

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



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In the matter of the Application of Golden State Water Company (U 13 W) for an order authorizing it to increase rates for water service by \$20,327,339 or 20.12% in 2010; by \$2,646,748 or 2.18% in 2011; and by \$4,189,596 or 3.37% in 2012 in its Region II Service Area and to increase rates for water service by \$30,035,914 or 32.67% in 2010; by \$1,714,524 or 1.39% in 2011; and by \$3,664,223 or 2.92% in 2012 in its Region III Service Area.

Application 08-07-010
(Filed July 1, 2008)

And Related Matters.

Application 07-01-014

**COMMENTS OF GOLDEN STATE WATER COMPANY ON
PROPOSED DECISION AND ALTERNATE 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 (“GSWC”) respectfully submits these Comments on the Proposed Decision of Administrative Law Judge (“ALJ”) Rochester (“PD”) and the Alternate Proposed Decision of Commissioner John Bohn (“APD”) in the above-captioned proceedings.

The PD is heavily slanted against GSWC, ruling against the company on nearly every contested issue. But the reasons given in deciding the lion’s share of these issues are unfounded, and in many cases unsupported by the record. Most troubling, the PD applies inconsistent standards to the parties—in some cases fashioning new standards—resulting in a decision that appears to be outcome-driven and is unfairly biased against GSWC. GSWC prefers the APD to the PD as it resolves two of the issues—the 1% equity adjustment and La Serena project costs—more fairly to GSWC. However, the APD still misses the point on many issues. For the reasons discussed herein, the Commission should reject both the PD and APD and issue a revised decision that more fairly resolves this GRC.¹

¹ Attached as Appendix A is GSWC’s recommended findings of fact and conclusions of law. Attached as Appendix B is a summary of presumed unintentional errors and omissions in the PD that should be corrected.

II. SUMMARY

The PD and APD need to be corrected to (1) recognize GSWC's long standing practice of deferring rate case expenses, and if the Commission shifts its treatment of these expenses at least allow GSWC a transition mechanism to recover its prudently incurred regulatory expenses in this proceeding; (2) authorize a Pension and Benefit Balancing Account for GSWC as the Commission has done for Cal-Am and San Jose and is poised to do soon for Cal Water, with whom GSWC competes in the financial markets; (3) apply a reasonable allocation of the costs associated with the La Serena plant improvements between new and existing customers; (4) properly reflect that the number of customers of ASUS in the four-factor allocation should be the number of ASUS customers, and not the number of service connections as prescribed in Commission Decision 85-07-084, reaffirmed in Commission Decision 09-03-007; and (5) grant GSWC's request for funds to replace the Miramar Reservoir #2 liner and cover in Region III.

III. DISCUSSION

A. Regulatory Commission Expenses for Regions II and III

GSWC's long-standing practice, approved by the Commission for over 50 years, has been to record its regulatory expenses (in PUC Account 146-Other Deferred Debits) during the preparation and processing of a general rate case and to then amortize these costs over the rate case cycle once the rate case is approved and the new rates are in effect.² As testified to by GSWC's witness Keith Switzer in this proceeding:

"As stated previously in this testimony, GSWC has had a long-standing practice of deferring its regulatory expenses during a rate case application and recovering those deferred expenses in rates over the ensuing rate case cycle. We [GSWC] do not know the exact origin of this practice at GSWC, but, to date, we have been able to trace it back at least as far as the Company's 1959 general rate case application for its Southwest District (Application No. 40675). I believe however that the practice extends even further back in time."³

This approach provides the most fair cost recovery for both GSWC and its customers because the customers that will pay the rate approved in the upcoming rate case cycle will be the

² Supplemental Opening Brief of Golden State Water Company, A.08-07-010, at 26 (April 29, 2010) ("Supplemental Opening Brief").

³ GSWC Supplemental Testimony (Switzer) at 4.

same customers that benefited from GSWC's efforts in this proceeding.

Given the length of time that GSWC has engaged in this practice and the fact that GSWC has routinely submitted annual updates to the Commission on the balance of PUC Account 146, the Commission should have been well aware of this long-standing practice.⁴ Contrary to such evidence and other evidence in this proceeding, however, including the detailed testimony of Mr. Switzer, the Commission now claims that, with respect to GSWC, it has always followed "a long standing Commission practice [of] setting rates based on forecasted expenses."⁵ As shown below, the Commission's assertion is simply wrong and belied by the record.

Despite GSWC's long-standing practice of deferred regulatory expense recovery, the Commission now appears intent on requiring GSWC to recover its regulatory expenses under a forecast approach going forward. If the Commission does implement such an approach, it will strand roughly \$2.5 million in costs prudently incurred by GSWC in this current GRC. Therefore, in order to transition to this new approach and to avoid stranding GSWC's prudently incurred costs, the Commission should allow GSWC to recover this \$2.5 million through a balancing account and surcharge mechanism.

1. Contrary to the PD and APD, GSWC Has Always, With Commission Approval, Recovered Regulatory Expenses on a Deferred Basis

Both the PD and the APD claim that the Commission has a long-standing practice of setting rates based on forecasted expenses.⁶ In support of this claim, however, the PD and APD misconstrue the record by disputing GSWC's 50 year history of recovering regulatory expenses on a deferred basis.⁷ The PD and APD are correct that the language in the 1967, 1969, 1976 and 1982 GRC Results of Operations Reports refer to regulatory expense as a "projection" or an "estimate,"⁸ but the PD and APD miss the fundamental point – the projection/estimate is for the costs associated with the current rate proceeding, and have nothing to do with the next GRC. The excerpt from the 1982 GRC Results of Operations Report (attached as Attachment F to the Supplemental Testimony of Keith Switzer) is a perfect example: "regulatory commission

⁴ See Supplemental Reply Brief of Golden State Water Company, A.08-07-010, at 26 (May 13, 2010) ("Supplemental Reply Brief").

⁵ APD at 50.

⁶ APD at 50.

⁷ APD at 49-50.

⁸ *Id.* at 49.

expense is based on amortizing the estimated cost of the **current rate proceeding** over the estimated years.”⁹ Contrary to the PD and APD’s assertion, this language does not indicate that the “estimated cost of the current rate proceeding”¹⁰ will be used to forecast the cost of the next proceeding;¹¹ it plainly states that the estimated cost of the then-current proceeding will be recovered by amortizing it over the following years and recovering those costs in rates. This approach is consistent with Mr. Switzer’s testimony in this proceeding: “GSWC has filed numerous rate case applications in the past 50 years, and **has incorporated the recovery of deferred regulatory expenses into each and every one.**”¹²

The Commission further confuses the issue by citing to Decision 09-07-021 and Decision 03-06-036 in support its claim for a universal policy of authorizing recovery of regulatory expenses on a forecasted basis.¹³ Under Decision 09-07-021 and Decision 03-06-036, the Commission denied Cal Am’s, not GSWC’s, request to recover deferred regulatory expenses.¹⁴ These decisions, however, only apply to Cal Am; they do not apply to GSWC. As shown above, the Commission, until this PD and APD, has never denied a request by GSWC to recover regulatory expenses on a deferred basis. These decisions therefore cannot support the PD’s and the APD’s claim of a uniform policy on deferred regulatory expense recovery.

In fact, contrary to the assertions in the PD and APD, GSWC’s practice of deferred recovery of regulatory costs is so ingrained that even though the PD and APD deny GSWC the right to recover its regulatory expenses on a deferred basis, the PD and APD does permit the recovery of costs associated with DRA’s consultant, Larkin and Associates, PLLC on a deferred basis.¹⁵ Specifically, GSWC has agreed to reimburse DRA for the costs of this consultant and DRA agreed to allow GSWC to recover those costs on a deferred basis by including them in its regulatory expense request in this proceeding.¹⁶ These costs were included in the Settlement

⁹ GSWC Supplemental Testimony (Switzer) at Attachment F (February 2010).

¹⁰ The costs of the then-current proceeding are estimated because the lion’s share of regulatory expenses for a given GRC is not known at the time the GRC is filed.

¹¹ Id.

¹² GSWC Supplemental Testimony (Switzer) at 5.

¹³ APD at 50.

¹⁴ See Decision 09-07-021 and Decision 03-06-036.

¹⁵ Supplemental Opening Brief at 27.

¹⁶ Id.

Agreement, which is approved and adopted by both the PD and the APD.¹⁷ The fact that DRA permitted GSWC to recover the consultant's costs on a deferred basis and the fact that the PD and APD approve such a recovery show that both DRA and Commission are aware of, and have endorsed, the long-standing practice of deferred regulatory expense recovery.

Moreover, Commission decisions relating to other Class A water utilities also support the concept of deferred recovery of regulatory expenses. Section 8.5 of the Commission's decision resolving Suburban Water System's 2002 general rate case states:

“Suburban's recorded expenses for this rate case were \$55,000 at the beginning of last year, but the company expects that to increase to more than \$100,000 because of unanticipated issues that have been added to this proceeding (Maple acquisition, BH Properties matter, reduction in revenue requirement because of the BPOU Project Agreement). Based on the only recorded amount, ORA estimated a total of \$60,000 for this proceeding. Because at least two of the issues added to this proceeding were essentially uncontested at hearing (BH Properties and BPOU adjustment), and because the Maple acquisition issue could have been dealt with earlier by Suburban, we discount Suburban's estimate and allot \$80,000 for regulatory expense.¹⁸

The Commission's decision did not adjust the initial \$50,000 estimate to take into account increased expenses that Suburban might incur during the next general rate case; the Commission adjusted the initial \$50,000 amount upward to \$80,000 to compensate Suburban for increased regulatory expense costs that it has incurred in the then-current proceeding. The decision therefore allowed Suburban to recover regulatory expenses on a deferred basis and roll those expenses into future rates. Thus, the PD and APD are simply wrong—the Commission's policy has long been to permit GSWC's regulatory expenses to be recovered on a deferred basis.

