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

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 No. 08-06-034

**JOINT MOTION OF THE DIVISION OF RATEPAYER ADVOCATES  
AND GOLDEN STATE WATER COMPANY  
(BEAR VALLEY ELECTRIC SERVICE DIVISION)  
TO APPROVE SETTLEMENT  
(SETTLEMENT AGREEMENT ATTACHED)**

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May 13, 2009

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**I. INTRODUCTION**

Pursuant to Rule 12.1 of the Commission’s Rules of Practice and Procedure (“Rules”) and the accompanying Motion for Leave to File Motion to Approve Settlement Agreement<sup>1</sup> the Division of Ratepayer Advocates (“DRA”), and Golden State Water Company (“GSWC” or the “Company”) on behalf of its Bear Valley Electric Service Division (“BVES”) (together, the “Parties”) submit this Joint Motion to Approve the Settlement Agreement between the Division of Ratepayer Advocates and Golden State Water Company on general rate case issues (“Settlement Agreement”).

In the attached Settlement Agreement, the Parties address BVES’ revenue requirements determination in the above-captioned general rate case proceeding (“GRC”) for each of the Test Years 2009-2012 as more fully described below. The Parties also address BVES’ special requests as made in its GRC Application as more fully described below.

The Parties respectfully request and hereby move the Commission for adoption of the Settlement Agreement entered into by the Parties in this proceeding. The purpose of this Joint

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<sup>1</sup> In an April 1, 2009 e-mail from ALJ Farrar, the Parties were directed to include with the settlement agreement a motion requesting a waiver or extension of the 30-day time limit set forth in Rule 12.1.

Motion is to facilitate the Commission's expeditious consideration and adoption of the attached Settlement Agreement. The Parties believe the Settlement Agreement fulfills the criteria that the Commission requires for approval of such settlements in that it is reasonable in light of the whole record, consistent with the law, and in the public interest as required by Rule 12.1(e). For these reasons, the Commission should grant this Joint Motion and adopt the proposed settlement as set forth in the attached Settlement Agreement.

## **II. PROCEDURAL BACKGROUND**

With its last general rate case thirteen years earlier, BVES filed its Application A.08-06-034 on June 27, 2008, which was assigned to Administrative Law Judge ("ALJ") Bertram Patrick. Shortly thereafter, DRA requested a reassignment of the proceeding on peremptory challenge. The motion was granted on August 20, 2008, and ALJ Jonathan Lakritz was assigned to the case. On August 13, the City of Big Bear Lake filed a protest to the Application. On August 15, 2008, DRA late-filed a motion for party status and its protest to the Application. On August 27, 2008, BVES submitted its cost allocation and rate design portion of the Application in its Amendment and Supplement to its General Rate Case Application. Pursuant to ALJ Lakritz' ruling September 22, 2008, a telephonic-only prehearing conference was held on October 8, 2008. A public participation hearing was held on December 2, 2008.

On November 28, 2008, BVES filed a motion for an interim rate increase to recover the increase in the GSWC General Office costs previously allocated to BVES by the Commission in D.07-11-037. On December 5, 2008 and December 8, 2008, City of Big Bear Lake and DRA filed their respective responses, opposing an interim rate increase. On December 18, 2008, BVES filed its reply in support of its request for an interim rate increase. The motion is still pending and the Settlement Agreement does not alter the respective positions of the Parties regarding the motion for an interim rate increase. The case was reassigned to ALJ Darwin F. Farrar on January 15, 2009.

Consistent with DRA's statutory mandate to represent and advocate on behalf of the interests of public utility customers within the jurisdiction of the Commission, DRA's staff members propounded, and BVES responded to, voluminous and substantial data requests. BVES supported its Application with prepared testimony served on June 27 and August 27, 2008, numerous exhibits, a Master Data Request ("MDR") response, voluminous work papers, a

sales forecast model, a results of operation (“RO”) model, a marginal cost analysis, a rate design model, a tour of BVES’ facilities, and numerous responses to informal requests from DRA and other parties.

