2019 Ruling")

C. *Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* (July 9, 2018) ("Amended Scoping Memo and Ruling")

D. *Application of Liberty Utilities (Park Water) Corp. (U 314-W) and Liberty Apple Valley Ranchos Water) Corp. (U 346-W) for Rehearing of Decision 20-08-047* (October 5, 2020) ("Application for Rehearing")

E. *Decision* 15-11-030 (Nov. 19, 2015)

F. *Decision* 20-08-047 (Aug. 27, 2020) (the "Decision")

G. *Decision* 21-09-047 (September 27, 2021) ("Rehearing Denial")

H. *Comments of the Public Advocates Office on Administrative Law Judge Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule* (July 10, 2019) ("July 10, 2019 PAO Comments")

I. *Comments of California Water Association Responding to Administrative Law Judge's*

September 4, 2019 Ruling (September 16, 2019) ("September 16, 2019 CWA Comments")

J. *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")

K. *Joint Comments of Liberty Utilities (Park Water) Corp. (U 314-W) and Liberty Apple Valley Ranchos Water) Corp. (U 346-W) on Proposed Decision (*July 27, 2020*) ("*July 27, 2020 Liberty Comments"*)*

L. *Joint Reply Comments of Liberty Utilities (Park Water) Corp. (U 314-W) and Liberty Apple Valley Ranchos Water) Corp. (U 346-W) on Proposed Decision (*August 3, 2020*) ("*August 3, 2020 Liberty Reply Comments*")*

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

N. *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 10, 2017) ("OIR")

O. *Proposed Decision of Commissioner Martha Guzman Aceves* (July 3, 2020) ("PD")

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

Q. *Reply Comments of California Water Association Responding To Administrative Law Judge's September 4, 2019 Ruling* (September 23, 2019) ("CWA Reply Comments")

R. *Reply Comments of the Public Advocates Office on the Proposed Decision of Assigned Commissioner* (August 3, 2020) ("August 3, 2020 PAO's Reply Comments")

S. *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's Reply Comments")

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

U. *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")

Decision of the California Public Utilities Commission

20-08-047[9]

(Aug. 27, 2020)

[9] The Decision is also included in the separately filed Appendix as Exhibit F.

Decision 20-08-047 August 27, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low – Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024

DECISION AND ORDER

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DECISION AND ORDER

Summary

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

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

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

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

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

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

1. Background

1.1 Policy Background

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

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

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

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

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

1.2. Factual and Procedural Background

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

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

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

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

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

Footnote continued on next page.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Issues Before the Commission

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

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

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

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

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

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

2. Forecasting Water Sales:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Party Comments

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

[13] AB 1668 and SB 606.

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

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

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

4.1. 2017 and 2018 Comments

The 2017 and 2018 comments are summarized below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.2. Comments on the 2019 Workshops and Workshop Reports

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

4.2.1. Water Sales Forecasting Comments

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

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

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

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

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

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

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

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

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

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

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

4.2.2. WRAM Comments

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

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

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

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

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

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

4.2.3. Tier 1 Water Usage and Water Baselines Comments

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

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

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

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

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

4.2.4. Low-Income Water Program Name Comments

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

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

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

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

4.2.5. Low-Income Multi-Family Housing Pilots Comments

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

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

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

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

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

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

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

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

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

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

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

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

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

4.2.6. Reporting Mechanism Comments

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

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

4.2.7. Water Consolidation Timeline Comments

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

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

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

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

4.2.8. Utility Affiliate Transaction Rule Comments

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

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

4.2.9. Safe Drinking Water Loan Funds Comments

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

5. Water Sales Forecasting

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

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

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

5.1. Requiring Specific Factors in Future Sales Forecasts

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

5.1.1. Short Term Forecasting

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

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

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

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

5.2. Water Revenue Adjustment Mechanisms

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

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

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

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

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

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

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

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

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

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

2. Forecasting Water Sales

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

> a. How should the Commission address forecasts of sales in a manner that avoids regressive rates that adversely impact particularly low-income or moderate income customers?
>
> b. In Decision (D.)16-12-026, adopted in Rulemaking 11-11-008, the Commission addressed the importance of forecasting sales and therefore revenues. The Commission, in D.16-12-026, directed Class A and B water utilities to propose improved forecast methodologies in their GRC application. However, given the significant length of time between Class A water utility GRC filings, and the potential for different forecasting methodologies proposals in individual GRCs, the Commission will examine how to improve water sales forecasting as part of this phase of the proceeding. What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?
>
> …

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> Option 1: Should the Commission adopt a Monterey-Style WRAM rather than the existing full WRAM?
>
> Option 2: Should the Commission adopt a mechanism that bands the level of recovery, or refund, of account balances based on the relative size of the account balance?
>
> Option 3: Should the Commission place WRAM surcharges only on higher tiered volumes of usage, thereby benefiting customers who have usage only in Tier 1 or have reduced their usage in the higher tier levels?
>
> Option 4: Should the Commission eliminate the WRAM mechanism?
>
> Option 5: Should the Commission move all customer classes to increasing block rate-design and extend the WRAM mechanism to these classes?[36]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[51] Executive Order B-17-2014.

[52] Executive Order B-29-2015.

[53] Executive Order B-37-16.

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

5.2.5. Allowing Water Utilities to a Monterey-Style WRAM

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

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

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

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

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

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

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

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

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

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

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

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

5.2.7. Lost Revenue Due to Reduced Sales During Droughts

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

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

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

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

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

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

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

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

6. Tier 1 Water Usage and Water Baselines

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

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

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

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

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

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

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

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

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

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

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

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

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

[64] SCE 2019 Comments at 6.

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

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

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

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

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

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

[67] California Water Association 2017 Comments at 5.

[68] California Water Association 2017 Comments at 6.

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

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

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

8. Low-Income Multi-Family Housing Pilots

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

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

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

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

The Advice Letter must outline and address the following:

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

[69] Staff Report at 3

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

9. Reporting Mechanisms

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

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

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

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

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

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

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

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

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

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

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

10. Water Consolidation Timelines

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

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

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

10.1. Existing Guidance for Water Consolidation Timelines

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

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

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

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

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

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

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

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

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

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

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

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

10.2. Streamlining Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. For each Utility Valuation Expert (UVE) providing testimony or exhibits, please provide the following:
    a. A list of valuations of utility property performed by the UVE in the last two years;
    b. A list of appraisals of utility property performed by the UVE in the last two years;
    c. A list of all dockets in which the UVE submitted testimony to a public utility commission or regulatory authority related to the acquisition of utility property in the last two years; and
    d. An electronic copy of or electronic link to written testimony in which the UVE testified on public utility fair value acquisitions in the past two years.
14. Explain each discount rate used in the appraisals and valuations, including explanations of the capital structure, cost of equity and cost of debt. State the basis for each input. Provide all sources, documentation, calculations and/or workpapers used in determining the inputs.
15. Explain whether the appraisal/valuation used replacement cost or reproduction cost and why that methodology was chosen.
16. Explain the basis for any comparable acquisitions used in the appraisal/valuation including the purchase price and number of customers for each comparable acquisition.

17. Are there any outstanding compliance issues, including but not limited to water quality violations, that the Seller's system has pending with the Board's Division of Drinking Water? If yes, provide the following information:
    a. Identify the compliance issue(s);
    b. Provide an estimated date of compliance;

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

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

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

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

    a. Identify the compliance issue(s);

    b. Provide an estimated date of compliance;

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

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

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

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

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

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

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

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

    c. Facilities construction;

d. Memorandum or Balancing Accounts.

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

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

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

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

10.3. Maintenance of At-Risk Timeline

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

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

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

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

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

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

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

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

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

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

10.3.1. Identification of Opportunities for Consolidation

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

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

[95] California Water Association 2019 Comments at 11.

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

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

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

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

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

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

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

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

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

12. Next Steps

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

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

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

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

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

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

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

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

12.2. Alignment with Statewide Programs and Processes

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

13. Conclusion

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

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

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

14. Comments on Proposed Decision

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

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

15. Assignment of Proceeding

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

Findings of Fact

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions of Law

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

2. Consideration of changes to the WRAM/MCBA is and has always been within the scope of this proceeding as part of our review of how to improve water sales forecasting.

3. Elimination of the WRAM/MCBA mechanism is a policy decision not determined by law.

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

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

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

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

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

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

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

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

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

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

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

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

O R D E R

IT IS ORDERED that:

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

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

(b) Impact of planned conservation programs;

(c) Changes in customer counts;

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

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

(f) Past Sales Trends.

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

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

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

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

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

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

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

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

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

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

This order is effective today.

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

MARYBEL BATJER
President
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners

I will file a dissent.

LIANE M. RANDOLPH
Commissioner

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

DISSENT OF COMMISSIONER RANDOLPH

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

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

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

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

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

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

Dated September 3, 2020, at San Francisco, California

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

Ord. Denying Rehearing of Decision 20-08-047, as Modified

21-09-047[10]

(September. 27, 2021)

[10] The Rehearing Denial is also included in the separately filed Appendix as Exhibit G.

