BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of Valencia Water Company (U342W), a Corporation, for an Order Authorizing it to Increase Rates Charged for Water Service in Order to Realize Increased Annual Revenue of $4,751,000 or 18.78% in a Test Year Beginning January 2011, $1,957,000 or 6.40% in a Test Year Beginning January 2012, $701,000 or 2.16% in an Escalation Year Beginning January 1, 2013, and to Make Further Changes and Additions to its Tariff for Water Service.	Application 10-01-006 (Filed January 4, 2010)

APPLICATION FOR REHEARING OF THE DIVISION OF RATEPAYER ADVOCATES OF DECISION 10-12-029

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APPLICATION FOR REHEARING OF THE DIVISION OF RATEPAYER ADVOCATES OF DECISION 10-12-029

I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

Pursuant to Rule 16.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) files this application for rehearing of Commission Decision (D.) 10-12-029, the Decision Approving Settlements and Increasing General Rates for the Valencia Water Company (Decision).

DRA seeks rehearing on the Decision's disposition of approximately $3.6 million in water contamination proceeds. The Decision's treatment of the contamination proceeds is inconsistent with the Commission's recently adopted rules for treatment of contamination proceeds, set forth in Decision (D.) 10-10-018 (Contamination Proceeds Rules).

The Commission's failure to comply with its own recently promulgated Contamination Proceeds Rules is prejudicial to Valencia's ratepayers because it requires them to pay contamination-related costs, while providing a share of contamination

proceeds intended to cover those costs to Valencia shareholders. This was exactly the outcome the Commission sought to avoid when it adopted the Contamination Proceeds Rules.

In addition, the Decision violates Public Utilities Code § 1708[1] because it modifies the Contamination Proceeds Rules without notice to or an opportunity to be heard by the parties who participated in the proceeding to develop those Rules.[2]

DRA thus asks the Commission to grant rehearing of D.10-12-029, to correct these legal errors and dispose of the contamination proceeds as provided in the Contamination Proceeds Rules.

II. BACKGROUND

Decision 10-12-029 adopts two settlement agreements between Valencia and DRA that resolve almost all of the major issues contested in A.10-01-016 – Valencia's General Rate Case (GRC) Application. The Decision also resolves the ratemaking treatment of proceeds from Valencia's settlement of water contamination claims, and other matters not resolved by the two settlement agreements.

DRA takes issue with the Decision's ratemaking treatment of approximately $3.6 million in proceeds collected as a result of Valencia's water contamination claims. These proceeds have been deposited into a water quality litigation memorandum account (WQLMA). Both Valencia and DRA agree that $1,585,396 in legal costs related to obtaining the contamination proceeds are properly subtracted from the gross proceeds in the WQLMA – leaving $2,059,881 in the account.[3] DRA and Valencia disagreed, however, regarding whether the remediation costs of replacing a contaminated well (Well V-157) with a new well (Well V-206) should be subtracted from the gross proceeds

[1] All further section references are to the California Public Utilities Code unless otherwise stated.

[2] Out of an abundance of caution, and consistent with its arguments regarding the need for notice and hearing, DRA is serving this Application for Rehearing on the parties to R. R.09-03-014, the rulemaking that resulted in the Contamination Proceeds Rules.

[3] Indeed, the decision in Valencia's 2003 GRC required that all contamination-related litigation expenses be refunded to ratepayers and so the Decision is consistent with that GRC Decision at D.03-05-031.

in the WQLMA, and if so, how much should be subtracted from the gross proceeds. To the extent any net proceeds remained, Valencia argued its shareholders should receive 67%.

DRA addressed the disputed issues in its Reply Brief filed September 10, 2010. In its Reply Brief, DRA argued that the Commission's proposed decision regarding the Contamination Proceeds Rules required the $2.4 million cost of the new well to be subtracted from the $2,059,881 in gross proceeds in the WQLMA. Thus, because the actual costs of the well exceeded the funds in the WQLMA, there would be no "net proceeds" remaining in the WQLMA to "share" between ratepayers and shareholders. DRA further argued that if any "net proceeds" remained, they should be allocated 100% to ratepayers.

The Contamination Proceeds Rules were adopted in D.10-10-018 and effective October 18, 2010. In D.10-10-018, the Commission adopted Rules substantially similar to those relied upon by DRA in its Reply Brief.

