



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of Golden State Water Company (U 913 E) for Authority to Increase Rates for Electric Service by its Bear Valley Electric Service Division.

Application 08-06-034
(Filed June 27, 2008)

**OPENING BRIEF OF DIVISION OF RATEPAYER ADVOCATES IN THE
MATTER OF THE APPLICATION OF GOLDEN STATE WATER
COMPANY FOR AUTHORITY TO INCREASE RATES FOR ELECTRIC
SERVICE BY ITS BEAR VALLEY ELECTRIC SERVICE DIVISION**

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BEAR VALLEY ELECTRIC SERVICE DIVISION**

I. INTRODUCTION

Pursuant to the schedule set forth in the Scoping Memo of January 16, 2009, the Division of Ratepayer Advocates (DRA) submits this opening brief in the matter of the application of Golden State Water Company (GSWC) for authority to increase rates for electric service by its Bear Valley Electric Service Division (BVES). GSWC seeks to increase BVES rates by \$6.8 million in 2009 with subsequent increases of \$877,000 in 2010, \$392,000 in 2011 and \$315,000 in 2012. GSWC has not met its burden of proof for establishing that these increases are just and reasonable.

DRA's opening brief will show that DRA's recommendations are supported by the evidence in this proceeding as well as BVES' recorded historical data and industry practices. The brief will address the disputed issues.

II. EXECUTIVE SUMMARY

GSWC's request for BVES rate increases is 55.5% over current base rates and 22.7% over total revenue requirement in present rates. BVES' current base rates were adopted in Decision (D.)96-05-033. However, the Commission has increased BVES' total revenue four times since D.96-05-033 in response to BVES' changing needs and the business climate since D.96-05-033. In the first two rate increases, the Commission

changed the amortization component of BVES' purchased power account (PPAC), a third increase changed the PPAC rate to reflect higher purchased energy costs during the energy crises in 2000/2001, and the last increase was to implement interim rate recovery for the cost of constructing the Bear Valley Power Plant (BVPP)¹.

DRA recommends a \$4.4 million revenue increase in 2009, \$468,000 for 2010, \$41,000 for 2011 and \$73,000 for 2012. DRA's recommendations for BVES is based on the review of BVES recent recorded historical costs, a careful examination of the BVES' need to fill new position and develop capital projects, the likelihood of duplication between the BVES Division and the GSWC General Office (GO) for which the Commission has already approved a BVES allocation, as well as the likelihood of duplication of resources between the BVES Division's internal staff and its allocations for outside services.

Examination of BVES' recommendations was particularly challenging because of the questionable state of BVES' records and errors in the workpapers as illustrated by the numerous changes and shifts in rationale that BVES had to make to some of its positions after filing the application. (See, Exhibit 8R p.2², Exh. 28, p.7³, Exh. 220⁴, Exh. 2B⁵, Exh. 21A⁶, Exh. 5A⁷, Exh. 14A⁸, Exh. 15, p.1², Exh. 208, p.8¹⁰). These changes and

¹ GSWC-BVES Testimony, Volume 2, Results of Operations, pp. 6-7, noting 13 changes in almost all categories of expenses in the application, including a catch-all category termed "miscellaneous".

² GSWC-BVES Rebuttal Testimony, Summary of Earnings – Witness Ron Larson.

³ GSWC-BVES Rebuttal Testimony, Revenue Allocation and Rate Design – Witness Ron Larson

⁴ GSWC-BVES Department Breakdown

⁵ Corrections to GSWC-BVES Testimony, Exhibit 2, p.69, noting number of employees in the Bear Lake Office

⁶ Corrections to GSWC-BVES Testimony, Exhibit 21, p.5, Table 2: Revenue Requirement for Monthly Billing (minus cost of cost of meters).

⁷ Corrections to GSWC-BVES Testimony, Exhibit 5, p.2-2, changing BVES' recorded net income and rate of return for 2003 through 2007 in Table 2-1.

⁸ Corrections to GSWC-BVES Testimony, Exhibit 14, pp. 2, 10, 13, 14, 15, 16, noting changes to projected costs and estimates for capital projects, including additions to plants and capital project upgrades and maintenance.

⁹ Corrections to initial testimony, accepting DRA's lag day estimates as the right number.

modifications reflect the level of scrutiny and diligence that DRA applied in reaching the conclusions and recommendations DRA made in this proceeding. GSWC conceded that errors were made consistent with DRA's review and examinations but sought to off-set any downward adjustments to its recommendations due to the errors with upward adjustments based on still more errors that GSWC claimed to have discovered independent of DRA's review.¹¹

In two categories of expenses, the difference between DRA's recommendations and GSWC's requests lie primarily in the forecast approach each party adopted in making the recommendations. DRA's approach resulted in slight reductions to GSWC's recommendations in these categories: (1) Administrative and General Expenses; and (2) Operations and Maintenance Expenses. DRA's adjustments associated with some staffing increases requested by GSWC explain the remaining difference in the recommendations made for these categories of expense.

GSWC also requests a rate impact mitigation plan (RIMP), certain new programs, changes to certain unmetered charges and fees and changes to its memorandum accounts in this general rate case (GRC) for its BVES Division.

A. Summary of Disputed Issues

The following is a brief summary of the disputed issues in the proceeding.

1. Administrative and General Expenses (A&G)

In this category of expenses, GSWC seeks authorization to expand its workforce by more than 30% notwithstanding a downturn in the economy and a very stable customer base with very slow to modest growth¹² over the years. Thus, DRA takes issue with the rationale for these staffing increases and recommends that the Commission reject

(continued from previous page)

¹⁰ Exh. 208, p.8, DRA's Testimony on Production, Transmission Distribution and General Plant, noting BVES admission that it overestimated new business projections for 2008 by \$168, 000.

¹¹ Exh. 28, p.2, GSWC's Testimony on Rate Allocation and Rate Design, Witness – Ron Larson.

¹² Exh. 2, pp. 1-2, 10, GSWC's Testimony on Result of Operations.

most of the proposed staffing increases. GSWC also seeks increased costs for outside services in this category, notwithstanding the projected increases in internal staffing recommendations. The parties' different staffing projections and outside services estimate as well as their forecast approach were the primary basis for the dispute in this category of expenses.

DRA's forecasting approach for estimating A&G expenses used an average of BVES' most recent recorded years, while GSWC used a trending approach to forecast expenses. For Test Year (TY) 2009, DRA recommended \$2.5 million (in 2007 dollars) while GSWC requested \$3.4 million; for TY 2010, DRA recommended \$2.5 million while GSWC requested \$3.7 million; for TY 2011, DRA recommended \$2.5 million while GSWC requested \$4 million; and for TY 2012 DRA recommended \$2.5 million while BVES requested \$4 million.

2. Operations and Maintenance Expenses (O&M)

DRA used three year averaging of recorded data to forecast expenses in this category, while GSWC trended all costs upwards for its BVES Division. These approaches accounted for most of the differences in the parties' recommendations for this category. DRA recommends slightly lower O&M expenses for BVES in three of the test years, but an increase in TY 2011.

DRA recommended \$2.5 million (in 2007 dollars) for TY 2009 while GSWC requested \$2.9 million; DRA recommended \$2.5 million for TY 2010 while GSWC requested \$3 million; DRA recommended \$2.5 million for TY 2011 while GSWC requested \$3 million. DRA's recommended increase over GSWC's recommendation was in TY 2012 when DRA recommended \$3.5 million while GSWC requested \$3 million.

DRA only disapproved one key staffing increase for this category of expenses.

a) Partial Settlement

DRA and GSWC also reached agreement on Production O&M expenses. DRA accepted GSWC's forecast O&M production expenses, by stipulating to Table 2 on page 5 of Exhibit BVES-10. DRA and GSWC agreed on the non-labor escalation used, and

that BVES would not have a two-way balancing account for this expense.

3. Production, Distribution, Transmission and General Plant; Bear Valley Power Plant Compliance

DRA disagreed with GSWC's requests in these two categories because of GSWC's failure to support or substantiate the requests with records, or evidence of any basis to support GSWC's deviation from accepted industry practice and Commission procedure in developing the recommendations. DRA reduced GSWC's recommendations in these categories to make them consistent with the industry standard and existing Commission practices in approving rate case recommendations.

DRA recommends maintaining the total Transmission, Distribution and Plant Additions at \$1,789,720, a level comparable to the historic investment level.

4. Ratebase

DRA also recommended adjustments to the Ratebase to use the appropriate lead/lag days. DRA recommends the following lag days increases: (1) an increase from 22.2 to 63.6 for "All Other Operations Expenses"; (2) an increase from 62.6 for "All Other Maintenance Expenses"; (3) an increase from -158.2 to -152.2 for "Injuries and Damages Expenses"; (4) an increase of 2.6 to 13.6 for "Allocated General Office Expense"; and (5) an increase from 106.0 to 127.78 for "Federal Income Tax" (FIT).

These lag days increases were necessary to bring the BVES Division in line with GSWC practices, because BVES is only a division of GSWC not an incorporated subsidiary that can sue or be sued or pay taxes separately from GSWC. GSWC accepted some of DRA's lag day recommendations on this basis but continued to recommend a different standard for some lag days.

DRA also recommends reducing BVES total Materials and Supply inventory by \$31,578 from \$400,000 to \$368,422.

5. Cost of Capital

GSWC requests a Rate of Return (ROR) of 9.80% and a Return on Equity (ROE) of 11.70% for the test years. DRA recommends that the Commission authorize ROR of

8.91% and an ROE of 10.16%. GSWC's recommendations are based on a comparison of its BVES Division with incorporated electric companies whose revenues surpass the BVES Division's revenue by more than 400% in some instances.

6. Revenue Allocation and Rate Design

DRA accepts GSWC's proposal for revenue allocation. However, DRA disagrees with GSWC's request for a higher monthly charge in the rate design component of the application. Both parties stipulated to leaving customer charges at \$6.40.

7. Tax Expense

DRA and GSWC also differed in how they determined the ratios to estimate Payroll, Property and Franchise Tax expenses. DRA used averages, while GSWC used a trend line.

8. Special Requests

GSWC made special requests for increases to its Energy Efficiency (EE) program, changes to its monthly billing, and funds for CO CEMS¹³. For these programs, GSWC's combined request for the test years was as follows:

- \$441,506 for TY 2009
- \$411,265 for TY 2010
- \$413,179 for TY 2011
- \$417,161 for TY 2012

DRA recommends that the Commission reject GSWC's requests to fund the monthly billing program and CO CEMS in all the test years. DRA recommends \$190,680 (in 2007 dollars) for O&M expenses for EE and \$0 for O&M expenses for CO CEMS in each of the test years. Thus, DRA's recommendations reduce GSWC's combined special requests for EE, Monthly Billing and CO CEMS to the following levels for the test years:

¹³ Carbon dioxide Continuing Emissions Monitoring System.

- \$190,680 for TY 2009
- \$190,680 for TY 2010
- \$190,680 for TY 2011
- \$190,680 for TY 2012

GSWC also requests acceleration of its Automated Meter Reading (AMR) program at a cost of \$464,220 for each of the test years. DRA recommends maintaining the AMR program at its most recent historic levels for a cost of \$154,740 in capital expenditures for the test years.

a) Partial Settlement

During the course of hearings, the GSWC and DRA reached an agreement that GSWC would accept DRA's forecast of EE at \$190,680 for each of the test years, with a one-way balancing account and carryover spending between the test years for the entire GRC cycle budget. GSWC accepted DRA's recommendation that no funds be authorized for carbon dioxide Continuous Emissions Monitoring Systems (CEMS) in its rebuttal testimony.¹⁴

9. Other Settled Issues

The Base Rate Revenue Adjustment Mechanism (BRRAM) that GSWC proposed was also settled with DRA. GSWC agreed to use DRA's 1/12th method to record the authorized base revenues in equal amounts monthly instead of BVES' seasonal approach. Both parties agree that either party may revisit the 1/12 month versus seasonality component of the BRRAM in a subsequent GRC.

The parties agreed that customer charges should remain at \$6.40 per month for the test years.

III. PROCEDURAL CONTEXT

GSWC filed the BVES GRC on June 27, 2008 requesting increases to its base rate revenues, cost of capital and return on equity. On August 27, 2008, BVES filed

testimony on its proposed revenue allocation and rate design for the test years. On November 21, 2008, GSWC filed a motion seeking an interim rate increase pending the decision on the GRC.

DRA and the City of Big Bear Lake filed timely protests to the GRC Application on August 15, 2008, and responses opposing GSWC's motion for an interim rate increase on December 8, 2008 and December 5, 2008 respectively. Administrative Law Judge (ALJ) Lakritz held a preliminary hearing conference (PHC) on October 8, 2008 and a public participation hearing in Bear Lake on December 2, 2008.

DRA conducted an audit of BVES operations during the months of November and December 2008. DRA also conducted extensive research on the issues in the GRC application and the projections in the workpapers used to support the application. On December 19, 2008, DRA filed its Report on the Results of Operations for BVES. On January 9, 2009, DRA filed its report on Revenue Allocation and Rate Design.

Snow Summit, Inc. (Snow Summit), one of BVES two large commercial customers, requested party status on December 2, 2008, seeking to submit testimony only on the issue of revenue allocation and rate design. The Commission granted party status to Snow Summit and extended the time for filing responses to the revenue allocation and rate design components of the GRC to January 9, 2009.

The Commission Scoping Memo on January 16, 2009, acknowledged the reassignment of the proceeding to Administrative Law Judge (ALJ) Farrar, and scheduled hearings as the parties previously agreed from February 23, 2009 to February 27, 2009. On January 30, 2008, GSWC filed its rebuttal testimony. In the rebuttal testimony, GSWC sought to make several changes to its initial filings that would increase the base revenue request in the application from \$6.8 million to \$7.07 million. DRA opposed the changes in GSWC's rebuttal testimony and the matter was submitted at the hearing on the application.

(continued from previous page)
14 Exh. 23, p.2.

Parties held settlement negotiations from February 9, 2009 to February 10, 2009 and mediation with ALJ Regina DeAngeles on February 11, 2009. Evidentiary hearings commenced on February 23, 2008 and concluded on February 2, 2008.

