

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



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In the Matter of the Application of SAN JOSE WATER COMPANY (U 168 W) for an Order authorizing it to increase rates charged for water service by \$34,928,000 or 12.22% in 2016; by \$9,954,000 or 3.11% in 2017, and by \$17,567,000 or 5.36% in 2018.

Application 15-01-002
(Filed January 5, 2015)

**OPENING BRIEF OF
SAN JOSE WATER COMPANY**

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SUBJECT INDEX

	<u>Page(s)</u>
SUMMARY OF RECOMMENDATIONS	vi
I. SUMMARY OF SJWC’S POSITION ON CONTESTED ISSUES	1
II. PROCEDURAL BACKGROUND	5
III. ISSUES RESOLVED BY SETTLEMENT AGREEMENT BETWEEN ORA AND SJWC	8
A. Utility Plant Additions	9
1. Source of Supply – Sites for Replacement Wells	9
2. Reservoirs and Tanks – Contingency Factor	10
3. Pump Stations and Equipment	10
4. Distribution System – Recycled Water Mains	10
5. Distribution System – City, County, and State	10
6. Distribution System – Meters	11
7. Distribution System – Advanced Metering Infrastructure	11
8. Distribution System – Pressure Monitors	11
9. Distribution System – Hydrants.....	11
10. Distribution System – Advanced Metering Infrastructure	11
11. Vehicles	12
B. Balancing and Memorandum Accounts	12
1. Research, Development and Demonstration Memorandum Account and Intervenor Compensation Memorandum Account	12
2. Preliminary Statement – Updated Language	12
3. Mandatory Conservation Revenue Adjustment Memorandum Account	12
IV. ISSUES CONTESTED BETWEEN ORA AND SJWC	13
A. Revenue Decoupling – WRAM/MCBA	13
1. SJWC’s proposed WRAM/MCBA would be consistent with decoupling mechanisms implemented by other Class A companies and would align SJWC’s incentives with the Commission’s Water Action Plan	13
2. ORA opposed SJWC’s WRAM/MCBA proposal based on past determinations and lack of concern to promote conservation	16

3.	SJWC’s emphasized that changing water supply conditions justify a WRAM/MCBA for SJWC	18
B.	WRAM-Related Conservation Programs	22
1.	SJWC proposed effective water conservation programs and accompanying revenue decoupling	22
2.	ORA approved adding new conservation programs	23
3.	SJWC’s rebuttal testimony provided specific support for the proposed conservation programs.	23
C.	ORA Challenged Many Elements of JCWC’s Payroll Expense Forecast	25
1.	Escalation factors and methodology	25
a.	SJWC based its forecast on actual salaries paid in 2015 and realistic escalation rates.....	25
b.	ORA produced a lower payroll forecast based on 2014 costs and unrealistic escalation rates.....	26
c.	SJWC’s rebutted testimony and cross-examination highlighted the competitive compensation environment in which SJWC operates	26
d.	Conclusion	28
2.	New Positions	29
a.	SJWC provided detailed explanations of its need to create 33 new positions	29
b.	ORA proposed to disallow all but two new positions based on a simplistic customer growth metric	30
c.	SJWC’s rebuttal testimony further justified the proposed new positions	32
3.	Temporary and Part-Time Positions	33
a.	SJWC explained its use of temporary and part-time employees	33
b.	ORA proposed to disallow all such costs	33
c.	SJWC’s response confirmed the value services temporary and part-time employees provide.....	34
4.	Bonuses for Officers and Managers	35
a.	SJWC explained the terms and functions served by its short-term and long-term incentive plan.....	35
b.	ORA summarily opposed inclusion of incentive costs in rates	36
c.	SJWC’s rebuttal testimony showed that SJWC’s incentive programs help make its compensation packages competitive for administrative staff and officers as well.	36

5.	Overtime expense also should be estimated based on a 3-year average	38
6.	Payroll expense related to non-tariffed products and services should not be disallowed	39
a.	ORA relied on a superseded decision to disallow NTP&S-related labor costs	41
b.	SJWC’s rebuttal testimony confirmed that ORA failed to justify disallowing NTP&S-related labor expense	42
D.	SJCW’s Estimated Regulatory Commission Expense was Reasonable and Should Be Accepted.....	43
E.	SJWC’s Forecast of Corporate Expense Was Appropriately Based on the Most Recent Recorded Year’s Expense.....	45
F.	ORA’s Adjustment to SJWC’s Estimate of Payroll Taxes Should Be Corrected by Eliminating Double Deduction of the Capitalized Portion of FICA Tax	46
G.	ORA’s Proposals to Required Memorandum Accounts to Record Prior Years’ Tax Credits are Unjustified	48
1.	SJWC’s implementation of federal Tangible Property Regulations would provide appropriate benefits to ratepayers in Test Year 2016	49
2.	ORA seeks to require SJWC to establish memorandum accounts to flow through tax benefits accruing prior to the Test Year	49
3.	SJWC’s response confirms that ORA’s memorandum account proposals relate to tax benefits accruing to ORA in years prior to Test Year 2016.....	50
4.	The rule against retroactive ratemaking does not permit use of memorandum accounts to adjust rates for costs or benefits accruing prior to authorization of the accounts	53
H.	Health Care Cost Balancing Account Should Be Authorized for SJWC	55
V.	ISSUES CONTESTED BETWEEN THE MUTUAL WATER COMPANIES AND SJWC	57
A.	Whether to Retain or Eliminate the Mountain District and/or the Distinctive Terms of Service Provided for in Schedule 1C	58
1.	Whether There Is Demand that Exceeds SJWC’s Capacity to Serve the Mountain District	60
2.	If There Is Demand that Exceeds SJWC’s Capacity to Serve, What Should Be Done About It?	62

3.	\$7.00/ccf Over-Use Charge	62
a.	Whether There Is a Cost-of-Service Basis for That Charge	63
b.	Whether That Charge Is Otherwise Justified	63
4.	Interruptible Service	64
B.	Whether Rates for All Customer and Service Classes Should Be Set on a Basis That Equalizes or Tends Toward Equalizing Rates of Return (“RoR”) SJWC Derives From Service to Such Classes	66
1.	Whether There Are Differences in RoR Among Customer and Service Classes or Among Customers Within Such Classes	66
2.	If There Are Such Differences in RoR, How and Whether Identical or Similar RoRs Can or Should Be Achieved	67
C.	Whether to Fund Expanded Water Conservation and Drought Water Source Acquisition Efforts	69
D.	Whether to Base WRAP Discounts on Household Size	70
VI.	UNCONTESTED ISSUES	70
A.	Sales and Revenue Forecasts	70
1.	Adjusted Revised Forecast	71
2.	Estimated Number of “Other” Customers	72
B.	Other Operating, Maintenance and General Expenses	72
1.	Customer Growth Factor Escalation for Test Year 2016 Expenses	72
2.	Updated Energy Cost of Service Escalation Factors	72
3.	Amortization of Recycled Retrofit Expenses	73
4.	NTP&S Adjustment	73
5.	Chamber of Commerce Dues	73
C.	Water Quality	73
D.	Customer Service	74
VII.	CONCLUSION	74

TABLE OF AUTHORITIES

 Page(s)
CASES	
<i>Pacific Telephone and Telegraph Co. v. PUC</i> (1965) 62 Cal. 2d 634	55
 CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS	
<i>California-American Water Co. (Amortization of WRAM-related Accounts)</i> Decision 12-04-048.....	17, 21
<i>Hamilton Cove Home Owners Ass'n v. Southern California Edison Co.</i> Decision 12-02-001, 2012 Cal. PUC Lexis 52	53
<i>Investigation to Consider Policies to Achieve the Commissions' Conservation Policy Objectives for Class A Water Utilities</i> Decision 08-02-036.....	18
Decision 08-08-030.....	17, 18
Decision 08-09-026.....	18
<i>Resolution E-4673 (Southern California Edison Co.)</i> Decision 92-03-094, 2014 Cal. PUC Lexis 351, August 14, 2014	54
<i>Rulemaking Addressing the Commission's Water Action Plan Objective of Setting Rates That Balance Investment, Conservation, and Affordability for the Multi-District Water Utilities</i> Decision 14-10-047.....	16
<i>Rulemaking to Consider Revisions to the General Rate Case Plan Class A for Water Companies</i> Decision 07-05-062.....	6
<i>Rulemaking re New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms</i> Decision 12-12-030, 2012 Cal. PUC Lexis 600	54
<i>Rulemaking to Develop Standard rules and Procedures for Regulated Water And Sewer Utilities Governing Affiliated Transactions and the use of Regulated Assets For non-Tariffed Utility Services</i> Decision 11-10-034	39
<i>San Jose Water Co.</i> Decision 09-11-032.....	60, 62, 63
<i>San Jose Water Co.</i> Decision 14-08-006.....	17, 29, 34, 39
(con't).....	40, 41, 59, 63
Decision 15-03-048.....	39, 40, 41,
(con't)	42, 43
<i>Southern California Water Co.</i> Decision 92-03-094, 1992 Cal. PUC Lexis 236 *32, 43 CPUC 2d 596.....	54

<i>Valencia Water Co.</i>	
Decision 10-12-029.....	18

STATUTES

Patient Protection and Affordable Care Act (Pub.L. No. 111-148 (Mar. 23, 2010) 124 Stat. 120) and Health Care and Education Reconciliation Act of 2010 (Pub.L. No. 111-152 (Mar. 30, 2010) 124 Stat. 1029)	55
Executive Order No. B-29-15 (April 1, 2015).....	7
Federal Insurance Contributions Act, 26 U.S.C. §§ 3101, et seq.	46, 47, 48
Social Security Tax and Medicare Tax	44

REGULATIONS

United States Treasury Department	
Tangible Property Regulations, T.D. 9689 (September 2, 2014)	49, 51, 52

CALIFORNIA PUBLIC UTILITIES

California Public Utilities Commission, Rules of Practice and Procedure	
Rule 13.11	1
California Public Utilities Code, Section 728	53
Commissioner’s Scoping Memo and Ruling, issued April 14, 2015	6

OTHER AUTHORITY

California Public Utilities Commission, Water Action Plan, October 2010	18
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SUMMARY OF RECOMMENDATIONS

- **Revenue Decoupling:** The Commission should enable San Jose Water Company (“SJWC”) to align its business incentives with its conservation goal by implementing a Water Revenue Adjustment Mechanism/Modified Cost Balancing Account (“WRAM/MCBA”) that will decouple utility revenue recovery from water sales.

- **WRAM-Related Conservation Programs:** If the Commission approves a WRAM and MCBA for SJWC, then it should also authorize funding for the ambitious WRAM-related conservation programs that SJWC has proposed.

- **Payroll Expense:** The Commission should adopt the payroll expense forecast SJWC has proposed for Test Year 2016. This forecast includes the addition of 33 positions to SJWC’s workforce and appropriate allowances for temporary and part-time employees, payroll escalation factors reflective of the local labor market, short-term and long-term incentive (bonus) programs, and a realistic estimate of overtime expense.

- **Non-Tariffed Products and Services:** Consistent with the Commission’s recent Decision 15-03-048, the Commission should not disallow payroll expense related to non-tariffed products and services (“NTP&S”) absent evidence that those costs were incremental to labor required for public utility service.

- **Regulatory Commission Expense and Corporate Expense:** The Commission should approve SJWC’s Test Year estimates for these expenses.

- **Payroll Taxes:** The Commission should make sure that any adjustment to SJWC’s estimate of the FICA element of payroll taxes is not double counted.

- **Tax Memorandum Accounts:** The Commission should reject proposals by the Office of Ratepayer Advocates to require establishment of a pair of tax memorandum accounts proposed to adjust rates for tax credits received in previous years, which would violate the rule of retroactive ratemaking.

- **Health Care Cost Balancing Account:** The Commission should approve SJWC's proposal to establish a balancing account for health care and dental insurance costs.
- **Rates and Service for the Mountain District:** The Commission should retain the \$7.00 per ccf Over-Use charge and the interruptible service condition that apply to service in SJWC's Mountain District.
- **Equalizing Rate of Return Among Customer Classes:** The Commission should reject the Mutual Water Companies' proposal that would drastically revise water rate design based on a formulaic allocation of costs among customers and classes of service.

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Application 15-01-002
(Filed January 5, 2015)

**OPENING BRIEF OF
SAN JOSE WATER COMPANY**

In accordance with Rule 13.11 of the Commission’s Rules of Practice and Procedure and the schedule established by Administrative Law Judge (“ALJ”) S. Pat Tsen, San Jose Water Company (“SJWC” or “the Company”), applicant in the above-captioned proceeding, hereby submits its opening brief, addressing all contested issues and summarizing the uncontested issues presented in this general rate case (“GRC”). The Office of Ratepayer Advocates (“ORA”) and a group of six mutual water companies taking service from SJWC in its Mountain District (the “Mutuals”) are the only other parties that have actively participated in this proceeding.

I.

SUMMARY OF SJWC’S POSITION ON CONTESTED ISSUES

Many issues, large and small, are addressed in the testimony and exhibits of SJWC, ORA, and the Mutuals. Among the most prominent areas of dispute were SJWC’s proposal for a revenue decoupling Water Revenue Adjustment Mechanism (“WRAM”) and Modified Cost Balancing Account (“MCBA”), SJWC’s forecast of payroll (labor) expense for Test Year 2016, SJWC’s utility plant additions for Test Years 2016 and 2017, certain issues relating to balancing and memorandum accounts, and issues raised by the Mutuals with respect to SJWC’s Tariff

Schedule 1C for service to its Mountain District and regarding allocation of costs among customers and classes of service.

ORA and SJWC have resolved their differences regarding utility plant additions and certain balancing and memorandum account issues, and plan within a few weeks to submit a Motion requesting Commission adoption of their settlement agreement addressing these issues. These issues resolved by settlement agreement are summarized in Part III, below.

Most of the estimates and proposals presented in SJWC's application and exhibits were, upon review, accepted by ORA as reasonable. A number of the adjustments and disallowances presented in ORA's results of operations report (Exhibit O-01) were, in turn, accepted by the Company. Those uncontested issues are summarized in Part VI, below.

The issues still contested between ORA and SJWC and between the Mutuals and SJWC are addressed in Parts IV and V of this brief, respectively. SJWC's position with respect to these issues is summarized as follows:

Revenue Decoupling: In this time of severe drought, public attention is focused on the need for all users to limit water consumption, but Commission policy and state legislators have wisely focused on water conservation as a long-term policy goal. Now is the time for the Commission to enable SJWC to align its business incentives with its conservation goal by implementing a WRAM/MCBA that will decouple utility revenue recovery from water sales. Experience with other water utilities' WRAM/MCBAs has demonstrated that these mechanism perform as intended if water sales forecasts are realistic. In the present GRC, the Company and ORA have cooperated to develop a sales forecast that properly reflects anticipated customer response to the drought and to drought-related water conservation mandates. In this context, authorization of a WRAM/MCBA as proposed by SJWC will benefit the utility, its customers, and the state's water conservation goals.

WRAM-Related Conservation Programs: With its incentives properly aligned through adoption of a WRAM/MCBA, SJWC seeks to pursue ambitious water conservation programs that will assist customers in achieving the water use reductions envisioned by the Governor's Executive Order and the implementing regulations of the State Water Board and this Commission. Mandates to cut water use will be better accepted and more effective if they are accompanied by programs that enable residential and business customers to make better, more efficient use of the water they still must use. That is what SJWC's WRAM-related conservation programs will help its customers to do.

Payroll Expense: ORA's proposed disallowances would cut SJWC's allowance for employee compensation to the bone and beyond. Steadily increasing regulatory requirements affecting all aspects of SJWC's business, increased attention of customers and the public media to issues regarding water resources and utility service, and technological change, all impose increasing and evolving responsibilities on the water utility, to which it must respond in many instances by adding new skills and capabilities to its work force. SJWC has proposed in this GRC to add 33 new employee positions, while ORA would allow just two. SJWC has shown the need that each of the 33 new position will fill and urges the Commission to authorize positions and rates sufficient for SJWC to fill them. SJWC also urges the Commission to adopt its forecast of Test Year 2016 payroll expense based on the most recent known employee compensation levels, to accept SJWC's payroll escalation factors that are based on the competitive Silicon Valley labor market, and to recognize the value of SJWC's incentive compensation plans and its temporary and part-time employees as well as its need to incur a reasonable level of overtime costs.

Non-Tariffed Products and Services: The same issue regarding payroll expense related to non-tariffed products and services ("NTP&S") that is presently at issue on rehearing of

SJWC's last GRC decision is presented again in this case. Pursuant to applicable Commission rules, compensation for employees who participate in providing NTP&S is properly included in utility revenue requirement to the extent that the employees' work on NTP&S does not impose incremental costs on the utility. ORA proposed to disallow NTP&S-related payroll costs without inquiring whether those costs were incremental or non-incremental. Such a disallowance is not justified.

