

Decision **PROPOSED DECISION OF ALJ MCKINNEY** (Mailed 2/14/2013)

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

Application of California Water Service Company (U-60-W) for an order confirming its discontinuance of the ESP program as provided in D.07-12-055, Ordering Paragraph 19, approving accounting for the residual affiliate transaction, and confirming under D.07-12-055, Ordering Paragraph 16 that Applicant's residual services to its affiliate CWS Utility Services comply with applicable law.

Application 08-05-019  
(Filed May 12, 2008)

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**DECISION APPROVING SETTLEMENT AGREEMENT  
BETWEEN THE DIVISION OF RATEPAYER ADVOCATES  
AND CALIFORNIA WATER SERVICE COMPANY**

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**DECISION APPROVING SETTLEMENT AGREEMENT  
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**1. Summary**

This decision adopts the proposed settlement agreement between the Division of Ratepayer Advocates (DRA) and California Water Service Company (Cal Water)<sup>1</sup> regarding changes to a program to provide waterline repair services to customers. The repair program was offered through Cal Water's affiliate, CWS Utility Services (CWSUS). In Decision (D.) 07-12-055 in Cal Water's 2006 general rate case, the Commission ordered Cal Water to change the way this service was provided to its customers so that it did not violate excess capacity or affiliate transaction rules. Cal Water made changes to the program, including transferring ownership of the program to an unaffiliated third party, and now seeks confirmation that it is in compliance with D.07-12-055. The settlement agreement stipulates to (1) the treatment of cost and revenues related to the program; (2) a one-time payment to ratepayers in the amount of \$2 million dollars; and (3) no penalties or sanctions should be levied related to Cal Water's service to CWSUS during the period prior to June 30, 2011. By adopting the settlement agreement, this decision resolves all remaining issues raised in this proceeding.

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<sup>1</sup> The parties filed the Joint Motion of California Water Service Company (U60W) and the DRA to Approve Settlement Agreement and Brief in Support (Joint Motion). The settlement agreement was attached as Attachment 1 to the Joint Motion.

**2. Background****2.1. Related Proceedings**

This decision references many related proceedings. The following summary chart is provided for ease of reference.

<b>Proceeding</b>	<b>Description</b>	<b>Decision (D.)</b>
Various	California Water Service Company (Cal Water) original affiliate transaction rules decision	D.97-12-011
Rulemaking (R.) 97-10-049	Original excess capacity (non-tariffed utility products and services (NTP&S)) rules for water utilities	D.00-07-018, as modified by D.03-04-028 and D.04-12-023
Application (A.) 06-07-017; A.06-07-018; A.06-07-019; A.06-07-020; A.06-07-021; A.06-07-022; A.06-07-023; A.06-07-024	2006 General Rate Case	D.07-12-055
A.08-05-019	This proceeding	
A.08-07-004	Application to modify D.97-12-011 regarding Cal Water's affiliate transaction rules	D.11-02-010
R.09-04-012	Rulemaking to set affiliate transaction rules, including NTP&S for all Class A water companies	D.10-10-019
A.12-07-007	2014 General Rate Case	

**2.2. Cal Water and the Extended Service Protection Program**

Cal Water is a Class A water company that services commercial and residential customers and is regulated by the Commission. Beginning in 2005, Cal Water offered its customers an emergency repair program for customer-owned water lines (extended service protection or ESP). The ESP

program was offered as a non-tariffed service through Cal Water's unregulated affiliate CWS Utility Services (CWSUS). In order to provide the service, Cal Water attempted to comply with the Commission's excess capacity rules (also known as NTP&S) and affiliate transaction rules.

Affiliate transaction rules are the principles that govern transactions between the regulated utility (here, Cal Water) and the utility's unregulated affiliated companies (here, CWSUS). D.97-12-011 granted Cal Water permission to reorganize itself into a holding company structure to form unregulated affiliated companies. However, D.97-12-011 also required that going forward Cal Water not offer unregulated services – even if those services qualified under excess capacity rules. Instead, any unregulated services were to be offered by an unregulated affiliate. (Re Water Service Company, (1997) 77 CPUC2d 53 at 59.)

Excess capacity rules are the principles that allow regulated utilities to use underutilized and excess regulated assets for non-tariffed purposes. The excess capacity rules set forth the allocation of revenue for passive and active projects between utility shareholders and customers. To be eligible for treatment as excess capacity, the utility must make certain showings about the nature and use of the assets. The excess capacity rules for all water utilities were developed in R.97-10-049 and set forth in D.00-07-018, as modified by D.03-04-028 and D.04-12-023 (D.00-07-018). These rules are intended to ensure that utility customers do not subsidize competitive ventures, while at the same time allowing a utility to efficiently use existing underutilized capacity through non-tariffed projects.

While this proceeding was pending, the Commission issued D.10-10-019 containing new rules for affiliate transactions and for excess capacity (now known as NTP&S).

Cal Water offered the ESP program through its affiliate CWSUS pursuant to the Commission's excess capacity rules. During the 2006 general rate case (A.06-07-017), concerns were raised about whether an unregulated affiliate was allowed to provide services under the excess capacity rules using utility resources. Ultimately, the Commission found that CWSUS could not provide the ESP services without violating the excess capacity rules, and that Cal Water could not provide the ESP services without violating affiliate transaction rules.<sup>2</sup> Moreover, Cal Water might be violating Section 453(a)<sup>3</sup> of the California Public Utilities Code<sup>4</sup> because it appeared to be granting undue and unjust preference to CWSUS for the ESP service. "We find that, in this case Cal Water is using its monopoly power to contact its utility customers in an effort to sell them a non-tariffed service that is not essential to its utility function. If we allow this, it may open the door to Cal Water also using its utility personnel and assets to offer sewer repair protection and in-home plumbing protection services similar to those now offered through American Water's utility affiliates, and any other business venture it finds could be profitable." (D.07-12-055 at 66.)

D.07-12-055 gave Cal Water three options:

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<sup>2</sup> In addition, D.07-12-055 found that Cal Water had failed to demonstrate that the ESP program even met the qualifications for a non-tariffed service provided under the excess capacity rules, and that if Cal Water wanted to continue offering the service, it would need to make the showing required to qualify under the excess capacity rules. (D.07-12-055 at 55-56.)

<sup>3</sup> Section 453(a) of the California Public Utilities Code states, "No public utility shall, as to rates, charges, service, facilities, or in any other respect make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice of disadvantage."

<sup>4</sup> All references to Sections are to the California Public Utilities Code unless otherwise specified.

1. Continue the ESP program as a regulated utility service or as an affiliate service and file an application that contained the terms and conditions of the revised ESP program. (D.07-12-055, ordering paragraph 16.)
2. Continue the ESP program, but not as a regulated utility service or as an affiliate service, and file an application with a detailed description of the terms and conditions of the proposed revised ESP program. (D.07-12-055, ordering paragraph 17.)
3. Discontinue the ESP program and notify customers. (D.07-12-055, ordering paragraph 19).

Cal Water chose not to continue to offer the ESP program and transferred it to HomeServe USA Corp. (HomeServe), an unaffiliated Pennsylvania company, just prior to the issuance of D.07-12-055. Under the arrangement, initially Cal Water provided billing and marketing support for the ESP program to CWSUS, which in-turn provided the services to HomeServe.