IV. POLICY ISSUES

Public Util. Code §451 provides:

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

Similarly, Public Util. Code §454 states that

no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the Commission and a finding by the Commission that the new rate is justified.

These mandates require the Commission to ensure that rates authorized in this proceeding are just and reasonable in the particular circumstances of this case.

A. Evidentiary Burden of Proof

Pursuant to the foregoing Code provisions, the Commission has held that in ratemaking applications, the burden of proof is on the applicant utility to show that the rates requested or the increases in rates are justified.¹⁵ In a GRC for Southwest Gas Corporation, the Commission stated:

...it is [the utility's] direct showing that must provide the clear and convincing evidence. Without establishing a basis, [the utility] will not have met its burden of proof.¹⁶

The same burden applies in all rate cases regardless of the kind of utility or the business of the utility. In a Pacific Gas and Electric Company's (PG&E) rate case, the

¹⁵ Application of Pacific Gas and Electric Company (2000) D.00-02-046, mimeo, p.36, 2000 Cal. PUC LEXIS 239

¹⁶ Opinion Regarding General Rate Increase (2004) D.04-03-034, mimeo, p.7.

Commission explained:

The inescapable fact is that the ultimate burden of proof of reasonableness, whether it be in the context of test-year estimates, prudence reviews outside a particular test year, or the like, never shifts from the utility which is seeking to pass its costs of operations onto ratepayers on the basis of the reasonableness of those costs.¹⁷

DRA maintains that this burden has two prongs which are both implicated in this proceeding, such that a utility must prove not just that rates are reasonable when compared with rates served by other utilities in the general area where the applicant utility is located, but that such rates are also justified when imposed on the applicant utility's ratepayers in the particular circumstances of the case.

Consequently, GSWC has the burden of proving that each recommended increase in rates, change in service or proposed new program is both just and reasonable

B. Evidentiary Standard of Proof

The Commission has further held that the standard of proof required to meet the burden placed on the utility in a general rate case is the "clear and convincing" evidentiary standard.¹⁸ Under this standard, the utility "... must produce evidence having the greatest probative value."¹⁹ Thus, in order to meet the standard in this case, GSWC should have presented evidence "that is so clear as to leave no substantial doubt; or that is sufficiently strong to demand the unhesitating assent of every reasonable mind."²⁰

GSWC has failed to meet this legal standard and cannot support its proposed rate increases in the areas disputed in this opening brief.

¹⁷ Application of Pacific Gas and Electric Company (2000) D.00-02-046, mimeo, p.36, 2000 Cal. PUC LEXIS 239 citing Re Pacific Bell (1987) 27 CPUC 2d 1, 21, D.87-12-067.

¹⁸ Opinion on Southern California Edison Company's Test Year 2006 General Rate Case Increase Request (2006) D.06-05-016; Opinion Regarding General Rate Increase, supra.

¹⁹ Application of Pacific Gas and Electric Company, supra, mimeo, p.38.

²⁰ Id., pp. 36-37.

C. Forecast Approach – Averaging vs. Trending

A substantial part of the dispute in this proceeding reflects a disagreement between DRA and GSWC on what method to use for determining the forecast years' estimates. DRA used the averaging method to estimate A&G and O&M expenses, but used recorded data from the most recent year available to estimate future Production, Transmission, Distribution, and General Plant additions.²¹ GSWC trended almost all its estimates in every category for the forecast years, except for instance, Production O&M where the recorded data reflected a downward trend.

The Commission has addressed this issue in several GRCs and identified some appropriate instances for applying the averaging methods or the last year recorded expense method to derive the forecast year estimates. In D.04-07-022, the Commission stated:

If recorded expenses in an account have been relatively stable for three or more years, the 1987 [last year] recorded expense is an appropriate base estimate for 1990 [the forecast year].

...

For those accounts which have significant fluctuations in recorded expenses from year to year, or which are influenced by weather or other external forces beyond the control of the utility, an average of recorded expenses over a period of time (typical four years) is a reasonable base expense for the 1990 test year. (D.89-12-057, 34 CPUC 2d 199, 231.)

Notwithstanding, these endorsement of the use of averaging and last year recorded data to estimate forecast year expenses, GSWC argues that “DRA’s methods is not consistent with Commission directives regarding methodologies for forecasting expenses.” (Exh. 11, p.17.²²) Yet, GSWC quoted the same decision that explained the use of averaging and last year recorded data as acceptable Commission methods for forecasting test year expenses. (Exh. 11, p.16.)

²¹ Exh. DRA 208, p.8:15-16.

²² GSWC-BVES Rebuttal Testimony on Administrative and General Expenses

In fact, the Commission Decision which GSWC relies on to discredit DRA's methodology clearly establishes that DRA's use of last year's recorded data for the Production, Transmission, Distribution and General Plant estimates is the most appropriate method for that particular category because it is based on budgetary estimates.

Also, because utility spending plans may not always be implemented as intended, budget-based forecasts generally will be given less weight than forecasts based on recorded spending in the absence of a showing supporting the contrary approach.²³

GSWC's argument against averaging and last year's recorded data lacks merit because it seeks to discredit, not the manner in which the averaging was done or the last year data computed, but that DRA used these methods at all. The propriety of these methods is settled in the law and the annals of Commission decisions.

Similarly, it must be noted that DRA's critique of GSWC's use of trending is not that GSWC used trending at all, but that GSWC has failed to establish why trending is the most appropriate method for estimating forecast year expenses when GSWC used such method. The burden is on GSWC to establish by clear and convincing evidence that the trending method is the most appropriate method for determining the forecast year expenses.

As discussed in prior Commission decisions, there are a number of acceptable methodologies for forecasting test year costs. ... Depending on circumstances, one method may be more appropriate than others. Under other circumstances, two or more methods may be equally appropriate. In general, the parties' testimony should explain (1) why its proposed methodology is appropriate, (2) why it is better than methodologies proposed by other parties and (3) why the results are reasonable. The Commission must weigh this information in deciding which methodology should be used

²³ D.02-07-022, p.17.

and how it should be used.²⁴

In analyzing the various disputed categories of expenses, where DRA and GSWC used different forecast methods, the record will show that GSWC failed to establish any of the three factors the Commission requires before adopting the forecast method proposed by a GRC applicant. A review of Commission authorities shows that a trend line method of estimating forecast year costs is the least adopted method in the cases considered by the Commission. These trends often result in incremental budgets for the forecast years, with little rationale than the fact that the recorded years reflected an upward trend. Utilizing a trend for forecasting is especially imprecise and inappropriate for the current test year period in which there is low economic activity and growth. In this respect, the Commission has also cautioned against them.

While incremental budgets may capture anticipated increases over historic levels it is not always clear that (1) additional productivity from past or current projects are also being properly cast on a forward basis, (2) that certain historic costs will be necessary in future years and can, instead, be used to offset new costs, and (3) that the proposed budgeted costs are not included in another form in the embedded recorded data. When these types of issues are raised, the utility has the responsibility to demonstrate the reasonableness of its estimates, even if it means identifying and justifying all costs embedded in the base year amount.²⁵

GSWC has clearly not met this burden for the rate increases it requests for its BVES Division.

V. OPERATIONS AND MAINTENANCE EXPENSES

The primary dispute between DRA and GSWC concerning O&M expenses lies in DRA's recommendation for using an averaging method to calculate GSWC-BVES' O&M expenses for the forecast years. DRA also recommends that the Commission reject

²⁴ Opinion on Southern California Edison Company's Test Year 2006 General Rate Increase Request, *supra*, D.06-05-016, mimeo, p.10.

²⁵ *Id.*

GSWC's proposed new labor position for a Key Accounts Administrator and reject GSWC's request for a two-way balancing account for the BVPP O&M costs. However, the true cost impact of GSWC's recommendation for a two way balancing account can not be known at this time, and GSWC has explained that its "forecast [of] specific additions to staff were layered on top of the forecast [method results]"²⁶ it used. Therefore, the relative cost impact of DRA's recommendation rejecting the Key Accounts Administrator is obscured even by the methodology GSWC has adopted.

GSWC's O&M expenses are separated into four primary components²⁷ and each of these components are further divided into labor and non-labor ("Other") costs. BVES and DRA reached an agreement on all Production O&M costs and would like the Commission to adopt their stipulation on this issue. Thus, this brief only addresses the issues in Transmission, Distribution and Customer Accounting O&M.

A. TRANSMISSION O&M

GSWC uses two different accounting methods to forecast Transmission O&M for the forecasted years. For Transmission Labor expense, GSWC used a three-year (2005-2007) average²⁸, but for Other Transmission expense, GSWC used a five-year trend line.²⁹ DRA accepts GSWC's use of a three-year average to forecast Transmission Labor expense, and maintains that the same three-year average is the only reasonable methodology for Transmission Other expense. Although DRA accepts GSWC's use of a three-year average to forecast Transmission Labor expense, a closer examination of GSWC's use of both averaging and trending to forecast the two parts of its Transmission O&M expense is informative.

²⁶ Exh. 2, p.47:11-14.

²⁷ Id., p.45

²⁸ Exh. 2, p.50:25-27; Exh. 204, p.6 [DRA's Report on Production, Transmission, Distribution and Customer Accounting], citing GSWC-BVES Result of Operations, Workpapers, Set 1, Chapter 5, pp. 8-13.

²⁹ Exh. 204, p.6.

1. GSWC-BVES' ARGUMENT

a) Transmission Labor Component

GSWC maintains that it used a three-year average to forecast the labor component of its Transmission O&M expense because a “trended forecast” would result in expenditures two times the expense for test-year 2007 on the Transmission Labor component alone.³⁰ However, GSWC tries to explain this outcome as an anomaly brought about by the fact that transmission work is too difficult to predict and its BVES Division did very little work on the transmission system during 2003-2004.

However, even when expressed in constant 2007 dollars such a [trended] forecast would result in expenditures in excess of \$120,000 for the labor component of transmission O&M alone.

29. BVES believes such a trend is unduly influenced by the low level of work done in 2003-2004 and it therefore, produces a forecast that is too high. Work on the transmission system is difficult to predict and thus BVES recommends an alternative forecast using a much more conservative assumption that transmission O&M in the future would be closer to the average level of expenditures.³¹

Notwithstanding GSWC's attempt to explain its use of the averaging method as necessary to address an anomaly, it follows clearly that in averaging record years' expenses, a three year average is reasonable and appropriate. The method should exclude the years that would unduly influence the outcome of the averages because the recorded expenses for those years are too high or too low.

31. A slight modification of this approach would be to use the average from 2005-2007 periods by omitting the lower 2003-04 expenditures. Based on this still conservative approach, the forecast of future transmission O&M expenditures is shown in Table 5D below.

32. BVES believes that the forecast in Table 5D is

³⁰ Exh. 2, p.50:14-15.

³¹ Id.

reasonable and consistent with expectations for work to be done on the Transmission System in this time period.³²

GSWC also claims that it is difficult to predict the nature of its transmission expenses because its transmission system is rather small.

22. However, because the transmission system involves a limited amount of equipment, expenses can vary significantly from year to year. For example, there are only 158,400 feet of transmission lines and thirteen substations. While a large system would almost certainly require some amount of maintenance every month, it is not necessary for BVES to work every month on its transmission system.³³

GSWC's description of its BVES Division's transmission system applies equally to all of the BVES Division's entire operation. The entire "service territory is 78-square miles"³⁴ that comprises of a resort community serving 21,400 residential customers and about 1,400 commercial, industrial, or public-authority customers³⁵ with a peak capacity of 42.6 MW.³⁶ It has "one generation plant, 205 miles of overhead and 54 miles of underground conductors, and 13 substations."³⁷ In fact, GSWC notes, what it calls the transmission system of its BVES Division may not even qualify as transmission because "it operates at a much lower voltage than 115KV (the level typically considered transmission)."³⁸

b) Transmission Other Expense

GSWC does not explain its use of trending to forecast the other component of its Transmission O&M expense in its application. Therefore, GSWC has failed to meet its burden of proof for the use of the trending method in reaching one component of the

³² *Id.*, pp.50-51.

³³ Exh. 2, p.49.

³⁴ Exh. 2, p.1:4.

³⁵ *Id.*, p.1:18-19.

³⁶ *Id.*, p.1:22:23

³⁷ *Id.*, p.2:5-8.

³⁸ *Id.*, p.49:1-2.

O&M expenses while the reasonable method for establishing the other component is a three year average.

In its rebuttal testimony on O&M issues, GSWC argues generally that it is reasonable to use the trend line to estimate all O&M expenses.³⁹ However, this general argument fails to provide the level of proof and degree of clarity that the Commission requires a GRC applicant to show when its method for forecasting expenses is in dispute.

Thus, the Commission has stated that the following must be clear from the evidence provided to support a given methodology, when ever that method is in dispute.

[Whether] (1) additional productivity from past or current projects are also being properly cast on a forward basis, (2) that certain historic costs will be necessary in future years and can, instead, be used to offset new costs, and (3) that the proposed budgeted costs are not included in another form in the embedded recorded data.⁴⁰

None of these issues are clear from the general arguments that GSWC made in its rebuttal testimony to support the use of trending over averaging. Indeed, this GSWC general argument belies GSWC's use of averaging in the two main areas of O&M expenses: (1) GSWC used a three-year average to forecast the labor component of its Transmission O&M, and (2) a five-year average to forecast both components of its Production O&M expense.⁴¹

2. DRA'S RECOMMENDATIONS

a) Transmission Labor Component

DRA agrees with GSWC's use of a three-year average to forecast future Transmission Labor expense and accepts GSWC's estimate of \$79,600 (in 2007 dollars) for each of the forecasted years. This average is also consistent with DRA's

³⁹ Exh. 10, p.6 [GSWC-BVES' Rebuttal Testimony on Operations and Maintenance Expense for Transmission, Distribution and Customer Accounting], citing D.04-07-022, mimeo, pp. 15-17.

⁴⁰ Opinion on Southern California Edison Company's Test Year 2006 General Rate Increase Request, supra, supra, mimeo, p.10.

