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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the matter of the Application of Golden State Water Company (U 133 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

RESPONSE OF GOLDEN STATE WATER COMPANY TO THE APPLICATION FOR REHEARING OF THE DIVISION OF RATEPAYER ADVOCATES OF DECISION 10-11-035

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I. INTRODUCTION

Pursuant to Rule 16.1(d) of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Golden State Water Company ("GSWC") respectfully submits this response to the Application for Rehearing of Decision 10-11-035 ("Application") submitted by the Division of Ratepayer Advocates ("DRA").

California Public Utilities Code Section 1732 and Rule 16.1(c) of the Rules of Practice and Procedure of the Commission make clear that applications for rehearing are a means to remedy legal error on the part of the Commission.[1] Applicants for rehearing may not ask the Commission to reweigh evidence[2] nor dispute the Commission's decisions of policy, as the

[1] Cal. Pub. Util. Code § 1732 (West 2010) (stating: "The application for rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful . . . ."); California Public Utilities Commission Rule of Practice and Procedure 16.1(c) (stating: "The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously").

[2] See, infra, fn. 30.

Commission has repeatedly explained that policy arguments have no place in an application for rehearing.[3] In its Application, however, DRA fails to set forth any legal error on the part of the Commission. Rather, all of its assertions are premised upon its disagreement with the Commission's assessment of the evidence, rely on cases that are inapplicable given the facts in this proceeding or rely on evidence not in the record, raise impermissible policy arguments, or simply reflect a fundamental misunderstanding of prior Commission decisions or Decision 10-11-035.

Specifically, as discussed in more detail below, DRA's assertion that the Commission improperly applied Tariff Rule 15 ("Rule 15") is wrong because it is based on DRA's misinterpretation of prior decisions of the Commission, as well as a misinterpretation of Rule 15. Moreover, DRA's challenge to the Commission's approach to the number of customers factor used in the four factor allocation methodology is misplaced because it relies on cases that are factually dissimilar to the record in this proceeding and is premised on impermissible policy arguments. DRA's assertion that the Commission improperly authorized GSWC to recover deferred regulatory expenses fails because DRA ignores the record's abundant evidence that Decision 10-11-035 is entirely consistent with the Commission's historic treatment of GSWC, and it evinces DRA's fundamental misunderstanding of prior Commission decisions and of Decision 10-11-035. Finally, DRA's assertion that Decision 10-11-035 requires modification to prevent double recovery impermissibly relies on evidence not in the record, and further, DRA misconstrues that evidence. Therefore, DRA has identified no legal error on the part of the Commission, and its Application should be denied.

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[3] See, infra, fn. 40.

II. DISCUSSION

A. DRA'S ASSERTION THAT THE COMMISSION IMPROPERLY APPLIED RULE 15 REGARDING THE LA SERENA PLANT EXPANSION IS WRONG

DRA asserts that the Commission erroneously allocated the cost of the La Serena plant additions between new and existing customers, arguing (i) that Rule 15 requires new customers to bear all of the costs of new facilities if at least 50% of the design capacity of such facilities are required to serve them and (ii) that the Commission accepted DRA's analysis that approximately 70% of the La Serena facilities will be used to serve new customers. DRA misunderstands and misinterprets Rule 15, and also misstates the Commission's findings as to the allocation of the La Serena facilities' costs between new and existing customers.

Fundamentally, DRA's argument fails because its interpretation of Rule 15 is erroneous and contradicted by the plain language of Rule 15, which provides:

> If special facilities consisting of items not covered by Section C.1.a are required for the service requested and, when such facilities to be installed will supply both the main extension and other parts of the utility's system, at least 50 percent of the design capacity (in gallons, gpm, or other appropriate units) is required to supply the main extension, the cost of such special facilities **may** be included in the advance, subject to refunds, as hereinafter provided, along with refunds of the advance of the cost of the extension facilities described in Section C.1.a above.[4]

GSWC agrees with DRA that "the language of Rule 15 is unambiguous."[5] And that language clearly states that the cost "may" be included. That is, by the inclusion of "may" as opposed to "shall," Rule 15 permits but does not require that new customers bear 100% of the cost of new facilities when at least 50% of such costs are attributable to the service of those new customers.

