

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



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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.)

R.09-04-012
(Filed April 16, 2009)

**COMMENTS OF GOLDEN STATE WATER COMPANY ON
PROPOSED DECISION**

GOLDEN STATE WATER COMPANY

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Golden State Water Company (U-133-W) ("GSWC") respectfully submits these Comments on the Proposed Decision of Commissioner Bohn ("PD"), mailed to parties on September 10, 2010 in the above-captioned proceeding. GSWC also joins in the Comments on the PD submitted by the California Water Association ("CWA"). GSWC submits these individual Comments to address several issues with the PD and the proposed Affiliate Transaction Rules ("ATRs") that are of particular importance to GSWC.

GSWC agrees with and supports the PD's conclusion that "[i]t is timely and appropriate to consolidate, clarify, standardize and update the current rules in order to provide standard rules applicable to regulated water and sewer utilities, their provision of non-tariffed services, and their transactions with affiliated companies."¹ In order to achieve this goal, several modifications to the proposed ATRs are required. For the reasons discussed herein, the Commission should amend and/or clarify the following proposed ATRs and issue a revised decision that more fairly resolves this important rulemaking proceeding.

¹ PD at 89.

II. GSWC'S COMMENTS ON THE PROPOSED AFFILIATE TRANSACTION RULES

A. Rule II.E: Remove Parent From the Definition of Affiliate

Rule II.E defines the term “Affiliate” to include the utility’s “Parent company,” which, in turn, is also defined as the entity that owns or has a controlling interest in the regulated utility.² These circular definitions result in anomalous and unintended application of the ATRs. Specifically, many of these rules are designed to insulate the regulated utility from the activities of wholly separate entities that are engaged in separate business enterprises. However, a parent company does not fit this category, as many of its activities are more closely related to the activities of its subsidiaries. This closer relationship between a parent company and the regulated utility is appropriate and should not be restricted to the same extent as other affiliates.

Indeed, in the case of GSWC and its parent company American States Water (“AWR”), if “parent company” remains part of the definition of “affiliate,” it would be impossible for GSWC and AWR to carry out their business. As an example, Rule III.B.4 prohibits the sharing of documents including forecast, planning or strategic reports between the utility and its affiliates.³ Under the ATRs as written, this would mean that GSWC could not share its budgets, forecast and strategic plans with its parent company AWR. Additionally, Rule III.B.5, would preclude GSWC’s parent, AWR, from speaking on behalf of GSWC.⁴ GSWC understands that the Commission would not want GSWC’s affiliate ASUS sharing its strategic business plans, or speaking on its behalf; however, there is no reason why AWR should also be so restricted. In fact, GSWC does not believe the Commission intended to prevent a parent holding company like AWR to speak on its behalf, especially when AWR is addressing the financial markets on behalf

² PD Appendix A at A-2

³ *Id.* at A-4

⁴ *Id.* at A-5

of the Company as a whole. Such a restriction does not make sense and would be detrimental to GSWC.

GSWC acknowledges that there are some ATRs that should apply to both' the utility's parent and affiliates; but there are also several rules where such an application makes no sense. It is important to separate these two categories of rules, and specify when a particular rule is to apply to the parent as well as an affiliate to avoid any confusion. In fact, the Commission has done this in Rules II.A, II.F, III.A, IV.B, V.A, V.C, VII.A, VII.B, VII.C, VII.D, VIII.A, VIII.C.3, VIII.F.8 and VIII.F.9. Accordingly, for purposes of consistency and clarity, "Parent company" should be removed from the definition of "Affiliate" in Rule II.E. Where applicable, the ATRs should specify when a particular rule applies to the affiliates and/or parent company of the utility.

B. Rule II.E: Several Additional Entities Should Also be Exempted From the Definition of Affiliate

In addition to removing parent company from the definition of "Affiliate," several other entities and organizations should also be exempted from this definition. Specifically, mutual water companies, joint powers authorities, public private partnerships and agencies or entities created through the legislature or judicial system should be excluded from the definition of an "affiliate" subject to these rules. Such an exemption would promote and encourage the continuation of the utilities' involvement in such entities, some of which are mandated by adjudicatory proceedings.

