

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of SAN GABRIEL VALLEY WATER COMPANY (U337W) for Authority to Increase Rates Charged for Water Service in its Fontana Water Company Division by \$8,164,800 or 14.2% in July 2012, \$3,067,400 or 4.7% in July 2013, and \$3,758,200 in July 2014.

Application 11-07-005
(Filed July 11, 2011)

**OPENING BRIEF
OF THE DIVISION OF RATEPAYER ADVOCATES**

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**OPENING BRIEF
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I. INTRODUCTION

Pursuant to Rule 13.11 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and the schedule established by Administrative Law Judge Douglas Long at the conclusion of evidentiary hearings, the Division of Ratepayer Advocates ("DRA") hereby submits its Opening Brief in the above-captioned proceeding. Application 11-07-005 seeks the Commission's approval to increase the Fontana Water Company Division's rates by: (1) \$8,164,800 or 14.2% in Test Year 2012; (2) \$3,067,400 or 4.7% in escalation year 2013; and (3) \$3,758,200 or 5.6% in escalation year 2014. San Gabriel is also seeking advice letter treatment for an in-conduit hydro generation project and San Gabriel is also seeking an adjustment to its tariff rate for recycled water relief that San Gabriel has already requested in a separate application, A.11-06-005.

DRA and San Gabriel have agreed and reached settlement on a majority of the issues raised in A.11-07-005. All issues not settled in A.11-07-005 were the subject of evidentiary hearings and will be briefed. Other parties to this proceeding, the City of Fontana and the Fontana Unified School District actively participated in the mediation

and settlement process but contest some of the settled items, and therefore, are not signatories to the settlement agreement.

II. SUMMARY OF RECOMMENDATIONS

DRA requests that the Commission adopt the recommendations made by DRA in its testimony and in its Opening Brief, which are summarized as follows:

1. The Commission should order a 39% capacity adjustment to the Test Year rate base portion associated with the Sandhill Water Treatment Plant Upgrades (an estimated reduction of \$13.2 million in the Test Year ratebase) and should order a 39% refund of capital costs with interest, associated with the Sandhill Water Treatment Plant Upgrade for costs already paid by ratepayers (an estimated \$11.5 million refund to ratepayers);
2. Decision (“D.”) 09-06-027 required that a reasonableness review be performed regarding the aspects of the Sandhill project. In that regard, the Commission should find that: (a) San Gabriel has not made a thorough affirmative showing of Edison’s contractual obligation to provide Lytle Creek Water to Sandhill; (b) Southern California Edison’s facilities are inadequate to deliver sufficient water for the Sandhill plant to operate at its full capacity of 29 MGD per day; and (c) the Sandhill Water Treatment Plant is incapable of treating 29 million gallons per day (“MGD”);
3. The Commission should reject San Gabriel’s request to incorporate an additional \$2,614,080 in rate base from San Gabriel’s investment in Fontana Union Water Company shares associated with the “Slemmer” Settlement. The Commission should reaffirm its earlier finding in D.09-06-027 that the \$1,585,920 associated with settling the “Slemmer” lawsuit included in rate base is the appropriate value attributable to ratepayers and was a one-time non-recurring legal expense;
4. The Commission should reaffirm its finding in D.09-06-027 that San Gabriel did not meet its burden of proof with regard to the additional costs

associated with the Plant F7 Retaining Wall. Thus, the costs of the Plant F7 retaining wall (\$537,868) should be excluded from rate base;

5. The Commission should reaffirm its finding in D.09-06-027 that San Gabriel did not meet its burden of proof with regard to the costs associated with the Walnut Avenue Pipeline. Thus, the costs of the Walnut Avenue Pipeline (\$1.16 million) should be excluded from rate base.

III. PROCEDURAL HISTORY

San Gabriel filed its Application on July 11, 2011. DRA timely filed its Protest on August 8, 2011 along with the City of Fontana. Fontana Unified filed its Protest on August 9, 2011. San Gabriel filed its reply to protests on August 18, 2011, wherein it stated its support for DRA's request for an extension of time to issue its report and listed a compromise schedule for DRA to serve its report and intervenors to serve their testimony. A prehearing conference was held on September 7, 2011. Assigned Commissioner Mark J. Ferron issued the Scoping Memo and Ruling on October 4, 2011.

Since filing its Application with supporting testimony and workpapers, San Gabriel discovered several "omissions" in its submittal. One "omission" was excluding "\$9,955,300 of net depreciated plant from its revenue requirement calculations."¹ On November 15, 2011, San Gabriel met with DRA representatives to inform DRA of the "omissions" and of its intent to make corrections in its rebuttal testimony.² As counsel for DRA explained during the first day of evidentiary hearings, San Gabriel's submitted corrections and revised workpapers caused DRA to request additional time to review the changes, including postponing the hearing date for all plant-related items to January 6th, 2012, which presiding officer Administrative Law Judge ("ALJ") Long granted. This reserved DRA's right to raise any issues with the corrections by submitting a late-filed exhibit.³

¹ Exhibit ("Exh.") SG-17, p. 3, lines 20-24.

² Exh. SG-17, p. 3, lines 26-30.

³ Reporter's Transcript ("Tr.") pp. 22:25 - 24:4.

DRA and San Gabriel engaged in informal negotiations beginning on November 29th, 2011 and continued with direct negotiations and settlement discussions through January 3, 2012. Assigned mediator neutral, ALJ Seaneen Wilson, assisted the parties during the negotiation process. The Commission held evidentiary hearings during January 4 – January 6, 2012 and held an additional day of hearings on January 31, 2012.

At the start of evidentiary hearings on January 4, 2012, the remaining contested issues included: (1) a ratebase adjustment and refund to ratepayers associated with the Sandhill Water Treatment Plant; (2) reasonableness review of the Sandhill Water Treatment Plant associated with: a) San Gabriel’s demonstration of its rights to delivery of water from Lytle Creek via the afterbay from Southern California Edison’s (“Edison”) power plant facilities’; b) San Gabriel’s demonstration of the adequacy of Edison’s facilities to deliver sufficient water from Lytle Creek to the Sandhill Water Treatment Plant; and c) San Gabriel’s demonstration of the capability of Sandhill to treat and process 29 MGD per day); (3) ratebase adjustment associated with the “Slemmer” settlement costs; (4) ratebase adjustment associated with the Plant F7 Retaining Wall project; and (5) ratebase adjustment associated with the Walnut Avenue Pipeline project.

IV. BURDEN OF PROOF

San Gabriel, as the Applicant in a General Rate Case (“GRC”) proceeding, bears the burden of proof to show that all charges demanded or received by any public utility must be “just and reasonable.”⁴ Existing rates are presumed to be reasonable and lawful, and a utility seeking to increase rates must follow the long-standing rule that a “utility seeking an increase in rates has the burden of showing by clear and convincing evidence that it is entitled to such increase.”⁵ The standard of proof applicable to the approval of rate increases is the “clear and convincing evidence” standard. Under this standard, a

⁴ Public Utilities Code § 451.

⁵ Re Southern California Edison Company, 2004 Cal. PUC LEXIS 325, *17. (Decision 04-07-022)

utility has the “obligation to support all aspects of its application through clear and convincing evidence.”⁶

V. DRA AND SAN GABRIEL SETTLEMENT

On May 2, 2012, DRA and San Gabriel (hereafter, collectively referred to as “the Parties”) submitted the “*Settlement Agreement Between the Division of Ratepayer Advocates and San Gabriel Valley Water Company On Issues Presented In the Present General Rate Case*,” and the “*Joint Motion of the Division of Ratepayer Advocates and San Gabriel Valley Water Company (U337W) For Approval of Settlement Agreement*.” The Settlement Agreement was not submitted within 30 days after the last day of hearing (Rule 12.1 of the Rules of Practice and Procedure). However, the Settlement Agreement was submitted consistent with the guidance and direction given by ALJ Long that the Parties submit a complete and fully explanatory settlement agreement that they are happy with.⁷

After several weeks of intense negotiations, the Parties reached an agreement in principle on most of the issues raised in this proceeding. The settled issues included but are not limited to: (i) the projected number of customers and water consumption by customer; (ii) water loss; (iii) operation and maintenance expenses; (iv) administrative and general expenses; (v) utility plant additions and ratebase (except for the ratemaking treatment and ratebase adjustments associated with the Fontana Union Shares, the Plant F7 Retaining Wall, the Walnut Avenue pipeline, and the refund and reasonableness review associated with the Sandhill Water Treatment Plant); (vi) income taxes and other taxes; (vii) working cash allowance; (viii) customer service reporting; (ix) conservation program and rate design; (x) programmatic changes to San Gabriel’s California Alternative Rates for Water Program; (xi) San Gabriel’s investment in Fontana Office Building A; and (xii) balancing and memorandum accounts.

⁶ Decision 04-01-052, 2004 Cal. PUC LEXIS 1, *35.

⁷ Tr., p. 621:20-24 (Statement of ALJ Long).

The Parties' agreement and terms of settlement were reduced to written form in a Settlement Terms Sheet. In the weeks and months that followed the close of evidentiary hearings, the Parties worked together to convert the Settlement Terms Sheet into a formal Settlement Agreement outlining: (1) the Parties' respective starting positions with regard to each settled issue; (2) San Gabriel's rebuttal position; (3) how resolution was reached; (4) the impact on revenue requirement; and (5) references to the record (testimony and exhibits of the Parties' witnesses) which addressed the particular issue. In addition to submitting the Settlement Agreement and the Joint Motion for approval of the Settlement Agreement, the Parties also attached a Joint Comparison Exhibit (consistent with Rule 12.1(a) of the Rules of Practice and Procedure).

VI. PLANT F7 RETAINING WALL PROJECT

A. The Commission Should Exclude The Plant F7 Retaining Wall Costs From Rate Base Because These Costs Are Imprudent And San Gabriel Has Not Met Its Burden Of Proof.