2. Recovery of Regulatory Expenses on a Deferred Basis Does Not Violate the Rule against Retroactive Ratemaking

The PD and APD both raise concerns that deferred recovery of regulatory expenses would violate the rule against retroactive ratemaking.¹⁹ Such concerns are alleviated, however,

¹⁷ See APD at 13 (approving Settlement Agreement, which includes GSWC's deferred recovery of the Larkin and Associates, PLLC costs);

¹⁸ Decision 03-05-078 at 17-18.

¹⁹ APD at 50.

by GSWC's use of Accounts 797 and 146 of the Commission's Uniform System of Accounts ("USOA") to track its deferred regulatory expenses.

Account 797 provides explicit authority for the Commission's long-standing practice of approving GSWC's regulatory expense recovery on a deferred basis: "Amounts of regulatory commission expenses which by approval or direction of the Commission are to be spread over future periods shall be charged to Account 146, Other Deferred Debits, and amortized by charges to this account."²⁰ The PD and APD completely ignore that – for the past 50 years – GSWC has booked "regulatory commission expenses" directed or approved by the Commission (i.e., approved in connection with GSWC's rate case applications) "to be spread over future periods" in Account 146.²¹ Account 146 can therefore be viewed as a de facto memorandum account for deferred regulatory expense in which GSWC records the costs it incurs in processing and litigating general rate cases and then, after review by the Commission for reasonableness, recovers those amounts in future rates. Any amount booked in Account 146 that is not deemed reasonable by the Commission would be written-off immediately. USOA Account 146 therefore allows deferred regulatory expense recovery under the well-established principle that balancing account recovery (i.e., recovery of amounts in a memorandum account deemed reasonable by the Commission) of already incurred costs does not violate the rule against retroactive ratemaking.²² As such, GSWC's long-standing practice of deferred regulatory expense recovery is consistent with the law and should be approved.

Moreover, even assuming *arguendo* that the Commission's policy regarding the recovery of regulatory expenses has always been the recovery of such expenses on a forecasted basis (which it has not), the Commission, by approving GSWC's rates over the past 50 years, has inadvertently directed regulatory expense recovery under a different paradigm. As a result, GSWC's rates have not been set in accordance with the proper procedure during that 50 year time period.

The rule against retroactive ratemaking is based on the presumption that the rate in question was set in accordance with proper procedure.²³ If proper procedure was not followed,

²⁰ USOA Account 797.b.

²¹ *Id.*

²² See *Re Pacific Gas and Electric Company*, Decision 98-12-092, 84 CPUC 2d 613, 1998 WL 986050 at *6 (Cal.P.U.C.).

²³ Decision 04-02-063.

the Commission can fashion such remedies as equity may require.²⁴ Therefore, assuming that the Commission's policy regarding the recovery of regulatory expenses has always been the recovery of such expenses on a forecasted basis, the Commission would have the power to fashion an equitable remedy (such as the remedy discussed below) for this inadvertent error that would neither unjustly punish GSWC for following Commission precedent nor violate the rule against retroactive ratemaking.

3. Shifting the Paradigm for Regulatory Expense Recovery without Providing GSWC an Opportunity to Recover Costs Stranded by Such Shift Would Be Inequitable, Unfair and Unreasonable

If adopted, the PD or the APD will require GSWC to shift its approach to regulatory expense recovery, requiring GSWC to forecast future regulatory expenses and recover those forecasts in rates going forward. As the Commission changes the regulatory paradigm for the recovery of regulatory expenses, GSWC is certainly willing to comply with the Commission's new directives. However, due to this shift, GSWC will (absent equitable relief) be forced to write off roughly \$2.5 million in prudently incurred regulatory expenses related to the current general rate case.²⁵ This write-off would occur notwithstanding the fact that the costs were incurred in compliance with the Commission's past approach to regulatory expense recovery.

Given the Commission's shift in its policy, it is both equitable and reasonable to permit GSWC a transition mechanism so that it can recover its prudently incurred regulatory expenses in this current GRC. It is a well-understood principle of equity that a promise that should reasonably be expected to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.²⁶ In this regard, the vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted.²⁷ In addition, it is both inequitable and unfair for a person to deny the existence of a state of facts if such person has led another to believe a particular circumstance to be true and to rely upon such

²⁴ Id.

²⁵ GSWC Supplemental Testimony (Switzer) at 3.

²⁶ People v. Castillo, 49 Cal.4th 145, 156 n.11 (2010).

²⁷ Garcia v. World Savings, FSB, 183 Cal.App.4th 1031, 1041 (2010).

belief to its detriment.²⁸

Pursuant to these principles of equity, the Commission should consider granting GSWC some equitable relief in connection with the \$2.5 million in stranded regulatory expenses. It would be manifestly unfair for the Commission to change the regulatory paradigm for this general rate case and for future general rate cases without providing GSWC an avenue to recover these costs. In fact, as the Commission noted in Decision 09-06-053, one important policy to consider when determining the scope of a utility's recovery of prudent, already-incurred costs is fairness.²⁹

Therefore, to allow GSWC to recover its \$2.5 million in prudently incurred regulatory expenses, GSWC suggests that the Commission, in an exercise of its equitable powers, transfer the \$2.5 million in stranded regulatory expenses to a balancing account and allow GSWC to recover the balance of the balancing account through a surcharge. This approach would allow the current \$2.5 million in regulatory expenses to be used as the forecast for the next general rate case in accordance with the new paradigm, but would also allow GSWC to recover the \$2.5 million in regulatory expenses stranded by the regulatory change.³⁰ Without such a transitional remedy (and assuming that the Commission does not allow GSWC to continue to recover regulatory expenses on a deferred basis), GSWC will be unable to recover costs that the Commission has already determined were prudently incurred by GSWC.³¹ As such, the Commission's decision may run afoul of both state and federal law guaranteeing GSWC an opportunity to recover its prudently incurred costs related to this proceeding.³²

The Commission has in fact provided a similar transitional remedy for the electrical utilities when the Commission moved in the mid-1990s to deregulate the energy markets in California.³³ As the Commission moved to allow private entities to compete in the energy

²⁸ People v. Castillo, 49 Cal.4th 145, 156 n.10 (2010).

²⁹ Decision 09-06-053 at 9.

³⁰ We're going to do the same in Region I. Then the combined will be the new forecast for the combined rate cases. Already a memo account in I.

³¹ See APD at 13 (approving Settlement Agreement and all regulatory expenses incurred in relation to this proceeding).

³² See In re Pacific Gas and Elec. Co., Decision 03-12-035, 230 P.U.R.4th 101 (Ca.P.U.C. 2003), 2003 WL 23104229 at *17 (Cal.P.U.C.); see also Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989).

³³ See Decision 95-12-063 (as modified by Decision 96-01-009), 64 CPUC.2d 1 (Ca.P.U.C. 1995) ("Transition Cost Decision").

markets, the electrical utilities claimed they had incurred certain costs under the regulated paradigm that could prevent them from effectively competing under the new, unregulated paradigm.³⁴ In particular, the utilities argued that certain plant was built and certain costs related to long-term power purchase agreements were incurred on the expectation that the utilities would maintain their exclusive territories and recover those costs through rates.³⁵ With the deregulation of the market and the entry of private electrical service providers, the utilities feared that some of these assets would have costs that were above-markets and would prevent them from competing under the new paradigm.³⁶

To allow the utilities to transition from the old regulatory paradigm to the new regulatory paradigm, the Commission approved the Competition Transition Charge (“CTC”), a charge that would allow the utilities to recover those costs that it had expected to recover from its current and future customers, but would be unable to recover as its current and future customers left to purchase power from independent electric service providers.³⁷ The CTC provided an avenue for the electrical utilities to recover costs stranded due to a change in the regulatory framework, just as the memorandum account would allow GSWC to recover costs stranded due to a change in the regulatory framework relating to the recovery of regulatory expenses. Accordingly, the Commission should order the \$2.5 million in stranded costs to be transferred into a balancing account and recovered over an appropriate amount of years. Such an approach would allow GSWC to recover all of its prudently incurred costs related to the prosecution of this general rate case.

B. Pension and Benefit – Balancing Account

GSWC requested the Commission’s permission to establish a two-way balancing account to track the difference between the pension expenses it collects in rates versus the actual costs it is required to incur for these benefits.³⁸ Notwithstanding the fact that the Commission has approved just such pension and benefit balancing accounts for several of GSWC’s competitors (as well as for California’s major electric utilities) the PD and APD find GSWC’s request to be

³⁴ Transition Cost Decision at 49.

³⁵ *Id.* at 47-49.

³⁶ *Id.* at 49.

³⁷ *Id.* at 58.

³⁸ Opening Brief of Golden State Water Company, A.08-07-010, at 50 (July 6, 2009) (“Opening Brief”).

unreasonable. But the reasons given for the PD and APD's conclusion are unsound and based on clearly erroneous factual findings. Accordingly, the Commission should reject the PD and APD's unfair treatment of GSWC and permit GSWC to establish the requested two-way balancing account.