DRA served its testimony on January 9, 2009, which was sponsored by a dozen witnesses. In addition, Snow Summit served testimony addressing only the issue of revenue allocation in this proceeding on January 9, 2009. BVES served its rebuttal testimony on January 30, 2009. Following settlement negotiations among the parties and participation in the Commission’s alternative dispute resolution procedures, evidentiary hearings were held from February 23 through February 27, 2009. Parties were subject to cross-examination of their prepared testimony during these evidentiary hearings. In addition, during the hearings a stipulation between DRA and BVES was presented on various issues. Opening briefs and reply briefs were submitted by each of the Parties and Snow Summit on March 18 and 25, 2009.

Since the filing of briefs, the Parties have engaged in further extensive settlement negotiations, resulting in the Settlement. As required by Rule 12.1, prior notice with an opportunity to participate in the settlement conference was provided to all parties. A settlement conference was noticed by BVES and held on April 16, 2009. In mid-April 2009, an agreement was reached in principle. On May 12, 2009, the Parties executed the attached Settlement Agreement.

A more detailed description of how individual settlement values relate to the Parties’ litigation positions is contained in Attachment A to the Settlement Agreement. This settlement comparison exhibit is incorporated by reference in the Settlement Agreement.

### **III. SUMMARY OF PROVISIONS OF SETTLEMENT AGREEMENT**

#### **A. INCREASE IN BASE RATES**

The Parties agreed to incremental revenue produced by changes in the Base Rates<sup>2</sup> of BVES (see footnote) as follows: 2009 - \$5,500,000 (18.13%); 2010 - \$515,000 (0.96%); 2011 - \$209,000 (0.83%); and 2012 - \$168,000 (0.35%), subject to the phase-in plan as discussed below. After taking into account the phase-in plan, the Parties agreed to revenue requirements

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<sup>2</sup> The term “rate” refers to the System Average Rate (SAR) in \$/kWh obtained by dividing total base rate revenue by sales. The incremental increase in the SAR from one year to another, times the respective sales in kWh produces the average revenue referred to here. This amount is less than the total increase in revenue between years since the increase in sales contributes to such revenue increases between years even with no price increase.

for 2009-2012 for BVES of: \$17,712,800, \$18,292,400, \$18,841,200 and \$19,449,600, respectively.

**B. PHASE-IN OF REVENUE INCREASES**

The Parties agreed that BVES will phase-in the agreed-upon 2009 revenue increase of \$5,500,000 over two years. As the first step in the two-year phase-in plan, the Parties agreed that the revenue increase to be implemented in 2009 upon authorization of the Commission will only be \$4,810,500 of the \$5,500,000. In addition, the Parties agreed that, in 2009, BVES will not seek recovery of the remaining \$689,500, i.e., the 2009 unrecovered increase in revenue will not be placed in rates until 2010 as part of the two-year phase-in plan. This is a one-time event for 2009 only.

The second step in the two-year phase-in plan occurs January 2010. The total 2010 increase in revenue equals \$1,269,100, which is comprised of the 2010 agreed-upon revenue from the 2010 rate increase (before the phase-in plan) of \$515,000 for 2010, plus an additional \$689,500 (per the phase-in plan), and revenues from sales growth. The additional \$689,500 increase in revenue requirements for 2010 is the second step of the phase-in plan of the 2009 revenue requirement increase and represents an amount equivalent to (but not a recovery of) the abandoned revenue increase in 2009, which was step one of the phase-in plan.

With the implementation of the two-year phase-in of the 2009 revenue requirement increase, the resulting incremental Base Rate revenue increases (and corresponding percentage increases) will be as follows: \$4,810,500 (15.85%) in 2009; \$1,214,400 (2.94%) in 2010; \$209,000 (0.83%) in 2011; and \$168,000 (0.35%) in 2012.

**C. CALENDAR YEAR RATE CHANGES**

The Parties agreed that all rate changes shall be on a calendar year basis. For 2009, the rates shall be calculated on a calendar year basis to recover the Test Year 2009 adopted revenue requirements. The 2009 rates will be implemented once the Commission issues a final decision in this proceeding.