In San Gabriel's 2008 GRC, A.08-07-009, the Commission excluded \$537,868 from rate base – these expenses arose from the retaining wall at Plant F7 (Plant F7 was included as Job 4870 in D.09-06-027).⁸ In the current proceeding, San Gabriel explains why the Plant F7 retaining wall was needed, but does not address the Commission's main concern in D-09-06-027 that San Gabriel was imprudent in planning the project. The Commission did not grant San Gabriel the opportunity to revisit the reasonableness of the costs associated with the Plant F7 retaining wall in D.09-06-027, yet San Gabriel includes the \$537,868 into rate base once again. Because San Gabriel failed to provide additional evidence in this proceeding that would meet its burden of proof and that would support reversing the Commission's decision in D.09-06-027, the Commission should reject San Gabriel's request to include into rate base once again the \$537,868 costs associated with the Plant F7 retaining wall.

⁸ D.09-06-027, Conclusion of Law 38.

Matt Y. Yucelen, P.E., San Gabriel’s witness on the retaining wall acknowledges the Commission’s finding in D.09-06-027 that San Gabriel had not met its burden of proof with regard to the Plant F7 retaining wall.² Even so, San Gabriel does not address the Commission’s central finding that San Gabriel imprudently planned the project. Instead, San Gabriel once again makes the argument that the costs associated with the Plant F7 retaining wall should be included in rate base in the current proceeding because the “Plant F7 retaining wall is in use and enabled San Gabriel to make better, more efficient use of its property.”¹⁰ San Gabriel also notes that the retaining wall “enabled the company to avoid constructing a costly storm water drainage system . . . [and] avoided the installation of expensive storm water vaults, sump pumps, and drainage system.”¹¹

San Gabriel’s fruitless attempt to include the Plant F7 retaining wall costs into rate base does not merit consideration. San Gabriel did not address the central issue raised in the Commission’s earlier decision, namely that it was imprudent in planning the retaining wall project. Therefore, the costs associated with the retaining wall (\$537,868) should not be included into rate base in this proceeding or any future GRC proceeding. The Commission previously decided this issue in D.09-06-027 when it found:

SGV [San Gabriel] could and should have been aware of the [drainage] issue. It should have considered alternative locations and, if reasonable alternative locations were not available, alternative ways to address the drainage issue... SGV [San Gabriel] has had ample opportunity to meet its burden of proof regarding the additional costs of the retaining wall built to address the drainage issues, and has not done so. The cost of the retaining wall is excluded from rate base.¹²

The Commission went even further and found that it was “not reasonable to believe that, when SGV [San Gabriel] purchased the land to build this project, it did not notice that the

² Exh. SG-12, p. 42, lines 6-11.

¹⁰ Exh. SG-12, p. 43, lines 7-8.

¹¹ Exh. SG-12, pp. 42-43, lines 28-12.

¹² D.09-06-027, p. 36; Finding of Fact 103.

land had a substantial slope that would cause drainage issues.”¹³ Therefore, San Gabriel engaged in imprudent planning.¹⁴

In its report, DRA found that San Gabriel provided no proof that it considered alternatives (either an alternative location or an alternative way) to address the drainage issue when it decided to build the retaining wall.¹⁵ In response to DRA’s finding, San Gabriel contends it included additional information for alternatives to building the retaining wall in the form of a cost-benefit analysis.¹⁶ However, the unit costs which San Gabriel used in its cost-benefit analysis to justify the 2005 Plant F7 retaining wall costs are the same cost estimates San Gabriel used for a future 2012-2015 Plant F-15 project.¹⁷ Therefore, San Gabriel’s cost-benefit analysis, which uses 2012-2015 dollar estimates, cannot be considered proof that San Gabriel considered “alternatives” before it began construction at the Plant F7 project.

The Commission should maintain its findings in D.09-06-027 and continue to disallow the \$537,868 costs associated with the Plant F7 retaining wall. The Commission has previously disallowed the Plant F7 retaining wall costs as imprudent and San Gabriel has provided no evidence in this proceeding to warrant inclusion of these costs into rate base. Furthermore, the Commission did not grant San Gabriel the opportunity to revisit the reasonableness of the Plant F7 costs in this proceeding.

¹³ D.09-06-027, p. 36.

¹⁴ *Id.*

¹⁵ Exh. DRA-1, p. 7-51, lines 19-21.

¹⁶ Exh. SG-25, p. 44, lines 14-17.

¹⁷ Tr. p. 430:4-16; pp. 431-432:11-19 (San Gabriel/Yucelen).

VII. WALNUT AVENUE PIPELINE PROJECT

A. **The Commission Should Exclude The Walnut Avenue Pipeline Project Costs From Rate Base Because San Gabriel Has Not Met Its Burden Of Proof Of Demonstrating A Need For The Project.**

The Walnut Avenue Pipeline Project involves approximately 5,379 linear feet of new installed 24-inch steel pipeline on Walnut Avenue between Citrus Avenue and Sierra Avenue that has a recorded cost of \$1,158,602.¹⁸ In San Gabriel's last general rate case proceeding, A.08-07-009, the Commission excluded from rate base the costs associated with the Walnut Avenue Pipeline project (referred to as "Job No. 5111" in the last GRC).¹⁹ The Commission found, "SGV [San Gabriel] provided no documentation addressing the need for the Job 5111 project" and "SGV [San Gabriel] provided no demonstration of how the Job No. 5111 project will increase reliability or whether an increase in reliability is needed."²⁰ In the current proceeding, San Gabriel has once again failed to meet its burden of proof.

In D.09-06-027, the Commission stated that in order for San Gabriel to meet its burden of proof it must establish the following with regard to the reasonableness of post-2002 construction projects:

In order to demonstrate a project is needed, there must be an affirmative demonstration of the need. Such a demonstration may include, but is not limited to, examples of specific problems that have occurred or will occur, and how the project will provide the remedy. Another way to demonstrate need is to show specific benefits that will not occur without the project, or new governmental requirements that will not be met without the project. Mere claims of need are not sufficient.²¹

¹⁸ Exh. SG-12, Attachment D, Walnut Avenue Pipeline tab, p. 1.

¹⁹ D.09-06-027, p. 45.

²⁰ D.09-06-027, Findings of Fact 120, 122.

²¹ D.09-06-027, p. 30.

Using this standard, San Gabriel has been unable to substantiate its claim that the Walnut Avenue Pipeline Project will increase the reliability of its service. During discovery, DRA offered San Gabriel an opportunity to “provide a demonstration that an increase in reliability is needed and how the Walnut Avenue Pipeline Project increases reliability.”²² San Gabriel responded, “[t]he Walnut Avenue transmission pipeline provides reliability by reducing the company’s reliance on small diameter distribution piping to deliver [the] large quantities of water to Plant F16 reservoirs and booster station and to the customers supplied from that facility.”²³ Here, it is obvious that San Gabriel is providing the same general claims of reliability it provided in its last general rate case proceeding, but it continues to ignore the Commission’s requirement that it must provide evidence buttressing its claim that the project will increase its reliability. San Gabriel’s other argument in its last general rate case that the Walnut Avenue pipeline will allegedly provide cost savings from coordination with the City of Fontana also did not provide sufficient justification for the Commission to include the Walnut Avenue Pipeline into rate base.²⁴ San Gabriel’s similar argument offered here should be afforded no weight.

Furthermore, if reliability in the area served by the Walnut Avenue Pipeline needed to be enhanced in 2006 when the project was constructed, it would have been included in San Gabriel’s 2005 Water System Master Plan. However, “Job No. 5111 project was not included in the Master Plan.”²⁵ As a matter of fact, San Gabriel’s 2008 Water System Master Plan Update, which assesses “water supply reliability, fire flow capabilities, and water quality distributions throughout [San Gabriel’s] water transmission and distribution system,”²⁶ did not establish a need for increased reliability. The additional evidence offered in this proceeding of an estimated additional cost of

²² Exh. DRA-5, p. 2.

²³ Exh. DRA-5, p. 2 (San Gabriel’s response to DRA data request AR4-002).

²⁴ D.09-06-027, Finding of Fact 120.

²⁵ D.09-06-027, Finding of Fact 118.

²⁶ Exh. SG-12, Attachment F, Section 7.4 Water Distribution System Hydraulic Analysis, p. 233

\$311,600 that San Gabriel would have incurred with paving and a slurry seal²⁷ is insufficient to demonstrate that the \$1.2 million spent on the Walnut Avenue Pipeline project was worth the potential savings of \$311,600.

San Gabriel has merely provided general claims of necessity that fall short of meeting the burden of proof required by the Commission. Therefore, the Commission should exclude the \$1,158,602 associated with the Walnut Avenue Pipeline Project from rate base – nothing San Gabriel has submitted in this proceeding has provided a sufficient rationale for including the pipeline in the company’s rate base.

VIII. THE “SLEMMER” SETTLEMENT

A. Background On The “Slemmer” Settlement And Fontana Union Water Company Shares.

The “Slemmer” Settlement refers to the settlement reached in the civil suit brought by Dr. Thomas Slemmer and several other persons against San Gabriel and other defendants in the San Bernardino Superior Court on February 14, 2002 (hereafter referred to as, the “Slemmer suit”).²⁸ In the Slemmer suit, the plaintiffs alleged their rights as minority shareholders in Fontana Union Water Company (hereafter, “Fontana Union”) had been violated by the defendants and claimed treble damages that ranged up to tens of millions of dollars.²⁹ Among the plaintiff’s allegations in the Slemmer suit were that the defendant’s violated anti-trust laws by settling a lawsuit involving access to Lytle Creek surface water, and whether the plaintiffs received a reasonable price for the 358.6 shares previously acquired by San Gabriel.³⁰ A settlement was entered into by the parties and approved by the San Bernardino Superior Court on July 24, 2006. The settlement terminated the Slemmer suit, San Gabriel paid \$4,200,000 to the plaintiffs, and San Gabriel received 179.2 shares of Fontana Union stock.³¹

²⁷ Exh. DRA-5, p. 2 (San Gabriel’s response to DRA data request AR4-002).