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[4] Rule 15 Section C.1.b Revised Cal. P.U. Sheet No. 393-W (emphasis added).

[5] Application for Rehearing of the Division of Ratepayer Advocates of Decision 10-11-035 (Dec. 22, 2010) at 4. ("Application").

DRA's interpretation of this provision to require inclusion, rather than permit inclusion, is wrong.

DRA asserts that a long standing Commission practice supports its interpretation of Rule 15; but DRA fails to cite a single Commission decision supporting that claim.[6] In fact, the one Commission decision cited by DRA actually contradicts DRA's position. Specifically, in Decision 05-12-020 the Commission approved of an allocation between new and existing customers of Apple Valley Ranchos Water Company based on a determination of the percentage of the facilities that were "clearly attributable to the new customers," which the parties had agreed was 75% of the cost of the proposed new well construction.[7] Thus, the Commission adopted a 75% / 25% allocation of costs between new and existing customers, an approach that undermines rather than supports DRA's purported interpretation of Rule 15 as mandating a 100% allocation to new develpments.

Moreover, the Commission has already clearly addressed the policy issue of the interpretation of the precise language at issue in Rule 15, and rejected the interpretation put forth by DRA in its Application. Specifically, in D. 90-02-042, the Water Utilities Branch of the Commission's Advisory and Compliance Division ("Branch") attempted the very same argument raised by DRA in its Application—that Section C.1.b mandates that a utility collect 100% of the cost of special facilities from new development in the event that the 50% threshold is met.[8] The Commission considered the policy arguments raised by Branch and rejected them, finding that the language of Rule 15 Section C.1.b means what it plainly says:

> the tariff rule uses the word 'may." Therefore, even when the 50 percent test is met, [California Water Service Company] CWS **has**

[6] Application at 3.

[7] Decision 05-12-020 at 18.

[8] Decision 90-02-042, 35 CPUC 2d 428 at *21.

> **discretion** to decide whether to demand an advance for special facilities. Adopting Branch's adjustment would penalize CWS for exercising a right expressly provided in its tariff.[9]

Thus, DRA's strained interpretation of Rule 15 as mandating a non-discretionary 100% allocation of costs to new development under Section C.1.b is directly contradicted by the Commission's decisions addressing Rule 15, and should be rejected.[10]

Moreover, even assuming *arguendo* that DRA's flawed interpretation of Rule 15 were correct, DRA's assumption that the 50% threshold is measured against the aggregate costs of all of the new facilities at issue is erroneous. DRA once again misunderstands the operation of Rule 15. These developments are completely separate and distinct and the main extension contracts for each were entered into over the course of several years.[11] As such, the developments are treated separately for purposes of triggering the provisions of Rule 15 Section C.[12] In Decision 96-11-009, the Commission accepted a stipulation under which a developer would only be required to advance its proportional cost of a new well, and California Water Company would apply the same approach to all developers in its Chico District, explaining that this approach "seems an appropriate resolution in the context in this proceeding, in which the Commission would otherwise have to decide whether two adjacent subdivisions proposed by the same developer should be treated as one for purposes of triggering an advance by that developer to cover the full costs of a new well."[13] This statement would be illogical if all new developments

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[9] Id. at *22 (emphasis added).

[10] DRA also asserts that "the 50% Rule" is part of Standard Practice U-17 and that the Standard Practice was created as a result of Rulemaking 90-07-004. However, while it is true that U-17 includes the language of Rule 15 paragraph C.1.b cited above, no part of Standard Practice U-17 suggests that this language requires that new customers bear all of the costs of new facilities simply because 50% of the cost of such facilities are attributable to servicing the new customers.