To further comply with D.07-12-055, Cal Water filed two applications:

- 1) The instant application, requesting that the Commission confirm that the transfer brought Cal Water into compliance with ordering paragraph 19; and
- 2) A.08-07-004, requesting modification of its affiliate transaction rules set forth in D.97-12-011.

### **2.3. Application 08-05-019 Regarding Discontinuing ESP Program**

On May 12, 2008, Cal Water filed this application requesting that the Commission (1) approve its proposed accounting for the agreement between CWSUS and Cal Water to provide billing and marketing services; (2) approve a rate surcredit related to the services; (3) find that, consistent with ordering paragraph 19 of D.07-12-055, Cal Water no longer offered ESP repair service; and (4) find that, consistent with ordering paragraph 16, the residual support services provided by Cal Water to CWSUS comply with applicable law, including the

affiliate transaction rules in D.97-12-011. (Application at 1.) Cal Water stated that it had ceased providing ESP program water line repairs through CWSUS, and that CWSUS had contracted with an independent third party, HomeServe, to provide a replacement service to Cal Water's customers. As directed by ordering paragraph 19, customers were notified by letter from CWSUS that HomeServe would start providing the service in lieu of CWSUS starting February 25, 2008. Cal Water continued to provide limited billing and market support services to CWSUS, who in-turn supported HomeServe under the contract.

The utility services provided to HomeServe included billing, accounting, accounts payable, cash receipts, distribution of reports on a monthly-basis, incidental customer service support in the form of redirecting customer calls and forwarding complaints to HomeServe, as well as marketing support through use of Cal Water's name and trademark and customer database. Division of Ratepayer Advocates (DRA) protested the application citing numerous concerns, including whether it was appropriate to use the accounting methodology from the excess capacity rules instead from the affiliate transaction rules. (Protest of Division of Ratepayer Advocates, June 18, 2008 at 4.)

A prehearing conference (PHC) in A.08-05-019 was held on July 25, 2008.

#### **2.4. Application 08-07-004 to Modify Affiliate Transaction Rules**

On July 2, 2008, Cal Water filed A.08-07-004 Application of California Water Service Company to Modify Decision 97-12-011 regarding affiliate transaction rules. This application was filed in light of the fact that under D.97-12-011 non-tariffed services, including excess capacity, could only be offered by an affiliate of Cal Water. The application sought to modify Cal Water's existing affiliate transaction rules to allow the regulated utility to offer non-tariffed services that qualify under the Commission's excess capacity rules.

A.08-05-019 and A.08-07-004 were placed on to the same procedural schedule. Joint PHCs for the proceedings were held on September 3, 2008 and November 30, 2008. Cal Water filed its Opening Brief to Determine Scope of Proceedings on October 10, 2008 (Cal Water Scoping Brief) and DRA filed its reply brief on October 24, 2008 (DRA Scoping Brief). Cal Water filed its response on October 31, 2008.

Pursuant to a May 11, 2009 ruling by the assigned Administrative Law Judge (ALJ) in this proceeding, Cal Water established a memorandum account (A.08-05-019 Memorandum Account) for the residual affiliate transactions that Cal Water's affiliate CWSUS had been offering utility customers through a contract with HomeServe. This memorandum account would track costs under two methodologies:

- (1) Cal Water's affiliate transaction rules (greater of cost or fair market value); and
- (2) The excess capacity rules for utilities established in D.00-07-018.

## **2.5. Issues from the Scoping Memo**

On October 2, 2009, the assigned Commissioner at the time, Commissioner Bohn, and the assigned ALJ at the time, Christine M. Walwyn, issued the Assigned Commissioner's and Administrative Law Judge's Scoping Memo and Ruling (Scoping Memo), which set forth the scope and schedule of the proceeding, and addressed other procedural matters. The Scoping Memo found that the issues the Commission must address in A.08-05-019 were:

- (a) Whether Cal Water complied with ordering paragraphs 16-19 of D.07-12-055;
- (b) Whether to allow HomeServe to provide the ESP program to Cal Water's utility customers using Cal Water's billing and marketing services;

- (c) Whether to allow Cal Water to account for its billing and marketing services, which as of the date of the Scoping Memo were provided through CWSUS, using the methodology adopted in the Commission's excess capacity rules, rather than using the rules that govern transactions between Cal Water and its affiliates;
- (d) If Cal Water was authorized in A.08-07-004 to offer utility non-tariffed services under the Commission's excess capacity rules, the Commission will evaluate in A.08-05-019 whether the billing and marketing services being provided to HomeServe qualify under these rules; and
- (e) Issues raised by ALJ Walwyn in the September 3, 2008 PHC, specifically:
  - (1) Customer privacy issues regarding customer information provided to HomeServe;
  - (2) The terms and conditions under which Cal Water's name and goodwill may be used in HomeServe's marketing; and
  - (3) Whether there is any potential for discriminatory or anti-competitive effects prohibited under Commission statutes and orders in Cal Water providing marketing and billing services to HomeServe.

Further, the Scoping Memo found that the principal issues in these applications were being addressed for all Class A water utilities in R.09-04-012, a rulemaking proceeding in which the Commission was developing standard rules and procedures for regulated water and sewer utilities governing affiliate transactions and the use of regulated assets for non-tariffed utility services (formerly called excess capacity). In light of R.09-04-012, which was instituted after the Cal Water general rate case decision and after Cal Water filed A.08-07-005 to modify its own affiliate transaction rules, the procedural schedule

in this proceeding was set to allow R.09-04-012 to be resolved before addressing Cal Water's applications.

## **2.6. Decision 10-10-019 on NTP&S**

The Commission's consideration in R.09-04-012 of standard rules and procedures for Class A water utilities addressed both affiliate transaction rules and the use of NTP&S. Final rules were adopted in D.10-10-019, issued on October 19, 2010. Under D.10-10-019, the excess capacity rules in D.00-07-018 were superseded by Rule X of D.10-10-019. Rule X designates certain categories of NTP&S as active or passive, and does not require further Commission approval for a utility to offer these services. For example, "Customer Account Management Services" is listed as "Active" and includes "Billing calculation and presentation." For services that are not specifically identified in Rule X, the utility must file an advice letter with the Commission prior to offering the service. The new rules took effect on July 1, 2011. (December 21, 2010 letter from Commission Executive Director to Jose E. Guzman, Jr.)

Under D.10-10-019, Cal Water could not continue to provide billing and marketing services to its affiliate CWSUS for HomeServe's program as NTP&S. (D.10-10-019, conclusion of law 35.)

On November 29, 2010, Cal Water and DRA filed a joint PHC statement stating that A.08-07-004 was moot in light of the adoption of D.10-10-019. Therefore, on February 24, 2011, the Commission dismissed A.08-07-004. (D.11-02-010.)

With new affiliate transaction and NTP&S rules in place, and with A.08-07-005 dismissed, the Commission continued its procedural schedule in this proceeding, A.08-05-019.