²⁸ D.09-06-027, p. 11.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

The ratemaking treatment of the investment in shares of Fontana Union was discussed in D.09-06-027 (San Gabriel’s previous GRC proceeding, A.08-07-009). In D.09-06-027, the Commission discussed “whether any of the \$4,200,000 should be recovered from ratepayers by being included in ratebase.”³² The Commission concluded that: (1) the Slemmer settlement had no significant value to ratepayers with regard to the 358.6 shares previously acquired by San Gabriel, (2) the \$1,585,920 of Slemmer settlement costs corresponding to the value to ratepayers of the additional 179.2 shares of Fontana Union stock acquired by San Gabriel will be allowed into rate base, and (3) if San Gabriel chooses revisit this issue in its next GRC, “it shall explain in its exhibits why any information in those exhibits that was not included in the record in this proceeding regarding this issue could not have been provided in this proceeding.”³³

San Gabriel chose to revisit this issue in the current proceeding and requests that the Commission, “revise its decision in the previous general rate case and continue its longstanding policy of recognizing San Gabriel’s recorded, original cost of the Fontana Union stock in rate base.”³⁴ Nevertheless, pursuant to Ordering Paragraph 6 of D.09-06-027, because San Gabriel chose to revisit the issue it should have explained in its exhibits why any new information provided in the instant proceeding was not provided in the record in its last GRC proceeding, and why San Gabriel failed to do so. Both DRA and the City of Fontana point out that San Gabriel has failed to provide any new evidence in the current rate case proceeding that was not available in the last general rate case that would warrant a revision to the Commission’s decision.³⁵ Therefore, DRA agrees with the Commission that \$1,585,920 of the \$4,200,000 is attributable to the value to ratepayers and accurately represents the 179.2 Fontana Union shares acquired by San Gabriel as a result of the Slemmer Settlement.

³² D.09-06-027, pp. 11-15.

³³ D.09-06-027, p. 15, Ordering Paragraph 6.

³⁴ Exh. SG-10, p. 30, lines 7-9.

³⁵ Exh. DRA-1, p. 16-5 – 16-6, lines 21-13. *See also* Tr. p. 348:12-25 (City of Fontana/Ramas).

B. The Commission Should Reaffirm Its Finding That Only \$1,585,920 Of The Slemmer Settlement Costs Should Be Included Into Rate Base.

In the instant proceeding, San Gabriel attempts to mislead the Commission by claiming that San Gabriel, “purchased, paid for, and acquired clear title to a combined total of 537.8 shares in Fontana Union” when the Slemmer suit was resolved.³⁶ This is an inaccurate statement. As San Gabriel’s witness, Mr. Whitehead, affirmed during hearings, three groups of stock are the subject of San Gabriel’s testimony in this proceeding: (1) the 290.1 shares of Fontana Union stock acquired by San Gabriel from Western Water Company (hereafter, “Western”) in March 2000 for \$446,600; (2) the 68.5 shares of Fontana Union stock acquired by San Gabriel from Vulcan Materials (hereafter, “Vulcan”) in 2003 for \$239,750; and (3) the 179.2 shares of Fontana Union stock that it received as a result of the Slemmer settlement [in 2000 and 2003].³⁷

San Gabriel combines all three groups of stock and claims the total number of shares represents the number it received as part of the Slemmer settlement. However, San Gabriel already had title to 358.6 shares (290.1 + 68.5 acquired from Western and Vulcan, respectively) of Fontana Union stock at the time of the Slemmer settlement.³⁸ San Gabriel’s logic appears to be as follows -- because Western and Vulcan became plaintiffs in the Slemmer suit, the 358.6 shares previously acquired from Western and Vulcan were in jeopardy in that litigation. However, this contention is directly contradicted by San Gabriel’s testimony that the Slemmer suit was “meritless.”³⁹ If the Slemmer suit was without merit, then as the Commission determined in D.09-06-027, there was no significant risk that San Gabriel would have to pay more for the 358.6

³⁶ Exh. SG-10, p. 24, lines 1-7; Exh. SG-23, p. 5, lines 13-18.

³⁷ Tr. p. 242:1-16; p. 247:10-17; p. 248:20-28 (San Gabriel/Whitehead).

³⁸ Exh. SG-10, p. 27, lines 1-6.

³⁹ Exh. SG-10, p. 27, lines 18-21. *See also* D.09-06-027, p. 14, “SGV [San Gabriel] represents that the Slemmer suit was without merit.”

shares previously acquired.⁴⁰ Furthermore, if San Gabriel were to lose the suit, then it would have been found to have acted improperly in the purchase of the 358.6 shares and this would imply wrongdoing on the part of San Gabriel in purchasing those shares.⁴¹ Ratepayers should not have to pay for a company's wrongdoing.

The record in this proceeding also does not demonstrate that San Gabriel was at any risk of losing the 358.6 shares previously acquired from Western and Vulcan. As City of Fontana witness Donna Ramas testified, in her investigation and analysis of the Slemmer lawsuit, the Slemmer Settlement Agreement, and the San Bernardino Court Order approving the Slemmer Settlement Agreement, there was nothing indicating that the shares previously acquired by San Gabriel were in jeopardy.⁴² Accordingly, the Commission correctly determined the value attributable to ratepayers that should go into rate base is the \$1,585,920 value of the 179.2 shares of Fontana Union stock that San Gabriel received as a part of the Slemmer Settlement. The combined total value of the 537.8 shares of stock is not the appropriate amount because the additional 358.6 were not in jeopardy. Therefore, The Commission should reject San Gabriel's request to place an additional \$2,614,080 in rate base.

IX. SANDHILL WATER TREATMENT PLANT

A. Background On The Sandhill Water Treatment Plant Reasonableness Review.

The Sandhill Water Treatment Plant was originally designed and constructed in the 1960s at Fontana's Plant F14 site. The Sandhill Plant underwent significant upgrades that were completed in December of 2008. As part of these upgrades, San Gabriel maintained use of its diatomaceous earth filter, added conventional dual media filter beds, and provided pretreatment capabilities.⁴³ In its 2002 GRC, A.02-11-044, San Gabriel

⁴⁰ D.09-06-027, p. 14.

⁴¹ *Id.*

⁴² Tr. pp. 349-350:25-28, 17-24 (City of Fontana/Ramas).

⁴³ Exh. DRA-1, p. 15-3-15-4: lines 14-2.

proposed an estimated cost of \$9.8 million for upgrades to the Sandhill Water Treatment Plant.⁴⁴ These proposed upgrades--although approved--were not completed following the 2002 GRC. In San Gabriel's subsequent 2005 GRC, A.05-08-021, San Gabriel again proposed upgrades to the Sandhill Treatment Plant - this time at a much higher cost of \$35 million. The upgrades were intended to expand capacity and allow the Sandhill Treatment Plant to: (1) treat 29 million gallons per day; (2) treat 100% of Lytle Creek water; (3) treat 100% of State Water Project water; (4) or treat any combination of both Lytle Creek water and State Water Project water. In A.05-08-021, the Commission determined that, "the Sandhill Treatment facility is needed and building it is reasonable."⁴⁵ The Commission also determined that the Sandhill Water Treatment Plant's primary function is that of a baseload unit, operating as nearly as possible on a 24-hour, seven-days-per-week basis to make maximum possible use of San Gabriel's most economical source of supply.⁴⁶

In D.07-04-046, the Commission noted that since San Gabriel had first made its request for proposed upgrades to the Sandhill Water Treatment Plant in A.02-11-044 for an estimated \$9.8 million, in just two years, the cost for the proposed upgrades had escalated to \$35 million.⁴⁷ By the time the Commission issued its decision in San Gabriel's 2008 GRC, D.09-06-027, the total cost expended on the Sandhill Treatment Plant now totaled \$40,307,114.⁴⁸ Because the Commission determined in D.07-04-046 that the Sandhill Treatment Plant upgrade was needed and cost-effective, the Commission did not address need or cost of the upgrades in San Gabriel's 2008 GRC. Nevertheless, the Commission ordered San Gabriel's rates, "subject to refund with interest regarding the revenue requirement associated with the Sandhill Water Treatment Plant (Sandhill)

⁴⁴ D.04-07-034, p. 36.

⁴⁵ D.07-04-046, pp. 40, 118.

⁴⁶ *Id.* at 38.

⁴⁷ *Id.*

⁴⁸ D.09-06-027, p. 74.

upgrades pending a reasonableness review, in its next general rate case.”⁴⁹ Specifically, San Gabriel was ordered to provide the following in its next Fontana Division GRC:

1. [A] thorough affirmative showing regarding Southern California Edison Company’s contractual obligation and the adequacy of Southern California Edison Company’s facilities to deliver sufficient water to the afterbay for the Sandhill Water Treatment Plant to operate at its full 29 million gallon per day capacity.⁵⁰
2. [A] reasonable effort to obtain Southern California Edison Company’s input regarding the adequacy of Southern California Edison Company’s facilities to provide sufficient water to the afterbay for the Sandhill Water Treatment Plant, when sufficient Lytle Creek water is available, and make this information available to other parties in San Gabriel Valley Water Company’s next GRC.⁵¹
3. [A] thorough affirmative showing regarding the capability of the Sandhill Water Treatment Plant to treat 29 MGD of Lytle Creek water, if sufficient water is available. The showing shall include a complete explanation of how the Sandhill Water Treatment Plant will operate to do so.⁵²

This brief will demonstrate that San Gabriel failed to make a thorough affirmative showing with regard to Southern California Edison Company’s contractual obligation, San Gabriel failed to make a sound effort to obtain Southern California Edison Company’s input regarding the adequacy of Southern California Edison Company’s facilities, and San Gabriel failed to make a thorough affirmative showing regarding the capability of the Sandhill Water Treatment Plant to treat 29 MGD of Lytle Creek water, if sufficient water is available.

B. Southern California Edison Company’s Contractual Obligation To Provide Lytle Creek Water To The Sandhill Water Treatment Plant.

In D.09-06-027, the Commission noted that San Gabriel had made claims of Southern California Edison Company’s (hereafter, “Edison”) contractual obligation to deliver up to 38 MGD of Lytle Creek water to the afterbay, however, San Gabriel had not

⁴⁹ D.09-06-027, Ordering Paragraph 16.

⁵⁰ D.09-06-027, Ordering Paragraph 17.

⁵¹ D.09-06-027, Ordering Paragraph 18.