**D. INCREASE IN BASELINE ALLOWANCE FOR FULL TIME RESIDENTS**

The Parties agreed that the baseline allowance for full time residential customers taking service on tariff schedule D should be increased from 270 kWh per month to 320 kWh per month. To implement this increase in the baseline allowance and ensure revenue neutrality with regards to recovery of purchase power costs in the Purchase Power Adjustment Clause (PPAC rate), the Parties agreed to increase rates of the residential customers class in the PPAC by approximately \$400,000. The Parties also agreed that the rates adopted in the GRC are to include changes within the residential rate structure for base rates and the Purchase Power Adjustment Clause (“PPAC”) rate.

**E. ADMINISTRATIVE AND GENERAL EXPENSES**

The Parties agreed that the cost allocation of a portion of GSWC’s General Office (“GO”) overhead costs to BVES shall be \$3,648,500 for 2009. The treatment of GSWC’s GO costs allocated to BVES for subsequent years, and the process of adding such costs to BVES’ revenue requirements, are addressed in Section M below.

The Parties agreed that expenses for internal staff for BVES for 2009-2012 shall equal \$927,900, \$1,097,900, \$1,217,700, and \$1,347,600, respectively. The Parties also agreed to the addition of the following new staff positions (and year added), which costs are included in the budgeted amounts set forth above: Energy Analyst (2009), Rate Analyst (2009), Account Analyst III (2009), Vice President (2010), Administrative Secretary (2011), Compliance Coordinator (2011), Contract Administrator (2012), and Tariff Administrator (2012).

The Parties agreed that external staffing A&G expenses for 2009-2012 for outside services shall equal the following amounts: \$1,232,400, \$1,237,900, \$1,323,300 and \$1,470,900, respectively. Regulatory Expenses for each of the years 2009-2012 were agreed by the Parties to equal \$350,000.

Regarding all other A&G expenses, the Parties agreed to the following amounts for 2009-2012: \$661,000, \$694,800, \$717,600 and \$763,100, respectively.

**F. OPERATION AND MAINTENANCE EXPENSES**

The Parties agreed that operation and maintenance (“O&M”) expenses for the Bear Valley Power Plant shall be \$707,000 (in 2007 dollars) for the years 2009 – 2012, which will not be subject to any type of balancing account.

The Parties also agreed that other O&M expenses, including transmission, distribution and customer accounts, for 2009-2012 shall be: \$2,304,800, \$2,438,700, \$2,576,600 and \$2,720,400, respectively.

**G. BOOK DEPRECIATION AND TAXES**

The Parties agreed that depreciation expenses for 2009-2012 shall equal \$2,483,600, \$2,580,700, \$2,700,300 and \$2,799,500, respectively, and the franchise tax rate and property tax rate shall be 0.941% and 0.390%, respectively. Payroll tax rates for 2009-2012 of 6.325%, 6.445%, 6.565% and 6.685%, respectively, were agreed to by the Parties, with the methods and assumptions used by BVES to compute income taxes.

**H. RATE BASE AND CAPITAL BUDGET**

The Parties agreed to the method of computation of the rate base as the simple average of beginning and year-end results, and costs of materials and supplies of \$400,000 for each of the years 2009-2012. Working cash for 2009-2012 was agreed by the Parties to be \$750,500, \$804,400, \$822,600, and \$853,300, respectively (prior to reductions related to monthly billing – see Section K below).

**I. COST OF CAPITAL AND RATE OF RETURN PROVISIONS**

The Parties agreed to a return on equity (“ROE”) of 10.50% and long-term debt cost of 7.60%, resulting in a rate of return (“ROR”) of 9.15%, as shown below, for 2009-2012.

