

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

Order Instituting Rulemaking evaluating the)	
Commission's 2010 Water Action Plan Objective)	
Of Achieving Consistency between the Class A)	R.17-06-024
Water Utilities' Low-Income Rate Assistance)	(Filed June 29, 2017)
Programs, Providing Rate Assistance to All)	
Low-Income Customers of Investor-Owned)	
Water Utilities, and Affordability.)	
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**COMMENTS OF CALIFORNIA WATER ASSOCIATION
ON PHASE I ISSUES**

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**COMMENTS OF CALIFORNIA WATER ASSOCIATION
ON PHASE I ISSUES**

I. INTRODUCTION

In accordance with Article 1 of the Rules of Practice and Procedure (the “Rules”) of the California Public Utilities Commission (the “Commission”), California Water Association (“CWA”) hereby submits its comments on the Phase I issues identified in the January 9, 2018 *Scoping Memo and Ruling of Assigned Commissioner* (“Scoping Memo”).¹ CWA is a statewide association representing the interests of investor-owned Class A, B, C, and D water utilities subject to the Commission’s jurisdiction. CWA and its members have previously filed comments and participated in workshops held as part of this proceeding. CWA submits these comments on behalf of its water utility members, including the Class A and Class B water utilities named as respondents to this rulemaking proceeding, all of which support and join in CWA’s comments.

¹ CWA submits these opening comments on behalf of its member Class A and Class B water utilities: Alisal Water Company (dba Alco Water Service), Bakman Water Company, California-American Water Company, California Water Service Company, Del Oro Water Company, East Pasadena Water Company, Golden State Water Company, Great Oaks Water Company, Liberty Utilities, San Gabriel Valley Water Company, San Jose Water Company, and Suburban Water Systems. One or more of these water utilities may submit additional comments individually.

The Scoping Memo identifies two phases for this proceeding. Phase I will address consolidation of at-risk water systems, sales forecasting, affordability, and health and safety issues. Phase II of the proceeding will address the existing water utility low-income support programs and jurisdictional issues.

It is important to note that water rates and the cost of water service are not driving poverty in California. In most cases, customers are receiving water at a cost of less than a penny per gallon. The impact of water service cost on household income, while a concern for low-income customers, is dwarfed by the other family needs that put pressure on incomes – other utilities, housing costs, food costs, transportation costs, health care costs, etc.

CWA and its member companies have spent decades in support of providing safe, clean, affordable, and accessible water and have long worked to provide assistance to low-income customers and disadvantaged communities. CWA considers the experience of its member companies to be a good opportunity for the Commission to gain constructive expertise in furthering the policy goals and directives of the “human right to water” law, codified as California Water Code Section 106.3.

As directed in the Scoping Memo, CWA provides comments on the Phase I issues identified below.

II. PHASE I ISSUES

A. Consolidation of At Risk Water Systems by Regulated Water Utilities

- 1. How could the Commission work with the SWRCB and Class A and B water utilities to identify opportunities for consolidating small non-regulated systems within or adjacent to their service territories that are not able to provide safe, reliable and affordable drinking water? Should the Commission address consolidation outside of each utility’s general rate case (GRC)?**
- 2. 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)?**

With the proper incentives in place, CWA has long supported consolidation as a means to assist communities that are not able to provide safe, reliable and affordable drinking

water on their own. As noted in the *Report on Joint Agency Workshop*, December 15, 2017 (“Report”), included with the Scoping Memo as Appendix B, over the last decade there have been more than 30 acquisitions of small systems water systems by larger Commission-regulated water utilities.² For example, at the December 15, 2017 workshop, a representative from California Water Service Company discussed its 2014 consolidation of and physical connection to the West Goshen Mutual Water Company and the ratemaking consolidation of its Lucerne service territory.³ Additional examples include the acquisition and consolidation of the Garrapata Water System, Dunnigan Water Works and the Oxbow Marina Mutual Water Company by California-American Water, all of which were out of compliance with various drinking water standards until California American Water assumed the risks and made the investments to bring them up to standard and into compliance.⁴ Other acquisitions by Golden State Water Company (Rural Water Company)⁵ and the former Apple Valley Ranchos Water Company, now Liberty Utilities (Yermo Water Company)⁶ similarly resulted in substandard systems being brought into compliance. All of these examples provided relief to customers with respect to safe, reliable and affordable drinking water.