⁵² D.09-06-027, Ordering Paragraph 19.

submitted any evidence in the record to support its claim.⁵³ The Commission further stated that the best indication of Edison's obligations would be the actual contract between San Gabriel and Edison, yet no such contract had been submitted.⁵⁴ The Commission did not make a disallowance based on Edison's contractual obligation or the adequacy of Edison's facilities, but ordered San Gabriel's rates subject to refund with interest pending a reasonableness review of these issues in San Gabriel's next GRC.⁵⁵

At the time DRA submitted its Report on November 3, 2011 (Exhibit DRA-1), DRA did not make any recommendations specific to Edison's contractual obligation to provide Lytle Creek surface water to San Gabriel.⁵⁶ Since then and as this proceeding has evolved, sufficient information has been submitted into the record for DRA to conclude that San Gabriel has not made a thorough affirmative showing of Edison's contractual obligation.

1. San Gabriel is still in the process of determining whether Edison can fulfill its contractual obligation to deliver Lytle Creek water to the Sandhill Water Treatment Plant.

San Gabriel has been fully aware of Edison's inability to deliver up to 38 MGD to the Sandhill Water Treatment Plant since San Gabriel's 2008 general rate case. Yet, San Gabriel has not made a written demand to Edison to meet its contractual obligation.⁵⁷ In the past six months, rather than make a demand, San Gabriel has discussed options with Edison which involve a cooperative effort (between San Gabriel and Edison) to ensure that the proper quantity of water necessary to operate the Sandhill Water Treatment Plant

⁵³ D.09-06-027, p. 71.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Exh. DRA-1, pp. 15-6 – 15-7, lines 17-9.

⁵⁷ Tr. p. 68:9-16 (San Gabriel/DiPrimio).

at its maximum capacity is being delivered.⁵⁸ This runs contrary to what San Gabriel represented it would do in its opening briefs in its previous 2008 GRC.

The City of Fontana's exhibit CF-3 is a cover page and excerpt from San Gabriel's Phase 2, Opening Brief in A.08-07-009. In that Opening Brief, San Gabriel stated the following:

Edison has contractual obligations to take up to 38 mgd . . . San Gabriel is now in consultation with Edison to determine whether Edison can fulfill its contractual obligation to deliver "38 plus" mgd and 'whether they need to do something to assure that they can fulfill that obligation' . . . we will insist upon performance of [Edison's] obligations to deliver the full amount of the water that they have contracted to deliver.'⁵⁹

By stating that it would "insist upon performance of [Edison's] obligations to deliver the full amount of the water they have contracted to deliver," San Gabriel conveyed that it would do what was necessary to ensure that Edison is meeting its contractual obligation of delivering the full amount of water that it is required, by contract, to deliver.

Nonetheless, this has not been the case. As evidenced by Mr. DiPrimio's testimony that Edison's plant must be modified in order for it to take 38 MGD (60 cfs),⁶⁰ Edison is still not meeting its contractual obligation of delivering up to 38 MGD. San Gabriel has not been firm or "insisted upon performance" from Edison as it said it would.

2. San Gabriel has not made a thorough affirmative showing of Southern California Edison Company's contractual obligation to deliver up to 38 MGD of Lytle Creek water.

During cross-examination of San Gabriel's witness, Robert DiPrimio, by the City of Fontana, Mr. DiPrimio confirmed that his direct testimony, in part, provides documentation of Edison's contractual obligations in the form of three indentures involving Fontana Power Company, Fontana Union, and a 1940 indenture involving a

⁵⁸ Tr. p. 67:1-8 (San Gabriel/DiPrimio).

⁵⁹ Exh. CF-3.

⁶⁰ Tr. p. 65:17-23 (San Gabriel/DiPrimio).

transfer of rights under two prior indentures to Edison.⁶¹ Mr. DiPrimio also agreed that his testimony establishes that those indentures constitute Edison’s contractual obligations.⁶² Nevertheless, upon further questioning by the City of Fontana, Mr. DiPrimio confirmed that the indentures included with his testimony do not directly involve San Gabriel but instead involve Fontana Union, so it is true that there is, “no direct contractual obligation . . . between Edison and San Gabriel Valley Water Company.”⁶³ Mr. DiPrimio also could not point to anything in the indenture agreements that specifically identified anything about Edison delivering up to 38 MGD.⁶⁴ In fact, Mr. DiPrimio also agreed that what the indentures do is grant Edison (previously the Fontana Power Company) the right to make use of Lytle Creek water to generate electricity, and then return the same amount of water to the afterbay in the same quantity and quality (without impairment).⁶⁵

Thus, the Commission should find that San Gabriel has not made a thorough affirmative showing of Edison’s contractual obligation to provide Lytle Creek Water to the Sandhill Water Treatment Plant, and absent an actual contract with Edison which demonstrates exactly what Edison’s contractual obligations are, San Gabriel has not met its burden of proof.

C. Adequacy of Edison’s Facilities To Deliver Sufficient Water For Sandhill To Operate At Its Full 29 MGD Capacity.

Edison’s facilities, specifically Edison’s penstock pipeline and afterbay, are incapable of delivering the required amount of water sufficient for the Sandhill Water Treatment Plant to operate at its full 29 MGD.⁶⁶ In order for the Sandhill Water

⁶¹ Tr. pp. 63-64:7-3 (San Gabriel/DiPrimio).

⁶² Tr. p. 64:4-9 (San Gabriel/DiPrimio).

⁶³ Tr. p. 64:10-18 (San Gabriel/DiPrimio).

⁶⁴ Tr. p. 66:11-22 (San Gabriel/DiPrimio).

⁶⁵ Tr. pp. 64-65:19-12 (San Gabriel/DiPrimio).

⁶⁶ See generally Exh. DRA-1, pp. 15-7 to 15-15.

Treatment Plant to operate at its full 29 MGD, the flowrate down Edison’s penstock pipeline though Edison’s Fontana Power Plant and leaving Edison’s afterbay must equal up to 55.3 cfs (equivalent to 35.7 MGD).⁶⁷ A flowrate of 55.3 cfs (35.7 MGD) is required to ensure an adequate amount of water is delivered from the afterbay to the Sandhill Water Treatment Plant and to others, namely, the West Valley Water District, the City of Bernardino, and the City of Rialto. Table 1 – Flowrate Comparison Chart By Location provides the unit conversion equations from million gallons per day (“MGD”) and cubic feet per second (“cfs”).

Table 1 – Flowrate Comparison Chart By Location

Flowrate Location and Description	Flowrate* (in units of MGD and cfs)	
	MGD (Million Gallons per Day)	cfs (cubic feet per second)
Design Capacity of Edison's Penstock Pipeline to its Afterbay	38.7 MGD	60 cfs
Sum total of the flowrate required to provide 29 MGD to Sandhill and 10.4 cfs to "others" from Edison's Afterbay	35.7 MGD	55.3 cfs
Maximum flowrate Edison is currently allowing through its Penstock Pipeline and into its Afterbay	31 MGD	48 cfs
Required flowrate for "others" from Edison's Afterbay	6.7 MGD	10.4 cfs
Required flowrate to meet the design capacity of Sandhill from Edison's Afterbay	29 MGD	44.9 cfs
Flowrate San Gabriel is proposing to run through a bypass at Edison's afterbay	5 MGD	7.7 cfs
*the most commonly referred to unit for each location is shown in BOLD		
unit conversion: $1 \text{ MGD} = \frac{1 \text{ Million Gallons}}{\text{Day}} \times \frac{1,000,000 \text{ gallons}}{1 \text{ Million Gallons}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{60 \text{ min.}} \times \frac{1 \text{ min.}}{60 \text{ sec.}} \times \frac{1 \text{ cubic foot}}{7.48 \text{ gallons}} \times \frac{1 \text{ cfs}}{1 \text{ cubic foot} / \text{sec.}} = 1.55 \text{ cfs}$		

1. The age and underground depth of Edison’s penstock pipeline impairs the pipeline’s reliability to achieve its maximum flow.

Edison’s penstock pipeline is nearly a century old and is buried at a shallow depth. Its age and location undermine Edison’s capability to supply the water needed for the

⁶⁷ Exh. DRA-1, p. 15-7, lines 14-17.

Sandhill Water Treatment Plant to operate at its full 29 MGD capacity. Edison representatives confirmed this fact on April 11, 2011, during a meeting between Edison and San Gabriel representatives where both parties discussed several items related to the Sandhill Water Treatment Plant, including the Fontana Power Plant (also referred to as the, “Electric Hydro Power Plant”) Operations, Decision 09-06-027, and the supply pipe/penstock.⁶⁸

Soon after the April 11, 2011 meeting, Edison’s Manager of Eastern Hydro, Walter D. Pagel, submitted a letter to San Gabriel’s Vice President, Robert J. DiPrimio, memorializing the April 11, 2011 meeting between Edison and San Gabriel representatives (hereafter, referred to as the “Edison-Pagel letter”). As stated in the Edison-Pagel letter, during the April 11, 2011 meeting, San Gabriel representatives specified that records from Edison’s Hydro Electric Power Plant show a maximum delivery rate of 60 cubic feet per second (“cfs”) in Edison’s penstock pipeline.⁶⁹ In response to San Gabriel’s depiction, Edison representatives stated that the supply pipe/penstock is over 22,000 feet long and over 90 years old.⁷⁰ Edison representatives further stated, “the pipe’s age, and its shallow depth under the ground level, suggest that its integrity could be compromised, which can affect the maximum flow.”⁷¹ This statement by Edison representatives confirms that a flowrate of 60 cfs in Edison’s penstock pipeline may no longer be possible.

Even though Edison representatives confirmed that the penstock pipeline’s age and shallow depth compromise the pipeline’s ability to deliver the maximum flowrate of 60 cfs to Sandhill, San Gabriel still asserted in its direct testimony, submitted July 2011, that “Edison’s facilities can operate and have operated at its design or operating capacity

⁶⁸ See Exh. SG-5 (Direct Testimony of Robert J. DiPrimio) Attachment D – Letter from Walter D. Pagel of Southern California Edison to Robert J. DiPrimio of San Gabriel Valley Water Company summarizing meeting on 4/11/2011, dated April 21, 2011.