Pursuant to the Commission's direction in the Revised Scoping Memo reopening this proceeding,³⁹ GSWC has submitted detailed information regarding its pension and benefits expenses for the period 1990-2009 showing when and to what extent GSWC has been able to retain excess authorized contributions, and when and to what extent GSWC has contributed in excess of the contributions authorized in rates.⁴⁰ The results of this analysis are compelling—the recorded contributions made by GSWC exceeded the authorized amounts by \$1.7 million over this 20-year period.⁴¹ Significantly, during the last 5 and 10 years, GSWC has contributed in excess of the amounts authorized in rates by approximately \$2.9 million and \$3.1 million, respectively.⁴² In addition, GSWC's recorded pension expense required by SFAS 87 exceeded the authorized amounts by \$6.0 million over this 20-year period. Significantly, during the last 5 and 10 years, GSWC's recorded pension expense required by SFAS 87 exceeded the authorized amounts by \$5.9 million and \$8.9 million, respectively. These significant and unprecedented deficits between rates and actual contributions and SFAS 87 pension expense justify the two-way balancing account requested by GSWC.

Despite the Commission's reopening of the record and explicit request for this information, the PD and APD completely ignore this evidence in reaching the same speculative conclusions reached in the original PD—that over time market fluctuations smooth out,⁴³ and that GSWC has not shown the extent of its under-recovery for any time period but the most recent five year period.⁴⁴ The PD and APD are wrong. The information requested by the Commission and presented by GSWC demonstrates that there have been significant shortfalls over the course of the last two decades, and significant volatility in recent years, which warrants

³⁹ See Ruling of the Assigned Commissioner and Administrative Law Judge Reopening the Proceeding and Amending the Scoping Memo, A.08-07-010 (October 5, 2010).

⁴⁰ See, generally, GSWC Supplemental Testimony (Farrow).

⁴¹ *Id.* at 3.

⁴² *Id.* at 4.

⁴³ PD at 38.

⁴⁴ PD at 37-38.

the establishment of a two-way balancing account as requested.⁴⁵ Inexplicably, the PD and APD fail to even acknowledge the existence of this evidence, even though it directly contradicts the PD and APD’s findings. These findings are therefore arbitrary and capricious and must be rejected by the Commission.

In fact, GSWC’s request for a balancing account to address the unprecedented market volatility is perfectly consistent with the very same two-way balancing account mechanisms already approved by the Commission for several utilities—including at least two of GSWC’s direct competitors. Specifically, the Commission has approved and adopted pension and benefit balancing accounts for California-American Water Company (“Cal Am”), San Jose Water Company (“San Jose”), Pacific Gas and Electric (“PG&E”), Southern California Edison (“SCE”), and has proposed the same mechanism for California Water Services (“Cal Water”) in a proposed decision issued on October 26, 2010—only six days after the PD was issued in this GRC.⁴⁶

The PD and APD attempt to distinguish these Commission approved pension and benefit balancing accounts from GSWC’s requested balancing account; but this effort fails because it is based on an erroneous understanding of how these balancing accounts operate and a mischaracterization of GSWC’s request. Specifically, the PD and APD find that the “SCE balancing account was based on minimum ERISA funding, not the higher FAS 87 calculations requested by GSWC”⁴⁷ and “[i]n the case of the Cal-Am and San Jose settlements, there were caps based on ERISA minimum funding levels placed on the amount of recovery allowed through the balancing account.”⁴⁸ The PD and APD are just plain wrong. The Commission is confused between the caps set on what is **recovered through rates** and the cap set as to what is allowed to be **tracked in the balancing account**.

In the case of SCE and San Jose, as well as in the proposed decision issued for Cal Water, the amount recorded in the respective balancing accounts is the difference between the amount

⁴⁵ See, generally, GSWC Supplemental Testimony (Farrow).

⁴⁶ See Supplemental Opening Brief of the Division of Ratepayer Advocates, A.08-07-010, at 8-9 (April 29, 2010); Proposed Decision issued in Cal Waters Application 10-07-001 issued on October 26, 2010, Finding of Fact 44, Conclusion of Law 27 and Ordering Paragraph 26

⁴⁷ APD at 37.

⁴⁸ Id.

included in rates and the actual amount required to be recorded by the utility, which is calculated based on FAS 87:

- SCE:** “SCE’s regulatory liabilities related to employee benefit plan expenses represent pension costs recovered through rates charged to customers in excess of the amounts recognized as expenses or the difference between these costs calculated in accordance with rate-making methods and these costs calculated in accordance with SFAS No. 87”⁴⁹
- San Jose:** “DRA and SJWC agree to \$6,000,000 in Pension expense for the test year, subject to a capped balancing account. SJWC and DRA agree that the Company should establish a balancing account, effective January 1, 2010, to record cash contributions to the retirement plan, with SJWC's recovery of this expense for ratemaking purposes capped at the level of Pension expense calculated according to the method prescribed by SFAS 87 for each concurrent year.”⁵⁰
- Cal Water:** “The amounts to be recorded in the balancing account will be limited to the difference between SFAS 87 expense calculated by Cal Water’s actuarial expert and recorded as expense and Cal Water’s recovery of costs for ratemaking purposes. In any filing, Cal Water will demonstrate its continued compliance with SFAS 87.”⁵¹

In the case of Cal-Am, the Commission also approved of a balancing account “to track the difference between the level of expenses authorized in rates and the actual costs.”⁵² As with the balancing accounts discussed above, the Commission determined that “Cal Am’s recovery for ratemaking purposes shall be capped at the minimum level of Benefit Plan expense calculated according to the Employee Retirement Income Security Act minimum funding levels.”⁵³ Thus, while Cal-Am is limited to recovering the minimum ERISA funding levels in rates, if Cal-Am follows the FAS 87 accounting requirements for financial reporting (which is required under

⁴⁹ GSWC Ex. 201

⁵⁰ Joint Settlement of the Division of Ratepayer Advocates and San Jose Water Company Addressing Revenue Requirement Issues, Section 4.4 of Attachment B to the Joint Motion of San Jose Water Company and the Division of Ratepayer Advocates for Approval of Settlement Agreements, A.09-01-009 (August 19, 2009).

⁵¹ Settlement of California Water Service Company, Jeffery Young, the Leona Valley Town Council, Jack Chacanaca and the Division of Ratepayer Advocates, A.09-07-001, at 496-97.

⁵² Decision 10-06-038 at Ordering Paragraph 7.

⁵³ Id.

GAAP), Cal-Am also records the difference between the minimum ERISA funding included in rates and FAS 87.

In short, the PD and APD's conclusion that the amount of recovery allowed via the Commission approved balancing accounts is capped at the ERISA minimum funding level is simply not true. In fact, the amount of recovery permitted by these balancing accounts is the difference between the amounts included in rates (in some cases ERISA minimum funding level) and actual expense incurred (in most, if not all, cases based on FAS -87).⁵⁴ GSWC's proposed balancing account would operate in precisely the same manner—that is, it would record the difference between the amount included in rates and the actual amount required to be recorded under FAS 87. The fundamental error made by the PD and APD is their assumption that because the amounts GSWC collects in rates is based on FAS 87, the balancing account requested is distinguishable from the balancing accounts where the utility's rates are based on ERISA minimum funding. But this is a distinction without a difference as the amounts included initially in rates—however derived—must be trued up with the amounts actually required to be recorded under FAS 87.

Indeed, the record shows that GSWC would agree to base its current rates on ERISA values rather than estimated FAS 87 values (assuming, as GSWC proposed and as is the case with SCE's balancing account, that the account is a two-way balancing account).⁵⁵ These ERISA values were put into the record in GSWC supplemental testimony following the Commission's reopening of the record in this proceeding.⁵⁶

The PD and APD also weakly attempt to distinguish the Commission approved pension and benefit balancing accounts from GSWC's request on the ground that several of these balancing accounts were the result of settlement agreements reached between DRA and the respective utility rather than contested litigation.⁵⁷ Notably, the PD and APD do not indicate why this distinction is meaningful. Once again, this is a distinction without a difference—either

⁵⁴ As confirmed by DRA's expert witness Donna Ramas in testifying regarding the effect of SCE's balancing account, "[w]hat that means, the company is allowed to set a regulatory liability for the difference between what is collected in rates and what expenses there were in the SFAS 87 calculations." Transcript, Ramas, Vol. X, p. 772:26-773:6.

⁵⁵ See Supplemental Reply Brief at 40.

⁵⁶ See GSWC Supplemental Testimony (Ramas).

⁵⁷ Id.

way the Commission has made a determination that such balancing accounts are warranted and reasonable.

Moreover, the PD and APD's statement that "settlements are not precedential" presents an incomplete and misleading picture of the Commission's treatment of pension and benefit balancing accounts.⁵⁸ In fact, the settlements of this issue for the water utilities (Cal-Am, Cal Water and San Jose) followed the SCE case, wherein the Commission approved of a two-way balancing account mechanism after the issue was litigated by DRA. Thus, the truth is that the SCE case did set a precedent, which was followed by DRA and the Commission in resolving this issue by settlement in the subsequent water utility GRCs. The recent Cal Water settlement of this issue is particularly instructive. In that case, as part of its litigation position in its opening testimony, DRA recommended (and the other parties agreed) that Cal Water should be authorized to establish a pension and benefits balancing account on the ground that the other Commission regulated utilities were granted the same mechanism to deal with volatile market conditions.⁵⁹ These precise circumstances are equally applicable to GSWC, and thus, it would be patently unfair if GSWC were not also granted permission to establish this same balancing account mechanism.⁶⁰

Denying GSWC equal treatment as to this balancing account mechanism is not only unjustified, it is highly prejudicial given that the Commission has established the same 10.2% return on equity for GSWC as for San Jose, Cal-Am and Cal Water.⁶¹ It is widely recognized by both the financial markets and the Commission itself that the risk faced by utilities is reduced by the establishment of balancing accounts and memorandum accounts.⁶² Risk (or the absence of risk), in turn, impacts the Commission's determination of the appropriate return on equity and market returns for a regulated utility.⁶³ Thus, if the Commission were to disallow GSWC from

⁵⁸ APD at 37.