Regulatory Commission Expense and Corporate Expense: ORA would disallow substantial portions of SJWC's estimates of these expenses despite SJWC's evidence that these costs are increasing, for specific reasons. SJWC's estimates should be adopted.

Payroll Taxes: The only difference between SJWC and ORA in this area concerns the capitalized portion of FICA taxes that fund Social Security and Medicare. FICA taxes are part of the "labor burden" that the allocation of a portion of payroll expense to capital projects. In this case, the ORA analyst criticized SJWC for transferring an insufficient portion of FICA expense to capital projects, but his adjustment overcompensated for the deficiency, resulting in a "double removal" of FICA tax from the allowance for payroll tax expense. This error should be corrected.

Tax Memorandum Accounts: ORA proposes to require SJWC to establish a pair of memorandum accounts to generate refunds with respect to federal and/or state tax credits for past tax years. Both these proposals suffer from the same defect – they would violate the rule against retroactive ratemaking by reaching back to events preceding creation of the proposed memorandum accounts. These proposals should not be adopted.

Health Care Cost Balancing Account: SJWC has proposed a balancing account for health and dental insurance costs due to the continuing unpredictability of these costs from year

to year. The Commission has authorized such balancing accounts for several other water utilities and should approve SJWC's request.

Rates and Terms of Service for the Mountain District: The Mutuals have proposed to eliminate Schedule 1C that applies to service in SJWC's Mountain District in the Los Gatos area of the Santa Cruz Mountains. SJWC has proven that there continues to be a constraint on its ability to serve customers in the Mountain District, justifying continued maintenance of a \$7.00 per ccf Over-Use charge and an interruptible service condition.

Equalizing Rate of Return Among Customer Classes: The Mutuals propose major changes in water rate design based on a formulaic allocation of costs among customers and classes of service, with the goal of equalizing rate of return among customer classes and perhaps even among customers. SJWC strongly opposes this project, based on its recognition that water rate design serves many policy goals that would not be well served by a formulaic allocation of costs. The record shows that SJWC's rates are cost based and on a total company basis and should enable SJWC to earn a reasonable rate of return on that basis, but it is not in the public interest to apply a formulaic cost allocation to raise rates for residential customers for the benefit of other customer groups.

II.

PROCEDURAL BACKGROUND

SJWC filed this GRC application (the "Application") on January 2, 2015, seeking Commission authorization to increase rates for the Test Year 2016 and Escalation Years 2017¹

¹ In accordance with the applicable Rate Case Plan for Class A Water Utilities, 2017 is a second test year with respect to the estimation of Utility Plant in Service, Depreciation, and other accounts relevant to the calculation of rate base but is an escalation year with respect to revenue and expense

Footnote continued on next page

and 2018, and to make investments and accounting changes as specified therein. SJWC presented a thorough showing in support of its rate increase proposals for Test Year 2016 and Escalation Years 2017 and 2018 in its Report on the Results of Operations (Exhibit SJWC-1), its Capital Budget Project Justifications (Exhibit SJWC-3), and supporting workpapers and studies (Exhibit SJWC-2 and Exhibits SJWC-4 through SJWC-9, respectively).

ORA filed a timely protest to the Application on February 2, 2012, while the Mutuals filed a motion for leave to late file a protest on February 26, 2015. At the prehearing conference (“PHC”) held February 27, 2015, ALJ Tsen granted the Mutuals party status and allowed them to file a protest. They did so on March 5, to which SJWC filed a timely response on March 12, 2015. At the PHC, ALJ Tsen also tentatively adopted a procedural schedule and instructed the parties to proceed with discovery. A Public Participation Hearing was held in San Jose on the evening of March 24, 2015.

The Assigned Commissioner’s Scoping Memo and Ruling, issued April 14, 2015 (“Scoping Memo”), described events in the proceeding to that date, provided a comprehensive list of issues to be considered in this proceeding, noted the informal report to the ALJ of the Commission’s water quality expert, who identified no issues with SJWC’s water quality over the last three years, and adopted a specific schedule for this proceeding. The Scoping Memo also addressed alternative dispute resolution and settlement procedures, discovery, preparations for hearing, and other procedural matters.

Following extensive discovery, ORA and the Mutuals served their testimony on April 23, 2015. ORA’s Report and Recommendations on SJWC’s Results of Operations (Exhibit O-

calculations. *See, Re Revisions to the Rate Case Plan for Water Utilities*, D.07-05-062, App. A, at A-19.

01) challenged many aspects of SJWC's revenue and expense estimates and project proposals for the Test Year and the GRC cycle, but also accepted many of SJWC's estimates and proposals as reasonable. In Exhibit M-01, the Mutuals presented their own critique and proposals on a select number of issues.

SJWC responded to ORA with rebuttal Exhibit SJWC-10, served May 7, 2015, disputing many aspects of ORA's analysis but accepting important aspects of it as providing reasonable resolution of certain issues. SJWC's rebuttal of the Mutuals' testimony was presented in Exhibit SJWC-11, also served May 7, 2015.

Pursuant to ALJ Tsen's direction by her ruling of June 2, 2015, SJWC provided updated testimony (Exhibit SJWC-12) to reassess its sales forecast in the context of the Governor's Executive Order of April 1, 2015 and regulations subsequently adopted by the State Water Resources Control Board ("State Water Board") requiring reductions in water production averaging 25% statewide as compared to 2013 usage by water systems serving urban water users. In Exhibit SJWC-12, SJWC's Senior Vice President of Regulatory Affairs, Palle Jensen, testified that ORA had directed a data request to SJWC on April 1, 2015, asking the extent to which the Governor's Executive Order affected SJWC's water consumption forecasts and its application generally. He explained that SJWC intended to provide a more realistic water usage reduction estimate than simply a strict percentage reduction as requested by the State Board (20%) or the Santa Clara Valley Water District (30%), with an expectation that customers, as a whole, usually fall short of specific percentage reduction goals. He also noted that SJWC's

revised forecast takes into account the anticipated “recovery effect,” with an assumed return to normal precipitation levels.²

The parties participated in a noticed settlement conference on May 26, 2015. SJWC engaged in extensive settlement negotiations with both ORA and the Mutuals. Ultimately, SJWC and ORA achieved a settlement in principle of issues relating to SJWC’s capital projects and some issues relating to balancing and memorandum accounts. SJWC and ORA intend to submit a joint motion for Commission approval of their settlement agreement within the next several weeks. SJWC and the Mutuals were unable to settle issues of concern to the Mutuals.

Evidentiary hearings were held on June 15 to 17, 2015, before ALJ Tsen. The hearings addressed a limited set of issues outstanding between ORA and SJWC, as well as issues presented by the Testimony of the Mutuals. Thereafter, in accordance with ALJ Tsen’s instructions, the parties agreed on a common outline for opening briefs, with which the present opening brief conforms.

III.

ISSUES RESOLVED BY SETTLEMENT AGREEMENT BETWEEN ORA AND SJWC

The pending Settlement Agreement will resolve all contested issues in this proceeding between ORA and SJWC with the exception of the unresolved matters addressed in Part IV of this opening brief. The settled issues resolved by the Settlement Agreement will include: (i) all contested utility plant additions; and (ii) treatment of certain balancing and memorandum accounts.

² Exhibit SJWC-12 (Jensen), at 2-3.

The Settlement Agreement will describe each settled issue in detail, will provide a statement of the respective positions of SJWC and ORA (referred to in the context of the Settlement Agreement as the “Settling Parties”), will describe the difference between SJWC’s rebuttal position and ORA’s position, will indicate how the issue was resolved, and will list references to the testimony, evidence, and exhibits of witnesses addressing the particular issue. The Comparison Exhibit (an attachment to the Settlement Agreement) will display the various elements of revenue requirement based on the original and settlement positions of the Settling Parties, showing the differences between settlement amounts for the various accounting categories and indicating the status of each contested issue as either having been settled or as remaining unresolved. The Comparison Exhibit will also display the disposition of the various uncontested issues that are summarized in Part VI, below.

A. Utility Plant Additions.

The Settlement Agreement presents a proposed resolution of all contested company-funded utility plant additions. Out of a total capital budget of approximately \$300 million for the 3-year period, ORA challenged capital projects totaling approximately \$60 million. As a result of diligent negotiations between the Settling Parties, these contested capital projects were eventually settled at a total dollar figure of approximately \$44 million. Each of the specific settled capital projects is briefly identified in this Part of the opening brief, with more detailed descriptions set forth in the Settlement Agreement itself that will more fully explain the positions of the Settling Parties as well as the proposed resolution of each issue.

1. Source of Supply – Sites for Replacement Wells.

SJWC originally requested authorization of \$6,528,600 in budget year 2017 for the purchase of property for replacement wells. SJWC agreed to defer this project to its next GRC

with the understanding that SJWC would purchase new property if it proved to be necessary, with the purchase to be reviewed for prudence in its next rate case.

2. Reservoirs and Tanks – Contingency Factor.

ORA recommended that SJWC's proposed budgets for certain reservoir and tanks projects be reduced, based on lower contingency factors and sales tax rates. SJWC agreed to ORA's position as its experience with similar projects justified a lower contingency factor.

3. Pump Stations and Equipment.

SJWC requested authorization for improvements to various specific pump stations. ORA generally agreed with the need for the projects, but recommended budget reductions for some and advice letter treatment for others. SJWC agreed with ORA's position on these projects. SJWC requested authorization for replacement expenditures for both line shaft pumping equipment and submersible pumping equipment. ORA recommended a lower total 3-year budget than SJWC originally proposed. Ultimately, the Settling Parties agreed to a compromise budget amount in recognition of their respective positions and concerns.

4. Distribution System – Recycled Water Mains.

SJWC requested authorization for certain recycled water pipeline installation projects in 2016 and 2017. ORA did not object to the need for the projects, but recommended lower estimated project costs based on different escalation factors. The Settling Parties agreed to ORA's position.

5. Distribution System – City, County, and State.

SJWC requested authorization for a total 3-year budget of approximately \$1.26 million for facility relocations or improvements of SJWC facilities performed in conjunction with projects undertaken by city, county and state agencies pursuant to franchise agreements. ORA used a different methodology as the basis for its recommendation that a reduced budget be

authorized. The Settling Parties agreed to a compromise budget amount in recognition of their respective positions and concerns.

6. Distribution System – Meters.

ORA recommended that the replacement of a certain type of meters be removed from SJWC’s meter replacement program, resulting in a lower total meter replacement budget for 2015. In rebuttal testimony, SJWC contended that the disputed meters were being discontinued by the meter manufacturer and the Settling Parties agreed to adopt SJWC’s position.

7. Distribution System – Advanced Metering Infrastructure.

SJWC requested authorization for ongoing replacement of services greater than 2”, ORA considered the replacement costs for services greater than 2” to be captured in the overall service replacement budget. The Settling Parties agreed to ORA’s position.

8. Distribution System – Pressure Monitors.

SJWC requested authorization to purchase and install pressure monitors in the distribution system for all pressure zones. ORA recommended the project be pushed back by one year based on the current progress level. The Settling Parties agreed to ORA’s position.

9. Distribution System – Hydrants.

SJWC requested authorization to replace hydrants within the distribution system. ORA recommended estimating the replacement costs based on the five-year inflation adjusted recorded average. The Settling Parties agreed to ORA’s position.

10. Distribution System – Advanced Metering Infrastructure.

SJWC proposed full scale implementation of Advanced Metering Infrastructure (“AMI”) throughout the service area. ORA took the position that SJWC should perform a pilot study prior implementing full scale AMI and the Settling Parties agreed to adopt this approach, as described in detail in the Settlement Agreement.

11. Vehicles.

SJWC requested a total 3-year budget of approximately \$5.47 million for vehicle replacement by the end of 2017. ORA recommended a replacement budget of approximately \$4.97 million for vehicle replacement over the same period. The Settling Parties agreed to a compromise total budget amount of approximately \$5.22 in recognition of the positions and concerns expressed by the respective parties.

B. Balancing and Memorandum Accounts.

The Settlement Agreement will detail how the Settling Parties propose to resolve three issues in dispute with respect to certain of SJWC's existing balancing and memorandum accounts.

1. Research, Development and Demonstration Memorandum Account and Intervenor Compensation Memorandum Account.

ORA and SJWC originally disagreed as to whether the Research, Development and Demonstration Memorandum Account and the Intervenor Compensation Memorandum Account should remain open once the balances had been amortized. The Settling Parties ultimately agreed that the account should stay open to track future expenses.

2. Preliminary Statement – Updated Language.

The Settlement Agreement memorializes the Settling Parties' agreement that SJWC's Pension Expense Balancing Account should be updated to reference the most current applicable General Rate Case Decision.

3. Mandatory Conservation Revenue Adjustment Memorandum Account.

The Settlement Agreement memorializes the Settling Parties' agreement that SJWC's Mandatory Conservation Revenue Adjustment Memorandum Account

(“MCRAMA”) balance had been appropriately accounted for after recovery of the balance was completed.

IV.

ISSUES CONTESTED BETWEEN ORA AND SJWC

Only a limited number of issues contested between ORA and SJWC were the subject of testimony and cross-examination at the evidentiary hearings. These include issues relating to:

- (1) SJWC’s proposal to decouple revenue from sales by implementing a Water Revenue Adjustment Mechanism (“WRAM”) and a Modified Cost Balancing Account (“MCBA”);
- (2) SJWC’s proposals for WRAM-related conservation programs; (3) various aspects of SJWC’s estimated payroll expense; (4) regulatory commission expense; (5) corporate expense; (6) the calculation of payroll taxes; (7) ORA’s proposal for income tax memorandum accounts; and (8) SJWC’s request for a health care cost balancing account.

A. Revenue Decoupling – WRAM/MCBA

1. SJWC’s proposed WRAM/MCBA would be consistent with decoupling mechanisms implemented by other Class A companies and would align SJWC’s incentives with the Commission’s Water Action Plan.

Witness Palle Jensen, SJWC’s Senior Vice President for Regulatory Affairs, presented SJWC’s proposal for revenue decoupling in Chapter 19 of Exhibit SJWC-1 and the associated Appendix I, presenting proposed tariffs for a Water Revenue Adjustment Mechanism (“WRAM”) and a Modified Cost Balancing Account (“MCBA”). Mr. Jensen testified that the proposed decoupling mechanism is similar to the WRAM and MCBA that the Commission has adopted for five other Class A water utilities and that adoption of this decoupling mechanism for

SJWC will promote the development and implementation of more aggressive water conservation programs.³

As Mr. Jensen testified, SJWC currently has a “Monterey-style” WRAM that tracks the difference between revenue SJWC receives for metered sales through its tiered volumetric rates and the revenue SJWC would have received through a single uniform quantity rate.⁴ He testified that “a Monterey-style WRAM does not decouple the link between sales and revenues,” and so SJWC will lose revenues if it implements successful water conservation measures, creating an incentive to increase water sales.⁵

Mr. Jensen explained that without a WRAM/MCBA, the Commission’s traditional ratemaking procedures, which use projections of sales to set rates, encourage water utilities to increase water sales. If actual sales exceed the projection, the utility receives additional revenues and earnings, but if actual sales are below projected levels, revenues and earnings will be less than the Commission has authorized, and the utility could be at risk of not recovering its fixed costs.⁶

In assessing proposals in 2008 to implement WRAM/MCBAs for California Water Service Company and Park Water Company, the Commission recalled that its Water Action Plan (“WAP”), adopted in 2005, recognized that water utilities had a financial disincentive to conserve water and that full decoupling of sales and revenues was necessary to remove that disincentive. Based on these and other references, Mr. Jensen testified that ratemaking procedures that link sales to earnings are a major disincentive to a water utility’s promotion of

³ Exhibit SJWC-1, ch. 19 (Jensen), at 2.

⁴ *Id.* at 3, citing D.08-08-030, at 20.

⁵ Exhibit SJWC-1, ch. 19 (Jensen), at 3.

⁶ *Id.* at 3.

successful water conservation programs.⁷ Conversely, by adopting SJWC’s WRAM/MCBA proposal, “the Commission will provide SJWC with a strong incentive to implement more aggressive and cost effective water conservation programs.”⁸

Mr. Jensen went on to note that SJWC’s WRAM/MCBA proposal aligns the company’s financial interest with the priorities of the Governor, state water agencies, and the Commission to encourage water customers to reduce their water consumption. He noted the drastic steps the Governor and state agencies have taken to encourage and induce customers to reduce water use and provided a list of benefits adoption of a decoupling WRAM/MCBA would achieve.⁹

Mr. Jensen explained that the WRAM and the MCBA are two separate mechanisms. The WRAM will ensure recovery of the portion of SJWC’s fixed costs that are recovered through the quantity charge as well as certain variable costs not included in the MCBA. The MCBA will recover actual costs for purchased water, groundwater extraction fees and purchased power. The MCBA in conjunction with the WRAM will accomplish revenue decoupling, and will replace SJWC’s current incremental cost supply offset accounts.¹⁰

Mr. Jensen’s testimony also included a detailed account of the inconsistency between the allowance of WRAM/MCBAs for other Class A water companies and the Commission’s past unwillingness to allow SJWC to adopt those mechanisms. Recognizing that the Commission approved WRAM/MCBAs for other water utilities based on settlements with ORA and that settlements often are not considered precedential because they may result from consideration of a number of issues in addition to the referenced one, he noted that most of the WRAM/MCBA

⁷ *Id.* at 4, citing D.08-02-036.