⁶⁹ *Id.* at 1.

⁷⁰ *Id.*

⁷¹ *Id.*

of 60 cfs or greater.”⁷² San Gabriel cited to its “records,” meaning the entries in its logbooks, as confirming this fact.⁷³ However, when asked during cross-examination about the four entries made in its logbooks, San Gabriel witness Mr. DiPrimio, confirmed that the entries were made nearly 54 years ago.⁷⁴ Thus, the most recent entry submitted in San Gabriel’s testimony as proof that Edison’s facilities “can operate and have operated at its design capacity of 60 cfs or greater” is from April 11, 1958 to April 13, 1958.⁷⁵ San Gabriel has not submitted more recent evidence in this proceeding showing that the penstock pipeline has the ability operate at the maximum delivery rate of 60 cfs capacity. Thus, San Gabriel has not demonstrated that Edison’s Hydro Electric Power Plant, namely the penstock pipeline, has the capacity to deliver sufficient water for Sandhill to operate at 29 MGD.

2. Edison’s facilities currently operate at a reduced capacity, which does not allow enough water for Sandhill to achieve its full 29 MGD capacity.

Edison’s facilities currently operate at a reduced capacity of 48 cfs.⁷⁶ A reduced capacity of 48 cfs is not enough for the Sandhill Water Treatment Plant to achieve its full 29 MGD (44.9 cfs) capacity since 10.4 cfs from the afterbay is required for delivery to the West Valley Water District, the City of Bernardino, and the City of Rialto. In direct testimony and during evidentiary hearings, Mr. DiPrimio explained that Edison is currently operating the Hydro Electric Power Plant at 48 cfs and suggested that a restriction or blockage in the penstock may be causing this reduced flow.⁷⁷ Mr. DiPrimio also testified that once a solution is implemented, it is his understanding that the penstock

⁷² Exh. SG-18, p. 14, lines 23-28.

⁷³ *Id.*

⁷⁴ Tr. p. 41:5-17 (San Gabriel/Di-Primio).

⁷⁵ *Id.*

⁷⁶ Exh. SG-5, p. 8, line 24; Tr. p. 41:18-22 (San Gabriel/DiPrimio).

⁷⁷ *Id.*

will resume its 60 cfs design capacity.⁷⁸ Edison representatives confirmed that the Fontana Power Plant will continue to operate at 48 cfs until a solution is identified.⁷⁹ To date, San Gabriel’s only solution to the “restriction” or “blockage” in Edison’s penstock pipeline is the option of using an existing bypass line to supplement flows into the Sandhill Water Treatment Plant. However, this solution is – at best – only a temporary solution. Mr. DiPrimio admits this in his direct testimony where he discusses the bypass line option as a measure to be “taken in the *short term* to supplement flows to the Sandhill Plant while the longer term solution is implemented that allows delivery of the full capacity of 60 cfs to the afterbay.”⁸⁰ More importantly, the option of using the bypass line does nothing to address the concerns raised in the Edison-Pagel letter, and San Gabriel and Edison have not entered into a formal agreement to use the existing bypass line, they only continue to have open and ongoing discussions.⁸¹

3. Use of the existing bypass line will not restore maximum delivery of water from Edison’s facilities to Sandhill.

Even though San Gabriel reports that it has been in open and continuing discussions with Edison to restore the full capacity of Edison’s Hydro Electric Power Plant and supply pipe/penstock facilities, no binding agreements have been reached with respect to what the ultimate problem might be, or a possible solution, and a date for resolving the problem has not yet been established. In fact, even assuming use of the the existing bypass line is a solution to restoring the maximum flows of 60 cfs to the Sandhill Water Treatment Plant, an additional problem arises when turbidity increases beyond the point that Edison’s facilities are able to handle. This causes further flowrate restrictions to the Sandhill Water Treatment Plant.

⁷⁸ Tr. p. 42:2-6 (San Gabriel/DiPrimio).

⁷⁹ Exh. SG-5, Attachment D, page 2.

⁸⁰ Exh. SG-5, page 9, lines 14-17 (emphasis added).

⁸¹ Tr. p. 71:9-24 (San Gabriel/DiPrimio); *See also*, Exh. SG-5, Attachment D, page 2.

Mr. DiPrimio's cross-examination testimony provided additional details which confirm that there are still many unknowns in addressing the problem with Edison's Hydro Electric Power Plant and in restoring full capacity.⁸² When asked whether it was correct that use of the bypass line would still not address the problem with Edison's facilities delivering 60 cfs, Mr. DiPrimio responded:

A: As I commented on before, I'm not sure there's a problem with the penstock. Edison has agreed to perform inspection on the pipeline and to evaluate its structural integrity. The problems with operating the power plant may be in the afterbay or they may be in the penstock. But that's part of our work that Edison and San Gabriel are working cooperatively together to determine what the solutions can be implemented so that we can operate the power plant at a higher flow rate.

Q: Okay. And you continue to work cooperatively with them?

A: Yes.

Q: Is that correct? But there's still unknowns as to – or an unknown in addressing this issue overall?

A: At the present time, that's correct.⁸³

Additionally, Edison's facilities are not only subject to the flowrate limitations in the penstock and through the turbines to the afterbay, there are also limitations to the amount of turbidity that Edison's turbines can handle. For instance, if too much sand and debris accumulates in turbid water during a storm, this can cause Edison to turn away ALL of the large quantities of water. That is, Edison would turn away not only the 5 MGD San Gabriel currently promises if it uses the bypass pipeline, but also ALL of the Lytle Creek surface water available during a storm event. San Gabriel witness, Mr. LoGuidice, agreed that, "it is most likely true, yes . . . [that during] . . . high flows

⁸² Tr. p. 120:4-23 (San Gabriel/DiPrimio).

⁸³ *Id.*

associated with storm events that turbidity is the highest.”⁸⁴ Mr. LoGuidice also acknowledged that Edison has some concerns with respect to the amount of turbidity their facilities can handle. Mr. LoGuidice’s testimony went as follows:

Q: Now, are there currently any limitations on the amount of turbidity that Edison is able to handle at its power plant near the afterbay?

A: I don’t believe there are any written levels as to the level of turbidity, any written requirements as to what level of turbidity Edison can operate at.

They do have some concerns as that damage could affect – could occur to their facilities if turbidity is too high, but it also relates to the type of turbidity.

Q: So you agree that there are limitations?

A: I’m sure there are limitations. I don’t know what they are as I sit here. We have not experienced any limitations due to turbidity since our new plant has been in operation.⁸⁵

Mr. LoGuidice’s response during cross-examination is inconsistent with San Gabriel’s data request response, “Explanations For Reduced Lytle Creek Flow To The Sandhill Water Treatment Plant.”⁸⁶ In its data request response, San Gabriel describes several days in 2011 when Edison requested San Gabriel to turn out their intake surface flow due to high turbidity levels during a storm event.⁸⁷ Nevertheless, although San Gabriel acknowledged Edison’s concerns with respect to high flows in Lytle Creek increasing turbidity to a point where damage to Edison’s Hydro Electric Power Plant could occur and the Hydro Electric Power Plant is unable to use the water, San Gabriel continues to focus on the fact that Sandhill has not experienced problems with turbidity yet.⁸⁸ San Gabriel asserted, “Our new facility with the pre-treatment equipment available

⁸⁴ Tr. p. 374:24-27 (San Gabriel/LoGuidice).

⁸⁵ Tr. pp. 372:25-373:15 (San Gabriel/LoGuidice).

⁸⁶ See Exh. DRA-2, Attachment 7 (San Gabriel’s response to DRA data request AR4-001, Question 7).

⁸⁷ *Id.*

⁸⁸ Tr. p. 375:5-14 (San Gabriel/LoGuidice).

[meaning the post-2002 and 2005 GRC upgrades to the Sandhill Water Treatment plant] allows us to treat at much, much higher levels of turbidity. In fact, we have not run across a period yet since the plant has been in operation where we were unable to treat the water.”⁸⁹

San Gabriel misses the point. It is true that there have been many rainy seasons. However, water has not been delivered to the Sandhill Water Treatment Plant during these storms because of the limitations and inadequacies in Edison’s facilities. In fact, there may be further limitations related to turbidity at the Sandhill Water Treatment Plant that have yet to be determined since higher turbidity water is not able to pass through Edison’s facilities.

In addition to the shortcomings in Edison’s penstock pipeline and the flow restrictions experienced in Edison’s facilities when turbidity increases, Edison also pointed to an additional problem with its afterbay that affects the maximum delivery of water into the Sandhill Water Treatment Plant. As summarized in the Edison-Pagel letter, Edison representatives notified San Gabriel of a problem in the Fontana Power Plant’s weir within Edison’s afterbay. Edison stated the following, “due to the level of the Fontana Water Company weir, water appears to be backing up from the Fontana Hydro Electric Plant’s afterbay into SCE’s power plant turbines, preventing the maximum flow of water.”⁹⁰ What’s more, Edison representatives also informed San Gabriel that, “the Fontana Power Plant becomes electrically unstable at flows between 50 and 55 cfs and it is difficult to keep the generators online.”⁹¹ These deficiencies in Edison’s facilities render it unable to operate at a capacity of no more than 48 cfs.⁹²

⁸⁹ Tr. p. 372:18-24 (San Gabriel/LoGuidice).

⁹⁰ Exh. SG-5, Attachment D, page 1.

⁹¹ *Id.*

⁹² *Id.*

4. San Gabriel failed to make a reasonable effort to obtain Edison's input as previously ordered by the Commission in D.09-06-027.

In San Gabriel's last GRC, the Commission ordered San Gabriel to "make a reasonable effort to obtain Southern California Edison Company's input regarding the adequacy of Southern California Edison Company's facilities to provide sufficient water to the afterbay for the Sandhill Water Treatment Plant, when sufficient Lytle Creek water is available, and make this information available to other parties in San Gabriel Valley Water Company's next GRC."⁹³ During evidentiary hearings, San Gabriel confirmed that the earliest information it made available to the Commission or DRA was the Edison-Pagel letter, a letter summarizing a meeting held on April 11, 2011 with Edison representatives.⁹⁴ This meeting also appears to be the earliest contact that San Gabriel had with Edison regarding the adequacy of Edison's facilities. That letter, dated April 21, 2011, was not submitted until July 11, 2011, as Attachment D to San Gabriel Exhibit SG-5, Robert J. DiPrimio's direct testimony.

