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# ATTACHMENT A

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

In the matter of the application of Alco Water )  
Service, (U206), (Alco) a California Corporation, )  
for an order 1) authorizing it to increase rates for )  
water service by \$3,709,633 or 62.6% in test year )  
2010; 2) authorizing it to increase rates on )  
July 1, 2011 by \$1,752,844 or 18.2% and )  
July 1, 2012 by \$1,016,639 or 8.9% in accordance )  
with Decision 08-110035, and 3) adopting other )  
related rulings and relief necessary to implement )  
the Commission's ratemaking policies. )  
\_\_\_\_\_ )

Application 10-02-006  
(Filed February 1, 2010)

**[PROPOSED] COMMENTS  
OF CALIFORNIA WATER ASSOCIATION  
ON THE PROPOSED DECISION OF  
ADMINISTRATIVE LAW JUDGE LONG**

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Attorneys for CALIFORNIA WATER  
ASSOCIATION

January 18, 2011

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**[PROPOSED] COMMENTS OF  
CALIFORNIA WATER ASSOCIATION  
ON THE PROPOSED DECISION OF  
ADMINISTRATIVE LAW JUDGE LONG**

In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure, California Water Association ("CWA") hereby provides comments on the Proposed Decision of Administrative Law Judge ("ALJ") Long (the "Proposed Decision" or "PD"), mailed December 16, 2010, in the above-captioned application of Alco Water Service ("Alco"). By this application, Alco seeks Commission approval to increase general rates and implement tiered pricing to promote conservation, and requests that the Commission make certain additional findings, conclusions and orders. The Proposed Decision would resolve issues presented by Alco's application, by the Division of Ratepayer Advocates ("DRA"), and by the City of Salinas. The Proposed Decision, on the ALJ's initiative, also raises and would resolve with scant evidentiary basis, issues regarding the auditing of Alco's financial statements and transactions

between Alco and members of the family that own and manage the utility. Since these issues are of a policy nature and have serious industry-wide impact, CWA submits these comments with respect to the Proposed Decision's prohibition of such "family transactions."

I.

THE PROPOSED DECISION'S CRITIQUE OF THE NEW  
AFFILIATE TRANSACTION RULES AND ITS PROHIBITION  
OF FAMILY TRANSACTIONS ARE CAUSE FOR CONCERN.

The Commission recently adopted a set of affiliate transaction rules for Class A and Class B water companies, which apply to transactions between these water utilities and their parent companies and other affiliated companies. *See, Rulemaking to Develop Standard Rules and Procedures for Regulated Water and Sewer Utilities Governing Affiliate Transactions and the Use of Regulated Assets for Non-Tariffed Utility Services*, D.10-10-019, App. A. The Proposed Decision notes that these new rules focus primarily on inter-company transactions, and then bluntly declares that these rules "do not sufficiently address transactions involving the utility and the owners and / or senior employees where there is little or no structural separation as occur with Alco." PD, at 22. The Proposed Decision then goes on to assert that Alco has a "long history" of leasing and buying equipment from the family that owns and operates the utility or other companies owned by the family, and that these "family transactions" are "problematic" and should be prohibited, with recent transactions of this sort to be "closely examine[d]." *Id.*

CWA does not question the Proposed Decision 's determination that recent "family transactions" should be examined. That is an entirely appropriate exercise of the Commission's jurisdictional oversight.

CWA is deeply concerned, however, by the Proposed Decision's summary determination that the recently adopted Affiliate Transaction Rules "do not sufficiently address transactions involving the utility and the owners and / or senior employees" and by its summary prohibition of all future "family transactions" for Alco and possibly for other Class B water utilities as well.