For example, entities created as part of water rights adjudicatory proceedings, such as WaterMaster boards or water management authorities would be subject to these Rules unless amended. Because GSWC owns a ten percent or more interest in almost all the adjudicated basins from which it draws water for customers, as written the ATRs would require GSWC to

treat these adjudicated entities as “Affiliates.” Given the significant restrictions imposed by the ATRs on the relationship between GSWC and any affiliate, GSWC would essentially be unable to fulfill its court mandated obligations, and would not be in a position to ensure continued supply from these adjudicated basins for its customers.

GSWC also has a controlling right in the quasi-governmental entity of the Ojai Basin Groundwater Management Authority (OBGMA) through its enabling legislation. By strict interpretation of these ATRs, the OBGMA would be considered an affiliate of GSWC. Again, imposing the restrictions on affiliates set forth in these ATRs on this relationship would seriously impair GSWC’s ability to carry out its duties to the OBGMA. Indeed, under these rules as written, it would be impossible for GSWC to serve on OBGMA as it could not be part of OBGMA’s strategy, planning and related functions. Such a restriction makes no sense and should be not be adopted by the Commission.

Likewise, the ATRs overly broad definition of “Affiliate” would also have the unintended consequence of impairing GSWC’s ability to participate in any regional watershed management program, regional treatment plant or other regional solution for water management. Given the restrictions on GSWC’s activities and the requirement to subject such affiliates to PUC rules, GSWC would be precluded from participating in what would otherwise be considered a best management practice for other utilities.

As another example, GSWC owns more than a ten percent voting share of the Pomona Valley Protective Association (PVPA), a non-profit corporation whose main purpose is to manage the San Antonio Spreading Grounds. Among the other members are local cities and water districts. While the PVPA does fall under the exceptions cited in Rule III.B.8, these exceptions are not adequate because the PVPA would still be subject to PUC requirements under

Rule VII and Rule VIII, many of which would be considered unacceptable by these public agencies.

In sum, the Commission must recognize the benefit of GSWC and other utilities participating in these regionalized programs and that groundwater basin management is beyond the physical and financial resources of any single utility or agency. Accordingly, the definition of “Affiliate” should be changed to exempt the following entities from its purview: mutual water companies, joint powers authorities, public private partnerships and agencies or entities created through the legislature or judicial system.

C. Rule V.C Unnecessarily Includes a Definition of Key Officers

The last sentence of Rule V.C. reads “For purposes of this rule, key officers are the Chair of the entire corporate enterprise, the President at the utility and its parent, the chief executive officer at each, the chief financial officer at each, and the chief regulatory officer at each, or in each case, any and all officers whose responsibilities are the functional equivalent of the foregoing.”⁵

This sentence is leftover from the energy rules wherein the sharing of officers is prohibited. In light of the fact that sharing of officers is not prohibited by these ATRs for the water industry, this sentence of Rule V.C is not relevant or necessary and only creates confusion and inconsistency in the rules. Accordingly, this sentence should be removed from the Rule V.C.

D. Rule V.D Exclusion to Shared Corporate Support Services

Rule V generally sets forth the circumstances and conditions applicable to shared corporate support services among a utility, parent company and/or its separate affiliates. Rule V.B provides the circumstances under which corporate support services may not be shared, and

⁵ PD Appendix A at A-7

sets forth the general policies and standards that may not be violated by the sharing of such corporate support services. Notwithstanding this general rule, Rule V.D goes further and identifies several corporate support services that may not be shared under any circumstances, including “employee recruiting, engineering, hedging and financial derivatives and arbitrage services, water or sewage for resale, water storage capacity, purchasing of water distribution systems, and marketing.”⁶

Prohibiting the sharing of the corporate support services identified in Rule V.D is completely unnecessary in light of the general standards governing shared corporate support services set forth in Rule V.B. Moreover, imposing such categorical prohibitions is unduly restrictive and if implemented would seriously damage GSWC’s existing business operations.

For example, GSWC currently conducts employee recruiting activity for its affiliates American States Utility Services (“ASUS”) and Chaparral City Water Company (“CCWC”). However, GSWC conducts the recruiting of candidates only and does not interview or hire ASUS and CCWC employees. Given that ASUS’ and CCWC’s service areas are outside of GSWC’s service areas, GSWC, ASUS and CCWC do not compete for the same employees. Thus, there is no competitive or unfair advantage caused by this shared support, nor any other violation of any policy mandates set forth in Rule V.B. In this context, allowing GSWC to perform limited recruiting activity for these affiliated entities is reasonable and should not be restricted by these ATRs.