² Report, p. 3.

³ *Id.*, p. 5.

⁴ D.13-01-033, *Application of California-American Water Company (U210W) and Garrapata Water Company (U212W) for an Order Authorizing Garrapata Water Company to Sell and California-American Water Company to Purchase the Assets of Garrapata Water Company*, Decision Approving the Application of California-American Water Company's Acquisition of Garrapata Water Company's Assets; D.15-11-012, *Application of California-American Water Company (U210W) and Grant Park Development, Inc. (dba Dunnigan Water Works) (U437W) for an Order Authorizing Dunnigan Water Works to Sell and California-American Water Company to Purchase the Public Utility Assets of Dunnigan Water Works*, Decision Authorizing California-American Water Company to Purchase the Public Utility Assets of Dunnigan Water Works; Resolution W-5042, June 11, 2015.

⁵ D.15-06-049, *Application of Rural Water Company (U 311 W) and Golden State Water Company (U 133 W) for an Order Authorizing Rural Water Company to Sell and Golden State to Purchase the Assets of Rural Water Company*, Decision Approving the Request of Rural Water Company and Golden State Water Company for an Order Authorizing Rural Water Company to Sell and Golden State Water Company to Purchase the Public Utility Assets of Rural Water Company.

⁶ Resolution W-4998, August 28, 2014.

The State Water Resources Control Board (“SWRCB”) has the authority to order mandatory consolidation,⁷ as well as programs to encourage voluntary consolidation.⁸ These programs, as well as monitoring and reporting by the SWRCB, can help Commission-regulated water utilities identify troubled systems within or adjacent to their service territories that may benefit from consolidation. Additionally, through their provision of service and community activities, Commission-regulated water utilities may also become aware of such systems independently. Finally, in D.14-10-047, the Commission directed water utilities to, as part of the general rate case process, conduct a review to determine whether high-cost and affordability problems exist in any of their districts.⁹

The Commission should focus its efforts in this area on working to streamline processes for physical and ratemaking consolidation and ensure that it is providing the proper incentives for its regulated water utilities to undertake such efforts. Currently, an enormous disincentive is the pending Proposed Decision in the applications of the four publicly traded Class A companies for authority to adjust their cost of capital, and especially their cost of equity.¹⁰ The extraordinary reduction in their proposed returns on equity (“ROEs”) to a level more than 120 basis points lower than the national average for regulated water utilities would make their ROEs the lowest in the country, and will eliminate any incentive to acquire a struggling water system whose customers are being subjected to substandard service.

There are substantial risks involved for healthy utilities that acquire troubled utility systems, and the unreasonably low equity returns being considered by the Commission will not allow the larger Class A or B utilities to accept or absorb those risks. Clearly, this loss of

⁷ Health & Safety Code §116682.

⁸ See www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/waterpartnership.shtml

⁹ D.14-10-047, *Order Instituting Rulemaking on the Commission’s Own Motion into Addressing the Commission’s Water Action Plan Objective of Setting Rates that Balance Investment, Conservation, and Affordability for the Multi-District Water Utilities of: California-American Water Company (U210W), California Water Service Company (U60W), Del Oro Water Company, Inc. (U61W), Golden State Water Company (U133W), and San Gabriel Valley Water Company (U337W)*, Decision Providing Further Guidance Following Release of Staff Report.

¹⁰ See Application 17-04-001, and related matters, *Proposed Decision of ALJ Bemserderfer*.

incentive is directly at odds with the Commission's objective in this rulemaking and the state's policy on consolidation, which is to create incentives that will promote voluntary consolidations between healthy, well-managed utilities and troubled utilities that lack the technical, managerial, and financial means to provide safe, reliable water service.