If San Gabriel were serious about resolving the inadequacies in Edison's facilities, action would have been taken soon after the 2009 GRC decision ordering San Gabriel to obtain Edison's input. What is more suspicious is that even though the flowrate through Edison's afterbay never reached its design capacity of 60 cfs, nor the minimally required 55.3 cfs, during the rainy season of 2010,⁹⁵ this substandard performance did not motivate San Gabriel to discuss this issue before the April 11, 2011 meeting with Edison representatives. San Gabriel's passivity is particularly troubling since the Sandhill Water Treatment Plant Hydraulic Assessment (prepared by Civiltec Engineering for San Gabriel in March 2010, Exhibit SG-13) required Sandhill to operate at 29 MGD. To try to make up for the deficiency in flowrate, the Hydraulic Assessment based its conclusion of a

⁹³ D.09-06-027, Ordering Paragraph 18.

⁹⁴ Tr. p. 55:6-13 (San Gabriel/DiPrimio).

⁹⁵ See Exh. DRA-1, Attachment 15-4.

possible 29 MGD flowrate on a 30-minute time period on March 12, 2010. The 29 MGD flowrate was not based on a full day of operation.

5. San Gabriel has not made a thorough affirmative showing regarding the adequacy of Edison's facilities to deliver sufficient water to the afterbay for Sandhill to operate at its full 29 MGD capacity.

Without a definite plan or solution in place to resolve the deficiencies in Edison's facilities and San Gabriel's languid effort in obtaining Edison's input regarding the adequacy issue, the Commission should find that Edison's facilities are inadequate to deliver sufficient water for the Sandhill Water Treatment Plant to operate at its full 29 MGD capacity. As long as Edison's Hydro Electric Power Plant continues to operate at 48 cfs instead of 60 cfs and when one considers that 10.4 cfs that is delivered to the West Valley Water District, the City of San Bernardino, and the City of Rialto from the afterbay, only 37.6 cfs (24.3 MGD) is available for delivery to the Sandhill Water Treatment Plant. This means that the Sandhill Water Treatment Plant is not operating as it should be at its full daily capacity of 29 MGD.

D. Capability Of The Sandhill Water Treatment Plant To Treat 29 MGD Of Lytle Creek Water If Sufficient Water Is Available.

1. San Gabriel has not met its burden of proof regarding whether Sandhill is capable of treating 29 MGD of Lytle Creek water.

In D.09-06-027, the Commission ordered San Gabriel to make a thorough affirmative showing in its next general rate case regarding the capability of the Sandhill Water Treatment Plant to treat 29 MGD of Lytle Creek water, if sufficient water is available. The Commission also ordered San Gabriel to include a complete explanation of how the Sandhill Water Treatment Plant will operate to do so.⁹⁶ Despite being charged with this evidentiary burden, San Gabriel failed to provide a thorough affirmative showing in the instant proceeding demonstrating that the Sandhill Water

⁹⁶ D.09-06-027, p. 115, Ordering Paragraph 19.

Treatment Plant is capable of treating 29 MGD of Lytle Creek water, if sufficient water is available, and how the Sandhill Water Treatment Plant will operate to do so. Moreover, the Sandhill Water Treatment Plant Hydraulic Assessment submitted by San Gabriel which purports to, “evaluate and determine the capacity of San Gabriel’s Sandhill Water Treatment Plant to produce potable water for San Gabriel to distribute to its customers,”⁹⁷ reveals inconsistencies with the design drawings (specifically, the General Hydraulic Profile design drawing G-007 prepared by Black & Veatch in 2004) for the Sandhill Water Treatment Plant and San Gabriel’s own testimony in this proceeding. Therefore, San Gabriel’s Hydraulic Assessment cannot be relied on to show the capability of the Sandhill Water Treatment Plant to treat 29 MGD of Lytle Creek Water.

As described in Mr. LoGuidice’s rebuttal testimony, “[c]onstraints regarding the operation of Southern California Edison’s facilities have temporarily limited the availability of maximum amounts of Lytle Creek water for the Sandhill plant.”⁹⁸ In addition to the constraints and inadequacies with Edison’s facilities to deliver sufficient water for the Sandhill Water Treatment Plant to operate at its full 29 MGD capacity, inconsistencies exist between the Hydraulic Assessment’s portrayal of the Sandhill Water Treatment Plant’s capacity and the “Standard Operating Procedures.”⁹⁹ Specifically, the Normal Operating Conditions presented in the Hydraulic Assessment are inconsistent with the Standard Operating Procedures and the design drawings for the Sandhill Water Treatment Plant.¹⁰⁰

⁹⁷ Exh. SG-13, p. 2, lines 1-4.

⁹⁸ Exh. SG-19-C, p. 15, lines 18-21.

⁹⁹ Exh. DRA-1, p. 15-16, lines 4-6, footnote 273.

¹⁰⁰ Exh. DRA-1, page 15-15.

a) The Hydraulic Assessment’s Normal Operating Conditions are inconsistent with the Sandhill Water Treatment Plant’s Standard Operating Procedures and design drawings.

The Sandhill Water Treatment Plant’s Standard Operating Procedures clearly state in the first sentence under section 4.2 – Influent EQ Reservoir, “[a]n influent EQ reservoir provides for blending of raw water flows and equalization of fluctuating flows from Lytle Creek.”¹⁰¹ As DRA’s witness Ms. Rasmussen testified during hearings, the Influent Equalization Reservoir has two purposes:

A: Both are in an equalizing capacity. First, to equalize pressures when treating Lytle Creek along with State Water Project water. The State Water Project water comes at a much higher pressure. So that reservoir is required to equalize the pressures.

When only treating Lytle Creek water, there is also a need for that reservoir to equalize the flow coming from Lytle Creek being, namely, in order to maximize the flow through the Sandhill Water Treatment Plant.¹⁰²

The “Standard Operating Procedures” for the Sandhill Water Treatment Plant and the design drawings for the upgraded Sandhill Water Treatment Plant show that the Sandhill Water Treatment Plant utilizes the Influent Equalization Reservoir and can maintain a five-foot water level.¹⁰³ (A five-foot water level is equivalent to 1,580 HGL feet {“HGL” is the “Hydraulic Grade Line”} at water surface elevation. For the water in the Influent Equalization Reservoir, which is at atmospheric pressure, the HGL is the water surface level presented as the elevation in feet above sea level.) The 2004 Black & Veatch General Hydraulic Profile design drawing G-007 (hereafter referred to as, “G-007 design drawing”) also shows that 30 MGD of Lytle Creek water should flow by gravity from Edison’s afterbay to the Influent Equalization Reservoir with a five-foot water level

¹⁰¹ Sandhill Water Treatment Plant Standard Operating Procedures, Page 8 of 22 (SOP-C, WTP Description). See also, Exh. DRA-1 p. 15-17; Tr. p. 474:14-26.

¹⁰² Tr. p. 482:1-13 (DRA/Rasmussen).

¹⁰³ Exh. DRA-1, p. 15-16, lines 13-17.

(1,580 HGL). This suggests that Lytle Creek water should also have a gravity flow from Edison's afterbay to the Influent Equalization Reservoir with a more shallow water level (anything less than five-feet) and thereby achieve an even greater instantaneous flowrate than 30 MGD.

Conversely, the Hydraulic Assessment recommends bypassing the Influent Equalization Reservoir in order to achieve a flowrate of 29 MGD.¹⁰⁴ The Hydraulic Assessment further recommends that if the Influent Equalization Reservoir is utilized, it is maintained at only a one-foot water level (1,576 HGL) or less in order to optimize the maximum possible flow, approximately 28.26 MGD.¹⁰⁵ What the Hydraulic Assessment fails to point out is that, in order for the Sandhill Water Treatment Plant to be able to treat 29 MGD or more of Lytle Creek water, San Gabriel must bypass the Influent Equalization Reservoir. This is inconsistent with G-007 design drawing that shows the Sandhill Water Treatment Plant should be able to treat 30 MGD of Lytle Creek water. Bypassing the Influent Equalization Reservoir is not consistent with how the Sandhill Water Treatment Plant was designed to operate to maximize its capacity and achieve a daily flowrate of 29 MGD. (Exhibit DRA-1, Attachment 15-6 – *A Comparison of the Civiltec Engineering Inc. Hydraulic Assessment and the Black & Veatch Corp. Design Drawings for the Hydraulic Profile of the Sandhill Water Treatment Plant* – details the inconsistencies between the Hydraulic Assessment and the G-007 design drawing.)

During cross-examination of DRA witness Ms. Rasmussen, counsel for San Gabriel asked Ms. Rasmussen whether it was true that Sandhill could be operated with the Influent Equalization Reservoir at a water elevation lower than 1580 HGL.¹⁰⁶ Ms. Rasmussen responded that, "It can be operated. However, in order to maximize the flow

¹⁰⁴ Exh. SG-13, Attachment 2, pp. 3-1 – 3-6.

¹⁰⁵ Exh. SG-13, Attachment 2, p. 3-5.