⁸ Exhibit SJWC-1, ch. 19 (Jensen), at 5.

⁹ *Id.* at 5-7.

¹⁰ *Id.* at 9-11.

settlements were approved in a focused investigation regarding water conservation policy and so should be considered as precedential policy.¹¹ He further detailed the Commission's examination of the functioning of approved WRAM/MCBAs in a series of water utility GRCs, in which the Commission has not found any fault with the existing WRAM/MCBAs.¹²

Mr. Jensen concluded his testimony on this subject by requesting that the Commission adopt the WRAM/MCBA as described in his testimony and with the specific tariff language presented in Appendix 1 to that testimony. Consistent with the WRAM/MCBAs mechanisms adopted for several other Class A water utilities, the "SJWC proposal is good public policy, and furthers the water conservation objectives of the State of California, and the principles embedded in the Commission's Water Action Plan."¹³

2. ORA opposed SJWC's WRAM/MCBA proposal based on past determinations and lack of concern to promote conservation.

ORA witness Tony Tully provided testimony opposing SJWC's request for a revenue decoupling WRAM/MCBA. ORA recommended that SJWC continue with its current Monterey-style WRAM along with its current Incremental Cost Balancing Account ("ICBA"), Mandatory Conservation memorandum Account ("MCMA"), and Mandatory Conservation Revenue Adjustment Memorandum Account ("MCRAMA"), rather than adopting a full revenue decoupling WRAM/MCBA.¹⁴ ORA pointed to the Commission's plans for a generic review of accounting mechanisms such as the WRAM in R.11-11-008 and claimed that "preliminary

¹¹ *Id.* at 15-16.

¹² *Id.* at 16-17.

¹³ Exhibit SJWC-1, ch. 19 (Jensen), at 19.

¹⁴ Exhibit O-01 (Tully), at 13-1. Although the MCRMA is only available in a drought period when Schedule 14.1 is activated, Mr. Tully considered that the availability of the MCRAMA substitutes for any need the Company might have for a full decoupling WRAM. Tr. 357:10-18; 359:10-16 (Tully/ORA).

findings” from the review of the WRAM pilot programs’ high under-collections are “still inconclusive.”¹⁵

ORA quoted extensively from D.08-08-030, which approved a Monterey-style WRAM along with an inclining-tiered conservation rate design for SJWC, and went on to recount ORA’s opposition to SJWC’s request for conversion to a WRAM/MCBA in its last GRC, A.12-01-003.¹⁶ ORA noted that D.14-08-006 in that GRC did not authorize a WRAM/MCBA for SJWC, based on an inconclusive Finding of Fact that “[i]t is uncertain whether SJWC’s Monterey-Style WRAM, rather than those WRAMs used by other water utilities, is an adequate mechanism to encourage conservation.”¹⁷

ORA again opposed SJWC’s request for a decoupling WRAM/MCBA in this proceeding, based on claims to the following effect:

- There is no need to promote an aggressive conservation program as SJWC is already meeting its SBX7-7 conservation goals.
- SJWC does not need a WRAM in response to drought priorities as drought mechanisms are already in place.
- SJWC’s unique water supply agreement, for which it was granted a Monterey-style WRAM, has not changed.
- And there are ongoing proceedings regarding the WRAM pilot program.¹⁸

In other words, it is unnecessary for SJWC to promote conservation, because drought regulations will compel conservation, and the decoupling WRAM may not be such a great idea after all.

ORA closes its chapter of opposition to the WRAM/MCBA by complacently noting that “water use in California has been on the decline” while doubting whether revenue

¹⁵ *Id.*, citing D.14-10-047 and D.12-04-048

¹⁶ Exhibit O-01 (Tully), at 13-2 to 13-6.

¹⁷ *Id.* at 13-7, citing D.14-08-006, at 125 (Finding of Fact 71).

¹⁸ Exhibit O-01 (Tully), at 13-12 to 13-22.

decoupling has been responsible. ORA points to “issues with inaccurate [sales] forecasting that go along with WRAM” that have resulted in high under-collections and have persisted for companies with WRAM/MCBAs. Despite this extensive history, ORA claims that authorizing a WRAM/MCBA for SJWC would be “premature.”¹⁹

3. SJWC’s emphasized that changing water supply conditions justify a WRAM/MCBA for SJWC.

SJWC witness Jensen responded to ORA’s opposition to SJWC’s WRAM/MCBA proposal by noting that ORA found no specific deficiencies in SJWC’s proposal but merely referred to older proceedings. ORA failed to recognize that SJWC’s request is an effort to address changes in its water supply situation that became apparent only after the original Monterey-style WRAM was implemented in 2008 and must be addressed now.²⁰

Mr. Jensen emphasized that ORA’s opposition to revenue decoupling conflicts with, and impedes, the Commission’s fundamental water policy objective: “Strengthen Water Conservation Programs to a Level Comparable to those of Energy Utilities.”²¹ He noted that, while decoupling is relatively new in water regulation, the Commission has decades of experience with such mechanisms, since the Commission first implemented decoupling programs for energy utilities in the 1980s. ORA’s position on revenue decoupling for SJWC also is contrary to past its agreements to implement revenue decoupling for five other Class A water utilities, which the Commission approved.²²

¹⁹ *Id.* at 13-22 to 13-23.

²⁰ Exhibit SJWC-10, ch. 2 (Jensen), at 2-11.

²¹ California Public Utilities Commission, Water Action Plan, October 2010, at 19.

²² The Commission has approved the same WRAM/MCBA mechanism requested by SJWC for five other Class A water utilities. D.08-02-036 adopted WRAM/MCBAs for Cal Water and Park; D.08-08-030 adopted a WRAM/MCBA for Golden State; D.08-09-026 adopted a WRAM/MCBA for Apple Valley Water Company; and D. 10-12-029 adopted a WRAM/MCBA for Valencia Water Company. See, Exhibit SJWC-10, ch. 2 (Jensen), at 2-11 to 2-12; Tr. 326:13-327:5 (Jensen/SJWC).

SJWC's rebuttal testimony emphasized that ORA's rejection of the WRAM/MCBA proposal ignored the key rationale for revenue decoupling, which is to remove the utility's incentive to promote sales and to encourage the development of conservation prices and non-price water conservation programs. As Mr. Jensen testified,

ORA offers no response to the fundamental truth that without decoupling, SJWC loses (or gains) revenues in conjunction with reduced (or increased) water sales. . . . Without a WRAM/MCBA, SJWC's financial incentive is not to fund conservation programs, estimate substantial savings to satisfy Commission reporting requirements, and hope, if not ensure, that conservation programs do not actually reduce sales.²³

Continuing his rebuttal testimony, Mr. Jensen made clear that SJWC's water supply situation does not warrant a Monterey-style WRAM. ORA claims that a November 2007 settlement agreement between ORA and SJWC, approved by D.08-08-030, by which SJWC accepted a Monterey-style WRAM in the context of its take-or-pay contract with the Santa Clara Valley Water District ("SCVWD"), and the fact that SJWC's contract with SCVWD has not changed, preclude the need for a decoupling WRAM. Mr. Jensen's rebuttal testimony clearly states SJWC's belief that the Monterey-style pricing adjustment "is not the proper regulatory response." He explained that SJWC gets 50 to 60% of its water from sources other than SCVWD, and so is under no minimum take obligation for a half or more of its supply. SJWC has a financial disincentive for customers to reduce their water consumption, but allowance of a WRAM/MCBA would correct that disincentive "and would align the Company's ratemaking mechanism with the stated policy goals of the State of California."²⁴

²³ Exhibit SJWC-10, ch. 2 (Jensen), at 2-13.

²⁴ *Id.* at 2-14. In response to ALJ Tsen's ruling of June 2, 2015, regarding the Governor's water conservation water conservation mandate, SJWC noted in supplemental testimony that the Company incorporated its knowledge of the state's critical drought conditions into preparation of its revenue decoupling testimony. Exhibit SJWC-12 (Jensen), at 11-12.

As noted above, ORA witness Tully considered that the availability of the MCRAMA substitutes for any need the Company might have for a full decoupling WRAM.²⁵ However, when SJWC recently sought to recover the balance accumulated in its MCRAMA during a portion of 2014 by filing its Advice Letter No. 468, ORA filed a protest. ORA's protest specifically urged rejection of SJWC's use of a method drawn from the WRAM/MCBA to calculate the revenue related costs of SJWC's conservation program.²⁶

Clearly, a drought memorandum account, such as the MCRAMA, does not provide the same revenue protection as a full WRAM/MCBA. Mr. Jensen explained that gaining authorization for and implementing a drought memorandum account has been challenging and subject to lengthy delays on past occasions, and a similar delay occurred beginning in March of this year, when SJWC filed an advice letter seeking recovery for amounts tracked in its reopened MCRAMA during 2014, which remained suspended with no relief in sight.²⁷ As Mr. Jensen testified,

This stands in stark contrast to the recovery mechanisms available to a utility with a full WRAM/MCBA. A utility with a full WRAM/MCBA is provided a annual recovery mechanism that provides timely rate recovery of balances. This timely recovery is to the benefit of both utility and ratepayer. The likelihood for further supply restrictions and the difficulty in obtaining and collection from any potential drought memorandum account, only further justifies the need for a WRAM/MCBA, since with a WRAM/MCBA there would be no need for special accounts to track reduced revenues and the reduced variable costs that ultimately accrue to the ratepayers, in the event of mandatory conservation or rationing situations.²⁸

²⁵ Tr. 357:10-18; 359:10-16 (Tully/ORa).

²⁶ See, Exhibit SJWC-13 (ORA's Protest Letter of Danilo Sanchez, Program Manager, to Raminder Kahlon, Director, Division of Water and Audits, California Public Utilities Commission, dated May 29, 2015), at 1.

²⁷ *Id.* at 2-15; see also, Tr. 335:12-336:16 (Jensen/SJWC).

²⁸ *Id.*

Mr. Jensen denied ORA's claim that ratepayers would likely have to pay surcharges to reimburse SJWC for under-collection in a WRAM balancing account. He saw no facts or analysis to support this claim. He noted the Commission's conclusion in D.12-04-048, the decision by which the Commission addressed the then-current problem of severely under-collected WRAM/MCBA accounts, that a key reason for those large under-collections had nothing to do with the mechanics of the WRAM/MCBA, but rather with the overstated sales forecasts adopted by the Commission.²⁹ In short, Mr. Jensen agreed with ALJ Tsen that "a lot of the undercollection which results from the WRAM account and prior GRCs in other Class A companies is due to mistakes made in the sales forecast."³⁰

In this GRC, by contrast, SJWC recommended, and ORA supported, an aggressive sales forecast that accounted for the effects of an ongoing drought. Given all parties' and the Commission's sensitivity to the ill-effects of overstated sales forecasts, Mr. Jensen rightly considered it likely that there would not be large under-collections in SJWC's WRAM, if approved.³¹

While ORA argued that some future proceeding should assess the WRAM, SJWC believes it would not be good public policy to delay implementation. As Mr. Jensen testified, the Commission can and should resolve this issue, for this water utility, in this GRC. SJWC needs a WRAM now to align its financial interests with a reduction in water sales – an argument to which ORA has offered no response. Mr. Jensen rightly observed that, having approved SJWC's request for a WRAM in this case, the Commission could change its policy if, in the future, it

²⁹ Exhibit SJWC-10, ch. 2 (Jensen), at 2-16; see also, Tr. 330:2-331:2 (Jensen/SJWC), noting the Commission's conclusion that the WRAM/MCBA mechanism was balanced, but accumulated balances were driven largely by a miscast of the sales forecast.

³⁰ Tr. 342:12-18 (Jensen/SJWC).

³¹ *Id.*

wishes to make industry-wide changes to the WRAM. In the meantime, however, the Commission can properly align SJWC's financial incentives with California's public policy goals by approving revenue decoupling – with a full decoupling WRAM/MCBA as SJWC has proposed.³²

B. WRAM-Related Conservation Programs

1. SJWC proposed effective water conservation programs and accompanying revenue decoupling.

Ben Pink sponsored Chapter 18 of Exhibit SJWC-1, addressing Water Conservation. That material provides an overview of the history and current elements of SJWC's water conservation program.³³ It goes on to describe a series of additional conservation programs proposed for implementation in 2016 along with the WRAM/MCBA. These WRAM-related conservation programs include:

- Waterfluence Landscape Budget Program;
- Home Water Use Reports;
- Ultra-High Efficiency Toilet, Showerhead, and Aerator Direct Install Program;
- CII Survey Program;
- School Education Kits Program; and
- Landscape Education Class Series.³⁴

SJWC's testimony concluded by summarizing the program costs and water savings for each of the proposed conservation programs and calculating benefit-to-cost ratios for four of the six programs. Each of these four programs has a positive, greater than 1, benefit-to-cost ratio and

³² See, *Id.* at 2-18.

³³ Exhibit SJWC-1, ch. 18 (Pink), at 2-14.

³⁴ *Id.* at 14-32.

for each program the discounted cost of water saved per acre-foot is significantly lower than for any other source of water supply.³⁵

2. ORA approved adding new conservation programs.

ORA recommends continuation of SJWC's existing water conservation programs and expansion of the Company's recycled water program, but opposes funding a "new category" of WRAM-related water conservation programs at this time. ORA reduces SJWC estimate for all additional WRAM-related conservation programs from \$1.5 million per year to zero.³⁶

3. SJWC's rebuttal testimony provided specific support for the proposed conservation programs.

SJWC witness Pink responded to ORA's recommendations in rebuttal testimony, challenging ORA's assertion that SJWC does not need additional conservation programs because it is already meeting its gallons per capita per day targets for 2015 and 2020 pursuant to SB7x-7. He noted that ORA's water use charts were incorrect, and that actual data show that water use can fluctuate each year based on a variety of factors, including weather, economic activity, and the extent of conservation efforts and outreach.³⁷ As California now suffers through one of the worst droughts in recorded history, the Governor has issued an unprecedented call for 25% mandatory conservation statewide from baseline year 2013. As Mr. Pink testified, this order to reduce usage has trumped all other planning processes and essentially makes the prior legislatively mandated targets irrelevant. To achieve the 30% usage reduction SJWC has asked of its customers will require that SJWC have as many programs as possible for its customers to

³⁵ *Id.* at 32-33. The other two programs present either no cost or low cost for SJWC. *Id.* at 33.

³⁶ Exhibit O-01 (Keowen), at 2-14 to 2-15. ORA would permit SJWC to pursue its proposed Waterfluence program, for which SCVWD would bear all the costs. *Id.* at 2-12.

³⁷ Exhibit SJWC-10, ch. 6 (Pink), at 6-2.

use in order to save water. If the drought continues, usage restrictions will very likely remain in place and SJWC could be subject to fines if the required usage reductions are not achieved.³⁸

Mr. Pink emphasized that ORA should not be focused on the SB7x-7 process, but instead on the effort that is required of SJWC now to reduce usage in the face of the drought. In order to reduce usage now, SJWC needs additional conservation programs. The proposed WRAM-related conservation programs will fill gaps where programs are not otherwise locally available. Each program has its own merit. For example, the Commercial, Industrial and Institutional (“CII”) survey program meets a currently unmet need for complex water audits in these sectors of SJWC’s customer base and SCVWD has offered to share 50% of program cost with any local retailer. SJWC should be allowed to implement this favored and promising program.³⁹

Finally, Mr. Pink noted the special situation of the School Education Kits program, which the Commission approved over ORA’s objections in the last GRC, but which SJWC was not able to implement until the last year of the GRC cycle, due to ORA’s opposition and the lateness of the last GRC decision. SJWC’s witness saw no sense for this just-implemented program to be rejected and shut down for the 2016 to 2018 cycle. He testified that the program has enrolled 2,630 students after just one month of marketing, has received a tremendous positive response, and will make SJWC a leader in water conservation school education in Santa Clara County.⁴⁰

Mr. Pink concluded his rebuttal testimony by declaring that “SJWC remains committed to implementing all of the new WRAM-related conservation programs.” He

³⁸ *Id.*

³⁹ *Id.* at 6-3.

