

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)

**REPLY BRIEF  
OF THE DIVISION OF RATEPAYER ADVOCATES**

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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 (“ALJ”) Douglas Long at the conclusion of evidentiary hearings and via email on June 21, 2012, the Division of Ratepayer Advocates (“DRA”) hereby submits this reply brief in response to San Gabriel Valley Water Company’s (“San Gabriel”) June 1, 2012 Opening Brief in the above-referenced docket. ALJ Long established a schedule setting the deadline for reply briefs and reply comments on the settlement between DRA and San Gabriel to be due three weeks after the filing of opening briefs. (Tr. 621:20-622:8, Statement of ALJ Long.) On June 20, 2012, San Gabriel requested a one-week extension for filing reply briefs for all parties in the above-referenced docket.<sup>1</sup> The City of Fontana (the “City”), DRA, and Fontana Unified School

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<sup>1</sup> See Wednesday, June 20, 2012 e-mail from Martin Mattes, counsel for San Gabriel, to ALJ Long, respectfully requesting that all parties be allowed a one-week extension to file reply briefs and stating the City and DRA’s indication that neither party would object.

District did not object to San Gabriel's request.<sup>2</sup> On June 22, 2012, ALJ Long granted the one-week extension, setting the new due date for filing reply briefs and reply comments as June 29, 2012.<sup>3</sup> Thus, this filing is timely.

This Reply Brief will address the arguments made in San Gabriel's Opening Brief regarding the contested issues of the Plant F7 retaining wall, the Walnut Avenue pipeline, the "Slemmer" settlement costs, and the Sandhill Water Treatment Plant. This Reply Brief will show that, (1) the Commission should not revisit the Plant F7 retaining wall and the Walnut Avenue pipeline projects in this general rate case; (2) the Commission should not include the \$537,868 costs associated with constructing the Plant F7 retaining wall or the \$1.16 million costs associated with the Walnut Avenue pipeline into rate base; (3) the Commission should reject San Gabriel's request to include the \$2.6 million "Slemmer" settlement cost into rate base; and (4) the Commission should find that San Gabriel did not satisfy the requirements set forth in D.09-06-027 regarding the delivery, adequacy, and capability of the Sandhill Water Treatment Plant (the "Sandhill Plant" or "Sandhill") to perform at its 29 million gallon per day ("MGD") capacity.

## **II. THE PLANT F7 RETAINING WALL PROJECT AND WALNUT AVENUE PIPELINE PROJECT**

As discussed in DRA's and the City's Opening Briefs, the Plant F7 retaining wall project and the Walnut Avenue pipeline project were part of a reasonableness review in San Gabriel's last general rate case. (DRA Opening Brief, pp 6-11; City Opening Brief, pp. 20-22.) In San Gabriel's last general rate case, San Gabriel was given more than an ample opportunity to meet its burden of proof and present its case for why the Plant F7 retaining wall and the Walnut Avenue pipeline project costs should be included into rate base. After fully adjudicating these issues, San Gabriel failed to meet its burden of proof. Accordingly, in D.09-06-027, the Commission excluded both the Plant F7 retaining wall

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<sup>2</sup> *Id.*; See also, Wednesday, June 20, 2012 e-mail from Marvin Sawyer, counsel for Fontana Unified School District, indicating that the Fontana Unified School District agrees with San Gabriel's request.

<sup>3</sup> *See*, Thursday, June 21, 2012 email from ALJ Long to all parties indicating that the extension is granted.

and the Walnut Avenue pipeline costs from rate base. Yet, notwithstanding the Commission's decision and final resolution of the Plant F7 retaining wall issue and the Walnut Avenue pipeline costs, San Gabriel attempts to revisit and relitigate this issue in a "flagrant disregard of the Commission's decision." (*See* City Opening Brief, pp. 21-22.) As the City and DRA both point out, the Commission did not grant San Gabriel the opportunity to revisit these projects and for that reason, San Gabriel's request should be denied and the Commission's decision in D.09-06-027 should be upheld. (DRA Opening Brief, pp 6-11; City Opening Brief, pp. 20-22.)

**A. San Gabriel's Claim that the Plant F7 Retaining Wall and The Walnut Avenue Pipeline Should Be Included In Rate Base is Disingenuous.**

In its Opening Brief, San Gabriel recommends that the Commission include the \$537,868 investment in the Plant F7 retaining wall and the \$1,158,602 investment in the Walnut Avenue pipeline into rate base because these two projects have been used and useful for more than five years, and further asserts that by not including these projects into rate base, San Gabriel is being deprived a return on its investment. (San Gabriel Opening Brief, p. 2.) San Gabriel further argues, "it is reasonable now to allow San Gabriel to include that investment in rate base" because "lengthy disallowances certainly make up for any arguable missteps in San Gabriel's planning of these projects." (*Id.* at 2, 29.)

