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APPENDIX C

Workshop Report

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WORKSHOP REPORT

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor***PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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Staff Report to Commissioner Bohn and Judge Gamson re OIR.09-04-012 and related Workshops

Commissioner Bohn and Judge Gamson:

This report discusses the results and proposed rules arising from workshops hosted by the Water Division and Energy Division to discuss issues associated with OIR.09-04-012 (Rulemaking). This Rulemaking was issued by the Commission on April 16, 2009, and was assigned to Judge Gamson. Its stated purpose was twofold: First, the Commission wants “to develop standard rules and procedures for regulated water and sewer utilities governing affiliate transactions.” (ATRs) Second, the Commission also wants to create standard rules and procedures to govern “the use of regulated assets” by the utility to provide non-tariffed products and services (NTP&S).

The Rulemaking designated this proceeding as quasi-legislative, stating that the Commission anticipates “that the issues in this proceeding may be resolved through a combination of workshops and filed comments, and that evidentiary hearings will not be necessary.” In accordance with the Rulemaking schedule, the first workshop was held November 11 and 12, 2009. This was attended by industry representatives, Commission staff from both the Division of Water and Audits and the Energy Division, the Division of Ratepayer Advocates (DRA), Toward Utility Rate Normalization (TURN), and the California Consumer Federation (CCF). The parties discussed general concepts and problems to be addressed, as specified in the Rulemaking. In response to comments and observations advanced during these two days, the staff drafted a set of proposed rules, drawn largely from language in existing rules for specific water companies and for the energy companies, and issued these proposed draft rules to the parties on December 31, 2009. These draft rules were to serve as a starting point to develop specific rules and language acceptable to the parties.

As it appeared that much progress had been made in the first workshop, Judge Gamson ordered further workshops which were held February 23 and 24, 2009, March 8, 2010, and

March 23, 2010.¹ The goals for all of the workshops, as specified by Judge Gamson, were the following:

- Find areas of initial agreement among the parties.
- Find areas of potential agreement and explore these areas.
- Propose language and rules for these areas of agreement that also satisfy the Commission's goals as stated in the OIR and the comments.
- Identify areas or issues that need to be litigated or handled through alternative dispute resolution (ADR) or mediation mechanisms.

Accordingly, the parties attempted to identify three groups (called "buckets" for convenience during the workshops) to house the various rules and their wordings. The first bucket contained rules and wording with which all parties agreed. The second bucket had items that, while the parties disagreed regarding need, content, or wording, their disagreements could potentially be resolved through further discussion and compromise. The third bucket contained rules or wording for which the disagreement was so complete that any resolution would require intervention by a disinterested third party. The parties identified approximately 150 rules, sub-sections or rules, or differences in wording to categorize in this way during these workshops.

It should be pointed out that the CFC representative is in strong opposition to the structure of existing and proposed affiliate rules, which emphasize constraints of the actions of the utility, as the CFC believes that court rulings have said that the Commission has direct jurisdiction over the actions of the utility's affiliates. The CFC will elaborate on the findings of these court cases in its next comments. The CFC also disagrees with the concept underlying the production of NTP&S; viz. that ratepayer assets can be used in this way (i.e., for provision of both utility service and the NTP&S) without additional degradation or depletion, and that this is a cost to ratepayers not recovered through any particular sharing mechanism adopted by the Commission so far. The CFC stresses that this concept needs further study and *quantitative* analysis to determine whether ratepayer are being reimbursed reasonably for use of their assets by affiliates or for provision of NTP&S by shareholders, and would oppose any action allowing such use of utility assets before appropriate analysis is performed.

Attached find a spreadsheet with the specific rules and wording falling into each category as described above (i.e, Buckets 1, 2, and 3). This spreadsheet is derived from the initial staff

¹ While it was clear from the onset that there was serious disagreement among the parties regarding the need for certain of these rules, not to mention specific wording, and although the parties presented their positions vigorously, these workshops were notable for the respectful exchange of ideas as well as the lack of acrimony expressed in them.

proposed rules mentioned above. The industry's primary spokesman, the California Water Association (CWA), worked with DRA and TURN to finalize the agreements regarding these categorizations, as expressed in these workshops, and produced an initial spreadsheet summarizing its understanding of these agreements. Some of the issues required further consideration by DRA, in consultation with the Division of Water and Audits, and DRA provided its edits to the CWA spreadsheet to the staff.²

In general, all parties agreed during the workshops with the Commission's goals stated in the OIR that these rules should be applied uniformly to all similar utilities, that cross-subsidy of affiliates by the utilities should be prevented, and that anti-competitive behaviors of the utilities, if any, should also be prevented. However, even though industry representatives support these overall goals, they argue that, for the most part, their companies already act in concert with them and no significant correction or constraint by this Commission is warranted.

Significantly, the industry representatives argue that their utilities have little or no market power, and that their affiliates are not able to engage in anticompetitive behavior as they do not currently provide products and services into competitive markets. Thus, any cost or competitive advantage provided them through their affiliation with the utility would have no impact on the markets they serve. Instead of rules specifically designed to prevent transfer of market power and effect separation between utility and affiliate, such as those governing the transfer of employees from utility to affiliate, the companies argue that it is sufficient to ensure that actual costs are allocated between affiliates and their utilities accurately, using methods that measure cost causation reliably. While DRA and TURN agree that some of the staff's proposed separation rules are not needed, cumbersome, unnecessarily burdensome, or simply unenforceable, such as the proposed prohibition against sharing office space and equipment with affiliates, they are not willing to depend on cost allocation methods entirely and insist on retaining some separation rules.

The rules and specific wording that found general agreement by the parties in these workshops are presented as recommendations to the ALJ and Commission. The staff notes that many, if not most, of the "Bucket 1" issues are derived from existing rules and definitions that already exist in current Commission affiliate rules.

There is, however, a continuing subtext expressed by the utility representatives that most of these rules are unnecessary because of their claim that most utilities do not have affiliates

² A cursory look at the spreadsheet shows that most of the proposed deletions and edits, shown in red font, come from CWA. While this may be partially due to the order in which the spreadsheet was constructed (i.e., by CWA) and reviewed (by DRA), it is also true that DRA and TURN were generally in support of the proposed rules drafted by the staff, while CWA and other industry representatives were generally opposed to their implementation.

that provide products or services to unregulated or competitive markets, or that have California operations.

The following chart summarizes the positions of the parties in terms of the aforementioned “bucket” system. Note that the process of building rules and their wording is a protean one, and parties may change their positions as this rulemaking progresses.

A.	B. <u>Bucket 1</u> General Consensus	C. <u>Bucket 2</u> Disagreement with Possible Resolution Through Further Discussion	D. <u>Bucket 3</u> Strong Disagreement Requiring input from Third Party or ADR
E. <u>Affiliate Transactions Rules:</u> I. Definitions M. Operational Rules Q. Financial Health of Utility U. Confidentiality Y. Subtotal	F. J. 16 N. 14 R. 0 V. 1 Z. 31	G. K. 18 O. 30 S. 15 W. 0 AA. 63	H. L. 0 P. 1 T. 6 X. 0 BB. 7
CC. <u>Nontariffed Products and Services Rules</u>	DD. 29	EE. 20	FF. 0
GG. Total for ATR and NTP&S rules	HH. 60	II. 83	JJ. 7

The staff notes that there are only seven Bucket 3 issues, and thus, in the opinion of the participating parties, are irresolvable by the parties themselves; some of these have to do with the staff’s proposed rules designed to protect the financial health of the utilities from problems encountered by their affiliates. These “ringfencing” rules garnered no consensus items, most falling into the Bucket 2 category. The utilities argued during the workshops that this sort of rule has no place among the Affiliate Transactions Rules and belong in either the specific holding company or cost of capital Decisions. Other Bucket 3 issues reflect strong disagreement among the parties regarding rules governing the Commission’s oversight powers, required recordkeeping by the utilities and affiliates, and review of compliance through audits of utility and affiliate actions. Specifically, the seven Bucket 3 proposed rules are:

III.C.3. Wherever the terms "non-public, proprietary information" appear in these ATRs, they must be considered in the context of SEC regulations and other federal and state statutes, rules and regulations.

VII.A. The parent shall provide the utility, or enable the utility to acquire, adequate capital to fulfill all of its service obligations prescribed by the Commission.