⁴⁰ *Id.* at 6-3 to 6-4.

considered these programs vital in the short-term due to the current drought, and also in the long-term, to ensure that water use reductions are permanent and that there are no gaps or underserved customer groups in the extent of conservation offerings.⁴¹

C. ORA Challenged Many Elements of JCWC's Payroll Expense Forecast.

Witness Denia Leal, SJWC's Vice President of Human Resources, sponsored Chapter 5 of Exhibit SJWC-1, addressing payroll, personnel, and employee benefits issues. She testified that total Payroll for 2015 through 2018 was estimated by escalating 2015 total actual payroll by annual payroll escalation factors and including the proposed addition of 33 employees in 2016. Total payroll was then allocated between expensed and capitalized payroll based on recorded historical allocations.⁴² Contested aspects of payroll expense include escalation factors and methodology, proposed new positions, temporary and part-time positions, bonuses for officers and managers, overtime expense, and payroll expense related to Non-Tariffed Products and Services.

1. Escalation factors and methodology

- a. SJWC based its forecast on actual salaries paid in 2015 and realistic escalation rates.

SJWC estimated its total annual payroll expense for the beginning of year 2015 based on the then-existing number of positions (358) at their known current January 1, 2015 salary levels. For 2016, SJWC applied the 3% contract agreement increase for union employees and 5% for administrative employees to bring the administrative staff's average wage comparability

⁴¹ *Id.* at 6-4.

⁴² Exhibit SJWC-1, ch. 5 (Leal), at 3.

of 90% closer to the union's comparability of 99% to the market average. The Company then used the PUC-published forecasts to escalate to 2017 and 2018.⁴³

- b. ORA produced a lower payroll forecast based on 2014 costs and unrealistic escalation rates.

Although January 2015 salary rates were known when SJWC filed its application and provided the base for SJWC's Test Year 2016 projection of payroll expense, ORA based its adjustment on recorded 2014 costs, applying a generic escalation factor (the "CPUC ECOS Memorandum Labor Factor) to determine a projected payroll cost for 2015, which was then adjusted by a further "Labor Factor" to reach a forecast for Test Year 2016. Payroll expense for "Transition-Year 2015" was estimated by escalating 2014 expense by 2% for union employees (per SJWC's union contract) and by the 1.6% "CPUC labor factor" for administrative and officer payroll.⁴⁴ To reach the Test Year 2016 projection, ORA applied the contract-based 3% factor for union employees, but applied the anomalous "CPUC labor factor" of *minus* 0.7% (-0.7%) in place of the 5% factor justified by SJWC witness Leal.⁴⁵

- c. SJWC's rebutted testimony and cross-examination highlighted the competitive compensation environment in which SJWC operates.

SJWC witness Leal responded to ORA's reliance on 2014 payroll expense, escalated to 2015, by affirming that "2015 payroll expense should be calculated based on actual wages that are in effect for 2015." By relying on actual 2014 wages, "ORA neglects to fully account for the annual change in wages, personnel and promotions that occurred effective January 1, 2015."⁴⁶ Ms. Leal noted that SJWC promoted six union employees and 10 administrative employees to

⁴³ *Id.* at 3.

⁴⁴ Exhibit O-01 (Keowen), at 3-1, 3-4.

⁴⁵ *Id.* at 3-6 to 3-7.

⁴⁶ Exhibit SJWC-10, ch. 4 (Leal), at 4-3.

higher positions and also made “market salary adjustments” to positions falling below 90% of the midpoint on comparability. As she observed, by basing payroll only on a 2014 baseline, ORA neglects to include these adjustments.⁴⁷ ORA thereby understates the payroll expense that SJWC is actually incurring in 2015, the year that should provide the base for this important element of Test Year 2016 revenue requirement.

SJWC’s 2015 market comparability study showed that its administrative staff is at just 93.23% of the midpoint of the market without bonus, and edges up to just 95.25% of the midpoint with bonuses included. To achieve approximately the midpoint of market compensation, SJWC escalates administrative staff payroll by 5% from 2015 to 2016, a figure comprised of a 2.8% inflationary factor plus a market adjustment of 2.2%.⁴⁸ Based on her expertise developed as a human resources officer for SJWC for over 25 years, Ms. Leal challenged ORA’s proposed labor cost escalation factor for 2016 of minus 0.7% (-0.7%) as “unrealistic in the Silicon Valley job market. Wage rates continue to escalate and not deflate.”⁴⁹

Ms. Leal went on to testify as follows:

Also, the Silicon Valley economy is experiencing a tightening of the labor market due to low unemployment rates which makes it difficult to recruit and retain employees. Paying better wages attracts and retains employees thereby providing the best services to our customers.⁵⁰

In response to cross-examination, Ms. Leal continued to challenge the relevance of the “ECOS Memo” labor cost escalator on which ORA relied to bring the 2014 actual payroll expense up to Test Year 2016 levels. While agreeing that the ECOS Memo indicates labor rate deflation in 2016, she testified that such a projection is contrary to what is published by the

⁴⁷ *Id.*

⁴⁸ *Id.* at 4-6.

⁴⁹ *Id.*

⁵⁰ *Id.*

Bureau of Labor Statistics.⁵¹ When asked whether the tightening Silicon Valley job market impacts the prevailing wage for meter readers at SJWC, she replied as follows:

I will have to answer yes to that question. We have a very constrained and competitive labor market. Even for meter readers there is some – there is some slight difficulty at this time just for laborers given that the construction industry is just booming in our area and they are taking all the skilled labor. They've even had to raise their rates in order to retain their workers. So we're having just a slight delay in doing our hiring just finding skilled people.⁵²

ORA witness Keowen also was questioned about his use of an ECOS escalation factor of 1.6% to convert 2014 labor costs to 2015. He could not say how the ECOS factor was calculated, but he acknowledged that Exhibit SJWC-14, a news article, indicated an increase in wages and salaries in the Bay Area of 4.9% in the year 2014, and that Exhibit SJWC-15, a release from the U.S. Bureau of Labor Statistics, showed increases in average weekly wages for Santa Clara County and San Mateo County substantially outstripping the average for the United States as a whole. Mr. Keowen acknowledged that the rate of salary increase in the service area and employee base area for SJWC appears to have been more rapid than in the country as a whole.⁵³

d. Conclusion

In summary, SJWC was well justified in basing its Test Year 2016 payroll cost estimate on salaries and wages actually being paid in 2015, escalated to the Test Year by a 3% factor (consistent with its primary labor agreement) for union employees and a 5% factor (including a 2.8% inflation factor and a 2.2% market equalizing adjustment) for administrative employees and officers. Although the earlier recorded numbers and the ECOS inflation factors

⁵¹ Tr. 390:4-20 (Leal/SJWC).

⁵² Tr. 390:26-391:11 (Leal/SJWC).

⁵³ Tr. 425:25-428:25 (Keowen/ORA).

on which ORA relied may be consistent with some past practice, they were proven not to be the best evidence or reliable indicators in the present Silicon Valley labor market in which SJWC must compete for employees. Therefore, SJWC's forecast of Test Year payroll expense is reasonable and should be adopted.

2. New Positions

In its last GRC, SJWC requested more than 20 new positions to fill various necessary functions, many of them in response to new regulatory mandates. The Commission's Decision, D.14-08-006, however, authorized only four new positions, two of which already had been filled when the application was filed in January 2012. In the present GRC, SJWC has requested 33 new positions while ORA would allow only two new positions. SJWC must caution that the constraint imposed by D.14-08-006's parsimonious approach makes it even more essential that SJWC's showing of need to add 33 new positions be given serious and close attention.

a. SJWC provided detailed explanations of its need to create 33 new positions.

Ms. Leal testified that the four new positions allowed by D.14-08-006 brought SJWC's total authorized head count to 355 employees, but the company has had to fill another three positions not allowed for in current rates to bring its total head count to 358. The 33 additional positions for which SJWC seeks authorization would bring authorized head count to 391.⁵⁴ In her direct testimony, Ms. Leal provided detailed explanations of the factors that contributed to SJWC's determination of need to request each of those 33 additional positions.

For example, Ms. Leal described in detail the events and requirements that created specific need for each of the three proposed new positions in SJWC's Customer Service Department – two Customer Integration Developers, one to provide technical support to

⁵⁴ Exhibit SJWC-1, ch. 5 (Leal), at 4.

Customer Service workers in the field and another to develop integrations to SJWC’s website and Smartphone site to improve transparency and customer information, and a social media specialist to enhance communications with customers.⁵⁵ She described the functions of four new positions required in the Distributions Systems Department to help ensure safe excavation work, prompt repair of leaks, reliable distribution, and safety management.⁵⁶ Requirements to replace many pipelines and special facilities (tanks, booster pumps, and mechanical equipment) drive the need for five of the seven new positions in Engineering, with the other two positions required to manage and update the Company’s hydraulic model and to maintain its GIS system.⁵⁷ The request for four new positions in Operations is driven by environmental compliance and security concerns, and the six new positions in the Water Quality Department are driven by increasingly demanding health and safety regulations.⁵⁸ The need for other requested positions is presented in similar detail.

- b. ORA proposed to disallow all but two new positions based on a simplistic customer growth metric.

ORA asserted that SJWC’s plan to hire 33 new employees was “excessive,” based on a comparison of this 9.21% increase in staffing with SJWC’s average annual customer growth rate of just 0.29%. Based on the average customer growth rate, ORA claims that “SJWC should be funded for just one new employee.” This simplistic comparison of ratios was the primary basis for ORA’s proposal to disallow 32 of the 33 new positions proposed and substantiated by Ms. Leal.⁵⁹ ORA further contended that the existence of 15 open positions, as of March 31,

⁵⁵ *Id.* at 4-6.

⁵⁶ *Id.* at 6-9.

⁵⁷ *Id.* at 9-17.

⁵⁸ *Id.* at 27-29.

⁵⁹ Exhibit O-01 (Keowen), at 3-7 to 3-8.

2015, called into question the validity of SJWC’s need for new positions, and questioned the “cost/benefit” of adding employees for a company that already provides safe and reliable water service at its current staffing levels.⁶⁰ While ORA adjusts SJWC’s projected overtime expense downward to moderate the effects of high overtime expense in 2013,⁶¹ ORA nonetheless denies the relevance of that high recent overtime expense to SJWC’s need for new employees.⁶²

Although witness Keowen actually recommended adding two positions – one based on the rate of customer growth and a second to provide a dedicated records manager to support a capital project for which ORA recommend approval⁶³ – his recommendation was not based on any information obtained from the Company regarding the need for particular positions, nor even on a consideration of the detailed explanations provided in Chapter 5 of SJWC’s Results of Operations Report about the new positions that the company was requesting. The witness “didn’t consider that” information and, further, did not even present any data requests seeking information relevant to the need for these positions.⁶⁴ ORA’s witness conceded that it “does seem reasonable” that the Company would be concerned to be “adequately staffed to meet increasingly stringent regulatory requirements and concerns in the area of security of the water supply and critical facilities,” but given the time and resources available, he “was not able to evaluate each and every specific aspect that requires to be addressed.”⁶⁵

⁶⁰ *Id.* at 3-8 to 3-9.

⁶¹ *Id.* at 3-12.

⁶² *Id.* at 3-9 to 3-10.

⁶³ *Id.* at 3-11 to 3-12.

⁶⁴ Tr. 429:5-430:13 (Keowen/ORa).

⁶⁵ Tr. 431:15-26 (Keowen/ORa).

c. SJWC's rebuttal testimony further justified the proposed new positions.

In rebuttal testimony, Ms. Leal objected to ORA's reliance on the existence of employee vacancies as a reason to disallow the creation of new positions. She explained that SJWC has experienced an abnormal number of retirements due to its aging employee population, several of them near year-end.⁶⁶ A comparable number of positions were still open in March 2015, a circumstance Ms. Leal explained as due in part to a "bidding system" that the unions operate under, by which, as vacancies come up and are filled, other positions open lower in the "food chain." As a result, the ultimate openings for external hires are likely to be at entry level positions.⁶⁷

Ms. Leal also testified that basing the addition of new employee positions strictly on the customer growth rate is insufficient, "given the tightening regulatory environment." She explained that the need for many of SJWC's employee additions is driven by three principal factors: 1) increasing regulatory obligations; 2) providing improved customer service and a more effective web and social media presence; and 3) increasing infrastructure replacement activities. These "drivers" would exist whether SJWC forecasted increases or decreases to the customer base. In sum, Ms. Leal testified that to "offhandedly state that employee additions should be based solely on forecasted customer growth ignores the complication involved with running a Class A water utility in the 21st century."⁶⁸

⁶⁶ Exhibit SJWC-10, ch. 4 (Leal), at 4-7.

⁶⁷ Tr. 386:22-387:8, 393:11-394:21, 408:4-:409:10 (Leal/SJWC).

⁶⁸ Exhibit SJWC-10, ch. 4 (Leal), at 4-6 to 4-7. Ms. Leal testified that the Company already has been obliged to fill two of the 33 requested new positions, for a Web Developer and a water quality engineer, and is actively recruiting for two other positions, with a strategy for others to follow. *Id.* at 4-7; Tr. 391:20-392:21 (Leal/SJWC).

3. Temporary and Part-Time Positions

a. SJWC explained its use of temporary and part-time employees.

SJWC's total payroll estimate includes temporary and part-time payroll expense. Ms. Leal testified that SJWC's union contracts provide for temporary labor to provide relief during peak summer months; temporary labor also allows completion of maintenance projects at much lower costs than would be required for full-time employees – not only due to lower wages but also by avoiding payment for benefits, since temporary employees are not eligible for them. Ms. Leal further explained that temporary and part-time employees are necessary to provide relief during extended absences and assistance for mandated projects. Temporary and part-time labor expenses have historically been allowed; only in the last GRC were these expenses excluded from revenue requirement.⁶⁹

b. ORA proposed to disallow all such costs.

ORA argues for disallowance of temporary and part-time labor from Test Year payroll expense on the basis that the last GRC decision “correctly noted” that temporary and part-time labor “does not provide continuous benefit to ratepayers, and therefore should be excluded from rates.”⁷⁰ ORA further asserts that if “speculative costs” for temporary and part-time labor are included in rates and SJWC does not actually require the use of such labor, “an additional windfall for shareholders would result.”⁷¹

⁶⁹ Exhibit SJWC-1, ch. 5 (Leal), at 3-4.

⁷⁰ Exhibit O-01 (Keowen), at 3-5.

⁷¹ *Id.*

- c. SJWC's response confirmed the value services temporary and part-time employees provide.

In rebuttal testimony, Ms. Leal made clear that there is nothing speculative or unnecessary about SJWC's employment of temporary and part-time employees. She testified that temporary labor is provided for in SJWC's union contracts to provide relief during peak summer months and enables SJWC to complete simple maintenance projects at a much lower cost than that of full-time permanent employees – not only in wages but also in benefits, since temporary employees do not qualify for the latter. She noted that SJWC employs 24 to 26 college student each summer, to provide relief during the vacation season, thus maintaining the level of service to customers.⁷² Ms. Leal also noted SJWC's employment of two permanent, part-time employees as Customer Service Representatives, who work 30 or more hours per week. Their part-time classification limits accrual of sick time and vacation accrual, but these positions qualify for other benefits, including health insurance.⁷³ Ms. Leal emphasized that temporary and part-time labor is so critical to the continued efficient operations that SJWC has continued to employ this labor subsequent to the last GRC decision even though recovery of the cost was disallowed.

While temporary employees do not provide “continuous benefits” to the Company, they enable the Company to provide continuous service to its customers, filling in for permanent employees during the vacation season and performing routine work at modest expense. The Commission's sparsely reasoned disallowance of these labor costs in the last GRC⁷⁴ was ill advised and should not be repeated.

⁷² Exhibit SJWC-10, ch. 4 (Leal), at 4-5.

⁷³ *Id.* at 4-5 to 4-6.

⁷⁴ See, D.14-08-006, *supra*, at 32.

4. Bonuses for Officers and Managers

- a. SJWC explained the terms and functions served by its short-term and long-term incentive plan.