⁴¹ Exh. 204, p.4, citing BVES response to DRA-STA-25, question #5

recommendation for Distribution and Customer Accounting O&M as well.

b) Transmission Other Expense

DRA used a three-year average of 2005-2007 average to forecast future Transmission Other expense. This use of a three-year average is appropriate, in part, because BVES used a similar three-year average to estimate Transmission Labor expense, and also because the recorded data does not support the use of either the last year (2007) recorded expense or a trend line.

The recorded expenses for the three years were (1) \$6,200 for 2005, (2) 6,000 for 2006 and \$7,700 for 2007. The 2007 expense is 24% greater than the two previous year's data, and given the difference of \$200 between the 2005 and 2006 data, the increase in 2007 cannot logically be considered the manifestation of an upward trend.

GSWC has presented no argument to rebut the use of a three-year average or support any alternative method. Therefore, GSWC has failed to carry its burden on this issue.

B. DISTRIBUTION O&M

DRA used a three-year average of 2005-2007 recorded data to forecast test year Distribution expenses, while GSWC used a five year trend line to forecast these expenses. DRA and GSWC also differed in the manner they computed overtime for the Distribution labor component. DRA included all overtime billed by BVES Linemen in the forecast of the test year expenses while GSWC removed Linemen's overtime from its forecast.

1. GSWC-BVES ARGUMENT

a) Distribution Labor & Other Component⁴²

GSWC's argument to support trending the Distribution Labor expense is unreasonable for the following reasons:

⁴² GSWC used the same five year trend to derive both its Distribution Labor and Other expenses. Thus DRA addresses both components together.

- (1) GSWC maintains that from 2004 to 2007 it operated its distribution system with a shortage of linemen, resulting in substantial overtime work that was billed at double the regular time⁴³;
- (2) GSWC removed the overtime expenses in calculating the forecast year expenses, then averaged the overtime and added it back to the forecasted expenses after GSWC has calculated the trend amount⁴⁴;
- (3) The downturn in California's real estate market is likely to result in a marked reduction of new homes needing connection, a distribution labor component⁴⁵
- (4) BVES' distribution system like its transmission system is very small and relatively stable.⁴⁶

Nevertheless, GSWC argues that these facts support a trend line. This argument lacks merit and seems to ignore significant aspects of GSWC's application and the BVES' system that are clearly inconsistent with the argument.

(1) The Shortage of Linemen

GSWC acknowledged that it had a shortage of linemen from 2004 – 2007 and that this shortage of linemen resulted in substantial over-time billing by the remaining linemen who had to cover the shortage.

38. From 2004 – 2007 BVES had a shortage of linemen. This was due to the new Inspector position being filled by BVES linemen and 3 retirements resulting in attrition and the lack of available replacement linemen in the market place. BVES was short as many as 2 linemen for as long as 18 months during this period. One solution was to train and promote from within by utilizing the Apprentice Lineman program.⁴⁷

In explaining the factors that escalated the Distribution Labor expense during the

⁴³ Id., p.52:5-9

⁴⁴ Id., p.53:19-21

⁴⁵ Id., p.55:7-11

⁴⁶ Id., p.2:5-8..

⁴⁷ Id., p.52.

2003-2007 timeframe GSWC stated:

46. During the 2003-07 period, distribution O&M expenses have increased at an average rate of \$110,000 per year, much of which is due to increases in labor costs. Such labor cost increases were not only due to escalation of IBEW labor rates, but also reflects a growth in overtime to accomplish all the work.⁴⁸

This shortage of linemen and its resulting overtime condition is exactly the kind of condition in the recorded years that makes trending inappropriate for calculating the Distribution Labor component because they are not “costs [that] will be necessary in future years and can, instead, be used to offset new costs.”⁴⁹

(2) Over-Time Expense

GSWC concedes that the impact of overtime in its Distribution Labor expense would unduly trend the forecasted figures upwards.

In addition, it was observed that overtime labor costs may unduly influence the trend upward and believe the best method of forecasting such expenses would be to remove these costs from the historic numbers and forecasts them separately. The table below shows a doubling of overtime from 2003 to 2007.⁵⁰

However, rather than consider this undue influence of overtime expense a reason to use another method approved by the Commission for calculating the forecast test year expenses, GSWC resorted to a tortured calculus to eliminate the impact of overtime.

GSWC describes its calculation of Linemen’s overtime in the trend method as follows:

In developing a forecast of Distribution O&M, we have removed the overtime component and trended the net amount and then added back an average allowance of overtime based on a five-year average.⁵¹

⁴⁸ Id., p.53

⁴⁹ Opinion on Southern California Edison Company’s Test Year 2006 General Rate Increase Request, *supra*, mimeo, p.10.

⁵⁰ Id., p.45:14-17.

⁵¹ Id., p.53:19-21

GSWC gives no reason to explain why this method of treating overtime was more consistent with trending than averaging, as a method for calculating the Distribution Labor expense. Presumably, GSWC averaged overtime expense because averaging levels the impact of over-time in each of the forecasted years, and is supposed to eliminate the undue influence of over-time in the trend years, but it also means that the trend in years with substantial over-time is used to boost the trend in years that have lesser overtime by raising their overall levels. Indeed the overtime in 2006 and 2007 is nearly double the over-time Labor in 2003 and one-and-half times the over-time Labor in 2004 and 2005.⁵²

DRA maintains that these over-time activities are distortions of the trend line because they arise from a shortage that BVES has since resolved and is not likely to experience going forward. Further, it is not clear what aspects of BVES Distribution O&M activities were further impacted by the shortage. Therefore, the best approach is to use an average to address the likelihood that some over-time would be necessary in the forecasted years but perhaps not to the extent that they were in the past. However, this use of averaging should be consistent with the approach used for the entire Distribution O&M expenses.

(3) Downturn in California's Real Estate Market

GSWC also concedes that the Downturn in California's Real Estate Market is expected to reduce the number of new homes needing connection to its BVES Division's services. Connecting new homes to the BVES grid is a Distribution Labor activity. Therefore, reductions to such services should logically yield corresponding reductions in costs associated with such activities.

52. In fact, the condition of the California economy in general is expected to have a marked impact on new construction done in Big Bear. The expected significant drop in new home construction is expected to significantly reduce

⁵² Id., p.54, Table 5G

BVES' capital work related to hooking up new customers.⁵³

New meter additions are running at less than 40% of the 2003-2007 average for the first five months of 2008.⁵⁴

Although GSWC was using the current condition of the California economy to explain its forecast projections for the test years, the inescapable conclusion of that reasoning is that the recent California boom figured significantly in increasing the recorded historical data that formed the basis of the trend. Hence, the economy became yet another “historic cost [that will not] be necessary in future years” or stated differently, “additional productivity from past or current projects that are also ..[im]properly cast on a forward basis.”⁵⁵ As the Commission noted in SCE’s Test Year 2006 GRC,

[w]hen these types of issues are raised, the utility has the responsibility to demonstrate the reasonableness of its estimates, even if it means identifying and justifying all costs embedded in the base year amount.⁵⁶

GSWC has simply failed to meet this responsibility for its BVES Division.

(4) BVES distribution system is very small and highly susceptible to weather conditions

GSWC’s BVES Division has a very small Distribution system, manned entirely by 13 linemen. Like its transmission system, the labor component of the Distribution activities is highly susceptible to weather.

[I]n years when winter storms are severe, maintenance requirements are necessarily high and take precedent. At those times it is necessary to use more hours in direct work on repairing the system. Because BVES is a small system and the same crews do both the capital and O&M work versus capital work can be cyclical.⁵⁷

⁵³ *Id.*, p.55.

⁵⁴ *Id.*, footnote 27 to preceding paragraph in the Application.

⁵⁵ Opinion on Southern California Edison Company’s Test Year 2006 General Rate Increase Request, *supra*, mimeo, p.10.

⁵⁶ *Id.*

⁵⁷ Exh. 2, p.54:1-4.

This characteristic of the BVES system makes trending inappropriate for its Distribution O&M expense. A trend for Distribution O&M presumes that the weather conditions that existed in the last five years would recur in like manner or with like severity in the forecast years. This is illogical. Thus the Commission has stated that when recorded expenses are influenced by weather or other external forces beyond the control of the utility, “an average of recorded expenses ... is a reasonable base expense for forecasting the test year expenses.”⁵⁸

The influence of weather and other conditions beyond GSWC’s control are made further significant on BVES’ system by the fact that the entire service territory is a vacation and resort area and its two largest customers are ski resorts.⁵⁹ Therefore, the most reasonable method for forecasting Distribution labor expenses is the averaging method.

2. DRA’S RECOMMENDATIONS

DRA recommends that the Commission use a three-year average of 2005-2007 expenses to determine GSWC’s Distribution O&M for its BVES Division. DRA included the overtime in the forecast test years’ expenses before averaging to ensure that any overtime in the forecast years is accounted for in the methodology. Although, the overtime costs would tend to increase the averages, DRA considered that the distribution labor expense have been rather stable even while including the overtime labor expense. GSWC also found it necessary to average overtime, even while trending.

a) Distribution Labor

When the three-year average is used to calculate the Distribution Labor expense, the amount for each of the forecast years (2009-2012) is \$994,300, while BVES’s trended forecast result is as follows:

2009	\$999,600	(Regular Time)	\$139,000	(Overtime)
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⁵⁸ D.89-12-057, 34 CPUC 2d 199, 231.

⁵⁹ Exh. 2, p.1:17-21

2010	\$1,065,400	(Regular Time)	\$144,000	(Overtime)
2011	\$1,134,500	(Regular Time)	\$149,100	(Overtime)
2012	\$1,207,200	(Regular Time)	\$154,500	(Overtime)

There is no factual reason for the trended forecast yielding such excessively high costs for the forecast years. Since 2004 when GSWC added the BVPP, total labor expenses have been historically stable, ranging from a low of \$969,700 in 2006 to a high of \$1,017,000 in 2007, a difference of only \$47,000.⁶⁰ By contrast the difference between the low and high forecast in the result of the trended method is \$207,600 when only regular time is considered, and \$223,100 when overtime is considered.

Further, by using a trend of the 2003 to 2007 years, GSWC included a year before the BVPP was constructed and four years after it was constructed without explaining what impact BVPP had on the stability of Distribution O&M expenses. GSWC maintains that BVPP is a peaker plant and it is operated by contracted staff.⁶¹ Since BVES' Distribution O&M costs is highly sensitive to severe winters, one can only assume that the ownership of a peaker within the service territory played a significant role in containing Distribution O&M costs that would normally arise in a winter when such a plant did not exist. Hence, the fact that Distribution Labor costs have been fairly stable since 2004.

It merits emphasis to note that GSWC bears the burden of explaining these facts and has failed to do so.

b) Distribution Other O&M

DRA also used three-year averages to forecast test year expenses for Distribution Other expenses. DRA's recommendation for the forecast years was \$260,100. This recommendation is consistent with historical spending. BVES trended these expenses

⁶⁰ Exh. 204, p.9:13-15

⁶¹ Exh. 2, p.47:14-20, stating that "there are four primary contractors that provide staff and expertise for operating the BVPP (EN2, CEMTEK, US Tech, and Conerstone). Together they provide the resources required to operate the power plant in compliance with its air emissions permits."

over five years, without explaining why the 2005 expense, which was 25% more than the 2006 and 2007 expenses was consistent with its trend.

While GSWC's historical data for non-labor expense in the 2004 to 2007 timeframe has shown a clear downward trend for the BVES Division and the 2003 recorded year shows a clear anomaly inconsistent with any of the trends for the entire decade, GSWC proposes to go back to 1997 historical data to find a trend.⁶² This approach has no merit.

(1) GSWC'S CLAIM OF SECONDARY EFFECTS OF THE AVERAGING METHOD ON O&M

GSWC argues that DRA's averaging method will have secondary negative effects on BVES' additions to capital projects, but fails to explain how that secondary effect was determined, or the correlation between the secondary effect and the averaging method.⁶³ Specifically, GSWC explains the secondary effects as follows:

In summary, it is BVES' unionized employees who do all the O&M and construction work. When O&M expenses decrease, it is due to an increase in construction work or construction related work. When the latter falls, then this unionized work force is engaged in maintenance work. In any efficient operation, scheduling and planning projects are activities that are performed well in advance of needs. Maintenance projects are identified and prioritized, and thus, during a period when construction work is required, then only the most critical maintenance is performed.⁶⁴

This argument is illogical in the context of determining forecast year expenses. The very premise of the argument, that "[w]hen O&M expenses decrease, it is due to an increase in construction work or construction related work" makes it inapplicable to DRA's proposal to use a three-year average method in determining the forecast test year expenses. DRA's proposals is that forecast test year O&M expenses should be reduced

⁶² Exh. 10, p.9, see Figure 2.

⁶³ Exh. 10, p.13.

⁶⁴ Id., p.14

because there will likely not be any Distribution Labor O&M work to charge more than the forecasted costs. DRA's recommendation has nothing to do with any expectation that construction work will increase to take the labor away from Distribution O&M.

GSWC's testimony contradicts the very correlation that GSWC was making between reductions in capital expenses and increases in O&M costs. Subsequent to filing the application, GSWC reduced its own capital projections⁶⁵ but did not make any corresponding increases in its projected O&M costs to account for the claimed expensing of unionized labor from the foregone capital projects. GSWC could not identify any.

Further, the GSWC witness sponsoring this testimony on the correlation between unionized capital labor costs and O&M expensed labor costs did not know how the mathematics of the relationship was derived or calculated:

- Q. And I'm trying to understand, if you reduce the capital projects, what correlation exists – do you make between the – the percentage reduction in union wages involved in the reduction and the increase in expenses that occurs?
- A. The dollars that are expended for labor in a capital project don't correlate to the same revenue requirement that the dollars in the actual expensed labor require.
- Q. What calculations did you make to reach the conclusion that about 63 percent of the difference between BVES and DRA's forecast is eliminated if the Commission were to take into consideration the transfer of labor from capital to expense?
- A. Okay. The actual percentages were calculated by Mr. Larson.
- Q. You don't know what percentages he used?
- A. I do not.
- Q. To your knowledge, did Mr. Larson sponsor any testimony in the initial application addressing this correlation between the transfer of labor from capital to expense?