## II.

### ASSESSING THE AFFILIATE TRANSACTION RULES AS INSUFFICIENT AND FORBIDDING FAMILY TRANSACTIONS ABSENT ANY NOTICE OR OPPORTUNITY TO BE HEARD WOULD BE ARBITRARY, CAPRICIOUS, AND A DENIAL OF DUE PROCESS

Nothing in the procedural history of this general rate case ("GRC") for a Class B water utility provided notice either to Alco or to any other participant in California's investor-owned, Commission-regulated water utility industry that the proceeding would be the forum for a critique of the recently adopted Affiliate Transaction Rules and for a determination that those new rules "do not sufficiently address" family transactions. If the Commission determines that there is a need to address and consider revising the scope of the Affiliate Transaction Rules, it should re-open the rulemaking proceeding, R.09-04-012, in which D.10-10-019 was recently adopted, or initiate a new rulemaking proceeding. In either case, the Commission's intention to consider such a broadening of the scope of its Affiliate Transaction Rules should and must be noticed at least to all parties to R.09-04-012 (of which CWA was one), and all parties should and must be given a fair opportunity to be heard. Reaching conclusions about the appropriate scope of the newly adopted Affiliate Transaction Rules in the absence of such prior notice and hearing is arbitrary, capricious, and a denial of Due Process.

Likewise, the Proposed Decision's summary prohibition of transactions between Alco and members of the family that owns Alco was not preceded by any notice that such a prohibition was under consideration. No party to the Alco GRC appears to have raised any issue as to the propriety of such family transactions. The Proposed Decision indicates only that DRA contested the proposed valuation of certain trucks and equipment. PD, at 28-29.

The Proposed Decision's attempt to justify prohibiting all family transactions includes no reference to any evidence from or argument by any party on the subject. See, PD, at 22-24. None of the "findings of fact" included in the Proposed Decision under the heading, "Family Transactions," refer to any evidence of any impropriety by Alco, any Alco owner, any member of the family of any Alco owner, or any company owned by any such person. *Id.* at 43 (Findings 21 through 26).

There appears, in fact, to be no evidentiary support for the Proposed Decision's prohibition of family transactions. To impose such a prohibition without prior notice and in the absence of any evidence of need for such a draconian measure or any evidence as to the effects such a prohibition may have on the utility's operations would be arbitrary, capricious, and a denial of Due Process.

### III.

#### THE PROPOSED DECISION'S AMBIGUOUS IMPOSITION OF A BAN ON FAMILY TRANSACTIONS MUST BE LIMITED IN SCOPE.

A further, and broader, problem with the Proposed Decision is that its purported ban on "family transactions" could be interpreted to apply not only to Alco, but also to all Class B water utilities. The Proposed Decision states as follows:

Although the Commission otherwise imposes general affiliate transaction rules applicable the water industry in D.10-10-019, for Class B companies like Alco we hereby impose an additional clear and simple ban on any Alco transactions in the future with all family-related parties.

PD, at 23. There is something missing from the above sentence, creating an ambiguity that allows the sentence to be given at least two distinct meanings. According to this sentence, the Proposed Decision may be imposing its “clear and simple ban” either “on any Alco transactions in the future with all family-related parties,” or “for Class B companies like Alco.”

CWA would not hazard a guess as to ALJ Long’s intentions in this regard. However, CWA respectfully urges that the Proposed Decision should, at the very least, be modified by deleting the words “for Class B companies like Alco” from the referenced sentence on page 23 of the PD, so that it will read as follows:

Although the Commission otherwise imposes general affiliate transaction rules applicable to the water industry in D.10-10-019, we hereby impose an additional clear and simple ban on any Alco transactions in the future with all family-related parties.

However, as demonstrated above, even limiting the imposition of a ban on family transactions only to Alco still will be arbitrary, capricious, and an abuse of Due Process, given the lack of notice or an opportunity to be heard for Alco and other parties with respect to the proposed prohibition.

#### IV.

#### CONCLUSION

For the foregoing reasons, CWA respectfully submits that the Proposed Decision should be modified to eliminate the prohibition on family transactions for Alco

and all other Class B water companies. In Appendix A to these comments, CWA proposes to eliminate a relevant Finding of Fact and Ordering Paragraph.

Respectfully submitted,

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January 18, 2011

## APPENDIX A

### PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

#### FINDINGS OF FACT

...

22. ~~Prohibiting transactions involving Alco and the family ownership group and senior employees will avoid the risk of unfair transactions.~~ Alco has financial transactions between the regulated utility and the family members that control the ownership of Alco's common stock.

...

#### CONCLUSIONS OF LAW

...

#### ORDERING PARAGRAPHS

...

9. ~~Alisal Water Corporation dba Alco Water Service (Alco) must cease all transactions between the utility and any member of the Adcock family.~~

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