Decision 21-09-047 September 23, 2021

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability.	Rulemaking 17-06-024

ORDER DENYING REHEARING OF DECISION 20-08-047, AS MODIFIED

I. SUMMARY

This decision addresses the applications for rehearing of Decision (D.) 20-08-047 (or "Decision") filed jointly by Liberty Utilities (Park Water) Corp. and Liberty Utilities (Apple Valley Ranchos Water) Corp. (together, Liberty); and separately by California-American Water Company (Cal-Am); California Water Association (CWA); California Water Service Company (Cal Water); and Golden State Water Company (Golden State) (together referred to as Applicants). In D.20-08-047[1] we evaluated the sales forecasting processes used by water utilities and concluded that the Water Revenue Adjustment Mechanism/Modified Cost Balancing Account (WRAM/MCBA) had proven to be ineffective in achieving its primary goal of conservation. To keep rates just and reasonable, we precluded the continued use of the WRAM/MCBA mechanism in future general rate cases (GRC) but continued to allow use of the Monterey-style WRAM with an Incremental Cost Balancing Account (ICBA). We

[1] Unless otherwise noted, citations to Commission decisions issued since July 1, 2000 are to the official pdf versions, which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

also adopted other requirements relating to Class A water utilities' low-income rate assistance programs.

In its application for rehearing, Liberty alleges the elimination of the WRAM in D.20-08-047 is unlawful because (1) the Commission did not provide parties with a meaningful opportunity to be heard on this issue; (2) it is not supported by record evidence; (3) the issue was not in the scope of the proceeding; and (4) it is inconsistent with prior Commission decisions. Liberty requests oral argument.

Cal-Am alleges the elimination of the WRAM is unlawful because (1) the Commission violated Public Utilities Code section 1701.1 subdivision (c)[2] and Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules)[3] by including in the Decision an issue outside the scope of the proceeding; (2) the Commission failed to regularly pursue its authority by failing to fully examine and develop a record on the elimination of the decoupling WRAM and to consider all of the facts and issues; (3) the Decision impedes Cal-Am from having a fair opportunity to earn a reasonable rate of return; (4) the Decision lacks necessary evidentiary support; (5) certain findings of fact and conclusions of law are not supported by record evidence; (6) the Decision lacks necessary findings of fact and conclusions of law; and (7) the Decision departs from Commission precedent without adequate explanation. Cal-Am requests oral argument.

CWA alleges the elimination of the WRAM in D.20-08-047 is unlawful because (1) elimination of the decoupling WRAM was not within the established scope of this proceeding; (2) parties were denied a meaningful opportunity to be heard and respond to the proposed discontinuation of the decoupling WRAM, in violation of statutory requirements and constitutional due process; (3) the eleventh-hour revisions to the Proposed Decision constituted an alternate proposed decision for which additional opportunity for public review and comment was required pursuant to section 311

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[2] Subsequent section references are to the Public Utilities Code unless otherwise noted.

[3] Subsequent rule references are to the Commission's Rules of Practice and Procedure unless otherwise noted.

subdivision (e); and (4) certain findings of fact are not supported by record evidence. CWA requests oral argument.

Cal Water alleges the elimination of the WRAM is unlawful because (1) the Commission violated section 1701.1 subdivision (c), Rule 7.3, and Cal Water's due process rights by eliminating the WRAM/MCBA decoupling mechanism without including examination of the decoupling WRAM in any of the three scoping memos; (2) the Commission violated section 1708 by modifying prior Commission decisions addressing the decoupling WRAMs without providing Cal Water an opportunity to be heard; (3) the Commission unlawfully mischaracterized the proceeding as quasi-legislative rather than as ratesetting, thereby depriving Cal Water of procedural rights available only in ratesetting proceedings; (4) the Commission violated sections 728 and 729 by eliminating the decoupling WRAM because it effectively fixed water utility rates and rate mechanisms without first holding a hearing; (5) certain findings of fact, conclusions of law, and discussion on the elimination of the decoupling WRAM and/or intergenerational transfer costs are not based on record evidence; (6) the Commission violated section 1705 by failing to hear all evidence that might bear on the exercise of its discretion and to demonstrably weigh that evidence; (7) the Decision unlawfully binds the discretion of future Commission actions by precluding Cal Water from proposing to continue the decoupling WRAM in future GRCs; (8) the preemptive denial precluding a future WRAM violates the Legislative directive under section 727.5 subdivision (c); and (9) the elimination of the decoupling WRAM and preemptive prohibition on rate design changes unlawfully impairs the ability of Cal Water to earn an adequate rate of return in violation of the constitution. Cal Water requests oral argument.

Golden State alleges the elimination of the WRAM is unlawful because: (1) the Commission violated section 1701.1 subdivision (c), Rule 7.3, and Golden State's due process rights by ordering revocation of the WRAM/MCBA without having included this issue in any scoping memo; (2) the Commission violated section 1708 and Golden State's due process rights because it had no meaningful opportunity to analyze or refute the evidence relied upon; (3) the Commission violated section 1708 by failing to have

evidentiary hearings before revoking the WRAM mechanism; (4) the revocation of the WRAM/MCBA and related findings of fact are not supported by the record evidence; (5) the Decision violates section 1705 because it does not contain findings of fact on the effect the elimination of the WRAM/MCBA mechanisms will have on low-income customers; and (6) the Decision violates section 321.1 subdivision (a) by failing to consider the consequences of the Decision on all ratepayers and on low-income customers. Golden State requests oral argument.

The Public Advocates Office at the California Public Utilities Commission (Public Advocates) filed a response opposing the applications for rehearing.

We have carefully considered the arguments raised in the applications for rehearing and do not find grounds for granting rehearing. However, we will modify D.20-08-047 to remove a Finding of Fact that is not based on the evidentiary record and make some clarifying edits. Rehearing of D.20-08-047, as modified, is denied.

II. DISCUSSION

A. The elimination of the WRAM was within the scope of the proceeding.

Applicants contend that the Decision was unlawful because it eliminated the WRAM in violation of section 1701.1, subdivision (c) and Rule 7.3 by addressing an issue that was not within the scope of the proceeding. Specifically, Applicants allege that the elimination of the WRAM/MCBA decoupling mechanism (decoupling WRAM) was not included in any of the scoping memos issued in the proceeding. (Golden State at p. 14-17, CWA at pp. 6-12, Cal-Am at pp. 2-7, Cal Water at pp. 7-20, Liberty at pp. 3-4.) Applicants are not correct. The issue of the decoupling WRAM was included in the original Scoping Memo as part of the water sales forecasting issue. (*Scoping Memo and Ruling of Assigned Commissioner*, January 9, 2018, at pp. 2-3.) We did not violate our own rules or fail to regularly pursue our authority.

Section 1701.1, subdivision (c) provides, in relevant part, that "[t]he assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution . . . ."

Rule 7.3, in relevant part, provides:

> The assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date), issues to be addressed, and need for hearing. . . . In a proceeding initiated by application or order instituting rulemaking, the scoping memo shall also determine the category. . . .

(Cal. Code of Regs., tit. 20, § 7.3.) Section 1701.1(b) and Rule 7.3 require the Scoping Memo to include the issues to be addressed in the proceeding but does not require it to list all possible outcomes to a proceeding.

The Scoping Memo in this proceeding identified water sales forecasting as an issue to be addressed in the proceeding, specifically asking "What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?" (*Scoping Memo and Ruling of Assigned Commissioner*, January 9, 2018, at pp. 2-3.) Water sales forecasting was included in this proceeding because of its effect on WRAM balances and the effect of those balances on customer rates. The decoupling WRAM is inextricably tied to water sales forecasting.[4] One of the main reasons that water sales forecasting is important to the Commission is that when forecast sales are higher than actual sales, the WRAM utilities recover that difference in revenue through surcharges on customer's bills. Therefore, the risk of inaccurate forecasting is borne by the ratepayers. For non-WRAM utilities, if the water sales forecast is higher than actual sales, there is no mechanism to true-up the difference, therefore the risk is borne by the utility. Our concern about water sales forecasting and its effect on rates is, therefore, heightened because of the WRAM. This is illustrated in D.16-12-026, where the Commission found: "[t]he record of substantial WRAM balances or surcharges imposed over months or years on Class A and B water IOUs customers due

[4] CWA points out that D.16-12-026 distinguishes between forecasting and WRAM/MCBA as Section 6.1 is entitled Forecasting and Section 6.2 is entitled WRAM/MCBA. (CWA at p. 11, fn. 32.) However, in Section 6.1. Forecasting, the acronym WRAM is mentioned 42 times.

to mismatches between authorized revenue and sales demands action now to better align forecasted rates to recorded sales." (D.16-12-026 at p. 37.)