⁶⁵ Repoter's Transcript of Proceedings [RT], p.339, p.341

A. I do not know.

Q. Are you aware of any Commission decisions in any general rate case where this issue was discussed or addressed?

A. I'm not aware of any.⁶⁶

Further, GSWC never explained any of the historical recorded costs with this phenomenon that requires a corresponding increase in O&M costs, when capital costs are reduced. In fact, the historical recorded data also contradicts this GSWC's theory that decreases in capital costs are inversely proportional to increases in O&M by a determinable mathematical factor. In GSWC testimony on Capital additions, Mr. Markling reduced his capital addition projections on rebuttal without GSWC making a corresponding increase in O&M expenses, and claimed that in the years from 2004 to 2007, the BVES Division was cash-strapped and had to reduce its capital projects as a result.⁶⁷ However, as DRA has noted, those years reflected the most stable period of O&M labor expenses in the entire historical data. Neither Mr. Markling nor Mr. Larson provided any data to explain how that effort to reduce capital projects in the cash strapped years impacted O&M.

Given these inconsistencies, the Commission has two options. Either the Commission accepts that GSWC was less than candid about one theory and not the other, or that both theories are false. Until GSWC concedes that it was being less than candid about either of the theories, both theories must fail.

C. CUSTOMER ACCOUNTING

GSWC used a five-year trend line to forecast Customer Accounting expense, then added the expected costs for the positions of CSR and one half-time intern in 2008 and a Key Account Administrator. DRA recommends using the 2007 actual customer accounting labor expense (\$526,500) as the "base level" expense, and removing the Key

⁶⁶ RT, pp. 342-343

⁶⁷ RT, p.486, Exh. 14, p.4.

Accounts Administrator position.

Customer accounting refers to work done by customer service representatives (CSR), meter readers, field service personnel and meter testmen. These positions staff walk-up windows (CSR) as well as perform turn-on and turn-off services. A close examination of GSWC's requests shows that while the CSR position may be an internal Division staff working from the Bear Lake office, the Key Accounts Administrator position is not only redundant of an existing position in that office, but could be duplicative of services that can , and are, being provided from GSWC's General Office in San Dimas.

Therefore, DRA recommends approving the CSR position, but not the Key Accounts Administrator position. Further, DRA notes that the intern position has already been staffed, and the pay of \$14,500 for that position is already in the 2007 recorded expense, thereby inflating GSWC's trend line.

a) Key Accounts Administrator

GSWC describes a key account as a large revenue producer or kilowatt user, someone with multiple accounts or multiple meters.⁶⁸ GSWC has also determined that it has 190 key accounts, many of these accounts belonging to a single customer such as Snow Summit which is one of the ski resorts in the BVES territory.⁶⁹ However, GSWC has failed to explain why it needs to add a Key Accounts Administrator in 2009 to service these accounts.

Q. Did you make any projections as to whether your key accounts would increase in the test years?

A. I am not aware of any.

Q. Do you have any studies of how much key accounts have grown in the historic years?

⁶⁸ RT, p.354:21-23.

⁶⁹ RT, pp. 353-356.

A. I do not. I don't think those were identified in the past.⁷⁰

Q. Why 2009; what happens in 2009 to make that need?

A. I think the need has always been there. It's just that we identified a year for each of these positions that we felt that the workload would be significant for the managers, and they would no longer be able to deal as effectively with those issues related to key accounts, and it would be the preferred year to bring that person on.⁷¹

GSWC simply has no need for this new position. GSWC did not undertake any studies to estimate the need for a Key Accounts Administrator, or make any projections about how key accounts might increase in the forecasted year, but simply concluded on the basis of conjecture that the work would be too much for those who usually did such work in 2009.

It should be noted that GSWC has conceded that the downturn in the economy is likely to slow down new developments in the BVES territory over the forecast years.⁷² GSWC describes its large customers as "several large accounts that provide service to snowmaking operations of two ski resorts and another for the local waste-water treatment facility."⁷³ Clearly, these are only a handful of customers whose energy needs place them in a category where they need more than one meter, each meter corresponding to an account.⁷⁴ Hence, to bolster its claim that its key accounts need a full-time personnel addressing their needs, GSWC chose to remain very vague about how many accounts its two large customers actually own.

Q. And BVES has two large – two very large customers, is that correct, the two snowmakers in the resorts, as I understand?

A. Those two, yes.

⁷⁰ RT, pp. 354-355.

⁷¹ RT, p.355:13-21.

⁷² Exh. 2, p.55

⁷³ Exh. 2, p.1:19-21

⁷⁴ RT, p.356:14-17.

Q. How many key accounts do those two customers have if you recall?

A. Individually?

Q. Well, you could calculate them individually or any way you like.

A. I don't have that written down, but it's – it's probably four or five, six. I can get that for you if you want it.

Q. Well, you can just round it out for me. The two large customers, how many key accounts do they have?

A. Those two largest customers?

Q. Yeah.

A. I'm going to estimate it less than 20, but I mean it may be 21. It may be 22.

ALJ FARRAR: Is there another witness that would be able to provide a more exact number?

THE WITNESS: I don't know that there is another witness – well, we probably have that information, but not a witness necessarily that would be able.⁷⁵

GSWC also fails to explain what kinds of need these key accounts have that require a full time employee addressing them. One would assume that these large energy users are more sophisticated than average residential users of electricity and would have their own internal staff able to address most of their needs, in such a manner that they don't need to contact BVES often. This would explain why the Administrative Manager has been able to do most of this job in the past.

GSWC has failed to meet any standard of proof for establishing that this Key Account Administrator position is necessary at all. GSWC also claims that the person employed in this position would be required to monitor Commission proceedings for its BVES Division. This added explanation for the Key Accounts Administrator reflects the fact that GSWC does not have facts to support the need for this position. GSWC has ample staff in its regulatory department located in San Dimas who can monitor

⁷⁵ RT, pp. 356-357.

Commission proceedings. Adam Rue, one of the witnesses in this proceeding, testified that he works in such a department. There is nothing unique to monitoring this Commission's proceedings, or the proceedings of the California Energy Commission (CEC) or the California Independent System Operator (CAISO) that requires the monitor to be located at 7000 feet above sea level to work at the BVES Division. Further, this monitoring duty has nothing to do with key accounts.

VI. ADMINISTRATIVE AND GENERAL EXPENSES

BVES's A&G expenses are divided into three categories: (1) Account No. 920 – Internal Staff's Administrative and General Salaries; (2) Account No. 923 & 928 – External Staff comprising of outside services and regulatory expenses; and (3) All Other Accounts. GSWC's requests and DRA's recommendations for each of the forecast years is a different amount. GSWC also used the trending method to forecast A&G test year expenses while DRA relied more on historical levels of recorded expenses.

The largest disparity between DRA's recommended amounts and GSWC's requests for the forecast years is in Account No. 920 which is the expense for internal staff. GSWC seeks to add eleven new positions, fill two vacant positions⁷⁶, hire an intern and create a position that will be funded through the public purpose program. These new positions are not justified by fact or reason in the Application.

The following analysis discusses the Accounts.

A. FERC ACCOUNT NO. 920 – INTERNAL STAFF

GSWC has not met its burden of proof for seeking to increase its internal staff by more than 30 percent at the same time it is projecting a downturn in business and reporting the loss of new business.⁷⁷ Even while it expects lesser business as a result of the downturn in the economy, GSWC has conceded that it did not undertake any studies to determine whether its large customer base will grow or shrink in the forecast years

⁷⁶ RT, p.301:24-28

⁷⁷ Exh. 2, p.55, Exh. 208, p.8.

covered by the GRC.⁷⁸ Thus, the labor force expansion is not driven by any need to address growth or new business activity.

Further the evidence in this proceeding reflects that GSWC has not done a proper accounting of its current staff to enable it justify that the positions it is now seeking are in fact necessary.⁷⁹ GSWC witness and Vice President⁸⁰ stated in his testimony that GSWC's BVES Division has 43 employees, but when asked to verify this number, he was uncertain about what it included.

Q. Let me refer you to line 6 where you count the staff at 43 individuals working out of the Bear Valley Electric Service office.

A. Yes.

Q. Are you sure that number is correct? Do you have any reason to believe that it might be different?

A. I believe the number is correct. It was based upon accounting of the org chart at the time. It may not represent maybe all the filled positions, but I believe it to be correct when I wrote this, yes.

Q. When you wrote this, you are referring to early 2008?

A. More like mid-year. We filed this in June.

Q. I'm trying to understand whether that number [43] includes any vacant positions. Does it include the vice president position?

A. I think it probably does. I mean, again, as I recall, I was providing this as a kind of general overview of the operation. I think I took the org chart and just counted the number of positions, so it would have included the VP.

...⁸¹

Witness Switzer suggested that GSWC's witness and BVES' Administrative

⁷⁸ RT, p.313-315,

⁷⁹ RT, p.302, p.381-382.

⁸⁰ One of two Vice Presidents at the GSWC General Office who's duties cover aspects of BVES oversight.

⁸¹ RT, pp. 302-303.

Manager would be the right witness to ask about the number of people employed at the BVES Division. The following is BVES Administrative Manager's response to a request for verification.

Q. How many Full Time Equivalent positions do you have today including the Energy Prescheduler and the Intern?

A. Filled positions or unfilled positions?

Q. Filled positions.

A. I believe 38, unless I counted them wrong.

Q. Did you say 38?

A. I believe unless I counted them wrong.

...

Q. Are you aware that Exhibit 2, page 4; Mr. Switzer's testimony, states that BVES has 43 individuals working out of the Bear Lake office?

...

A. Okay. I see what you're talking about.

Q. Do you know whether the difference between your number of 38 and the number 43 that he used has to do with part-time employees?

A. I can't answer that question. I don't know.

Q. You can't reconcile your number with his – the number 43 that he stated in his testimony?

A. Not at this moment.⁸²

If the GRC is not the moment to establish the number of employees BVES has for purposes of verify its request for 11 more employees, then when is the right moment? GSWC has the obligation in this proceeding to prove by clear and convincing evidence that the requests for new employees that it has made for its BVES Division is just and reasonable. Without a proper accounting of the existing positions and the number of staff currently working in that Division, DRA fails to see how GSWC can possibly meet this

⁸² RT, pp. 381-382

burden.

Q. Do you know at this moment how many part-time employees Bear Lake currently employs?

A. Currently as of last Friday [February 20, 2009] we have one.

Q. The Intern is the person you've already counted in reaching 38; is that correct?

A. That is correct.⁸³

It is interesting to note that when Ms. Gray was asked "how many full-time equivalent employees" BVES had, when she answered 38; yet, she soon admitted that included in the 38 is a part-time employee, the intern. Therefore, the correct answer is really 37. Notwithstanding, GSWC's uncertainty about whether its BVES Division has 43, or 38 or 37 employees, it would be naïve of anyone to assume that GSWC does not actually know how many individuals work in a small division of less than 50 people. This may be a form of tergiversation tactically intended to ensure that, in the future, no one is able to clarify how many of the claimed new position GSWC did fill. If we don't know how many they started with, how do we know what they added?

1. GSWC's rationales for the new positions

GSWC's attempt to justify its staffing positions seems like the accounting equivalence of throwing darts on the wall. In its initial application seeking these positions, GSWC did not present any documentation establishing the need for these positions in man-hours or correlating their duties to their specific skills and time required to do those duties. In GSWC's rebuttal to DRA's A&G testimony, GSWC included a table purporting to show the weeks per year that each of the positions is expected to worked.⁸⁴ However, on cross examination, GSWC's witness on A&G expenses admitted that she had no way of knowing how many hours each of those positions would actually

⁸³ RT, pp.382-383.

⁸⁴ Exh. 11, Attachment.

require.⁸⁵

Q. Let me take you to Exhibit 11, please. ... Where you're describing the duties of the Environmental Specialist, you state that the Environmental Specialist would attend meetings, workshops, and hearings. I'm trying to understand if these meetings have to do with Commission meetings, FERC meetings. What meetings are you referring to?

A. It would be all of those types of meetings related to environment and – to the environment.

Q. So these are not internal office meetings. These are –

A. Not necessarily.

Q. What kind of workshops are you talking about?

A. I don't have a specific name of a workshop. However, from time to time, there are workshops on environmental issues.

Q. And as you sit here today, you have no idea how many such meetings, workshops or hearings might come up between 2009 through 2012; is that correct?

A. No, I don't have an idea.

Q. And just so we don't repeat prior testimony, you stated that you derived the amount of time for those types of duties from certain information as to how other companies have done that; is that correct?

A. That's correct.⁸⁶

Ms. Gray, BVES Administrative Manager and GSWC's witness on A&G and O&M, also admitted that she had no idea how much of the Environmental Specialist's time would might be spent addressing Air Quality Municipal District (AQMD) rules, which is one of the duties of the position.⁸⁷ Yet, she admitted that the duties of the

⁸⁵ RT, p.386 - 390

⁸⁶ *Id.*, pp. 386-387.

⁸⁷ *Id.*, p.387:15-21

Environmental Specialist and the Contract Administrator position clearly overlap.⁸⁸ She also admitted that the Tariff Administrator would be providing services that are currently being done effectively from GSWC's San Dimas office, and she did not know how many tariffs the BVES Division has that necessitate a new position sharing that responsibility with the General Office.⁸⁹

The vacant positions that DRA disputes are the following: (1) Vice President; (2) Administrative Secretary to the Vice President; (3) Account Analyst III (Plant); (4) Tariff Administrator; (5) Compliance Coordinator; (6) Environmental Specialist; and (7) Contract Administrator. These are in addition to the position of the Key Account Administrator that DRA recommended the Commission should reject under the O&M discussions.

DRA recommends that the Commission authorize four of the new positions, in addition to the CSR position that DRA has already discussed in the O&M category: (1) Energy Pre-Scheduler; (2) Rate Analyst; (3) Energy Analyst; (4) Resource Planner/Modeler. GSWC also seeks to have a Public Purpose Program Coordinator whose salary will be funded by the Public Purpose Program Surcharge, and DRA does not oppose the request for the Public Purpose Program Coordinator.