**2.7. New Contractual Arrangement with HomeServe**

In order to comply with D.10-10-019, Cal Water, CWSUS, and HomeServe entered into a new contractual arrangement. Under the new arrangement, Cal Water contracted directly with HomeServe to provide billing support on an exclusive basis. Cal Water discontinued any marketing support for the HomeServe program. The contracts do not give HomeServe the right to use the Cal Water name or logo, and Cal Water does not provide HomeServe with customer information. Response of California Water Service Company (U60W) To Division of Ratepayer Advocates' Audit Served May 31, 2011 (Response to Audit at 2.) CWSUS and HomeServe entered into a separate agreement pursuant to which CWSUS, as an unregulated entity, provides marketing services.

**2.8. Applicability of Commission Resolution G-3424**

On March 4, 2011, the assigned ALJ ruled that the applicability of the analysis and policy set forth by Commission Resolution G-3424 should be considered in this proceeding.<sup>5</sup> Resolution G-3424 was issued in April 2009 and addressed a similar NTP&S fact pattern. Pacific Gas and Electric Company (PG&E) sought to offer certain non-regulated services to its customers, and Resolution G-3424 denied authority to do so. Resolution G-3424 reasoned that

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<sup>5</sup> "The applicability of the analysis and policy set forth by the Commission in Resolution G-3424, issued on April 16, 2009 and attached to this ruling, shall be considered in regards to both (1) whether the Commission should authorize California Water Service Company's existing affiliate transaction; and (2) whether the Commission should authorize California Water Service Company to sign a contract directly with Home Services." Administrative Law Judge's Ruling Requesting Parties Address the Analysis and Policy Adopted by the Commission in Resolution G-3424 as it Applies to the Issues Raised in this Proceeding, March 4, 2011.

the services were outside of the utility's core mission to the utility's customers.<sup>6</sup> The resolution cited concerns about (1) customer confusion and privacy issues leading to additional costs for utility customers and (2) the use of a utility's billing system and customer service personnel to perform revenue collection for one vendor, giving that vendor an undue advantage. The services PG&E sought to provide were similar to the services that were provided by Cal Water to CWSUS and by CWSUS to HomeServe.<sup>7</sup>

CWS addressed the applicability of the analysis in G-3424 in its Response to Audit. In particular, on the issue of whether the billing arrangements provided exclusively to HomeServe created an "unjust or undue" preference, CWS argued that (i) exclusivity is often inherent in transactions involving excess capacity, (ii) cases on exclusive dealing contracts look to the size and length of the contract, and relevant market, when determining if an exclusive contract is anticompetitive. (Response to Audit at 5-7.)

### **2.9. Evidentiary Hearings**

Evidentiary hearings were held on June 30 and July 1, 2011. This proceeding was submitted on December 21, 2012.

### **3. Proposed Settlement Agreement**

On October 12, 2011, the parties filed a Joint Motion Of California Water Service Company (U60W) And The Division Of Ratepayer Advocates (DRA) To Approve Settlement And Brief In Support; settlement agreement Attached (Joint Motion). A copy of the settlement agreement is attached hereto as Attachment 1.

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<sup>6</sup> Resolution G-3424. April 16, 2009.

<sup>7</sup> Exhibit A Product List of Business and Cooperation Agreement filed under seal as Exhibit 16 C.

Cal Water and DRA state that the proposed settlement is reasonable and fully supported by the evidence of both parties. In addition, they state that the settlement negotiations were at arms' length. (Joint Motion at 1.) The proposed settlement agreement is an all-party settlement that resolves all of the remaining issues in this proceeding. No protests or comments were filed in response to the Joint Motion.

The key terms of the settlement agreement are summarized as follows:

1. For the period prior to June 30, 2011 Cal Water provided billing and marketing support services to CWSUS, which in-turn provided them to HomeServe. Related costs and revenues were tracked in the A.08-05-019 Memorandum Account. For this period, the parties agreed that:
  - a. Costs and revenues in the A.08-05-019 Memorandum Account should be calculated using the regulatory accounting principles for affiliate transactions that the Commission established for Cal Water in D.97-12-011;
  - b. Cal Water properly applied those affiliate transaction rules with regard to Cal Water's services to CWSUS, as reflected in the A.08-05-019 Memorandum Account;
  - c. The balance in the A.08-05-019 Memorandum Account as of June 30, 2011 will be amortized over a 12-month period;
  - d. Any remaining balance in the A.08-05-019 Memorandum Account will be addressed in Cal Water's next general rate case;
  - e. In no event will a surcharge be levied against ratepayers; and
  - f. There should be no Commission penalties or sanctions relating to Cal Water's services to CWSUS during this time period.
2. For the period after June 30, 2011, Cal Water provided billing services to HomeServe under a direct contract (June 30, 2011 Contract). The June 30, 2011 Contract

provides for a monthly-payment to Cal Water and an annual payment to Cal Water. Related costs and revenues were tracked, and continue to be tracked, in the A.08-05-019 Memorandum Account.

- a. Beginning July 1, 2011, ratepayers began receiving a 10% share of the monthly revenues that Cal Water receives from HomeServe pursuant to the June 30, 2011 Contract.
- b. Beginning with the November 2012 annual payment from HomeServe, ratepayers began receiving a 10% share of the annual payment.
- c. The ratepayer shares will be reflected in the A.08-05-019 Memorandum Account until the next general rate case (next GRC). At the conclusion of the next GRC, Cal Water will provide a surcredit to its ratepayers for the amounts recorded in the A.08-05-019 Memorandum Account from June 30, 2011 to the date on which rates under the next GRC decision take effect. The amortization period will be as specified in Standard Practice U27W. Cal Water will incorporate a forecast of the shared revenue in the next GRC's revenue requirement.
- d. As of June 30, 2011, the A.08-05-019 Memorandum Account does not need to include accounting using affiliate transaction rules. Section 4.A in the Preliminary Statement for the memorandum account can therefore be eliminated. Cal Water will continue to provide accounting using excess capacity rules as described in the section currently identified as Section 4.B of the Preliminary Statement.
- e. As part of the settlement agreement, Cal Water and DRA agree that Cal Water's rights and responsibilities under the June 30, 2011 Contract are consistent with Commission rules and policies, including the affiliate transaction and NTP&S rules.

3. Cal Water residential ratepayers will receive a one-time payment in the amount of \$2 million to be amortized over a 12-month period.
4. Within 30 days of the Commission's final decision approving the settlement, Cal Water will submit a Tier 1 advice letter requesting authority to amortize the \$2 million payment and the June 30, 2011 A.08-05-019 Memorandum Account amount. Seven days prior to submitting the advice letter, Cal Water will provide DRA with a draft copy of the advice letter with supporting workpapers that reconcile the revenues and expenses and the surcredit to ratepayers.

Cal Water's next GRC, A.12-07-007, was filed on July 5, 2012 and new rates are expected to take effect in 2014. Rates set in that proceeding will include treatment for future costs and revenues associated with the HomeServe contract. Therefore, within 30 days after these new rates take effect, Cal Water will need to file a Tier 1 advice letter requesting authority to amortize any amounts remaining in the A.08-05-019 Memorandum Account when the new rates take effect. Seven days prior to submitting the advice letter, Cal Water should provide DRA with a draft copy of the advice letter with supporting workpapers that reconcile the revenues and expenses and the surcredit to ratepayers.

The parties state that the settlement advances the public interest by balancing Cal Water's opportunity to provide the service with the ratepayer's interest in a share of the resulting proceeds and a reasonable share of the value of the services rendered and assets sold by Cal Water's subsidiary, CWSUS. This settlement would resolve the issues of the proceeding without penalizing Cal Water for its past unauthorized behavior.