⁵⁹ See Proposed Decision in A.09-07-001 at 36 (October 26, 2010).

⁶⁰ It is also noteworthy that in the case of Cal-Am Commissioner Bohn expressly determined that "authorizing a Benefit Plan memorandum account, pending the outcome of the general rate case" was reasonable. *See* Ruling Consolidating Proceedings (A.09-01-013, 09-05-008 and 09-07-002) dated August 19, 2009 pages 3-4. Following this pronouncement, DRA settled the issue with Cal-Am, agreeing to the establishment of the same balancing account mechanism GSWC has requested in this case.

⁶¹ See, e.g., Decision 09-05-019 at 2.

⁶² Decision 09-05-019 at 30.

⁶³ Id. at Finding of Fact 6.

establishing the same balancing account that its competitor water utilities are permitted to use for pension and benefit costs, GSWC would necessarily take on greater risk. And given that GSWC competes in the same market for capital as its competitors, this increased risk puts it at a disadvantage. Indeed, due to the recent volatility in market conditions, GSWC has experienced significant shortfalls between pension and benefit expense projections and actual costs—even based on a 20 year cycle the company has lost 1.7 Million dollars.⁶⁴ In light of the Commission’s uniform rate of return for GSWC, San Jose, Cal-Am and Cal Water, it is unfair and prejudicial to single out GSWC as the only one of these four Class A water utilities that is not entitled to reduce its risk via a pension and benefits balancing account.

Finally, the PD and APD’s conclusion that “a balancing account also removes a very important ratepayer protection, the incentive to control costs” is unsupported by the record.⁶⁵ In fact, the record demonstrates that “GSWC has an incentive to maintain competitive rates in order to retain its market share, as it competes with cities, counties, and other municipal water utilities.”⁶⁶ Thus, contrary to the PD and APD’s conclusion, denying GSWC a balancing account would be a mistake relative to incentives for the future. In light of recent experience, GSWC would have an incentive to be extraordinarily conservative in its future estimates of the value of its required pension and benefits contributions in order to avoid significant under-recoveries.

In sum, the fact that the Commission has authorized balancing accounts for SCE, PG&E, Cal Am, San Jose and is about to approve the same mechanism for Cal Water, clearly indicates that such balancing accounts for pension benefits are a reasonable approach to the market volatility related to these costs. As it has done for these other utilities, the Commission should authorize GSWC to establish the two-way balancing account it has requested to track the difference between its pension and benefit expenses recovered in rates and the actual costs it is required to record in accordance with SFAS 87.

⁶⁴ GSWC Supplemental Testimony (Farrow) at 3.

⁶⁵ PD at 35.

⁶⁶ Exhibit 98; Transcript, Ramas, Vol. X, p. 766:6-13.

In the alternative, the Commission should adopt the same language for GSWC that it proposes be adopted for Cal Water.⁶⁷ This language is set forth below with “GSWC” inserted in place of “Cal Water”:

The Commission adopts a balancing account for pension costs, as follows:

- (a) The amounts to be recorded in the balancing account will be limited to the difference between SFAS 87 expense calculated by GSWC’s actuarial expert and recorded as expense and GSWC’s recovery of costs for ratemaking purposes. In any filing, GSWC’s will demonstrate its continued compliance with SFAS 87.
- (b) The balancing account should have an effective date concurrent with the effective date of rates in this proceeding and shall apply to GSWC’s expensed SFAS 87 amounts after that date.
- (c) The balancing account should be subject to recovery one of two ways: (1) through a Tier 2 advice letter if the accumulated balance in the plan exceeds 2% of GSWC’s total company adopted revenue requirement, or (2) as part of a general rate case filing. Recovery of Plan costs should be subject to GSWC’s meeting its burden of proof that such costs were reasonable and prudent.
- (d) GSWC’s should not be permitted to change its method of the Plan’s accounting for ratemaking purposes except as required by changes in state or federal law, or as directed by the FASB. Changes in assumptions reflecting current market, interest rate, or demographic conditions should not be considered “changes in accounting” as these are standard practices used to develop SFAS 87 requirements. GSWC’s must prove the reasonableness of any change in accounting in a general rate case proceeding.

C. La Serena Plant Improvement Project

The APD correctly recognizes that the improvements at the La Serena facility were necessary to address water supply and storage deficiencies of existing customers in the Nipomo Mesa area of GSWC’s Santa Maria service area. Accordingly, the APD finds that the costs for the La Serena upgrades should be borne by both existing customers and new development. This recommendation is a vast improvement over the findings in the PD of the Administrative Law Judge which finds that DRA’s erroneous calculations for supply and capacity requirements “has

⁶⁷ Settlement of California Water Service Company, A.09-07-001.

merit” and thus concludes that the La Serena project was undertaken for the benefit of new customers.

Unfortunately, while the APD rejects DRA’s untenable position that the entire costs of the project was undertaken to serve new development, the cost sharing allocation between new development and existing ratepayers adopted in the APD (70.66% new development/ 29.34% existing ratepayers) is based on DRA’s calculation of the storage requirements of the new development compared to the capacity of the La Serena upgrades. Because the cost allocation adopted in the APD is equal to DRA’s determination of how much storage capacity was necessary for the new development, it is critical to review that reasonableness of that calculation.

Putting aside the technical engineering issue of how to properly measure incremental fire flow requirements, on its face, DRA’s position is simply illogical. DRA estimates the combined storage capacity for the housing developments and elementary school to be 353,000 gallons. This figure represents 70.6 percent of the 500,000 gallon storage capacity at the La Serena site. More importantly, this figure of 353,000 gallons represents 35 percent of GSWC’s total storage capacity in the Nipomo Mesa area (GSWC has 1,000,000 gallons of storage capacity in Nipomo Mesa, including the new La Serena capacity). In other words, DRA would have the Commission believe that 35 percent of the total storage capacity in Nipomo Mesa was necessary to serve 63 residential units plus a 650 student elementary school, and the remaining 65 percent is adequate for the other 1,388 customers in the Nipomo Mesa area. The basis for this calculation makes no sense; therefore, this calculation should not be adopted by the Commission.

DRA reaches these skewed results based on a flawed calculation that counts the fire flow requirements for each development on cumulative basis. The following figure shows DRA’s mistake most clearly (as they say, a picture is worth a thousand words):

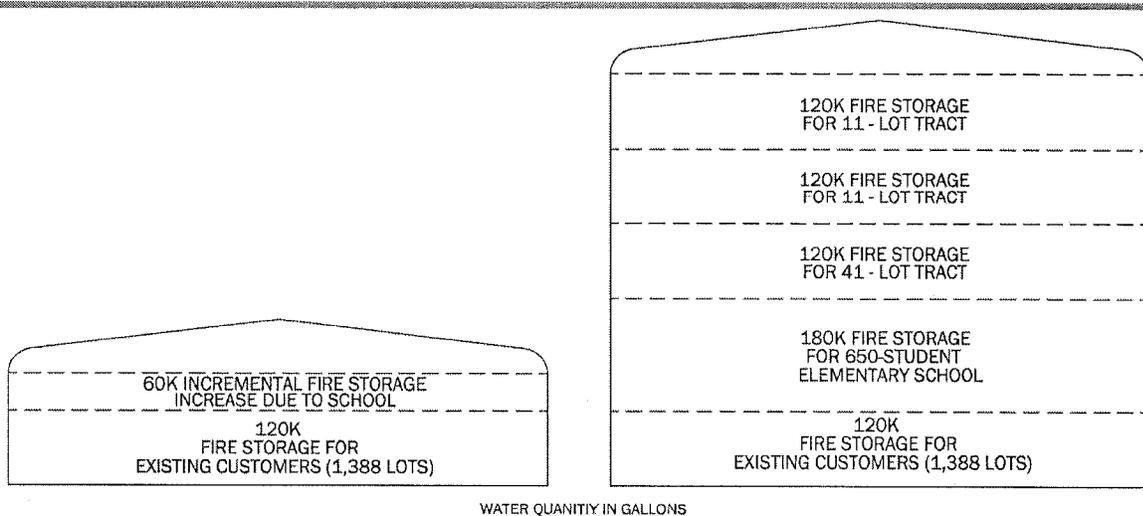


FIGURE 1A - APPROPRIATE METHODOLOGY FOR DETERMINING REQUIRED FIRE STORAGE

FIGURE 1B - DRA METHODOLOGY FOR DETERMINING REQUIRED FIRE STORAGE

On rebuttal, DRA adjusted its calculations to include all of the additional 63 new customers and increased its storage requirements, excluding the school, from 173,000 gallons to 321,900 gallons. This equates to 5,109⁶⁸ gallons per customer. If the Commission were to accept DRA’s calculations, GSWC would need to provide 07,092,019⁶⁹ (7 million) gallons of storage for its existing customers. That is ridiculous, and shows just how misguided DRA’s calculations are. Prior to constructing the new La Serena Tank, GSWC had 500,000 gallons of storage or just 360 gallons per customer.⁷⁰ DRA’s calculations are clearly erroneous and cannot be relied upon by the Commission.