There are many other examples of shared corporate support that also fall into the same scenario as described above, including sharing of engineering services, water rights and water storage capacity (among others). Unless the sharing of such resources violates Rule V.B, there is no reason for the Commission to disallow such activity. Indeed, by sharing these resources

⁶ PD Appendix A at A-7

GSWC customers benefit from the utilization of excess capacity that is appropriately charged to the affiliates, reducing GSWC's revenue requirement and thereby reducing water rates for GSWC's customers. Rule V.B provides adequate protection against any potential abuses of shared corporate support. Accordingly, the Commission should remove Rule V.D in its entirety as it is unduly restrictive and unnecessary to achieve the purposes of Rule V.

E. RULE VI. Pricing of Goods and Services between the Utility and Its Affiliate(s)

Rule VI.E provides: "Transfers from the utility to its affiliates of goods and services not produced, purchased or developed to be offered on the open market by the utility shall be priced at fully allocated cost plus 5% of direct labor cost."⁷

It is not clear whether Rule VI.E applies to the transfers of goods and services that are contemplated by Rule V, or whether these shared corporate services are excluded from Rule VI.E. Alternatively, Rule VI.E could be interpreted to only apply to services that are direct charged versus costs that are allocated using acceptable methodologies such as the four-factor allocation. Without clarifying when and how the 5% of direct labor cost is to be applied, utilities and Commission staff will be left to work this out in GRCs.

Accordingly, GSWC proposes that Rule VI.E be rewritten to read "*When* transfers from the utility to its affiliates of goods and services not produced, purchased or developed to be offered on the open market by the utility *are direct charged to the affiliate they shall* be priced at fully allocated cost plus 5% of direct labor cost."

F. Rule IV.D.2: Allow for Transition Period Prior to Imposing 15% Finder's Fee on Employee Transfers

GSWC is concerned that the restrictions and conditions set forth in the ATRs may adversely impact its parent corporation AWR's current business operations. In fact, similar to

⁷ PD Appendix A at A-8

the experience of the energy industry in the mid-1990s, AWR may be faced with the possibility of restructuring in order to comply with this new regulatory regime. If such restructuring takes place, the 15% finder's fee stated in Rule IV.E.2, would be initiated for the transfers of each employee from the utility to the parent.⁸ This cost should not be imposed in the context of the utilities and their parent company's efforts to come into compliance with these newly enacted ATRs. Accordingly, GSWC requests that a transition period be allowed prior to imposition of the fee described in Rule IV.E.2.

In their Report dated April 26, 2010, Staff originally agreed with allowing such a transition period, and included the following section derived from energy Rule IV.D.4:

Nor will it apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that the transfer is made during the initial implementation period of these ATRs, or pursuant to a P. U. Code §851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.⁹

This provision has been inexplicably omitted from the current version Rule IV.E.2. GSWC (as well as CWA and the other utilities) believe that Rule IV.E.2 is unnecessary and should be completely removed from the ATRs. However, if Rule IV.E.2 is adopted by the Commission, then the section allowing the utility and its holding company a period of time for any needed transfers should be included as part of this rule, as originally proposed by Staff.

G. Rule VIII.E: Cost of Independent Audit Should be Included in Rates

Rule VIII.E requires the utility to submit independent audits biennially, and provides that the "audits shall be at shareholder expense."¹⁰ GSWC disagrees with requiring its shareholders to bear the burden of such costly audits. The Commission's purpose in adopting these ATRs

⁸ PD Appendix A at A-6

⁹ PD Appendix B at B-8

¹⁰ PD Appendix A at A-11

(and requiring these independent audits) is to provide appropriate Commission oversight for the protection of ratepayers. The utility would not otherwise conduct these costly audits. Given that these audits are for the benefit of the utility's ratepayers, the cost of the audits should be allowed in rates.