On May 21, 2012, the assigned ALJ issued a ruling to reopen the record and directed Cal Water to submit additional information, including the

investment cost file and net purchase price calculation for the sale of the ESP program to HomeServe. Cal Water submitted the additional information in June 2012.

On September 5, 2012, this proceeding was re-assigned from ALJ Christine M. Walwyn to ALJ Jeanne M. McKinney.

On December 18, 2012, the parties filed a Motion to Reopen the Record for the Limited Purpose of Accepting a Modified "Preliminary Statement Q"; Modified "Preliminary Statement Q" Attached (Joint Motion for Preliminary Statement). The Joint Motion for Preliminary Statement includes a modified Preliminary Statement Q which makes the corrections necessary to reflect the June 30, 2011 Contract terms and the settlement agreement terms. It also acknowledged that an advice letter will need to be filed after the new rates take effect.

#### **4. Standard for Review for Settlement Agreements**

The settlement agreement was a collaborative effort between the parties. The parties state that it was an arms' length negotiation, and that each issue was resolved with reasoned and thoughtful analysis of the law and evidence. (Joint Motion at 1.)

The settlement agreement is also consistent with Commission decisions on settlements, which express a strong public policy favoring settlements of disputes if they are fair and reasonable in light of the whole record. (*See* D.05-03-022 at 9.) This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results. (*Id.*) As long as the settlement, taken as a whole, is reasonable in light of the record, consistent with law, and in the public interest, it may be adopted.

For the Commission to approve the settlement, several conditions must be met.

First, under Rule 12.1(a),<sup>8</sup> the settlement motion must contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged.

Rule 12.1(a) also limits any settlement to the issues in the proceeding. We find that the Joint Motion meets this standard. The settlement agreement resolves only issues in the proceeding and the parties state that they do not intend it to have precedential value. The current arrangement with HomeServe has a limited term and generally does not continue the services which DRA found objectionable. The settlement also provides ratepayers a significant one-time payment of \$2 million dollars and a percentage of revenues going forward.

The settlement also complies with Rule 12.5, which requires that the settlement agreement be binding on all parties and not set any precedent regarding any principle or issue for any future proceeding. This is a unique case because it was litigated at the same time that the Commission was developing new generic rules for all Class A water utilities. By ceasing operation under its old contract with its affiliate CWSUS after the new affiliate transaction and NTP&S rules became effective under D.10-10-019, Cal Water's actions appropriately resolved concerns raised during this proceeding. It is therefore not necessary, or appropriate, for this decision to address the broader applicability of any Commission policy, rule or statute.

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<sup>8</sup> All references to Rules are in the Commission's Rules of Practice and Procedure.

Rule 12.1(d), provides that, prior to approval, the Commission must find a settlement “reasonable in light of the whole record, consistent with the law, and in the public interest.” We find the proposed settlement meets the Rule 12.1(d) criteria, and we therefore approve the settlement. Below we discuss each of the three criteria in detail.

#### **4.1. The Settlement is Reasonable in Light of the Whole Record**

We find that the evidentiary record as a whole supports a finding that the settlement is reasonable.

In assessing whether the settlement is reasonable, we consider here the evidentiary record including the responses to the ALJ’s information requests, the evidentiary exhibits, the appendices to the Joint Motion, and the Joint Motion Regarding Preliminary Statement. In addition, events outside of the proceeding, such as the issuance of D.10-10-019 regarding affiliate transaction and NTP&S rules, impact our analysis of the settlement.

We first consider if it is reasonable to find that Cal Water has complied with ordering paragraphs 16-19 of D.07-12-055 by transferring the ESP service to an unaffiliated company and appropriately compensating ratepayers for any gain on sale from the transfer. The Joint Motion asserts that the settlement, including the \$2 million payment, adequately compensates ratepayers for any gain on sale of the customer contracts by CWSUS. Cal Water had argued that that the transfer was not subject to Commission jurisdiction because it was a transfer of CWSUS assets, not Cal Water assets. DRA had sought compensation for the gain on sale. Given this dispute over whether ratepayers are entitled to a gain on this transaction, the parties agree that the settlement reasonably allocates the gain between ratepayers and Cal Water shareholders. Given these competing viewpoints, and given the evidentiary record as a whole, it is reasonable to find

that Cal Water has complied with ordering paragraphs 16-19 of D.07-12-055 and that ratepayers have been adequately compensated for any gain on sale.

Next, we consider whether treatment of the pre-June 30, 2011 Contract arrangement with HomeServe is reasonable under the proposed settlement. We previously found that Cal Water acted in good faith in its reliance that the ESP service was permitted under prior excess capacity rules. (D.07-12-055 at 65.) Concerns about the ESP program were raised in the 2006 general rate case and Cal Water responded with changes to the program. After the new affiliate transaction and NTP&S rules were approved by the Commission, Cal Water made further changes. Furthermore, after DRA filed its audit in this proceeding, Cal Water made further changes to the program. The settlement requires Cal Water to apply the accounting methodology for affiliate transaction rules to this time period. Given the efforts by Cal Water to comply with regulations, and given the proposed compensation to the ratepayers, the evidentiary record as a whole supports a finding that the settlement's treatment of the pre-June 30, 2011 Contract with HomeServe is reasonable.

Next, we consider if it is reasonable to find that the services provided under the June 30, 2011 Contract between Cal Water and HomeServe qualify as NTP&S. During the course of this proceeding, the scope of the services provided by Cal Water and its affiliate have changed. At this time, the only remaining service is billing support provided to HomeServe. Billing support is specifically contemplated as an activity that qualifies as NTP&S without the need for further Commission review. (D.10-10-019 at A-14; see also, D.07-12-055 at 56-57 and Gov. Code § 54346.3.) Cal Water already provides the same service to municipalities for sewer bills and to at least one garbage collection company. (Joint Motion at 14, 16.) Here, Cal Water has agreed that in connection with

home waterline repair services it will only provide billing support to HomeServe, while Cal Water's right to provide billing support for other types of services remains unlimited. Based on this, we agree with the parties that the services provided by Cal Water under the new contract arrangement do qualify as NTP&S.

Even though billing support qualifies as NTP&S, there are other concerns that must be considered, such as the likelihood of customer confusion and possible loss of customer privacy. Prior to the June 30, 2011 Contract arrangement, both DRA and the assigned ALJ expressed concern about whether the arrangement with HomeServe might result in customer confusion or violate customer privacy rules. In this regard, the assigned ALJ asked the parties to brief the applicability of the analysis set forth in Resolution G-3424 which denied PG&E the authority to offer a similar non-tariffed home repair service. The analysis in Resolution G-3424 resulted from concerns about customer privacy and possible customer confusion. Under the new contract arrangement, however, Cal Water does not make customer information available to HomeServe and does not authorize HomeServe to use the Cal Water name or logo. Instead, the customer information is shared in the other direction. Under the new arrangement, HomeServe authorizes Cal Water to use the names and addresses of the customers that have signed-up for home insurance services. Thus, concerns about customer confusion and privacy are resolved.

