



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFOR

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City of Rolling Hills,

Complainant,

vs.

California Water Service Company (U-60-W),

Defendant.

Case (C.) 17-08-006
(Filed August 9, 2017)

**CALIFORNIA WATER SERVICE COMPANY'S (U 60 W)
MOTION TO DISMISS COMPLAINT 17-08-006**

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Dated: October 27, 2017

Director, Regulatory Policy & Compliance
California Water Service Company

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I. INTRODUCTION

Pursuant to Rule 11.2 of the Commission's Rules of Practice and Procedure ("Rules"), the transcript for the Prehearing Conference held on October 9, 2017, and the 11/24/17 email ruling of the Assigned Administrative Law Judge granting an extension of the deadline for this motion from October 25, 2017 to October 27, 2017, California Water Service Company ("Cal Water") respectfully moves for dismissal of Complaint 17-08-006 of the City of Rolling Hills.

Consistent with a tariff approved by the Commission, Cal Water implemented individual customer water budgets, and applied drought surcharges to usage above a budget, from June 1, 2015 to July 29, 2016. The City of Rolling Hills ("Complainant" or "City") requests that the Commission order Cal Water to (1) re-calculate all of the water budgets for a subset of City residents; (2) recalculate all drought surcharges as if the

revised budgets had been in effect; and (3) refund the difference between the drought surcharges under the revised budgets, and the actual drought surcharges charged.¹

The Commission must dismiss the City's complaint as a matter of law, because, even assuming that all facts alleged by the City are true, the complaint fails to show that Cal Water has violated any Commission rule, order, or law. The City therefore fails to state a claim for which relief can be granted under PU Code Sections 734 and 1702. Finally, the Complaint amounts to a collateral attack on Resolution W-5074² that is prohibited under PU Code Section 1709.

II. THE COMPLAINT OF THE CITY OF ROLLING HILLS

The City claims that Cal Water's methodology for establishing drought water budgets for "residents within the City who purchased their homes following December 31, 2012" under the Commission's approved Schedule 14.1 was "unreasonable and unjust" in violation of PU Code Sec. 451,³ "arbitrary and capricious,"⁴ and "discriminatory" in violation of PU Code Sec. 453.⁵ The City does not claim that Cal Water erroneously applied Schedule 14.1, but instead that the methodology itself is unlawful.

The City demands that, in reparation, Cal Water should be ordered to re-calculate the water budgets of all customers in the City of Rolling Hills for whom there is no 2013 water usage history, and reimburse those customers for any drought surcharges that would not have been triggered if the re-calculated water budgets had been in place.⁶

¹ Complaint at pages 2-3.

² *Appeals of the Division of Water and Audits Dispositions of Various Advice Letters Updating Rule 14.1 and Adopting Schedule 14.1 for California-American Water Company, California Water Services Company, Golden State Water Company, and San Jose Water Company*, Resolution W-5074 (February 25, 2016)

³ Complaint, Attachment A at 1 (lines 2-3) and 2 (lines (3-7)).

⁴ *Id.* at 1 (lines 4-5 and 19-21).

⁵ *Id.* at 2 (lines 11-17).

⁶ *Id.* at pages 2-3.

III. BACKGROUND

As discussed in Cal Water’s Answer to the Complaint filed on September 18, 2017, Cal Water has made every effort to work with the City and its residents to apply the mandatory drought restrictions of Schedule 14.1 in a fair manner while pursuing the conservation objectives of the State Water Resources Control Board (“State Board” or “Water Board”).