H. Rule VII.E – Ring Fencing

GSWC understands that the Commission's intention in proposing Rule VII.E is to protect regulated utility assets from the potential bankruptcies of their parent entities. However, as described in detail in CWA's comments to the PD, Rule VII.E fails to achieve this intended purpose because the non-consolidation opinion required by this rule is not practical given the nature of consolidation as a remedy in bankruptcy and given the corporate structure of many Class A water utilities (including GSWC).¹¹ GSWC urges the Commission to hold off on adopting the requirements of Rule VII.E at this time, and agrees with CWA that a more flexible approach to this financial separation issue can and should be explored in more detail and decided upon at a later date. If the Commission nevertheless decides to go forward with this rule, it should provide for an exemption from the rule in the following circumstances: (i) if a utility already has a Commission decision in place that addresses the adequacy of the utility's financial separation measures or (ii) if a utility meets the corporate structure test discussed in detail below.

At the outset, it is important to point out that Rule VII.E assumes that ring-fencing provisions alone can, in all cases, preclude a utility from being "pulled into bankruptcy of its parent company." This premise is wrong. In fact, notwithstanding the most ironclad ring-

¹¹ Rule VII.E currently requires each utility to provide a "non-consolidation opinion that demonstrates that the ring-fencing around the utility is sufficient to prevent the utility from being pulled into bankruptcy of its parent company." In the event a utility's current ring-fencing provisions are insufficient to obtain this required non-consolidation opinion, the utility must propose and implement ring-fencing provisions that are sufficient to prevent the utility from being pulled into the bankruptcy of its parent company. PD Appendix A at A-9.

fencing provisions possible, no credible non-consolidation opinion could state with unqualified certainty that an affiliate utility could not be pulled into a bankruptcy of its parent corporation. This is because it is impossible to predict how a given court will view the particular facts and circumstances of an individual case, and how it would apply the many equitable doctrines that are available to set aside corporate formalities. Indeed, if a parent entity is left insolvent or without sufficient capital to pay its debts as they come due, a bankruptcy court may consolidate the assets and liabilities of the utility with those of the parent or may equitably subordinate the obligations that the parent owes to the utility to the obligations that the parent owes to other creditors irrespective of the most stringent ring-fencing measures employed. Ring-fencing provisions may mitigate against a court utilizing such measures, but cannot ensure that such equitable doctrines are not employed.

As such, the real issue regarding the provision of a non-consolidation opinion is which measures from among the universe of possible ring-fencing measures available should the Commission require water utilities to employ. Generally speaking, it is true that the more ring-fencing measures that are employed the tighter a non-consolidation opinion will be. But there are relative costs and benefits associated with each ring-fencing measure and in incrementally strengthening a non-consolidation opinion. Unless and until the Commission examines and evaluates these costs and benefits, it doesn't make sense to adopt Rule VII.E for all water utilities.

In fact, according to the PD, the Commission has already examined GSWC's corporate structure and determined that the Commission's goals with respect to protecting a water utility from potential financial difficulties of its parent company can be achieved without imposing any

and all extreme ring-fencing provision that might otherwise strengthen a non-consolidation opinion. As the PD states:

“rules in water utility holding company decisions (specifically, D.97-12-011 [Cal Water Holding Company Decision] and D.98-06-068[Southern California Water (GSWC) Holding Company Decision]) regarding provision of adequate capital are sufficient to protect the utility and its ratepayers from concerns about the parent of a utility negatively impacting the financial health of the utility with regard to capital.”¹²

This makes sense because the corporate structure employed by GSWC (as well as most other water utilities) simply does not give rise to the need to employ extreme ring-fencing measures. Specifically, this is true because the principal asset of GSWC’s parent entity AWR is the stock of GSWC. Thus, it is highly unlikely that financial difficulties at another subsidiary that is not a regulated California utility would result in the bankruptcy of AWR. In this context, there is little or no benefit to the Commission requiring a legal opinion stating that the ring-fencing around GSWC is so strong as to prevent the utility from being pulled into bankruptcy of AWR, even if obtaining such an opinion was possible.

On the other hand, imposing any and all extreme ring-fencing provisions that might support a tighter non-consolidation opinion would have significant costs to the water utilities and their ratepayers. As described in detail in CWA’s Comments, the water utility ATRs currently permit water utilities to have a closer relationship to their parent companies than allowed by the affiliate transaction rules applicable to the energy industry. Allowing water utilities and their parent entities to share officers, directors and other resources and assets has tangible and significant cost savings for all interested parties, including ratepayers. Thus, requiring water utilities such as GSWC to submit the non-consolidation opinion requested by Rule VII.E risks the imposition of inefficient and costly ring-fencing measures that have no corresponding

¹² PD at 61.

benefits to the utility or its ratepayers (and still will not get to the ultimate place of complete protection).