[11] GSWC Supplemental Testimony (Gisler) at 3-4.

[12] See Webb Homes v. California Water Service Company, Decision 96-11-009, 1997 WL 627664 at *2.

[13] Id.

could simply be aggregated to reach Rule 15's 50% threshold even if the associated main extension contracts were executed years apart and with different developers.

Thus, even if Rule 15 requires that the costs of new facilities be fully borne by new customers who require at least 50% of such new facilities' design capacity, which it does not, none of these customers would qualify because on an individual basis, none requires 50% of the new facilities to serve its needs.[14] DRA tries to deflect this fact by asserting that the new school was built to accommodate the children of the new customers—but this statement is wholly unsupported by the record and makes no sense in any event given the small size of the residential developments relative to the number of students to be served by the school.[15]

Additionally, DRA significantly misstates the record in asserting that the Commission has accepted its analysis of the percentages of the new facilities that will serve new and existing customers. Just the opposite is true—the Commission expressly determined that both GSWC's and DRA's approach do not "appropriately reflect the fair share of the cost of the new developments that ought to be paid by the developers."[16] Instead, the Commission looked to GSWC's sheet used to calculate the facilities fees for guidance in deriving percentages of 52.4% for new developments and 47.6% for existing customers, and used these percentages as "a reasonable proxy for the allocation of costs between existing and new customers."[17] Thus, neither the evidentiary record, nor the Commission's decision, supports DRA's assertions regarding the percentage of the La Serena Plant that is attributable to the new development. In fact, even the Commission only adopted its 52.4% figure as a proxy, without explicitly making a

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[14] Decision 10-11-035 at 82-83.

[15] The total number of new residences is 63 units and the elementary school will accommodate 650 students. GSWC Supplemental Testimony (Gisler) at 3-4. Thus, for those 63 units to fill the school designed to serve 650 students, each household would have to have on average 10.3 children all of elementary school age.

[16] Decision 10-11-035 at 82.

[17] Id. at 83.

determination that at least 50% of the design capacity of the facilities are required to serve new customers, simply stating "it would be reasonable to assume" that this percentage was for new development.[18]

In the absence of persuasive substantive arguments, DRA resorts to rhetoric suggesting that the Commission's decision with respect to the La Serena plant expansion is the result of ex parte lobbing by GSWC, "arbitrary and capricious" decision-making on the part of the Commission, and the Commission "overturn[ing] the precedent set by earlier rulings as a matter of caprice or whim."[19] DRA's allegations are utterly incongruous. In fact, Decision 10-11-035 was issued after two rounds of briefing by the parties, six days of evidentiary hearings, two rounds of direct and rebuttal testimony, a proposed decision that was issued and withdrawn, a second proposed decision, an alternate proposed decision, and extensive comments. The Commission's detailed discussion explaining the positions taken by the parties and the method that it ultimately adopted in allocating the La Serena facilities' costs between new and existing customers[20] makes clear that the Commission has thoroughly examined this issue, weighed the considerable testimony provided by the parties and provided an allocation that it deems fair.

B. DRA'S ASSERTION THAT THE COMMISSION'S APPROACH TO THE NUMBER OF CUSTOMERS FACTOR IN THE FOUR FACTOR ALLOCATION IS GROUNDS FOR REHEARING OF DECISION 10-11-035 IS WRONG

DRA contends that the Commission's treatment of military base customers in the four factor allocation methodology of allocating general office costs among GSWC and its affiliates "overturns prior Commission policies or practices that have guided both the utilities and DRA in

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[18] Id.

[19] Application at 3.

[20] Decision 10-11-035 at 76-83.

reviewing utility applications."[21] DRA is wrong. To the contrary, the Commission acted in accordance with its long-standing practice of considering the particular facts before it when determining how to apply the individual allocations when applying the four factor method. Further, even if Decision 10-11-035 were to represent an evolution in the Commission's policy, which it does not, such policy choices are within the providence of the Commission and do not constitute legal error.