Item	Weight	Cost	Wtd. COC
Long-Term Debt	46.40%	7.60%	3.526%
Common Equity	53.60%	10.50%	5.628%
<b>Rate of Return</b>	<b>100.00%</b>		<b>9.15%</b>

**J. BEAR VALLEY POWER PLANT (BVPP) PROVISIONS**

The Parties agreed with the reasonableness of the BVES costs booked in the Operation and Maintenance Account (“OMMA”) account, which exceeded a previously established \$444,000 cap. Furthermore the Parties agreed that BVES shall not recover any amount above \$444,000 per year of O&M costs, even though BVES’ actual O&M costs substantially exceeded the annual cap through 2008. The Parties agreed that the direct cost of the BVPP is \$9,989,403 and that the indirect cost of the BVPP is \$2,497,351 based on a 25% overhead rate. The Parties

agree that the total cost of the BVPP is \$12,486,754, which costs shall be included in rate base for Test Years 2009 to 2012, with agreed-to adjustments as included in the results of operation calculations (such as depreciation).

**K. SPECIAL REQUESTS PROVISIONS**

BVES included certain special requests in its Application, some of which the Parties agreed to implement.

*Energy Efficiency.* The Parties agreed to energy efficiency expenses for BVES for 2009-2012 of \$190,680 (in 2007 dollars) per year. For 2009, the budget will be the prorated portion of the annual budget for Test Year 2009 as of the effective date of the Commission’s decision in this GRC. The Parties also agreed that a one-way balancing account be established for the entire four-year rate case cycle, with carryover of spending between years up to the total GRC cycle budget. The energy efficiency budget shall not have specific program or administrative cost allocations.

*Monthly Billing.* The Parties agreed that BVES shall begin monthly billing in 2011, which will reduce working cash by approximately \$800,000 per year.

*Base Revenue Requirement Adjustment Mechanism.* The Parties agreed to establish a Base Revenue Requirement Adjustment Mechanism (“BRRAM”) as set forth in BVES’ Application, with the exception of computing monthly adopted revenues based on 1/12 of annual total revenues as opposed to a seasonality adjustment as proposed by BVES.

The Parties agreed to the revenue requirement for monthly billing and energy efficiency projects noted in the table below.

<b>SPECIAL PROJECTS</b>	<b>2009*</b>	<b>2010*</b>	<b>2011*</b>	<b>2012*</b>
Monthly Billing	\$31.1	\$60.2	\$87.0**	\$111.8**
Energy Efficiency	\$205.3	\$212.2	\$220.1	\$228.9
<b>Subtotal Special Requests</b>	<b>\$236.4</b>	<b>\$272.4</b>	<b>\$307.1</b>	<b>\$340.7</b>

\* In thousands of dollars.

\*\* Includes a reduction to working cash of approximately \$800,000 for 2011 and 2012.

**L. THE CAPITAL MEMORANDUM ACCOUNT**

The Parties agreed that the current balance of the Capital Project Memorandum Account (“CAPMA”) of \$374,800 (as of June 30, 2009), which BVES shall apply interest on the monthly balance at the rate of one-twelfth of the applicable three-month commercial paper rate. BVES

shall refund this balance via a per kWh credit to all customers over a four-month period beginning December 2009.

**M. GENERAL OFFICE UPDATE**

The Parties agreed that the BVES revenue requirement for 2009 will incorporate the General Office costs allocated to BVES in GSWC's 2006 General Office rate proceeding (A.06-02-023) and adopted by the Commission in D.07-11-037. The Parties also agreed that BVES is authorized to update BVES' revenue requirement and rates once during the 2010-2012 period to reflect any changes to the General Office (GO) costs (which include pension and benefits, billing, 24-hour communication/call center, information technology support, central mainframe computer and software, accounting and finance, recruitment, and payroll services and/or allocation to BVES adopted by the Commission in A. 08-07-010). Following the Commission's issuance of a final decision in GSWC's rate proceeding, A.08-07-010, BVES would be authorized to file an Advice Letter to implement any change in the Commission authorized costs allocated to BVES regarding General Office expenses and pension and benefit costs. The Parties expect that the Commission will issue a final decision in A. 08-07-010 before January 1, 2010. If a decision is not issued before this date, the Parties agreed that BVES shall continue use of the 2009 Test Year allocation value of \$3,648,500 until the Commission issues a decision in A. 08-07-010 and BVES updates the GO allocation via the advice letter process.