In light of the preceding considerations, GSWC requests that the Commission remove Rule VII.E from the ATRs in its entirety. GSWC is not opposed to further study of this issue to determine if there are any further measures that are necessary and appropriate in the water industry context to protect against a regulated utility being pulled into the bankruptcy of its parent entity. However, blindly adopting the requirement of a non-consolidation opinion for the water industry that is tailored to the energy industry corporate structures is a bad idea, and makes no sense for a corporate structure such as that employed by GSWC. Indeed, nowhere in the record does the Commission describe or examine what “ring-fencing” entails, especially considering the different organizational structures of the water utilities covered by these rules. Additionally, nowhere in the record does the Commission review the details or requirements of a “non-consolidation opinion” to determine if the measures that would support such an opinion, in any way, would be in conflict with these rules. Rule VII.E should not be adopted without this further examination and study.

Alternatively, in the event the Commission moves ahead with this rule, GSWC requests that Rule VII.E be revised such that a utility is exempt from providing the non-consolidation opinion in the following circumstances: (i) the utility has a Commission decision in place that addresses the appropriate financial separation measures to be employed by the utility; or (ii) the utility’s assets constitute 70% or more of the assets of the parent company on a consolidated basis; or (iii) the parent company of the utility has a credit rating from one or more nationally recognized credit agencies that is equal to or greater than investment grade. These benchmarks will ensure that extreme ring-fencing measures that may support a non-consolidation opinion are

only imposed in circumstances wherein the parent entity has substantial assets independent of the regulated utility. For the Class A utilities and their parent entities that are exempt from Rule VII.E under any of these benchmarks, the proposed ATRs already require the utility to put in place the specific types of ring-fencing provisions recommended by credit agencies and reports on ring-fencing prepared by other public utility and public service commissions.

In summary, it will not benefit GSWC or its customers to impose unnecessary rules on GSWC with unknown costs and consequences and with the potential to disrupt GSWC's current corporate structure. This is particularly true given that the Commission has determined that GSWC already has provisions in place that “are sufficient to protect the utility and its ratepayers from concerns about the parent of a utility negatively impacting the financial health of the utility.” The Commission should delay adopting Rule VII.E in this proceeding—at least to the extent it applies to GSWC—until all parties, including the Commission has the opportunity to fully review the impact and consequences of requiring the utilities to obtain such a non-consolidation opinion.

I. Rule VIII.C – Length of Time to Complete Requested Compliance Plan

Rule VIII.C requires the filing of a compliance plan by March 2011 with the 2010 annual report.¹³ Because this is a new requirement on the utility and given the complexity of the required compliance plan, the Commission should allow for an extension of the due date for the first report so that any utility unable to meet the date will not be in violation of these rules.

¹³ PD Appendix A at A-10.

III. GSWC'S COMMENTS ON PROPOSED RULES GOVERNING PROVISION OF NON-TARIFFED PRODUCTS AND SERVICES

A. Remove Rule X.A

Rule X.A reads "Except as provided for in these rules, new products and services shall be offered through affiliates."¹⁴ This sentence is contrary to conclusion of law 34 which states "NTP&S rules should apply equally to all covered water and sewer utilities."¹⁵ Conclusion of Law 34 allows all water utilities to engage in NTP&S while Rule X.A. prohibits water utilities from entering into new NTP&S contracts. Rule X.A. should be removed.

B. Rule X.D: Remove Cost Allocation from Non-Tariffed Products and Services

Finding of Fact 37 reads "There are appropriate uses of excess capacity or slack resources by water and sewer utilities which can benefit the utility, the marketplace and (if there is revenue sharing and there are appropriate safeguards in place) ratepayers."¹⁶

By including Rule X.D. in these rules and specifically the last sentence which reads Non-incremental investments and costs incurred for labor and capital jointly used for tariffed and non-tariffed products and services shall be fully allocated between ratepayer and shareholder. The Commission takes away any incentive for a utility to participate in NTP&S and in fact by including a requirement to revenue share and fully allocate costs the utility would lose money. If Rule X.D. is not removed from these rules utilities will not participate in NTP&S.