A proposed decision in this matter mailed on November 12, 2010 (PD). The PD determined that Valencia's *estimated* cost of the new well ($1 million), rather than the *actual* cost of the new well ($2.4 million) should be subtracted from the gross proceeds in the WQLMA, and that shareholders were entitled to 50% of the remaining net proceeds of $1,059,881.

Parties filed comments on the PD on December 2, 2010, and reply comments on December 7, 2011. Consistent with its Reply Brief comments, DRA opposed these determinations in the PD. Both DRA and Valencia engaged in *ex parte* meetings with various Commissioner offices regarding this issue.

The final Decision, like the PD, concluded that Valencia's estimated amount of $1 million for replacing the contaminated well should be substituted for the $2.4 million actual cost of the replacement well for purposes of calculating the net proceeds remaining in the WQLMA, and for "sharing" with ratepayers. The Decision also concluded that half of the net proceeds should be transferred to Valencia's shareholders.

DRA seeks rehearing of these aspects of the Decision.

III. THE DECISION COMMITS LEGAL ERROR BY DEVIATING FROM THE CONTAMINATION PROCEEDS RULES ADOPTED IN DECISION 10-10-018

Approximately four months ago the Commission issued D.10-10-018 adopting Contamination Proceeds Rules. Among other things, the Rules define how to calculate "net proceeds,"[4] require that replacement plant be placed in rate base at actual cost,[5] and provide criteria to determine when utility shareholders may "share" in contamination proceeds.[6] Decision 10-10-018 concludes that sharing may only occur when "net proceeds" exist.[7] It defines "net proceeds" to be gross proceeds less all costs related to the contamination.[8]

Decision 10-12-029 was the Commission's first opportunity to apply the Contamination Proceeds Rules. However, instead of applying the Rules, the Decision cites to them, but then pursues an independent course for disposition of the approximately $3.6 million in contamination proceeds in Valencia's WQLMA. In adopting this independent course, the Decision fails to comply with the Contamination Proceeds Rules in at least two ways: (1) it improperly applies the Rule regarding calculation of net proceeds by using *estimated* plant costs rather than *actual* costs; and (2) it bypasses the analysis required by the Rules to determine the appropriate level of sharing between shareholders and customers.

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[4] D.10-10-018, Ordering Paragraph 6, *mimeo* at 64-65.

[5] D.10-10-018 *mimeo* at 27.

[6] D.10-10-018, Ordering Paragraph 5, *mimeo* at 64.

[7] D.10-10-018 *mimeo* at 47.

[8] D.10-10-018, Ordering Paragraph 6, *mimeo* at 64-65.

Decision 10-10-018 is unambiguous that the Contamination Proceeds Rules are meant to govern all future Commission deliberations involving the allocation of contamination proceeds.[9] The Rules are to be applied uniformly to all water utilities to ensure consistent treatment of contamination proceeds throughout the water industry. The Decision is entitled "Decision Adopting Rules for Accounting Treatment of Contamination Proceeds…." It states: "Going forward, the accounting treatment and rules adopted in this decision shall govern."[10]

Unfortunately, although the Commission had an opportunity to apply the Rules promulgated in Decision 10-12-029, it did not do so. This failure to comply with the Commission's own Rules constitutes legal error – a failure to proceed as required by law - which must be remedied on rehearing.[11]

The specifics involved in each of these failures to comply with the Commission's Contamination Proceeds Rules are discussed in turn below.

A. The Decision's Use of "Estimates" Does Not Comply With The Rule For Calculating Net Proceeds

1. D.10-10-018 Requires That Net Proceeds Must Be Calculated Using Actual Costs – Not Estimates

Ordering Paragraph 6 of Decision 10-10-018 defines "net proceeds" to be "gross proceeds" less all costs incurred as a result of the contamination:

> 6. "Net Proceeds" are hereby defined as:
>
> Gross proceeds received minus all (1) reasonable legal expenses related to litigation, (2) costs of remedying plants, facilities, and resources to bring the water supply to a safe and reliable condition in accordance with General Order 103-A standards,

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[9] *See, e.g.,* D.10-10-018 *mimeo* at 4 ("Given the current lack of standardized rules that govern contamination-related proceeds, the Commission found it imperative that clear rules and pathways be laid out regarding the inclusion or exclusion of replacement plant in rate base, in order to assure a fair and reasonable allocation of proceeds between ratepayers and shareholders, and that ratepayers only pay a return on used and useful plant in service.").