**N. SALES FORECAST**

The Parties agreed upon the sales forecast, including the forecast of customers by class and total sales, as set forth in Attachment B of the Settlement Agreement.

**O. COST ALLOCATION**

The Parties agreed that the allocation of costs should be based on a system average price ("SAP") method, including the full allocation of the fixed charges for the Street Light Class. Allocation of costs based on equal percentage of marginal cost ("EPMC") will not be used in this GRC.

**P. RATE DESIGN AND INCREASE IN BASELINE ALLOWANCE**

The Parties agreed that the baseline allowance should be increased from 270 kWh per month to 320 kWh per month. This increased allocation has an approximately \$400,000 effect on the Purchase Power Adjustment Clause (“PPAC”) rates within the residential customer class. In order to maintain revenue neutrality, the Parties agreed that BVES shall include a compensating adjustment to its PPAC revenues within the residential customer class.

The Parties also agreed to the rate design methods proposed by BVES, with the exception regarding the residential customer service charge, which shall remain at \$6.40 per month (\$0.21 per day).

**Q. CERTAIN RATES, AND NET-TO-GROSS MULTIPLIER**

The Parties agreed to use BVES’ assumptions for escalation of labor and non labor expenses and an uncollectible rate of 0.297%. The Parties also agreed to a Net-To-Gross factor as indicated below:

	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Franchise %</b>	0.941%	0.941%	0.941%	0.941%
<b>Uncollectibles %</b>	0.297%	0.297%	0.297%	0.297%
<b>NTG Factor</b>	1.80299	1.80299	1.80299	1.80299

**R. MISCELLANEOUS FEES**

The Parties agreed that the after hours turn-on fee shall be \$80.00, the after hours clean and show fee shall be \$80.00, and the return check fee shall be \$10.00.

**S. NO AGREEMENT REGARDING FORECASTING METHODOLOGY**

In reaching this agreement, neither DRA nor BVES has agreed to any particular forecasting methodology. Rather, the provisions of this agreement reflect DRA’s and BVES’ compromise positions regarding forecasting methodologies.

**T. CURRENT ECONOMIC CONDITIONS ADDRESSED**

The Parties agreed that the Settlement Agreement fully addresses any concerns regarding the effect of this rate increase given the current economic situation. The effects on ratepayers are mitigated in several ways, including the following:

- The overall rate increase has been reduced from an original request of 22.7% to 18.1%.
- A rate mitigation plan for the first year reduces this increase by 20%. Therefore, the rate increase in 2009 is actually 15.9%.
- A refund of the CAPMA account of \$374,765 plus interest to all customers, allocated over the winter of 2009 (December 2009 through March 2010).
- BVES has taken several other measures to reduce the financial impact on its customers:
  - Increasing the baseline allowance from a monthly 270 KWh to 320 KWh.
  - Creation of an Energy Efficiency (EE) program, which will help customers reduce their energy usage.
  - Implementation of monthly billing so customers can better manage their bills.
  - Increasing the California Alternative Rates for Energy (CARE) and Low Income Energy Efficiency (LIEE) eligibility requirements from 175% of the federal poverty level to 200%.
  - Increasing Automated Meter Reading, which assures timely and more accurate meter reading rather than estimating bills.

The effects on BVES' costs are addressed by:

- Reducing the BVES requested return on equity from 11.7% to 10.5%.
- An overall reduction in Administrative and General Expenses additions from the original BVES request results in additional "belt tightening" in many areas, including new staff and outside services.
- A reduction in plant additions from the original BVES requests, including a reduction in new construction, reduced installation of Automated Meter Reading and additional reductions in plant additions.
- Although BVES believes that the economic situation would result in more financial risks and, therefore, a higher cost of capital, BVES nevertheless accepted a lower cost of capital in light of the current economic conditions.