DRA takes issue with the Commission's conclusion in this proceeding that a military base constitutes a single customer for the purpose of four factor allocations.[22] DRA relies heavily on allocation methodologies that the Commission used in Decision 03-05-078, resolving Suburban Water Systems' ("Suburban") general rate case in 2003, and in Decision 07-10-034,[23] resolving GSWC's general rate case in 2007, to support its contention that Decision 10-11-035 is a departure from the Commission's past policies. However, due to important factual differences in the records in those proceedings, the Commission's allocation methodologies used in those cases have no bearing here.

First, Suburban had asserted that "zero" was the number that should have been used for the number of customers served by its affiliates under service contracts with various military bases, claiming that they had "clients rather than customers."[24] However, in Decision 03-05-078, the Commission explained that it was not persuaded by the clients versus customers distinction.[25] In contrast, in this proceeding, GSWC assigned American States Utility Service ("ASUS"), its affiliate serving military bases, six customers, not zero customers, and it set forth

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[21] Application at 4.

[22] Id. at 5.

[23] DRA cites Decision 07-10-034, but Decision 07-10-034 was rescinded and replaced by Decision 07-11-037.

[24] Decision 03-05-078 at 22.

[25] Id. at 20, 22.

extensive evidence as to why treating each of the six contracts under which it serves military bases as a single customer is appropriate. Specifically, the record demonstrates that neither GSWC nor ASUS delivers bills to the residents on the bases for water service, collects payments from the residents on the military bases, or has any other direct interaction with the military base residents.[26] Rather, as with master-metered customers which are counted as one customer, GSWC's only point of contact and interaction is with the base, its single customer.[27] Further, this testimony is consistent with the general principle that customers and not connections are counted for cost allocation purposes.[28] As such, there is significant evidence in the record to support the Commission's finding that ASUS has six customers, as the Commission determined.[29] Although DRA may not agree with the Commission's assessment of the record, an applicant for rehearing may not ask the Commission to reweigh evidence.[30]

Moreover, DRA's reliance on 07-11-037[31] is misplaced, as the Commission's adoption of a modified three factor allocation in that case was as an "interim expedient" meant to apply only to the specific circumstances presented in that case.[32] Indeed, DRA fails to address the fact that in the Commission's use of a modified three factor methodology in Decision 07-11-037, it did

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[26] Comments of Golden State Water Company on Proposed Decision and Alternate Proposed Decision, A.08-07-010 (Nov. 9, 2010) at 20.

[27] Id.

[28] See, e.g., Re Citizens Utilities Company of California, Decision 85-07-084, 18 CPUC 2d 387 at *16 (explaining "[t]he customer component of the four-factor formula is actual customers, not connections).

[29] Decision 10-11-035 at 24.

[30] See, e.g., Application of Southern California Gas Company for Approval of Advanced Metering Infrastructure, Decision 10-11-036 at 9 (rejecting an application for rehearing in which the applicants argued the evidence "was based on wild speculation . . . ." as it explained "[t]his argument constitutes no more than an improper request for us to reweigh the evidence, and thus, a relitigation of a fiercely debated issue"; also quoting Decision 00-11-042 for the proposition that "[t]he Commission need not explain in minute detail why it credits some evidence and discredits others" and ultimately concluding that the applicants' request neither raised legal error nor met the purpose of an application for rehearing).

[31] See, supra, note 23.