[10] Decision *mimeo* at 55.

[11] *See, e.g., Southern California Edison Co. v. Public Utilities Com.*, 140 Cal App 4th 1085 (2006) (decision annulled for Commission's prejudicial failure to proceed in the manner required by law).

> and (3) all other reasonable costs and expenses that are the direct result and would not have to be incurred in the absence of such contamination, including all relevant costs already recovered from ratepayers (for which they have been, or will be, repaid or credited).[12]

This definition specifically addresses the type of remediation costs at issue here: "costs of remedying plants, facilities, and resources to bring the water supply to a safe and reliable condition in accordance with General Order 103-A standards" are to be deducted from gross proceeds to calculate net proceeds. However, instead of adhering to this simple definition of "net proceeds" – which requires that all costs associated with contamination be subtracted from gross proceeds - D.10-12-029 chose to subtract *estimated* remediation costs of replacing a contaminated well ($1 million) instead of using the undisputed *actual costs* ($2.4 million).[13]

The Decision's use of estimated costs, rather than actual costs, has no basis in the Contamination Proceeds Rules, or in the facts of the case. First, it is clear that D.10-10-018's definition of "net proceeds" contemplates the subtraction of *actual costs* from gross proceeds. There is no mention of *estimated costs* in the definition. Second, Ordering Paragraph 5 of Decision 10-10-018 recognizes that "net proceeds" can only be calculated "after the contaminated plant is replaced or remediated and *all costs have been determined*…" (emphasis added).

Third, in addition to the clear and compelling definition of "net proceeds," which requires subtraction of remediation costs, Decision 10-10-018 clearly reflects the Commission's intent to rely on actual costs by requiring that any remediation and replacement projects be complete before any "sharing" can occur to avoid unnecessary risks to ratepayers:

> Any sharing before the completion of remediation or replacement would run the risk of future shortfalls that the IOU would seek to cover through rates. To allow allocations

[12] D.10-10-018 *mimeo* at 64-65.

[13] This cost is not disputed, as reflected in Finding of Fact 14 in D.10-12-029.

> to be made before remediation and replacement is complete would shift the risk of incomplete, unfunded or unnecessarily deferred remediation and replacement to the ratepayer. Further, the potential for associated impacts on service if such contingencies were to occur would not be in the public interest generally.[14]

In sum, if estimates were sufficient to determine remediation costs, there would be no reason for such projects to be completed prior to calculation and allocation of any net proceeds. In no place does D.10-10-018 contemplate that estimated costs of remediation and replacement can or should be substituted in the net surplus calculation for actual costs. A finding to the contrary is inconsistent with the ratepayer protection concerns repeatedly expressed in D.10-10-018.

2. Valencia Proposed The Use of Estimates To Preserve Net Proceeds For "Sharing" With Its Shareholders

Here, the cost to construct replacement Well V-206 (including a necessary pipeline) was $2.4 million. However, had the Decision applied the Rules and subtracted $2.4 million from the gross proceeds, there would be no net proceeds left to "share" with Valencia's shareholders. Thus, Valencia proposed that, if the Commission wanted to subtract such costs from the contamination proceeds (Valencia did not concede such subtraction was proper), that the costs of replacing contaminated Well V-157 be "estimated," rather than using the actual replacement costs of $2.4 million.

Valencia proposed two possible methodologies for this "estimate." Valencia first proposed to value the replacement of contaminated Well V-157 using the cost of the new Well V-206 ($2.4 million), adjusted for the remaining useful life of the retired well and the difference in the production capacities of the two wells. This estimate resulted in a replacement "estimate" of approximately $480,000. Alternatively, Valencia proposed that the replacement value of contaminated Well V-157 be based on the amount included in its water quality litigation settlement with the polluters, which was approximately

[14] D.10-10-018 *mimeo* at 47.

$1 million. Notwithstanding the fact that the cost to replace contaminated Well V-157 was $2.4 million, Valencia argued that there could be no higher valuation of the cost of replacing Well V-157 than $1 million because this was the amount agreed to in its settlement with the polluters.