The Commission also should review the existing requirements and administration of consolidation efforts with an eye towards efficiency and timeliness, so that disadvantaged customers are provided with relief as soon as possible. The Commission should also consider various ratemaking methods and mechanisms that remove roadblocks to acquisition and consolidations, so that interested parties are incentivized to make choices that will provide the most benefits in the long-term.

Beyond removing the cost of capital roadblock, this necessarily means addressing consolidation outside of general rate case proceedings as necessary. The Class A water utilities are required to file general rate case applications every three years and the Commission rate case proceedings are often long and complex. In order to best address the needs of communities that are not able to provide safe, reliable and affordable drinking water, both the Commission and regulated water utilities require the flexibility to make and evaluate consolidation proposals outside of the general rate case process.

The Commission should take similar steps to encourage Class A and B utilities to act under the Commission's non-tariffed products and services rules to serve as administrators for small water systems that need operations and maintenance support or to arrange for their unregulated affiliates to do so consistent with the Commission's affiliate transaction rules. This means evaluating existing Commission rules and requirements to determine whether they make it unreasonably difficult for Commission-regulated water utilities or their affiliates to provide such services. Does the Commission want its rules to prevent a healthy regulated water utility from providing assistance to a troubled system? For example, the Commission should consider whether an exemption from its affiliate transaction rules or from its rules for the provision of

non-tariffed products and services for water utilities¹¹ would provide a helpful incentive for water utilities or their affiliates to serve as administrators for small systems in need of assistance. Additionally, as with consolidation, the Commission must provide the flexibility to address such arrangements outside of the general rate case process as necessary.

B. Forecasting Water Sales

- 1. 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?**
- 2. 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?**

With respect to the first question above, it should be noted that sales forecasting and regressive rates are not connected issues and that sales forecasting methodology cannot be “tweaked” in a manner that will avoid regressive rates. Regressive or progressive rates are a product of rate design decisions, not sales forecasting methodologies. Question B.1. should be removed from the Scoping Memo, and the sole emphasis should be on Question B.2.

The Commission in 2004 established a standard method of developing water sales forecasts. As part of the Commission’s general rate case plan, water utilities were required to forecast customer usage using the “New Committee Method.”¹² Because the experience in the

¹¹ D.10-10-019, *Order Instituting Rulemaking on the Commission’s Own Motion to Develop Standard Rules and Procedures for Regulated Water and Sewer Utilities Governing Affiliate Transactions and the Use of Regulated Assets for Non-Tariffed Utility Services (formerly called Excess Capacity)*, Decision Adopting Standard Rules and Procedures for Class A and B Water and Sewer Utilities Governing Affiliate Transactions and the Use of Regulated Assets for Non-Tariffed Utility Services, Appendix A.

¹² D.04-06-018, *Order Instituting Rulemaking on the Commission’s Own Motion to Evaluate Existing Practices and Policies for Processing General Rate Cases and to Revise the General Rate Case Plan for Class A Water Companies*, Interim Order Adopting Rate Case Plan, Appendix, pp. 6-7; see D.07-05-062, *Order Instituting Rulemaking to Consider Revisions to the*

2007-2010 and 2011-2016 droughts rendered the New Committee Method impractical and even damaging to utilities and their customers, water utilities, pursuant to Ordering Paragraph 2 of D.16-12-026 now have the flexibility to provide alternate forecasts as necessary.¹³ This flexibility is crucial to allow forecasts to be tailored to address extreme events, such as the most recent drought, or particular characteristics of the water utility or its service territory. In recent years, water utilities, the Office of Ratepayer Advocates (“ORA”) and the Commission have increasingly relied on alternative forecasting methodologies to take into account the impact of drought, conservation, government mandated reductions and economic developments. Standardization does not ensure accuracy – in fact, the opposite is true. The flexibility allowed has proven essential for achieving more accurate sales forecasts.