The contract also contains an exclusivity clause which continues to be a concern. In addition to the issues discussed above, Resolution G-3424 based its denial on the possibility that providing billing services to the third party vendor, while excluding other market incumbents, could have an anticompetitive effect. (Resolution G-3424 at 19.) Here, Cal Water has agreed not to provide billing

support to companies with products similar to that of HomeServe. Cal Water also has agreed not to offer similar products itself. However, there is no limitation on other companies offering a similar repair service to customers without the billing support assistance of Cal Water, and Cal Water can continue to provide billing support to companies that do not have similar products. Given the fact that NTP&S and affiliate transaction rules were being developed at the same time that this proceeding was pending, and given the limited nature of the exclusive service being provided, we agree that it is reasonable to approve the settlement agreement's treatment of the June 30, 2011 Contract.

Going forward, however, Cal Water must still demonstrate that any new contract or extension of the exclusive arrangement does not violate Section 453(a) by granting an undue preference or advantage. This requirement is separate and apart from the inquiry as to whether the service qualifies as NTP&S. As the Commission is unable to audit the cost of every utility contract with a third party included in rates in order to determine if they are just and reasonable, we regularly rely on competitive bidding as one of the indicators to determine whether the contracted service grants a preference. If the billing exclusivity arrangement between Home Serve and Cal Water is later renewed or renegotiated, Cal Water must demonstrate that the arrangement does not constitute preferential treatment in violation of Section 453(a). This could be accomplished by offering the billing service as a non-exclusive tariffed offering or by competitively bidding the arrangement.

In compliance with D.10-10-019, on a going-forward basis Cal Water will provide accounting using the methodology adopted in the Commission's new NTP&S rules, rather than using the rules that govern transactions between Cal Water and its affiliates.

**4.2. Settlement is Consistent with the Law**

We find that the settlement is consistent with the law.

The joint parties, who represent all of the parties in the current proceeding, believe that the terms of the settlement agreement comply with all applicable laws and decisions. Having reviewed the parties' arguments set forth in the Joint Motion, we agree that nothing in the settlement agreement contravenes statute or prior Commission decisions.

D.07-12-055 raised concerns about whether the original ESP program violated Section 453(a), and concerns about Section 453(a) compliance continued to be raised throughout this proceeding.

In October 2008, Cal Water stated that because there are so many other options for billing support, Cal Water could not be seen as having market power. (Cal Water Scoping Brief at 5, 18.) DRA agreed saying that "there has been no indication of preferential treatment by Cal Water to Home Service in the provision of billing and marketing." (DRA Scoping Brief at 5.)

The Joint Motion addresses Section 453(a) at length, but ultimately argues that it is not necessary to make a definitive finding on whether the contractual arrangements with HomeServe violate Section 453(a). Given the limited time period of the arrangement with HomeServe, and the unique circumstances of this case, we agree.

D.07-12-055 did not find that Cal Water had violated Section 453(a) by offering the ESP service because "Cal Water acted in good faith in its reliance that the ESP service had been authorized under D.00-07-018 and that this is an issue of first impression as to whether this type of service is authorized under the excess capacity rules." (D.07-12-055 at 65). D.10-10-019 noted that it had previously been unclear whether a water utility may provide NTP&S to its

affiliate, or under what conditions. (D.10-10-019 at 83-84.) As a result, Cal Water was required to make changes to the ESP service while new rules were still being developed.

Although, as discussed above, we have concerns that the exclusivity clause makes it difficult to establish that the contract complies with Section 453(a), we do not see a need to explore this area further at this time. Given the unique circumstances of this case of first impression, the changes in Commission regulations during the period this case was pending, and Cal Water's efforts to meet our new standards, it does not make judicially efficient sense to use the Commission's limited resources to litigate this issue. Furthermore, any additional definition of discriminatory action under Section 453(a) would be better addressed in a broader proceeding.

#### **4.3. Settlement Agreement is in the Public Interest**

We also find that the settlement agreement is in the public interest and in the interest of Cal Water's customers. The settlement agreement has the support of both parties in the proceeding, Cal Water who provides the water service, and DRA, who represents the ratepayers. Approval of the settlement agreement avoids the costs of further litigation regarding this issue and conserves Commission resources.

The settlement agreement does not compromise the service objectives of Section 451. Section 451 requires that each regulated utility provides adequate services and facilities, "as are necessary to promote the safety, health, comfort and convenience" of its customers. Here, the home insurance services are not a service that is necessary to promote these goals. At the same time, however, Cal Water's ability to promote these goals is not reduced by Cal Water's arrangement

with HomeServe, an experienced third-party provider of home insurance services.

In addition, the settlement provides ratepayers with a reasonable share of the value of the services rendered and assets sold by Cal Water's subsidiary, CWSUS. The on-going review of this issue by the Commission has resulted in a settlement that addresses many of the concerns raised by the assigned ALJ and DRA. The payment of \$2 million to ratepayers, together with an on-going percentage of gross revenues, will allow customers to appropriately share in money earned from the program. Cal Water's role in marketing these services has ended. Furthermore, the contract is for a limited term and if there is a future extension of the arrangement Cal Water must demonstrate that any exclusive billing arrangement does not violate Section 453(a).

#### **5. Motions to File Documents under Seal**

On June 3, 2011, Cal Water filed an Amended Motion to File Information Under Seal pertaining to certain customer information included in its Amended Response to January 5, 2011 Ruling Requesting Additional Information. Cal Water sought to redact information regarding the number of customers enrolled in the home insurance services and the dollars per month that Cal Water billed on behalf of HomeServe. Cal Water argued that public disclosure of this information would place HomeServe at an unfair competitive disadvantage and that the information constituted a protected trade secret of HomeServe. In addition, Cal Water stated that this information was confidential information as defined in its contracts with HomeServe and thus Cal Water was obligated to take all reasonable steps to maintain confidentiality. Cal Water provided a non-confidential version of the information which aggregated customer

subscribership. Cal Water's motion proposed keeping the information under seal for three years.

On January 16, 2013, Cal Water filed a Response of California Water Service Company (U60W) Supporting Motions to File Exhibits Under Seal to address the numerous exhibits that were tentatively marked as confidential at the evidentiary hearing. In the Response, Cal Water stated that the majority of the information for which Cal Water seeks protection is commercially sensitive and trade secret material of HomeServe.

Where possible, Cal Water provided redacted versions of the documents, and they are added to the evidentiary record as follows:

Exhibit 7R Redacted versions of certain attachments to the March 25, 2011 Data Response JOH-003.

Exhibit 9 Redacted version of Business and Cooperation Agreement.

Exhibit 10 Redacted version of Asset Purchase Agreement, dated 2007.

Exhibit 11 Redacted version of Exclusivity Agreement, dated 2007.

Exhibit 13 Redacted version of Assignment Agreement, dated 2007.

Exhibit 16 Redacted version of Business and Cooperation Agreement, dated 2011.

Exhibit 17 Redacted version of Affiliate Marketing Agreement, dated 2011.

Exhibit 18 Agreement between CWSUS and City of Bakersfield.

Exhibit 21 Redacted version of Joint Exhibit by Cal Water and DRA, summarizing information from January 2008 through June 2011.

Cal Water requests that Exhibit 8C be kept under seal for five years and that the remaining exhibits be kept under seal permanently. Cal Water argues that the agreements and other documents contain trade secrets of HomeServe, which will not expire. DRA does not oppose the requests for confidential treatment.