The Parties agreed that the Settlement resolves any concerns as to the need to further assess the effect of the GRC rate increase given the current economic conditions.

**IV. THE SETTLEMENT MEETS THE CRITERIA UNDER RULE 12.1**

The Settlement Agreement meets all standards for approval by the Commission as identified in Rule 12.1 (d). That rule states:

The Commission will not approve stipulation or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

First, the Settlement Agreement is reasonable. Second, the Parties are aware of no statutory provision or prior Commission decision that would be impermissibly contravened or compromised by the Settlement Agreement.

Third, the Settlement Agreement is in the public interest. The principal public interest affected by this proceeding is delivery of safe, reliable electric service at reasonable rates. It advances this interest because it fairly balances BVES' opportunity to earn a reasonable rate of return against the needs of consumers for reasonable rates and safe, reliable electric service.

In sum, the Parties believe that the Settlement Agreement and the related documentation convey sufficient information for the Commission to discharge its regulatory obligations. Thus, taken as a whole, the Settlement Agreement satisfies the Commission's standards for approving settlements presented to it.

**A. The Settlement Agreement Is Reasonable in Light of the Record as a Whole.**

The Parties have a well-documented history in this proceeding of strongly-held convictions, leading to quite different conclusions about the different issues involved in this GRC proceeding. They have been extensively involved in debating these complex issues, and are knowledgeable and experienced regarding these issues. Extensive settlement negotiations were accomplished at arm's length over the course of months and after all parties to the proceeding provided testimony and participated in evidentiary hearings. The Parties fully considered the facts and law relevant to this case, and reached reasonable compromises on most of the issues raised in GSWC's Amended Application. In agreeing to a settlement, the Parties have used their collective experience to produce appropriate, well-founded recommendations. The Settlement Agreement clearly describes its scope and expresses the factual and legal considerations that form the grounds on which its adoption is urged. The Parties have succeeded

in achieving a Settlement Agreement that they believe balances the various interests affected in this proceeding and is reasonable, consistent with the law, and in the public interest.

**B. The Settlement Is Consistent With Law and Prior Commission Decisions.**

The Parties assert that the Settlement Agreement is fully consistent with law and prior Commission decisions. Also, the issues resolved in the Settlement Agreement are within the scope of the proceeding. The Settlement Agreement produces just and reasonable rates.

**C. The Settlement Agreement Is in the Public Interest.**

The Commission's first consideration on this point should be that this Settlement Agreement results in a reasonable rate impact on customers, yet provides adequate funding to BVES to ensure safe and reliable provision of electric service to customers.

*1. The Settlement Has a Reasonable Rate Impact on Customers.*

The Settlement represents a favorable outcome for ratepayers. While it will result in a rate increase for all BVES customer classes as compared to 1996 rates, the increase is reasonable given that it has been thirteen years since BVES' last GRC. In addition, the rate increase has been phased-in to reduce and/or mitigate the possibility of rate shock. In addition to its impact on rates, the Settlement Agreement will allow BVES to continue to provide a level of service expected by its customers and the Commission, based upon historical spending, trends, customer and system growth, and other cost drivers.

Numerous Commission decisions have endorsed settlements as an "appropriate method of alternative ratemaking" and express a strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record. See, e.g., D.88-12-083 (30 CPUC 2d 189, 221-23) and D.91-05-029 (40 CPUC 2d 301, 326). This policy supports many worthwhile goals, including not only reducing the expense of litigation, and conserving scarce Commission resources, but also allowing parties to reduce the risk that litigation will produce unacceptable results. D.92-12-019 (46 CPUC 2d 538, 553). This strong public policy favoring settlements also weighs in favor of the Commission resisting the temptation to alter the results of the negotiation process. As long as a settlement taken as a whole is fair, reasonable, and in the public interest it should be adopted without change.

Another benefit of the Commission adopting the settlement is that it would eliminate the burden on the Commission (and the parties) of having to deal with applications for rehearing that might be filed by the signatory parties on any of numerous issues where one or more of the parties could not accept without an appeal a result different than that adopted in the settlement.