Cal Water’s Answer provides an extensive summary of the state’s drought regulations since 2014, and the subsequent development and approval of Cal Water’s Schedule 14.1, the tariff under which Cal Water implemented drought surcharges from March 31, 2015 through July 29, 2016.⁷

A. Summary of Relevant Aspects of Schedule 14.1

- Consistent with Cal Water’s Water Shortage Contingency Plan approved in Schedule 14.1, Cal Water established monthly water budgets for all customers, and applied drought surcharges to overages, from June 2015 to July 2016.
- For the overwhelming majority of Cal Water customers, including those in the City of Rolling Hills, water budgets were customer-specific and based on the amount of water that a customer used in the same month in 2013, reduced by the 36% conservation target mandated by the Water Board.
 - For instance, if a customer in Rolling Hills used 50 CCF of water in July 2013, that customer’s water budget would be 32 CCF in July 2015.
- For the small minority of customers that were new in their homes or did not have consumption history, the monthly water budgets were calculated based on the average water use of the same class of customers in the same service area for a given month in 2013, reduced by the conservation standards established by the Water Board.
 - For example, a single-family residential customer in the Palos Verdes service area without consumption history in July 2013 would have

⁷ Answer of California Water Service Company to Complaint 17-08-006 (September 18, 2017) (“CWS Answer”) at 2-3. Note that page 3 erroneously indicates that Cal Water’s drought surcharges started on March 31, 2016, rather than March 31, 2015.

received a budget of 19 CCF, or 14,212 gallons, of water in July 2015 (average residential use of 28.4 CCF minus 36%).

- In recognition of the fact that no one approach is a perfect means to establish water budgets for customers, the Water Shortage Contingency Plan also established an appeals process for customers so that an assigned monthly budget could be adjusted to reflect unique circumstances.

B. Summary of Procedural History for Schedule 14.1

Date	Activity
4/28/15	<ul style="list-style-type: none"> • Cal Water submits proposed Water Contingency Plan in Schedule 14.1
May 2015	<ul style="list-style-type: none"> • Cal Water holds 25 public drought hearings to discuss the specifics of the Water Contingency Plan.⁸ The public hearing held for Palos Verdes customers was on Wednesday, May 13, 2017, at 6:00 pm.
5/27/15	<ul style="list-style-type: none"> • Cal Water submits revised proposed Schedule 14.1⁹ <ul style="list-style-type: none"> ○ 5/19/15 – City of Rolling Hills submits protest ○ 5/26/15 – Cal Water submits response to City’s protest ○ 5/28/15 – ORA submits protest ○ 5/29/15 – Cal Water submits response to ORA’s protest
6/1/15	<ul style="list-style-type: none"> • Water Division¹⁰ notifies City that Schedule 14.1 will be approved • Schedule 14.1 goes into effect: water budgets and drought surcharges begin.
6/10/15	<ul style="list-style-type: none"> • ORA requests that the Commission formally review Water Division’s approval of Schedule 14.1
6/17/15	<ul style="list-style-type: none"> • Water Division notifies all protestants that revised Schedule 14.1 will be approved, and that protestants have an opportunity to request a review of the approval by the full Commission.
1/22/16	<ul style="list-style-type: none"> • Draft Resolution affirming the Water Division’s approval of Schedule 14.1 <ul style="list-style-type: none"> ○ 2/4/16 – Opening Comments on Draft Resolution Due ○ 2/9/16 – Reply Comments on Draft Resolution Due
2/25/16	<ul style="list-style-type: none"> • Commission adopts Resolution W-5074

⁸ The dates and times for each public drought hearing held in May 2015 is listed in the body of AL 2168-B.

⁹ Note that information about another party that submitted a protest to Cal Water’s proposed Schedule 14.1 is not included in the table because it is not relevant in this case.

¹⁰ The CPUC’s Water Division was formerly called the Division of Water and Audits (DWA).

Date	Activity
3/31/16	<ul style="list-style-type: none"> • A “Surcharge Courtesy Tier” implemented so that small amounts of excess usage above a customer’s water budget are excused from drought surcharges.
7/29/16	<ul style="list-style-type: none"> • All drought surcharges eliminated.