The Decision rejected Valencia's first "estimation" proposal, acknowledging that D.10-10-018 requires the use of "actual costs": "… D.10-10-018 (at 42) in referencing the Uniform System of Accounts states that new replacement plant should be valued at its actual cost, not residual book value, when placed in rate base."[15] However, after acknowledging the obligation to use *actual costs*, and without any further reference to D.10-10-018, the Decision then concluded that the $1 million estimate, based upon Valencia's settlement with the polluters, was appropriate for calculating net proceeds and resulted in approximately $1 million left to allocate between shareholders and ratepayers: "Therefore we will adopt a value of $1 million for the replacement of Well V-157 in the calculation of net proceeds. A deduction of $1 million from the amount of $ 2,059,881, results in net proceeds of $1,059,881, the amount available to allocate to shareholders and ratepayers."[16]

3. The Decision Relies on Facts Not In Evidence To Justify Its Estimate

The Decision includes a footnote to justify the adoption of the $1 million estimate instead of actual costs, explaining that the estimate takes into account the fact that the replacement well had more capacity and a longer service life than the retired well:

> In adopting $1 million as the remediation cost of Well V-157 we note that although replacement Well V-206 and associated pipeline cost $2.4 million, Well V-206 has significantly more capacity and provides ratepayers with new plant with a longer service life.[17]

[15] D.10-12-029 *mimeo* at 15.
[16] D.10-12-029 *mimeo* at 15.
[17] D.10-12-029 *mimeo* at 15, note 21.

As an initial matter, nothing in the record supports the Decision's assumption that the additional capacity of the new well and the longer service life create a $1.4 million benefit that Valencia's ratepayers should cover. Among other things, this footnote fails to recognize that Valencia's shareholders were made whole for the un-depreciated value of the abandoned well; shareholders should not now receive additional compensation because of the longer service life of the new well.

To the extent that this footnote provides the basis for adoption of the $1 million estimate, it cannot be sustained because it is based on facts not in evidence in this proceeding. The Decision provides no further discussion or calculation to support the $1.4 million "benefit" assumed. Any such calculation of a ratepayer benefit would need to consider, among other things, the additional costs ratepayers currently bear for both wells, when only one was previously necessary, and the amount already paid to Valencia by its ratepayers in the form of rate of return on the new well. Further, in suggesting that the replacement well was overbuilt, the footnote in the Decision fails to recognize that this should trigger a disallowance to the *utility* for building a larger facility than necessary. Any unreasonable costs associated with the replacement facility should not be borne by the ratepayers, as the footnote contemplates.

4. The Decision's Use Of An Estimate Violates D.10-10-018 And Prejudices Valencia's Ratepayers

Nothing in the Contamination Proceeds Rules authorizes the Commission to calculate net proceeds by either (1) using an "estimate" of remediation costs or (2) unilaterally reducing actual remediation costs to address perceived ratepayer "benefits" from new plant. As discussed above, in adopting a clear definition of "net proceeds" as the starting point, D.10-10-018 clearly contemplates that *actual costs* of remediation must be subtracted from gross proceeds before any net proceeds can be distributed between shareholders and ratepayers. Otherwise, leftover costs resulting from inaccurate estimates could be improperly charged to ratepayers as rate based plant when contamination proceeds intended to pay these costs are available. This outcome is inconsistent with the very title of the Rulemaking that resulted in the Rules: "Order

Instituting Rulemaking … to Ensure that Investor-Owned Water Utilities Will Not Recover Unreasonable Return on Investments Financed by Contamination Proceeds ….”[18]

Here, by calculating net proceeds using *estimated* costs that are below actual costs, the Decision gives Valencia shareholders a $528,940 windfall and ratepayers are obligated to pay Valencia a rate of return on $528,940 worth of plant. Had the Rules been followed, the $528,940 would be recorded as Contributions in Aid of Construction, thus reducing the rate base paid to Valencia on the replacement plant.

5. The Decision Improperly Relies Upon An Estimate From Valencia's Settlement With The Polluters

The Decision's reliance on the terms of a settlement agreement with the polluters to adopt an estimate of replacement costs is inappropriate.[19] A similar proposal to use a settlement determination in another water rate case was rejected by this Commission. In D.05-07-044 the utility argued that its contamination litigation costs should not be subtracted from its contamination proceeds because its settlement with the polluters expressly waived the company's rights to obtain legal fees. That decision rejected the company's proposal and explained that adopting the company's proposal to pass these costs on to ratepayers where settlement proceeds existed would be unfair:

> If we were to approve San Gabriel's request, those litigation costs would now be collected instead from its ratepayers while it books the settlement award as a shareholder gain. That would be unfair. If ratepayers are to be asked to bear litigation expenses, then any recoveries should first be used to offset those expenses.[20]

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[18] *See also* D.10-10-018 *mimeo* at 47 expressing concern that ratepayers should not bear the burden of remediation due to a premature allocation of contamination proceeds.