The Commission must preserve this flexibility to help ensure the most accurate forecasts upon which to base rates. No forecast is perfect, but the Commission should encourage implementation of mechanisms that minimize the effect of inaccurate sales forecasts adopted in a given general rate case. Rather than seeking to standardize forecasting the methodologies, the Commission should look to allow more frequent updates to forecasts that reflect the most recent actual sales data. This is a practice from which the energy utilities and their customers have benefitted for decades; such common-sense regulation should extend to the water utilities and their customers, as well.

In D.14-08-011, the Commission approved a sales reconciliation mechanism (“SRM”) that allows one water utility, if it experiences more than a five percent difference between sales for the past year as compared to adopted test year sales, to adjust the estimated

General Rate Case Plan for Class A Water Utilities, Opinion Adopting Rate Case Plan for Class A Water Utilities, A-26.

¹³ “Class A and B water Investor-Owned Utilities shall propose improved forecast methodologies in their General Rate Case application, or in standalone separate applications, following the effective date of this decision to more accurately determine how authorized revenue determined in a General Rate Case will be collected through water rates ...” D.16-12-026, *Order Instituting Rulemaking on the Commission’s Own Motion into Addressing the Commission’s Water Action Plan Objective of Setting Rates that Balance Investment, Conservation, and Affordability for Class A and Class B Water Utilities*, Decision Providing Guidance on Water Rate Structure and Tiered Rates, Ordering Paragraph 2.

annual sales forecast during the remainder of the rate case cycle by 50 percent of the difference between the adopted forecast and actual water sales.¹⁴ D.16-12-026, the Commission encouraged water utilities to include SRM proposals in their next general rate case applications and authorized an advice letter process as an alternative means to initiate an SRM based on reduced sales during a drought year.¹⁵ More recently, the Commission recognized the merit of a program that adjusts rates to reflect more current sales data and recognized the customer benefits of a SRM.¹⁶

However, the Commission then rejected the merits of an SRM in a recent resolution based on an expansive reading of an ill-advised condition in D.16-12-026.¹⁷ As part of this proceeding, CWA recommends that the Commission remove restrictions on SRM implementation that tie it to a drought period and allow utilities to implement a modified SRM that would capture more of the revenue differences between earlier forecasts and actual sales.

Specifically, CWA recommends that the Commission remove the existing five percent trigger, so that the SRM would be applied for any variation from forecasted sales above a minimal amount. Additionally, the Commission should eliminate the 50 percent adjustment limitation in the SRM referenced in D.16-12-024 and allow the mechanism to adjust rates for the entire change in sales. California-American Water, ORA and other parties recently entered into a settlement agreement for an SRM with these characteristics.¹⁸ Last, the Commission should

¹⁴ D.14-08-011, *Application of California Water Service Company (U60W), a California corporation, for an order 1) authorizing it to increase rates for water service by \$92,765,000 or 19.4% in test year 2014, 2) authorizing it to increase rates on January 1, 2015 by \$17,240,000 or 3.0%, and on January 1, 2016 by \$16,950,000 or 2.9% in accordance with the Rate Case Plan, and 3) adopting other related rulings and relief necessary to implement the Commission's ratemaking policies*, Decision Adopting Settlement Agreement, pp. 18-20.

¹⁵ D.16-12-026, Ordering Paragraphs 3-4.

¹⁶ D.16-12-003, *Application of California-American Water Company (U210W) for Authorization to Modify Conservation and Rationing Rules, Rate Design, and Other Related Issues for the Monterey District*, Decision Addressing WRAM Balances, Rate Design, Conservation and Rationing Rules, and Other Issues for the Monterey District, pp. 65-69.

¹⁷ See Resolution W-5153, adopted January 11, 2018.

¹⁸ A.15-07-019, *Application of California-American Water Company (U210W) for Authorization to Modify Conservation and Rationing Rules, Rate Design, and Other Related Issues for the Monterey District*, Settlement Agreement Between California-American Water Company, the

also consider folding the Water Revenue Adjustment Mechanism /Modified Cost Balancing Account (“WRAM/MCBA”) recovery into base rates instead of surcharges. This would be in keeping with the opinions expressed by the Commissioners at the meeting when this rulemaking was initiated. By making these proposed changes, the Commission will at least place the water utilities in a position similar to that of the energy utilities with respect to reconciling actual and adopted sales.