Notwithstanding DRA's recommendation for the four new positions, GSWC has not presented sufficient justification to support each position as a full-time position. Therefore, GSWC could still add more duties to the obligations set forth for the four new positions that DRA has recommended.

a) Vice President and Administrative Secretary Positions

DRA recommends that the Commission reject GSWC's request for appointment of a Vice President and Administrative Secretary because GSWC has not demonstrated that these two positions are necessary for the operation of the BVES Division's business. In

⁸⁸ *Id.*, p.391:1-14.

⁸⁹ *Id.*, pp. 396-397.

fact, the only rationale that BVES provided to support the Administrative Secretary's position is that such a person would be supporting the Vice President.

GSWC's BVES Division has three primary departments namely, Administration, Energy Resource and Operations, and until 2002, all three departments were managed by a single person, who held the position of "District Manager".²⁰ In 2002, this District Manager was promoted to Vice President and before he left in January 2006, he hired the Administrative Manager, the Energy Resource Manager and the Operations Manager for each department of the Division.²¹ Upon the Vice President's retirement, the three department managers were reporting to a Vice President at GSWC's General Office.

Thus, where the BVES Division was run by one District Manager from the time of its last GRC to about 2003, it is now being run by three District Managers all doing one aspect of the work that the first District Manager had to do. DRA fails to see the justification for having this small Division of 38 to 43 employees adding another senior manager to oversee what has been effectively executed by three people doing the job of one person over the past few years.

In addition, evidence introduced by GSWC in this proceeding shows that GSWC continues to maintain a management structure that has the BVES Division managers reporting to a Senior Vice President at the General Office.²² GSWC provides no reason for adding another layer of management over the current managers, except to note that it had a Vice President at the Division between 2002 and 2006. This rationale fails to carry the necessary evidentiary burden.

b) Compliance Coordinator

GSWC requests a compliance coordinator for its BVES Division starting in year

²⁰ Exh. 2, p.6.

²¹ Exhibit 205, p8. DRA's Report on A&G Expenses, citing GSWC's response to data request No. DRA-MCL-26 (Second response) Question 2.

²² RT, p.271, See also D.96-05-033, showing that a Senior Vice President of Regulatory Affairs signed for GSWC in the settlement with DRA that resolved that rate case.

2011, purportedly to coordinate and monitor regulatory compliance issues with GSWC's General Office as well as monitor new legislation and proceedings at the various regulatory agencies. However, GSWC already has a full and experienced regulatory department with eleven employees supervised by a Senior Vice President of Regulatory Affairs.⁹³ Filings at the Commission, such as the "Renewable Portfolio Standard Compliance Report Submitted By Bear Valley Electric Service"⁹⁴ in the Commission's Rulemaking 06-05-027 shows that regulatory proceedings related to new legislation are the responsibility of the General Office.

In response to data request DRA-MCL-31, DRA asked BVES to provide supportive documentation and calculations to determine the need for this position, BVES stated: "It is difficult to extract just those tasks from the billings year to year."⁹⁵

GSWC has failed to meet its burden that this new position is needed. However, the Personnel in the positions of Rate Analyst and Energy Analyst that DRA has does not oppose, will be more than adequate to provide GSWC with some coordination between the fully staffed Regulatory Department at the General Office and the BVES Division.

c) Contract Administrator, Account Analyst III, Environmental Specialist and Tariff Administrator

The duties that GSWC claims would be done by the Contract Administrator, Account Analyst III, Environmental Specialist and Tariff Administrator are all being done by existing staff at both the General Office and the BVES Division of GSWC. In this respect, these duties are already embedded in the rates that formed the basis of most of the forecasts. For instance, the Vice President of Regulatory Affairs for GSWC testified that the financial and accounting information for the BVES Division would have

⁹³ RT, p.270

⁹⁴ Marked Exhibit 219, but not admitted into evidence.

⁹⁵ Exh. 205, p.11

to be obtained from the General Office.²⁶

GSWC does not dispute that its staff at the General Office are competent to take care of the duties of these new positions, but claims that it may be necessary for BVES Division staff to live in the territory served by the Division because of its mountainous seclusion from surrounding areas. While this rationale justifies the employment of linemen in the area, it does not justify the new positions in this category. In fact, when the job was done by GSWC in the past, as previously noted, it was done out of the San Dimas General Office not the Bear Lake office of the BVES Division.

Further, in Commission proceeding A.08-08-021, GSWC requested approval of a proposed power purchase agreement that would make it unnecessary for BVES to procure new power contracts during this general rate case cycle.²⁷ This makes the duties listed for the contract administrator surplus to BVES' needs. There is also currently an account analyst working at the BVES Division and reporting to the Administrative Manager. This position is in addition to the Accounting office the GSWC Vice President noted as operating out of the General Office.

Given the size of BVES's service territory, we fail to see why the General Office working with the Energy Resource Department of BVES cannot adequately manage the few contracts, tariffs and compliance issues that BVES would need in this rate cycle.

d) Resource Planner Modeler

GSWC's BVES Division is too small to require a full-time production cost simulation modeler managing an integrated resource plan (IRP) for it. GSWC describes the work to include development, implementation, monitoring and developing an in-house Production Cost Model, and performing annual customer growth studies as part of the IRP forecasting process.

The record shows that the BVES' territory has only grown 8 percent in the last

²⁶ RT, p.304; see also p.303.

²⁷ Exh. 205, p.12.

decade.⁹⁸ It has two primary large customers, whose needs could affect the peak load of its entire system, a most recent peak capacity of \$42.6MW and covers 76-square miles of territory.⁹⁹ Production cost simulation models are used to estimate the cost of electricity over the long term as affected by many variables that are used to run the model. DRA fails to see why a small electric service utility would need full time personnel running a production cost model for its service area.

Finally, a comparison of GSWC's historical recorded data with the results of GSWC's trended forecast shows that number and duties of GSWC's internal staff requests has little or no connection to the operations of GSWC's BVES Division over the test years.¹⁰⁰

B. FERC ACCOUNTS 923 AND 928

FERC Accounts 923 and 928 comprise expenses for outside services and regulatory services. FERC Account 923 reflects expenses associated with consulting expenditures for general regulatory requirements and legal services, while Account 928 reflects consulting and legal services directly associated with the general rate case application filing.

GSWC used a five-year trend to forecast these FERC 923 Account expenses, but used a four-year trend to forecast the cost of legal services because GSWC maintained that legal costs associated with its Energy Crisis litigation in 2004 made legal expenses for that year unusually high.

DRA maintains that a multi-year average is the best method for estimating these expenses because of fluctuations in the expenses over the past few years. Like GSWC, DRA did not include data from 2003 and 2004 in estimating the average because those costs were unusually high. DRA maintains that the Energy Crisis litigation that caused GSWC to exclude 2003 data should have resulted in GSWC's exclusion of 2004 data as

⁹⁸ Exh. 2, p.10:11

⁹⁹ Exh. 2, p.1.

well, because the energy crisis litigation that formed the basis of that litigation continued past 2004. GSWC claims it does not know whether that Energy Crisis litigation continued to affect any other years besides 2003.¹⁰¹

Q. You've always used five-year recorded data in most of your forecasts. Why did you use four years in this instance?

A. In this instance, there was an anomaly in year 2003.

A. If you refer back to page 85, line 14, it's a one-time litigation of ongoing legal services related to the litigation impacted 2002-2003 caused by BVES's involvement in the energy crisis.¹⁰²

It is common knowledge that none of the litigation arising from the Energy Crisis and begun in 2002 or 2003 ended in one year. When asked when its Energy Crisis litigation ended, GSWC could not say.

Q. So, as you sit here today, you don't know whether any of the electricity-crisis litigation continued in some form or another, perhaps for instance settlement aspects of it, up to 2005?

A. No, I do not.¹⁰³

GSWC's selective inability to recall evidence crucial to proving its case should not pass for partial evidentiary support. Having admitted that Energy-Crisis litigation fees affected its trending and had to be eliminated, its failure to determine when that "one-time" litigation concluded, GSWC had the obligation to state when that one-time litigation concluded so as to ensure that the trend it adopted is not further influenced by that cost during the years in the trend. GSWC's failure to eliminate the litigation impact

(continued from previous page)

¹⁰⁰ Exh. 205, p.6, Tables 5-5 and 5-6.

¹⁰¹ RT, p.405.

¹⁰² RT, p.404:12-25.

¹⁰³ RT, p.405:19-23

on the trended years makes its trended forecast unreasonable. GSWC also failed to provide alternative factual explanation to support the increase in funding above historic recorded levels. Therefore, DRA's three-year average method should be adopted for forecasting Account 923 expenses.

C. OTHER FERC ACCOUNTS [921-935]

DRA forecasts \$185,923 for the test years on FERC Account 921, using a four year average from 2004 to 2007. While GSWC used a five year trend forecast to estimate the costs for this account. DRA did not include 2003 in its average forecast because the recorded data for that year was too low.

Regarding FERC Account 925, GSWC stated:

“There is no specific forecast for Account 925 as a separate item. Due to the lumpiness of the recorded A&G expenditures, A&G were forecast in two aggregated components. The first component that includes account 925 was forecast as part of the non-labor A&G. The aggregate value by year that includes account 925 were converted to 2007 dollars and forecast on a straight line basis and then brought to their current dollar value by adding non-labor escalation.”¹⁰⁴

DRA maintains that this argument further supports DRA's use of an averaging method rather than a trend line because the “lumpiness” that makes it difficult for GSWC to disaggregate some of its recorded A&G expenditures also make it difficult to ensure that the trend is not due to factors that should be eliminated when running a trend line, including inflation.

The remaining dispute between DRA and GSWC on the forecast of estimates for FERC Accounts 921 through 935, are the result of the method used in calculating the forecast year expenses by either party.

¹⁰⁴ Exh. 205, p.21, citing BVES response to DRA-MCL-23 Question 4 data request.

1. DUPLICATION BETWEEN OUTSIDE WORK AND INTERNAL STAFF

GSWC does not dispute that its proposed new position were defined to duplicate work that is currently being funded by outside consultants, but claims that there will be a period during which the outside consultants will be necessary to train the internal staff. Thus, GSWC does not reduce the outside consultants' fee estimates by the degree to which the work will be duplicated if these new positions are authorized.

Q. Isn't it true that Bear Valley Electric Service is also forecasting an increasing trend in the cost of outside consultants for the test years?

A. Yes, that is true.

Q. And some of the positions you are seeking to fill in this application would be doing the work that was previously being done by some consultants; is that correct?

A. That is true.¹⁰⁵

DRA is mindful that even the new positions that DRA does not oppose fit within this category of duplication. However, DRA is only requesting that if the Commission should authorize any of the disputed new positions, then there should be a corresponding reduction of the cost of those new positions from the estimates approved for outside services in this rate cycle.

VII. PRODUCTION, DISTRIBUTION, TRANSMISSION AND GENERAL PLANT

GSWC and DRA disagree on the estimates used for the Production, Distribution, Transmission and General Plant category in this GRC for the following reasons:

- (1) GSWC overstated its overhead expenses for the BVPP thereby inflating the actual cost of the plant by \$1,502,511,¹⁰⁶
- (2) GSWC could not support its budgeted Transmission and Distribution Plant Additions, but made estimates that

¹⁰⁵ RT, p.392:18-26

¹⁰⁶ DRA discusses BVPP separately in the next section of this Brief.

ranged from a low of 11% to high of 19.59% percent for the forecast years, while DRA relied on the most recent recorded years to reduce GSWC's estimates;

(3) DRA increased 2008 General Plant Additions by \$26,353, but reduced 2009 General Plant additions by a corresponding amount because of a procurement that GSWC brought forward from 2008 to 2009.

(4) DRA reduced 2011 General Plant Additions by \$40,000.

The record will shows that DRA's recommendations are reasonable and should be adopted.

A. TRANSMISSION AND DISTRIBUTION PLANT

A comparison of GSWC's recorded history and request for Transmission and Distribution (T&D) Plant additions shows that GSWC's forecasts for the rate cycle bear no relation to the operations of the system as reflected in the recorded history. GSWC requests the following Transmission and Distribution Plant additions estimates for the 2009 to 2012 forecast years:

2008	\$2,038,000
2009	\$2,265,000
2010	\$2,190,000
2011	\$2,619,000
2012	\$3,060,000 ¹⁰⁷

DRA's recommendation for each of the forecast years is \$1,790,000. DRA relied on the actual level of plant additions based on the 12-month period ending September 2008. DRA's forecast is further supported by taking GSWC's 2008 plant additions forecast and adjusting it downward to correct GSWC's admission that it overestimated new business additions by \$168,000 and moved a budgeted \$80,000 upgrade of the Padmount Transformer project to the next year. The BVES Division recorded historical T&D plant additions for the five years period from 2003-2007 were as follows:

¹⁰⁷ Exh. 207, p.7, DRA's Report on Production, Transmission, Distribution and General Plant, Witness Paul Chan/Lindsey Laserson

2003	\$1,371,000
2004	\$4,732,000
2005	\$1,436,000
2006	\$1,794,000
2007	\$1,834,000 ¹⁰⁸

Transmission and distribution plant additions consist of various upgrades to power lines, substations, meters and other connection and maintenance services to end-use ratepayers. Except for 2004, which had incremental transmission and distribution plant additions associated with BVPP construction, the recorded year expenses reflect a fairly stable system consistent with the size and characteristics of the BVES service area.

GSWC realizes that this disconnection between its recorded year data and its forecast estimates seems unreasonable, and claims that the Company made a strategic decision to restrict investment in the years from 2003 to 2005.¹⁰⁹

4. During the period 2003-2007 available internally generated cash was inadequate to cover the capital need of BVES' distribution and transmission capital needs. Consequently, the company strategy was to restrict capital expenditures to no more than the level of depreciation with appropriate consideration of reliability and safety.
 5. The capital projects as outlined by the budget described below represents a return to a normal capital program.¹¹⁰
- Q. Let me ask you a hypothetical. If the budget level for 2009 hypothetically is 600,000 and historically you have maintained a system on a regular basis for 500,000 annually, looking at the reliability of the system and safety of the system over the particular years in the historical context, isn't it fair to say that the budget at 500,000 for 2009 would likely handle what has been historically needed to maintain the reliability of the system and the safety of the system going forward absent any other

¹⁰⁸ Id.,

¹⁰⁹ Exh. 2, p.110

¹¹⁰ Id., p.110:17-22.

information?