¹⁰⁶ Tr. p. 472:18-21 (DRA/Rasmussen).

through the plant, the influent equalization reservoir would be necessary.”¹⁰⁷ Referring to the G-007 design drawing, Ms. Rasmussen further testified:

A: That drawing also shows that it’s possible to augment water using State Water Project sources. ***But I do not see any indication on that drawing of any water required from State Water Project sources*** to create that water surface elevation in the influent equalization reservoir.¹⁰⁸

San Gabriel agreed that a 21 MGD flowrate in the Hydraulic Assessment with a 1,580 water surface elevation in the Influent Equalization Reservoir is inconsistent with the G-007 design drawing,¹⁰⁹ yet it made a further attempt to justify the inconsistency in the G-007 design drawing and the Hydraulic Assessment. San Gabriel seems to suggest that Black & Veatch’s G-007 design drawing does not specify which sources would make the 30 MGD flow rate possible.¹¹⁰ Ms. Rasmussen invalidated this suggestion by explaining that, although the drawing does not specifically reference the sources, the drawing does show the HGL going from Lytle Creek to the Influent Equalization Reservoir through the Sandhill Water Treatment Plant. Within that path, it is possible to supplement the flow rate by adding State Water Project water. However, the Black & Veatch drawing does not show that State Water Project water is necessary to reach the 30 MGD flowrate.¹¹¹

As DRA explained in its report, “although the design of the Sandhill Water Treatment Plant was to handle 30 MGD using the Influent Equalization Reservoir with a 1,580 HGL water surface, in reality, the Sandhill Water Treatment Plant is only able to receive 21.07 MGD under those conditions. Therefore, in order for the Sandhill Water Treatment Plant to treat 29 MGD of Lytle Creek water, the normal design conditions

¹⁰⁷ Tr. pp. 472:22-25 (DRA/Rasmussen).

¹⁰⁸ Tr. p. 472:5-11 (DRA/Rasmussen {emphasis added}).

¹⁰⁹ Tr. p. 142:10-17 (San Gabriel/Hawes).

¹¹⁰ Tr. p. 473:2-5 (Question by San Gabriel’s counsel, Mr. Mattes).

¹¹¹ Tr. p. 473:6-13 (DRA/Rasmussen).

must be altered by bypassing the Influent Equalization Reservoir.¹¹² However, bypassing the Influent Equalization Reservoir prevents San Gabriel from treating a daily flow of 29 MGD of Lytle Creek water when Lytle Creek water is available. Contrary to the results of the Hydraulic Assessment, San Gabriel has not achieved a daily flowrate of 29 MGD of Lytle Creek surface water at the Sandhill Water Treatment Plant.

During discovery, DRA offered San Gabriel an opportunity to explain the discrepancy between the “Normal Operating Conditions” described in the Hydraulic Assessment and those in the Sandhill Standard Operating Procedures and the G-007 design drawing. DRA asked San Gabriel to provide the Hydraulic Assessment’s output for the maximum flow rate under conditions utilizing the Influent Equalization Reservoir while maintaining a five foot water surface and an HGL of 1580.00 feet in the Influent Equalization Reservoir (the normal operating level shown in design drawing G-007.)¹¹³ San Gabriel responded that the maximum flow rate according to its hydraulic model was 21.07 MGD, and not the 30 MGD as represented in the G-007 design drawing. Yet, even achieving a flowrate of 21 MGD requires a high water surface elevation at the afterbay weir which could interfere with Edison’s afterbay operations and is not recommended. San Gabriel acknowledged this fact in its Hydraulic Assessment when it stated “a post-weir water surface level . . . between zero and three inches below the weir elevation is considered practical but not recommended for extended periods.”¹¹⁴

b) San Gabriel’s argument that the 30 MGD flowrate depicted in the G-007 design drawing is based on water supplemented by State Water Project sources is inaccurate.

During hearings, San Gabriel’s witness Mr. LoGuidice unsuccessfully tried to assert that the G-007 design drawing depicts only a specific scenario of the Sandhill Water Treatment Plant treating multiple sources. Mr. LoGuidice testified, “the plan

¹¹² Exh. DRA-1, p. 15-17, lines 5-11 (emphasis added).

¹¹³ Exh. DRA-2, Question 3.

¹¹⁴ Exh. SG-13, p. 2-9 and Figure 2.02.

shows how water would flow through the plant utilizing more than one single source of water. It includes surface water from Lytle Creek as well as State Water Project Water from either Inland Empire Utilities Association or the San Bernardino Valley Municipal Water District.”¹¹⁵ Mr. LoGuidice’s explanation is irrational. As Ms. Rasmussen had testified to earlier, Black & Veatch’s G-007 design drawing does not indicate that water is required from State Water Project sources.¹¹⁶ What’s more, a hydraulic profile like the G-007 design drawing would not have a clear purpose if it required water to come from multiple sources without specifying the amount coming from each source. What is more rational is that 30 MGD would flow from Edison’s afterbay to the Influent Equalization Reservoir, with State Water Project sources supplementing Sandhill as needed with no hydraulic concerns because of the high pressure of the sources.

Using Black & Veatch’s G-007 design drawing to determine which sources flow through the Sandhill Treatment Plant confirms that water from State Water Project sources is not required or even assumed. When inspecting Black & Veatch’s G-007 design drawing, it is clear there is a lack of any solid line boxes surrounding the elevation notations in the State Water Project portion of design drawing G-007, which would indicate an HGL elevation in the scenario of a 30 MGD flowrate. Further, the hydraulic grade line (HGL) shown specifically for State Water Project sources indicates there is no flow entering the Influent Equalization Reservoir from State Water Project sources in the hydraulic scenario with a 30 MGD flowrate.¹¹⁷ It seems once San Gabriel realized it could not send 29 MGD of Lytle Creek surface water to the Influent Equalization Reservoir it completely disregarded use of the Influent Equalization Reservoir to maximize the flow from Edison’s afterbay. However, this is not how the Sandhill

¹¹⁵ Tr. p. 367:2-23 (San Gabriel/LoGuidice).

¹¹⁶ See footnote 108, Tr. p. 472:5-11 (DRA/Rasmussen).

¹¹⁷ The State Water Project sources are indicated on drawing G-007 and show a pipe connection leaving the Energy Dissipation Facility and into the Influent Equalization Reservoir. The HGL for the water leaving the Energy Dissipation Facility is shown as being equal the top of the pipe entering the Influent Equalization Reservoir, indicating no movement of water from the State Water Project sources.

Treatment Plant was meant to operate when it underwent upgrades following San Gabriel's 2005 GRC. Black & Veatch's design drawing G-007 was prepared "during the design process of the Sandhill Water Treatment Facility"¹¹⁸ and depicted the Normal Operating Conditions of the Sandhill Treatment Plant as treating 30 MGD of Lytle Creek water and utilizing the Influent Equalization Reservoir.¹¹⁹

c) The Hydraulic Assessment erroneously relies on 30 minutes of data to calculate the Sandhill Treatment Plant's *daily* operating capacity.

San Gabriel's Hydraulic Assessment incorrectly provides estimates of Sandhill's *daily* operating capacity based on a model that was calibrated using instantaneous data from an un-sustained flowrate of approximately 30 MGD over *30 minutes*.¹²⁰ Using instantaneous data from a 30-minute period to estimate the daily operating capacity is problematic for three reasons. First, it is not based on daily operating flow conditions. Instead, San Gabriel relies on instantaneous data from an un-sustained flowrate of approximately 30 MGD over a 30-minute time period. Second, as Mr. LoGuidice testified to previously, it is not practical to operate the Sandhill Treatment Plant at its maximum capacity 24 hours a day.¹²¹ Since the Sandhill Treatment Plant was upgraded in 2008, it has not treated a full 29 MGD on any one day, reaching only 28.4 on one day out of three years of performance.¹²² Third, reporting instantaneous and daily flowrates interchangeably in MGD units is misleading, particularly when done without distinguishing between an instantaneous maximum and daily flowrates. This is a particular concern when one considers that the only recorded flowrate presented in the

¹¹⁸ Tr. p. 367:11-14 (San Gabriel/LoGuidice).

¹¹⁹ For ease of reference and explanation, attached hereto as Attachment 1, are three figures containing enlarged portion of G-007 design drawing.

¹²⁰ Exh. DRA-1 p. 15-20, lines 4-7.

¹²¹ Tr. p. 368:5-10 (San Gabriel/LoGuidice).

¹²² Tr. pp. 380-381:24-10 (San Gabriel/LoGuidice); *See also*, Exh. DRA-1 pp. 15-20 to 15-22, lines 11-2, Figure 15-E.

Hydraulic Assessment is an instantaneous maximum flowrate of 30.2 MGD on March 12, 2010, at 11:30AM. This short-lived recorded value was used to calibrate the hydraulic model for a daily flowrate even though the actual *daily* recorded flowrate for March 12, 2010 was only 21.91 MGD.¹²³

d) The evidence of 53 days in 2011 when Sandhill treated over 25 MGD does not outweigh the 200-plus days when ample Lytle Creek water was available yet not treated at Sandhill.

Once again, San Gabriel tries to prove the Sandhill Water Treatment Plant's capability to treat 29 MGD of Lytle Creek Water by contending that there were 53 days when Sandhill treated over 25 MGD.¹²⁴ San Gabriel fails to point out that 20 of the 53 days included flows from State Water Project sources. When only considering Lytle Creek water treated at Sandhill, the maximum daily recorded flowrate at Sandhill was 26.45 MGD on March 19, 2011. This is only 79% of the increased capacity from 17 MGD to 29 MGD, and it only occurred on one day. Furthermore, San Gabriel also does not allude to the 200-plus days since January 1, 2009, when ample Lytle Creek surface water was available, yet far less than 25 MGD was treated at the Sandhill Water Treatment Plant.¹²⁵ Without a doubt, San Gabriel has failed to provide a thorough affirmative showing regarding the capability of the Sandhill Water Treatment Plant to treat 29 MGD of Lytle Creek water, if sufficient water is available.

¹²³ Exh. DRA-1, p. 15-18.

¹²⁴ Exh. DRA-2. (San Gabriel response to Question 6 [San Gabriel's response included Attachment 63 to the City of Fontana Data Request No. 2, which lists the quantity of water treated at the Sandhill Plant each day from January 1, 2009 through September 11, 2011 (some days included Lytle Creek flow only and some days included both Lytle Creek flow and State Water Project water). San Gabriel Attachment 6 to its response lists the quantity of State Water Project water treated each day at the Sandhill Plant during the same time period. San Gabriel clarifies that the quantity of water delivered to Sandhill plant from the afterbay can be determined by subtracting the quantity of State Water Project water listed in Attachment 6 from the total quantity of water treated at Sandhill listed on Attachment 63.