These changes will help address the issue articulated in the Scoping Memo, because more of the revenue differences between the earlier sales forecast and the actual sales will flow into base rates. This will send more accurate pricing conservation signals to customers, ameliorate intergenerational risk, help utilities avoid large WRAM/MCBA surcharges, and begin the process of reducing customer hostility toward and confusion about the Commission’s implementation of cost-of-service ratemaking. Approving mechanisms to update forecasts between general rate cases is the best way to minimize the need for surcharges that alienate all customers, including low-income or moderate-income customers.¹⁹

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

As discussed previously, Commission-regulated water utilities already provide exceptional value to their customers through the provision of safe quality drinking water at reasonable rates. To the extent that the Commission is considering regulatory changes to provide similar benefits to troubled water utilities not regulated by the Commission, then acquisition, consolidation (whether physical or ratemaking), and operational contracts all can provide opportunities to minimize or lower rates and improve access to safe, high-quality drinking water for disadvantaged communities. As noted above, however, the proposed decision in the cost-of-capital proceeding, if adopted, may eliminate the potential for these good results to occur. In

Office of Ratepayer Advocates, Monterey Peninsula Water Management District, and the Coalition of Peninsula Businesses on Phase 3A Issues, March 8, 2017.

¹⁹ CWA notes that “moderate income customers” have not been defined. If necessary, this may be addressed in the upcoming workshops.

addition to removing this disincentive in the proposed decision, the Commission should look for ways to streamline the process for obtaining approval of such arrangements, both to provide an incentive to water utilities and to ensure timely relief for disadvantaged communities. It should also explore ratemaking mechanisms and other methodologies to remove any roadblocks or disincentives to explore such arrangements. Working in conjunction with the SWRCB and other agencies, the Commission may help address the lengthy and complex process of applying and receiving approval and funding for such projects.

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

CWA is not sure how to interpret this question because the vast majority of Commission-regulated water systems are leaders in ensuring the technical, financial, and managerial capabilities of their systems, which in turn protect the health and safety of their customers (with respect to water service). It seems that this question is more applicable for non-regulated systems and that is where the attention should be directed. Commission-regulated water utilities diligently work with state and federal officials to maintain compliance with water quality standards, and to ensure that drinking water is clean and safe. Indeed, investor-owned water utilities consistently lead the entire water industry in drinking water compliance.²⁰

While the Commission's current processes (*e.g.*, cost-of-service regulation, compliance with General Order 103-A, affirmation in general rate cases of utility compliance with all applicable drinking water standards) generally ensure the health and safety of regulated water systems, it may be worthwhile for the Commission, as with the consolidation proposals discussed above, to examine its policies to determine whether any are creating disincentives for taking extra steps to improve water quality. For example, hindrances to improving water quality sometimes occur during the general rate case process, when utilities may encounter opposition to taking any steps beyond the bare minimum required by law. It may be helpful for the

²⁰ "Investor-Owned Water Firms Boast Sterling SDWA Record," *Global Water Intelligence*, October 2011.

Commission to declare its support for recovery of costs related to taking early action with respect to water quality, or to addressing non-regulated contaminants.²¹

The Commission, working in conjunction with the SWRCB and the Legislature, may also want to consider an effort similar to the recently enacted New Jersey Water Quality Accountability Act, which requires all purveyors of public water, regardless of ownership, to meet the same standards to improve the safety, reliability, and administrative oversight of water infrastructure. Efforts such as this will help ensure and/or improve the health and safety of all water systems throughout the State.

III. CONCLUSION

CWA and its Class A and Class B water company members appreciate the opportunity to provide the above comments on the Phase I issues identified in the Scoping Memo. CWA looks forward to participating in the upcoming workshops to help refine the issues and develop proposals to advance the Commission's policies with respect to low-income customers and disadvantaged communities.

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²¹ On a related noted, the Report misidentifies MCL as "Minimum Contaminant Level" when it should be "Maximum Contaminant Level." Report, p. 2.