When granting requests to file documents under seal, the Commission must carefully balance the policy goals of public disclosure, full participation and transparency with the statutory provisions allowing confidential treatment of data (*see*, D.06-06-066.) In light of these policy considerations, it is not appropriate to permanently seal the record. Instead, the agreements with HomeServe will be protected for the term of the contracts executed in 2007.

For each document, the basis for confidential protection and the length of time for protection is set forth in the following table.

<b>Document</b>	<b>Reason</b>	<b>Time Period</b>
Exhibit 4C (Additional Confidential Testimony of Thomas Smegal, May 2012 and Attached Draft of Business & Cooperation Agreement between California Water Service Company and Home Service USA Corp.)	Documents contain commercially sensitive, proprietary information and trade secrets. Release of the documents would put HomeServe at an unfair competitive disadvantage.	3 years from the date of this decision (for testimony); length of executed contract term for draft agreement.
Exhibit 7C (March 25, 2011 CWA Response to DRA Data Request No. JOH-003)	Documents contain commercially sensitive, proprietary information and trade secrets. Release of the documents would put HomeServe at an unfair competitive disadvantage. Redacted version provided	3 years from the date of this decision.
Exhibit 8C (Customer	Documents contain	3 years from

<b>Document</b>	<b>Reason</b>	<b>Time Period</b>
Complaints and Testimonies (CDs)	commercially sensitive, proprietary information and trade secrets. Release of the documents would put HomeServe at an unfair competitive disadvantage. Documents also contain confidential customer information.	the date of this decision (permanent for customer information.)
Exhibit 9C (Business and Cooperation Agreement dated November 23, 2007 and Amendment No. 1 dated June 26, 2009), Exhibit 10C (Asset Purchase Agreement dated November 23, 2007), Exhibit 11C (Exclusivity Agreement dated November 23, 2007), Exhibit 12C (Limited Guarantee dated November 23, 2007), Exhibit 13C (Assignment Agreement dated November 23, 2007), Exhibit 16C (Business and Cooperation Agreement dated June 30, 2011), Exhibit 17C (Utility Services Marketing Services Agreement dated June 30, 2011)	Documents contain commercially sensitive, proprietary information and trade secrets. Release of the documents would put HomeServe at an unfair competitive disadvantage.	Length of 2007 contract term (currently set to expire November 23, 2017)
Exhibit 19C (May 31, 2011 Confidential DRA Audit of California Water Service Company's Discontinuance of the ESP Program as Provided in Decision 07-12-055)	Documents contain commercially sensitive, proprietary information and trade secrets. Release of the documents would put HomeServe and Cal Water at an unfair competitive disadvantage.	3 years from the date of this decision.
Exhibit 21C (Joint Costing Exhibit)	Documents contain commercially sensitive, proprietary information and	3 years from the date of this decision.

Document	Reason	Time Period
	trade secrets. Release of the documents would put HomeServe at an unfair competitive disadvantage.	

## **6. Waiver of Comment Period**

This is an uncontested matter that pertains solely to a water corporation. Accordingly, pursuant to Section 311(g)(3) and Rule 14.7(a), no public review or comment is required.

## **7. Assignment of Proceeding**

Michel Peter Florio is the assigned Commissioner and Jeanne M. McKinney is the assigned ALJ in this Proceeding.

### **Findings of Fact**

1. This application was filed by Cal Water in order to comply with ordering paragraphs 16 and 19 of D.07-12-055 resolving Cal Water general rate case A.06-07-017.
2. Cal Water is a regulated water company and CWSUS is its unregulated affiliate.
3. DRA protested this application.
4. On October 12, 2011, Cal Water and DRA filed the Joint Motion requesting approval of the settlement agreement, attached hereto as Attachment A, which addressed proposals made in Cal Water's application and the issues raised by DRA in its responses.
5. All issues remaining in this proceeding are encompassed by, and resolved in the settlement agreement.
6. The parties to the settlement agreement are all of the active parties in this proceeding.

7. The parties are fairly reflective of the affected interests.
8. No term of the settlement agreement contravenes statutory provisions or prior Commission decisions.
9. The settlement agreement, as clarified, is reasonable in light of the record, is consistent with law, and is in the public interest.
10. The material described in Section 5 above constitutes material that is entitled to confidential treatment.

### **Conclusions of Law**

1. The settlement agreement fully resolves and settles all disputed issues in this proceeding.
2. The settlement agreement is reasonable in light of the whole record, consistent with law, and in the public interest.
3. The settlement agreement should be approved.
4. It is reasonable for Cal Water to file a Tier 1 advice letter requesting authority to amortize the \$2 million payment and the amount in the A.08-05-019 Memorandum Account as of the June 30, 2011.
5. It is reasonable for Cal Water to file a Tier 1 advice letter requesting authority to amortize the amount remaining in the A.08-05-019 Memorandum Account as of the date the rates set in A.12-07-007 become effective.
6. Preliminary Statement Q should be modified as necessary to reflect the terms of settlement agreement.
7. Adoption of the settlement has no precedential status for subsequent applications by Cal Water.
8. If Cal Water pursues a renewal or renegotiation of the contract with HomeServe, it should demonstrate that any exclusive billing provision complies with Section 453(a).

9. The requirement for a 30-day period for public review and comment should be waived, pursuant to § 311(g)(3) of the Public Utilities Code and Rule 14.7(a).

10. Cal Water has complied with ordering paragraphs 16 and 19 of D.07-12-055.

11. Because new affiliate transaction rules were put in place by D.10-10-019, the question of whether the billing and marketing services being provided to HomeServe qualify under prior rules is moot.

12. Because of the unique nature of the June 30, 2011 Contract and because of the terms of the settlement agreement, it not necessary to further examine whether there is or was any potential for discriminatory or anti-competitive effects prohibited under Commission statutes and orders when marketing and billing services were provided to HomeServe.

13. Because Cal Water has contracted directly with HomeServe and is only providing billing support services, the June 30, 2011 Contract complies with the D.10-10-019.

14. It is reasonable for the material described in Section 5 above to remain under seal for the amount of time set forth in Section 5.

15. This proceeding should be closed.

16. This decision should be effective today so that the settlement agreement may be implemented expeditiously.

**O R D E R****IT IS ORDERED** that:

1. The settlement agreement between Division of Ratepayer Advocates and California Water Service Company (U60W), attached hereto as Attachment 1, is approved.
2. The joint motion of California Water Service Company (U60W) and Division of Ratepayer Advocates to Reopen the Record for the Limited Purpose of Accepting a Modified "Preliminary Statement Q" is granted.
3. Preliminary Statement Q of California Water Service Company (U60W) is hereby replaced with the Preliminary Statement Q attached as Attachment 2. Within 30 days of the Commission's final decision approving the Settlement, California Water Service Company (U60W) must submit a Tier 1 Advice Letter incorporating into its tariffs the Preliminary Statement in Attachment 2.
4. If the contracts between California Water Service Company (U60W) and HomeServe USA Corp. are ever renewed or renegotiated, California Water Service Company (U60W) will notify the Commission and demonstrate that any exclusive terms comply with Section 453(a) of the California Public Utilities Code.
5. California Water Service Company (U60W) shall make a one-time payment to ratepayers in the amount of two million dollars, to be amortized over a 12-month period, as set forth in the settlement agreement.
6. California Water Service Company (U60W) shall pay to ratepayers the remaining balance of the memorandum account as of June 30, 2011, amortized over a 12-month period, as set forth in the settlement agreement.