- A. Hypothetically, yes. However, in reality our last five years we have held back on capital spending from what we would have preferred due to cash conservation measures.¹¹¹

Thus, GSWC concedes that using recorded years historical data to project forecast years transmission and distribution additions is a reasonable practice. However, GSWC claims an exception in its case because it purportedly held back on plant additions due to fiscal issues. GSWC did not present any document to support the fact that it had fiscal issues as it alleged and there is no evidence to show that this fiscal constrain affected any other part of GSWC's business except the capital budget for the BVES Division. Further, it is unclear whether GSWC was claiming that the fiscal constraint was based on the funds generated by BVES Division or based on funds generated by GSWC or its parent company American States Water Company. There is simply nothing but the statement of the witnesses in the report claiming this fiscal constraint.

However, there is ample other evidence to contradict the claim that GSWC suffered a fiscal problem that limited its ability to invest in transmission and distribution additions. First, as noted previously, the 2004 recorded data associated with incremental transmission and distribution plant additions associated with the BVPP construction was unusually high at \$4,732,000. Yet, 2004 was also one of the years that GSWC claimed that it had fiscal issues that forced it to limit capital additions in its BVES Division. Similarly, GSWC's workpapers used to explain the Division Substation-upgrade describes the project as a "design [that] will incorporate a partial padmount type of a substation similar to the one that was constructed in 2003".¹¹² The year 2003 was another year included in the so called fiscal issues period.

As previously noted, the Commission has stated a clear preference for estimating forecast year expenses with recorded year averages rather than budget expectations

¹¹¹ RT, p.486.

¹¹² Exhibit 226, p.6 [marked 36].

because budgets are often made to be broken.¹¹³ Already, evidence that GSWC has significantly miscalculated this transmission and distribution plant additions appears in the 2008 update with now available information. For instance, GSWC overestimated its 2008 new business forecast by \$168,000 for 2008, and could not execute the budgeted Padmount Transformers project as scheduled in 2008.

Also, because utility spending plans may not always be implemented as intended, budget-based forecasts generally will be given less weight than forecasts based on recorded spending in the absence of a showing supporting the contrary approach.¹¹⁴

Even if the Commission were to consider adopting GSWC's budgets for these expenses, there is insufficient documentation to support the need for these projects, the basis for the upgrades and the particular work items that amount to the large round figures that GSWC would like the Commission to authorize.¹¹⁵

Q. And is that the document you were referring to as the justification for the projects that you were proposing in the Application?

A. Yes.

Q. Can you refer me to where in any of these justifications you describe why the project was needed other than as opposed to what the project is? Do you understand my question?

A. Yes. That's not shown in these documents.

Q. Isn't it true that this comprises essentially all the justification you provided in support of your testimony in the workpapers?

A. In terms of documents, yes.¹¹⁶

Consequently the Commission should adopt DRA's estimate for the forecast years

¹¹³ D.02-07-022, p.17

¹¹⁴ Id..

¹¹⁵ See Exh. 226.

¹¹⁶ RT, p.488:3-15.

which are based on the most recent recorded year estimates and is actually supported by GSWC's 2008 estimates after adjustments based on GSWC's corrections to those estimates.

B. GENERAL PLANT

DRA accepts GSWC's requests for its general plant additions, except for corrections to reflect errors in GSWC's entries and to reflect a purchase that has already been made inconsistent with the budgeted projections. DRA's report on this issue is illustrative:

In response to a DRA data request, BVES indicated that it had already spent \$26,353 in FERC Account 392 Plant Additions for 2008, for a new vehicle that was not originally budgeted.¹¹⁷ DRA does not take issue with the purchase and includes the \$26,353 in its General Plant additions forecast for 2008. However, DRA recommends that the Commission adopt \$88,647 in FERC Account 392 Plant Additions for 2009, to offset the purchase that was made in 2008. DRA derived its estimate by subtracting the \$26,353 spent in 2008 from the estimated \$115,000 in Plant Additions for 2009. DRA's method of estimating the 2009 Plant Additions is straight-forward and provides a reasonable estimate.¹¹⁸

BVES plans to replace vehicle #535 in 2010 for \$45,000.¹¹⁹ BVES also forecasted replacing the same vehicle #535 in 2011 for \$40,000.¹²⁰ BVES is double counting and can not replace the same vehicle twice. DRA recommends that vehicle #535 be replaced in 2010 and the budgeted funds be deducted from FERC Account 392 Plant Additions for 2011. DRA does not take issue with the \$45,000 requested in 2010 for replacing vehicle #535, but recommends that the \$40,000 budgeted for 2011 be deducted from that year's FERC Account 392 Plant Additions.¹²¹

¹¹⁷ Response to Data Request DRA-PMC-35

¹¹⁸ Exh. 208, p. 10.

¹¹⁹ Bear Valley Electric Service Workpapers Set 2 Support to Volume 2, Chapter 9 - Attachment A, p. 65

¹²⁰ Bear Valley Electric Service Workpapers Set 2 Support to Volume 2, Chapter 9 - Attachment A, p. 96

¹²¹ Exh. 208, p.11

VIII. BEAR VALLEY POWER PLANT COMPLIANCE

The Commission approved the BVPP in D.05-04-016 with a requirement that GSWC must submit the completed project for a reasonableness review at its next GRC.

Our decision today authorizes Southern California Water Company (SCWC) to increase rates by approximately \$2.7 million or about 10% in current revenues, in order to recover capital-related and operational and maintenance (O&M) costs of a new 8.4 megawatt (MW) electric generating facility for its Bear Valley Electric Service Division (BVES). Adopted rates are subject to refund after a reasonableness review in SCWC's next general rate proceeding.

...Our decision provides that a reasonableness review of all generation facility costs will be conducted in SCWC's next general rate case for its Bear Valley Electric Service division.¹²²

GSWC¹²³ submits the BVPP for the reasonableness review in this GRC. In conducting the reasonableness review, DRA found that GSWC had overstated the actual costs incurred for the construction of BVPP because GSWC applied a 25% overhead charge that was not authorized by the Commission. Consequently DRA recommends that ratepayers be refunded \$1,471,815 as result of the overcharges to the capital costs. DRA also recommends that ratepayers be paid interest on the overcollection of revenues booked to the Capital Cost Memorandum Account (CAPMA) balance. With interest, the \$1,471,815 due ratepayers, becomes \$1,566,676. DRA recommends that ratepayers receive a one-timer billing credit for these refunds effective upon the approval of an advice letter implementing the order.

A. CAPITALIZED OVERHEAD COST

In D.03-07-005, the Commission granted GSWC a Certificate of Public Convenience and Necessity (CPCN) to construct the peaker plant in its BVES Division

¹²² D.05-04-016, pp.1-2.

¹²³ Formerly Southern California Water Company (SCWC) at the time the BVPP Application was filed.

territory. The decisions authorizing the construction of the BVPP did not authorize a 25 percent overhead cost for the power plant, but required GSWC to record only actual “capital-related or O&M costs” to the authorized memorandum accounts.

In D.05-04-016, the Commission authorized an increase in rates and established a capital-related memorandum account in which to record costs incurred to construct the BVPP facility. The language of the decision shows that the Commission intended all capital-related costs for the project to be actual incurred costs, not costs derivative of a parent company’s “loading factor”.

The capital-related memorandum account is capped at a revenue requirement of 42,255,500, and the O&M memorandum account is capped at an annual amount of \$444,000. These caps protect BVES ratepayers from any cost increases above the cap amounts adopted herein. In addition, BVES customers benefit **if actual capital-related** or O&M costs are less than estimated costs, as the difference will be returned to BVES customers.¹²⁴

The BVPP was contested as a costly alternative to several other measures for reaching the same objective and the Commission rejected GSWC’s request that the \$13 million estimated cost be found reasonable when the CPCN was granted.¹²⁵ Therefore, it is clearly understandable that the Commission was not going to approve a project that is already deemed rather costly, with overhead charges that are only tangentially related to the actual costs incurred in the construction. Indeed, the issue of cost in the original CPCN was so contested that the Commission refused to find the \$13 million costs reasonable, even while the entire costs items for the project were before it at the time the decision was made.

In D.05-04-016, the Commission authorized GSWC to recover up to \$13 million in rates for the cost of BVPP, but still reserved decision on the reasonableness of the project until this GRC. GSWC submitted the BVPP for a reasonableness review in this

¹²⁴ D.05-04-016, p.2 [Emphasis added.]

¹²⁵ D.03-07-005, p.14.

GRC and seeks an overhead cost of 25 percent that was neither incurred in the actual construction of the project nor authorized in the CPCN. DRA maintains that GSWC is not entitled to 25% overhead costs and has not provided any document to support its claim for the overhead. GSWC has also not shown that it participated in the construction of the project to an extent that it should be entitled to such overhead costs.

GSWC offers many contradicting explanations for the 25 percent overhead costs. First, GSWC claims that the overhead cost was approved in the last BVES GRC Decision¹²⁶ almost a decade before the Application for the CPCN,¹²⁷ but a careful review of that decision fails to disclose any discussion of a 25 percent overhead cost to be used for BVES capital projects.

GSWC also claims that the overhead cost was requested in the CPCN and was very clearly delineated as 25 percent.

Q. When the Commission approved the Bear Valley Power Plant, did Bear Valley inform the Commission in any of the discussions and the Decision that followed that the 25 percent overhead cost had no bearing directly to the power plant but was taken from a companywide cost approved for Golden State Water Company?

A. ...I believe so. ...There were two Applications involving the Bear Valley Power Plant, the first of which was to just get a CPCN to construct the plant.

And as a part of that Application we submitted a cost estimate for what the plant would cost. And that included our estimates for the contract with Stewart and Stevenson, project management costs, various engineering costs, as well as overhead at 25 percent. It was very clearly delineated it was 25 percent.

That Application, all the Commission granted was our approval to build the plant. Subsequent to that we filed a second Application to begin rate recovery for the power plant,

¹²⁶ D.96-05-033; See Exhibit 211, DRA's Report on Bear Valley Power Plant Compliance, p.8, noting GSWC's response to DRA-BEN-29 data request.

¹²⁷ Exh. 218, p.3, Response to DRA Audit Data Request TAD 004.

and that again included the 25 percent, the overhead at the 25 percent loading factor.¹²⁸

However, GSWC has not provided any document to show that it requested overhead cost at 25 percent in the CPCN. Neither of the decisions GSWC mentioned in its testimony discussed or recognized a 25 percent overhead cost. In D.03-07-005, the only mention of overhead was as follows:

SCWC also provides information on the process it used for planning the proposed generation facility and developing estimated costs.¹²⁹ SCWC explains that it engaged in a competitive bid process by issuing a request for proposals for firm capacity and energy resulting in negotiations and an agreement to construct the generation facility for \$8.9 million. SCWC states that additional costs for project management, engineering, overhead and contingencies raise the total estimated cost to approximately \$13 million.

Nevertheless, the Commission made it clear in the decision that it was not considering the reasonableness of any costs to be incurred for the construction of the BVPP. Therefore, determination of a reasonableness of a 25 percent overhead costs must be determined in this proceeding.

Lastly, GSWC claims that the 25 percent overhead cost was adopted by the Commission in its [GSWC] last GRC as a companywide loading factor for all capital projects, both water and electric.¹³⁰ GSWC does not explain where the Commission made this company wide loading factor applicable to BVES, which traditionally has its own GRC. GSWC listed decisions D.04-03-039, D.04-08-053, D.06-01-025, and D.07-11-037 as the authorities for a 25 percent overhead loading factor to be applied to the BVPP. However, these decisions were all decided after the CPCN [D.03-07-005] which

¹²⁸ RT, p.279-280

¹²⁹ Exhibit 1 includes descriptions of the relationship between the contractor and SCWC, and alternative sources of power, including comparable cost estimates. Exhibit 1 attachments include preliminary engineering and design information, a project plan and location, and a preliminary cost estimate for the proposed generation facility.

¹³⁰ Exh. 17, p.4, GSWC's Rebuttal to Bear Valley Power Plant Compliance

authorized the BVPP subject to a reasonableness review and mentioned overhead as one of the costs to be incurred in the construction of the project. We fail to see how these decisions that came after the CPCN could be the basis for the overhead cost mentioned in the CPCN, absent any reference in either decision that the “loading factor” is applicable to the BVPP.

Further, GSWC noted that when it submits a recommendation for overhead costs for the Commission to establish its loading factor, it also submits proposals or a study of projects that the factor may apply to, none of which included electric projects.

Q. ...when the Commission determines a companywide overhead cost for Bear Valley – for Golden State Water Company, does Golden State Water give the Commission projections of expected capital projects that will be done in the period in the test years?

A. Yes.

Q. Did those include electric power plant for the general rate case that preceded the application for the Bear Valley Power Project?

A. No, I do not believe so.¹³¹

GSWC’s attempt to apply the same loading factor it uses for its capital projects in its water Divisions to the capital projects in its BVES Division ignores the fact that FERC has strict Accounting and Reporting Requirements that are applicable in the Electric context. As DRA noted:

Most importantly, the proposed overhead rate and costs that BVES is proposing fails to meet the strict requirement for capitalization of overhead costs that was established by the Federal Energy Regulatory Commission (FERC) in the Accounting and Reporting Requirements for Public Utilities and Licenses, Electric Plant Instruction (EPI) 4. The (EPI) 4 requirements for overhead costs are as follows:

- Only costs that have a definite relationship to construction should be capitalized.

¹³¹ RT, p.287:12-21

- The overhead costs should be equitably distributed to each job or work order.
- Adequate records must be maintained to support overhead costs.¹³²

GSWC has failed to meet any of the foregoing standards and GSWC has the burden of proof in this proceeding. In fact, DRA maintains that GSWC cannot prove that it performed any work that can equitably be assigned a 25 percent overhead charge because BVPP was a turnkey project, where by a third party contractor built the plant made it operational before turning it over to the BVES Division. While GSWC has argued that it performed a substantial amount work in relation to supervising the third party contractor, the only available record of tasks provided by GSWC belies this claim.¹³³ On the basis of this record of tasks for the construction of BVPP, DRA recommends a very generous overhead charge of 10 percent as reasonable.