In contrast, GSWC has used industry standards for evaluating the impact of new business on total water supply and GSWC again used industry standards for evaluating the impact of new business on total system storage.⁷¹ There are three components of system storage that must be evaluated, including operational storage, fire storage and emergency storage.⁷² Fire storage only needs to be large enough to meet the worst case fire demand within the system because once the worst case demand is accommodated there is sufficient to meet fire fighting needs for all lesser

⁶⁸ 321,900 divided by 63.

⁶⁹ 5,109 gallons x 1,388 customers.

⁷⁰ 500,000 ÷ 1,388.

⁷¹ See Supplemental Opening Brief at 32-34.

⁷² GSWC Supplemental Testimony (Gisler) at 7.

fire flow demands.⁷³ The results of these calculations are clear: the new development requires additional storage of 134,153 gallons, representing 26.8% of the 500,000 gallon reservoir.⁷⁴ Therefore, new development is responsible for 26.8% of the costs related to the new tank. GSWC could have built a smaller tank to accommodate only the new development, but chose instead to build a standard size tank and make up a portion of the storage deficiency for existing customers noted in the 1998/1999 Nipomo Master Plan. To do otherwise would not have been reasonable or prudent.

GSWC and DRA have submitted hundreds of pages of testimony and briefing on this subject in this proceeding and in A.07-03-064. This record makes one thing very clear—DRA’s calculation of fire flow requirements is wrong and based on a fundamental misunderstanding of water system engineering. The APD is correct in allocating the costs of the La Serena plant upgrades between new development and existing customers, but the only allocation that is supported by the record is GSWC’s calculation that the new development is responsible for 26.8% of the new storage facilities.

In sum, at most the new development should be assigned 27% of the balance of \$3,519,000 in costs, or \$950,130⁷⁵. New development has already contributed \$287,000 therefore an additional \$663,130 should have been collected from new development. Based on the calculations in the APD the last sentence of the last paragraph on page 84 of the APD should be rewritten to read “Golden State should remove \$663,100 less recorded depreciation of \$49,868⁷⁶ or \$613,262 from rate base. Additionally, Golden State’s Santa Maria ratepayers should be given a one-time credit of \$209,600⁷⁷ to offset the fact that Golden State previously included the La Serena costs in rate base.

D. Cost Allocation

The PD and APD each adopts a traditional four-factor cost allocation methodology for General Office expenses based on: (1) the total amount of plant owned by an entity; (2) its total expenses; (3) its number of employees; and (4) its number of customers. Although GSWC

⁷³ Id. at 13.

⁷⁴ Id.

⁷⁵ $27\% \times \$3,519,000 - \$950,130$

⁷⁶ $.3.76\% \times 633,100 \times 2 = 49,868$

⁷⁷ $2 \times \$663,130 \times 0.0887 \text{ (Rate of Return)} \times 1.78172 \text{ (Net -to-Gross Multiplier)} = 209,600$

disagrees with certain elements of the Commission's four-factor cost allocation methodology (e.g., its refusal to allow single-factor allocation in appropriate circumstances) and many of the assumptions it uses, these comments will focus only on the Commission's determination of the appropriate number of customers to be included in the cost allocation formula.

GSWC serves a number of military bases across the country. GSWC does not, however, provide any services directly to the residents of these bases—its only customers are the bases themselves.⁷⁸ As noted by GSWC in its testimony and briefs, and as acknowledged by DRA during oral arguments,⁷⁹ neither GSWC nor ASUS: (1) delivers bills to the residents on the military bases for water service; (2) collects payments from the residents on the military bases; or (3) has any other direct interaction with the military base residents. GSWC's only point of contact and interaction is its customer, the base itself. In light of these undisputed facts, the actual number of service connections on these military bases should not be used for total customer counts—each military base should be counted as one customer.

By counting each service connection on the base as a separate customer in these circumstances, the PD and APD are in conflict with the Commission's long-standing policy on determining customer counts for the four-factor allocation methodology. As set forth in Commission Decision 85-07-084, "[t]he customer component of the four-factor formula is actual customers, not connections."⁸⁰ The Commission most recently confirmed this policy in Decision 09-03-007, rejecting DRA's argument that the number of connections should be counted instead of the number of customers:

“...the data shown in its [Suburban Water Systems] application related to the number of employees and number of customers reflects the actual number for each element for both Suburban and Southwest. ...”

“We [the Commission] agree with Suburban in this regard...⁸¹”

⁷⁸ Exhibit 11, p. 6:7-9, 17-20; p.7:6-8, 19-22; p. 8:8-10, 21-23.

⁷⁹ Oral Argument Transcripts A.08-070-10_081610_FOA page 958 lines 24-27

⁸⁰ D.85-07-084, 1985 Cal. PUC LEXIS 598, *42.

⁸¹ D.09-03-007 page 18, at 8.1.2 Four Factor Method (FFM)

In addition, both the PD and APD acknowledge that “[t]he purpose of the four-factor cost allocation methodology is to allocate the costs of general office expense between Golden State and its affiliates based on a cost-causation approach.”⁸² Because neither GSWC nor ASUS provides direct services to military base residents, there is no direct, causal link between the number of connections on a military base and the amount of general office expenses ASUS incurs in providing service to the bases.⁸³ Its general office costs are limited to servicing its actual customers, the military bases themselves. The one base, one customer approach is already in practice at the Marine Corps Logistics Base in Barstow where GSWC treats the base as one customer for purposes of cost allocation.

In fact, the military bases are analogous to GSWC’s master-meter customers. Under a master-meter connection, GSWC interacts directly with each master-meter customer, but not with the individual connections that in turn receive water service through the master meter.⁸⁴ Because GSWC does not interact directly with the connections that are sub-metered off of the master meter customer, the individual connections are not counted as customers for purposes of the cost allocation methodology; the customer count is limited to the master-meter customers.

Although counting each military base as one customer is consistent with Commission precedent and analogous to GSWC’s master-meter service, the PD and APD reject this approach in favor of counting service connections, stating that GSWC has not provided a “compelling reason why the method adopted in D.07-011-037 (sic) should be altered in this GRC.” The PD and the APD, however, did not adopt the methodology approved in Decision 07-11-037. Decision 07-11-037 adopted a modified three-factor methodology and limited the methodology to that specific rate case whereas the PD and APD adopted the traditional four-factor methodology.⁸⁵ It would therefore be inappropriate to use Decision 07-11-037 as precedent for this proceeding.

⁸² APD at 18.

⁸³ Because there is a need to allocate costs between GSWC and Chaparral based on the number of customers, the Commission must keep this allocation factor in the cost allocation methodology.

⁸⁴ Exhibit 211 Supplemental Testimony of John T. Garon Jr. page 16 lines 13-21

⁸⁵ See Decision 07-11-037 at 34 (showing that, when compared to the four-factor methodology adopted in this proceeding, the Commission limited the allocation methodology in Decision 07-11-037 to that particular proceeding).

Furthermore, as shown above, Decision 07-11-037 is an inappropriate application of Commission precedent and provides no cost-causation link between the actual number of customers serviced and the costs allocated to ASUS in the four-factor allocation methodology. Contrary to the assertion in Decision 07-11-037, ASUS does not “provide full water and wastewater services” to the residents of the military bases;⁸⁶ it only provides these services to its single customer, the base itself. As stated above, neither GSWC nor ASUS: (1) delivers bills to the residents on the military bases for water service; (2) collects payments from the residents on the military bases; or (3) has any other direct interaction with the military base residents. Therefore, the method used in Decision 07-11-037 is inappropriate for this proceeding and should not be used.

Furthermore, the PD and APD also reject GSWC’s approach on the grounds that “[i]f Golden State’s proposal were followed to its natural conclusion, each city served by Golden State should only be counted as one customer.” The Commission’s concerns, however, are misplaced. Both GSWC and DRA agreed that using the number of service connections with respect to city contracts was appropriate. Such an approach was appropriate because ASUS actually performed direct services for each of the connections in these cities.⁸⁷ There was a direct, causal link between the number of connections and the amount of expenses incurred by ASUS.⁸⁸ In fact, as both the PD and the APD acknowledged, GSWC and DRA have already agreed to count the number of service connections to determine customer count with respect to the one remaining city contract: “Golden State and DRA agree on the number of customers for ASUS-City (12,599).”⁸⁹ The Commission’s concern that counting each military base as one customer would lead to counting each city under contract as one customer is simply not supported by the facts.

Finally, the Commission just adopted standard rules and procedures for Class A and B water utilities governing affiliate transactions and the use of regulated assets for non-tariff services (“Water Utility Transaction Rules”). Under these new rules, the Commission intends to

⁸⁶ Decision 07-11-037 at 36.

⁸⁷ See id. at 38-42.

⁸⁸ See id.

⁸⁹ APD at page 24

treat all Class A water utilities equally and use the standard rules and procedures for electrical utilities as a guide post for implementing the new rules.