VII.D. Ring-Fencing. Within three months of the effective date of the decision adopting this amendment to the Rules, a utility shall obtain a non-consolidation opinion that demonstrates that the ring-fencing around the utility is sufficient to prevent the utility from being pulled into bankruptcy of its parent holding company. The utility shall promptly provide the opinion to the Commission. If the current ring-fencing provisions are insufficient to obtain a non-consolidation opinion, the utility shall promptly undertake the following actions:

1. Notify the Commission of the inability to obtain a non-consolidation opinion;
2. Propose and implement, upon commission approval, such ring-fencing provisions that are sufficient to prevent the utility from being pulled into the bankruptcy of its parent holding company; and then
3. Obtain a non-consolidation opinion.

VIII.A. The officers and employees of the utility and its affiliated companies shall be available to appear and testify in any proceeding before the Commission involving any transaction between the utility and the affiliate in connection with the provision of products or services, as set forth in Rule 1.B. If, in the proper exercise of the Commission staff's duties, the utility cannot supply appropriate personnel to address the staff's reasonable concerns, then the appropriate staff of the relevant utility affiliated companies including, if necessary, its parent company, shall be made available to the Commission staff.

VIII.B. The utility and its affiliated companies shall provide the Commission, its staff, and its agents with access to the relevant books and records of such entities in connection with the exercise by the Commission of its regulatory responsibilities in examining any of the costs sought to be recovered by utility in rate proceedings. The utility shall continue to maintain its books and records in accordance with all Commission rules. The utility's books and records shall be maintained and housed available in California.

VIII.D. Upon the creation of a new affiliate, the utility shall immediately notify the Commission of its creation, as well as posting notice of this event on its web page board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Director of the Commission's Division of Water and Audits and the Division of Ratepayer Advocates. The advice letter shall state the affiliate's purpose or activities, whether the utility claims that Rule I.B makes these ATRs applicable to the new affiliate, and shall include a demonstration to the Commission that there are adequate procedures in place that will assure compliance with these ATRs.

VIII.E. The utility shall have an audit performed biennially by independent auditors. The audits shall cover the last two calendar years which end on December 31, and shall verify that the utility is in compliance with the ATRs set forth herein. The Division of Water and Audits shall post the audit reports on the Commission's web site. The audits shall be at shareholder expense.

Almost one third of the staff-proposed Affiliate Transactions Rules items achieved consensus among the parties, and 59% of the staff-proposed NTP&S items were similarly embraced during these workshops; the strong exceptions by CFC, described above, should be noted, however. Overall, 55% of the items fell into Bucket 2, disagreements needing further discussion and mediation. Often these disagreements focused on a word or two, such as whether a utility's action needed to have a "material" impact on cost or service to be prohibited (Rule III of the proposed ATRs, introductory paragraph); whether the affiliate's product is sold "on the open market" (Rule VI); how to specifically define "fully-allocated cost" (Rule II.E); or whether to refer to ratepayer assets used to provide NTP&S as "excess or unused" or "available assets and resources." (Proposed NTP&S rule I.C.1)

On the other hand, some Bucket 2 issues, such as Rule IV.E of the proposed ATRs which governs the transfer or assignment of a utility employee to an affiliate, are vigorously opposed by the utilities, regardless of wording, but are supported with equal strength by DRA and TURN and may be impossible to resolve by the parties themselves. In this case, these Bucket 2 issues may in fact move to Bucket 3 and will require action by a third party through some form of ADR or mediation methods; ultimately, of course, the Commission will make the final decision regarding all of these proposed rules, or any additional rules or wording that, in their opinion, are required to attain their goals and policies.

After edits to the attached spreadsheet were provided by DRA, a copy was forwarded to TURN, which had no revision to DRA's edited version, while retaining its right to propose revisions or additions in its upcoming comments. The staff has further edited the spreadsheet for clarity and, given the positions expressed by the parties at these workshops, and recognizing the objections expressed by the CFC, above, believes that the spreadsheet represents these positions faithfully.

The spreadsheet follows the following outline:

- The Excel spreadsheet consists of two books, the first for the positions on the staff's proposed ATRs and the second for positions regarding the proposed NTP&S.
- The ATRs book consists of application rules; definitions; operational rules; separation rules; a rule concerning confidentiality; rules governing the utilities' financial health; and oversight and reporting requirements.

- The NTP&S book consists of conditions under which such products or services may be offered; the treatment of revenues; cost allocation; oversight and reporting requirements; and procedures to use to provide a new NTP&S.
- Each has a legend at the beginning that describes the font and color-coding used in that book of the spreadsheet.

ATR Provision	#1	#2	#3	Additional Comments by the Parties
Staff-Proposed Affiliate Transactions Rules for all Commission-Regulated Water and Sewer Utilities	Consensus	Some Consensus - Add'l Agreement Needed	No Agreement - Hearings or ADR Will Be Required	<p>Legend:</p> <p>Column 1 is based on the Staff Proposed Rules of December 31, 2009, all language in black font.</p> <p>black = agreed upon deletion; <i>black</i> = agreed upon additions;</p> <p>red = additional edits suggested by CWA, but not agreed to by the parties at the workshop - they are mostly Bucket 2 items;</p> <p>red underline = proposed deletions by CWA;</p> <p>blue = DRA's comments/responses to CWA suggested edits (in order to differentiate them from CWA's comments.</p>

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ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>1. I. Jurisdiction and Applicability to Utility Affiliates</p>				
<p>Opening Paragraph: These Affiliate Transaction Rules (ATRs) set forth the practices and restrictions which <i>that</i> shall be observed by all water and sewer utilities regulated by the California Public Utilities Commission (Commission) when these utilities have dealings and transactions with their affiliates not regulated by the Commission, including transactions with their parent <i>holding company, if applicable</i>.</p>		X		<p>All edits except for the addition in red (from CWA) were agreed to at the Workshop. The addition is in Bucket 2 until the other Parties agree. DRA agreed to the deletion of "dealings and" subject to a proper definition of "transaction" which we never got. It is possible that the transaction between a utility and affiliate is complete, but there are other dealings that the Commission needs to oversee? DRA not clear why CWA wants to remove this.</p>
<p>A. These ATRs shall apply to California public utility water and sewer corporations or companies subject to regulation by this Commission. The Commission's Division of Water & Audits has the sole and full discretion, subject to the Commission's oversight, in determining the extent to which these ATRs will be applied to Class C and Class D water utilities.</p>		X		<p>The first sentence is Bucket 1. The second sentence was proposed by CWA. DRA does not accept the second sentence; the rules should apply to all utilities; we need further discussions to consider possible exemptions for C & D's utilities; it should not be left solely to staff's discretion.</p>
<p>B. For purposes of a combined water and sewer utility, these ATRs apply to all utility transactions with affiliates engaging in the provision of a product that uses either water</p>	X			

ATR Provision	#1	#2	#3	Additional Comments by the Parties
or sewer services that relate to the use of water or sewer services				
C. These ATRs apply to transactions between a Commission-regulated utility and another affiliated <i>entity</i> , unless specifically modified <i>or exempted</i> by the Commission in addressing a separate application to merge or otherwise conduct joint ventures related to regulated services.	X			
D. Utilities shall comply with all applicable State and Federal statutes, laws and administrative regulations.	X			
E. The Commission shall retain jurisdiction over the rates and services provided by the utilities.	X			DRA tentatively agrees that there it is unnecessary to state this in these rules and removal would help streamline these rules.
F. A utility's parent company shall not assert in any Commission proceeding that the Commission review of the reasonableness of any cost has been or is preempted by a regulator from another state or country.	X			DRA is still considering this language, but tentatively agreed to the Bucket 1 deletion

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>G. <u>Existing Commission rules for each utility and its parent holding company shall continue to apply except to the extent they conflict with these ATRs. In such cases,</u> †These ATRs shall supersede <i>all prior affiliate transactions rules and guidelines, currently applicable to water and sewer utilities</i>, provided that nothing herein shall preclude (1) the Commission from adopting other utility-specific guidelines; or (2) a utility or its parent holding company from adopting other utility-specific guidelines, with advance Commission approval through Decision or Resolution.</p>		X		<p>DRA's notes do not show that we agreed to remove this sentence. We agree that these rules should take precedence over any prior rules. If an existing rule were not covered here, this would mean it would be wiped out?</p>
<p>H. <u>Where these ATRs do not address an item currently addressed in a utility's existing rules, imposed by this Commission, which govern that utility's transactions with its affiliate(s), the existing utility-specific rules shall continue to apply for that item only.</u></p>		X		<p>Consensus not yet achieved on whether to delete this provision; DRA notes this is the same issue as in first sentence of G, above. DRA does not want to remove.</p>
<p>I. These ATRs shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.</p>	X			