B. INTEREST ON THE CAPMA

D.05-04-016 required GSWC to establish a one-way memorandum account to record the capital related revenue requirement for the BVPP. This component of the BVPP, like every component of the BVPP was equally subject to a reasonableness review. GSWC created the CAPMA account but did not make it an interest earning account.

In response to a data request from DRA, GSWC stated that its Company Preliminary Statement which identifies the Accounting Procedures for the CAPMA did not include a provision for interest or carrying cost. Therefore, GSWC did not establish the CAPMA as an interest bearing account. This argument by GSWC to deprive ratepayers of the time earning value of their money marks the extent to which GSWC is willing to go to strip ratepayers of any benefit.

In D.94-06-033, DRA recommended and that Commission directed that all water

¹³² Exh. 211, p.9.

¹³³ See Exh. 217

utilities' memorandum accounts must bear interest.

Our order today adopts two changes proposed by DRA and unopposed by utilities. In addition we authorize an expansion of existing water quality memorandum accounts on a proper showing.

12.1 Interests on Balancing Accounts

DRA recommends that, effective as of the date of this order, all balancing accounts and memorandum accounts maintained by regulated water utilities (with the exception of drought and conservation memorandum accounts subject to 20 basis point reduction) bear interest at 90-day commercial paper rate. All other utilities regulated by the Commission are permitted to post interest on balancing accounts. ...

...Accordingly, we adopt DRA's recommendation in its entirety.¹³⁴

IX. COST OF CAPITAL & RETURN ON COMMON EQUITY

GSWC requests that its BVES Division be treated as a stand-alone electric utility for purposes of determining its weighted cost of capital or recommended rate of return (ROR) and its return on equity (ROE). For want of a better alternative, DRA adopts the model of a stand-alone electric utility but addresses the limitations of making a recommendation for a BVES Division that has no comparable utilities for effective analyses of its cost of capital. GSWC requests a 9.80 weighted cost of capital and 11.70 percent on return on equity (ROE). DRA recommends a weighted cost of capital of 8.91 percent and a return on equity (ROE) of 10.16 percent.

A. RETURN ON EQUITY

The ROR or weighted cost of capital is the cost of common equity, preferred equity, and long-term debt weighted by the proportion of common equity, preferred equity and long-term debt in the capital structure. The problem with BVES is that it does not issue common equity or preferred equity and it does not take long-term debt

¹³⁴ Re: Financial and Operational Risks of Commission Regulated Water Utilities, 55 Cal.PUC 158, 153 P.U.R.4th 205, D.94-06-033, p.31.

independent of its parent water utility, GSWC. Still, in this rate case, DRA does not take issue with GSWC's request that "[t]he Commission should authorize separate rates of return for GSWC and BVES based on the Commission's analysis of the risks faced by each utility" as though they were independent entities.¹³⁵ In order to analyze develop a separate rate of return for BVES, DRA also accepts, GSWC's proposed capital structure for BVES comprising 46.40 percent long-term debt and 53.60 percent common equity. With this capital structure, DRA recommends a common equity cost of 10.16 percent and a long-term debt cost rate of 7.49 percent.¹³⁶

DRA maintains that a weighted cost of capital of 8.91 percent is reasonable for BVES as a stand-alone electric utility because its realistic exposure to the market is shielded not only by GSWC, but by American Water Service the parent company of GSWC. The capital structure used to derive BVES' stand-alone long-term debt and common equity mirror the capital structure of GSWC.¹³⁷

However, GSWC argues that DRA's recommended ROR for BVES is unreasonable because it presumes that BVES has become less risky.

DRA recommends that the Commission reduce BVES authorized return on equity from 10.40% to 10.16% and it's overall rate of return from 9.32% to 8.91%...This implies that BVES has become less risky.¹³⁸

The percentage change between the rates DRA recommends and the rate currently held by BVES is relatively insignificant and there is no reason to believe that BVES, if it were in fact a stand-alone utility, would not be less risky today than it was at the time of its last rate case. GSWC's construction of BVPP since the last rate case serves to make BVES less exposed market fluctuations in energy prices and uncertain weather. Similarly, GSWC has been able to seek interim increases in rates to address any impact

¹³⁵ Exh. 5, p.1-5, GSWC Cost of Capital Testimony, Witness Jan Reid.

¹³⁶ Exh. 213, p.2, DRA's Report on Cost of Capital, Witness Tom Ranaghan

¹³⁷ Exh. 213, pp. 2, 4.

¹³⁸ Exh. 27, p.1, GSWC Cost of Capital Rebuttal Testimony, Witness Jan Reid

of market conditions on its BVES operations. Thus, the regulatory oversight has been very mindful and responsive to BVES needs and has responded promptly to requests that BVES has made in the past. Coupled with these conditions, is the fact that BVES is itself a Division of a regulated water utility, GSWC, which is itself wholly owned by yet another regulated utility. This holding structure affords BVES a double layer of holding company protection with guaranteed rates of return at every level.

B. RETURN ON EQUITY

GSWC claims that it identified fourteen risk factors that point to the fact that BVES faces far more risks today than it did in the past.¹³⁹ However, GSWC's list of risks are all variations of the same factor, the economy. GSWC presents no analysis to show the extent to which the economy was significantly different when BVES was granted its current ROR and ROE. While uncertainty continues to permeate the country's economic decisions, the risks that a regulated utility is exposed to with guaranteed rates are much less than the risks for regular businesses that pay the rates.

The primary factor that informed the risk assessment and the proposed ROE in DRA's recommendation is the fact that the proxy group BVES chose for itself is significantly more risky when compared to BVES' real characteristics. Therefore, it became necessary to adjust any percentage returns reached on the basis of that comparable group slightly downward to identify it with BVES.

A leading expert on cost of capital issues on cost of capital issues in a regulatory environment notes that: "There are two generic approaches to forming proxy groups of companies. The first approach, referred to as the 'direct' or 'focused' approach, consists of selecting a group of...companies that are directly comparable in risk to the subject utility...the end result is usually a small sample of companies with a risk profile similar to that of the subject utility. The second approach referred to as the 'indirect' approach consists of selecting a large group of companies representative of the

¹³⁹ Exh. 5, Chapter 2, p.3-4.

utility average...it is a matter of judgment as to which of the two broad approaches should be employed.”¹⁴⁰

BVES’ comparison group is based on the focused approach. BVES’ comparison group is based on a sample of 20 electric firms taken from the Value Line Investment Survey.¹⁴¹ BVES relied upon the screening criteria established in D.07-12-049. This decision recommended that: “Three basic screens should be used in selecting a comparable proxy group. Those screens are: (1) to exclude companies that do not have investment grade credit ratings, (2) exclude companies that do not have a history of paying dividends and (3) exclude companies undergoing a restructure or merger. Additional screens may be used to the extent that justification is provided.”¹⁴² Since BVES is a small utility, as measured by gross revenues, BVES restricted its proxy group to Value Line firms which met the following criteria: “Companies with a current S&P credit rating of BBB- or better.”¹⁴³

The focus group that GSWC chose for BVES, which DRA adopted for the sake of the analysis, has revenues that far exceed BVES. This focus group is exposed to such market conditions that BVES is not exposed to because BVES is not even incorporated. The companies in the focus group also have poorer credit rating than GSWC, which presumably borrows funds when needed for its BVES Division.

GSWC’s Cost of Capital Witness could not provide the growth rate for the comparable group he selected for BVES.¹⁴⁴ He considered that the smallest revenue in his focus group of comparable firms is \$696 million, but BVES’ revenue is \$29 million.¹⁴⁵

¹⁴⁰ Morin, R. A., “The New Regulatory Finance”, Public Utility Reports, Inc., Vienna, Virginia, (2006), pp. 400-401.

¹⁴¹ D.07-12-049 endorsed the use of the Value Line Investment Survey as a reliable source for financial data.

¹⁴² D.07-12-049, Mimeo, December 20, 2007, p. 15.

¹⁴³ Exh. 213; According to Standard and Poor’s “An obligation rated ‘BBB-’ exhibits adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity of the obligator to meet its financial commitment on the obligation. (Standard and Poor’s, <http://www.standardandpoors.com>).

¹⁴⁴ RT, p.422

¹⁴⁵ RT, p.423

He noted that BVES does not have a Standard and Poor rating, while the companies in his focus group do¹⁴⁶, and all the companies in the focus group are publicly traded.¹⁴⁷ BVES has none of these characteristics. Therefore, it is unreasonable to accept without adjustments the results of any model for ROE based on this focus group of comparable companies.

X. RATEBASE

Rate Base is the depreciated asset value of BVES's net investments used to provide service to its customers. The major components of Rate Base are Fixed Capital, Adjustments, Working Cash, and Deductions for Reserves. Most of DRA's disagreement with GSWC regarding ratebase has to do with the number of lead lag days GSWC chose for its BVES Division working cash. DRA recommended that BVES use the same lead lag days that GSWC uses as it is a only a division of GSWC, shares General Office Accounting with GSWC and doesn't pay taxes independent of GSWC.

A. WORKING CASH

Working Cash is the capital supplied by shareholders to meet day-to-day utility operational requirements, by bridging the gap between the time expenditures are required for services and the time revenues are collected for those services. It is included in rate base to compensate shareholders for this investment.

Working Cash utilizes the Lead-Lad Approach, following the Commission's policy set forth in its Standard Practice U-16. The Lead-Lag Approach is a method used to determine the amount of funds required to pay operating expenses in advance of receiving customer revenues. It requires a comprehensive analysis of transactions to determine the net lag days between (1) the time lag between the utility services rendered and the receipt of the associated revenues for those services (Revenue Lag) and (2) the time lag between the recording of the utility costs such as purchased power, labor,

¹⁴⁶ RT, p.423

¹⁴⁷ RT, p.423

materials, and so forth, and payment of those costs (Expense Lag).

- DRA recommends 36.7 days for BVES' payment lag calculation, resulting from adjustments to various lead-lag components discussed below, as compared to BVES' estimate of 31.1 days.¹⁴⁸
 - Increasing the number of lag days for All Other Operation expenses from 22.2 to 63.6.
 - Increasing the number of lag days for All Other Maintenance expenses from 20.7 to 62.6.
 - Increasing the number of lag days for Office Supplies and Expense from 7.1 to 24.5.
 - Increasing the number of lag days for Injuries and Damages expenses from -158.2 to -152.2.
 - Increasing the number of lag days for Allocated General Office expenses from 2.6 to 13.6.
 - Increasing the number of lag days for Federal Income Tax (FIT) from 106.0 to 127.78.

GSWC acknowledges that DRA used the lead lag days GSWC presented in its water GRC for Region III of its water operations¹⁴⁹, and accepts DRA's modification to the lag days for General Office expenses, but does not accept the other adjustments. GSWC claims that it conducted separate lead lag studies for its BVES Division and that the Commission should not use the lead lag studies for the water division for the BVES Division.

However, DRA's experience with the lead lag studies that GSWC purportedly performed for the BVES Division is that it is wrought with errors, and in many cases, such as with FIT and General Office allocation, was not based on actual costs. In fact, GSWC does not dispute that the Commission should use the lead lag studies it presented in the water GRC for Injuries and Damages (152.2) but that DRA has recorded the wrong

¹⁴⁸ Exh. 209, pp. 1-2. DRA's Report on Ratebase, Witness – Lindsey Lasserson

¹⁴⁹ Referencing GSWC Application No.08-07-011

number in presenting that number to the Commission.¹⁵⁰ Yet, the record clearly shows that DRA in fact recorded the number as it was used in the GSWC filing.¹⁵¹

Further, GSWC's argument that a lead lag study that was unique to BVES was done to arrive and separate lead lag day averages for BVES belies the its explanation that to arrive at the lead lag day average for almost all the disputed items, GSWC combined "a sample of payments in the year 2007 for both the GSWC Region III and the BVES lag days study in the respective GRC's [sic]."¹⁵²

Notwithstanding the dispute between DRA and GSWC on the proper lag day calculation, once GSWC adopted DRA's recommendations to change several of the lead lag day results, GSWC had the burden to adjust all its calculations in order to recommend a new average for the BVES Division. Having failed to do so, GSWC has failed to meet its burden in this proceeding and the Commission only has DRA's lead lag day average to adopt for this proceeding.

B. MATERIALS AND SUPPLIES

DRA also recommends reducing the total Materials and Supplies inventory by \$31,578 from \$400,000 to \$368,422. Materials and Supplies (M&S) is the cost of inventory of materials purchased for construction, operation, maintenance, and contract work.

DRA takes issue with \$400,000 BVES has estimated for M&S from 2009-2012, and recommends that the Commission adopt BVES' recorded June 2008 balance of \$368,422 for M&S.¹⁵³ DRA's forecast incorporates more recent data which reflects that BVES has been reducing its M&S balance relative to recorded 2007 levels. Therefore, DRA recommends a \$31,578 adjustment for BVES' average M&S balance for each year from 2009-2012, as shown in the table

¹⁵⁰ RT, p.413

¹⁵¹ See Exh. 221, Working Papers from GSWC's Water GRC

¹⁵² Exh. 15, p.8, GSWC's Rebuttal Testimony on Ratebase (Including Working Cash)

¹⁵³ Response to data request DRA-LJL-7

below.¹⁵⁴

The discrepancy between DRA's materials and supply recommendation and GSWC's recommendation arose because DRA relied on more recent data which reflects that BVES had been reducing its M&S balance relative to recorded 2007 levels.¹⁵⁵

XI. TAX EXPENSE

Tax expense comprises of projections for expenses due for: (1) Federal Income Taxes (FIT); (2) State Income Taxes (California Corporate Franchise Taxes (CCFT); (3) payroll taxes; (4) property, or ad valorem taxes; (5) franchise taxes; and (6) deferred taxes. DRA accepted GSWC's recommended tax rates for determining FIT and State Income Taxes and deferred taxes, but differed with GSWC on the methods used to determine property taxes, franchise taxes and payroll taxes.