2. *The Settlement Is in The Public Interest Regardless of its Timing.*

Although hearings have already concluded and post-hearing briefs have been filed, this Settlement is still in the public interest. Saving parties or the Commission the time or the expense of hearings is not the only thing to consider in determining if a settled outcome is preferable to a litigated one or if it is in the public interest. In fact, a settlement after evidentiary hearings ensures that the settlement is based on a “fully-litigated” and, as a result, better developed, record.

The negotiation process itself lends credence to the fact that the Settlement is in the public interest and is the preferable outcome. Following extensive hearings, and therefore being completely informed as to the strengths, weaknesses, and nuances of each other’s litigation positions, the negotiators for the Parties spent a number of weeks weighing and negotiating a reasonable, mutually acceptable outcome. No other persons have such a close understanding of the details of the issues at stake here besides the Parties. The Commission has previously recognized the benefits of a settlement by the parties, by stating:

A very important potential advantage of settlements is that the parties themselves may be better able than the trier of fact to craft the optimal resolution of a dispute. D.92-08-036, Finding of Fact 9.

Furthermore, the provisions of the Settlement Agreement as well as Attachment A to the Settlement Agreement show that the settled values fall within or below the litigation positions initially established by the Parties. Thus, from reviewing the Settlement, the Attachment A, and the process used to arrive at these mutually acceptable outcomes, the Commission may derive substantial assurance that the requirements of Rule 12 and Public Utilities Code Section 451 have been met.

The Settlement represents a tough bargain, crafted under the strictures of all the Commission’s rules governing procedural and substantive scrutiny of a utility request for rate relief, by parties intimately familiar with the utility’s operations, accounting, and duty to provide reliable service at reasonable rates. The fact that all parties had already engaged in a week of

hearings should be recognized to have improved the quality and value of the settlement – not diminished it.

In addition, other factors than “avoiding the time and expense of hearings” have traditionally been weighed by the Commission in assessing whether or not a settlement is in the public interest. For example, the Commission has looked at the extent to which discovery has been completed, the stage of the proceeding, whether the parties had undertaken a thorough review of the issues, the experience of counsel, the amount offered in settlement, the presence of a governmental participant, the overall strength of applicant’s case, and the relative risks and complexities of the litigation. *See, e.g.*, Decision 00-09-037, 2000 Cal. PUC LEXIS 697 (citing *Officers for Justice v. Civil Service Commission of the City and County of San Francisco* (9th Cir. 1982) 688 F. 2d 615, 625).<sup>3</sup> In the present case, discovery was complete, and the stage of the proceeding was as advanced as possible for a settlement – it was after the briefing stage. Parties undeniably had undertaken a thorough review of the issues. The Parties were represented by highly experienced counsel. The recommended revenue requirement is a reasonable amount, as discussed above. The involvement and presence of DRA, Commission staff responsible for ratepayer interest, as a signatory to the Settlement is strongly indicative of the fact that it is reasonable and in the public interest. The overall strength of BVES’ case is a fact that can be readily determined by the ALJ and the full Commission based upon the fully developed record before it, as can the relative risks and complexities of the litigation. Applying each and every one of these tests, the Commission can and should determine that the Settlement is in the public interest and is the preferred outcome for this proceeding.

**D. This Settlement Is Fair and Reasonable Even Though It Is Not an All-Party Settlement.**

The Settlement Agreement is not an all-party settlement. Snow Summit, which was the only other active party participating in this proceeding, participated in the settlement conference with the Parties but did not join in executing the Settlement Agreement. Throughout the proceeding, Snow Summit was interested in a single issue -- revenue allocation. The Parties, on the other hand, crafted and executed a global Settlement Agreement, addressing all disputed issues. Despite the fact that Snow Summit did not join in the Settlement, the Settlement

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<sup>3</sup> Such criteria are considered whether the settlement is all-party or contested. D.00- 09-037, *id.* at \*14.