7. Within 30 days of the Commission's final decision approving the settlement, California Water Service Company (U60W) must submit a Tier 1 advice letter requesting authority to amortize the amounts set forth in ordering paragraphs 5 and 6. Seven days prior to submitting the advice letter, California Water Service Company (U60W) must provide Division of Ratepayer Advocates with a draft copy of the advice letter with supporting workpapers that reconcile the revenues and expenses and the surcredit to ratepayers.

8. Beginning July 1, 2011, ratepayers began receiving a 10% share of the monthly revenues that California Water Service Company receives from HomeServe USA Corp., pursuant to the HomeServe Contract.

9. Beginning with the November 2012, annual payment from HomeServe USA Corp., ratepayers began receiving a 10% share of the annual payment.

10. At the conclusion of Application (A.) 12-07-007, California Water Service Company (U60W) will provide a surcredit to its ratepayers for the amounts recorded in the A.08-05-019 Memorandum Account from June 30, 2011 to the effective date of the rates set forth in the A.12-07-007 final decision. The amortization period will be as specified in Standard Practice U27W.

11. Within 30 days after the effective date of the rates adopted in the Commission's final decision in Application (A.) 12-07-007, California Water Service Company (U60W) (Cal Water) must submit a Tier 1 advice letter requesting authority to amortize the amounts remaining in the A.08-05-019 Memorandum Account. Seven days prior to submitting the advice letter, Cal Water must provide Division of Ratepayer Advocates with a draft copy of the advice letter with supporting workpapers that reconcile the revenues and expenses and the surcredit to ratepayers.

12. California Water Service Company (U60W) will incorporate a forecast of the shared revenue for the June 30, 2011 contract with HomeServe USA Corp. in the Application 12-07-007 revenue requirement.

13. The documents placed under seal shall remain under seal for the applicable period of time set forth in Section 5 of this decision and shall not be made accessible or disclosed to anyone other than the Commission and its staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ) or the ALJ then designated as Law and Motion Judge.

14. If California Water Service Company (U60W) or HomeServe USA Corp. believes it is necessary to keep the confidential data under seal for an additional period, California Water Service Company (U60W) or HomeServe USA Corp. shall file a new motion to file confidential documents under seal at least 30 days before the expiration of the time period designated in Section 5 of this decision.

15. The following exhibits are added to the evidentiary record: Exhibit 7R, Exhibit 9, Exhibit 10, Exhibit 11, Exhibit 13, Exhibit 16, Exhibit 17, Exhibit 18, and Exhibit 21.

16. Application 08-05-019 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**Attachment 1**

**Settlement Agreement Between the Division of Ratepayer Advocates  
and California Water Service Company (U-60-W)  
Resolving All Issues in A.08-05-019**



**FILED**

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

**PH 11-11  
04:59 PM**

Application of California Water Service Company (U 60 W) for an order confirming its discontinuance of the ESP program as provided in D.07-12-055, Ordering Paragraph 19, approving accounting for the residual affiliate transaction, and confirming under D.07-12-055, Ordering Paragraph 16 that Applicant's residual services to its affiliate CWS Utility Services comply with applicable law.

A.08-05-019  
(Filed May 12, 2008)

**SETTLEMENT AGREEMENT BETWEEN THE DIVISION OF RATEPAYER  
ADVOCATES AND CALIFORNIA WATER SERVICE COMPANY (U-60-W)  
RESOLVING ALL ISSUES IN A.08-05-019**

October 11, 2011

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

Application of California Water Service Company (U 60 W) for an order confirming its discontinuance of the ESP program as provided in D.07-12-055, Ordering Paragraph 19, approving accounting for the residual affiliate transaction, and confirming under D.07-12-055, Ordering Paragraph 16 that Applicant's residual services to its affiliate CWS Utility Services comply with applicable law.

A.08-05-019  
(Filed May 12, 2008)

**SETTLEMENT AGREEMENT BETWEEN THE DIVISION OF RATEPAYER**

**ADVOCATES AND CALIFORNIA WATER SERVICE COMPANY (U-60-W)**

**RESOLVING ALL ISSUES IN A.08-05-019**

**I. GENERAL**

- A. Pursuant to Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Division of Ratepayer Advocates ("DRA") and California Water Service Company ("Cal Water" collectively, "the Parties") have agreed on the terms of this Settlement Agreement ("Agreement") which they now submit for approval.
- B. This Agreement addresses and resolves all issues raised by the Parties in Application 08-05-019.
- C. Since this Agreement represents a compromise by them, the Parties have entered into each stipulation contained in the Agreement on the basis that its approval by the Commission not be construed as an admission or concession by any Party regarding any fact or matter of law in dispute in this proceeding. Furthermore, the Parties intend that the approval of this Agreement by the Commission not be construed as a precedent or statement of policy of any kind for or against any Party in any current or future proceeding. (Rule 12.5, Commission's Rules on Practice and Procedure.)
- D. Parties agree, without further consideration, to execute and/or cause to be executed, any other documents and to take any other action as may be necessary, to effectively consummate this Agreement. The Parties shall take no action in opposition to this Agreement.
- E. The Parties agree that no signatory to the Agreement assumes any personal liability as a result of their agreement. All rights and remedies of the Parties are limited to those available before the Commission. The provisions of this Agreement are not severable.

If any part of the Agreement is disapproved or modified, the remaining provisions of the Agreement shall be void, with the Parties returning to their positions in this proceeding as if the Agreement were never reached.

- F. The Parties acknowledge that unless expressly and specifically stated otherwise herein, the California Public Utilities Code, Commission regulations, orders, rulings, and/or decisions shall govern the interpretation and enforcement of this Agreement.
- G. This Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts together shall constitute one and the same instrument.

## II. DEFINITIONS

For the purposes of this Agreement, the following definitions apply:

- A. "Affiliate/NTP&S Rules" refers to the "*Rules for Water and Sewer Utilities Regarding Affiliate Transactions and the Use of Regulated Assets for Non-Tariffed Utility Services*" adopted in Appendix A to D.10-10-019 in Commission proceeding R.09-04-012. "NTP&S" refers to the "non-tariffed products and services" primarily addressed in Rule X of the Affiliate/NTP&S Rules.
- B. "Cal Water" refers to California Water Service Company (U-60-W), a California corporation which is a wholly-owned subsidiary of California Water Service Group, and which provides water utility services throughout California pursuant to the rules and regulations of the Commission.
- C. "CWSUS" refers to CWS Utility Services, a California corporation which is a wholly-owned subsidiary of California Water Service Group, and an unregulated affiliate of Cal Water.
- D. "DRA" refers to the Division of Ratepayer Advocates of the Commission.
- E. "HomeServe" refers to HomeServe USA Corp., a Pennsylvania corporation.
- F. "ESP program" refers to the Enhanced Services Protection program developed and administered by CWSUS.
- G. "Memorandum Account" refers to Cal Water's memorandum account entitled Home Emergency Insurance Solutions established by Advice Letter 1925.
- H. "B&C Agreement" refers to the Business & Cooperation Agreement dated June 30, 2011 between HomeServe and Cal Water, which Cal Water submitted under seal as confidential Exhibit 16-C in A.08-05-019.