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<u>J. If a utility has no affiliate that falls under the definition of Rule I.B, the utility may request exemption from these ATRs by advice letter. The utility shall file the advice letter within 30 days after the effective date of the Decision adopting these ATRs and shall serve it on all parties to this proceeding. In the advice letter filing the utility shall attest:</u>		X		CWA requested that this entire section be deleted because it was unnecessary. If a utility has no affiliate, then the rules don't apply (not necessary to file an AL); DRA initially agreed to remove this section, provided that Section VIII B remains. DRA considering.
<u>1. that no affiliate of the utility provides services as defined by Rule I.B; and</u>		X		Ditto; DRA: there was no agreement to take this out at the workshop.
<u>2. if an affiliate is subsequently created which provides services as defined by Rule I.B, then the utility shall:</u>		x		Ditto; DRA says keep.
<u>a. notify the Commission's Executive Director and the Director of the Division of Water and Audits in accordance with section VIII D. (?) [(ck w/Mehboob) by letter, served on all parties to this proceeding at least 30 days before the affiliate begins to provide services as defined by Rule I.B, that such an affiliate has been created; and</u>		X		Ditto; DRA agrees in part. (We did not agree to delete this provision at the workshop.) If DRA's edit acceptable we could get rid the rest of subpart a and subpart b.
<u>b. certify in this notice that the utility and affiliate will comply with these ATRs in their entirety.</u>		X		Ditto

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p><u>K. A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application with this Commission, served on all parties to this proceeding, requesting a limited exemption from these ATRs or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates, if such out-of-state transactions do not impact the utility's operations and the operating costs inside California. The applicant has the burden of proof.</u></p>		X		<p>CWA does not believe this provision is necessary; the other parties will consider deleting. DRA recommends keeping, as these out of state transactions could impact California ratepayers. [DRA recommended language in blue in its edits on staff rules.]</p>
<p>L. These ATRs <u>should be interpreted broadly</u> and <u>are intended</u> to effectuate our stated objectives of fostering <u>competition and protecting consumer and ratepayer interests</u> the public interest and, as an element thereof, <u>preventing anti-competitive conduct.</u></p>		X		<p>The Parties agreed that the first sentence of provision L is Bucket #2; DRA particularly objects to the deletion of the phrase "protecting consumer and ratepayer interests;" this is CWA's proposed deletion; the phrase "fostering competition" was discussed at the workshop.</p>
<p>L. (continued) If any provision of these ATRs, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the ATRs, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.</p>	X			

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>2. II. Definitions - For purposes of these ATRs, the following definitions shall apply:</p>				
<p>A. "Parent company" or "parent" refers to <i>the</i> holding company or corporation that owns, or has a controlling interest in, the regulated utility.</p>	X			
<p>B. "Utility" (unless specified as a water utility) refers to all water utilities and sewer utilities regulated by the Commission.</p>	X			
<p>C. "Water utility" refers to all water utilities regulated by the Commission. "Sewer utility" refers to all sewer utilities regulated by the Commission.</p>	X			
<p>D. "Affiliate" means any person, corporation, utility, partnership, or other entity 5 percent or more of whose outstanding voting securities are more than [10 or50] percent owned, controlled, or held with power to vote, directly or indirectly, either by a utility, or any of its subsidiaries, or by that utility's its controlling corporation, and/or by any of its subsidiary</p>		X		<p>CWA has proposed the edits in red to tighten the definition discussed at the Workshop. Also, with respect to the numerical control, CWA has proposed "more than 50%." The PURPA standard was 5%; the SEC standard is 10%. DRA is amenable to a number between 5 and 50 percent, but is leaning toward 10%. DRA OK with language edits; needs to discuss the percentage no.</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>of either that exerts substantial operational control as well as any company in which the utility, its controlling corporation, or any of the utility’s affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these ATRs, “substantial operational control” includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of more than [10 or 50] percent or more by the utility in an entity’s company creates a rebuttable presumption of substantial operational control.</p>				
<p>For purposes of these ATRs, is definition, “affiliate” shall include the utility’s parent or holding company, or any company which <i>that</i> directly or indirectly owns, controls, or holds the power to vote more than [10 or 50] percent of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the</p>		X		<p>DRA needs to agree on percentage no.</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>provision of products or services as set out in Rule I.A.</p>				
<p>However, in its compliance plan filed as required by Rule VIII.C, the utility shall demonstrate both the specific mechanism and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these ATRs as a conduit to circumvent any of these ATRs. Examples include but are not limited to specific mechanisms and procedures to assure the Commission that the utility will not use the holding company or another utility affiliate not covered by these ATRs as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these ATRs in contravention of these ATRs, (2) provide services to its affiliates covered by these ATRs in contravention of these ATRs or (3) to transfer employees to its affiliates covered by these ATRs in contravention of these ATRs. In the compliance plan, a corporate</p>	<p>X</p>			<p>CWA proposed deleting this section from the definition because the points contained therein are covered in later sections. DRA agreed that this language wasn't necessary to be part of the definition - but may be needed elsewhere in the rules.</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>officer from the utility and holding company shall verify the adequacy of these specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these ATRs as a conduit to circumvent any of these ATRs.</p>				
<p>Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate for the purpose of these ATRs. However, these ATRs apply to all interactions any <i>such</i> regulated subsidiary has with other affiliated <i>unregulated</i> entities covered by these ATRs.</p>	X			DRA - ck with Mehboob?

ATR Provision	#1	#2	#3	Additional Comments by the Parties
E. "Costs" mean the direct cost of a good or service plus all applicable indirect charges and overheads. ¹		X		There is an issue as to whether the term "fully allocated" and the accompanying footnote should be incorporated into this definition. <i>DRA: The real issue is what are "applicable" charges are, which renders this definition meaningless.</i>
<u>[1] We could also use some version of: "direct costs plus all fully allocated capital and expense amounts including all management, administration, overhead, and indirect allocations" as our definition of "cost."</u>		X		Consensus was not reached on whether this footnote should be either incorporated into the definition or deleted altogether.
F. "Transaction" refers to all transactions between utility, its parent, and/or its affiliated companies.	X			It was agreed to delete this definition so as to avoid having the word being defined as part of the definition. <i>DRA: agrees, this is not a helpful def. but may be a better one out there.</i>
G. "Property" includes refers to any right or asset, tangible or intangible, to which an entity has legal or equitable title.	X			
H. "Real property" includes refers to any interest in real estate including leases, easements, and water rights.	X			
I. "Customer" means any person, firm, association, corporation or government agency supplied or entitled to be supplied with water or wastewater service by a utility for compensation company, or corporation as defined in §§204, 205 and 206 of the PU	X			Comports with GO 103-A definition

ATR Provision	#1	#2	#3	Additional Comments by the Parties
Code, which is the ultimate consumer of a utility's goods and services.				
J. "Customer Information" means non-public information <u>and data</u> specific to a <u>utility customer which the utility acquired or developed in the course of its provision of utility services</u> particular customer of the utility.		X		There was not agreement on this definition. CWA proposes these changes.
K. "Indirect Costs" mean those overhead costs that are shared by the utility and its affiliates and are so general in nature as to require prorations based on a combination of several pertinent factors. The four-factor test is one method of allocating indirect costs.		X		CWA suggested this as a new definition - at the Workshop, CWA thought the other parties agreed, but DRA's notes indicate that no definition was agreed upon. <u>DRA will check but I don't think we like the last sentence. This was not discussed at the workshop so other parties have not seen this.</u>
M. "Cross Subsidy"		X		<u>DRA thinks cross subsidy also needs defining. This was not resolved at the workshop.</u>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>3. III. Utility Operations and Service Quality</p>				
<p>The primary responsibility of public utilities regulated by this Commission is to provide Provision of “adequate, efficient, just, and reasonable service” to its ratepayers as is “necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.” This is the primary responsibility of public utilities regulated by this Commission. (§§451 and 2701 of the P. U. Code) [It is Commission policy to encourage the development of new markets and improved products and services through the use of utilities’ affiliates for the benefits of California residents, consistent with continued provision of utility service, as specified above.] Such Transactions between a utility and its affiliates shall not result in any adverse changes in utility services or be contrary to the public interest.² policies with respect to service to customers, employees, operations, financing, accounting, capitalization, rates, depreciation, maintenance, or other matters affecting the public interest or utility</p>		X		<p>As a result of the April 6 meeting between DRA and CWA, this section has been edited to tighten the language, ensure that it is explicit that transactions are between a utility and its affiliates, and to accommodate DRA's preference for retaining the sentence about Commission policy encouraging the development of new markets and improved services through the affiliate (not the utility). CWA's preference was to delete this sentence because it was more applicable to the energy and telecom utilities, and in the water industry, the preponderance of employees at the utility (vs. the affiliates) should not preclude them from trying to develop innovative services or technologies, as long as the utility customer would be a primary beneficiary. The bracketed, highlighted sentence is Bucket 2; all other edits are Bucket 1. DRA: this is bucket 2.</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
operations. The parent shall ensure that there will be no adverse impact on customer service as a result of affiliate transactions.				