Here, the Decision explained that the WRAM issue, as it relates to water sales forecasting, was part of this OIR from the beginning. It discusses the comments made by parties throughout the proceeding that show the linkage between the WRAM and sales forecasting:

> California-American Water Company also identified sales forecasting as an important issue for this rulemaking to explore as the "long-standing problem of forecasting future sales … has been heightened by periods of drought and issues related to very substantial balances in the Water Revenue Mechanism Accounts."

(Decision at p. 18, quoting Cal-Am's comments to the Order Instituting Rulemaking 17-06-024, p. 3.)

> In comments to this Scoping Memo the California Water Association, among other suggestions, called for folding the WRAM/MCBA recovery into base rates instead of surcharges[5] while the Public Advocates Office of the Public Utilities Commission argued that the large variances in forecasted sales are exacerbated by the WRAM/MCBA process.[6] Accordingly, the August 2, 2019, workshop included a panel on drought sales forecasting that identified a number of problems with the WRAM/MCBA mechanism. The September 4, 2019, Ruling specifically sought comment on whether the Commission should convert utilities with a full WRAM/MBCBA mechanism to a Monterey-Style WRAM with an incremental cost balancing account.

(Decision at p. 50, fns. in original.)

> The Public Advocates Office of the Public Utilities Commission recognizes that forecast variance is inevitable in rate-of-return regulation, but that the impact on water utilities has been muted as the result of the WRAM decoupling

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

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

> mechanism in California. While the Public Advocates Office of the Public Utilities Commission recognized that large WRAM balances are not solely caused by a large variance in forecasted sales, it argued that by mitigating the consequences of inaccurate sales forecasts, WRAM and other decoupling mechanisms exacerbate the actual size of the variance.

(Decision at p. 30.) These comments illustrate that WRAM issues were an integral part of the discussions on sales forecasting throughout the proceeding.

The above notwithstanding, the Applicants cite *Southern California Edison Company v. Public Utilities Commission* (2006) 140 Cal.App.4th 1085 (*Edison*) to support their scoping memo arguments. (Golden State at pp. 15-17, CWA at pp. 8-11, Cal-Am at pp. 4-6, Cal Water at p. 8.) However, this reliance on *Edison* is misplaced. In *Edison*, the issue in controversy was unrelated to the issues listed in the scoping memo. (*Edison*, *supra*, 140 Cal.App.4th 1085, 1104-1105.) Here, as explained above, water sales forecasts were included in the list of issues in the Scoping Memo and because the WRAM and water sales forecast are inextricably linked, we did not violate our own rules. *Edison* has no relevance here.

Additionally, Cal Water and CWA cite *City of Huntington Beach v. Public Utilities Commission* (2013) 214 Cal.App.4th 566 (*Huntington Beach*) to support their argument. Like *Edison*, this case is not relevant to the instant proceeding. In *Huntington Beach*, the Commission had concluded a construction project preempted local ordinances where "[t]hroughout the PUC proceedings, the parties and the [C]ommission emphasized that a court, not the [C]ommission, would adjudicate the validity of the City's municipal ordinances." (*Huntington Beach*, *supra*, 214 Cal.App.4th 566, 570.) In the present case, there was no stipulation or express language in the Scoping Memo equivalent to that in *Huntington Beach*.

Cal Water cites *Calaveras Telephone Co. v. Public Utilities Commission* (2019) 39 Cal.App.5th 972 for the proposition that the Commission may not disregard its own rules. (Cal Water at p. 8.) This case is inapposite. As discussed above, because water forecasting includes WRAM issues, and was identified as an issue in the scoping

memo, we are in compliance with our rules.

Golden State and Cal Water argue if they would have had any notice that the Commission would consider revoking their authority to use their WRAM and MCBA mechanisms they would have advocated for hearings. (Golden State at p. 15, Cal Water at pp. 18-19.) Nothing in the Scoping Memo precluded the WRAM Utilities from requesting hearings. In fact, the Scoping Memo stated that hearings are not required at this time. It further stated that if hearings are required at a later date, an amended scoping memo would be issued. (*Scoping Memo and Ruling of Assigned Commissioner*, January 9, 2018, at p. 4.) The parties at any time could have filed a motion to request hearings. No party did. Even after the September 4, 2019 Administrative Law Judge's (ALJ) Ruling specifically asked for comments on whether the WRAM should be replaced with the Monterey-Style WRAM, no party requested hearings. (*Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions*, September 4, 2019, at p. 3 (September 4, 2019 ALJ Ruling.) More than ten months elapsed, after the parties filed their reply comments to that ALJ Ruling, before the Proposed Decision (PD) was issued. The parties had adequate time to file a motion requesting hearings after the ALJ Ruling requested comments on that issue.

Moreover, the parties had notice that, as a pilot program, the continuation of the WRAM and MCBA was regularly under consideration. Since the WRAMs were authorized, the Commission regularly evaluated whether the WRAM and MCBA should be continued. In D.12-04-048 the Commission ordered "a more vigorous review of the [WRAM/MCBA] mechanisms and options to the mechanisms, as well as sales forecasting, be conducted [in] each applicant's pending or next [GRC] proceeding." It further ordered the utilities to address five options in those proceedings, including whether the Commission should adopt a Monterey-Style WRAM rather than the existing full WRAM and whether the Commission should eliminate the WRAM mechanism. (D.12-04-048 at pp. 42-43.) In D.16-12-026 the Commission stated: "We conclude that, **at this time**, the WRAM mechanism should be maintained." (D.16-12-026 at p. 41, emphasis added.) Finally, the Applicants' rehearing applications themselves show the

Commission's ongoing evaluations of the viability of the WRAM in their individual GRC, and other, proceedings. (Golden State at pp. 9-13, CWA at pp. 3, 13.)

B. Applicants were afforded due process.

Applicants contend they were denied due process because they were not given a meaningful opportunity to be heard and to respond to the discontinuation of the decoupling WRAM in violation of statutory requirements and constitutional due process. Golden State, Cal Water, Liberty, Cal-Am and CWA contend the Decision violated section 1708 by failing to have an evidentiary hearing before discontinuing the WRAM. More specifically, they argue that the Decision's order to refrain from seeking WRAM/MCBAs in their next general rate case proceedings rescinds previous Commission decisions without affording parties a meaningful opportunity to address the relevant issues as required by section 1708. (Golden State at pp. 17-20, Cal Water at pp. 20-32, Liberty at pp. 2-3, 6, Cal-Am at p. 21, fn. 65, and CWA at pp. 13-14.) CWA explains that WRAMs authorized in the utilities' various GRCs and in the balanced rates rulemaking decision, D.16-12-026, affirmed the decoupling WRAM as a ratemaking mechanism for ongoing use. Therefore, CWA argues, the Commission may not rescind, alter, or amend these decisions without providing the parties an opportunity to be heard through hearings. (CWA at p.13-14.)

Section 1708 provides the Commission discretion to rescind, alter, or amend any order or decision made by it:

> The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

The Applicants are incorrect in their argument that Section 1708 provides the right to evidentiary hearings in this proceeding. The Decision does not rescind, alter, or amend any prior decision. The Decision specifically stated that the policy decision to discontinue the use of the decoupling WRAM would be implemented in the utilities' next

GRCs. (Decision at p. 76.) The Decision does not reopen any prior Commission decisions. Nonetheless, we address the issues raised by the Applicants below.

CWA, Golden State, and Cal Water contend that there was no such opportunity to present evidence or to cross-examine witnesses on the WRAM issues in this proceeding. CWA, Golden State, and Cal Water cite *California Trucking Association v. Public Utilities Commission* (1977) 19 Cal.3d 240, 244 (*California Trucking*) for the proposition that "a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal." (CWA at p. 14, Golden State at pp. 18-19, Cal Water at p. 25.) However, *California Trucking* does not support Applicants' claim that the Commission denied the parties' due process rights by failing to provide the parties with an opportunity to present evidence or to cross-examine witnesses. In *California Trucking*, the petitioner had requested a hearing on two separate occasions but the Commission refused those requests. (*California Trucking Assn. v. Pub. Util. Com*., *supra*,19 Cal.3d 240, 242-243.) In the instant proceeding, the parties did not request that the Commission schedule hearings. The Court, in *California Trucking* held that "[i]f no party seeks to challenge a proposed order except by merely submitting written comments on its merits, the commission is not required to hold a hearing." (*Id*. at p. 245.) Further, the Court found that "there is nothing remarkable in the concept that one who is entitled to a hearing may waive his right thereto by failing to assert it." (*Id*. at p. 245, fn. 7.) As discussed above, we disagree that Section 1708 provides the right to evidentiary hearings in this proceeding. But even if Applicants had such a right, because no party asked for evidentiary hearings, we did not violate the Applicants' due process rights.