Ms. Leal testified that SJWC maintains a Short Term Incentive (“STI”) plan that awards annual cash bonuses to reward superior performance and reinforce the Company’s short and long-term strategic goals and objectives. The procedure for aligning performance with specific cash bonus amounts includes establishing well-defined, clearly disclosed performance targets, including regulatory compliance, operational metrics, and delivering on specific goals and objectives as identified and documented at the beginning and each year. Managers and officers – approximately 38 employees out of 358 total personnel positions – are eligible for the formal STI program. In addition, a limited number of field supervisors and administrative employees are given the opportunity to earn modest bonuses. The inclusion of STI brings the compensation of SJWC’s administrative staff to 92% of comparable companies and agencies. Ms. Leal testified that the STI plan motivates staff to greater effort and so provides a significant benefit to customers.⁷⁵

Ms. Leal also addressed the purpose and functioning of the Long-Term Incentive (“LTI”) plan for SJWC’s officers. She explained that the LTI plan is designed to improve the Company’s long-term performance and to address concerns of shareholder advocacy groups that a significant portion of officer compensation for publicly traded companies should be based on incentives and aligned with shareholder interests. LTI compensation is a component of total direct compensation that is compared with peer group compensation and therefore is of critical importance for officer retention. Officers must fulfill various conditions to earn their LTI, and service period requirements incentivize retention and so reduce the risk of losing valuable

⁷⁵ Exhibit SJWC-1, ch. 5 (Leal), at 1-2.

officers, who are increasingly difficult to replace in the utility industry.⁷⁶ LTI grants are in the form of Restricted Stock Units, which may be subject to time vesting and performance measurement. Ms. Leal explained that LTI is not “additional” compensation, but is instead a re-allocation of payroll expense between cash compensation and long-term incentives – a re-allocation that benefits SJWC’s customers. With inclusion of the LTI, officers’ total direct compensation averages between the median and the 75th percentile of their peer group, after application of a cost of living factor. “Without LTI,” she testified, “cash compensation would need to be increased by approximately 10%-30% to be at market, and the company would lose the performance and service incentives.”⁷⁷

b. ORA summarily opposed inclusion of incentive costs in rates.

ORA argues that “[w]hile bonuses may provide additional incentive to accomplish goals, for ratemaking purposes, bonuses should not be included [in] rates, and [should be] funded by SJWC shareholders.”⁷⁸ ORA expresses concern that any “unused bonuses” would become a windfall for the company, and argues for disallowing bonuses as a way of reducing costs to ratepayers.⁷⁹

c. SJWC’s rebuttal testimony showed that SJWC’s incentive programs help make its compensation packages competitive for administrative staff and officers as well.

In rebuttal testimony, witness Leal challenged ORA’s disallowance of SJWC’s STI and LTI programs for administrative staff and officers of the company. As noted previously, the Company’s 2015 market comparability study showed that administrative staff is at just 93.23%

⁷⁶ *Id.* at 2.

⁷⁷ *Id.* at 3.

⁷⁸ Exhibit O-01 (Keowen), at 3-4 (apparently missing words added).

⁷⁹ *Id.* at 3-4 to 3-5.

of the market midpoint without a bonus, but that bonuses bring the comparability to 95.25% of the midpoint, which is closer to the union employees' market comparability of 96%. The STI allows SJWC to keep administrative staff compensation comparable to that of union employees while often tying bonuses to key performance indicators related to customer service and operating efficiency, thereby directly benefiting ratepayers.⁸⁰

The percentages noted above demonstrate that both employee groups, even considering bonuses, are compensated below comparable market rates. That means the STI bonuses are not “overcompensating” SJWC’s administrative staff. And ORA has done nothing to show that the incentive element of SJWC’s STI program is in any way unfair to employees or harmful to morale or operations. To the contrary, as noted above, the STI program allows SJWC to reward superior customer service and operating efficiency, thereby benefiting ratepayers.

Ms. Leal vigorously denied that SJWC derives any “windfall” by failing to pay authorized incentives. She provided statistics demonstrating that over the past five years the Company has cumulatively paid out more than 100% of the STI targets – an incremental payout borne by shareholders and not by ratepayers. Because the Company consistently exceeds STI targets, there is no risk of a “windfall” to the company. Ms. Leal noted as well that the Company pays at and above the STI targets because employees consistently meet the STI goals – proving that “the STIs successfully incentivize employees to meet key performance metrics.”⁸¹

Ms. Leal also explained the rationale justifying the Company’s LTI Plan (“LTIP”) for officers. The LTIP is designed to improve the Company’s long-term performance and responds to concerns of shareholder advocates that a significant portion of officer compensation should be

⁸⁰ Exhibit SJWC-10, ch. 4 (Leal), at 4-3 to 4-4.

⁸¹ *Id.* at 4-4.

aligned with shareholders' interests. Ms. Leal explained that this is a very common practice for publicly traded companies like SJWC's parent company, and that LTI compensation is a component of total direct compensation that is of critical importance for officer retention. LTI grants are in the form of restricted stock units, subject to vesting over time and performance measurements. With inclusion of LTI, total direct compensation to SJWC's officers averages between the median and 75% of the peer group. Elimination of the LTI Plan would require a 10 to 30% increase in cash compensation while eliminating the performance and service incentives that the Plan provides.⁸²

The basic and undeniable point of SJWC's position is that the opportunity to earn a bonus for strong performance is a standard element of a standard compensation package for a corporate officer just as it is for a managerial or supervisory employee. The long-term retention-oriented incentives for officers are more substantial than the STI cash bonuses offered to both officers and managers but both programs are consistent with standard principles of good corporate governance and efficient business operations. They are proper and necessary costs of doing business in a competitive labor world.

5. Overtime expense should be estimated based on a 3-year average.

ORA reported that SJWC paid \$1,293,556 in overtime in 2014, the last recorded year for this GRC, which amounted to 3.62% of total payroll expense. This was consistent with SJWC's 5-year average of 3.68%.⁸³

In rebuttal testimony, SJWC opposed ORA's overtime estimate based on the five year average, urging instead that a more recent 3-year average provides a more accurate forecast.

⁸² *Id.* at 4-4 to 4-5.

⁸³ Exhibit O-01, ch. 3 (Keowen), at 3-9.

This is because both SJWC and ORA forecast overtime using non-inflation adjusted averages of historical data. As Ms. Leal testified, since the averages are not adjusted for inflation, the more recent data set should be used. Moreover, ORA’s baseline forecast of \$1,220,835 is lower than the actual expense in the most recent recorded 3-year period, and so is clearly insufficient.⁸⁴ Accordingly, the Commission should base the overtime expense element of payroll expense on the 3-year average (years 2012 to 2014).

6. Payroll expense related to non-tariffed products and services should not be disallowed.

In SJWC’s last GRC, A.12.01-003, ORA recommended disallowance of nearly \$300,000 in base-year payroll expense for employees who engaged in the provision of non-tariffed products and services (“NTP&S”), which ORA claimed should be borne by shareholders rather than ratepayers. In D.14-08-006, the Commission recognized that, pursuant to the applicable rules, all risk related to NTP&S is borne by the shareholders, while the associated revenue benefits both ratepayers and shareholders.⁸⁵ However, the Decision accepted ORA’s contention that the payroll expenses at issue were incurred to provide NTP&S and therefore should not be considered in determining test year labor costs.⁸⁶

SJWC applied for rehearing of D.14-08-006 with respect to this issue, but at the time SJWC filed the present GRC in January 2015, the Commission had not yet acted on that application. In March 2015, the Commission issued D.15-03-048, granting limited rehearing to determine if SJWC’s labor costs associated with NTP&S were incremental labor or excess or

⁸⁴ Exhibit SJW-10, ch. 4 (Leal), at 4-7 to 4-8.

⁸⁵ D.14-08-006, *supra*, at 100-01, citing, D.11-10-034, App. A, Rules for Water and Sewer Utilities Regarding Affiliate Transactions and the use of Regulated Assets for Non-Tariffed Utility Services (“ATRs”).

⁸⁶ D.14-08-006, *supra*, at 103-04.

unused capacity.⁸⁷ The Commission noted in that Decision that Rule X.D of the ATRs addresses the allocation of costs to NTP&S and that under Rule X.D “only incremental costs associated with the NTP&S are allocated to the service.” The rule states that “all cost . . . due to NTP&S projects shall not be recovered through tariffed rates.” The Commission interpreted this provision as follows:

The words “due to” indicate that only those costs caused by the provision of the NTP&S get allocated to the service. The costs associated with unused or excess labor would be incurred by the utility regardless of whether NTP&S were provided and thus are not “due to” the provision of the NTP&S.”⁸⁸

While agreeing with SJWC that only incremental costs associated with NTP&S are properly allocated to shareholders, and modifying D.14-08-006 to remove findings and conclusions that stated otherwise, the Commission in D.15-03-048 was not prepared to judge the character of the labor costs at issue. The Commission noted that if the labor associated with NTP&S is needed by the regulated business, there is an issue whether SJWC should be using that labor to provide NTP&S labor. Because of conflicting statements in the prior Decision as to the reason for disallowing NTP&S related labor and with little evidence to determine if the labor associated with NTP&S was excess capacity, the Commission granted limited rehearing to determine whether labor costs associated with NTP&S were related to excess or unused capacity or whether this labor was needed for regulated operations. But pending the outcome of the limited rehearing, the prior disallowance of labor costs was left to remain in effect, subject to adjustment.⁸⁹ It is in this context that the same issue was raised in the present GRC.

⁸⁷ Re San Jose Water Company, D.15-03-048, at 2.

⁸⁸ *Id.* at 4-5.

⁸⁹ *Id.* at 6-7.

- a. ORA relied on a superseded decision to disallow NTP&S-related labor costs.

Although the Commission issued D.15-03-048 nearly a month before ORA's testimony was served, ORA's testimony was not modified to reflect that Decision in any respect. To the contrary, ORA noted that SJWC had been ordered (in D.14-08-006) to exclude labor attributed to NTP&S and claimed that "no final decision has been issued" on SJWC's application for rehearing on the issue. ORA proceeded to make the same adjustment to exclude labor attributed to NTP&S in this GRC as it had made in the prior one – removing "Labor cost attributed to NTP&S" in the amount of \$442,357 from the 2016 payroll forecast. The only factual support for this disallowance was that SJWC attributed 12,202 labor hours to NTP&S in 2014, equivalent to the time of six full-time employees, and one Distribution System Inspector attributed 59% of his work hours to NTP&S.⁹⁰

When questioned about the ORA position, ORA witness Keowen stated that labor related to NTP&S should not be allowed in rates in this proceeding, in order to be consistent with D.14-08-006.⁹¹ He acknowledged that D.15-03-048 had granted rehearing of the issue, but insisted that the basis for ORA's position was D.14-08-006, not D.15-03-048.⁹² He also acknowledged that D.15-03-048 determined that whether the labor cost associated with NTP&S is incremental is a question of fact to be investigated, and that the same factual inquiry needs to be made in this case. Yet he admitted that his recommendation to disallow all NTP&S-related labor expense was based on the assumption that it is all incremental, and the issue of the

⁹⁰ Exhibit O-01 (Keowen), at 3-3.

⁹¹ Tr. 431:27-432:12 (Keowen/ORR).

⁹² Tr. 432:23-433:15 (Keowen/ORR).

incremental or non-incremental character of that labor was not the subject of his study, which “was just based on the number of hours and what had been cited in the previous rate case.”⁹³

- b. SJWC’s rebuttal testimony confirmed that ORA failed to justify disallowing NTP&S-related labor expense.

In rebuttal testimony, SJWC witness Jensen testified that ORA’s removal of NTP&S-related labor expense did not comply with the Commission’s ATRs. He noted that SJWC’s NTP&S-related labor falls under the “excess or unused capacity” qualifications of Rule X.B and that the effective distinction was of incremental versus non-incremental expenses related to provision of NTP&S. Mr. Jensen explained that incremental NTP&S expenses would not be incurred by the utility without the provision of NTP&S, but the NTP&S-related labor expense that ORA would deduct is *non-incremental* – it would be incurred by the utility with or without the provision of NTP&S. He noted that Rule X.D confirms that incremental costs – those that are “incurred due to NTP&S” – are not to be recovered through tariffed rates, but that non-incremental costs *can* be recovered through rates.⁹⁴ Mr. Jensen noted further that the rehearing granted by D.15-03-048 would determine what portion, if any, of labor associated with SJWC’s NTP&S was related to excess capacity.⁹⁵

On cross-examination, Mr. Jensen noted that the rehearing pursuant to D.15-03-048 is ongoing and that the disallowance of NTP&S-related labor by D.14-08-006 will remain in effect, subject to adjustment, pending the outcome of the rehearing.⁹⁶ What all this means for the present case requires careful consideration of the implications of D.15-03-048 as a decision on the law, not the facts, of the matter.

⁹³ Tr. 433:16-434:15 (Keowen/ORR).

⁹⁴ Exhibit SJWC-10 (Jensen), at 2-6 to 2-8.

⁹⁵ *Id.* at 2-8.

⁹⁶ Tr. 319:6-11, 320:25-321:3 (Jensen/SJWC)

The Commission has ruled in D.15-03-048 that only incremental costs should be allocated to NTP&S, and that a factual analysis is required to determine whether and in what amount NTPS-related labor cost is incremental – whether it has been incurred *due to* the provision of NTP&S.⁹⁷ We know that ORA’s disallowance of all of SJWC’s NTPS-related labor cost was *not* based on an assessment of the incremental or non-incremental character of the labor at issue. The limited rehearing ordered by D.15-03-048 is addressing the incremental or non-incremental character of the labor at issue in the *prior* GRC – during Test Year 2013. Thus, regardless of the outcome of that limited rehearing on that factual issue, there has been no effective challenge to any of the payroll expense presented in SJWC’s proposed revenue requirement for 2016 because ORA has offered no evidence that any portion of SJWC’s NTPS-related labor cost for 2016 (or for ORA’s base year 2014 or SJWC’s base year 2015) is incremental – *i.e.*, labor cost that has been or will be incurred *due to* the provision of NTP&S. In short, ORA’s challenge to SJWC’s NTP&S related labor cost fails for lack of proof.

D. SJWC’s Estimated Regulatory Commission Expense was Reasonable and Should Be Accepted.

SJWC projected Regulatory Commission Expense of \$1,000,000 for the current GRC cycle, amortized over the years 2015 to 2017 with \$341,300 in Test Year 2016.⁹⁸ This expense estimate was supported by testimony that the regulatory landscape “has become increasingly complicated, increasingly contentious, and increasingly costly.” As indicated by SJWC’s last GRC and other proceedings, regulatory applications “regularly go longer than outlined in the

⁹⁷ D.15-03-048, *supra*, at 5-7.

⁹⁸ Exhibit SJWC-1, ch. 9 (Jensen), at 2 and Table 9-B. Specifically, these amounts represent Regulatory Commission Expense other than the CPUC Reimbursement Fee, which is not included as an expense for ratemaking purposes. See, Exhibit SJWC-2 (Jensen), WP 9-8.

scoping memos and additional outside service expenses are incurred for legal assistance, consulting expertise, public noticing, and printing services.”⁹⁹

ORA challenged the “factual basis” for SJWC’s forecast, asserting that over the past three years SJWC spent a total of \$570,000 in Regulatory Commission Expense. Because the costs vary from year to year, ORA recommended use of a 5-year inflation adjusted average, reducing SJWC’s forecast from \$341,000 to \$185,000 for Test Year 2016.¹⁰⁰

ORA’s \$185,000 estimate is unreasonably low even on a historical basis. ORA based its use of a 5-year average on the variation of costs from year to year, but failed to note that the cost variation follows a three-year cycle matching the Rate Case Plan. Not surprisingly, SJWC routinely incurs much higher Regulatory Commission expense in the years in which it files a GRC.¹⁰¹ ORA’s selection of a 5-year base period omits a GRC year, and so seriously underestimates the average expense over any 3-year GRC cycle. Applying ORA’s forecast method to a 6-year base period (2009 to 2014) with the same inflation factors produces a forecast of \$216,000 for Test Year 2016, rather than ORA’s \$185,000 estimate.

SJWC witness Jensen provided rebuttal testimony arguing forcefully that ORA’s backward looking perspective is inappropriate for assessing the cost of regulatory participation over the current GRC cycle. He explained that Regulatory Commission expense includes

legal fees for proceedings before the CPUC (GRC, Cost of Capital (COC), other miscellaneous proceedings including formal Applications, Advice Letters, OIRs and miscellaneous activities), consulting fees necessary for outside expertise on issues in these proceedings (sales forecasting, financial consultants, regulatory consultants etc.), printing costs of the various Applications and associated Exhibits for proceedings, costs related to meeting CPUC customer notification requirements (bill insert design and printing

⁹⁹ Exhibit SJWC-1, ch. 9 (Jensen), at 2.

¹⁰⁰ Exhibit O-01 (Keowen), at 2-29.

¹⁰¹ See, Exhibit SJWC-2 (Jensen), WP 9-8.

costs, translation services and newspaper fees), and miscellaneous costs (file sharing site, equipment rental, etc.).¹⁰²

Mr. Jensen objected to ORA's proposed \$185,000 allowance for Test Year 2016 as inadequate, for several reasons. For one, SJWC did not process a Cost of Capital application during the last three-year GRC cycle, but SJWC is very likely to do so during the coming three-year GRC cycle. Additionally, he testified, "the regulatory landscape has become increasingly complicated, increasingly contentious, and increasingly costly" – examples being three major proceedings for SJWC that lasted far longer than anticipated, with increased legal and consulting fees. Increased participation by intervenors is another source of increasing regulatory expense.