[19] Settlements are not binding on non-signatories, and are routinely deemed "not precedential." Valencia's settlement with the polluters provides: "Neither this Agreement nor any Parties' performance under this Agreement is intended to be or shall be asserted by any other Party to be an admission of any kind or character whatsoever …." Exhibit 10 at § 16.16.

[20] D.05-07-044 *mimeo* at 23.

The Decision's adoption of the $1 million "estimate" based on Valencia's settlement with the polluters is similarly "unfair" to Valencia's ratepayers. It requires Valencia's ratepayers to absorb $1.4 million of the replacement cost for the contaminated well, while the remaining contamination proceeds of $1,059,881 (which should be used to defray the cost of the replacement well) are split between shareholders and ratepayers. Such an outcome results from the Commission's failure to proceed in the manner required by its own Contamination Proceeds Rules, and cannot be countenanced.

B. The Decision Errs By Failing To Perform The Analysis Required To Justify Sharing

After improperly concluding that the net proceeds remaining in the WQLMA are $1,059,881 (if properly calculated there would be no net proceeds) the Decision then moves to determining the allocation of this money between shareholders and ratepayers. Decision 10-10-018 is clear that "where net proceeds do result," at a minimum, the Commission must consider a list of factors set forth in Appendix D in determining any allocation of net proceeds to shareholders.[21] Decision 10-10-018 explains that: "The general inquiry in each case should be: What comparative risk, benefit or burden have ratepayers and shareholders experienced, or can be expected to experience, under the particular circumstances of this case?"[22] The list in Appendix D comprises various "non-exclusive" factors of risk, benefit, and burden "that should have selective value as a check list for such decision making in individual cases."[23] "Those factors …. are not to be considered the only factors that the Commission may consider when making an allocation decision…"[24] However, they must be considered.

Notwithstanding the extensive list of factors to be considered pursuant to D.10-10-018 before any "sharing" can occur, the Decision discusses only two related factors from

[21] D.10-10-018 *mimeo* at 47. *See also,* D.10-10-018, Ordering Paragraph 5, *mimeo* at 64 (sharing may occur "where circumstances warrant and on the basis of factors relevant to the individual case, including factors set out in Appendix D to this decision.").

[22] D.10-10-018 *mimeo* at 47.

[23] D.10-10-018 *mimeo* at 48.

[24] D.10-10-018 *mimeo* at 48.

the list – Valencia's risk in recovering its litigation costs of roughly $1 million and the "difficult and protracted litigation and negotiations" that resulted in the settlement. The Decision only considered the Company's risk in weighing of these factors and determines that this "risk" entitles Valencia's shareholders to 50% of the net proceeds remaining in the WQLMA.

The Decision's grant of 50% of the net contamination proceeds to Valencia's shareholders is not supported by the analysis required by D.10-10-018. Most significantly, the Decision fails to balance between company and customer risks in a manner that considers the risk to customers if Valencia's litigation had not been successful. The Decision also fails to recognize that Valencia had a duty to pursue the litigation. As set forth in D.10-10-018 at Finding of Fact 3, responding to contamination events comes within a utility's obligation to serve:

> 3. Contamination events are among the contingencies which a contemporary water utility needs to be prepared to confront and manage. Being ready and able to respond to contamination, however arduous and frustrating that task, is now part and parcel of doing business as a water company and generally comes within the obligation to serve.

Further, there are virtually no examples of funds booked to a memorandum account that have not ultimately been charged to ratepayers, or otherwise netted from gross proceeds. Thus, the Decision's suggestion that Valencia bore any but the most *de minimus* risk for its litigation costs, which were booked to the WQLMA, is unsupported by any Commission precedent. Consequently, the Decision's analysis, uninformed by actual Commission practice, and lacking a balanced comparison to Valencia ratepayer risks, does not comply with the requirements of D.10-10-018.