Agreement complies with the Commission's criteria for settlements, as recently restated in D.03-04-030, where the Commission reaffirmed the policy it adopted in D.96-01-011:

We consider whether the settlement taken as a whole is in the public interest. In so doing, we consider individual elements of the settlement in order to determine whether the settlement generally balances the various interest at stake as well as to assure that each element is consistent with our policy objectives and the law." [cite omitted]

Since the Settlement before us is contested, we take note of the approach followed regarding a contested settlement in D.01-12-018. There, we stated that when a contested settlement is presented to us where hearings have been held on the contested issues, we are free to consider such settlements under Rule 51.1(e) or as joint recommendations. Evidentiary hearings were held on the contested issues in this proceeding, although various parties elected to waive or curtail cross-examination. Nonetheless, the underlying testimony was received into evidence, and forms an independent basis against which to evaluate the reasonableness of the Settlement Agreement.

Measured against the underlying testimony in this case, the Settlement clearly is in the public interest. The Settlement reflects a highly detailed agreement between the settling parties. The specific values adopted in the settlement for the various FERC accounts are set forth in the Settlement and in particular in Attachment A in sufficient detail for the Commission to understand and appreciate the reasonableness of the Settlement, particularly in the context of the hearing record and briefs. The settling parties spent weeks of effort to assure that the specific amounts adopted had a rationale associated with them and reflected the testimony of all the parties regarding appropriate revenue requirements or policy positions regarding those issues. This Settlement Agreement allows the Commission to conduct the review necessary for determining that this agreement is in the public interest.

Finally, the sponsoring Parties are fairly reflective of the affected interests: DRA represents ratepayers and comprehensively reviewed BVES' requests account by account. DRA is "ideally positioned to comment on the operation of the utility and ratepayer perception" as required by D.92-12-019 at page 16.

The Parties believe, and herein represent, that no term of the Settlement contravenes statutory provisions or prior Commission decisions.

The Parties believe that the Settlement Agreement is a reasonable compromise of their respective positions, and that the outcome in the Settlement Agreement is "reasonable in light of

the whole record, consistent with law, and in the public interest" as required by Rule 12.1(e). Accordingly, the Parties request that the Commission adopt the Settlement Agreement without modification.

**V. REQUEST FOR FOUR-YEAR RATE CYCLE**

BVES does not currently have a rate case plan in effect. To address this, BVES requested that the Commission establish a four-year rate case cycle. BVES proposed that its next GRC application would be for Test Year 2013.<sup>4</sup>

No party objected to BVES' request for a four-year rate case cycle, with its next GRC application for Test Year 2013. Accordingly, BVES requests the Commission grant BVES' request.

**VI. CONCLUSION**

For the reasons stated above, the Parties urge the Commission to approve the attached Settlement Agreement without modification and as quickly as possible. As discussed, the Settlement Agreement is reasonable in light of the whole record, consistent with law and is in the public interest. In a period of time for discovery of each party's position and full litigation thereof, the Parties have obtained comprehensive information on the strengths and weaknesses of the other's position in this proceeding. Armed with that information, the Parties believe strongly that the Settlement Agreement accomplishes a mutually acceptable outcome of the TY 2009-2012 revenue requirement issues in this proceeding and BVES' Special Requests.

Consequently, the Parties respectfully request that the Commission grant this motion and: (1) adopt the attached Settlement Agreement as reasonable in light of the whole record, consistent with law and in the public interest; (2) authorize BVES to modify electric rates for service, consistent with the terms of the Settlement Agreement; (3) implement the fees, programs, mechanisms, and procedures as set forth in BVES' Special Requests; (4) establish a

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<sup>4</sup> BVES Exhibit 2, p. 12, lines 6-11.

four-year rate case cycle for BVES, with its next GRC application for Test Year 2013; and (5) grant such other and further relief as the Commission finds just and reasonable.

Dated at San Dimas, California: May 13, 2009

Respectfully submitted,

By: /s/ Dana Appling

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