ORA witness Keowen did not address the increasing regulatory complexity that SJWC faces, and he did not specifically consider the increasing regulatory activity associated with such issues as safety and security and drought response or the increasing involvement of intervenors in SJWC's proceedings. He "just looked at the historical data to show what the actual expenses for regulatory costs have been."¹⁰³ SJWC's estimate of \$1,000,000 in Regulatory Commission expense amortized over a 3-year period is meant to account for the steadily increasing complexity and costs of the regulatory process that Mr. Jensen described but ORA ignored.¹⁰⁴

E. SJWC's Forecast of Corporate Expense Was Appropriately Based on the Most Recent Recorded Year's Expense,

SJWC's workpaper shows estimated General Corporate expense of \$908,000 for Test Year 2016.¹⁰⁵ ORA criticized this estimate, based on escalated 2014 recorded expense, because

¹⁰² Exhibit SJWC-10, ch. 2 (Jensen), at 2-3 to 2-4.

¹⁰³ Tr. 423:1-3 (Keowen/ORR); see generally, Tr. 422:17-424:25.

¹⁰⁴ Exhibit SJWC-10, ch. 2 (Jensen), at 2-3 to 2-5; see also, Tr. 334:11-26 (Jensen/SJWC).

¹⁰⁵ *Id.*

the 2014 amount was the highest recorded period over the last five years. ORA recommended using a 5-year inflation adjusted average, which reduces the Test Year forecast to \$790,000.

SJWC's rebuttal testimony described Corporate expenses – relating to such matters as SEC filings, investor relations, shareholder meetings, fees related to stocks and bonds, and director's fees and expenses. Mr. Jensen explained that SJWC based its Test Year 2016 estimate on recorded 2014 expense because that most recent recorded year most accurately reflects the current level of these expenditures.¹⁰⁶ The upward trend in these costs warrants SJWC's slightly higher Test Year estimate.

F. ORA's Adjustment to SJWC's Estimate of Payroll Taxes Should Be Corrected by Eliminating Double Deduction of the Capitalized Portion of FICA Tax.

The largest expense for payroll taxes is for Federal Insurance Contributions Act ("FICA") taxes that include Social Security Tax and Medicare Tax. These amount to 6.2% of gross earnings, subject to a maximum taxable earnings cap, and 1.45% of gross earnings without a cap, respectively. SJWC estimated FICA Taxes for Test Year 2016 at \$3,000,300. This amount was derived by applying the FICA Tax Ratio based on a 3-year historical average (7.00%) to SJWC's total payroll expense, which indicates a 9.60% ratio as applied to SJWC's expensed payroll (from which capitalized labor has been deducted).¹⁰⁷

ORA criticized this calculation because the 9.60% ratio is higher than the maximum total FICA tax rate of 7.65%. According to ORA, the reason for this "discrepancy" is that SJWC did not reduce its FICA estimate by the amount of the "capitalized FICA." According to ORA,

¹⁰⁶ Exhibit SJWC-10, ch. 2 (Jensen), at 2-5 to 2-6.

¹⁰⁷ Exhibit SJWC-2 (Jensen), WPs 10-2, 10-7.

SJWC capitalizes 24.17% of its SUI and FUI (unemployment) taxes, but does not do so for FICA. ORA reduced SJWC's FICA estimate by the same 24.17%.¹⁰⁸

In rebuttal testimony, SJWC witness Jensen disagreed, noting that the capitalized portion of FICA already is accounted for in SJWC's workpapers. Specifically, SJWC's workpaper for Administrative Expenses Transferred presents labor, labor burden, and other expenses that are directly charged to capitalize projects and to the construction overhead pool. The transferred labor burden already includes the allocation of capitalized FICA, which is thereby transferred out of revenue requirement. As Mr. Jensen testified, if the Commission were to adopt ORA's recommendation, the capitalized portion of FICA would be "doubly removed" from authorized revenue requirement. He therefore urged the Commission to disregard ORA's recommendation to remove capitalized FICA from SJWC's total Payroll Tax estimate.¹⁰⁹

On cross-examination, ORA witness Han reviewed SJWC's workpaper for Administrative Expenses Transferred, Workpaper 9-9. He agreed that this workpaper shows the administrative expenses that are taken out of the expenses portion of the revenue requirement and are included in the capital budget as part of overhead loading, and that the three lines referring to "labor burden" showed things like benefits and taxes related to payroll, including FICA taxes.¹¹⁰

Mr. Han further agreed that the workpaper indicates that SJWC has transferred a portion of the FICA taxes related to its employees from operating expenses to capital, but he contended that the amount transferred was not sufficient – that the company "undercapitalized"

¹⁰⁸ Exhibit O-01 (Han), at 6-3.

¹⁰⁹ Exhibit SJWC-10, ch. 2 (Jensen), at 2-8 to 2-9.

¹¹⁰ Tr. 414:9-415:18 (Han/ORa); Exhibit SJWC-2, WP 9-9.

its FICA tax expense by about \$559,000.¹¹¹ He removed the entire amount of FICA taxes related to capital projects from the total amount of payroll taxes reflected on Workpaper 10-7, and so he acknowledged that some portion of that capitalized portion of FICA taxes is removed twice under his methodology.¹¹²

Mr. Han stated that if the Company agreed that 24.17% of FICA tax should be capitalized, then the Company would be in the hole by approximately \$589,000, and he would be willing to add that amount to plant additions to compensate for the loss of overhead. He also would be prepared to adjust his workpaper to reflect that elimination of the double deduction.¹¹³

SJWC recommends the Commission adopt the Company's forecasting methodology, which has been used, and accepted, across numerous GRC proceedings. However, if the Commission adopts ORA's methodology, the capitalized portion of payroll removed from total payroll taxes should be added back into Administrative Expenses Transferred to avoid double removal and thereby should be included in plant additions.

G. ORA's Proposals to Required Memorandum Accounts to Record Prior Years' Tax Credits are Unjustified.

ORA has proposed to require SJWC to establish a pair of memorandum accounts in order to generate refunds to ratepayers with respect to federal and/or state tax credits for past tax years. Both these proposals suffer from the same defect – they would violate the long-established rule against retroactive ratemaking.

¹¹¹ Tr. 415:19-416:3 (Han/ORR).

¹¹² Tr. 416:4-24 (Han/ORR).

¹¹³ Tr. 416:24-417:8 (Han/ORR).

1. SJWC’s implementation of federal Tangible Property Regulations would provide appropriate benefits to ratepayers in Test Year 2016.

SJWC provided detailed testimony explaining its implementation of the Tangible Property Regulations (“TPR”) that were issued in 2013 and 2014 by the U.S. Treasury Department and the Internal Revenue Service (as T.D. 9689) to provide guidance on application of certain Internal Revenue Code provisions, all of which broadly apply to amounts to acquire, produce, or improve tangible property or to the disposition of such property, and provide guidance as to deduction or capitalization of such amounts for income tax purposes.¹¹⁴ The Tangible Property Regulations generally are effective for taxable years beginning on or after January 1, 2014. Implementation allows a “catch up” deduction for prior years and an annual repair deduction for future years. For regulatory purposes, the book/tax differences from implementing the repair regulations are normalized for federal income tax purposes, reducing the rate base by an increase in federal deferred tax liability, but are flowed through for state income tax purposes. Both these effects are consistent with the Company’s current reporting practices.¹¹⁵

2. ORA seeks to require SJWC to establish memorandum accounts to flow through tax benefits accruing prior to the Test Year.

ORA agreed with SJWC’s proposal to normalize the federal income tax savings and to flow through the state tax savings. ORA claimed concern, however, that federal and state tax savings from implementing the Tangible Property Regulations for 2013 and prior years, 2014, and 2015 were not reflected in SJWC’s last GRC. ORA estimated substantial state tax savings resulting from flow-through of the TPR deductions for 2013 and prior years, with lesser amounts

¹¹⁴ Exhibit SJWC-1, ch. 10 (Jensen), Att. 1, at 1-6.

¹¹⁵ *Id.* at 2, 4; see also, Tr. 287:5-288:2 (Lynch/SJWC).

for 2014 and 2015, and also expects a substantial increase in SJWC's deferred federal income taxes that was not considered in the last GRC. ORA proposed that state and federal income tax savings be accumulated in a "TPR memorandum account" with the balance to be passed on to ratepayers by advice letter within 30 days after SJWC completes its 2015 tax filings.¹¹⁶ ORA witness Han confirmed on cross-examination that ORA is proposing a memorandum account to reflect the benefit of TPR tax deductions in 2014 and 2015.¹¹⁷

ORA also proposed that SJWC be required to establish a memorandum account with respect to California's Enterprise Zone Sales and Use Tax Credit, which was repealed January 1, 2014. According to ORA's testimony, SJWC filed refund claims for the years 2008-2012 to claim the Enterprise Zone tax credit and received a credit of \$880,000 in 2014. This credit was not reflected in the last GRC decision, but ORA claimed it should be passed on to ratepayers. ORA asked the Commission to require SJWC to establish a memorandum account for this tax credit amount of \$880,000 and file an advice letter to refund the tax savings within 30 days after the rates for this GRC become effective.¹¹⁸

3. SJWC's response confirms that ORA's memorandum account proposals relate to tax benefits accruing to ORA in years prior to Test Year 2016.

James Lynch, SJWC's Chief Financial Officer, provided rebuttal testimony addressing ORA's analysis of income tax issues, including both of ORA's memorandum account proposals. Mr. Lynch disagreed with ORA's proposal for a TPR memorandum account. He explained that the record in SJWC's last GRC, A.12-01-003, was closed in mid-2012 but the final Tangible Property Regulations were not issued until August 14, 2013, and SJWC's detailed

¹¹⁶ Exhibit O-01, ch. 5 (Han), at 5-6.

¹¹⁷ Tr. 418:10-16 (Han/ORR).

¹¹⁸ *Id.* at 5-6 to 5-7.

analysis of the TPR was not completed until the following year. Thus, the timing of SJWC's last GRC did not enable SJWC to include effects of the TPR in rates in that proceeding.¹¹⁹

SJWC witness Lynch noted that ORA's proposal would require SJWC to go back to a prior period to begin tracking federal and state income tax savings in a memorandum account. He challenged the proposal as "a clear case of retroactive ratemaking," violating the well-established ratemaking rule against tracking amounts from a previous period without prior Commission approval and inconsistent with the Commission's reliance on future test year forecasts as the basis for setting utility rates.¹²⁰

Mr. Lynch further noted that the effects of the TPR on SJWC's deferred income tax liability are incorporated into SJWC's revenue requirement going forward. The beginning balance of deferred tax liability, which is a deduction from rate base, for the 2016 Test Year includes the increase caused by the federal TPR deductions. SJWC's rate base has been reduced accordingly and so ratepayers *will benefit* from SJWC's implementation of the Tangible Property Regulations. Due to the retroactive ratemaking concern and in recognition of the TPR's benefits to ratepayers through the reduction of rate base beginning in Test Year 2016, Mr. Lynch urged the Commission to disregard ORA's recommendation.¹²¹

ORA's attempt to require SJWC to establish a memorandum account to facilitate flow-through of an Enterprise Zone Tax Credit is equally inappropriate. As Mr. Lynch testified, SJWC calculated and claimed a refund with respect to the Enterprise Zone Tax Credit in 2014.

¹¹⁹ Exhibit SJWC-10, ch. 5 (Lynch), at 5-2.

¹²⁰ *Id.*

¹²¹ *Id.* at 5-3. It should also be noted that the TPR deduction amounts listed in Exhibit O-01, at 5-5, do not reflect changes in SJWC's estimates that were included in its 45-day update, as reflected in ORA's Results of Operations Appendix A, Tables 6-1 and 6-4, but not in the testimony at page 5-5. Exhibit SJWC-10, ch. 5 (Lynch), at 5-3.

The ultimate amount of the refund is uncertain, because it is currently under review by the Franchise Tax Board.¹²²

After conducting a highly technical study to determine whether SJWC activities might qualify for the Enterprise Zone Tax Credit, upon completion of the study in June 2014, SJWC submitted a claim for the tax credit. Due to the timing of SJWC's last GRC, in which the record was submitted in mid-2012, SJWC could not have included the effects of the proposed credit in that last GRC. Requiring SJWC to go back to a prior period to track and record the tax credit in a memorandum account without prior Commission approval would be a clear-cut case of retroactive ratemaking. On this basis, Mr. Lynch urged the Commission to disregard ORA's memorandum account/flow-through recommendation."¹²³

In response to cross-examination, Mr. Lynch clarified that the Enterprise Zone tax credit refund has been received but it remains subject to review and audit by the Franchise Tax Board. The filing was made in 2014.¹²⁴

The change in the Tangible Property Regulations occurred in 2013, allowing the expensing of certain items previously capitalized for tax purposes. SJWC claimed refunds pursuant to that change for tax year 2014 and previous years, and also forecasts its taxes for Test Year 2016 using the new TPR rule.¹²⁵ Adoption of the new TPR rule benefits ratepayers with respect to both federal and state income calculations, but in different ways – mainly by a

¹²² Exhibit SJWC-10, ch. 5 (Lynch), at 5-4.

¹²³ *Id.*

¹²⁴ Tr. 288:16-290:6 (Lynch/SJWC).

¹²⁵ Tr. 291:11-28, 293:18-24, 296:16-21 (Lynch/SJWC)..

deferred tax credit that reduces rate base for federal purposes and reduced tax expense for state purposes.¹²⁶

4. The rule against retroactive ratemaking does not permit use of memorandum accounts to adjust rates for costs or benefits accruing prior to authorization of the accounts.

The problem with ORA's memorandum account proposals for tax credits resulting from both the Tangible Property Regulations and the Enterprise Zone Sales and Use Tax Credit is that ORA's purpose is to apply those memorandum accounts retroactively – to record the effects of taxes paid and credits claimed for past years in tax returns filed prior to the Test Year for this GRC. The fact that a previous GRC did not take account of these tax credits is of no significance. What matters is that use of a memorandum account permits the Commission to preserve expenses or revenues for future consideration of their impact on rates, but only to the extent that those expenses or revenues are incurred or accrued after the memorandum account has been authorized and established.

This limit on the use of memorandum accounts is a direct result of the rule against retroactive ratemaking. A recent case concisely relates the derivation of that rule:

The rule against retroactive ratemaking was established in *Pacific Telephone and Telegraph Co. v. PUC*, 62 Cal. 2d 634, 649 (1965). In that case the Supreme Court held that the Commission lacks "the power to roll back general rates already approved by it under an order, which has become final, or to order refunds of amounts collected by a public utility pursuant to such approved rates and prior to the effective date of a commission decision ordering a general rate reduction." The Supreme Court explained that this rule flows directly from Section 728 of the California Public Utilities Code, which expressly limits the Commission's power to establishing rates "to be thereafter observed."¹²⁷

¹²⁶ Tr. 301:21-302:20 (Lynch/SJWC).

¹²⁷ *Hamilton Cove Home Owners Ass'n v. Southern California Edison Co.*, D.12-02-001, 2012 Cal. PUC Lexis 52.

The use of memorandum accounts can avoid the full effect of the rule against retroactive ratemaking, but only to a limited extent. That limit was clearly established in a Commission decision that has come to be known as the *Southern California Water Headquarters* case, decided in 1992. In that decision, the Commission stated as follows:

It is a well-established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, ***before the utility incurs those expenses***, the Commission has authorized the utility to book those expenses into a memorandum or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking.¹²⁸

The Commission recently quoted this passage from the *Southern California Water Headquarters* case in a decision in the Commission's Natural Gas Pipelines Safety Rulemaking. In that decision, the Commission continued as follows:

Similarly, it is the Commission's practice not to reduce general rates that have been set on a forecast basis to account for costs not incurred -- unless the Commission has previously set up some mechanism to adjust rates for costs not incurred (e.g. a balancing account). This practice is also consistent with the rule against retroactive ratemaking.¹²⁹

The consistent message of these and dozens of other Commission decisions, on the same principle as applied in many different fact situations, is that a memorandum account can serve the interests of a public utility in recovering costs not previously recognized in rates or of its customers in having the benefit of revenues not previously so recognized, but only – in either case – to the extent that those costs or revenues are incurred or accrued ***after*** the memorandum account has been authorized and established. Only to that extent can the creation of a

¹²⁸ *Southern California Water Co.*, D.92-03-094 1992 Cal. PUC Lexis 236 *32; 43 CPUC2d 596, 600 (emphasis added), most recently cited in Resolution E-4673 (Southern California Edison Co.), 2014 Cal. PUC Lexis 351, August 14, 2014.

¹²⁹ Rulemaking re New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms, D.12-12-030, 2012 Cal. PUC Lexis 600,

memorandum account avoid the rule against retroactive ratemaking as the California Supreme Court declared it half a century ago in the *Pacific Telephone* case: that the Commission lacks "the power to roll back general rates already approved by it under an order, which has become final"¹³⁰

Thus, in conclusion, the memorandum accounts proposed by ORA to record tax benefits that have accrued prior to the establishment of those accounts would be inconsistent with the rule against retroactive ratemaking and, hence, unlawful. Accordingly, the Commission should not require the establishment of such accounts.