IV. LEGAL BASIS FOR MOTIONS TO DISMISS

While the Commission’s Rules of Practice and Procedure do not define the appropriate legal basis for ruling on a motion to dismiss, in D.14-03-027 the Commission reviewed past decisions and described two legal standards it has used to evaluate motions to dismiss.¹¹ In one line of cases, the Commission has considered motions to dismiss as analogous to motions for summary judgment in civil cases.¹² Under this standard, which is based on California Code of Civil Procedure Section 437(c), a “motion for summary judgment is appropriate where the evidence presented indicates there are no triable issues as to any material fact, and that based on the undisputed facts, the moving party is entitled to judgment as a matter of law.”¹³ When this standard is met, granting a motion to dismiss “promotes and protects the administration of justice and expedites litigation by the elimination of needless trials.”

The Commission goes on to observe that it has also articulated a second, “slightly different” standard for dismissing complaints and applications:

On a motion to dismiss a complaint, the legal standard against which the sufficiency of the complaint is measured is whether, taking the well-pleaded factual allegations of the complaint as true, the defendant is entitled to prevail as a matter of law. (*e.g.*, *MCI Telecommunications Corp. v. Pacific Bell*, Decision (D.)95-05-020, 59 Cal. PUC 2d 665, 1995 Cal. PUC

¹¹ *Connie K. Walczak, et al., v. California Water Service Company*, D.14-03-027 (March 27, 2014).

¹² *Id.* at 3.

¹³ *Id.*, citing *Raw Bandwidth Communications, Inc. v. SBC California, Inc. and SBC Advanced Solutions, Inc.*, (2003) D.03-05-023 (*Scoping Memo and Ruling of Assigned Commissioner on Motion to Dismiss and Preliminary Matters* at 3, citing to *Westcom Long Distance, Inc. v. Pacific Bell et al.*, D.94-04-082, 54 CPUC 2d 244, 249); California Code of Civil Procedure, § 437(c), and; Weil & Brown, *Civil Procedure Before Trial*, 10:26-27).

LEXIS 458, at *29-*30, citing *Burke v. Yellow Cab Co.* (1973) 76 Cal. PUC 166), 3 CPUC 3d, 301.)¹⁴

Finally, the Commission indicates that, “[i]n determining if the complainant’s allegations are ‘well pleaded,’ we are guided by the standards set forth in Pub. Util. Code § 1702, which provides that the complainant must allege that a regulated utility has engaged in an act or failed to perform an act in violation of any law or Commission order or rule.¹⁵ The Commission has stated that a complaint that fails to state facts sufficient to constitute a cause of action is “*ipso facto* insufficient.”¹⁶

V. DISMISSAL IS REQUIRED AS A MATTER OF LAW

As discussed below, the Commission must dismiss the City’s complaint as a matter of law under the two legal standards described above.

A. Assuming Undisputed Facts, Cal Water Must Still Prevail as a Matter of Law

To apply the first legal standard discussed above, wherein a motion to dismiss is appropriate if, based on the undisputed fact, “the moving party is entitled to judgment as a matter of law,” Cal Water will therefore assume (but does not agree) that the following factual allegations are true in order to analyze whether Cal Water should nevertheless prevail as a matter of law:

- That Cal Water calculated a property’s monthly water budget by averaging water usage among all of its Palos Verdes Peninsula District regardless of

¹⁴ *Id.* at 4.

¹⁵ PU Code Section 1702 states, in part:

Complaint may be made... setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.

¹⁶ *Pacific Continental Textiles Inc., Complainant v. Southern California Edison Company, Defendant*, D.06-06-011 (June 15, 2006) at 2. The Commission concluded that Complainant’s failure to allege the violation of any law or rule or order of the Commission renders the complaint legally insufficient. *Id.* at 4.

lot size, land use, and whether a resident has a complete water history consumption history from 2013.¹⁷

