

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking on the  
Commission's own Motion to Consider  
a Comprehensive Policy Framework for  
Recycled Water

Rulemaking 10-11-014  
(Filed November 19, 2010)

**REPLY COMMENTS  
OF THE DIVISION OF RATEPAYER ADVOCATES ON  
THE DRAFT FORM ADVICE LETTER AND POLICY GUIDELINES  
DISCUSSED AT 5TH WORKSHOP HELD OCTOBER 23 AND 24, 2012**

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**I. INTRODUCTION**

Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules") and the October 29, 2012 email ruling of ALJ Weatherford, the Division of Ratepayer Advocates ("DRA") respectfully submits these Reply Comments in response to parties' opening comments filed on November 14, 2012 on the draft form advice letter and policy guidelines that were discussed at the Fifth Workshop on October 23 and 24, 2012.

There are many issues raised in the draft documents that should be addressed by the Commission before a proposed decision is issued in this docket. DRA will more fully address those issues in its comments to the workshop report. DRA offers these Reply Comments on the following issues discussed in opening comments.

DRA addresses some of the issues raised in parties' opening comments and explains its recommendations related to those issues below. DRA's silence on issues raised by parties does not constitute its agreement with their proposals. DRA may comment on additional questions in comments on the January 2013 Workshop Report and/or April 2013 Proposed Decision.

## II. DISCUSSION

### A. Comments on Policy Guidelines and Criteria

- 1. DRA agrees that non-economic, non-monetized costs and benefits should be part of any cost-effectiveness analysis, though the term “benefits justify the cost” should not be a criterion in that analysis.**

The California Water Association (CWA) believes that the Commission should “consider a balancing of the project’s non-economic, non-monetized costs and benefits as part of any cost-effectiveness analysis.”<sup>1</sup> DRA agrees with CWA that non-economic costs and benefits should be considered by the Commission in evaluating proposals that would increase “the production distribution and use of recycled water” (Section 2.c.). Further, CWA’s proposed addition of Footnote 4 on page A-3 should be placed after “cost effective” and the term “benefits justify the cost” should be removed altogether from the section. The phrase “benefits justify the costs” should be removed from Section 2.c. as it implies that all benefits would be considered, whether they directly or indirectly benefit ratepayers. There may be situations where the benefits to society do justify the cost, but the cost to ratepayers is so extreme that the project is not cost effective.<sup>2</sup> In addition, DRA also recommends adding “as appropriate” to CWA’s proposed Footnote 4 because not all of these factors may apply to all recycled water projects:

A cost-benefit analysis should consider relevant non-monetized and/or non-economic costs and benefits, as appropriate, such as improved water supply reliability, reduced dependence on imported water, comparative energy costs and/or savings, comparative increases or reductions in greenhouse gases, other associated environmental impacts, and the availability of grants and/or low-cost loans available

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<sup>1</sup> CWA Comments at p.4.

<sup>2</sup> Such situations may lend themselves to government financing where the costs would be borne by a larger population that would more fully realize the benefits identified.

to the recycled water project through the IOWSU or participating public agencies.

DRA does not agree with CWA’s proposed language change to include the phrase “such increase is” to Section 2.c. This phrasing changes the meaning of the Section from a general statement to a more specific description which DRA does not believe is necessary or appropriate for a policy guideline.

**2. The Commission should not alter the proposed framework to establish mandatory volume goals for recycled water use within service areas.**

CWA proposes changes to “expand[] and strengthen[]” Section 2.d. that actually weaken and constrict the goals set forth in the draft guidelines.<sup>3</sup> CWA’s continued concern that penalties will flow from the establishment of mandatory volume goals for recycled water use is at best premature and most likely misguided. The establishment of goals is important in order to ensure that proposed benefits are realized and the cost effectiveness relied on by the Commission is achieved. CWA introduces the concept of penalties into Section 2.d.<sup>4</sup> The draft guidelines do not state that penalties would automatically flow from the establishment of goals. There are many ways to establish, measure, and reward the achievement of goals and it is premature to determine whether such volume goals may be needed in the future and how they would be structured. Accordingly, DRA would like the opportunity to revisit this issue in the future. DRA does not agree with CWA’s recommendation that Section 2.d. be “expanded and strengthened” to clarify that neither goals, voluntary or mandatory, nor penalties support the Commission’s effort to encourage and increase recycled water use.

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<sup>3</sup> CWA Comments at p.5.

<sup>4</sup> Id.

**3. The Commission should retain Sections 5 and 6 as water-energy efficiency and greenhouse gas reduction are important state and Commission goals.**

Sections 5 and 6 enunciate important state goals with respect to water-energy efficiency and greenhouse gas reduction. CWA proposes to eliminate those important goals from the policy guidelines.<sup>5</sup> DRA disagrees. Eliminating important statewide and Commission goals would be contrary to the purpose of the guidelines. Water-energy efficiency and greenhouse gas reduction are economic issues and merit specific statements in the guidelines. It is not sufficient to simply consider them with other “non-economic” issues. Water-energy efficiency and greenhouse gas reduction are real economic, regulatory, and social considerations for water recycling projects for the Commission and Sections 5 and 6 should be included in the guidelines and not rolled into a footnote along with other “non-economic” issues.

**4. The Commission should add a commitment to protect the IOWSU ratepayers in regional projects such that they are not required to shoulder an unjust share of the associated costs of such projects.**

DRA agrees with CWA’s recommendation to include language which would express the Commission’s commitment to protect the IOWSU ratepayers in regional projects from bearing an unjust share of the associated costs of such projects.<sup>6</sup> CWA explains how this addition to the guidelines is consistent with Commission policy and the goals of this proceeding. DRA further proposes that this language not only be added to the guidelines, but also included in the minimum criteria under either the Regional Partnerships or the Project Costs.