Golden State argues that the Decision's conclusion that WRAMs are no more effective at conservation than Monterey-Style WRAMs is based singularly on Public Advocates' graph and because it had no opportunity to analyze or refute this data, the Commission violated section 1708 and the WRAM utilities' due process rights. (Golden State at p. 17-18.) Golden State cites *Brewer v. Railroad Commission of California* (1922) 190 Cal. 60, 77-78 to support its claim that the Decision's "reliance on

this one-sided perspective" without giving the WRAM utilities the ability to refute the data violates their due process rights. However, *Brewer* does not support Golden State's claim. In *Brewer*, during hearings, the Commission excluded evidence proffered by petitioner because it was duplicative. (*Brewer v. Railroad Com. of Cal., supra,*190 Cal. 60, 76-77.) Here, we sought comments from the parties. The Decision relied on the evidence in the record and the comments received by the parties. It did not rely on a one-sided record, and the WRAM utilities had their own opportunity to provide its own perspective for the record.

Golden State's reliance on *California Association of Nursing Homes, etc. v. Williams* (1970) 4 Cal.App.3d 800 is equally unavailing. (Golden State at pp. 18-19.) In that case, the defendant agency, required by statute to create Medi-Cal reimbursement rates for nursing homes, failed to produce an evidentiary record for the court to review and the defendant agency based its decision on off-the-record, private negotiations with select affected businesses, rather than public hearings as required by statute. (*Cal. Assoc. of Nursing Homes, etc. v. Williams, supra*, 4 Cal.App.3d 800, 810-812.) Here, the entire record is available to the parties on the Commission's website, all parties were entitled to attend the workshops and file opening and reply comments, and there are no allegations of private negotiations.

Next, CWA and Cal Water claim it was never incumbent on the parties to seek greater opportunities to weigh in on the WRAM matter because the issue was never reasonably encompassed in any scoping memo. (CWA at p. 15, Cal Water at p. 32.) CWA claims the "deficiency of the evidentiary record is the Commission's failure, as it does not meet the procedural standard mandated for the protection of the parties." (CWA at p. 15.) To support this contention, CWA cites the *Edison* holding that the court "cannot fault the parties for failing to respond to the merits of proposals that were not encompassed in the scoping memo absent an order amending the scope of issues to include the new proposals." (*Edison*, *supra*, 140 Cal.App.4th 1085, 1106.)

As discussed briefly above, the facts in *Edison* can be distinguished from the facts in the instant proceeding. In *Edison*, a party, joining the proceeding late, filed

opening comments 10 months after opening comments were due. The comments included 400 pages of supporting materials and offered new proposals, that were not described in the scoping memo, for the first time in the proceeding. The ALJ ruling gave parties three business days (excluding the weekend and a legal holiday) to file supplemental reply comments. (*Id*. at pp. 1105-1106.) In contrast, in the instant proceeding, as discussed above, WRAM issues were encompassed in the sales forecasting issue included in the original scoping memo. (*Scoping Memo and Ruling of Assigned Commissioner*, January 9, 2018, at p. 1-3.) There were no late-filed comments or voluminous attachments. The parties had twelve days to file opening comments and another seven days to file reply comments. (*Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions*, September 4, 2019, at p. 5.) Once the ALJ's ruling issued, the parties had ample time to submit comments, and parties did file both opening and reply comments.

A recent Court of Appeal decision, *BullsEye Telecom, Inc. v. Public Utilities Commission* (2021) 66 Cal.App.5th 301 (*BullsEye Telecom*), is more on point. In that decision the court distinguished *Edison* from the facts in *BullsEye Telecom* and found the petitioners had the opportunity to present evidence but had not done so. The Court of Appeal discussed that the petitioners asserted that their "evidentiary showing would have been quite different if the Scoping Memo in 2012 reflected the Commission's current view that only differences in cost-of-service could provide a 'rational basis for different rates.'" (*BullsEye Telecom*, *supra*, 66 Cal.App.5th 301, 327.) The Court held that petitioners failed to show that cost was excluded as an issue by the Scoping Memo, especially in light of the legal position taken by the Real Party in Interest. The Court of Appeal held: "[i]f petitioners had relevant evidence to present on that issue but failed to do so, that was their own strategic decision and they cannot now be heard to complain." (*Ibid*.) Likewise, in the present case, Applicants had the opportunity to provide substantive comments in response to the questions in the September 4, 2019 ALJ Ruling Inviting Comments, but declined to do so. They cannot now complain that the record is devoid of evidence.

Golden State further argues that even if the parties are not entitled to evidentiary hearings, their due process rights have been violated because they "were denied any opportunity to submit any evidence as to the importance of not having their WRAM/MBCA mechanisms revoked and to refute Cal PA's graph." (Golden State at p. 20.) Similarly, CWA takes issue with the graph provided by Public Advocates in its reply comments during the proceeding, claiming it never had the opportunity to respond to the graph until the issuance of the PD. (CWA at p. 16.)

It is well established that due process requires "adequate notice" and an opportunity to be heard. "Due process as to the commission's initial action is provided by the requirement of adequate notice to a party affected and an opportunity to be heard before a valid order can be made." *People v. Western Airlines, Inc*. (1954) 42 Cal.2d 621, 632.

Discontinuation of the WRAM/MBCA was raised throughout the proceeding and the opportunity to file opening and reply comments on this specific issue was provided in the September 4, 2019 ALJ Ruling. The graph at issue was provided in Public Advocates' reply comments in response to CWA's opening comments. (Public Advocates September 23, 2019 Reply Comments at p. 7.) During the proceeding, in the ten months between Public Advocates' introduction of the graph and the issuance of the PD, CWA never sought the opportunity to respond to the graph. CWA and the other parties could have filed a motion to strike the graph or a motion requesting the opportunity to respond to the graph. As discussed above, the parties did not avail themselves of the opportunity to address the graph; they "cannot now be heard to complain." CWA and Golden State have not shown that we failed to proceed in the manner required by law.

C. The Decision is supported by record evidence.

Applicants contend that elimination of the WRAM is not supported by record evidence. For the most part, the allegations are based on differences of opinion and the Applicants have not shown the determinations lack evidentiary support.

1. The Findings of Fact and Conclusions of Law are supported by record evidence.

Applicants contend that certain findings of fact and conclusions of law are not supported by record evidence in violation of Section 1757.1(a)(1). (Golden State at pp. 20-28, CWA at pp. 19-22, Cal-Am at pp. 19-27, Cal Water at pp. 40-46, Liberty at pp. 4-5.)

Cal Water identified a typographical error in Finding of Fact #2, which states:

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

The underlined surcharge should read sur-credit. Accordingly, we will modify D.20-08-047 to reflect this correction.

CWA argues that the statement in Finding of Fact #8, that subsequent GRC proceedings did not adjudicate the WRAM/MCBA options ordered in D.12-04-048 because those proceedings were resolved by settlement, is incorrect because the Commission approved those settlements. (CWA at p. 20.) This Finding of Fact simply makes the point that the Commission, for the water industry as a whole, did not resolve each issue, but rather, approved the settlements with the knowledge that there is give and take in negotiation and that overall, the settlement was reasonable. Finding of Fact #8 is correct.

Golden State argues that Finding of Fact #11, which states that the WRAM/MCBA has led to substantial under-collections and subsequent increases in quantity rates, is unsupported by current data because the Decision cites to a 2012 Commission decision for that proposition. However, the Decision also cites to two later decisions, D.13-05-011 and D.16-12-026. (Decision at p. 61.) It also discusses comments of the parties regarding high WRAM balances and subsequent rate increases. Cal-Am commented that the "long-standing problem of forecasting future sales. . . has been heightened by periods of drought and issues related to very substantial balances in

the Water Revenue Mechanism Accounts." (Decision at p. 19.) In its comments, "San Gabriel Water Valley Water Company agreed that authorizing Sales Reconciliation Mechanisms during drought periods will help mitigate the regressive nature of rates caused by amortizing high WRAM and Drought Lost Revenue Memorandum Account (DLRMA) balances." (*Id*. at pp. 32-33.) Public Advocates explained that "the main issue is that the WRAM balances are so high." (*Id*. at p. 65.) Finding of Fact #11 is adequately supported by the record.

Golden State alleges that its comments on the PD provided more current data reflecting it had over-collections in two of its service areas in recent years. However, its comments on the PD are not included in the evidentiary record.[7] Additionally, the proffered data addresses Golden States' two service areas, but the Decision considers the WRAM balances of all the service territories of all the WRAM utilities.

Golden State, Cal Water, Cal-Am and CWA contend that a critical determination in the Decision's discontinuation of the WRAM/MCBA is its finding that the mechanisms are no more effective in promoting conservation than the Monterey-Style WRAM/ICBA mechanisms, as stated in Findings of Fact #13 and #14. (Golden State at pp. 21-23, Cal Water at p. 40, Cal-Am at pp. 23-25, CWA at pp. 20-21.)