As noted above, Decision 09-03-007 ordered Suburban, another Class A water utility, to count customers, not connections, when determining the appropriate number of customers to be used in the four-factor cost allocation methodology. Furthermore, the Commission itself believes that electrical utilities may count the number of military contracts, not connections, when determining its customer counts. Therefore, in accordance with the Commission's newly-adopted Water Utility Transaction Rules and Commission precedent, the Commission should treat GSWC in the same manner as Suburban and the electrical utilities and allow GSWC to count the number of military contracts, not the connections they serve, when determining the customer count for the four-factor cost allocation methodology.

E. Claremont System Miramar Reservoir Liner and Cover Replacement

The PD and APD determine that GSWC's request for funds to replace the liner and cover on the Miramar Reservoir #2 should be rejected.⁹⁰ The PD and APD conclude that GSWC has not shown or proven that the existing condition of the cover is "beyond repair" and therefore replacement is unreasonable at this time.⁹¹ The PD and APD's conclusion is incorrect because the PD and APD rely on outdated information from Three Valleys Municipal Water District's ("TVMWD") last written inspection report from May 2007, in which the consultant found the reservoir in good condition but in need of certain repairs.⁹² The PD and APD fail to consider the fact that in following up on these inspection reports, GSWC and TVMWD determined that the dilapidated condition of the existing cover precluded a contractor from making the necessary repairs because doing so posed a severe safety hazard.⁹³

Moreover, both GSWC and TVMWD determined that the damage to the cover presents serious concerns from an operational and water quality standpoint, thus prompting their determination that the cover required replacement.⁹⁴ The record indicates that both GSWC and TVMWD agree that the replacement of the cover will not only extend the life of the reservoir,

⁹⁰ APD at 59.

⁹¹ Id.

⁹² Id.

⁹³ Exhibit 92; *see also* Transcript, Gisler, Vol. IX, pp. 703-706.

⁹⁴ Exhibit 79, Gisler Rebuttal Testimony at 104 and at Attachment 8.

but will also address the various deficiencies with the existing cover identified in GSWC witness Ernest Gisler's rebuttal testimony.⁹⁵ Because the new liner and cover are needed and because GSWC is contractually obligated to pay for these replacements,⁹⁶ the Commission should grant GSWC's request for funds to replace the Miramar Reservoir #2 liner and cover.

F. Emergency Motion to Establish a Memorandum Account for the Purpose of Tracking Regulatory Expenses Associated with Extended Proceedings in the Above-Captioned Matter

On February 5, 2010, GSWC filed an emergency motion to establish a memorandum account for the purpose of tracking regulatory expenses associated with these extended proceedings ("Emergency Motion"). As of the date of these comments, however, the Commission has yet to rule on the Emergency Motion. For the reasons set forth in the memorandum accompanying GSWC's Emergency Motion, GSWC respectfully requests that the Commission issue an order approving its request for a memorandum account to track regulatory expenses associated with these extended proceedings.

⁹⁵ Id.

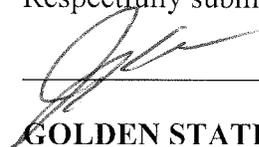
⁹⁶ Exhibit 124, Attachment A, Section VIII(A)(2)(b).

IV. CONCLUSION

For the reasons set forth above, the Commission should (1) modify the PD and the APD as proposed herein; and (2) issue an order approving its request for a memorandum account to track regulatory expenses associated with these extended proceedings.

Date: November 9, 2010

Respectfully submitted,



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APPENDIX A

GSWC proposes the following modifications to the PD's Findings of Fact and Conclusions of Law. Text shown as a ~~strikethrough~~ should be deleted and text with a double underline should be added.

Findings of Fact

1. Golden State and DRA are the only parties to the settlement.
2. Golden State provided applications and exhibits explaining its request for a rate increase in detail.
3. DRA provided an analysis of the applications indicating that it agreed with some of Golden State's estimates and disagreed with others.
4. The overall settlement result lies between the initial positions of Golden State and DRA, and the settlement resolves some issues raised by other parties.
5. Golden State represents the interest of its shareholders.
6. DRA represents the interests of ratepayers.
7. The settlement and our resolution of contested issues in this proceeding result in rates sufficient to provide adequate reliable service to customers at reasonable rates while providing Golden State with the opportunity to earn a reasonable return.
8. ~~Absent "extraordinary circumstances," including vacant positions in labor expense is not reasonable. Golden State's decision to not adjust its labor expense for vacant positions is reasonable.~~
9. Golden State's aggressive recruiting efforts do not constitute "extraordinary circumstances," but there is no evidence of bad faith on Golden State's part to indicate willful noncompliance with Pub. Util. Code § 2107, warranting a fine of \$45,000.
10. Golden State's proposal to allocate certain costs based on a single-factor allocation and certain other costs based on a four-factor allocation is not reasonable.
11. ~~It is reasonable to allocate to Golden State only and to Golden State, Chaparral and ASUS City combined, all those costs centers which provide absolutely no service to ASUS Military.~~ Golden State does not provide services to ASUS military base customers.
12. It is ~~not~~ reasonable for Golden State to count each military contract as one customer.
13. ~~It is reasonable to use the combined total of connections at each military base (17,788) under contract to ASUS as the number of ASUS Military customers in the four-factor allocation~~ The appropriate driver of the cost-causation relationship between Golden State and ASUS is the number of military contracts.
14. Although the amount or expense related to purchased water does not materially impact the amount of general office activity, a full four factor allocation methodology is intended to smooth out the discrepancies.

15. Including the purchased water costs in the expenses factor of the four-factor cost allocation is reasonable.
16. DRA's proposal to include the value of all distribution assets at the military bases served by ASUS in the plant factor of the four-factor cost allocation is reasonable.
17. Golden State's proposal to use only the plant associated with ASUS's corporate headquarters and assets is not reasonable.
- ~~18. Golden State's proposed employee expenses for ASUS represents only 27 ASUS employees in the employee expenses factor of the four-factor cost allocation.~~
- ~~19. The number of ASUS employees has gone from 27 to 84 since Golden State filed its GRC application.~~
- ~~20. Using employee count instead of employee expenses results in a more accurate cost allocation.~~
21. All Golden State's contracts to supply unregulated services to various cities expired January 1, 2010, except the contract with the City of Torrance.
22. Golden State and DRA reached settlement on the allocation of general office costs for the City of Torrance contract.
- ~~22a. Golden State has not demonstrated that without a 1% equity adjustment, it will be unable to attract and retain highly skilled employees or that customer service will suffer. The current state unemployment rate is not sufficient incentive for current employees to perform at a high level and to attract skilled applicants for open positions and the competitive market for GSWC's employees has not been as depressed as the competitive market generally.~~
23. Golden State has been able to fill 85 positions in the last 12 months.
24. The current state unemployment rate is sufficient incentive for current employees to perform at a high level and to attract skilled applicants for open positions.
- ~~25. Golden State's request for to include the a 1% equity adjustment in its forecast for the 2010 test year is not reasonable.~~
- ~~25a. DRA's assertion that the current wage escalation rate sufficiently addresses the need for salary increases is not reasonable.~~
26. Golden State asserts that enhanced and expanded retiree medical benefits are necessary to stay competitive with other water utilities vying for the same employees from a limited pool of technically skilled candidates.
- ~~27. Golden State's request to expand and enhance retiree medical benefits would increase the retiree medical benefit costs to ratepayers by 350%. The cities and agencies that provide water service in the areas surrounding Golden State's service areas, with whom Golden State competes for water utility workers, offer some form of VEBA to their employees.~~
28. Golden State's request for expanded and enhanced retiree medical benefits is not reasonable.
29. Under the current ratemaking treatment for pension and post-retirement benefits, market fluctuations result in over-recovery in some years and underrecovery in others.

30. Balancing accounts remove the impact of market fluctuations and protect ratepayers from under-recovery, ~~but also remove an incentive for utilities to control costs.~~

31. ~~There are other methods for utilities to control the volatility of pension costs. Whether rates are based on an estimate of ERISA funding amounts or an estimate of the FAS 87 required amounts, the amount recorded in the balancing account is the difference between the amount included in rates and the actual amount required to be recorded under FAS 87.~~

32. Golden State's request for a pension balancing account is ~~not~~ reasonable.

33. Golden State's two general office facilities house 154 employees.

34. Varied and overlapping work schedules for its call center employees indicate a need for individual work spaces.

35. Golden State's request for \$288,900 in 2009 for new leased general office space is reasonable.

36. Golden State's compensation for its five highest paid executives falls high within the range set by its consultant.

37. Golden State has 12 executive or officers whose compensation falls within the range of compensation set for only the 5 highest paid positions.

38. Golden State's executive compensation ~~exceeds~~ is on par with the level recommended by its consultant.

39. DRA's request for executive labor expense that is \$1 million (30.1%) less than Golden State requested is not reasonable.

40. Allowing Golden State's executive compensation at a level that is ~~\$500,000 (15%) less than requested~~ the requested level is reasonable.

41. Golden State's COPS reorganization is not complete.

42. Golden State's next GRC is due to be filed in May 2011, about six months after the issuance of the decision in this proceeding.

43. A management audit prior to the next GRC would not provide sufficient time to determine if the reorganization is providing the expected beneficial results.

44. DRA's request for a management audit prior to the next GRC is not reasonable.

45. ~~In past GRCs, because more accurate information was not available, an estimate was used to calculate test year CCFT for FIT purposes.~~

46. ~~Some of Golden State's CCFT figures are readily available during the current tax year.~~

47. Using partial actual CCFT figures in the calculation of FIT is preferable to a total estimate.

48. Any changes to the current CCFT methodology will result in inconsistent tax treatment among Golden State's regions. A review of the CCFT is more appropriately undertaken in Golden State's upcoming statewide GRC due to be filed in 2011.