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>It is Commission policy to encourage the efficient use of utility capital and improved products and services for the benefit of California residents, consistent with continued provision of utility service as specified above. Transactions between a utility and its affiliates shall ensure that the utility's customers prefer or at least remain indifferent from a service and rate standpoint and shall not result in any degradation of the reliability, efficiency, adequacy, or cost of utility service. Transactions covered by these rules shall not impair the utility's ability to fulfill its obligation to serve or to operate in a prudent and efficient manner.</p>				<p>DRA prefers the paragraph developed at the workshop (though not perfect) as a starting point.</p>
<p>2 Such transactions shall not result in any adverse changes in utility policies with respect to customers, customer service, employees, operations, financing, accounting, capitalizations, rates, depreciation, maintenance, or other matters affecting the public interest or utility operations.</p>		X		<p>DRA and TURN would prefer to keep this. (DRA has re-inserted language here in blue to comport with Staff Rules.)</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>The parent located in California will maintain its business headquarters in the state together with fully operational field offices as appropriate to maintain the quality of utility service. The utility shall not close any of its local offices as a result of any association with an out of state parent company. However, the utility is not precluded from making local operational changes in connection with integrating systems acquired in other transactions.</p>	X			
<p><u>A. A utility shall not allow transactions with affiliates to diminish water utility staffing or resources that would result in degradation of the reliability, efficiency, adequacy, or cost of utility service. Utility management attention shall not be diverted to such transactions in a way that would result in such degradation. The utility's parent and affiliates shall not acquire utility assets at any price if such transfer of assets would impair the utility's ability to fulfill its obligation to serve or to operate in a prudent and efficient manner.</u></p>	X			<p>There was no agreement to delete this.</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>A. It is Commission policy to encourage the efficient use of capital and improve products and services for the benefit of California residents, consistent with the continued provision of utility service, as specified above. Transactions between a utility and its affiliates shall be on terms that ensure the utility's customers remain indifferent from a service and rate standpoint, and shall not result in any material degradation of the reliability, efficiency, adequacy or cost of utility service. Transactions covered by these rules shall not impair the utility's ability to fulfill its obligation to serve or to operate in a prudent and efficient manner.</p>		X		<p>DRA: Keep paragraph. Revised and discussed at the workshop for the opening paragraph. (Except, how did the word "material" get in here?) The rest of this provision is consistent with Staff Draft Rules.</p>
<p>B. Except as otherwise provided by these ATRs, a utility shall not <i>assist an affiliate operating in a competitive market in California by:</i></p>		X		<p>DRA believes this is new proposed language/not discussed at the workshop.</p>
<p><u>1. providing leads to its affiliates;</u></p>		X		<p>CWA recommends deleting this item; DRA and TURN prefer to leave it in. We think "leads" is sufficiently clear.</p>
<p>2. soliciting business on behalf of its affiliates;</p>	X			
<p>3. acquiring non-public and proprietary information on behalf of or to provide to its competitive/unregulated affiliates;</p>	X			

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<u>4. sharing market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;</u>		X		CWA considers this provision to be impractical for some of the water utilities and requests that it be deleted; the other parties are considering the request
<u>5. requesting authorization from its customers to pass on customer information exclusively to its affiliates;</u>		X		CWA considers this provision to be impractical for some of the water utilities and requests that it be deleted; the other parties are considering the request
6. giving the appearance that the utility speaks on behalf of its affiliates, or that the affiliate speaks on behalf of the utility; or	X			
7. representing that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers.	X			

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>C. Except as provided for elsewhere in these ATRs, a utility shall provide access to utility information, services, and unused capacity or supply on the same terms and conditions for all similarly situated market participants. If a utility provides supply, capacity, services or non-public or proprietary information³ to its affiliate(s) for use in competitive markets, it shall contemporaneously make the offering available to all similarly situated market participants, which include all competitors serving the same market as the utility's affiliates. These provisions are not applicable to transactions or potential transactions that may be subject to separate Commission action.</p>		X		<p>At the Workshop, all of the edits in black were agreed to and this provision was deemed Bucket 1; however, the last sentence was not discussed and CWA subsequently moved it to Bucket 2. DRA does not agree to the last sentence.</p>
<p>³ Wherever the terms "non-public, proprietary information" appear in these ATRs, they must be considered in the context of SEC regulations and other federal and state statutes, rules and regulations.</p>			X	<p>This footnote was not discussed in the Workshop, but came up subsequently in consultation with the publicly traded water companies. DRA: this adds a new issue not discussed at the workshop.</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>D. A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly non-discriminatory basis, and only with prior affirmative customer written consent. consistent with state law and the utility's policy on privacy.</p>		X		<p>CWA believes this provision is now covered by Section III C. and is no longer necessary here</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>4. IV. Separation</p>				<p>It is CWA's understanding that shared corporate services are exempt from these Separation Rules and must be excluded because (1) these services are essential to utility operations and are part and parcel of the obligation to serve; and (2) these services are cost-based and, therefore, are not comparable to the provision of services in competitive markets in California. <i>DRA is not clear what CWA is arguing here.</i></p>
<p>A. The utility shall maintain its accounting records in accordance with <u>Generally Accepted Accounting Principles</u>, the Commission's Uniform System of Accounts, Commission decisions and resolutions, and the Public Utilities Code.</p>		X		<p><i>On further reflection DRA cannot agree to this change.</i></p>
<p>B. The utility, and its parent and other affiliated companies shall allocate common indirect costs between amongst them in a manner <i>consistent with cost causation principles, so that neither that</i> the ratepayers of the utility, <i>nor the utility itself</i>, shall subsidize not any parent or other affiliate of the utility <u>not regulated by the Commission.</u></p>		X		<p>CWA proposes the addition in red, which is Bucket 2. All other edits are Bucket 1. <i>DRA does not agree to the new addition. DRA does not agree to replace common with indirect.</i></p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>C. A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Rule V (Shared Corporate Services). This provision does not preclude a utility from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions.</p>	<p>X</p>			<p>DRA agreed to this at the workshop given that the restriction may be unrealistic for some utilities; provided the proper cost allocation for utility assets and expenses are in place under other ATRs.</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>D.—Except as permitted in Rule V, a utility and its affiliates shall not jointly employ the same employees. This rule prohibiting joint employees also applies to Board Directors and corporate officers, except for the following circumstances: In instances when this rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both) to the extent consistent with Rule V. Where the utility is multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California. In the case of shared directors and officers, a corporate officer from the utility and holding company shall describe and verify in the utility’s compliance plan required by Rule VIII.C the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to</p>	<p>X</p>			

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>circumvent any of these ATRs. In its compliance plan, the utility shall list all shared directors and officers between the utility and its affiliates.</p>				