Findings of Fact #13 and #14 state:

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

[7] Under Rule 14.3 of the Commission's Rules of Practice and Procedure, comments on the Proposed Decision are required to focus on factual, legal or technical errors in the proposed decision, making specific reference to the record or applicable law. Comments which fail to do so will be accorded no weight. Furthermore, comments on Proposed Decisions are filed after the evidentiary record has been closed, and thus, are not considered part of the evidentiary record. (See, e.g., Rules 13.14, 14.2, and 14.3.)

14. Conservation for WRAM utilities measured as a percentage change during the last 5 years is less than conservation achieved by non-WRAM utilities, including Class B utilities as evidenced in water utility annual reports filed from 2008 through 2016.

Golden State alleges Finding of Fact #13 is solely based on the graph submitted in Public Advocates' September 2019 reply comments. Golden State further argues that because the WRAM utilities were not provided "any opportunity to counter CAL PA's graph" no valid record was established on the issue of whether the WRAM/MBCA should be discontinued. (Golden State at pp. 21-23.) To support this claim, it cites *The Utility Reform Network v. Public Utilities Commission* (2014) 223 Cal.App.4th 945, 959 (*TURN*) and summarizes the holding as "evidence not subject to cross-examination cannot be the sole support for a finding of fact." (Golden State at p. 23, fn. 93.) Golden State misconstrues this decision. In fact, the Court stated: "Consequently, the issue before us is a narrow one. May the Commission base a finding of fact solely upon hearsay evidence where the truth of the extrarecord statements is disputed? The answer is no." (*TURN*, *supra*, 223 Cal.App.4th 945, 959.)

In *TURN*, PG&E submitted the evidence in dispute, a hearsay declaration from an executive of the California Independent System Operator (the CAISO) and a petition the CAISO had filed with a federal agency. Neither the CAISO executive nor the authors of the petition testified in the Commission's proceedings. Because of their hearsay nature, the presiding ALJ ruled these materials could not be used as evidence of the need for the project in question. Then the Decision overruled the ALJ's ruling and approved the project solely upon that evidence. (*TURN*, *supra*, 223 Cal.App.4th 945, 949.)

TURN is not relevant to this proceeding. The evidence at issue here is based on data provided to the Commission by the utilities in their annual reports. (*Reply Comments of the Public Advocates Office on the Water Division's Staff Report and Response to Additional Questions*, September 23, 2019 at p. 7.) Further, as discussed above, after Public Advocates provided the graph in its reply comments, the parties never

sought permission to respond to the graph they now dispute or to have the graph stricken from the record.

Next, Golden State argues that there are three problems with Public Advocates' graph but the Commission refused to consider the information provided in the WRAM utilities' comments on the PD opposing the data in Public Advocates' graph. It cites *United States Steel Corporation v. Public Utilities Commission* (1981) 29 Cal.3d 603, 608-609 (*U.S. Steel*) to support this contention. However, *U.S. Steel* is not on point. In that case, the Supreme Court annulled the Commission's decision because the Commission refused to consider the economic effect of authorizing different rates for similar services over similar routes. In the instant proceeding, Golden State and Cal Water are arguing that the Commission erred because it refused to consider the utilities' comments on the PD, which were filed after the close of the evidentiary record. However, each of the problems Golden State and Cal Water identified is related to the measurement or interpretation of the data provided in Public Advocates' graph. Neither Golden State nor Cal Water argue that the data are inaccurate. (Golden State at pp. 21-23, Cal Water at p. 41.) Nonetheless, the Decision addresses those concerns and discusses why, in weighing the evidence, it determined that Public Advocates' arguments were credible. (Decision at pp. 62-70.) Golden State and Cal Water simply disagree with the way the Commission weighed the evidence; they have not identified legal error.

CWA argues that Findings of Fact #13 and #14 are unsupported by the record because they contain data that was not placed into evidence in the proceeding or made available to the parties for review. (CWA at p. 20-21.) Finding of Fact #13 addresses the data, from the annual reports that the water companies submit to the Commission, that underlies the graph that Public Advocates filed in its September 2019 reply comments. However, because this data was not included in the evidentiary record and is not necessary, we will delete this finding of fact. In contrast, it is clear from the wording of Finding of Fact #14 that the data are from the aforementioned graph provided in Public Advocates' September 2019 reply comments. In reviewing this finding, it became apparent that the wording is not clear. To clarify, the we will modify Finding of

Fact #14 to indicate that the "last 5 years" refers to the last 5 years of the data provided in the graph contained in Public Advocates' September 2019 reply comments. With this change, Finding of Fact #14 is supported by the record.

Cal-Am relies on *California Manufacturers Assoc. v. Public Utilities Commission* (1979) 24 Cal.3d 251 and *Camp Meeker Water System, Inc. v. Public Utilities Commission* (1990) 51 Cal.3d 845 to support its claim that the Commission commits legal error when it issues a decision which is unsupported by evidence before it. (Cal-Am at p. 19.) However, that is not the situation in this proceeding. Cal-Am's rehearing application provides several reasons for its belief that the evidence relied on by the Decision is faulty, however, it fails to provide references to any evidence in the record that contradicts that evidence. (Cal-Am at pp. 23-27.) Cal-Am is merely arguing about the way in which the Commission weighed the evidence. It has not shown legal error.

Next, Cal-Am claims that the Commission did not make any conclusion of law regarding the impact of the decoupling WRAM on conservation. (Cal-Am at p. 23.) It does not provide any reason or analysis as to why this is necessary. In fact, the Commission is not required to make such a conclusion of law. Section 1705 requires conclusions of law "on all issues material to the order or decision." It is within the Commission's discretion to identify the factors that are material to its decision. (*Clean Energy Fuels Corp. v. Pub. Util. Com.* (2014) 227 Cal.App.4th 641, 659.) The conclusions of law in the Decision satisfy this requirement.

Cal Water argues that the Commission's conclusion "that continuation of the decoupling WRAM for conservation purposes will not benefit customers" is unsupported by the record. (Cal Water at p. 42.) However, the Decision states "we are not persuaded that continuing the WRAM/MCBA for strictly conservation purposes is beneficial to ratepayers." (Decision at p. 67.) The previous five pages of the Decision discuss the comments of the parties to provide the basis for this conclusion. Part of that discussion addressed the graph provided by Public Advocates, which they argue showed the annual change in average consumption per metered connection is almost the same

during the last eight years for both WRAM and non-WRAM utilities. (*Id*.) The inference is clear; if non-WRAM utilities achieve similar annual change in average consumption as WRAM utilities, other factors must come into play. The Decision identifies some of those factors on page 69. This Finding of Fact is supported by the record.

Golden State contends that Findings of Fact #15 and #16, regarding intergenerational transfers of cost associated with the WRAM, have no factual basis in the record. More specifically, it states: "In reality, the Commission has no basis for conducting any such quantification or analyzing the significance of intergenerational transfers in the short or long term, because there is no data in the record regarding the under-collections that would lead to intergenerational transfers or the intergenerational transfers themselves." (Golden State at pp. 24-25.)

As discussed above, there is evidence in the record regarding under-collections and the resulting surcharges. To the extent that Golden State is arguing that it is improper for the Commission to address its concern about intergenerational transfers because it cannot quantify those costs, it is mistaken. The Decision cites D.16-12-026, which addresses intergenerational transfers associated with WRAM balances collected in surcharges long after the under-collection occurred. (Decision at p. 70.) It is well established that the Commission is concerned with minimizing intergenerational transfers of costs associated with the WRAM balances. (*See* D.18-12-021 at pp. 234-235 and D.12-04-048 at p. 8.)

Cal Water contends that the statement in Finding of Fact #15 could be said of any balancing account, therefore, the fact that there are intergenerational transfers of cost associated with the WRAM, does not support the Commission's decision to eliminate it. (Cal Water at pp. 45-46.) The Decision explains that the WRAM balances have been significant and under-collected and the Commission seeks to minimize such transfers, when possible, to keep rates just and reasonable. (Decision at p. 70.) This is one of various reasons we identified to support our decision to discontinue the WRAM. The balances in other balancing accounts are not relevant to this proceeding. Cal Water's

statement does not identify legal error, it is a disagreement with the way in which we weighed the evidence.