- That the volume and outcome of the appeals considered by Cal Water were very high (in the context of City’s argument that they “are evidence of the inadequacy of Cal Water’s initial budget allocations”).¹⁸
- That relying upon pre-acquisition data for residents to calculate the initial water budgets of those who purchased homes within the City after January 1, 2013 would be fairer (not “arbitrary or capricious”) as compared to the methodology in Cal Water’s Schedule 14.1.¹⁹
- That there are no privacy concerns associated with using the water usage of previous occupants to calculate the water budgets of current occupants.²⁰
- That the City has no multi-family housing or commercial uses; that instead it is comprised entirely of 685 single-family homes, located on lots averaging 2.7 acres, portions of which are required to facilitate the care of horses and other agrarian uses.²¹
- That properties located within the City were compared to those surrounding cities on the Palos Verdes Peninsula – which do not accommodate multi-family housing, commercial uses, etc. – in order to calculate an average monthly water allocation budget for properties within the City of Rolling Hills.²²

Taking all of the above as true, the fatal flaw in the City’s Complaint is that the Commission has already addressed the issue that different methodologies for establishing a water budget under Schedule 14.1 can be acceptable, and that they are not “unreasonable or unduly discriminatory” as long as there is an appeals process that

¹⁷ Complaint, Attachment A at 1 (lines 5-7). Cal Water corrects this statement in its Answer to the Complaint at 7.

¹⁸ *Id.* at lines 14-15. Cal Water does not agree with this statement, and will address the issue if the Complaint moves forward.

¹⁹ *Id.* at lines 15-20. This assertion is a conclusion unsupported by the current record.

²⁰ *Id.* at lines 24-28. This assertion is a conclusion unsupported by the current record.

²¹ *Id.* at 2 (lines 8-11). Cal Water has not confirmed whether all assertions in this description are accurate.

²² *Id.* at lines 11-14. Cal Water corrects this statement in its Answer to the Complaint at 7.

will allow a customer's individual budget to be adjusted to avoid "an undue customer hardship or an unjust and unreasonable result."²³

As discussed in Resolution W-5074, customers of San Jose Water Company ("SJWC") filed grievances with the Commission regarding SJWC's use of a uniform water budget for all of its residential customers based on a district-wide residential average. In Resolution W-5074, the Commission observed as follows:

...[N]umerous SJWC's customers appealed [Water Division's] disposition approving SJWC's Schedule 14.1 wherein all residential allotments are based on a 2013 average customer water use as opposed to using individual customer 2013 water use as proposed by some utilities. Customers with above-average use would be forced to reduce their water consumption by more than 30% to fall within the residential allotment plan and thus avoid paying a drought surcharge for excess water use. Customers with average or below-average water use would need to reduce their water consumption by 30% or less to avoid paying a drought surcharge for excess water use.

No one water allotment is either perfect or fair for all customers. All have characteristics that can be either recommended or criticized. SJWC was not alone in proposing an allotment based on 2013 average customer use. It is true that customers with above-average water use will be responsible for larger water use reductions compared to below-average water users. This is not dissimilar from the Governor's April 1, 2015 EO and the Water Board's implementation of mandatory water use reductions based on per capita use where larger water users are responsible for larger reductions in water use.

We do not find SJWC's allotment determination based on historic average customer usage to be either unreasonable or unduly discriminatory when combined with the provision in Schedule 14.1 that provides customers the ability to request an allotment variance in circumstances where an average customer allotment would create either an undue customer hardship or an unjust or unreasonable result. Further, a customer has the right to file a complaint with the Commission if she disagrees with the utility's disposition of her variance request. Given that the variance request procedure protects against an unreasonable result arising from

²³ Res. W-5074 at 9.

the implementation of an average customer allotment, we find that SJWC's residential allotment system to be a reasonable approach to implementing the Water Board's mandatory water reductions, and deny the appeals on this issue.²⁴

Accordingly, the Commission approved SJWC's Schedule 14.1, and adopted the following Findings and Conclusions in Res. W-5074:

17. San Jose Water Company's implementation of the residential drought allotment is based on historic average customer use.