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>D. (cont.) No later than 30 days following a change to this list, the utility shall notify the Commission's Director of the Division of Water and Audits and the parties to this proceeding of any change to this list.</p>	X			
<p>C. A utility and its employees are permitted to jointly employ the same employees, subject to the provisions in these rules re cost allocation, sharing of non-public and proprietary utility information, and ongoing Commission oversight. The employment of individuals by the utility and its affiliates shall not be used as a means to circumvent these rules.</p>				<p>This is the original language from Staff Rules.</p>
<p>C. A utility and its affiliates are permitted to jointly employ the same officers and other employees, subject to: the existing rules and practices on cost allocation; the provisions in these rules regarding the sharing of non-public and proprietary information; and ongoing Commission oversight. The joint employment of individuals by the utility and its affiliates shall not be used as a means to circumvent these rules.</p>		X		<p>DRA does not agree to CWA's proposed language for C, above. These changes were not discussed or agreed to at the workshop.</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<i>D. The utility shall list all shared directors and officers between the utility and its affiliates in its annual report to the Commission. Not later than 30 days following a change to this list, the utility shall notify the Director of the Division of Water & Audits and the Director of the Division of Ratepayer Advocates of the change(s).</i>	X			
E. Employees transferring from the utility to an affiliate not regulated by the Commission are expressly prohibited from using non-public, proprietary utility information gained from the utility in a discriminatory or exclusive fashion to the benefit of the affiliate to the detriment of unaffiliated competitors.		X		This provision was moved from the enumerated list below to become a new subsection E. CWA proposes the addition in red. This addition is Bucket 2. <i>DRA does not agree (nor did other parties) to the first addition; the change to the second half of the sentence may be ok, but again, it was not discussed at the workshop.</i>
1. — All employee movement between a utility and its affiliates, as defined in Rule I.B, shall be consistent with the following provisions:	X			
2. — A utility shall track and report to the Commission all employee movement between the utility and affiliates, consistent with Rule VIII.F.	X			

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>3. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event that such employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years.</p> <p><u>Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of other unaffiliated service providers.</u></p>			<p>X</p>	<p>DRA agrees to the deletion of the first part at workshops; we did not agree to deletion of the second part (we have changed it here as CWA's proposed deletion (red underline.)</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p><u>4. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that the transfer is made during the initial implementation period of these ATRs, or pursuant to a P. U. Code §851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all</u></p>			X	<p>DRA prefers to keep this item in the ATRs and to have a 15 percent transfer fee as the minimum amount. CWA disagrees that this provision should remain in the ATRs because the number of utility employees that could or would transfer to a competitive market in California is de minimus.</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p><u>covered employees at a later time.</u></p>				
<p><u>5. Utility employees not involved in marketing may be used on a temporary or intermittent basis (less than 30% of an employee's chargeable time in any calendar year) by affiliates only if:</u></p>		X		<p>CWA believes that this provision (including the enumerated items below) should be deleted because all of these issues are already adjudicated in the individual company GRCs. Further, shared services must be an exception to all of these conditions. DRA said at the</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
				Workshop that it will consider agreeing to have this provision deleted.
<u>a) All such use is documented, priced and reported in accordance with these ATRs and existing Commission reporting requirements, except that when the affiliate obtains the services of a non-executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 10% of direct labor cost, or fair market values. When the affiliate obtains the services of an executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 15% of direct labor cost, or fair market value.</u>		X		
<u>b) Utility needs for utility employees always take priority over any affiliate requests;</u>		X		
<u>c) No more than 5% of full time equivalent utility employees may be on loan at a given time;</u>		X		
<u>d) Utility employees agree, in writing, that they will abide by these ATRs; and</u>		X		

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<u>e) Affiliate use of utility employees must be conducted pursuant to a written agreement approved by the appropriate utility and affiliate officers.</u>		X		

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>5. V. Shared Corporate Support</p>				
<p>As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems, and personnel as further specified below. The utility shall Any shared support shall be priced, reported and conducted (performed?) in accordance with these ATRs, as well as other applicable Commission pricing and reporting requirements.</p>		X		<p>CWA does not believe this paragraph is necessary for this section; rather, it should begin with the specific permissible shared services. <u>This is language from Staff rules; DRA has underlined certain words that were discussed at the workshop as being controversial but were not resolved.</u></p>
<p>As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidy of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility</p>		X		<p>DRA flagged words in this section, as well, for resolution. CWA questions the need for this section, also, and requested that the last sentence, at a minimum, be deleted. CWA also noted at the Workshop that shared services between non-competing affiliates in the water industry necessarily involves the transfer of confidential information; hence, parts of the first sentence are untenable for some of the companies.</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these ATRs.				

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management. However, if a utility and its parent holding company share any key officers after 180 days following the effective date of the decision adopting these ATRs, then the following services shall no longer be shared: regulatory affairs, lobbying, and legal services except those necessary to the provision of shared services still authorized. For purposes of this rule, key officers are the Chair of the entire corporate enterprise, the President at the utility and its holding company parent, the chief executive officer at each, the chief financial officer at each, and the chief regulatory officer at each, or in each case, any and all officers whose responsibilities are the functional equivalent of the foregoing.</p>	X			<p>DRA: DRA agrees however, there must be an adequate cost sharing mechanism and pricing of these costs to affiliates.</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, water or sewage for resale, water storage capacity, purchasing of water distribution, systems, and marketing. However, if a utility and its parent holding company share any key officers (as defined in the preceding paragraph) after 180 days following the effective date of the decision adopting these ATRs, then the following services shall no longer be shared: regulatory affairs, lobbying and all legal services except those necessary to the provision of shared services still authorized.</p>		X		<p>CWA requested that this entire section be deleted because there are several services here that should be shared (e.g., employee recruiting and engineering). Also, CWA noted that while it is appropriate to provide examples of services that can be provided as shared services, it is inappropriate to define what services can be provided; there is no justification for eliminating these services in these rules because such issues are and should be determined in the companies' GRCs. CWA also noted that, at a minimum, this section should only be limited to "unregulated affiliates competing in California water markets." DRA: DRA agrees however, there must be an adequate cost sharing mechanism and pricing of these costs to affiliates. (not sure if everyone agreed to this at the workshop.</p>
<p>6. VI. Pricing of Goods and Services Between the Utility and Its Affiliate(s)</p>	X			<p>New language agreed to at the Workshop</p>
<p><u>To the extent that these ATRs do not prohibit the All transfers of goods and services between a utility and its affiliates, and except as provided by Rule III.C, shall be subject to the following pricing</u></p>	X			

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<u>provisions:</u>				
<p>1. Transfers from the utility to its affiliates of goods and services produced, purchased or developed <i>for sale on the open market</i> by the utility will be priced at fair market value.</p>		X		<p>CWA believes that this provision is problematic because it is unclear as to which services this would apply, and requirements of this nature could harm customers of regulated utilities. CWA also noted that there are no instances of goods and services produced, purchased or developed for sale on the open market by the utility. DRA believes the rules must contemplate all future possibilities as well as the present situation.</p>
<p>2. Transfers from an affiliate to the utility of goods and services produced, purchased or developed for sale on the open market by the affiliate shall be priced at no more than fair market value.</p>	X			
<p>3. For goods or services for which the price is regulated by a state or federal agency, that price shall be deemed to be the fair market value, except that in cases where more than one state commission regulates the price of goods or services, this Commission’s pricing provisions govern.</p>	X			

ATR Provision	#1	#2	#3	Additional Comments by the Parties
4. Goods and services produced, purchased or developed for sale on the open market by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these ATRs or applicable law.		X		CWA believes that this provision is problematic because it is unclear as to which services this would apply, and requirements of this nature could harm customers of regulated utilities. CWA noted that there are no instances of goods and services produced, purchased or developed for sale on the open market by the utility. This provision could harm customers and prevent regional water supply solutions.
5. Transfers from the utility to its affiliates of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded allocated cost plus 5% of direct labor cost .		X		CWA requests the changes in red - fully allocated costs covers both "loaded" and direct labor costs. DRA can consider CWA's change here, but the problem is, we don't have an agreed upon definition of "fully allocated costs."
6. Transfers from an affiliate to the utility of goods and services not produced, purchased or developed for sale <u>on the open market</u> by the affiliate will be priced at the lower of fully loaded allocated cost plus 5% of direct labor cost .		X		CWA requests the changes in red - fully allocated costs covers both "loaded" and direct labor costs.