IV. GSWC'S COMMENTS ON TEXT OF PROPOSED DECISION

A. Southern California Water was not Acquired by GSWC

At the bottom of page 77 through the top 78 the Commission states that "Golden State Water is constrained, but not prohibited, from offering NTP&S. D.98-06-068 (regarding the holding company application of Southern California Water, later acquired by Golden State

¹⁴ *Id.* at A-12.

¹⁵ PD at 93.

¹⁶ PD at 88.

Water). GSWC would like to clarify the record that Southern California Water was not acquired by GSWC and this was simply a name change.

B. Bear Valley Electric is not a Subsidiary of GSWC

In footnote 5 on page 6 of the PD the Commission notes: "In its 2008 Annual Report submission Golden State Water Company (Golden State Water) listed Bear Valley Electric Services, but did not list transactions with this company in its response to the OIR." GSWC would like to clarify for the record that Bear Valley Electric Services is a division of GSWC and is not an affiliate. GSWC simply went beyond the reporting requirements of the Annual Affiliate Transaction Reports as required in its Holding Company Decision D.98-06-068.

V. CONCLUSION

For the reasons set forth above, the Commission should modify the PD as proposed herein.

Respectfully submitted,

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APPENDIX A

Modifications to the Proposed Decision and Proposed Rules

GSWC adopts and supports the proposed modifications to the PD and to the rules submitted by the California Water Association. In addition, for the reasons set forth above, GSWC recommends the following:

PD Page 6, Footnote 5:

In its 2008 Annual Report submission Golden State Water Company (Golden State Water) listed Bear Valley Electric Services (which is a division of GSWC, not an affiliate) but did not list transactions with this company in its response to the OIR.

PD Page 77-78

Golden State Water is constrained, but not prohibited, from offering NTP&S. D.98-06-068 (regarding the holding company application of Southern California Water, which later acquired by changed its name to Golden State Water) included the following rule:

Conclusions of Law

25. A 5% adder to fully loaded costs to the price paid by an affiliate to a water or sewer utility for goods and services not allocated as part of Shared Corporate Support and not provided on the open market is a reasonable percentage to account for unidentified cross-subsidies which accrue to affiliates from the investments and training funded by ratepayers.

29. Water Utilities should be required Ring-fencing is a reasonable method to ensure core water and sewer utility functions are protected from significant financial problems which may befall the parent of the utility.

RULE I. Jurisdiction and Applicability

I.A.

These Rules apply to all Class A and Class B California public utility water and sewer corporations or companies subject to regulation by the California Public Utilities Commission (Commission).

I.B.

To the extent noted, these Rules apply to transactions between a Commission-regulated utility and another affiliated entity, including the utility's parent company, and to the utility's use of regulated assets for non-tariffed utility services, unless specifically modified or exempted by the Commission. Transactions between a Commission-regulated utility and an affiliated utility regulated by a state regulatory commission (whether the utility is located in California or elsewhere) are exempt from these Rules, except for provisions of Rule IV.B and Rule X.

RULE II. Definitions

II.E. "Affiliate"

"Affiliate" means any entity whose outstanding voting securities are more than 10 percent owned, controlled, directly or indirectly, by a utility, by its parent company, or by any subsidiary of either that exerts substantial operational control.

For purposes of these Rules, "substantial operational control" includes, but is not limited to, the possession, directly or indirectly of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of more than 10 percent by the utility in an entity's company creates a rebuttable presumption of substantial operational control.

For purposes of these Rules "affiliate" includes ~~the utility's parent company, or any~~ company that directly or indirectly owns, controls, or holds the power to vote more than 10 percent of the outstanding voting securities of a utility or its parent company.

Regulated subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate for the purpose of these Rules. However, these Rules apply to all interactions any such regulated subsidiary has with other affiliated unregulated entities covered by these Rules.

For the purpose of these rules "affiliate" does not include mutual water companies, joint powers authorities, public private partnerships and agencies or entities created for the purpose of regionalized programs and/or groundwater management and/or created through legislative or judicial system.

IV.DE.2

When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 15% of the employee's base annual compensation. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision does not apply to clerical workers.