[32] Decision 07-11-037 at 34.

not consider the value of plant,[33] and thus DRA seeks to have the Commission revisit one aspect of the four factor allocation set forth in Decision 10-11-035, but not all that goes with it. In this proceeding, however, after reviewing ASUS' contracts for operations on military bases, the Commission adopted DRA's recommendation that GSWC's plant factor for ASUS-Military include a total plant factor of $226,043,586.[34] If DRA wants the Commission to blindly apply the allocation methodology here exactly as it did in the 2007 decision, despite the evident differences in the record before it, then the resulting revision of Decision 10-11-035 should incorporate the removal of the plant factor from the cost allocation analysis. While such a revision is not the outcome that GSWC recommends, it is important to note that DRA disputes differences in the Commission's allocation methodology between Decision 07-11-037 and Decision 10-11-035 only when those differences arise from arguments that DRA lost.

Further, a host of decisions reveals that the four factor method is standard,[35] and that the decisions cited by DRA are thus outliers in which the Commission used modified three factor methods in response to unique circumstances. In fact, in Decision 09-03-007, resolving Suburban's general rate case in 2009, the Commission again used the four factor method for Suburban because it found that the three factor method used in Decision 03-05-078 was not applicable given the record before it.[36] As the Commission accurately explained in Decision 10-11-035, its standard policy is to use the four factor method "unless it can be shown that one or more of the established four factors are inappropriate or would result in distorting the allocation

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[33] See Decision 07-11-037 at 35.

[34] Decision 10-11-035 at 25.

[35] See Decision 06-07-011 at 48, Decision 07-04-046 at 23, and Decision 08-06-022 at 55.

[36] Decision 09-03-007 at 18.

results unreasonably."[37] Thus, Decision 10-11-035 reflects no departure from the Commission's long-standing practices.

In examining DRA's contentions regarding the Commission's use of the traditional four factor methodology in Decision 10-11-035, it is critical to keep in mind that the standard of review for applications for rehearing is legal error.[38] In DRA's effort to portray a decision with which it disagrees as such, DRA uses incendiary language—implying that the Commission has changed course "as a matter of wont."[39] However, even if Decision 10-11-035 does reflect an evolution in the Commission's policy, a point which GSWC strongly disputes as set forth above, such policy choices are within the discretion of the Commission and do not constitute legal error. To the contrary, the Commission has repeatedly explained that such policy issues do not constitute proper grounds for seeking rehearing of a Commission decision or order.[40]

Finally, DRA argues that the Commission has followed a "zigzag course" with respect to cost allocation over the past seven years and that the Commission should therefore modify Decision 10-11-035 in accordance with either Decision 03-05-078 or Decision 07-10-034.[41]

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[37] Decision 10-11-035 at 23.

[38] See, supra, fn. 1 and accompanying text.

[39] Application at 5.

[40] See Application of Ponderosa Telephone Company for Rehearing of Resolution T-17132, Decision 10-05-052 at 9 (rejecting the applicant's allegation that the Resolution "represents an unfortunate departure from the spirit of employee protection laws and the Commission's stated policy" on the grounds that "[t]his policy argument as no place in an application for rehearing, which should raise allegations of legal error"); see also Re Review Policies Concerning Intrastate Carrier Access Charges, Decision 08-02-037, 2008 WL 2089430 at *2 (Cal.P.U.C.) (rejecting the request in an application for rehearing that the Commission insert an ordering paragraph providing that "a competitive local exchange carrier shall charge an interexchange carrier only for functions it provides to the interexchange carrier" on the grounds that "[i]t is obvious that the issue Qwest raises is a policy issue, not an allegation of legal error"); see also Re Pacific Bell, Decision 03-02-073, 2003 WL 1338092 at *5 (Cal.P.U.C.) (rejecting an argument posed in an application for rehearing that requiring excess earnings of a directory affiliate to be included in sharing 'contradicts the essence' of the New Regulatory Framework on the grounds that this is "entirely a policy argument and appears to be similar to that which [the applicant] pursued during the hearing" and explaining that "[a]pplications for rehearing of Commission decisions specifically provide an opportunity to present the Commission with allegations of legal error within a challenged decision, not with policy arguments").

[41] Application at 5.