49. The Commission's Water Action Plan discusses the necessity of water

utilities addressing their infrastructure needs by undertaking long-term planning to provide the capital to improve or replace existing infrastructure.

50. Golden State's consultant's activities, or similar future activities, comply with the Water Action Plan.

51. Golden State's request for \$200,000 for Region II and \$250,000 for Region III regulatory expense in addition to the amounts settled with DRA is a reasonable, forecast of future expenses and Golden State's long-standing practice of deferring rate case expenses and amortizing them over the life of the rate case cycle is reasonable.

52. Golden State interprets DPH's § 64554(c) to require that all groundwater only systems meet MDD with the highest-capacity source off line, defining it as a "firm capacity" standard and a prudent utility practice.

53. DPH has clarified § 64554(c) as requiring only groundwater-only water systems to meet MDD with the highest source capacity off line before being granted an initial permit.

54. Golden State's request for two new wells in the Norwalk System is based on Golden State's application of its "firm capacity" standard.

55. Golden State's request for two new wells in the Norwalk System is not reasonable.

56. Removing the largest capacity source to determine adequate water supply or water pressure in the West Hampshire Plant is not required by DPH's § 64554(c) or GO 103-A.

57. Golden State's request for booster pump stations in the West Hampshire Plant to address water pressure issues when the highest-source capacity is off line is not reasonable.

58. Golden State's request for new storage tanks/reservoirs in the West Hampshire Plant is based on the need for the new booster station.

59. Because the new booster station in the West Hampshire Plant is not reasonable, the storage tanks/reservoirs are unnecessary and therefore not reasonable.

60. Golden State's request for a chlorination system is based on its need for a booster station and storage tanks/reservoirs.

61. Golden State's request for a chlorination system is not reasonable.

62. The Three Valleys MWD inspection of damage to the Miramar Liner and Cover found the reservoir was in good condition and recommended only repairs presents serious concerns from an operational and water quality standpoint and requires replacement.

63. Golden State's request for funds to replace the liner and cover on the Miramar Reservoir is not reasonable.

64. Reconstructing the San Dimas Baseline Well #4 forebay and pump is reasonable as the pump is projected to last as long as the current well and the pump will be used on the replacement well.

65. Golden State's request for funds to reconstruct the Baseline Well #4 forebay and pump is reasonable.

66. ~~The new site for a booster station in the San Dimas System has not been~~

chosen Golden State's process with respect to capital improvement projects of first obtaining Commission authorization, then taking steps to contact owners and negotiate contracts is reasonable.

67. Project design and permitting activities are associated with a particular site.

68. Because no site for the San Dimas booster station has been selected or purchased, Golden State's request for design and permitting fees is not reasonable.

69. The Apple Valley South System is a groundwater-only system and has a supply deficit of 88 gpm when Golden State applies its interpretation of with respect to "firm capacity" which requires meeting MDD with the highest source capacity off line.

70. Less-costly alternatives, such as conservation, should be explored to address the possible 88 gpm deficiency prior to burdening ratepayers with the expense of a new well Golden State's request for a new well in the Apple Valley South System would allow the system to meet firm capacity.

71. Golden State's request for a new well in the Apple Valley South System is not reasonable.

72. The Apple Valley North System is a single source groundwater system.

73. If Apple Valley North System's single source of groundwater is off line for any reason, the system has a 100% deficit that cannot be alleviated through conservation.

74. Relocating and enlarging the Yucca Booster Pump will enable Golden State to supply water to the Apple Valley North System if the single groundwater source is off line for any reason.

75. Golden State's request for funds to relocate and enlarge the Yucca Booster Pump in the Apple Valley North System is reasonable.

76. MWD of Orange County requires that water agencies purchase water at a constant rate over each 24-hour period.

77. The Placentia System's current storage capacity of 1.5 million gallons is insufficient to meet the storage requirements of 3.0 million gallons in order to maintain the constant rate required by the MWD of Orange County.

78. Golden State has provided an estimate for the land acquisition based on previous land acquisitions and land costs in Orange County, the site of the proposed reservoir.

79. Golden State's request for funds to purchase land and construct a new reservoir to increase storage capacity for the Placentia System in order to meet the MWD of Orange County requirement that water be purchased at a constant rate is reasonable.

80. The Placentia System's sole groundwater source is scheduled to be taken off line due to contamination, leaving the system with only two sources of supply, the OC-37 and OC-56 connections with the MWD of Orange County.

81. Although the MWD of Orange County's water supply has been reliable for the last 20 years, it is currently warning its customers of a possible

- 30% curtailment of water availability and possibly more if the drought continues.
82. Golden State's proposal to build two new wells in the Placentia System to increase its groundwater sources and decrease its reliance on diminishing MWD of Orange County water supplies is reasonable.
83. When Golden State takes its Concerto Well out of service, the Yorba Linda System will be completely reliant on a single source of groundwater, the OC-90 connection with MWD of Orange County.
84. Golden State has received warnings regarding curtailment of water supply from the MWD of Orange County.
85. Golden State's request to construct a transmission main to connect the Yorba Linda System with the Placentia System to improve system reliability is reasonable.
86. Golden State's booster pumps in the Placentia System Newport Plant are of insufficient size to deliver water to the system in the case of a planned or unplanned outage.
87. Golden State's request for permitting and design related to replacing the booster pumps in the Placentia System Newport Plant to increase system reliability in the event of an outage is reasonable.
88. Golden State's AMI program lacks the requisite preplanning detail and Justification at this time.
89. Golden State's request for AMI pilot program funding is not reasonable at this time.
90. Golden State's request for pre-deployment funds to hire a consultant to assist in the preparation and evaluation of a final AMI deployment plan is reasonable.
91. Golden State provided no guidelines to predict when a dry year will occur in Wrightwood.
92. Golden State has provided no information to estimate the lag time between precipitation and groundwater recharge in Wrightwood.
93. Golden State has not met its burden of proof regarding inadequate water supply in the Wrightwood System.
94. Golden State's request for \$11,313,039 for the Wrightwood water exchange project should not be included in rate base as the project was removed from the scope of its application.
95. Golden State's conservation costs are based on previous years' expenses, the Commission's Water Action Plan and the California Urban Water Conservation Council's recommendations.
96. Golden State's forecasted conservation costs are reasonable.
97. The La Serena project costs were ~~poorly~~ properly estimated.
98. ~~Golden State did not revise the special facilities fees based on the updated cost estimates~~ Fire storage deficiencies in the Nipomo system were identified in GSWC's 1998/1999 Master Plan.
99. ~~Golden State did not collect special facilities fees from all the developments.~~ The San Simeon earthquake in 2003 exacerbated the storage deficiency in Nipomo.

100. The La Serena project costs were incorrectly included in rate base after Golden State's last GRC. Fire storage demands for additional developments are not cumulative.
101. The La Serena plant improvements were undertaken for the sole benefit of new developments. DRA added the fire storage demands for the new developments thereby over-stating the demands imposed on the system by the new developments.
102. The La Serena plant improvement costs are not reasonable. Fire storage demand for the elementary school in Nipomo is 180,000 gallons, which added 60,000 gallons to the storage demand for the previously existing customers.
103. The size of the new storage tank built at the La Serena Plant is 500,000 gallons.
104. The incremental demand of 60,000 gallons for the elementary school is 12% of the new tank's capacity.
105. The La Serena plant improvements were primarily undertaken to meet long-standing supply and storage deficiencies in the Nipomo system.
106. The new tank at La Serena plant cost \$985,979.
107. GSWC collected \$287,000 in Special Facilities Fees from developers for the tank at the La Serena plant, which exceeds 12% of its actual cost.
108. Improvements made at the La Serena plant with the exception of the tank were needed solely for the previously existing customers and were not caused by the new developments.
109. The La Serena plant improvement costs are reasonable.
110. The La Serena plant improvement project costs were appropriately included in rate base after Golden State's last GRC.
111. GSWC request for a 1% equity adjustment is reasonable.

Conclusions of Law

1. Rule 12.1(d) provides that the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.
2. The settlement does not violate any statute or Commission decision or rule.
3. The settlement is consistent with law.
4. The settlement is in the public interest.
5. The settlement should be adopted.
6. Golden State should not be fined \$45,000 for including vacant positions in its labor expense calculations.
7. Golden State's proposed \$1,471,247 labor expense associated with vacant positions should not be approved.
8. The total number of military contracts connections at each military base should be counted as customers in the general office cost allocation methodology.
9. Purchased water costs for Golden State and Chaparral should be included in the total expenses factor of the general office cost allocation four factor methodology.
10. The total value of all distribution assets at the military bases served by

ASUS should be included in the plant factor of the four-factor cost allocation.

11. ~~Employee count should be used instead of (Total labor expense factor-factor should be used~~ in the general office four factor cost allocation methodology.

12. Golden State's request for a 1% equity adjustment should be ~~denied~~granted.

13. Golden State's request for \$3,340,800 in 2009, \$3,411,000 in 2010, \$3,505,000 in 2011, and \$3,573,000 in 2012 for expanded post-retirement medical benefits should be ~~denied~~granted.

14. Golden State's request for balancing account treatment for pension and benefits should be ~~denied~~granted.

15. Golden State's request for pension cost recovery of \$5,062,000 in 2009, \$5,115,000 in 2010, \$5,191,000 in 2011, and \$5,288,000 in 2012 should be granted.