Similarly, Cal Water and CWA argue that Finding of Fact #16 lacks support in the record. Specifically, they allege the Decision does not analyze how the Monterey-Style WRAM mechanism would better minimize intergenerational transfers of cost. (Cal Water at p. 46, CWA at p. 21.) The Decision explains that the option to use the Monterey-Style WRAM mechanism is more limited than the decoupling WRAM and that no other option was put forth by the parties. Based on these two options, the more limited Monterey-Style WRAM mechanism would better minimize intergenerational transfers of cost:

> We therefore find that the WRAM/MCBA mechanism is not the best means to minimize intergenerational transfers of costs when compared to an alternative available to the utilities and the Commission.
>
> **5.2.5. Allowing Water Utilities to [Use] a Monterey-Style WRAM**
>
> In view of the foregoing, we believe that it is an appropriate time to move to eliminate the option for water utilities to use the full WRAM/MCBA mechanism. However, to account for the consequences of inaccurate forecasts, it is reasonable that these former WRAM utilities be provided an opportunity to establish Monterey-Style WRAMs offset by ICBAs. The option to use the Monterey-Style WRAM grants water utilities a rate adjustment mechanism that is more limited and allows water utilities to recover lost revenues constrained to the difference between conservation tiered rates and single, uniform rates.
>
> In comments on the proposed decision, water companies claim that the Monterey-Style WRAM serves a different purpose and does not provide the same benefits as the traditional WRAM/MCBA.[8] However, no water company or

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

> any other party offered any alternative to the WRAM/MCBA process other than allowing companies to use a Monterey-Style WRAM in future GRCs.[9]

(Decision at pp. 70-71, fns. in original.) The Applicants have not established an abuse of discretion with respect to Finding of Fact #16.

CWA argues that Finding of Fact #17 is incorrect in finding that "[t]iered rate design causes customers to use less water at increased costs per unit consumed; thus, use of [tiered] rate design is a reasonable means to stabilizing revenues." (CWA at p. 21, citing Decision at p. 103.) However, CWA makes no citation to the evidentiary record to support its argument. It does cite to Commissioner Randolph's dissent to the Decision, but the dissent is not part of the evidentiary record. Rule 16.1 (c) requires rehearing applicants to make specific references to the record or law. CWA has failed to prove legal error.

Cal-Am alleges Finding of Fact #19 and Conclusion of Law #4 are unsupported by the record. Finding of Fact #19 states:

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

Conclusion of Law #4 states:

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

Cal-Am and Cal Water argue that there is no evidence in the record to support the claim that eliminating the WRAM/MCBA will improve forecasting. (Cal-Am at p. 21, Cal Water at p 43.) However, the Decision does not find that eliminating the WRAM/MCBA will improve forecasting. As shown above, Conclusion of Law #4 states that eliminating the WRAM/MCBA will provide *better incentives* to more

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July 27, 2020, Comments of Liberty Utilities at 8-10.

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

accurately forecast sales. This Conclusion of Law is based on the language in the Decision on page 18, which reads:

> In addition, parties highlighted the reality that drought is the new normal in California and that forecasts need to be more accurate so that WRAMs can be smaller, and that the Monterey-Style WRAM would provide better incentives for parties to more accurately forecast sales while still providing the utility the ability to earn a reasonable rate of return.

Upon review, it has come to our attention that no citation was provided for that statement. This statement was based on the following record evidence:

Public Advocates' Comments on Phase 1 Issues, February 23, 2018, at pp. 7-8:

> In fact, the risk that a forecast may be inaccurate is the sole economic basis for providing regulated utilities with rates of return greater than a risk-free rate.[fn.] . . . [W]ith revenue decoupling for water utilities,[fn.] the impact on water utilities of forecast variance is muted since nearly all revenue forecast risk has been transferred from utility investors to ratepayers. As a result of the WRAM decoupling mechanism in California, variance in forecasted revenues manifests not as the normal business risk underpinning rate-of-return regulation but as the perceived cause of large WRAM balances and increased customer surcharges.
>
> By mitigating the consequences of inaccurate sales forecasts, WRAM and other decoupling mechanisms can be reasonably assumed to not only reflect variances in sales forecasts but to exacerbate the actual size of the variance.

And Southern California Edison Comments on Staff Report, September 16, 2019, at pp. 3-5:

> In certain situations, implementing a Monterey-Style WRAM with a MCBA may balance the benefits and risks of implementing a conservation rate design more equitably among stakeholders. However, implementing a Monterey-Style WRAM as opposed to a full decoupling WRAM requires shareholders may be required to make up the difference for any shortfalls in authorized revenue not related to the use of a conservation rate design that far exceeds

> normal business risk. [fn.]

Accordingly, we will modify the Decision to insert a footnote with a citation to these comments.

Cal-Am further argues that the limited evidence in the record appears to contradict the Commission's conclusion on this issue. First it cites the staff report on the January 14, 2019 workshop which states that the water utilities claim WRAMs "allow them to institute more accurate and equitable rates." (Cal-Am at p. 21.) However, the report states that mid-year corrections and WRAMs allow them to institute more accurate and equitable rates. Moreover, this claim addresses rates, not accurate sales forecasting. The report also noted that Public Advocates claimed this reduced scrutiny of company expenses and is burdensome to ratepayers. Next Cal-Am cites the workshop report for the second workshop held on August 2, 2019, which observes that CWA and Public Advocates agreed that forecasts have been improving. (*Id*. at p. 21.) However, the report notes that Public Advocates said that "[r]ecent forecasts have improved, but there is still room for further improvements." Finally, it cites Southern California Edison's comments that claimed inaccurate forecasts were not the result of WRAM, but of a general forecast methodology. (Cal-Am at p. 22.) Public Advocates' comments contradict Southern California Edison's assertion. In its reply comments, Public Advocates addressed incentives to develop accurate forecasts:

> [T]he Public Advocates Office strongly supports the development of forecasts that are as accurate as possible for both revenues and expenses. When revenue variances are tracked in decoupling mechanisms (i.e., Water Revenue Adjustment Mechanisms (WRAMs)), and/or expenses are tracked in balancing and memorandum accounts, it reduces the financial repercussions to the utility of inaccurate forecasts. This, in turn, reduces the utility's incentive to develop accurate forecasts. This can result in misguided attempts by Water IOUs to lower rate increases in General Rate Cases (GRCs) with artificial forecasts that are deliberately inaccurate (e.g. higher adopted sales quantities or lower proposed expenses), with the resulting variances recovered through different mechanisms between GRC cycles

that provide for rate increases via a less transparent process.

(*Reply Comments of The Public Advocates Office on Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule*, July 24, 2019, at pp. 2.)

Public Advocates also addressed the manipulation of forecasts:

> Utilities should not propose and the Commission should not adopt sales forecasts with any particular rate outcome in mind. Instead of lowering noticed rate impacts with [higher] than reasonable sales forecasts and allowing new mechanisms to "stagger the impact on customers into smaller increments" as suggested by CWA, the water utilities should propose accurate forecasts openly and transparently in GRCs. Customers should not be required to face the continued uncertainty of stealth rate increases that accompany the operation of existing—much less new—alternative rate mechanisms.

(*Id*. at p. 3.) Additionally, Public Advocates' response to the rehearing applications identifies many other places in the record that contain evidence to support the Decision's determination that elimination of the WRAM will provide better incentives to more accurately forecast sales. (*Response of the Public Advocates Office to California-American Water Company, California Water Service Company, Golden State Water Company, Liberty Utilities Corp., and California Water Association's Rehearing Applications of Decision 20-08-047*, October 20, 2020, at pp. 8-9.) Cal-Am simply disagrees with our weighing of the evidence; it has failed to show legal error.

Similarly, Cal-Am and Cal Water erroneously argue that there is nothing in the record of this proceeding that addresses whether sales forecasts are more significant with the Monterey-Style WRAM. (Cal-Am at p. 22, Cal Water at 44.) The language quoted above that states when revenue variances are tracked in decoupling mechanisms like the WRAM, it reduces the financial repercussions to the utility of inaccurate forecasts, contradicts their arguments. Logic dictates that where there is no revenue protection for inaccurate forecasts, forecasting becomes more significant, both to the utility and the ratepayer. Moreover, Cal-Am provides no citations to the record to

support its allegation, but refers to evidence in its comments to the PD, which were filed after the record in this proceeding was closed and cannot be considered as part of the evidentiary record.

2. The Commission developed a record on the elimination of the WRAM.

Cal-Am contends the Commission failed to pursue its authority by failing to fully examine and develop a record on the elimination of the WRAM and to consider all of the facts and issues. Cal Water contends the Commission violated section 1705 by failing to hear and weigh all of the evidence. Section 1705 provides in pertinent part that a Commission order or decision "shall contain, separately stated, findings of fact and conclusions of law ... on all issues material to the order or decision."

More specifically, Cal-Am and Cal Water contend the Commission failed to adequately weigh the evidence, consistent with relevant case law. (Cal-Am at pp. 7-18, Cal Water at 46-47, citing *United States Steel Corporation v. Public Utilities Commission* (1981) 29 Cal.3d 603, 608 (*U.S. Steel*).) It is well established that an agency's duty is to weigh the relevant evidence provided in a proceeding. Cal-Am and Cal Water offer nothing to show that we failed to consider all the relevant evidence in this proceeding. For example, they assert we failed to consider the potential rate design impacts of eliminating the WRAM. (Cal-Am at pp. 7-18, Cal Water at pp. 48-50.) Next, they argue that in failing to consider rate design, we failed to consider the effect of changed rate design on conservation and low-income customers. (Cal-Am at pp. 13-18, Cal Water at pp. 48-50.) To support their arguments, Cal Water and Cal-Am cite to the parties' comments on the PD, Commissioner Randolph's dissent, and other documents, none of which are in the evidentiary record of this proceeding. An application for rehearing is not a permissible vehicle to merely reargue the issues or to ask the Commission to reweigh the evidence. The Commission has complied with section 1705 by considering the material facts and weighing the relevant evidence provided in this proceeding.