18. San Jose Water Company's customers whose water use is above average will require greater reductions in water use for consumption to be within the allotment and avoid having to pay drought surcharges.

22. San Jose Water Company's allotment determination based on historic average customer usage is neither unreasonable nor unduly discriminatory when combined with the provision in Schedule 14.1 that provides customers the ability to request an allotment variance in circumstances where an average customer allotment would create either an undue customer hardship or an unjust or unreasonable result.

23. Customer appeals of San Jose Water Company's historic average customer water use in establishing residential drought allotments should be denied.

There can be no dispute that Res. W-5074 specifically determined that different methodologies for calculating customer water budgets are acceptable when paired with an appeals process. More specifically, the City's contention that Cal Water's base allotment approach for customers without a water usage history back to 2013 is a violation of PU Code Section 451 is directly contradicted by the fact that the Commission accepted SJWC's use of the much less granular approach of calculating one average allotment, and applying it to every residential customer, regardless of individual usage history. Therefore, even if the Commission were to assume that all of the City's facts are correct, this precedent establishes that Cal Water's more granular approach for setting water budgets, and its related appeals process, must be found to be "neither

²⁴ *Id.* at 9-10 (emphasis added).

unreasonable nor unduly discriminatory” as SJWC’s approach. Because none of the facts raised by the City change this outcome, there are “no triable issues as to any material fact,” and this motion to dismiss must be granted.

B. The City Failed to Identify Any Violation of Any Law or Commission Rule or Order as Required under PU Code Section 1702

With regard to the second legal standard discussed in D.14-03-027, a “well-pleaded” allegation in a complaint that will survive a motion to dismiss is one that meets the requirements of PU Code Section 1702. While the City challenges the reasonableness and fairness of Cal Water’s water budget methodology, the City does not claim that Cal Water has violated any law or Commission rule or order, a fundamental requirement of Section 1702.

The Commission has dismissed such cases at the outset, without pursuing further Commission process such as evidentiary hearings, when, taking the well-pleaded factual allegations of a complaint is true, there is still no violation of a Commission rule, law, or order. For example, the Commission dismissed a complaint against an energy utility upon concluding that “Complainant has failed to state a claim upon which relief can be granted because SoCalGas has, at all times, acted in accordance with its tariffs and with Commission rules and decisions with respect to its customer billing practices.”²⁵

In D.09-11-017, the Commission describes issues that are the appropriate subject of a complaint case, and those that are not:

We dismissed a complaint for failing to state a cause of action where the complainant protested the reasonableness of commission approved rates but did not allege that the utility had violated its tariffs, commission regulations, or state law. We said complaint proceedings are appropriate for addressing tariff violations, wrongful billings, or an improper assignment of a customer to a particular schedule, but are not appropriate forums for discussing rate design, rate restructuring, or the

²⁵ *Jerome D. Monkarsh, Complainant v. Southern California Gas Company*, D.09-11-017 (November 20, 2009) at 4.

integrity of an already approved rate. (*Universal Forest Products, Inc. v. Southern California Edison Company*, 56 CPUC2d 731 (1994).)

Rather than claiming a tariff violation, a wrongful billing, or the use of the wrong tariff, the City's Complaint is more akin to challenging the "integrity of already approved rate" – the methodology that defined the excess water usage to which drought surcharges could be applied.

As described in its Answer to the Complaint, Cal Water followed the guidance and mandates of both the Commission and the State Water Resources Control Board in developing its Water Contingency Plan in Schedule 14.1.²⁶ Cal Water's Plan then underwent the Commission's lengthy process for approval as detailed in the Procedural History of Schedule 14.1. This consisted of a close review by the public, ratepayer advocates, and the Commission itself through the advice letter process, public hearings, and issuance of a formal Commission resolution.²⁷

As discussed in Section VI, below, the City did not avail itself of the several opportunities it had to pursue a change to Cal Water's Schedule 14.1. Indeed, while the Commission specifically observed in Res. W-5074 that "a customer has the right to file a complaint with the Commission if she disagrees with the utility's disposition of her variance request," Cal Water is not aware of any complaint filed by residents of the City when drought surcharges were in effect.²⁸

Further, if Cal Water had agreed to take alter its initial budgeting approach solely for City residents, Cal Water would have been justly accused of implementing Schedule 14.1 in a discriminatory manner (assuming that the City's preferred methodology was seen as superior). Schedule 14.1, Section F.1.b(ii) clearly identifies what the Commission has approved:

²⁶ See Background Section in Cal Water's Answer at 2-3.