However, if the Commission is persuaded that there is confusion with respect to cost allocation, a rehearing of Decision 10-11-035 is not the appropriate remedy. Rather, in such case, the Commission should issue an Order Instituting Rulemaking and have a statewide proceeding to consider the four factor methodology so that all interested parties may be heard. As the Commission has committed no legal error in this proceeding and applications for rehearing are an inappropriate forum for policy arguments, DRA's Application should be denied.

C. DRA'S ASSERTION THAT THE COMMISSION IMPROPERLY AUTHORIZED GSWC TO RECOVER DEFERRED REGULATORY EXPENSES IS WRONG

DRA erroneously contends that the Commission reversed its long-standing policies by authorizing GSWC to recover deferred regulatory expenses. This is a broad over-generalization that ignores GSWC's history of recovering regulatory expenses on a deferred basis for more than fifty years. Further, DRA's discussion of memorandum account treatment for these expenses evinces its fundamental misunderstanding of Decision 10-11-035.

While the Commission's general rule may be to set rates based on forecasted expenses, in Decision 10-11-035 the Commission appropriately recognized that it has historically allowed GSWC to recover regulatory expenses incurred in connection with the current rate case over the years covered by the rate case. The Commission noted that GSWC provided language from its 1967, 1969, 1976 and 1982 GRC Results of Operations Reports as proof of its historic practice, and explained that "[a]lthough regulatory expense may appear to be a forecast of future regulatory expenses, that is not the case."[42] The Commission's determination is supported by the record. GSWC's witness Keith Switzer provided testimony describing its long-standing practice:

> As stated previously in this testimony, GSWC has had a long-standing practice of deferring its regulatory expenses during a rate

[42] Decision 10-11-035 at 48.

> 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.[43]

As such, nothing in Decision 10-11-035 overturns the Commission's long-standing policies. To the contrary, Decision 10-11-035 authorizes GSWC to continue a practice that has been in place for more than fifty years.

As GSWC repeatedly stated in the underlying proceeding, if the Commission wants GSWC to change course and recover its regulatory expenses on a forecasted basis in the future, the Commission should instruct it to do so and provide a methodology that allows GSWC to transition. However, prohibiting GSWC from recovering costs incurred in accordance with the very same procedures that the Commission has approved for GSWC for more than five decades would constitute a departure from the Commission's long-standing policies. The Commission should also note that DRA's self-serving approach to this issue has undermined its credibility. Specifically, DRA requested that the Commission authorize the recovery, on a deferred basis, of the expenses that DRA incurred in hiring Larkin and Associates, PLLC to assist with the general rate case that culminated in Decision 10-11-035. In response to DRA's recommendation, GSWC agreed to reimburse DRA for these expenses for later recovery in its rates.[44] DRA's contention

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[43] GSWC Supplemental Testimony (Switzer) at 4; see also Opening Brief of Golden State Water Company, A.08-07-010 (July 6, 2009) (public version) at 89-90 (discussing (i) the testimony of GSWC Witness Hilda Wahhab who explained that, during the 10-15 years that she has worked on rate case expenses, GSWC has consistently booked its regulatory expenses in its Deferred Rate Case Expense Account for Commission approval and then amortization over the three-year rate case cycle; and (ii) GSWC's 1985 Annual Commission Report and every annual report since 1985, evidencing that the Commission has authorized GSWC to defer its rate case expenses since at least 1985).

[44] Supplemental Opening Brief of Golden State Water Company, A.08-07-010 (Apr. 29, 2010) at 27.

that GSWC's directly incurred regulatory expenses from the proceeding may not be recovered, but that the costs of DRA's consultant may be recovered on a deferred basis, is unjustifiable.