IV. THE DECISION COMMITS LEGAL ERROR BY MODIFYING D.10-10-018 WITHOUT NOTICE AND OPPORTUNITY TO BE HEARD

As discussed above, Decision 10-10-018 adopts Contamination Proceeds Rules requiring that remediation costs be deducted from gross proceeds before net proceeds are

calculated,[25] and that any remaining net proceeds be allocated using a list of prescribed factors.[26]

However, barely two months after the Commission's adoption of the Contamination Proceeds Rules, D.10-12-029 deviated dramatically from the Rules. D.10-12-029 used *estimated* remediation costs to calculate net proceeds.[27] Then, without considering the list of factors provided in D.10-10-018 appendix D, (including risks to ratepayers) the Decision allocated 50% of the net proceeds to shareholders, summarily reasoning that the litigation and negotiations were "difficult and protracted" and Valencia bore some risk that its litigation costs might not be fully recovered.[28]

These actions constitute a *de facto* modification of the Contamination Proceeds Rules. Consequently, as recognized in D.03-04-061, failure to provide notice and the opportunity to be heard to parties who participated in the development of those Contamination Proceeds Rules – including DRA - violates Public Utilities Code Section 1708.[29]

Section 1708 provides:

> The [C]ommission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

In D.03-04-061 the Commission agreed that effectively modifying an earlier decision through a later decision without notice and an opportunity to be heard constitutes legal error. In that case, TURN pointed out that a Commission decision

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[25] D.10-10-018, Ordering Paragraph 6, *mimeo* at 64-65.

[26] D.10-10-018, Ordering Paragraph 5, *mimeo* at 64 and Appendix D.

[27] D.10-12-029 *mimeo* at 14-15.

[28] D.10-12-029 *mimeo* at 16.

[29] D.03-04-061 recognizes an obligation to provide notice to the general public. D.03-04-061 *mimeo* at 6.

establishing rules regarding natural gas subscriptions effectively negated an earlier decision without providing the requisite notice and opportunity to be heard.[30] Decision 03-04-061 agreed and the Commission granted TURN's application for rehearing.

Similarly here, D.10-12-029 deviates from, and therefore modifies, D.10-10-018 in several respects, as discussed herein. To comply with § 1708, the Commission must grant rehearing so that the parties to Rulemaking 09-03-014 may receive notice and be heard regarding this alteration to D.10-10-018.

V. CONCLUSION

As described in detail above, the Commission has not complied with its Contamination Proceeds Rules set forth in D.10-10-018. The Commission's failure to comply with its own Rules constitutes legal error which must be corrected.

When corrected to comply with the Contamination Proceeds Rules, the Decision should subtract the total net litigation costs of $1,585,396 from the WQLMA, leaving a remaining total of approximately $2,059,881[31] to be recorded in Contributions in Aid of Construction to cover the costs of replacement Well V-206 pursuant to D.10-10-018. Because the $2.4 million cost of remediation is greater than the remaining amount of $2,059,881, no net proceeds remain to share between shareholders and ratepayers. The remaining difference of $314,119 ($2,059,881 - $2,400,000) not covered by the gross proceeds, is the appropriate amount that should be recorded in Valencia's rate base.

On this basis, the Decision's discussion regarding allocation of the net proceeds is moot; if the Decision had properly adhered to the Contamination Proceeds Rules, no funds would be available to allocate between shareholders and Valencia's ratepayers.

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[30] D.03-04-061, Ordering Paragraph 1 at p.10.

[31] The amounts in the WQLMA may differ slightly because of interest. All proceeds remaining in the WQLMA, including interest, should be recorded to CIAC.

Further, if the changes described above are not made to obtain consistency with D.10-10-018, this Application for Rehearing must be granted because D.10-12-029 altered the Contamination Proceeds Rules set forth in D.10-10-018 without providing parties to Rulemaking 09-03-014 notice and opportunity to be heard as required by Public Utilities Code Section 1708.

Respectfully submitted;

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January 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the "**APPLICATION FOR REHEARING OF THE DIVISION OF RATEPAYER ADVOCATES OF DECISION 10-12-029**" to the official service lists in **A. 10-01-006/R.09-03-014** by using the following services:

[**X**] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on January 21, 2011 at San Francisco, California.

/s/ NANCY SALYER
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