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<sup>5</sup> Id. at p. 6.

<sup>6</sup> Id. at pp. 7-8.

**5. The introductory language in Section 12 should be retained as it contains important ratepayer protections for potable water customers.**

CWA proposes to change the language in Section 12 to “emphasize” the case-by-case analysis the Commission will perform and eliminate “confusing or duplicative” language.<sup>7</sup> CWA’s proposed changes provide no additional emphasis and eliminate important considerations the Commission should use in evaluating projects on a case-by-case basis. The language CWA proposes to delete is not duplicative. The rate impact and fixed cost burden on potable water customers from the discounting of recycled water is not discussed elsewhere in this section. Further, the language CWA would delete is important to ratepayers because this is where the Commission enunciates its intent to protect potable water customers when recycled water rates are discounted. The changes to Section 12 proposed by CWA should be rejected.

**6. The Commission should retain the requirement to justify “reasonable economic incentives” and not lower the evaluation standard to mere practicability.**

CWA proposes changes to Section 12.a. “to more accurately track the statutory language” of Water Code section 13580.8(b).<sup>8</sup> However, instead of simply tracking the statute CWA would flip the analysis and remove the need to justify an economic incentive. DRA agrees with CWA that IOWSUs generally bear the burden to show that proposed projects are justified. DRA disagrees with CWA’s recommendation of a language change from “where needed/justified” to “where practicable.” The Water Code section cited by CWA states that “where practicable, a reasonable economic incentive” may be appropriate. CWA’s proposed change to Section 12.a. would deem discounted rates a reasonable economic incentive, “where practicable,” and eliminate the need for an

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<sup>7</sup> Id. at p. 8.

<sup>8</sup> Id.

IOWSU to justify as reasonable the proposed economic incentive. Recycled water rates should not be discounted if it is unnecessary and CWA's proposed change would unnecessarily put a burden on potable water rates customers.

**B. Comments on the Minimum Criteria and Tier 3 Advice Letter**

**1. Recycled water projects involving advanced treatment technology are compatible with the Tier 3 Advice Letter treatment for projects that are “relatively straightforward, uncomplicated and cost-limited.”**

The proposed Tier 3 Advice Letter process would be open to all projects that do not involve advanced treatment technology. CWA would change the standard for the Tier 3 Advice Letter process to eliminate all projects that involve direct potable use.<sup>2</sup> DRA disagrees with CWA's proposed change. DRA agrees that projects involving advanced treatment technology may require additional review time and would not be appropriate for the Tier 3 Advice Letter process, but there may be projects that would be involve direct potable use that would not require additional review time under the process outlined by Commission staff. The original language should be retained.

**2. The Commission should retain the criterion that IOWSUs detail conservation and demand-side management efforts currently undertaken in the applicable service area.**

Simply because recycled water adds reliability CWA would eliminate from consideration a criterion that requests the IOWSU detail the conservation and demand-side management efforts it is currently undertaking in the applicable service area.<sup>10</sup> CWA believes the only purpose for explaining conservation and demand-side management efforts would be to evaluate whether further conservation efforts should be

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<sup>2</sup> Id. at p.12.

<sup>10</sup> Id. at p. 13.

employed before a recycled water project is approved.<sup>11</sup> DRA agrees with CWA's assertion that recycled water provides a reliability benefit that conservation and demand-side management cannot provide, however, DRA disagrees with CWA's proposal to eliminate this important criterion. As part of the overall cost effectiveness evaluation DRA believes it important for the Commission to have a reasonable level of assurance that all conservation efforts have been exhausted in the applicable service area. These are not incompatible concepts and it is appropriate to require an IOWSU to provide a complete picture so that the Commission can fully assess the overall impact of the water recycling proposal.

**3. The Commission should retain the principles set forth in the 2010 Water Action Plan in evaluating recycled water projects.**

Cal Water expresses a concern that the proposed Guidelines would somehow alter the burden of proof that IOWSUs must meet when seeking Commission approval of capital projects.<sup>12</sup> Section 2.b. of the Guidelines simply lists the key principles set out in the 2010 Water Action Plan. While all of those principles are important in evaluating whether an IOWSU has met the burden of proof, they in no way alter the standard of proof. Recycled water projects may affect potable water rates, and therefore, these projects should be scrutinized to ensure that potable ratepayers are appropriately benefiting from these projects. The principles set forth in the 2010 Water Action Plan do not raise or in any way alter the burden of proof, and they should be used to help determine whether the project is prudent and reasonable.

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<sup>11</sup> Id. at pp.12-13.

<sup>12</sup> Comments of Cal Water at p.4.

**4. The Commission should include a section in the minimum criteria which addresses reporting requirements outlined in GO-103 A.**

DRA agrees with Consumer Federation of California's (CFC) recommendation to include a section in the minimum criteria which addresses reporting requirements outlined in GO-103 A.<sup>13</sup> DRA agrees that transparency is important to customers and reporting requirements are an important tool in ensuring transparency. There is no reason for the Commission to explore creating new reporting requirements to achieve this goal and every reason for the Commission to adopt the same reporting requirements that already apply to potable water projects for recycled water projects.

**III. CONCLUSION**

For the reasons explained herein, DRA believes that many of the questions posed in the OIR, cannot be addressed adequately absent the changes to the draft documents proposed herein and encourages the Commission to address those issues in the workshop report and Proposed Decision.

Respectfully submitted,

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<sup>13</sup> Comments of the Consumer Federation of California at p. 3-4.