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p><u>The utility shall develop a verifiable and independent appraisal of fair market value for any goods or services that are transferred to any affiliated company under this section. The Commission’s staff shall have access to all supporting documents used in the development of the fair market value. If sufficient support for the appraisal of fair market value does not exist to the reasonable satisfaction of the Commission’s staff, the utility shall hire an independent consultant acceptable to the Commission staff to reappraise the fair market value for these transactions.</u></p>			X	<p>CWA has significant problems with this paragraph: It considers the language far too broad, an undue administrative burden, and of little relevance to the water utility industry. Further, the small level of financial transactions does not warrant an independent consultant and would be extremely costly. The concept of goods and services is also too broad - at a minimum, it should be tangible assets, not any goods and services. Finally, the concept of fair market value is not relevant since the Commission approves the tariffs under which any goods or services might be transferred. <u>DRA submits that this matrix is not the appropriate place for CWA to make lengthy arguments of its position; for the purposes of getting this matrix out, DRA has not deleted CWA's words, but will respond to CWA's argument in comments.</u></p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
7. VII. Financial Health of the Utility				CWA expressed its view at the Workshop that these provisions have no relevance to affiliate transactions, even though they may be relevant to holding company decisions. CWA believes this section, as drafted, is inappropriate for affiliate transactions rules.
<u>A. The parent shall provide the utility, or enable the utility to acquire, adequate capital to fulfill all of its service obligations prescribed by the Commission.</u>			X	CWA cannot agree to this provision - it notes that the utility has the obligation to ensure adequate capital, and that the utility has no authority to obligate its parent to do so. DRA: the parent must be able to assure the viability of the utility.
<u>B. If the parent is publicly traded, the utility shall notify the Director of the Commission's Division of Water and Audits and the Division of Ratepayer Advocates in writing within 30 days of any downgrading to the bonds of the parent/affiliate/utility, and shall include with such notice the complete report of the issuing bond rating agency.</u>			X	The parties did not have specific problems with the wording of this paragraph. CWA, however, recommends moving this provision to Section VIII - Regulatory Oversight. DRA - we thought this language was not at issue (except the part added in blue) so we left it in Bucket 1.
<u>C. A utility shall maintain a balanced capital structure consistent with that determined to be reasonable by the Commission in its most recent decision on the utility's capital structure. The utility's equity shall be retained such that the Commission's adopted capital structure</u>			X	CWA recommends deleting this provision because (1) it is covered in the comprehensive cost-of-capital proceeding; (2) a utility's capital structure will often vary by more than 1% every time there is a new debt financing or a stock offering; and (3) it is completely unworkable. DRA's notes do not show any agreement to delete this position.

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p><u>shall be maintained on the average over the period the capital structure is in effect for ratemaking purposes. A utility shall file an application for a waiver of this rule, on a case by case basis and in a timely manner, if an adverse financial event at the utility reduces the utility's equity ratio by 1% or more. In order to assure that regulatory staff has adequate time to review and assess the application and to permit the consideration of all relevant facts, the utility shall not be considered in violation of this rule during the period the waiver is pending resolution. Nothing in this provision creates a presumption of either reasonableness or unreasonableness of the utility's actions which may have caused the adverse financial event.</u></p>				

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>D. Ring-Fencing. Within three months of the effective date of the decision adopting this amendment to the Rules, a utility shall obtain a non-consolidation opinion that demonstrates that the ring-fencing around the utility is sufficient to prevent the utility from being pulled into bankruptcy of its parent holding company. The utility shall promptly provide the opinion to the Commission. If the current ring-fencing provisions are insufficient to obtain a non-consolidation opinion, the utility shall promptly undertake the following actions:</p> <ol style="list-style-type: none"> 1. notify the Commission of the inability to obtain a non-consolidation opinion; 2. propose and implement, upon commission approval, such ring-fencing provisions that are sufficient to prevent the utility from being pulled into the bankruptcy of its parent holding company; and then 3. obtain a non-consolidation opinion. 			<p>X</p>	<p>DRA proposed subparts D and E in its draft rules; DRA believes this is a Bucket 2 or 3 issue. (They are additions to the Staff Rules.)</p>
<p>E. Changes to Ring-Fencing Provisions. A utility shall notify the Commission of any changes made to its ring-fencing provisions within 30 days.</p>				

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>8. VIII. Regulatory Oversight</p>				
<p>A. The officers and employees of the utility and its affiliated companies shall be available to appear and testify in any proceeding before the Commission involving any transaction between the utility and the affiliate in connection with the provision of products or services, as set forth in Rule 1.B. If, in the proper exercise of the Commission staff’s duties, the utility cannot supply appropriate personnel to address the staff’s reasonable concerns, then the appropriate staff of the relevant utility affiliated companies including, if necessary, its parent company, shall be made available to the Commission staff.</p>			X	CWA did not agree to this provision, even with the proposed edit in the first sentence. The parties acknowledged that this provision would either be Bucket 2 or 3
<p>B. The utility and its affiliated companies shall provide the Commission, its staff, and its agents with access to the relevant books and records of such entities in connection with the exercise by the Commission of its regulatory responsibilities in examining any of the costs sought to be recovered by utility in rate proceedings. The utility shall continue to maintain its books and records in</p>			X	CWA noted that Sec. 314 (b) of the PU Code does not permit this provision (applies to electric, gas and telephone utility affiliates, not water). DRA disagrees; section 314(b) is silent on whether the section applies to water utilities, that is why clarification is needed in these rules. DRA agreed that it may not be necessary to require all docs be kept in California offices (given state of electronic recordkeeping and since some utilities have offices out of state.)

ATR Provision	#1	#2	#3	Additional Comments by the Parties
accordance with all Commission rules. The utility's books and records shall be maintained and housed available in California.				
<p><u>C. No later than September 30, 2010, each utility shall file a compliance plan by advice letter with the Director of the Commission's Division of Water and Audits and the Division of Ratepayer Advocates. The compliance plan shall include:</u></p>		X		<p>CWA objected to the need for a formal compliance plan because the small degree of affiliate transactions that now exists with the water utilities does not warrant such a plan. CWA's recommendation is a statement of compliance that would be included each year in the companies' annual reports to the Commission. It was agreed that the parties would rewrite Sections C, D and E and submit their revisions with their April transmittal e-mails to Jack Fulcher. DRA did not agree to waive compliance plan requirements, but agreed to consider ways to streamline required filings and possibly merge the compliance certification with the annual reporting requirements. More discussion needed to resolve.</p>
<p>1. a list of all affiliates of the utility, as defined in Rule II.D, and for each affiliate specify its purposes or activities, and whether the utility claims that Rule I.B makes these ATRs applicable to the affiliate;</p>		X		<p>CWA agreed this should be included in the Statement of Compliance, but that it needs to be limited to affiliates that have transactions with regulated utilities and other appropriate limitations (i.e., in State of California).</p>

ATR Provision	#1	#2	#3	Additional Comments by the Parties
2. a description demonstration of the procedures in place to assure compliance with these ATRs.		X		To be rewritten by the parties, as appropriate. CWA noted that the water companies would include the listing of transactions from the previous year in the Statement of Compliance.
3. <u>The utility's compliance plan shall be in effect between the filing and a Commission's determination of the advice letter. A utility shall file a compliance plan by advice letter biennially thereafter, or whenever the utility has a new affiliate covered under Rule I.B or an existing affiliate's circumstances changes so that it is now covered under Rule I.B, or when there is any other significant change that would make the findings of the prior compliance plan now invalid.</u>		X		To be deleted or rewritten by the parties, as appropriate. DRA: There was no agreement to delete this provision at the workshop.
D. <u>Upon the creation of a new affiliate, the utility shall immediately notify the Commission of its creation, as well as posting notice of this event on its web page board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Director of the Commission's Division of Water and Audits and the Division of Ratepayer Advocates. The advice letter shall state the affiliate's</u>			X ³	This provision, CWA believes, should only apply to an affiliate that has transactions with the utility. There can be hundreds of parent company subsidiaries who are not regulated. It was agreed that the section was to be rewritten by the parties, as appropriate. DRA wants to be notified of new affiliates. There may be some duplication of reporting requirements in these rules that could be simplified; the parties did not have time to resolve this issue at the workshops.