DRA attempts to draw a stark line whereby "either D.10-11-035's conclusion about the proper treatment of regulatory commission expenses is wrong or D.09-07-021, D.04-06-018 and all other prior general rate case decisions of this Commission involving Class A water utilities are wrong . . . ."[45] However, DRA has clearly over-generalized the Commission's past decisions. As the foregoing paragraph illustrates, the Commission has approved GSWC's practice in numerous general rate cases over many decades, and has also authorized Suburban to recover regulatory expenses on a deferred basis and roll those expenses into future rates.[46]

Moreover, DRA's citations of Decision 09-07-021 and Decision 04-06-018 are misplaced. Decision 09-07-21 determined that California-American Water Company ("Cal-Am") must forecast its regulatory expenses, but this conclusion was consistent with the Commission's prior treatment of Cal-Am.[47] Because the Commission's historic treatment of GSWC has been to permit the recovery of regulatory expenses incurred in the current rate case in the years following the rate case, the Cal-Am decision is inapposite. Further, although Decision 04-06-018 states that the Commission's current practice for water utilities is to use two forecasted test years, it acknowledges that standard ratemaking practice may include the use of historical or forecasted test years.[48]

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[45] Application at 8.

[46] See Decision 03-05-078 at 17-18 (authorizing Suburban to recover regulatory expenses already recorded and estimated costs for the current proceeding in future rates).

[47] Specifically, the Commission cited a 2003 decision and stated that it "has directly addressed the use of actual regulatory expenses rather than test year forecasts for Cal-Am," and that Cal-Am had failed to demonstrate that the Commission's determination of forecasted regulatory expenses was unreasonable. Decision 09-07-021 at 73.

[48] Decision 04-06-018 at 6.

Even more significant is DRA's apparent misunderstanding of Decision 10-11-035. DRA sets forth a four prong test for the establishment of memorandum accounts and engages in a detailed analysis as to why "regulatory commission expenses are among the least deserving candidates for memorandum account treatment . . . ."[49] Decision 10-11-035 does not authorize GSWC to establish a memorandum account. Rather, the Commission simply explained that, under the Uniform System, Account 146 is analogous to a memorandum account in that a water utility may accumulate regulatory commission costs for which recovery has yet to occur: Regulatory commission expenses deemed reasonable are placed in Account 146 and amortized over the three-year rate case cycle.[50] Because Decision 10-11-035 does not authorize GSWC to establish a memorandum account, the four prong test cited by DRA[51] is in no way applicable.

DRA also erroneously argues that memorandum account treatment "may well lead into extensive discovery efforts and the type of 20/20 hindsight review that the use of a prospective test year avoids,"[52] and that "because affording memorandum account treatment to these expenses will lead to additional expensive and unnecessary litigation over the reasonableness of the expenditures, establishing a memorandum account for these normal business expenditures will work to the detriment of GSWC's customers."[53] Once again, these statements are wrong because Decision 10-11-035 does not authorize GSWC to establish a memorandum account.

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[49] Application at 7.

[50] Decision 10-11-035 at 48-49.

[51] In any case, the test cited by DRA does not reflect any fixed policy of the Commission. Rather, the Commission explained in Decision 10-04-031 that it does not apply a fixed set of factors in determining whether to establish a memorandum account. Rather, it explained that it "has considered all of these factors, considered only some of these factors, or relied on other policy considerations" at various times, and that "the question presented to the Commission in all instances is whether a utility should be permitted to seek recovery of these costs at a later date without encountering retroactive ratemaking issues." Decision 10-04-031 at 44.

[52] Application at 6.

[53] Id. at 7.

DRA's admonitions that Decision 10-11-035 will somehow result in additional discovery requests and prudence review are also wrong. The record is replete with references to the discovery conducted over the course of this proceeding,[54] and Decision 10-11-035 explains the burden of proof that a utility must meet in order to justify the costs associated with its proposed rate increases.[55] Thus, the record shows that DRA issued data requests, negotiated and settled some regulatory commission expense items[56] and litigated the balance, such as the appropriateness of the regulatory expenses associated with GSWC's consultant CH2MHILL.[57] Both discovery and review as to the prudence of regulatory costs are therefore already a standard aspect of general rate cases. As such, the Commission's treatment of GSWC's regulatory expenses in Decision 10-11-035 will create no new procedural burdens or costs associated with such burdens.