H. Health Care Cost Balancing Account Should Be Authorized for SJWC.

SJWC witnesses Leal and Jensen both provided testimony supporting the Company's request that the Commission authorize a Health Care Cost Balancing Account effective January 1, 2016, to allow for the recovery of unpredictable costs of insurance premiums, especially as they may be affected by the Affordable Care Act ("ACA"). Ms. Leal detailed various elements of the ACA that contribute to higher insurance costs, but the Health Care Cost Balancing Account is proposed as a two-way account that may result in increases or decreases to rates depending on future costs. She also noted that such accounts have been authorized for several other Class A water companies, including Apple Valley Ranchos Water Company, California Water Service Company, and Great Oaks Water Company.¹³¹

ORA opposed SJWC's request, asserting that a balancing account "automatically infers that the amounts are reasonable for recovery" and "can only track costs that are due to

¹³⁰ *Pacific Telephone and Telegraph Co. v. PUC*, 62 Cal. 2d 634, 649 (1965).

¹³¹ Exhibit SJWC-1, ch. 5 (Leal), at 29-30; see also, *Id.*, ch. 17 (Jensen), at 17-1.

events of an exceptional nature.”¹³² ORA suggests that “SJWC has options of adjusting back its health care benefits, choosing not to provide employees with ‘Cadillac plans,’ passing excess costs through to its employees, or paying their employees compensation in lieu of health care coverage.”¹³³ ORA also points out that the rates of increase in SJWC’s medical premium rates have been trending lower in recent years and that dental premiums have, on average, only increased slightly.¹³⁴

In rebuttal testimony, SJWC witness Leal expressed concern that ORA “made light of the dramatic fluctuations in health and dental insurance costs over the last six years.” She noted that the Company’s insurance rates are based on employee utilization of benefits that fluctuate unpredictably from year to year. Annual variations in medical premiums, for example, have ranged from -1.34% to 12.62% over the course of 2010 to 2015 with no discernable pattern in the years between. Despite recent achievements, Ms. Leal noted that decreases in insurance premiums are a rarity.¹³⁵ With a balancing account such as SJWC has proposed, an increase in cost would be registered in the account, but so would a decrease in costs.¹³⁶ The instability of health and dental insurance costs is the primary justification for the Health Care Cost Balancing Account that the Commission has authorized for other Class A water utilities – and for authorizing such an account for SJWC.

¹³² Exhibit O-01, ch. 12 (Merida), at 12-3.

¹³³ *Id.* at 12-3 to 12-4.

¹³⁴ *Id.* at 12-4 to 12-6.

¹³⁵ Exhibit SJWC-10, ch. 4 (Leal), at 8; see also, Tr. 385:3-22 (Leal/SJWC).

¹³⁶ Tr. 407:15-26 (Leal/SJWC).

V.

ISSUES CONTESTED BETWEEN THE
MUTUAL WATER COMPANIES AND SJWC

The perspectives and proposals of the Mutual Water Companies (the “Mutuals”) were presented through the testimony of Robert Burke, which he timely served on April 23, 2015, and which thereafter was identified as Exhibit M-1. Portions of Exhibit M-1 addressing matters beyond the scope of this proceeding were stricken,¹³⁷ and another portion of Exhibit M-1, relating to “SJWC’s Regulatory History with the Mutuals” and other mutual water companies, was allowed only with the understanding that its relevance is as to credibility and business practice and that it is not necessarily factually relevant to the current GRC.¹³⁸

SJWC responded to the Mutuals’ testimony by presenting the Rebuttal of San Jose Water Company to Testimony of the Mutual Water Companies, which was timely served on May 7, 2016, and thereafter was identified as Exhibit SJWC-11. Exhibit 11 consists of two chapters, of which Chapter 1, addressing the Mutuals’ ratemaking proposals, was sponsored by Mr. Jensen, and Chapter 2, addressing operation considerations of SJWC’s Mountain District, was sponsored by Andrew Gere, SJWC’s Chief Operating Officer.

The issues addressed below were presented by Mr. Burke in Exhibit M-1 and SJWC’s responses were presented in Exhibit SJWC-11 and in the course of testimony by Messrs. Jensen and Gere at the evidentiary hearings of June 15 and 16, 2015.

¹³⁷ The material stricken from Exhibit M-1 consisted of Section 2.B, at p. 14; five paragraphs under the heading, “Construction for Main Extensions and Customer Installations” at pp. 21-22; Section III.C at pp. 38-47; and Attachments 6 and 8 referenced at pp. 46 and 39, respectively. Tr. 118:15-119:2 (Ruling of ALJ Tsen).

¹³⁸ The referenced material appears at pp. 8-12 of Exhibit M-1 (Burke). Tr. 113:14-18 (Ruling of ALJ Tsen).

A. Whether to Retain or Eliminate the Mountain District and/or the Distinctive Terms of Service Provided for in Schedule 1C

SJWC acquired the facilities of Redwood Estates Mutual Water Company (“RMWC”) in 2006. Located in the Santa Cruz Mountains south of SJWC’s service area, RMWC’s water system was supplied mainly by SJWC’s Montevina pipeline, which was then designed for a pumping capacity of 320 gallons per minute. This design capacity was adequate to serve all of RMWC’s customers with a daily allowance of 250 gallons per day (“gpd”). Upon acquisition, this water system became SJWC’s Mountain District, for which SJWC filed Tariff Schedule 1C, with certain differences in rates and terms of service as compared with Tariff Schedule 1, applicable to other residential service customers. At the outset, Schedule 1C applied to 374 residential service customers formerly served by RMWC as well as eight mutual water companies (including five of the six Mutuals), which in turn served 456 other residential customers.¹³⁹ By 2010, the sixth Mutual had been added and SJWC was serving 386 residential customers and nine mutual water companies in the Mountain District.¹⁴⁰

One of the Mutuals’ principal proposals in this GRC was to eliminate SJWC’s Tariff Schedule 1C and the Mountain District, completing its integration into SJWC’s service area. Mr. Burke testified that “[w]e are simply a pressure zone of SJWC, nothing else.” He asserted that SJWC presented no difference in cost or rate base to serve the Mountain District and claimed that “we have generated excess revenue to SJWC.”¹⁴¹

There are three distinctive features to Schedule 1C as compared to Schedule 1 that are of continuing importance. One is the inclusion in Schedule 1C of an “overuse rate” of \$7.00 per

¹³⁹ See, Exhibit M-1 (Burke), at 3-5 and Att. 4 (SJWC Mountain District Analysis, Oct. 2007, updated July 2010); Exhibit SJWC-11, ch. 2 (Gere), at 2-2; Tr. 131:12-133:1 (Gere/SJWC).

¹⁴⁰ Exhibit M-1 (Burke), Att. 4, at 2; Tr. 132:15-20 (Gere/SJWC).

¹⁴¹ Exhibit M-1 (Burke), at 15.

100 cubic feet (“ccf”) of water delivered.¹⁴² The second is the inclusion in Schedule 1C of an “interruptibility” provision, a Special Condition providing that, “[i]n the event of substantial risk to the Company’s ability to maintain service to customers in the Mountain District, the Company may temporarily interrupt or reduce services to such customers.”¹⁴³ The third is the inclusion in Schedule 1C of another Special Condition that exempts the mutual water companies from the tiered rates of SJWC’s conservation rate design, providing that each mutual water company “shall be charged one Service Charge, based on the Mutual’s meter size,” and “will be charged at the Single Quantity Rate for usage up to 20 Ccf times the number of customers the Mutual Water Company individually serves and will be charged at the Overuse Rate for usage in excess” of that amount.¹⁴⁴

Mr. Jensen explained, in rebuttal, that a separate tariff for the Mountain District is necessary mainly because of a limitation to the capacity that can be served to the Mountain District. As he testified, “[i]t will be necessary for SJWC to maintain Schedule No. 1C as long as there is a capacity limitation for the Mountain District. Thus, the Commission should reject the Mutual Water Companies’ proposal to eliminate Schedule No. 1C.”¹⁴⁵

¹⁴² SJWC Tariff Schedule 1C, Revised Cal. P.U.C. Sheet No. 1640-W, in A.15-01-002, Exhibit B.

¹⁴³ *Id.*, Revised Cal. P.U.C. Sheet No. 1617-W, ¶4.

¹⁴⁴ *Id.*, ¶5. This preferential rate provision was an element of the settlement agreement between SJWC and seven mutual water companies (represented by Mr. Burke) that retained the Overuse rate and the interruptibility provision and was approved by the Commission’s D.14-08-006 in SJWC’s most recent past GRC. See, D.14-08-006, *supra*, at 6-8.

¹⁴⁵ Exhibit SJW-11, ch. 1 (Jensen), at 1-10.

1. Whether There Is Demand that Exceeds SJWC's Capacity to Serve the Mountain District.

As Mr. Jensen testified, “[t]here is a supply limitation to the Mountain District region which goes back to well before SJWC acquired the District.”¹⁴⁶ Mr. Gere explained that this capacity limitation goes back to the early 1990s, when pumping capacity was designed to provide service subject to a daily allowance of 250 gpd per residence. When SJWC acquired the water system in 2006, it made improvements that increased the pumping capacity, allowing an easing of the usage allowance to 375 gpd/residence in 2008.¹⁴⁷ The Decision in SJWC's 2009 GRC relaxed the Mountain District usage allowance further, to 500 gpd/residence – but imposed an interruptible service tariff provision.¹⁴⁸

Mr. Gere testified that elimination of the usage limit is not feasible. The capacity of the four primary pump stations is adequate to serve customer demand while maintaining an appropriate safety margin or peaking factor, but an equipment malfunction or significantly increased usage by most Mountain District customers on a particular day could cause an unavoidable interruption. Similarly, unrepaired leaks in the Mutuals' distribution systems could lead to unavoidable service interruptions if usage limits were not in place. Usage limits also provide incentive for the Mutuals to properly maintain their systems and to repair leaks promptly. For all these reasons, Mr. Gere testified, SJWC must retain the 500 gpd/residence usage allowance with an interruptible condition in place.¹⁴⁹

¹⁴⁶ *Id.* at 1-2.

¹⁴⁷ Exhibit SJW-11, ch. 2 (Gere), at 2-1 to 2-2.

¹⁴⁸ *San Jose Water Co.*, D.09-11-032, at 4-5, 57-58 (Ordering Paragraph 2) and App. C, at 2-6; Exhibit SJW-11, ch. 2 (Gere), at 2-2.

¹⁴⁹ *Id.* at 2-2 to 2-3.

Mr. Burke claimed that SJWC’s own delivery capacity study from the last GRC showed that SJWC had a 500 gpd/customer delivery capacity – sufficient to “rebuff” the claim of a water delivery capacity constraint.¹⁵⁰ When asked to substantiate this claim, he referred to the 2010 engineering report that was Attachment 4 to Exhibit M-1, and specifically to a conclusion in that report that the Montevina pipeline “is expected to be capable of supplying 500 gallons per day per household to 852 existing customers, with infrequent interruptions.”¹⁵¹

This is hardly a claim of sufficient capacity. Its limitation is particularly significant in the context of the statement, earlier in the same document, of the reasons for its revision in 2010, as follows:

This document was revised in 2010 to verify that there was adequate production capacity to increase the daily residential allotment from 375 gallons/day/household to 500 gallons/day/household. This commitment . . . became effective on January 1, 2010 to allow a first tier usage rate to extend to 500 gpd per residence. This rate was contingent on the service to the Mountain District being an “interruptible service”, meaning that on occasion there may not be enough water to supply all of the customers. Above the standard usage rate, a higher rate is in effect to penalize excessive usage and to help ensure that the Mountain District water system is able to keep up with customer demand.¹⁵²

Like the 2010 engineering study, Mr. Gere confirmed that SJWC’s service capacity in the Mountain District is adequate in the context of the applicable service terms. As he testified, “[i]n the Mountain District we have a provision for interruptibility for the mutuals and a per residence limitation on the amount of water they can take. And with those two things in place, the capacity we have is adequate.”¹⁵³

¹⁵⁰ Exhibit M-1 (Burke), at 20; see also, *Id.* at 11.

¹⁵¹ Tr. 276:17-277:24 (Burke/MWCs).

¹⁵² Exhibit M-1 (Burke), Att. D, *supra*, at 2.

¹⁵³ Tr. 161:11-19 (Gere/SJWC).

The corollary to both the 2010 engineering report and Mr. Gere's testimony is that, absent interruptibility and the current usage limit, demand in the Mountain District would exceed SJWC's ability to provide reliable service. Mr. Gere testified to exactly that effect:

I think the conclusion of the engineering report was that in absence of [the 500 gpd rate step] we may not be able to meet capacity. It's not just the rate step, but it's the rate step as designed at 500 in conjunction with the interruptibility. . . . I think we need to continue to have that with the system as it is.¹⁵⁴

2. If There Is Demand that Exceeds SJWC's Capacity to Serve, What Should Be Done About It?

A settlement agreement that the Commission approved in SJWC's 2009 GRC increased the daily usage allowance to 500 gpd per residence, in exchange for imposition of an interruptible service tariff provision. Above the usage limit, set at 20 ccf per month, a \$7.00 per ccf "overuse" rate applies. That settlement agreement was entered into between SJWC and seven mutual water companies, six of which were the same Mutuals who now seek to eliminate all usage limits.¹⁵⁵

Considering that these limits are still needed to allow SJWC to continue providing reliable service to its customers, both residents and mutual water companies, in the Mountain District, the compelling conclusion is that the limits must be maintained.

3. \$7.00/ccf Over-Use Charge

Mr. Jensen testified that the \$7.00/ccf rate is an "overuse" rate that begins at 20 ccf per customer per month, which is approximately equivalent to the supply limitation of 500 gpd

¹⁵⁴Tr. 162:1-16 (Gere)/SJWC).

¹⁵⁵D.09-11-032, *supra*, at 4-5, 57-58 (Ordering Paragraph 2) and App. C, at 2-6; see also, Exhibit SJWC-11, ch. 2 (Gere), at 2-2.

per connection, and this rate “provides a strong incentive for Mountain District customers to keep aligned with the supply constraint.”¹⁵⁶

Mr. Jensen explained that the Commission originally approved the overuse rate in D.09-11-032, in SJWC’s 2009 GRC, as part of a settlement including most or all of the Mutuals, and they agreed to its continuation in the settlement of approved by D.14-08-006, in SJWC’s 2012 GRC.¹⁵⁷

a. Whether There Is a Cost-of-Service Basis for That Charge.

The \$7.00/ccf overuse rate is justified not on the basis of cost, but rather “as an incentive for customers to stay below the 500 gallons per day maximum allocation for service.”¹⁵⁸

b. Whether That Charge Is Otherwise Justified.

The \$7.00/ccf overuse rate is intended to guide behavior – specifically to induce customers to comply with the intended 500 gpd/residence usage limitation. Mr. Jensen testified that the \$7 per ccf overuse rate will be necessary “as long as there is a comparison limitation for the Mountain District.”¹⁵⁹

The overuse rate is intended to induce compliance with the supply limit of 500 gpd/residence, but it is measured on a monthly aggregate basis. That means that a residential customer can use over 500 gpd on many days, so long as the customer’s average usage for all days of the month does not exceed that amount. And it means that a mutual water company customer of SJWC will not have to pay the \$7.00/ccf rate unless the average of the average usage

¹⁵⁶ Exhibit SJWC-11, ch. 1 (Jensen/SJWC), at 1-3.

¹⁵⁷ Exhibit SJWC-11, ch. 1 (Jensen/SJWC), at 1-3 to 1-4.

¹⁵⁸ Tr. 170:7-19 (Jensen/SJWC).

¹⁵⁹ Exhibit SJWC-11, ch. 1 (Jensen/SJWC), at 1-4.

of all the mutual's customers, over the course of a month, exceeds 500 gpd. It is no wonder that the only evidence of this "overuse" rate ever actually being imposed on the Mutuals was in cases of substantial and continuing water leaks. But this appears not to have happened more than once per company.¹⁶⁰ The overuse rate seems to have been operating as intended – as an inducement for customers to respect the usage limit required by the capacity constraint upon SJWC's service to the Mountain District.