²⁷ See the Procedural History of Schedule 14.1, above.

²⁸ Res. W-5074 at 9.

If a customer was not in his or her current location in 2013, the average monthly consumption will be used as a starting budget. If customers have a unique situation and the average budget is not appropriate, they can file an appeal to have their water budget increased. Cal Water may also modify the starting budget to reflect suitable use.²⁹

Cal Water therefore lacked the authority to do as the City requested, and use a different methodology for the initial water budget calculations. A regulated utility's tariffs lay out the rates, terms, and conditions under which the company can conduct its business. As reflected in the procedural history for Schedule 14.1 shown earlier, there can be an extensive approval process because, once a tariff is established, it governs the relationship between the company and its customers. In addition to being a tool for Commission oversight of regulated activities, tariffs provide the transparency needed to ensure that customers in the same group are treated in a non-discriminatory manner.

By contrast, there is no description in Schedule 14.1 regarding how customer appeals should be addressed. Where Schedule 14.1 is silent, such as how and when Cal Water should modify a customer's water budget upon appeal, Cal Water exercised its flexibility in a manner that is consistent with the intent of the Commission. The City's Complaint alludes to this in its statement that, "During the appeal process, Cal Water implemented a method utilizing aerial imagery and GIS analysis in order to simultaneously determine a property's appropriate monthly water budget and the validity of the appeal."³⁰ Schedule 14.1 does not allow Cal Water the freedom to use a variety of approaches to establish an initial budget allocation, however, and this is what the City now requests.

For the City to prevail on their preference for calculating some initial water budgets based on a prior customer's usage, the City should have sought specific modifications to Schedule 14.1 that all customers could benefit from what the City

²⁹ Schedule 14.1 at page 7 (AL 2186-A, effective 6/1/15-3/31/16) (emphasis added).

³⁰ Complaint, Attachment A at 1 (lines 11-14).

perceives to be a more reasonable and fair option. There are sound public policy reasons for why issues of broad applicability are addressed in tariffs, and through Commission rulemaking and ratemaking proceedings, rather than through the individual complaint process. This is a prime example of one. The difficult circumstances that the City raises, in which a newer resident is obligated to file an appeal in order to obtain a more appropriate water budget because they have a lot that is larger than the norm used to calculate the district-wide average, is likely apply to others in Cal Water's territory.

In sum, because the City has not alleged a violation of a law, or a Commission rule or order, compliance with PU Code Section 1702 dictates that the City's Complaint must fail as a matter of law.

C. Reparation on the Ground of Unreasonableness is Prohibited by PU Code Section 734

Granting the City's requested relief violates PU Code Section 734, which states:

No order for the payment of reparation upon the ground of unreasonableness shall be made by the commission when the rate in question has, by formal finding, been declared by the commission to be reasonable...

The City appears to argue that Cal Water's failure to use the City's preferred methodology for its residents without a water history in 2013 constitutes an "unreasonable difference" in violation of PU Code Section 453, such that Cal Water must now apply the City's methodology to determine what drought surcharges should have been charged, and refund the difference to City residents. Both the drought surcharges and the methodology for applying them, however, were deemed reasonable when the Commission sustained the Water Division's approval of Schedule 14.1 in Res. W-5074. Therefore, the City should be precluded from seeking reparations on the ground of unreasonableness as it does in its Complaint.