## III. ACTIVITIES RELATING TO HOMESERVE PRIOR TO JUNE 30, 2011

- A. Prior to June 30, 2011, Cal Water provided services to CWSUS to support the ESP program, and subsequently, the HomeServe program. All references to "services to CWSUS" in this section refer to those services.

- B. All costs and revenues related to Cal Water's services to CWSUS during this time period have been tracked in the Memorandum Account authorized by the Commission.
- 1) The Parties agree that the costs and revenues in the Memorandum Account up until June 30, 2011 will reflect the regulatory accounting principles for affiliate transactions that the Commission established for Cal Water in D.97-12-011.
  - 2) The Parties further agree that Cal Water has properly applied those affiliate transaction rules with regard to Cal Water's services to CWSUS as reflected in the memorandum account.
  - 3) The Parties agree that the balance in the memorandum account as of June 30, 2011 will be amortized over a 12-month period, together with the one-time payment to ratepayers discussed in Section V below.
  - 4) Any remaining balance in the memorandum account will be addressed in Cal Water's next general rate case. In no event, will a surcharge be levied against ratepayers.
- C. As part of this Agreement, the Parties agree that there should be no Commission penalties or sanctions relating to Cal Water's services to CWSUS during this time period.

#### **IV. ACTIVITIES RELATING TO HOMESERVE BEGINNING JUNE 30, 2011**

- A. Beginning on June 30, 2011, Cal Water has been providing services directly to HomeServe pursuant to the B&C Agreement between Cal Water and HomeServe.
- B. The Parties agree that, consistent with the Affiliate/NTP&S Rules, ratepayers will receive a share of Cal Water's gross revenues associated with two aspects of the B&C Agreement:
- 1) Beginning July 1, 2011,<sup>1</sup> ratepayers will receive a 10% share of the monthly revenues that Cal Water receives from HomeServe (referred to as the "Administrative Fee" and the "Fee" in Sections 1 and 6 of the B&C Agreement).
  - 2) Beginning with the November 2012<sup>2</sup> annual payment from HomeServe, ratepayers will receive a 10% share of the annual payment that Cal Water receives from HomeServe (referred to as the "Annual Payment" in Sections 1 and 6 of the B&C Agreement).
  - 3) These ratepayer shares will be reflected in the Memorandum Account until the amounts are incorporated into rates in Cal Water's next general rate case. At the conclusion of that GRC, Cal Water will provide a surcredit to its ratepayers for the amounts recorded in the Memorandum Account from June 30, 2011 to the effective date of the final GRC decision. The amortization period will be as specified in Standard Practice U-27-W. Additionally, Cal Water will incorporate a forecast of the shared revenue in that GRC's revenue requirement.

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<sup>1</sup> Section III.B.3 of the Agreement provides for the pre-June 30, 2011 disposition of shared monthly revenues.

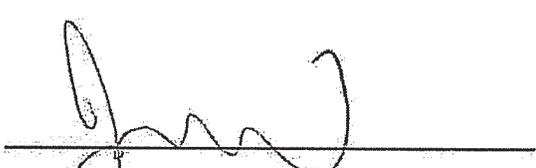
<sup>2</sup> The one-time payment discussed in Section V addresses the disposition of the November 2011 annual payment.

- C. The Parties agree that, as of June 30, 2011, the memorandum account for A.08-05-019 does not need to include accounting using affiliate transactions rules. Section 4.A in the Preliminary Statement for the memorandum account can therefore be eliminated. Cal Water will continue to provide accounting using excess capacity rules as described in the section currently identified as Section 4.B of the Preliminary Statement.
- D. As part of this Agreement, the Parties agree that Cal Water's rights and responsibilities under the B&C Agreement are consistent with Commission rules and policies, including the Affiliate/NTP&S Rules.

**V. ONE-TIME PAYMENT TO RATEPAYERS**

- A. The Parties agree that Cal Water's residential ratepayers will receive a one-time payment in the amount of two million dollars (\$2 million) to be amortized over a 12-month period.
- B. Cal Water will submit an advice letter requesting authority to amortize the one-time payment, plus the amount from the Memorandum Account as discussed in Section III.B(3), above, within 30 days of a Commission decision approving this Agreement.
- C. Seven days prior to submitting the advice letter discussed in Section V.B, Cal Water will provide DRA with a draft copy of the advice letter with supporting workpapers that reconcile the revenues and expenses and the surcredit to ratepayers.
- D. The Parties agree that the Commission should authorize Cal Water to file a Tier 1 advice letter consistent with this Agreement.

Signed:

<p><b>Joseph P. Como</b>   <b>Acting Director</b>  <b>The Division Of Ratepayer Advocates</b></p> 	<p><b>Thomas F. Smegal</b>   <b>Vice President, Regulatory Matters &amp; Corporate Relations</b>  <b>California Water Service Company</b></p> 
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October 11, 2011

**Attachment 2**

**Preliminary Statement**

Preliminary Statement  
(continued)

Q. A.08-05-019 Memorandum Account

1. Purpose: Cal Water has signed a contract with HomeServe USA to provide services. In Administrative Law Judge's Ruling Directing Establishment of a Memorandum Account for the Requested Residual Affiliate Transaction of May 11, 2009 (ALJ Ruling), Cal Water was directed "to track all revenues received from utility customers for the subject services and all costs, incurred since the inception of the service in a memorandum account." As modified by the settlement agreement adopted in D. \_\_\_ - \_\_\_ - \_\_\_ Cal Water is to track costs and revenues, under the "excess capacity" rules adopted in D.10-10-019 and subsequent decisions beginning July 1, 2011.
2. Applicability: This memorandum account is applicable to all territories served.
3. Inception: This memorandum account tracks costs and revenues related to the contract between HomeServe USA and Cal Water from July 1, 2011 until rates adopted in A.12-07-007 become effective.
4. Accounting:
  - A. In order to allow a future proper accounting of costs, Cal Water should perform as follows:<sup>1</sup>
    1. The following entries should be tracked in the memorandum account:
      - a. All revenue received by Cal Water from utility customers for the subject services, including (beginning November 2012) the annual payment from HomeServe USA;<sup>2</sup> and, customers for the subject services;<sup>3</sup> and,
      - b. All incremental costs required to perform the services offered under the contract.
  - B. Cal Water should record and retain enough detail in all accounting entries for the Commission to determine reasonableness of the expense or revenue.
  - C. Each tracked component should separately track monthly interest expense calculated at 1/12 of the most recent month's interest rate on Commercial Paper (prime, 90-day), published in the Federal Reserve Statistical Release (debit or credit).
5. Rate Component: Disposition of this memorandum account shall be made according to any subsequent decision in A.08-05-019

Notes:

1. Cal Water will retain any and all information necessary to calculate these amounts in connection with the proceeding.  
However, any calculation is subject to review by the Commission and is dependent on the final order in this matter. Cal Water will calculate this entry based upon retained information when and if the Commission deems it necessary.
2. Transfer should be defined broadly as any use, permanent or temporary, of utility goods or assets.
3. The memorandum account should also track that revenue received indirectly from customer payments through HomeServe USA.

(continued)