DRA recommends using 2007 tax ratios to calculate payroll and property tax ratios, but uses a three-year average of franchise tax ratios to calculate franchise tax expense. GSWC used a trend line to determine the ratio of wages and payroll taxes for a five-year period then used the trended ratio to forecast payroll tax expense for the test years.

GSWC's use of a trend line for tax expense is more problematic than the use of a trend in any other calculation because tax expense is too complex to be explained by simple trending.

[E]stimating tax expense is not merely a matter of reviewing historical payments, and then applying objective projection criteria in order to estimate test year expense. Tax expense is the composite of projected taxable income streams, book expenses, special tax deductions, and tax credits, calculated within the combined contexts of "real world" tax law, and "regulatory world" tax policies. Tax expense also includes taxes which are not a function of income streams but of the payment of employee compensation, the ownership of

¹⁵⁴ Exh. 209, p.4.

¹⁵⁵ Exh. 209, p.4.

property, and a utility's "franchise" right to conduct its business within the geographical boundaries of a municipality or other local taxing authority.

While the mathematical model described above is seemingly unequivocal, the underlying accounting conventions, applicable tax rates, and the determination of what constitutes allowable deductions, is a function of current federal and state tax law, including new laws expected to affect the test year, and regulatory tax policies as determined by numerous Commission decisions. Many of the existing Commission tax policies were established in *Re Income Tax Expense for Ratemaking Purposes* (OII 24), D.84-05-036, 15 CPUC 2d 42 (1984).¹⁵⁶

GSWC has not provided any evidence to explain why increases in payroll taxes are a trend. Indeed, the idea of historical taxes on businesses following an upward trend is a strong argument to discourage future tax increases in any democratic process.

A. Payroll Taxes

DRA proposes to use the most recent 2007 ratio of 6.314 percent for payroll taxes because it is the most accurate information currently available. The 2007 test year expense estimate reflects, to the extent possible, the actual "real world" tax expense incurred by the regulated enterprise.¹⁵⁷

GSWC's trend for a payroll tax is inappropriate for the reasons already stated and also because a trend for a payroll tax may simply be the result of the kind of decisions the company made in the past. For instance:

A replacement employee hired mid-year creates a higher tax ratio than if one employee worked for the entire year; this is because the employer is again responsible for taxes on the first \$7,000 of wages even though taxes were paid on the first \$7,000 of the old employee. The same thing happens any time a new employee is hired because the ratio of taxes paid at lower wages is higher than the ratio of taxes paid at higher

¹⁵⁶ Exh. 207, pp.3-2, DRA's Report on Tax Expense, Witness – Stacy Hunter.

¹⁵⁷ Exh. 207, p.4, citing D.84-05-036 for consistency of this treatment with Commission policy.

wages.¹⁵⁸

On the other hand, the wage bases of all but one payroll tax in BVES operations have remained stable over the last three years.¹⁵⁹ Payroll taxes for the BVES Division also remained steady.¹⁶⁰

B. Property Taxes

The State Board of Equalization uses a very complex process to determine property taxes on a composite basis rather than by district or area. GSWC's use of a five year trend to forecast property tax expense is inappropriate because it failed to account or explain abnormally high increases that occurred in 2004 – 2005 and again in 2005-2006. The 2004-2005 increase was 17.0 percent and the 2005-2006 increase was 11.9 percent. Compared to these increases, the 2006-2007 tax increase was only 1.9 percent. Even GSWC admits that the use of numbers from an abnormally high year is inappropriate in a trend line.¹⁶¹

GSWC speculates that State and Local agencies will likely increase property taxes due to the problems they are having balancing their books.¹⁶² GSWC presents no evidence to support this conclusion except to state that regardless of what politicians say they will do, it is reasonable to expect that they will increase property taxes for businesses.¹⁶³ This argument is clearly inconsistent with the current mortgage crisis, which is expected to affect commercial property as well. GSWC realizes this fact but tries to make the distinction between residential and commercial properties.¹⁶⁴

A. [Mr. Larson]: I think that cities would rather not tax their –
I think there's a feeling that businesses have deep pockets but

¹⁵⁸ Exh. 207, p.6.

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ RT, p.193:11-19.

¹⁶² Exh. 13, p.6; RT, pp. 198-199.

¹⁶³ RT, p.199.

¹⁶⁴ RT, p. 199.

individuals don't I guess is a way to put it.¹⁶⁵

GSWC has an obligation in this case to prove the basis for its request by clear and convincing evidence, not by finding a way to put it. Property taxes are inextricably tied to Proposition 13 set values for the properties.¹⁶⁶ Proposition 13 Taxable Value for properties has capped increases in property values at 2% per year since 2004, which cap is far below the appreciation of most properties in the same time frame.¹⁶⁷ GSWC has not explained how its speculative theories on property values may be limited by Proposition 13 or excepted from it. Therefore, the Commission should adopt DRA's recommendation to use the 2007 ratio of 0.384 percent.

C. Franchise Taxes

DRA and GSWC both used averages to estimate the Franchise Tax expense for the BVES Division. However, GSWC used the average of a five-year period of actual revenues to determine the ratio for Franchise Tax expense, while DRA used a three-year average. DRA explains the use of a three year average as follows:

The franchise tax expense in 2003, as a percentage of

¹⁶⁵ RT, p.199:2-6.

¹⁶⁶ **Proposition 13**, officially titled the "People's Initiative to Limit Property Taxation," was a ballot [initiative](#) to amend the constitution of the state of [California](#). The initiative was enacted by the voters of California on [June 6, 1978](#). It was upheld as constitutional by the [United States Supreme Court](#) in the case of [Nordlinger v. Hahn](#), 505 [U.S. 1](#) (1992). Proposition 13 is embodied in [Article 13A of the California Constitution](#).

The most significant portion of the act is the first paragraph, which capped real estate taxes:

“

SECTION 1. (a) The maximum amount of any [ad valorem tax](#) on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties. ”

The proposition's passage resulted in a cap on [property tax](#) rates in the state, reducing them by an average of 57%. In addition to lowering property taxes, the initiative also contained language requiring a two-thirds majority in both legislative houses for future increases in all state tax rates or amounts of revenue collected, including income tax rates. It also requires two-thirds vote majority in local elections for local governments wishing to raise special taxes.

¹⁶⁷ See Orange County Assessor's explanation of the impact of declining property values on property taxes, <http://www.oc.ca.gov/assessor/pdf/Informal%20Review%2020-09.pdf>.

revenue, was extraordinarily high compared to all other years, and the expense in 2004 was higher than the 2005 expense, showing a downward trend for those two years.¹⁶⁸ DRA recommends using a three-year (2005-2007) average, equal to 0.925%, because it relies on more current data, and smoothes those fluctuations of the data set.¹⁶⁹

XII. SPECIAL REQUESTS AND RATE IMPACT MITIGATION

DRA and GSWC reached a partial settlement on most of the special requests GSWC made in its application except the Rate Impact Mitigation Plan and GSWC's recommendation to use an Advice Letter Process to implement GO Allocations authorized for BVES in subsequent GSWC rate cases.

A. Rate Impact Mitigation Plan

GSWC requests that the Commission adopt a RIMP for the rate increases authorized in this rate case. GSWC proposes a RIMP that would not increase overall rates by more than 10 percent in each rate period, and any initial deferral in customer rate increases to keep within the 10 percent increase threshold to be made up in subsequent period increases. GSWC also requests full recovery of revenues over the four year Test Periods, with interest.

The Commission should not adopt GSWC's RIMP because it is essentially a deferment of rates with interests that would add to the rates. The very point of a RIMP is to reduce rate shock from ratepayers having to absorb a large increase in rates all at the same time. A deferment of those rates with interest does not reduce the rate shock but arbitrarily postpones the rate shock. The rate increase that GSWC seeks in this proceeding would increase base revenues by 55 percent. This amounts to an increase of about \$16 per month on the average residential bill if the Commission were to adopt GSWC's proposal. If interests is added on this increase, they monthly impact exceeds

¹⁶⁸ BVES Prepared Testimony, Results of Operations, Volume 2, page 93.

¹⁶⁹ Exh. 207, p.8.

\$16 per month.¹⁷⁰

DRA proposes a phase-in of the 2009 revenue requirement increase over a four-year period to minimize the impact of BVES' rate increase. This proposal is consistent with revenue phase-in increases adopted by the Commission in other energy cases as discussed below. It does not appear that BVES or its investors have been adversely impacted with this ROR. DRA's phased-in recommendation will likely increase the ROR for BVES and will greatly ease the burden on BVES' customers, especially at this time when we are facing a national/global economic crisis.¹⁷¹

DRA's phase-in proposal has no carrying charges or interest. This approach is consistent with Commission decisions adopting phase-in proposals. In D.87-07-019, the Commission adopted a rate increase for SCE's Santa Catalina 1986 GRC to be paid in installments without a carrying charge. Similarly, in Southwest Gas' 2003 GRC (A.02-02-012), the Commission also authorized a 4-year phase-in of the adopted revenue requirement increases without a carrying charge.¹⁷² Most recently, the Commission adopted a phase-in proposal for the authorized rate increase in Southwest Gas' 2009 GRC (A.07-12-022) for the utility's South Lake Tahoe rate jurisdiction. The Commission phased in 75 percent of the increases in 2009 and 25 percent of the increases in 2010, without a carrying charge for the 25 percent increase foregone in 2009.

DRA recommends a four year phase-in proposal for the rate increase authorized in this proceeding, without a carrying charge, as follows:¹⁷³

- 2009 – Initially 50% of the increase be included in rates
- 2010 – Another 15% of the increase be included in rates, totaling 65%
- 2011 – Another 15% of the increase be included in rates, totaling 80%
- 2012 – Another 20% of the increase be included in rates, totaling 100%

¹⁷⁰ Exh. 212, p.12, DRA's Report on Special Requests, Witness – Dao Phan, citing Exh. 1.

¹⁷¹ Exh. 1, p.16.

¹⁷² D.04-03-034, mimeo, at pages 91-91, Ordering Paragraph 1.

¹⁷³ Exh. 212, p.12.

B. GENERAL OFFICE UPDATE

GSWC requests authorization to use the advice letter process for implementing GO allocations authorized for its BVES Division in subsequent GSWC rate cases. Under this request, GSWC would adjust rates in the BVES territory to be consistent with the Commission's most recently determined General Office (GO) expense as required in the GSWC water rate plan. Further, the advice letters will coincide with GSWC's GRC cycle, to update the general office allocation to BVES, effective the same date of the Commission's decision on the GSWC general office expense.

For example, according to BVES, a decision is expected from the Commission in the fourth quarter of 2009 for the GSW 2009 GRC, and the company expects to implement rates at the beginning of the test year on January 1, 2010. BVES also requests continual authorization to file advice letters recognizing the adoption of GSW's general office revenue requirement and the corresponding allocation of the general office costs to BVES. BVES states that his authorization would be implemented by increasing or decreasing the revenue requirement used in the Base Revenue Requirement Adjustment Mechanism balancing account.¹⁷⁴

DRA opposes GSWC's request to use the advice letter process to implement rate increases without the protection afforded by Public Utilities Code section 454. Upon closer examination, it became immediately clear that GSWC had not properly considered the potential conflicts between its advice letter proposal and Public Utilities' Code Section 454 et. Seq.

Q. Let's assume the 2010 Golden State Water Company rate case goes forward and there is a GO allocation that would require Golden State Water Company to raise its rates when implemented. How would the advice letter address the notice requirement in Section 454 that ratepayers should be informed when rates are going up?

A. I don't know.

Q. Does your proposal to use advice letters to raise rates

¹⁷⁴ Exh. 212, p.41.

make any provision for the public participation hearing process?

A. I have no idea about public participation process on raising the rates of a proceeding that that the Commission has authorized in a water proceeding which the Commission has authorized an increase.¹⁷⁵

Q. Did your proposal in the special request make any provision for how the Commission should address that [Notice] requirement?

A. No, it doesn't.¹⁷⁶

GSWC's proposal to use the advice letter process to implement rate increases for its BVES Division is misguided and in conflict with existing statutes. GRCs are based on estimates anyway, the exactitude that GSWC seeks in this special request is unnecessary. Therefore, the Commission should not authorize the use of the advice letter process for implementing rate increases, even when authorized in a prior Commission decision.

XIII. REVENUE ALLOCATION AND RATE DESIGN

GSWC adopted DRA's recommendations regarding revenue allocation and rate design, and even made several corrections to its application based on errors discovered by DRA. However, in GSWC's rebuttal testimony, GSWC represented that DRA agreed with all of its rate design proposals including:

- Increasing customer charges for some commercial customers and reducing them for others based on marginal cost data;
- Increasing both commercial rate tiers at the same SAP percentage
- Providing a small differential in energy rates within the Commercial Rate Class between A-1, A-2, A-3 and A-4 TOU in recognition of generally higher average voltages of service delivery;
- Providing a small differential of energy rates between primary and secondary Large Power Rates in recognition of higher average

¹⁷⁵ RT, p.123

¹⁷⁶ RT, p.124

voltages of service delivery;

- Increasing the spread between TOU Energy rates based on a relationship of marginal energy charges by TOU; and
- Simplifying the tariffs to include the components of the rate rather than additional detail that confuses customers, making the rates appear more compatible with the large electric utilities surrounding BVES.

DRA took no position on these issues in its report, and would like the record to reflect that DRA did not agree or disagree with these aspects of the rate design.

XIV. CONCLUSION

WHEREFORE, DRA respectfully requests that the Commission adopt its recommendations in this Opening Brief.

Respectfully submitted,

/s/ NOEL OBIORA

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March 18, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document **“OPENING BRIEF OF DIVISION OF RATEPAYER ADVOCATES IN THE MATTER OF THE APPLICATION OF GOLDEN STATE WATER COMPANY FOR AUTHORITY TO INCREASE RATES FOR ELECTRIC SERVICE BY ITS BEAR VALLEY ELECTRIC SERVICE DIVISION”** in **A.08-06-034** by using the following service.

E-MAIL SERVICE: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S.MAIL SERVICE: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses, if any.

Executed on **March 18, 2009**, at San Francisco, California.

/s/ ROSCELLA GONZALEZ

Roscella Gonzalez

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A.08-06-034

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