Additionally, Cal Water contends that by discontinuing the WRAM, the

Decision binds the discretion of future Commission actions. (Cal Water at p. 47.) Cal Water argues this violates section 727.5 subdivision (c), which states the Commission "shall consider, and may authorize, a water corporation to establish a balancing account, rate stabilization fund, or other contingency fund, the purpose of which shall be the long-term stabilization of water rates." Cal Water explains that the Decision's precluding the utilities from requesting WRAMs in future GRCs also precludes the Commission from considering whether the water utilities may establish a WRAM balancing account in violation of section 727.5 subdivision (c). However, the Commission has already considered and authorized the water utilities to use WRAM balancing accounts; section 727.5 subdivision (c) does not prohibit the Commission from rescinding that authorization. Moreover, the Decision did not preclude the utilities from requesting any other balancing accounts, in fact, it encouraged utilities to seek Monterey-Style WRAMs. (Decision at pp. 71-72.) The Decision did not violate section 727.5 subdivision (c).

D. The Decision is in compliance with section 321.1 subdivision (a).

Golden State contends that the Decision violates section 321.1 subdivision (a) by failing to consider the consequences of the Decision on all ratepayers and on low-income customers. More specifically, it argues that nothing in the record addresses how elimination of the WRAM will impact low-income customers. (Golden State at pp. 25-28.) As the Commission stated in D.06-12-042, "[t]he plain language of the statute only requires the Commission to 'assess' the economic effects of a decision. It does not require the Commission to perform a cost benefit analysis or consider the economic effect of its decision on specific customer groups or competitors." (D.06-12-042 at pp. 17-18.)

The relevant part of section 321.1 subdivision (a) requires the Commission to assess the economic effects of its decisions:

> It is the intent of the Legislature that the commission assess the consequences of its decisions, including economic effects . . . as part of each ratemaking, rulemaking, or other

> proceeding, and that this be accomplished using existing resources and within existing commission structures.

In the Decision, after discussing the elimination of the WRAM and its effect on ratepayers, the Commission concluded:

> We agree with the Public Advocates Office of the Public Utilities Commission that requiring WRAM utilities to transition to the Monterey-Style WRAM will not decrease conservation incentives for customers. Further, there is no evidence that eliminating the WRAM will raise rates on low-income and low-use customers. However, the impact of the unanticipated WRAM surcharges on low-income and low-use customers is one component of the problems we have encountered with the WRAM. Further, rate design is the ultimate determinant of impacts to low-income and low-use customers, and water utilities can and will propose rate structures in their next GRC application where the Commission will ensure low-income and low-use customers are not adversely impacted.[¶] . . . We continue to believe that other actions by companies, the Legislature, the State Water Resources Control Board, and the Commission have, and continue to do more to achieve conservation requirements and that the flaws and negative customer experience with the WRAM/MCBA outweigh any benefits it does achieve.

(Decision at pp. 68-69, fn. omitted.) We have complied with the requirements of section 321.1 subdivision (a); accordingly, Golden State has not shown legal error.

E. The Decision allows the utilities the opportunity to earn a fair rate of return.

Cal-Am and Cal Water contend that the Decision unlawfully impeded on their ability to earn a reasonable rate of return. Specifically, they suggest that the Commission's efforts to ensure low-income and low-use customers are not adversely impacted by the new rate designs may impact their ability to earn a reasonable rate of return. (Cal-Am at pp. 18-19, Cal Water at pp. 50-52.) To support this claim, Cal-Am and Cal Water cite *Hope Natural Gas, Duquesne Light,* and *Bluefield*, which hold that ratesetting must not lead to confiscatory rates. (*FPC v. Hope Natural Gas Co.* (1944)

320 U.S. 591; *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia* (1923) 262 U.S. 679, *Duquesne Light Co. v. Barasch (1989)* 488 U.S. 299.) These cases are not relevant here because this is not a ratesetting proceeding and we did not set rates for any utility. This was a quasi-legislative proceeding in which we ended a pilot program that afforded water companies the opportunity to receive balancing account treatment to account for the shortfall between forecast sales and actual sales.

F. The Revised Proposed Decision is not an alternate proposed decision.

CWA contends that the revisions to the PD were substantial and therefore constituted an alternate proposed decision for which additional public review was required pursuant to section 311, subdivision (e). More specifically, CWA alleges that the factual support drawn from workshop discussions and water utility annual reports comprised a substantive revision that materially changed how the PD reached that result. CWA further argues that revisions to the findings of fact, conclusions of law and ordering paragraphs of the PD violate section 311, subdivision (e). (CWA at p. 18.)

While section 311, subdivision (e), does impose a 30-day notice and comment period for "alternate" decisions, the Decision was not an "alternate" within the meaning of section 311, subdivision (e) or the Commission's rules, which implement the statute. Section 311, subdivision (e), defines an "alternate" as:

> [E]ither a substantive revision to a proposed decision that materially changes the resolution of a contested issue, or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs.

(Pub. Util. Code, § 311, subd. (e).)

Further, section 311, subdivision (e), directs the Commission to adopt rules to implement the statute. Accordingly, the Commission adopted Rule 14.1, which states:

> (d) "Alternate" means a substantive revision by a Commissioner to a recommended decision not proposed by that Commissioner or to the draft resolution which either:
>
> (1) materially changes the resolution of a contested issue,

or

(2) makes any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs.

(Cal. Code of Regs., tit. 20, § 14.1, subd. (d).)

The revisions in the Revised PD were not substantive revisions by a Commissioner to a recommended decision not proposed by that Commissioner. The Revised PD was a result of revisions made by the assigned ALJ and/or the assigned Commissioner based on comments to the Proposed Decision. Thus, it was not a change constituting an "alternate" under Rule 14.1, subdivision (d).

CWA argues "there is no basis in the unambiguous wording of section 311, subdivision (e), for limiting the definition of an "alternate" to a revision by a Commissioner to a proposed decision not proposed by that Commissioner. Any 'substantive revision' is an alternate and an opportunity to submit comments must be allowed." (CWA at p.18, fn. 54.)

However, the legislative history for section 311, subdivision (e), affirms that Rule 14.1 is lawful. It shows that the Legislature intended "alternates" to be substantive changes made by another Commissioner, not revisions made by the assigned Commissioner or the assigned ALJ. After considering comments of the parties, the Commission specifically addressed this issue in D.00-01-053:

> Specifically, TURN agrees with the Commission's discussion of the history and use of "alternate" (See D.99-11-052 mimeo. at 3-4.)[fn.] and asserts that:
>
> > "Everyone involved in the legislative process that resulted in SB 779 knew the Commission's longstanding definition of 'alternate' and the term was used in that traditional context. If the legislature had meant to change that longstanding definition, it would have done so explicitly, but it did not." (TURN, Comments on Bilas/Neeper Alternate at 4.)

(D.00-01-053 at p. 8.)

In D.99-11-052, the Commission discussed its reasoning for adopting its definition of "alternate" decision:

> At the time that the term 'alternate' was enacted into the Public Utilities Code [§ 311(e), added in 1994 by Assembly Bill 2850 (Escutia), Ch. 1110 of Stats. 1998], and for many years before the enactment, the Commission used that term in distributing agenda materials internally and in publishing its agenda. Under this Commission practice, to which § 311(e) expressly refers, the Commission has applied the term to a revision not prepared or accepted by the presiding officer who originally prepared the decision to be revised. In contrast, a revision that the presiding officer makes or accepts simply replaces the order as originally proposed, since that order no longer has a sponsor and therefore is not before the Commission or on its agenda. In implementing the statutory term 'alternate,' the Commission followed this established practice . . . .

(D.99-11-052 at p. 3, fn. omitted, emphasis in original.)

The Commission explained in D.00-01-053 that "[n]othing in SB 779 indicates that the Legislature intended to expand 'alternate' beyond this historical usage; rather, the Legislature's intent was to expand the kinds of decisions (including alternates to those decisions) that would be issued for comment." (D.00-01-053 at p. 8, fn. 8.) That decision, which adopted the current definition of "alternate" in the Commission's rules, considered parties' comments and is now final and not subject to appeal.

Proposed Decisions present outcomes recommended by the assigned ALJ in a proceeding. They are subject to change and do not become binding unless adopted by the Commission. It is normal practice for decisions to contain changes made by an ALJ following comments on the Proposed Decision. That practice is consistent with section 311, subdivision (d), which allows the Commission to adopt, modify, or set aside all or part of a proposed decision without any additional review or comment.