³ X (unless an acceptable outcome can be negotiated with the other parties)

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p><u>purpose or activities, whether the utility claims that Rule I.B makes these ATRs applicable to the new affiliate, and shall include a demonstration to the Commission that there are adequate procedures in place that will assure compliance with these ATRs.</u></p>				
<p><u>E. The utility shall have an audit performed biennially by independent auditors. The audits shall cover the last two calendar years which end on December 31, and shall verify that the utility is in compliance with the ATRs set forth herein. The Water Division shall post the audit reports on the Commission’s web site. The audits shall be at shareholder expense.</u></p>			X ⁴	<p>To be deleted or rewritten by the parties, as appropriate. CWA noted that this audit was unnecessary because it was covered in the water companies' general rate cases. DRA to discuss with Mehboob Aslam.</p>

⁴ (unless an acceptable outcome can be negotiated with the other parties)

ATR Provision	#1	#2	#3	Additional Comments by the Parties
<p>F. Each year, by March 31, the utility shall file a report with the Director of the Division of Water and Audits and the Director of the Division of Ratepayer Advocates that includes a summary of all non-shared services transactions between a utility and its affiliated companies and parent company for the previous calendar year. The utility shall maintain such information on a monthly basis and make such information available to the Commission's staff upon request. The summary shall include a description of each transaction and an accounting of all costs associated with each transaction although each transaction need not be separately identified where multiple transactions occur in the same account (although supporting documentation for each individual transaction shall be made available to the Commission staff upon request). These transactions shall include the following:</p>				<p>The indicated edits were discussed at the Workshop. DRA was to check on the edits internally and let the parties know whether it was in agreement. This extended to the enumerated items below. DRA: Edits in blue reflect DRA's recollection of edits agreed to at the workshop and/or the original language in Staff Rules that we did not agree to change.</p>
<p>1) services provided by the utility to the parent or other affiliated companies;</p>		X		<p>DRA does not agree to delete "parent" from items F.1 through 7.</p>
<p>2) services provided by the parent or affiliated companies to the utility;</p>		X		

ATR Provision	#1	#2	#3	Additional Comments by the Parties
3) assets transferred from the utility to the parent or affiliated companies;		X		
4) assets transferred from the parent or affiliated companies to the utility;		X		
5) employees transferred from the utility to the parent or affiliated companies;		X		
6) employees transferred from the parent or affiliated companies to the utility; and		X		
7) the financing arrangements and transactions between the utility and the parent or affiliated companies.		X		
8) services provided by and/or assets transferred from the parent holding company to affiliate company which may have germane utility regulations impacts		X		DRA: Language from DRA's proposed draft; not discussed at the workshop. DRA's concern is that transactions between an affiliate and a parent/affiliate may result in costs being loaded onto the parent/affiliate that would get allocated to the utility resulting in a cross subsidy.
9) services provided by and/or assets transferred from affiliated company to the parent holding company which may have germane utility regulation impacts.				

ATR Provision	#1	#2	#3	Additional Comments by the Parties
9. IX. Confidentiality				
Any records or other information of a confidential nature furnished to the Commission pursuant to these ATRs that are individually marked Confidential are not to be treated as public records and shall be treated in accordance with P. U. Code §583 and the Commission’s General Order 66-C, or their successors.	X			DRA notes that this section was not really discussed at the workshop, and the Commission's policy on confidential information is evolving toward placing the burden on the proponent of confidentiality to demonstrate why the data should be non-public.

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
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10. NTP&S Provision	Bucket #1	Bucket #2	Bucket #3	Additional Comments by the Parties
Staff-Proposed NTP&S Rules for all Commission-Regulated Water and Sewer Utilities	Consensus	Some Consensus - Additional Agreement Needed	No Agreement - Hearings or ADR Will Be Required	<p>Legend: Column 1 is based on the Staff Proposed Rules of December 31, 2009, all language in black font. Black = agreed upon deletion; black = agreed upon additions; red = additional edits suggested by CWA, but not agreed to by the parties at the workshop - they are mostly Bucket 2 items; red underline = proposed deletions by CWA; blue = DRA's edits and comments/responses to CWA (in order to differentiate them from CWA's comments.</p>

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
<p><u>These rules govern the provision of nontariffed products and services (NTP&S) to customers by the utilities. It is Commission policy that, except as provided for in these rules, new products and services shall be offered through affiliates. However, it is also Commission policy to encourage (DRA: is allow a better word?) the use of unused or excess capacity to increase the efficient use of utility capital resources by the utilities, provided that service to ratepayers is not harmed, consistent with the requirements of P.U. Code §§451 and 2701. Such increased efficiency, given the above caveats, should will be a benefit to the utility's customers. California economy. These rules govern the use of available utility assets and resources to provide nontariffed products and services ("NTP&S"). It is Commission policy to encourage the use of available utility assets and resources for NTP&S in order to increase the beneficial and efficient use of such assets and resources. The provision of regulated utility service shall always take priority over the provision of NTP&S.</u></p>			X	<p>CWA's proposed language that would replace the original two introductory paragraphs. Not addressed is whether utilities may provide NTP&S to their affiliates, and if so, on what terms and conditions (i.e., the NTP&S rules or the affiliate transactions rules). DRA did not agree to deleting the flagged language. <u>There was no agreement to delete this paragraph. The changes made here were agreed upon at the workshop, although there was no final consensus on the paragraph as a whole. DRA does not agree to CWA's rewrite proposed here, which was NOT discussed at the workshop. DRA prefers the original language. If a utility provides NTP&S to an affiliate, the affiliate transaction rules will apply.</u></p>

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
<p>NB:- <u>These NTP&S rules apply to the use of excess and unused capacity of utility resources by the utility. Use of these resources by the utility's affiliates, if allowed, is governed by the Affiliate Transactions Rules, above.</u></p>	X ?			I think we agreed to delete this paragraph as possibly adding confusion.
<p>X. A utility may only offer for sale the following products and services:</p>	X			
<p>A. Existing products and services offered by the utility pursuant to tariff;</p>	X			
<p>B. New products and services that are offered on a tariffed basis; and</p>	X			
<p>C. Products and services that which are offered on a nontariffed basis (NTP&S) and that which meet the following conditions:</p>	X			
<p>1. The NTP&S utilizes a portion of the excess or unused capacity of a available utility assets or resources.</p>		X		<p>Parties generally did not like the term "excess or unused capacity." One proposal was to use the term "available utility assets and resources," but there was not unanimous consensus on that term. Also, DRA raised the issue of placing a limit on the use of employees. DRA's position is that employees should not be considered excess capacity; only items on a balance sheet should be excess capacity. DRA disagrees with CWA's use of the term "available" to replace excess or unused capacity, it is too vague/broad (all resources are "available" but not all have additional capacity.)</p>

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
2. Such asset or resource has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;	X			
3. The involved portion of such asset or resource may <i>only</i> be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services.	X			DRA's notes show small addition.
4. The products and services can be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk being incurred by utility ratepayers, and no undue diversion of utility management attention; and	X			
5. The utility's offering of the NTP&S does not violate any <i>California</i> law, regulation, or Commission policy regarding anticompetitive practices.	X			
XI. Revenues. Gross revenue from NTP&S projects shall be shared between the utility's shareholders and its ratepayers. Revenues shall be determined and shared as follows:	X			

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
<p>A. Active NTP&S projects: 10%/90% = ratepayer/shareholder, and</p>		X		<p>10%/90% is CWA's proposal, which follows the Commission's current policy, adopted in D.00.07-018. DRA expressed a preference for a greater share for ratepayers at the Workshop, but did not recommend a specific percentage split. DRA believes 10% is not enough as this percentage is supposed to reflect a full cost allocation proxy. DRA is considering a allocation that provides adequate revenue to ratepayers, and believes 50% allocation would be more fair.</p>
<p>B. Passive NTP&S projects: 30%/70% = ratepayer/shareholder.²</p>	X			<p>All parties agreed with this percentage split, which is current Commission policy, except CFC. DRA is ok with this percentage for passive projects.</p>
<p>^[2] Current sharing for active water company NTP&S projects is 10/90, and for passive it is 30/70. We have removed the existing numbers and thresholds in these proposed rules in anticipation that the parties may want to suggest changes, as appropriate.</p>	X			