¹²⁵ Exh. DRA-1, Attachment 15-4 – Daily Recorded Available Lytle Creek Surface Water and the Daily Recorded Flow Diverted to the Sandhill Water Treatment Plant.

e) **The Commission should find that the Sandhill Treatment Plant Upgrade is not fully used and useful.**

The Commission is vested with the authority to “supervise and regulate every public utility in the State.”¹²⁶ In the Commission’s exercise of jurisdiction to regulate a public utility’s investment in water system infrastructure, the Commission “retains continuing authority to determine the used, useful, or necessary status of any and all infrastructure improvements and investments.”¹²⁷ Under the “used and useful” principle, “[w]e [the Commission] begin by analyzing these projects under used and useful principles, long followed by our Commission. Under these principles, ratepayers are required to bear only the reasonable costs of those projects which provide direct and ongoing benefits, or are used and useful in providing adequate and reasonable service, to the ratepayers.”¹²⁸ In D.09-06-027, the Commission also provided the reasonableness review standard required for post-2002 construction projects:

For a project to be used and useful, it must be in use providing service to ratepayers. In addition, it must be built to meet the design parameters. Thus, if a project is supposed to perform at a certain level, but performs at a lower level because of inadequate design or construction, only those costs reasonably attributable to the lower performance level will be allowed in ratebase.¹²⁹

Applying these principles, San Gabriel has failed to demonstrate that the 2008 Sandhill Treatment Plant upgrades have been used and useful. In fact, in the past three years since the upgrades were completed and on days when more than ample water was available in Lytle Creek, the Sandhill Water Treatment Plant has never had a daily flowrate of 29 MGD. Moreover, the Sandhill Water Treatment Plant is not operating as

¹²⁶ Cal. Pub. Util. Code § 701 (2012).

¹²⁷ Cal. Pub. Util. Code § 790 (2012).

¹²⁸ Re Pacific Power & Light Company, (1985) 19 CPUC 2d 36, 39 (citing D.83-12-068, Mimeo at p. 46). (Decision 85-09-084)

¹²⁹ D.09-06-027, p. 29.

intended, as the Commission stated in D.07-04-046. In D.07-04-046, the Commission determined that:

The Sandhill plant's primary function will be as a baseload unit, operating as nearly as possible on a 24-hour, seven days per week basis to make maximum possible use of San Gabriel's most economical source of supply, Lytle Creek surface water plus State Water Project supply purchased through Muni.¹³⁰

During hearings, San Gabriel witness Mr. LoGuidice testified the following:

A: It's not practical to operate the Sandhill facility or any other facility on a 24 hours a day, seven day a week basis at its maximum capacity. Nothing can be operated at that capacity, at its maximum capacity continuously.¹³¹

Yet, in rebuttal testimony, Mr. LoGuidice stated the following, "with the upgrades and modifications completed, the Sandhill Water Treatment Plant now will treat up to 29 MG per day on a consistent basis irrespective of the source."¹³² Mr. LoGuidice further testified during hearings that the Sandhill Water Treatment Plant is, "capable of treating consistently up to 29 million gallons per day when water is available to do so and the system has the need for that much water."¹³³ When asked to explain what appeared to be a blatant contradiction, Mr. LoGuidice provided the following response, "it's possible to consistently operate the plant at or near its capacity, but it's not practical to operate it continuously to average its maximum capacity."¹³⁴

Although Sandhill is meant to be a baseload unit utilizing San Gabriel's most inexpensive water source, and should operate as nearly as possible on a 24-hour-seven-day-per-week basis to make the most maximum possible use, San Gabriel admits that it's just "not practical to operate it [Sandhill] continuously to average its maximum

¹³⁰ D.07-04-046, p. 38.

¹³¹ Tr. p. 368:5-10 (San Gabriel/LoGuidice).

¹³² Exh. SG-19, p. 14, lines 28-30.

¹³³ Tr. p. 369:1-5 (San Gabriel/LoGuidice).

¹³⁴ Tr. p. 369:6-14 (San Gabriel/LoGuidice).

capacity.”¹³⁵ The statements made by Mr. LoGuidice are inconsistent with the Hydraulic Assessment submitted by San Gabriel. The Hydraulic Assessment describes the maximum capacity of the Sandhill Water Treatment Plant as 33.36 MGD of Lytle Creek water from the afterbay and that maximum permitted instantaneous flow rate through the filter is 41.53 MGD.¹³⁶ Contrary to Mr. LoGuidice’s testimony, when ample water is available, a daily capacity of 29 MGD should be met if the maximum capacity can reach 33.36 MGD.

The upgraded Sandhill Water Treatment Plant has performed at a lower level than it was meant to and has not been fully used and useful in providing adequate service to ratepayers. Because of this, San Gabriel should be allowed to only rate base a proportional amount of the cost of the plant upgrade that coincides with the realistic daily maximum operation of the Sandhill Water Treatment Plant of 24.3 MGD rather than the 29 MGD promised. San Gabriel pointed out during hearings that there was data which shows that Sandhill has operated at a rate above 24.3 MGD on many days.¹³⁷ Although this may be true, DRA noted that over the four-week period from July 13 to August 11, when Sandhill operated at a level above 24.3 MGD, the total flowrate often times included flows from State Water Project sources.¹³⁸ What’s more, during earlier periods of 2011 when Lytle Creek water was sufficiently available, Sandhill still had flows well below 25 MGD.¹³⁹ So, even if San Gabriel shows that it is possible to deliver more than 24.3 MGD to the Sandhill Water Treatment Plant from the afterbay, San Gabriel has not demonstrated that it maximized the use of its most economical source of water.

¹³⁵ Tr. p. 369:10-14 (San Gabriel/LoGuidice).

¹³⁶ Exh. SG-13 p. ES-1 as revised per Tr. p. 138:9-17 (San Gabriel/Hawes).

¹³⁷ Tr. p. 462:7-25 (Question by San Gabriel’s counsel, Mr. Mattes); Exh. SG-19, Attachment D.

¹³⁸ Tr. pp. 462-463:7-2 (DRA/Rasmussen).

¹³⁹ Tr. p. 466:2-6 (DRA/Rasmussen).

2. The Commission Should Order A 39% Capacity Rate Base Adjustment For The Sandhill Upgrade.

The Commission should require San Gabriel to apply a 39% capacity adjustment to the portion of ratebase associated with the Sandhill Water Treatment Plant Upgrade in the test year. Due to the inadequacy of Edison's facilities to deliver sufficient water for Sandhill to operate at its full 29 MGD capacity, and the conditional capability of Sandhill to treat 29 MGD of Lytle Creek water, the Commission should find that only 24.3 MGD of the 29 MGD rated capacity has been used and useful. A flowrate of 24.3 MGD to the Sandhill Treatment Plant coincides with the limited and reduced capacity of 48 cfs (31 MGD) entering Edison's afterbay (the current operating maximum flowrate). Thus, 24.3 MGD represents a fair value for a capacity adjustment.

The Sandhill Water Treatment Plant Upgrade was meant to provide an increase in capacity from 17 MGD to 29 MGD, yet only 24.3 MGD is now in use (61%). Because only 61% of Sandhill upgrade has been used and useful, the Commission should apply a 39% capacity adjustment to the portion of rate base associated with the Sandhill Treatment Plant Upgrade in Test Year 2013.¹⁴⁰

3. The Commission Should Order A Refund To Ratepayers For Revenues Collected For Sandhill Upgrades That Have Never Been Fully Used And Useful.

Given San Gabriel's much delayed effort to obtain Edison's input regarding the adequacy of Edison's facilities, the Commission should not allow San Gabriel to be given a third opportunity in this third GRC¹⁴¹ to pass through to ratepayers the full cost of the Sandhill Upgrade that has not been entirely used and useful. In addition to a capacity adjustment to rate base, the Commission should accordingly order San Gabriel to refund to ratepayers 39% of the capital costs, with interest, associated with the Sandhill Water

¹⁴⁰ Exh. DRA-1 p. 15-22, lines 19-20

¹⁴¹ This is the third San Gabriel GRC wherein Sandhill upgrade costs have been in issue.

Treatment Plant Upgrade that were collected in rates or offset with facilities fees up to the test year.

To calculate the reduction to rate base and refund due to ratepayers associated with a 39% capacity adjustment, DRA asked San Gabriel to provide the revenue requirement figures for the Test Year corresponding to a hypothetical \$1,000,000 reduction to plant-in-service. San Gabriel did not provide the requested information, explaining that it was “extremely complex.”¹⁴² Lacking this information from San Gabriel, DRA prepared its own calculation and recommends a reduction to plant-in-service of approximately \$15.7 million in the Test Year 2012-2013, with an associated reduction of \$13.2 million to rate base, and a total corresponding refund due to ratepayers of \$11.5 million.¹⁴³ The Commission should require San Gabriel to submit a filing which includes the description and workpapers showing its calculation for a rate base adjustment and refund to ratepayers associated with a 39% capacity adjustment to the capital costs of the Sandhill Water Treatment Plant upgrade.

X. CONCLUSION

For all the foregoing reasons set forth in this brief, and for the reasons set forth in DRA’s Report, the Commission should adopt DRA’s recommendations. The Commission should exclude from rate base the costs associated with the Plant F7 Retaining Wall and the Walnut Avenue Pipeline. The Commission should reaffirm its finding in D.09-06-027 that only \$1,585,920 of the “Slemmer” settlement costs be included in rate base as a one-time, non-recurring legal expense. The Commission should reject San Gabriel’s request to place an additional \$2,614,080 in rate base. The Commission should find that San Gabriel did not make a thorough affirmative showing with regard to Edison’s contractual obligation, the adequacy of Edison’s facilities, and the capability of Sandhill to treat 29 MGD. Accordingly, the Commission should order a

¹⁴² Exh. DRA-1 p. 15-23, lines 4-11 (with references to San Gabriel’s response to DRA Data Request AR4-003)

¹⁴³ DRA consulted D.07-04-046, D.09-06-027, and San Gabriel’s Advice Letter filings 358 and 368.

39% capacity adjustment to rate base and a ratepayer refund for revenues collected for Sandhill upgrades that have never been fully used and useful.

Respectfully submitted,

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