



**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) R.09-04-012
Governing Affiliate Transactions and the) (Filed April 16, 2009)
Use of Regulated Assets for Non-Tariffed)
Utility Services (formerly called Excess)
Capacity.))
_____)

**RESPONSE OF THE CALIFORNIA WATER ASSOCIATION
IN SUPPORT OF MOTION OF CALIFORNIA AMERICAN WATER COMPANY
FOR ORAL ARGUMENT BEFORE THE COMMISSION
REGARDING PROPOSED AFFILIATE TRANSACTION RULES**

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October 13, 2010

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Pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure, California Water Association (“CWA”) hereby files its response to the “Motion of California American Water Company for Oral Argument Before the Commission Regarding Proposed Affiliate Transaction Rules,” filed with the Commission on October 11, 2010. CWA and its member water utilities support California American’s motion and urge the Commission to grant it and schedule oral argument before the full Commission by all parties prior to adopting affiliate transaction rules for the Commission-regulated water utilities.

CWA agrees with California American that oral argument will greatly assist the assigned Administrative Law Judge and ultimately the Commission to adopt clear and consistent affiliate transaction rules that are workable and applicable to the water industry. As CWA has maintained throughout this proceeding, the affiliate rules currently being proposed for adoption are rules that are based on energy utility affiliate transactions rules and that are largely inappropriate application to the Commission-regulated water industry. The opening and reply comments filed by CWA and several of its water utility members further emphasize differences among the Class A water utilities themselves making application of energy utility-

based rules, without the opportunity for flexibility and a process for seeking exemptions from the rules, even more problematic for the Commission-regulated water industry.

The Division of Ratepayer Advocates (“DRA”) opposes California American’s motion for oral argument.¹ DRA states in its response that California American “is not *entitled* to oral argument under the Rules of Practice and Procedure, Rule 13.13 ... [which] gives the parties the right to make a final oral argument before the Commission, only in those quasi-legislative proceedings ‘in which hearings were held.’ (Rule 13.13(b).)” DRA Response, at 2; emphasis in original. While DRA is technically correct that a party is only *entitled* to an oral argument in a quasi-legislative proceeding in which a hearing is held, California American did not claim any right to oral argument. Moreover, “the Commission has the discretion, where not otherwise obligated by law, to schedule the presentation of oral argument before it.” *Rulemaking to Update, Clarify and Recodify Rules of Practice and Procedure*, R.06-02-011, 2006 Cal PUC LEXIS 80, at *32.² The Commission previously has held with respect to oral argument on applications for rehearing that “oral argument may be granted if the Commission determines that it will materially assist the Commission in resolving the application, and the application or response raises issues of major significance for the Commission.” *Cox California Telecom, LLC v. Global NAPs California, Inc.*, D.07-08-031, 2007 Cal PUC LEXIS 475, at *25. In this proceeding – despite DRA’s characterization of the request for oral argument as an “obvious delay tactic” – like California American, CWA believes that oral argument “will materially assist the Commission” on “a subject of major significance to the Commission” and to the water industry.

¹ See, “Response of the Division of Ratepayer Advocates to the Motion of California American Water for Oral Argument Before the Commission Regarding Proposed Affiliate Transaction Rules,” dated October 12, 2010 (“DRA Response”).

² See, also, Rule 13.13(a), Rules of Practice and Procedure (“The may, on its own motion or upon recommendation of the assigned Commissioner or Administrative Law Judge, direct the presentation of oral argument before it.”)

While the Scoping Memo in this proceeding did not provide for a hearing or oral argument, it did state that “issues which are not resolved in the workshop process may be able to be resolved or narrowed through the alternate dispute resolution process,” which was strongly encouraged. Scoping Memo, dated November 4, 2009, at 2-3. Most of the parties to this proceeding requested the ADR services of the Administrative Law Judge Division in May 2010. Unfortunately, the ALJ Division was not able to provide mediators to the parties within the time frame desired by the assigned Commissioner and Administrative Law Judge. Having been precluded from the ADR option due to time constraints, CWA urges that the Commission should at least provide the parties with the opportunity for oral argument before adopting rules which may have far-reaching – and, from the water companies’ point of view, adverse – impacts on the water utilities and their customers.

CWA believes that the Commission will greatly benefit from the opportunity to hear oral argument from all parties involved in this proceeding. CWA urges the Commission to grant California American’s motion and schedule oral argument for all parties wishing to participate before the full Commission at its earliest convenience.

DATED: October 13, 2010

Respectfully submitted,

By: /s/ JOSE E. GUZMAN, JR.

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CERTIFICATE OF SERVICE

I, Jeannie Wong, hereby certify that on this date I served by electronic mail and by hand delivery, the foregoing corrected **RESPONSE OF THE CALIFORNIA WATER ASSOCIATION IN SUPPORT OF MOTION OF CALIFORNIA AMERICAN WATER COMPANY FOR ORAL ARGUMENT BEFORE THE COMMISSION REGARDING PROPOSED AFFILIATE TRANSACTION RULES** on the parties in Rulemaking 09-04-012, below:

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Executed this 13th day of October, 2010 in San Francisco, California.

/S/ JEANNIE WONG
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CALIFORNIA PUBLIC UTILITIES COMMISSION

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PROCEEDING: R0904012 - CPUC - OIR TO DEVELO
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