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
<p>C. C. A utility <i>shall</i> classify <i>all</i> NTP&S as active or passive according to the matrix below. For a new NTP&S not listed in the matrix, which requires approval by the Commission by advice letter pursuant to Rule XV, an “active” project requires a shareholder investment of at least \$125,000.³ Otherwise the new NTP&S shall be classified as passive. No costs recoverable through rates shall be counted toward the \$125,000 threshold.</p>	X			
<p>^[3] Currently \$125,000.</p>	X			
<p>D. Revenues received that represent, in terms of <i>are specified in a contract, the</i> as pass-through of costs, without any mark-up, shall be excluded when determining revenue sharing. If an advice letter is required pursuant to Rule XV, the utility shall specify in the advice letter any items other than postage, power, taxes, and purchased water for which it proposes pass-through treatment and must obtain Commission approval for such treatment.</p>		X		<p>DRA believes the term "pass through" needs further clarification/defining and therefore has moved this to Bucket 2.</p>
<p>E. For those utilities with other operating revenue (OOR) of \$100,000⁴ or more <u>assumed in the most recent general rate case</u>, revenue sharing shall occur only for revenues in excess of that amount-assumed level of OOR. All NTP&S revenue below that level shall accrue to</p>	X			<p>All parties agreed to the changes and dollar amount in this provision except CFC. DRA: "In the most recent GRC" addition is new - DRA will consider. (It seems like a moving target.)</p>

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
the benefit of ratepayers.				
[4] Currently \$100,000.	X			
<p>F. For those utilities with OOR assumed to be below \$100,000⁵ in the most recent general rate case, there shall be no sharing threshold, <u>and ratepayers shall accrue all benefits there shall be sharing of all revenues</u> for non-tariffed products and services.</p>		X		<p>Parties agreed to the dollar amount in this provision except CFC. Parties discussed and agreed on the importance of not resetting the amount of OOR at every GRC, and acknowledged that the \$100,000 amount was what was adopted at the time the original excess capacity rules were adopted. So Cal Edison's OOR at the time its excess capacity rules were adopted was \$16.7 million and that amount has not been reset.</p>
[5] Currently \$100,000.	X			

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
<p>XII. <u>Cost allocation Responsibility.</u> <u>Costs, including all taxes, incurred due to NTP&S projects shall not be recovered through tariffed rates. These costs shall be tracked in separate accounts and any costs to be allocated between tariffed utility service and NTP&S shall be documented and justified in each utility's rate case.</u> All incremental costs, including taxes incurred, due to NTP&S shall be the responsibility of the utility, on behalf of shareholders, and shall not be recovered through tariffed rates.</p>		X		<p>A discrepancy here: CWA's notes indicate that all parties except CFC agreed to these changes. DRA's notes indicate that although various options were discussed, there was no final agreement. DRA has inserted below the original version from the Staff Rules, with DRA proposed edits in blue.</p>
<p>Cost allocation. All costs, direct and indirect, including all taxes, incurred due to NTP&S projects shall not be recovered through tariffed rates. These costs shall be tracked in separate accounts and any costs to be allocated between tariffed utility services and NTP&S shall be documented and justified in each utility's rate case. More specifically, all incremental investments, costs, and taxes due to non-tariffed utility products and services shall be absorbed by the utility shareholders, i.e., not recovered through tariffed rates. Non-incremental investments and costs incurred for labor and capital jointly used for tariffed and non-tariffed products and services shall be fully allocated between ratepayer and shareholder.</p>				

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
<p>XIII. Annual Report of NTP&S projects. Each utility shall include information regarding its NTP&S projects in its Annual Reports, including but not be limited to the following:</p>	X			So Cal Edison distributed its NTP&S report at the Workshop, which showed that only five items are reported: a list of the categories of assets or resources used to provide NTP&S; a description of NTP&S contracts by asset category; incremental costs per asset category; total gross revenues per asset category; and the proportional share per asset category of passive and active uses.
A. A detailed description of each NTP&S activity.	X			
B. Whether and why it is classified active or passive.	X			
C. Dates services were provided.	X			DRA tentatively agreed to delete
D. Gross revenue received.	X			
E. Revenue allocated to ratepayers and to shareholders, as established in the company's current GRC.		X		Addition recommended by CWA;
<u>F. All costs associated with the NTP&S provided, including direct costs, allocated indirect costs and overheads, and any additional income tax liability associated with provision of this service. Provide a detailed description of how these costs are determined.</u>		X		Recommended by CWA;
G. A complete identification of all regulated assets used in the transaction.		X		

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
H. A complete list of all employees identified by position that participated in providing the non-tariffed service, with amount of time spent on provision of the service.		X		Recommended by CWA;
<u>J. The names of all those that received the service.</u>		X		Recommended by CWA;
J. If the NTP&S has been classified as active through advice letter submission, provide the number of the advice letter and the authorizing Resolution.	X			
K. If the NTP&S did not require approval through advice letter, provide the date notice was given to the Commission.	X			
XIV. When a utility initiates the sale of NTP&S that are designated as active or passive in the matrix below , the utility shall provide notice of such activity by letter to the Director of the Division of Water and Audits and the Program Manager of the Division of Ratepayer Advocates-Water Branch, within 30 days of instituting such activity.	X			

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
<p>XV. Provision of new NTP&S. Any water or sewer utility that proposes to engage in a sale the provision of <i>new</i> NTP&S, <u>not listed in the matrix below</u>, using the excess capacity of assets reflected in the utility’s revenue requirement, and which are proposed to be classified as active as described herein, shall file a Tier 3 advice letter⁶ with the Director of the Division of Water and Audits seeking Commission approval. The advice letter shall contain the following:</p>	X			<p>DRA believes that the changes in blue were agreed to at the workshop.</p>
<p>^[6] See Resolution ALJ-202.</p>	X			
<p>A. A full description of the proposed NTP&S, including, without limitation, the identity of parties served (if known), revenue and cost forecasts, and the term of any contract to be employed.</p>	X			
<p>B. A description of the accounting mechanism method to be used to allocate track the incremental costs <u>between tariffed services and caused by</u> the NTP&S.</p>		X		<p>Changes proposed by CWA based on the fact that NTP&S will not allocate costs associated with NTP&S. DRA supports the original language in Staff Rules.</p>
<p>C. Copies of all operative documents for the proposed service.</p>	X			
<p><u>D. A detailed description of any items other than postage, power, taxes, and purchased water for which the utility proposes pass-through treatment for purposes of calculating</u></p>		X		<p>CWA proposed deleting this section; DRA wants to keep in; no consensus reached.</p>

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
<u>revenue sharing.</u>				
E. Complete identification of all <u>utility</u> regulated assets and <u>personnel</u> resources that will be used in the proposed transaction. Identify the particular <u>excess capacity (or capacities)</u> asset or resource to be used to provide the NTP&S.		X		DRA is not sure about CWA's proposed changes.
<u>F. A complete list of all employees <u>positions</u> that will participate in providing the service, with an estimate of the amount of time each will spend.</u>		X		CWA proposed deleting this section; DRA recalls that we proposed adding the word positions (not individual names) to ease the burden, but did not agree to delete.
G. An argument showing that the proposed NTP&S may be offered without <i>adversely</i> affecting the cost, quality, or reliability of the utility services.	X			
H. A showing of how the NTP&S will be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk, and no undue diversion of utility management attention.	X			
<u>I. A showing of how the NTP&S does not violate any law, regulation, or Commission policy regarding anti-competitive practices.</u>		X		CWA proposed deleting this section; no agreement to delete it at the workshop.

NTP&S Provision	#1	#2	#3	Additional Comments by the Parties
<p>J. A justification for classifying the NTP&S as active. The utility shall demonstrate that there is or will be incremental shareholder investment above \$125,000.⁷</p>		X		<p>DRA is considering the amount.</p>
<p>^[7] Currently this is \$125,000.</p>	X			
<p><u>K. A statement that all risks incurred through this proposed NTP&S project shall be borne by the utility’s shareholders.</u></p>		X		<p>CWA proposed deleting this section</p>
<p><u>L. A description of the market served by the proposed NTP&S project, a list or description of the current incumbents in that market, and an analysis of how the utility’s entry into the market will affect the market’s competitiveness. Include in this analysis a description of how the utility will guard against using predatory (i.e., below average total cost) pricing in this market.</u></p>		X		<p>CWA proposed deleting this entire section on the basis that it was unnecessary to provide this level of detail for the relatively insignificant types of NTP&S that water utilities provide or could be envisioned to provide. DRA: There was no agreement to delete this section; market analysis regarding profits and losses and risk analysis is standard practice for a new business. This paragraph simply asks that a copy of such analysis be provided and is not burdensome.</p>
<p>M. Any other information, opinions, or documentation that might be relevant to the Commission’s consideration of the NTP&S.</p>	X			
<p>Designation of Active and Passive NTP&S Water and Sewer Utility Projects (Matrix)</p>	X			<p>* No changes were identified in the Matrix</p>