In sum, it is DRA who has erred by asserting that the Commission changed its long-standing policies with respect to GSWC's recovery of deferred regulatory expenses and by miscomprehending the Commission's discussion of memorandum account treatment in Decision 10-11-035. As there is no legal error on the part of the Commission with respect to these issues, DRA's Application should be denied.

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[54] See, e.g., Supplemental Reply Brief of Golden State Water Company, A.08-07-010 (May 13, 2010) at 37 (stating "DRA has already served discovery specifically on this letter, and GSWC has fully responded to all of DRA's data requests").

[55] See Decision 10-11-035 at 13-14.

[56] Joint Motion of Golden State Water Company and the Division of Ratepayer Advocates to Approve Settlement Agreement, A.08-07-010 (June 29, 2009), Exhibit 1 at 33.

[57] GSWC Supplemental Rebuttal Testimony (Switzer) at 10 (explaining that the CH2MHILL costs were litigated during evidentiary hearings).

D. DRA'S ASSERTION THAT DECISION 10-11-035 NEEDS TO BE MODIFIED TO PREVENT DOUBLE RECOVERY IS IMPERMISSIBLY BASED ON EVIDENCE NOT IN THE RECORD AND IS WRONG

DRA's Application raises a new argument, contending that under Decision 10-11-035 certain regulatory expenses associated with Bear Valley Electric ("BVE") may be borne by GSWC's ratepayers, but this assertion is impermissibly based on evidence that is not the record. The Commission has repeatedly stated that applicants for rehearing may not present new evidence offered only after the submission of the case.[58] Thus, the Commission should reject this assertion outright.

Even if the Commission were to consider this new evidence, DRA's allegation is simply wrong because it misconstrues GSWC's administration of its regulatory costs. BVE is a division of GSWC, not a stand alone affiliate, and GSWC uses only one Account 146 for all of its Regions and Divisions. However, the amounts tracked in the account are separated by sub-legers relating to the respective general rate case for each Region and Division. Currently, there are separate sub-ledgers for Regions 1, Regions 2 and 3, and for BVE, assuring that GSWC will not recover regulatory costs associated with any Region or Division from ratepayers in a Region or Division tracked in a distinct sub-ledger, and assuring that GSWC will not recover the same regulatory costs in multiple proceedings. Due to this segregation of costs, there is no basis for DRA's assertion that GSWC may be able to recover its regulatory expenses from both BVE customers and GSWC's ratepayers, either in the record for this proceeding or outside it.

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[58] See Re Southern California Edison, Decision 10-03-023, 2010 WL 989921 at *7 (Cal.P.U.C.) (stating: "Transphase merely attempts to relitigate whether its proposal is cost-effective and submit new evidence in its application for rehearing. Neither is proper or permissible in an application for rehearing."); see also Pacific Bell Telephone Co. v. Global NAPs California, Inc., Decision 09-01-038, 2009 WL 254838 at *9 (Cal.P.U.C.) (explaining: "Our review of the rehearing application is based on the record before us, and not on new evidence now offered after the submission of the case").

III. CONCLUSION

As set forth above, DRA failed to identify any legal error in Decision 10-11-035, and the Commission should therefore deny DRA's Application.

Respectfully submitted,

Date: January 6, 2011

/s/ Joseph Karp

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Certificate of Service

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

RESPONSE OF GOLDEN STATE WATER COMPANY TO THE APPLICATION FOR REHEARING OF THE DIVISION OF RATEPAYER ADVOCATES OF DECISION 10-11-035

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 January 6, 2011, at San Francisco, California.

/s/ Marcus Hidalgo
Marcus Hidalgo

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