VI. THE COMPLAINT IS AN IMPERMISSIBLE COLLATERAL ATTACK ON RESOLUTION W-5074 UNDER PU CODE SECTION 1709

Section 1709 of the Public Utilities Code states that, “[i]n all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.” The Commission describes the purpose of the provision as follows:

Section 1709 is designed to prevent a party from making a collateral attack on a Commission decision. A collateral attack is an attempt to invalidate the judgment or order of the Commission in a proceeding other than that which the judgment or order was rendered.³¹

In *Huebner v. R.R. Lewis Water Co.*, the Commission rejected a challenge to a Commission resolution that approved a surcharge, observing that “Complainant has had the opportunity to file a timely application for rehearing or a petition for modification regarding Resolution W-4569.”³² The decision concluded that the issues raised in the resolution should have been considered “in a timely application for rehearing [footnote omitted] or in a petition for modification of Resolution W-4569, rather than in a separate complaint proceeding that seeks to invalidate the Resolution.”³³ Accordingly, the Commission dismissed the *Huebner* complaint as “an impermissible collateral attack on Resolution W-4569 pursuant to [PU Coded] Section 1709.”³⁴

The same principles in *Huebner* apply here. As indicated in the Procedural History of Cal Water’s Schedule 14.1, the City of Rolling Hills submitted a timely protest. After giving individual notice to the City on June 1, 2015 that the Water Division (“WD”) would nevertheless be approving the tariff, WD then sent a letter on June 17, 2015 alerting all protesting parties of the opportunity to seek Commission “review” of WD’s approval of the tariff:

³¹ *Peter W. Huebner and 26 Other Ratepayers Similarly Situated, Complainants v. R.R. Lewis Water Company, Defendant*, D.07-04-017, 2007 WL 1140376 at *4.

³² *Id.*

³³ *Id.* (citing D.03-08-036 and D.05-10-026) (emphasis added).

³⁴ *Id.* at *5.

A protestant may request review of [the WD's] disposition by the full Commission. The request for Commission review shall be filed with [the WD] within 10 days after the issuance of disposition.... The request for review shall specifically set forth the grounds on which the requester considers the disposition to be unlawful or erroneous.³⁵

Despite receiving this notice, the City did not request a full Commission review of the WD's approval of Schedule 14.1. However, because ORA and customers of other companies requested reviews of the WD's approval of the Schedule 14.1 tariffs for all four of the largest water companies in the state, the Commission nevertheless conducted a full review of the WD's decision to approve the tariffs.³⁶

On January 22, 2016, the Commission issued a draft resolution proposing to affirm WD's approval of the tariffs. The Commission presumably followed its own rules by serving the draft resolution on the City and other protestants to any of the Schedule 14.1 filings.³⁷ Once again, despite receiving notice of a draft resolution with an outcome adverse to its interests, the City neither filed comments on the draft resolution, nor sought rehearing of the final resolution.³⁸

As with *Huebner*, the complaint now before the Commission rises to the level of an improper collateral attack against Resolution W-5074 under PU Code Section 1709, and should therefore be dismissed.

VII. CONCLUSION

For the reasons discussed above, the complaint of the City of Rolling Hills must be dismissed as a matter of law.

³⁵ Letter from the Water Division dated June 17, 2015, with the subject line "Disposition of California Water Service Company Advice Letter 2168," directed to protestants of AL 2168.

³⁶ Res. W-5074 at 4.

³⁷ According to Rule 14.2(d)(1) of the Commission's Rules of Practice and Procedure, the Commission is required to serve a draft resolution addressing an advice letter "on the utility that proposed the advice letter, [and] on any person who served a protest or response to the advice letter."

³⁸ Rule 16.1 governs request for rehearing of a Commission "order or decision," including a resolution.

DATED this 26th day of October 2017, at San Jose, California:

Respectfully submitted,

CALIFORNIA WATER SERVICE COMPANY

/s/

Natalie D. Wales
Director, Regulatory Policy & Compliance