G. The proceeding was properly categorized.

Cal Water contends that the Commission unlawfully characterized the proceeding as quasi-legislative rather than ratesetting, thus depriving it of certain procedural rights. First, Cal Water claims that eliminating the WRAM is an unlawful ratesetting action, so it was improper for the Commission to categorize the proceeding as

quasi-legislative. Section 1701.1 subsection (d)(1) defines quasi-legislative cases as cases that establish policy, including, but not limited to, rulemakings and investigations that may establish rules affecting an entire industry. This case was an order instituting rulemaking proceeding that established rules for the entire water industry. It is not a ratesetting case because it is not a case in which rates are established for a specific company. (Section 1701.1 subd. (d)(3).) No rates were set in this proceeding. The elimination of the WRAM was a policy decision applied to all water companies. The ordering paragraph identified the utilities that currently employ the WRAM, however, the policy is applicable to all water utilities.

Moreover, Rule 7.1, subdivision (e), provides the Commission discretion to determine which category appears most suitable to the proceeding when a proceeding may fit more than one category. Therefore, there is no legal error in addressing issues from more than one category in a single quasi-legislative proceeding.[10]

Further, once the Commission has categorized a proceeding, Section 1701.1 subsection (a) states "the decision as to the nature of the proceeding shall be subject to a request for rehearing within 10 days of the date of that decision or of any subsequent ruling that expands the scope of the proceeding. Only those parties who have requested a rehearing within that time period shall subsequently have standing for judicial review . . . ." Cal Water claims the parties had no opportunity to appeal the designation of the proceeding because the issue was only raised in the PD. (Cal Water at pp. 35-36.) As discussed above, the issue was explicitly presented in the September 4, 2019 ALJ Ruling Inviting Comments. At that time CWA, on behalf of the water utilities, filed comments regarding that issue but declined to seek rehearing on the categorization within 10 days. The parties may not now challenge the categorization of the proceeding.

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[10] In May of 2021 the rules were modified and Rule 1.3, subdivision (e), which defines quasi-legislative proceedings became Rule 1.3, subdivision (f). The original definition was unchanged, but the Commission added clarifying language that states "even if those proceedings have an incidental effect on ratepayer costs." Thus, the Rules recognize that proceedings may not always fit perfectly into one category.

Finally, Cal Water argues that it was denied procedural protections as a result of the improper categorization. (Cal Water at pp. 36-38.) As discussed above, the proceeding was not miscategorized, therefore no procedural protections were denied.

H. The Decision did not fix water rates.

Cal Water contends that the Commission violated sections 728 and 729 by eliminating the WRAM because it effectively fixed water rates without holding a hearing. (Cal Water at pp. 38-39.) Cal Water's contention is not correct. Section 728 and 729 address the Commission's authority to fix rates. Section 728 orders the Commission, when it finds that rates charged by a public utility are unjust, to fix just and reasonable rates. In this proceeding, we did not hold hearings to evaluate any utility's rates. Cal Water's contention regarding section 729 is equally unavailing. Section 729 permits the Commission to investigate the rates of a public utility and establish new rates. No investigation of rates occurred in this proceeding. Here, we made a policy decision to discontinue a pilot program that protected certain water utilities' revenue when forecast sales were higher than actual sales. No rates were set for any utility.[11] This was not a ratesetting proceeding; it was a quasi-legislative proceeding, making general policy decisions for all water utilities. Cal Water has not shown legal error.

I. Oral argument is not necessary.

Applicants request oral argument pursuant to Commission Rule 16.3 (Cal. Code Regs., tit. 20, Rule 16.3). CWA contends that oral argument is appropriate because it will materially assist the Commission in resolving its rehearing application by providing a forum for interested parties to answer the Commissions questions. (CWA at p. 23.) Applicants argue it is appropriate because the Decision departs from precedent (Golden State at p. 28, Cal-Am at pp. 27-28, Liberty at p. 6.) and raises issues of

[11] Cal Water cites caselaw to show that "these statutory provisions have been construed by the California Supreme Court as requirements for the Commission to hold hearings prior to the implementation of new rates." (Cal Water at p. 39.) Because rates were not set in this proceeding, these cases are not on point.

exceptional controversy, complexity, or public importance. (Cal-Am at pp. 28-30, Cal Water at p. 52-53, CWA at p. 23.)

Rule 16.3 provides that requests for oral argument for applications for rehearing shall demonstrate oral argument would materially assist the Commission in resolving the application and that the challenged decision:

(1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation;

(2) changes or refines existing Commission precedent;

(3) presents legal issues of exceptional controversy, complexity, or public importance; and/or

(4) raises questions of first impression that are likely to have significant precedential impact.

The Commission has complete discretion to determine the appropriateness of oral argument in any particular matter. (Commission Rule 16.3, subdivision (a), Cal. Code Regs., tit. 20, Rule 16.3, subd. (a).) Applicants have had ample opportunity to explain their positions on the Decision's holdings while participating in workshops and in filed comments during the proceeding, in response to the PD, as well as in their applications for rehearing. An oral argument would not materially assist us in resolving those concerns. While the holdings are of public importance, the Decision explains why it is appropriate to depart from precedent to discontinue the WRAM. For these reasons, oral argument would not materially assist in the resolution of the application for rehearing and is therefore not warranted.

III. CONCLUSION

For the reasons discussed above, we modify D.20-08-047 to remove a Finding of Fact that is not based on the evidentiary record and make some clarifying edits. Rehearing of D.20-08-047, as modified, is denied as no legal error has been shown.

THEREFORE, IT IS ORDERED that:

1. D.20-08-047 is modified as follows:

   A. On page 18, line 11, after the sentence ending with "ability to earn a reasonable rate of return." the following footnote is inserted:

      Public Advocates' Comments on Phase 1 Issues, February 23, 2018, at pp. 7-8, Southern California Edison Comments on Staff Report, September 16, 2019, at pp. 3-5.

   B. Finding of Fact #2 is modified to replace "surcharge" with "sur-credit" as follows:

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

   C. Finding of Fact #13 is deleted.

   D. Finding of Fact #14 is modified to insert "(2012-2016)" to more specifically identify "the last 5 years":

      14. Conservation for WRAM utilities measured as a percentage change during the last 5 years (2012-2016) is less than conservation achieved by non-WRAM utilities, including Class B utilities as evidenced in water utility annual reports filed from 2008 through 2016.

2. With these modifications, rehearing of D.20-08-047 is denied.

3. This proceeding, Rulemaking 17-06-024, remains open.

This order is effective today.

Dated September 23, 2021 at San Francisco, California.

MARYBEL BATJER
President
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
Commissioners

DECLARATION OF SERVICE

Liberty Utilities (Park Water) Corp. and Liberty Utilities (Apple Valley Ranchos Water) Corp.

v.

Public Utilities Commission of the State of California

I, Fran Castro, hereby declare that I am a citizen of the United States, am over 18 years of age, and am not a party in the above-entitled action. I am employed in the City and County of Los Angeles, State of California. I am over the age of eighteen and my business address is 1901 Avenue of the Stars, Suite 480, Los Angeles, California 90067.

On October 27, 2021, I served the following document(s) entitled:

1. **PETITION FOR WRIT OF REVIEW AND MEMORANDUM OF POINTS AND AUTHORITIES**

2. **APPENDIX OF EXHIBITS VOLUME I & II TO AMENDED PETITION FOR WRIT OF REVIEW AND MEMORANDUM OF POINTS AND AUTHORITIES**

VIA FEDERAL EXPRESS: by placing copies of the documents listed above in envelopes designated as FedEx Express–Overnight Delivery and addressed to the persons as set forth below.

Arocles Aguilar, General Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102-3214

Rachel Peterson, Executive Director
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I am readily familiar with the firm's business practice for collection and processing of correspondence for delivery by FedEx Express–Overnight Delivery. On the same day, as referenced above, correspondence is placed for collection by FedEx Express–Overnight Delivery, with whom we have a direct billing account for payment of said delivery, to be delivered to the office of the addressees as set forth below on the next business day.

VIA ELECTRONIC MAIL: by transmitting an electronic mail message to each of the parties identified on the below Service List, through their attorneys of record as identified by the service list and corresponding email list provided in proceeding R.17-06-024 before the California Public Utilities Commission and/or as directed by the party(ies) and/or as directed by the California Rules of Court and Public Utilities Code. That email provided a link to an FTP site where the documents have been made available. Additionally, I stated in my email that if the recipient requested a physical copy of the documents my office would provide one.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Declaration of Service was executed on October 27, 2021 in Los Angeles, California.

/s/ Fran Castro
Fran Castro

SERVICE LIST

See Attached Service List from California Public Utilities Commission and list of email addresses

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