The \$7.00/ccf overuse rate is comparable to the drought surcharge that SJWC recently has implemented by means of its Schedule 14.1. Both impose a high charge on usage above a constrained allowance, but in different ways and for different purposes. The \$7.00/ccf overuse rate applies to all Mountain District customers, while Schedule 14.1 applies only to residential and landscape customers (not the Mutuals). Schedule 14.1's drought surcharge responds to a supply constraint, and will remain in effect only for the duration of the current, severe drought – perhaps only until early next year. The overuse rate responds to a capacity constraint, a limit on SJWC's capacity to deliver water to the Mountain District, and will need to be retained for so long as that capacity constraint persists.¹⁶¹

4. Interruptible Service

As noted above, the interruptible service clause was added to SJWC's Schedule 1C pursuant to a settlement agreement among SJWC and other parties including at least five of the six Mutuals that was approved by the Commission in SJWC's 2009 GRC decision and was a *quid pro quo* for SJWC's willingness to increase the daily usage allowance per residential

¹⁶⁰ Tr. 278:12-279:17 (Burke/MWCs); see also, Exhibit M-1 (Burke), at 19, noting the occurrence of significant leaks at two Mutuals causing increased water consumption.

¹⁶¹ See, Tr. 184:18-185:1, 252:18-253:15 (Jensen/SJWC).

customer to 500 gpd, equivalent to 20 ccf/mo.¹⁶² On cross-examination, Mr. Gere explained that in the event that the interruptible service provision were activated, “we would try and minimize who and how many are interrupted,” but the extent of interruption “would really depend on what leg of the system was unable to provide water, which generally is tied to where the demands are.” So, “our operating plan would be to minimize the number of customers that are interrupted and still make sure the system stays pressurized.”¹⁶³

Mr. Gere was asked whether all customers in the Mountain District are interruptible. He stated his understanding that the mutual water companies are interruptible but SJWC’s other Mountain District customers are not.¹⁶⁴ In fact, however, Special Condition 4 of SJWC’s Schedule C1, the interruptible service provision, does not distinguish among Mountain District customers. It provides that, “[i]n the event of substantial risk to the Company’s ability to maintain service to customers in the Mountain District, the Company may temporarily interrupt or reduce services to such customers.”¹⁶⁵

Mr. Gere explained that SJWC has limited storage available to manage peak loads – generally less than a day in the areas Mr. Burke asked about, and he noted that SJWC had no ability to utilize storage on the Mutuals’ systems.¹⁶⁶ Still, with the 500-gallon limit and the interruptibility, SJWC has sufficient peaking capacity in the Mountain District. He noted that there has not been two-week period of extremely hot weather or high demand, since the engineering report was published, so performance under a worst case scenario has not been

¹⁶² See, D.09-11-032, *supra*.

¹⁶³ Tr. 149:15-23 (Gere/SJWC).

¹⁶⁴ Tr. 154:19-155:5 (Gere/SJWC).

¹⁶⁵ SJWC Tariff Schedule 1C, Revised Cal. P.U.C. Sheet No. 1617-W, ¶4.

¹⁶⁶ Tr. 147:5-17, 156:9-16 (Gere/SJWC).

tested.¹⁶⁷ All these consideration support Mr. Gere’s testimony that, “due to operational limitations, SJWC must retain the 500-gpd/residence allowance with an interruptible provision, to which the interveners previously agreed during the 2009 GRC.”¹⁶⁸

B. Whether Rates for All Customer and Service Classes Should Be Set on a Basis That Equalizes or Tends Toward Equalizing Rates of Return (“RoR”) SJWC Derives From Service to Such Classes

Mr. Burke proposed to make “significant adjustment to equalize the Rates of Return from all Service / Customers.”¹⁶⁹ He sought to develop rate designs “so that all classes of customers deliver similar if not identical Rates of Return to the utility, with the exception of WRAP qualified customers.”¹⁷⁰ He would do so by recovering fixed costs by service charges and variable charges by quantity charges, then allocating rate of return to each based on their ratio to total costs.¹⁷¹

1. Whether There Are Differences in RoR Among Customer and Service Classes or Among Customers Within Such Classes

Mr. Burke presented an analysis consistent with his rate design goals that indicated widely variable rates of return for different classes of customers. His conclusion was that SJWC has a negative (-6.48%) rate of return on service to the 90% of its customers in the Residential class.¹⁷²

Under cross-examination by ORA counsel, however, Mr. Burke calculated that SJWC’s residential customers, as a class, use about 58% of SJWC’s water production but pay

¹⁶⁷ Tr. 158:20-159:9 (Gere/SJWC).

¹⁶⁸ Exhibit SJWC-11, ch. 2 (Gere), at 2-3.

¹⁶⁹ Exhibit M-1 (Burke), at 16.

¹⁷⁰ *Id.* at 28.

¹⁷¹ *Id.* at 29.

¹⁷² *Id.* at 32-33; Tr. 264:11-265:10 (Burke/MWCs).

about 62% of the Company's revenues.¹⁷³ ORA counsel's questions provide an example of one of many alternative ways of comparing the appropriate cost responsibility of particular customers or customer classes.

SJWC does not recommend undertaking the sort of cost allocation exercise Mr. Burke has presented, and does not endorse Mr. Burke's particular cost allocation model. However, SJWC does acknowledge that if such a cost allocation among customer classes were undertaken, it would indicate significant differences among rates of return for residential and other classes of customers.

2. If There Are Such Differences in RoR, How and Whether Identical or Similar RoRs Can or Should Be Achieved.

As indicated above, Mr. Burke, testifying on behalf of the Mutuals, advocates rate changes that would move drastically in the direction of equalizing rates of return for SJWC on service to its several classes of customers. SJWC strongly disagrees.

SJWC witness Jensen's rebuttal testimony presented a very different point of view. He testified as follows:

SJWC's rates are based on the cost of providing service throughout the entire service territory. SJWC's revenue requirement is authorized in GRC proceedings before the CPUC every three years. SJWC's rate design is based on Commission Standard Practices as well as the recommendations of the Commission's expert staff. Over the years thousands of person hours have been spent by SJWC and Commission staff to review and refine the rates SJWC charges to customers for water service. Clearly, these rates should not be completely redone to provide a better deal to non-residential customers.

The Mutual Water Companies provide a convoluted analysis to justify their claim that certain customer classes are subsidizing other customer classes. This analysis seems to be based on the fact that some customer classes pay more per service than others. The fact is that some customer classes pay more

¹⁷³ Tr. 282:2-283:22 (Burke/MWCs).

than others because they a) use more water on a per connection basis, and b) have higher capacity requirements as evidenced by the larger meter sizes.¹⁷⁴

Mr. Jensen went on provide information from SJWC's GRC workpapers showing that customer classes that use more water pay higher bills and customers that have higher capacity requirements (as evidenced by their larger meters) pay higher bills. He noted that SJWC has just one calculation of rate of return and it is based on the rate base for the entire system, cost of service for the entire system, and revenues for the entire system, applying a methodology has been reviewed, and approved, by the Commission in numerous GRC proceedings.¹⁷⁵

When questioned about his view of the Mutuals' cost allocation calculator, Mr. Jensen responded that he was not surprised about the outcomes, but emphasized that water service is a regulated industry:

It's different from a competitive industry. There are public policy goals that are pursued by regulators that . . . often times supersede competitive market decisions. That's why we're [a] regulated industry. So I think it's an interesting exercise. Is it applicable to water industry ratemaking? I don't think so. I haven't seen it in 25 years I've been doing this in the state of California.¹⁷⁶

Asked, finally, how to appropriately allocate costs among the customer classes, Mr. Jensen responded as follows:

I think it's clearly a judgment call because there's a public policy associated with the Commission's determination of what is just and reasonable. Utility ratemaking is fraught with subsidies going across customer classes, [with] individual customers within classes. And there may be overriding public policy goals why allocations should be made in a certain fashion.¹⁷⁷

¹⁷⁴ Exhibit SJWC-11, ch. 1 (Jensen), at 1-11 (emphasis added).

¹⁷⁵ *Id.* at 1-12; see also, Tr. 197:11-22, 198:4-200:13 (Jensen/SJWC), continuing to stress that SJWC calculates cost of service and rate of return on a total system basis.

¹⁷⁶ Tr. 219:4-20 (Jensen/SJWC).

¹⁷⁷ Tr. 219:22-220:17 (Jensen/SJWC).

SJWC concludes that the Commission should not embark on an effort to develop or seek to develop analysis of customer-specific or customer class-specific rates of return, and should not consider itself compelled or required to achieve identical or similar rates of return for differing classes or groups of customers. The Commission has more pressing goals. In the words of Mr. Jensen's rebuttal testimony:

There is no added benefit, but substantial increases to costs, associated with determining ratebase, cost of service, and revenues as applied to individual customer classes. Therefore, the Commission should deny the Mutual Water Companies' request to revise SJWC's rates based on service to individual customers or customer classes.¹⁷⁸

C. Whether to Fund Expanded Water Conservation and Drought Water Source Acquisition Efforts

The Mutuals recommend that SJWC be funded to market water conservation aggressively through various customer information media, and identifies public authorities and business customers as target segments for water conservation efforts.¹⁷⁹ The Mutuals favor retrofit programs combined with water audits and public education efforts.¹⁸⁰

SJWC witness Jensen addressed these proposals in his rebuttal testimony. He agreed in part. Specifically, he agreed that the Commission should adopt SJWC's proposed water conservation programs as addressed in Exhibit SJWC-1, Chapter 18, and in the rebuttal testimony of Mr. Pink, Exhibit SJWC-10, Chapter 6. But he disagreed with the Mutuals' emphasis on customer information media. As Mr. Jensen, stated, SJWC's proposed conservation programs are part of a larger comprehensive strategy to manage water use.¹⁸¹

¹⁷⁸ Exhibit SJWC-11, ch. 1 (Jensen), at 1-12.

¹⁷⁹ Exhibit M-1 (Burke), at 17, 25-26

¹⁸⁰ *Id.* at 47-50.

¹⁸¹ Exhibit SJWC-11, ch. 1 (Jensen), at 1-12 to 1-13.

D. Whether to Base WRAP Discounts on Household Size

The final issue identified by the Mutuals related to SJWC's Water Ratepayer Assistance Program ("WRAP") for low-income residential water customers. The Mutuals recommends that WRAP be changed to qualify beneficiaries based on living status – specifically by giving higher residential discounts to household of three or more, commensurate with the total number in the household.

SJWC witness Jensen agreed with this proposal. He observed that WRAP eligibility is already based in part on living status, with the income qualification guidelines tied to the number of people in the household. He also noted that the WRAP discount is based on the total household bill, which is in part based on the number of people in the household.¹⁸² It does not appear that more needs to be done at this time.

VI.

UNCONTESTED ISSUES

With respect to the uncontested issues, in many cases, ORA accepted the position of SJWC as presented in Exhibit SJWC-1, subject to updates in the workpapers as presented in Exhibit SJWC-2. In other cases, SJWC accepted ORA's position as presented in Exhibit O-01. SJWC demonstrated its acceptance of the ORA position by declining to contest or otherwise respond in Rebuttal Testimony to the ORA position. The uncontested issues for which SJWC accepted ORA's recommended position are explained more fully below.

A. Sales and Revenue Forecasts

As noted in Part II, above, ALJ Tsen directed SJWC and ORA, by a ruling issued June 2, 2015, to reassess their sales forecasts in the context of the Governor's Executive Order of

¹⁸² Exhibit SJWC-11, ch. 1 (Jensen), at 1-13.

April 1, 2015 and regulations subsequently adopted by the State Water Board requiring water systems serving urban water users to reduce their water production by an average of 25% statewide as compared to 2013 usage. SJWC responded with updated testimony by its Senior Vice President of Regulatory Affairs, Palle Jensen, that was subsequently received into evidence as Exhibit SJWC-12.

1. Adjusted Revised Forecast

Mr. Jensen testified that ORA had directed a data request to SJWC on April 1, 2015, asking the extent to which the Governor's Executive Order affected SJWC's water consumption forecasts and its application generally. He explained that SJWC intended to provide a more realistic water usage reduction estimate than simply a strict percentage reduction as requested by the State Board (20%) or the Santa Clara Valley Water District (30%), with an expectation that customers, as a whole, usually fall short of specific percentage reduction goals. He also noted that SJWC's revised forecast takes into account the anticipated "recovery effect," with an assumed return to normal precipitation levels. Overall, SJWC's revised forecast was for a 17% reduction in 2015 water sales from 2013 levels, as compared with a projected 9% reduction in SJWC's original application.¹⁸³

Mr. Jensen further testified that ORA used SJWC's revised forecasts, with minor adjustments, in its analysis presented in ORA's Results of Operations Report, Exhibit O-01. SJWC subsequently accepted ORA's minor adjustments and so issues related to sales forecasts are uncontested for purposes of the present GRC.¹⁸⁴ Exhibit SJWC-12 provides a supplemented Chapter 6 of Exhibit SJWC-1, including SJWC's responses to the ORA data requests along with

¹⁸³ Exhibit SJWC-12 (Jensen), at 2-4. A slight recovery in sales (of about 3%) was projected for 2016.

Id. at 4.

¹⁸⁴ *Id.* at 5.

revised tables that provide an overview of all changes to SJWC's revenue requirement that flow from the reduced sales forecasts. The Exhibit also provides an alternative forecast of a full 20% reduction in 2015 sales and the concomitant rate increase amount that would be required, but Mr. Jensen recommended the revised forecast that ORA had reviewed and adopted in its report.¹⁸⁵

2. Estimated Number of "Other" Customers

In its Application, SJWC forecast future customer numbers in the category of "Other" metered services, consisting mainly of portable meters used by contractors to procure water from nearby hydrants during construction projects, using a two-year average change in customers (2012-2013) rather than a five-year average that might be unduly influenced by decreased construction in 2010 caused by the recession.¹⁸⁶ In its Report, ORA suggested that a four-year average change in customers (2011-2014) would better account for recovery in the local housing industry.¹⁸⁷ SJWC accepted ORA's position. Thus, the estimated number of "Other" customers was an uncontested issue.

B. Other Operating, Maintenance and General Expenses

1. Customer Growth Factor Escalation for Test Year 2016 Expenses

ORA recommended that the Customer Growth Factor not be used in developing SJWC's operating expense estimates for the Test Year. SJWC accepted ORA's position. Thus, the issue of whether to remove the Customer Growth Factor escalation for Test Year 2016 was uncontested.

¹⁸⁵ *Id.* at 6-10.

¹⁸⁶ Exhibit SJWC-1, ch. 7 (Jensen), at 11.

¹⁸⁷ Exhibit O-01, at 1-3.

2. Updated Energy Cost of Service Escalation Factors

ORA made adjustments to various expense categories to reflect the use of the most recent Energy Cost of Service (“ECOS”) escalation factors (February 2015). Except where SJWC specifically contested the use of the most recent ECOS escalation factors in Rebuttal Testimony (e.g. with respect to payroll expense),¹⁸⁸ SJWC accepted ORA’s position.¹⁸⁹

3. Amortization of Recycled Retrofit Expenses

SJWC requested a total of \$7,124,800 in additional costs over the 3-year period for the company’s Recycled Water Retrofit Program, with the bulk of the costs forecasted for 2016. ORA did not oppose the retrofit program, but recommended that the total cost be divided evenly over each year of the rate case cycle. SJWC accepted ORA’s recommended adjustment.

4. NTP&S Adjustment

ORA identified errors in SJWC’s forecasted amount of revenue from NTP&S, which SJWC corrected by making a minor adjustment to the original amount of NTP&S revenue and then further revising that amount to account for the first \$100,000 of NTP&S revenue accruing to the benefit of ratepayers. The final credit amount of \$760,112 for NTP&S was, therefore, uncontested.

5. Chamber of Commerce Dues

ORA adjusted SJWC’s forecast of in Dues & Membership for Test Year 2016 to remove \$40,000 attributable to Chamber of Commerce costs, consistent with D.04-07-022.

SJWC did not contest ORA’s recommended adjustment.

¹⁸⁸ Exhibit SJWC-10, ch. 4 (Leal), at 4-5.

¹⁸⁹ *Id.* at 2-3.

C. Water Quality

ORA addressed the sufficiency of SJWC's utility service with respect to water quality in chapter 8 of Exhibit O-01. ORA concluded that SJWC's service area is in compliance with all applicable water quality standard.¹⁹⁰ SJWC agreed with and accepted ORA's conclusion.

D. Customer Service

ORA addressed the sufficiency of SJWC's customer service in chapter 8 of Exhibit O-01. ORA concluded that, based on the level of general complaints over the past three years and information provided by SJWC, SJWC's customer service were sufficient and recommended that the Commission find SJWC's customer service to be satisfactory.¹⁹¹ SJWC agreed with and accepted ORA's conclusion.

VII.

CONCLUSION

For all the reasons exhaustively stated in the foregoing pages, San Jose Water Company respectfully asks that the Commission authorize increases in rates for Test Year 2013 and Escalation Years 2014 and 2015 sufficient to enable the Company to meet and carry out the many and varied challenges and obligations discussed herein.

¹⁹⁰ *Id.* at 8-10.

¹⁹¹ *Id.* at 9-6 to 9-7.

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