This rule will not apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that the transfer is made during the initial implementation period of these ATRs, or pursuant to a P. U. Code §851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.

RULE V. Shared Corporate Support

V.C.

Examples of services that may be shared include: corporate governance and oversight, payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management and employee recruiting, engineering, information technology, water for resale and water storage capacity. ~~For purposes of this rule, key officers are the Chair of the entire corporate enterprise, the President at the utility and its parent, the chief executive officer at each, the chief financial officer at each, and the chief regulatory officer at each, or in each case, any and all officers whose responsibilities are the functional equivalent of the foregoing.~~

V.D.

~~Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, water or sewage for resale, water storage capacity, purchasing of water distribution systems, and marketing.~~

RULE VI. Pricing of Goods and Services between the Utility and Its Affiliate(s)

VI.E.

Direct t~~ransfers~~ from the utility to its affiliates of goods and services not produced, purchased or developed to be offered on the open market by the utility shall be priced at fully allocated cost plus 5% of direct labor cost. (Allocated costs related to Shared Corporate Support are exempt from this rule.)

VI.F.

RULE VII. Financial Health of the Utility

VII.E.

~~Financial Separation (Ring-Fencing). Within three months of the effective date of the decision adopting these Rules, each utility shall obtain a non-consolidation opinion that demonstrates that the ring-fencing around the utility is sufficient to prevent the utility from being pulled into bankruptcy of its parent company. The utility shall promptly~~

~~provide the opinion to the Director of the Commission's Division of Water and Audits and the Director of the Division of Ratepayer Advocates~~

~~If the current ring-fencing provisions are insufficient to obtain a non-consolidation opinion, the utility shall promptly undertake the following actions:~~

- ~~1. Notify the Director of the Commission's Division of Water and Audits and the Director of the Division of Ratepayer Advocates of the inability to obtain a nonconsolidation opinion;~~
- ~~2. Propose and implement, upon Commission approval, such ring-fencing provisions that are sufficient to prevent the utility from being pulled into the bankruptcy of its parent company; and then~~
- ~~3. Obtain a non-consolidation opinion, and provide the opinion to the Director of the Division of Water and Audits and the Director of the Division of Ratepayer Advocates.~~

~~VII.F.~~

~~Changes to Ring-Fencing Provisions. The utility shall notify the Director of the Commission's Division of Water and Audits and the Director of the Division of Ratepayer Advocates within 30 days of any changes made to its ring-fencing provisions, and shall obtain and provide promptly an updated non-consolidation opinion to the Director of the Division of Water and Audits and the Director of the Division of Ratepayer Advocates.~~

RULE VIII Regulatory Oversight

VIII.E

Independent Audits. Commencing in 2013, and biennially thereafter, the utility shall have an audit performed by independent auditors if the sum of all unregulated affiliates' revenue during the last two calendar years exceeds 5% of the total revenue of the utility and all of its affiliates during that period. The audits shall cover the last two calendar years which end on December 31, and shall verify that the utility is in compliance with these Rules. The utility shall submit the audit report to the Director of the Division of Water and Audits and the Director of the Division of Ratepayer Advocates no later than September 30 of the year in which the audit is performed. The Division of Water and Audits shall post the audit reports on the Commission's web site. ~~The audits shall be at shareholder expense.~~

RULE X. Provision of Non-tariffed Products and Services (NTP&S)

X.A

~~Except as provided for in these rules, new products and services shall be offered through affiliates.~~

~~products and services.~~

X.D.

Cost Allocation. All costs, direct and indirect, including all taxes, incurred due to NTP&S projects shall not be recovered through tariffed rates. These costs shall be

~~tracked in separate accounts and any costs to be allocated between tariffed utility services and NTP&S shall be documented and justified in each utility's rate case. More specifically, all incremental investments, costs, and taxes due to non-tariffed utility products and services shall be absorbed by the utility shareholders, i.e., not recovered through tariffed rates. Non-incremental investments and costs incurred for labor and capital jointly used for tariffed and non-tariffed products and services shall be fully allocated between ratepayer and shareholder.~~

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the

COMMENTS OF GOLDEN STATE WATER COMPANY ON PROPOSED DECISION

on all known parties to R.09-04-012 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on October 4, 2010, at San Francisco, California.

s/ Lisa Schuh

Lisa Schuh

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