16. Golden State's request for \$314,600, which includes \$288,900 for its new facility, in 2009, \$326,900 in 2010, \$339,600 in 2011, and \$352,800 in 2012 for rental expense should be ~~denied~~granted.

17. Golden State should be allowed to include ~~66~~100% of the rental cost for the new facility in rates.

18. Golden State's executive compensation included in rates should be ~~\$500,000 less than requested~~ \$3,288,965.

19. DRA's request for a management audit prior to Golden State's next GRC should be denied.

20. Golden State's ~~CCFT figure of \$630,400~~ current CCFT methodology should be adopted.

21. The issue of whether to revise Golden State's methodology for calculation of the CCFT should be undertaken in ~~Cal Am~~Golden State's statewide GRC to be filed in 2011.

22. Golden State's request for \$200,000 for Region II and \$250,000 for Region III regulatory expense in addition to the amounts settled with DRA should be granted, and Golden State is permitted to defer rate case expenses for Golden State's Region II and Region III ratemaking areas, as it has done in the past.

23. Golden State's "firm capacity" standard exceeds the requirements of DPH's § 64554(c).

24. Golden State's request for \$2,639,737 in 2009 and \$3,946,809 in 2010 to purchase land and drill, develop and equip two new 900 gpm wells at the Norwalk System's Imperial East site should be ~~denied~~granted.

25. Golden State's request for \$2,639,737 in 2009 and \$3,946,809 in 2010 to purchase land and drill, develop and equip two new 900 gpm wells at the Norwalk System's Imperial East site should be ~~denied~~granted.

26. Golden State's request for \$240,000 in 2009 and \$1,360,390 in 2010 to design and construct a new booster pump station in the Central Basin West Hampshire Plant should be ~~denied~~granted.

27. Golden State's request for \$366,895 in 2010 and \$1,967,565 in 2011 to design and construct a new 2.0 million gallon reservoir at the Hampshire Plant and demolish the existing 0.25 million gallon Hampshire Tank should be ~~denied~~granted.

28. Golden State's request for \$36,689 in 2010 and \$248,045 in 2011 for a chlorination system for the Central Basin Hampshire Plant Booster Station reservoir should be ~~denied~~granted.
29. Golden State's request for \$5,301 in 2008 and \$958,973 in 2009 to replace the liner and cover on the Miramar Reservoir #2 at Three Valleys MWD should be denied.
30. Golden State's request for \$56,308 in 2008 and \$278,540 in 2009 to reconstruct the hydraulics surrounding the San Dimas System Baseline Well #4 should be granted.
31. Golden State's request for \$265,542 in 2011 for design and permitting costs associated with building a new booster station to move water from the Vinnell gradient to the Wayhill gradient in the San Dimas System should be denied.
32. Golden State's request for \$2,075,861 to purchase land and design, construct, drill and equip a new well in the Apple Valley South System should be denied.
33. Golden State's request for \$746,058 to relocate and enlarge the Yucca Booster Pump in the Apple Valley North System should be granted.
34. Golden State's request for \$19,284 in 2010 and \$5,242,589 in 2011 to acquire land to build a new reservoir should be granted.
35. Golden State's request for \$1,865,386 to drill and equip a new 1,500 gpm well and \$206,658 for design and permitting of a second well in the North Zone of the Placentia System should be granted.
36. Golden State's request for \$55,134 in 2011 for the permitting and design related to replacing two booster pumps with larger capacity pumps should be granted.
37. Golden State's request for \$55,134 in 2011 for the permitting and design related to replacing two booster pumps with larger capacity pumps should be granted.
38. Golden State's request to test, evaluate, and implement one phase of a \$27,179,393 AMI system in Region II should be denied.
39. Golden State's request for \$341,292 to hire a consultant to assist in the pre-deployment preparation and evaluation of a final AMI deployment plan should be granted.
40. Golden State's request for \$11,313,039 for construction of the Wrightwood Project should be denied.
41. Golden State's request for \$738,644 for conservation expenses in Region III should be granted.
42. Golden State should remove ~~\$3,518,000~~an amount associated with the La Serena project costs from rate base in accordance with the decision.
43. Golden State's Region I ratepayers should be given a one-time credit ~~of~~
\$1,112,275 to offset the fact that Golden State previously included the La Serena costs in rate base in accordance with the decision.

ORDER

IT IS ORDERED that:

1. The joint motions of Golden State Water Company and the Division of Ratepayer Advocates to approve the settlement agreements, are granted.
2. As provided for in the settlement, Golden State Water Company is authorized to file a Tier 2 advice letter to recover actual costs incurred for the design, acquisition of land and construction of a 500,000 gallon reservoir in Claremont after the project is completed, used, and useful. The advice letter recovery is capped at a total cost for design, land acquisition and construction of \$1,677,542. This amount includes overhead of 17.80% for the design and 26.88% for construction and a contingency rate of 7.5%.
3. As provided for in the settlement, Golden State Water Company is authorized to file a Tier 2 advice letter to recover actual costs incurred to stabilize the Eaglecliff Tank in San Dimas after the project is completed, used, and useful. The advice letter recovery is capped at a total cost of \$329,217 including overhead rates of 17.80% for design and 26.88% for construction and a contingency rate of 7.5%.
4. As provided for in the settlement, Golden State Water Company is authorized to file a Tier 2 advice letter to recover actual costs incurred to purchase land for a 2.5 million gallon reservoir site in South San Gabriel after the project is completed, used, and useful. The advice letter recovery is capped at a total cost of \$2,064,200 including a contingency rate of 7.5%.
5. As provided for in the settlement, Golden State Water Company is authorized to file a Tier 2 advice letter to recover actual costs incurred to install the Lone Pine reservoir in Wrightwood after the project is completed, used, and useful. The advice letter recovery is capped at \$537,500 including overhead of 17.80% and a contingency rate of 7.5%.
6. As provided for in the settlement, Golden State Water Company is authorized to file a Tier 2 advice letter to recover actual costs for the Sheep Creek Reservoir in Wrightwood after the project is completed, used, and useful. The advice letter recovery is capped at \$376,250 including overhead of 17.80% and a contingency rate of 7.5%.
7. As provided for in the settlement, Golden State Water Company is authorized to file a Tier ~~2~~1 advice letter to establish a balancing account, as of January 1, 2010, to recover \$375,000 for the cost of hiring a consultant to conduct a comprehensive well replacement study. The study shall be expensed in the year the study is conducted and recovery shall be based on actual prudently incurred costs at the time of the next general office general rate case.
8. For matters other than those addressed in Ordering Paragraph 1, Golden State Water Company's application is granted only to the extent specified in this decision and is otherwise denied.
9. Golden State Water Company shall provide a one-time credit of \$1,112,275

to customers as an offset to La Serena plant improvement project costs included in rate base.

10. Golden State Water Company is authorized to file by Tier ~~2~~1 advice letter, revised tariff schedules, and to concurrently cancel its present schedules for such service. This filing shall be subject to approval by the Commission's Division of Water and Audits. The effective date of the revised schedules shall be five days after filing, and shall apply only to service rendered on or after that date.

11. For escalation years 2011 and 2012, Golden State Water Company shall file Tier 2 advice letters in conformance with General Order 96-B proposing new revenue requirements and corresponding revised tariff schedules for each district and rate area in this proceeding. Golden State Water Company's advice letters shall follow the escalation procedures set forth in the Commission's Rate Case Plan (Decision 07-05-062) for Class A Water Utilities and shall include appropriate supporting workpapers. The revised tariff schedules shall take effect on January 1, 2011 and January 1, 2012, respectively and shall apply to service rendered on and after their effective dates. The proposed, revised revenue requirements and rates shall be reviewed by the Commission's Division of Water and Audits. The Division of Water and Audits shall inform the Commission if it finds that the revised rates do not conform to the Rate Case Plan, this order, or other Commission decisions, and if so, reject the filing.

12. The sur-charge to true-up the interim rates shall be collected over the remainder of this rate case cycle. The tariff implementing the sur-charge may be included in the filing authorized in Ordering Paragraph 10 or filed by Tier ~~2~~1 Advice Letter within 5 days of the effective date of the rate increases authorized by this decision.

13. Application 08-07-010 and Application 07-01-014 are closed.

This order is effective today.

Dated , at San Francisco, California.

Appendix B

Golden State identifies the following administrative errors and omissions in the PD and/or its Appendices:

B-1: In accordance with Finding of Fact 48, for Region III, the tables should be revised to use partial actual Corporate Franchise Tax (CCFT) figures in the calculation of Golden State's Federal Income Tax (FIT).

B-2: In accordance with Conclusion of Law 41, the tables should be revised to incorporate Golden State's estimate for conservation expenses of \$738,644 in Region III.

B-3: In accordance with the Settlement, table 5 on page 10 should be revised to show that the total number of employees allowed in Region III is 12, not 11.

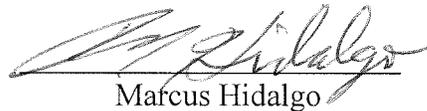
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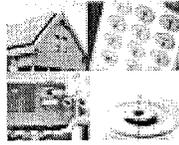
I hereby certify that I have this day served a copy of the

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

on all known parties to A.08-07-010 and A.07-01-014 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 November 18, 2010, at San Francisco, California.


Marcus Hidalgo



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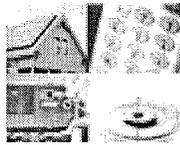
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CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF WATER AND AUDITS
ROOM 3102