San Gabriel's argument is flawed and misses the point. As DRA explained in its Opening Brief, San Gabriel, as the utility applicant seeking a general rate increase bears the burden of proof to show by "clear and convincing evidence" that it is entitled to such an increase and to show that "all charges demanded or received by a public utility must be 'just and reasonable.'" (Public Utilities Code § 451; *Re Southern California Edison Company*, 2004 Cal. PUC LEXIS 325, at \*17) In its Opening Brief, San Gabriel mistakenly tries to argue that it is "reasonable now" to include the Plant F7 retaining wall and the Walnut Avenue pipeline investment in rate base because it has been in service for over five years and this should make up for any "mistakes" it made in the past. A flawed,

unapproved project does not transmogrify its status simply by operating for a period of years. This is not the standard. In fact, in San Gabriel’s last general rate case, the Commission confirmed San Gabriel’s burden of proof with regard to the Plant F7 retaining wall, the Walnut Avenue pipeline, and all other post-2002 construction projects:

For these projects, SGV has the burden of proof. SGV must demonstrate each project is used and useful, needed and constructed at a reasonable cost. (D.09-06-027, at 29.)

Applying this standard to the Plant F7 retaining wall and the Walnut Avenue pipeline project costs in San Gabriel’s last general rate case, the Commission found that San Gabriel failed to meet its burden of proof regarding the additional costs of both projects and excluded the costs from rate base. (D.09-06-027, pp. 36, 45.) San Gabriel acknowledges this in its Opening Brief yet it ignores the Commission’s finding.

**B. San Gabriel Blatantly Disregards The Commission’s Findings In D.09-06-027.**

San Gabriel applies its flawed argument that – the Commission should include the investment of a project in rate base because it is now in service and the lengthy disallowances “make up for any arguable missteps in San Gabriel’s planning” – not only once but twice. San Gabriel applies this same logic to the \$1.16 million investment costs of the Walnut Avenue pipeline. In its Opening Brief, San Gabriel contends that the “Commission was *concerned* that SG had not documented and borne its burden of proving that the project was needed or would increase reliability of service, and so excluded the investment from rate base.” (San Gabriel Opening Brief, p. 29 (emphasis added).) San Gabriel’s argument that the Commission was merely “concerned” with San Gabriel meeting its burden of proof misconstrues and ignores the Commission’s findings in D.09-06-027.

Despite the Commission’s findings and conclusions, San Gabriel makes the argument that, “[a]fter six years during which San Gabriel has borne the cost of the Walnut Avenue main without any reflection in rates, it is certainly time for this used and useful utility plant to be included in rate base.” (San Gabriel Opening Brief, p. 32.) San

Gabriel completely ignores the Commission’s findings and conclusions made in the last rate case decision. As DRA pointed out in its Opening Brief, the Commission disposed of this issue in the last rate case decision by removing this project from rate base. The Commission explicitly excluded the \$1.16 million costs associated with the Walnut Avenue pipeline from rate base because it found that San Gabriel had not met its burden of proof. (D.09-06-027, Finding of Fact No. 47; Conclusion of Law No. 47.) The Commission clearly articulated that San Gabriel had not met its burden of proof regarding this project by explaining:

“General claims that a project will enhance reliability without a convincing demonstration that it will do so is not sufficient to meet the burden of proof. SGV [San Gabriel] provided no demonstration of how this project will increase reliability or whether an increase in reliability is even needed. (D.09-06-027, p. 45.)

Contrary to San Gabriel’s claim, the Commission expressed more than mere “concern” with San Gabriel’s \$1.16 investment in the Walnut Avenue pipeline project. The Commission found that San Gabriel “provided no documentation addressing the need” and “provided no demonstration of how [the Walnut Avenue pipeline] project will increase reliability or whether an increase in reliability is needed.” (D.09-06-027, Finding of Fact Nos. 120-122, p. 90.) As evidenced by the record, including the Commission’s findings in D.09-06-027, and detailed in DRA’s Opening Brief, San Gabriel failed to provide clear and convincing evidence to meet the requisite burden for both the Plant F7 retaining wall and the Walnut Avenue pipeline. Furthermore, the Commission did not grant San Gabriel the opportunity to revisit the reasonableness of these projects. Therefore, San Gabriel’s position that the \$1.16 million cost for the Walnut Avenue pipeline into rate base should now be allowed in rates should be afforded no weight.

Allowing San Gabriel to revisit the Plant F7 retaining wall and the Walnut Avenue pipeline projects and re-open the door simply because San Gabriel declares that these projects have been in service for more than five years and are “used and useful,” would set a dangerous Commission precedent. The Commission should reject San Gabriel’s

attempt to re-adjudicate the reasonableness of these two capital projects since the Commission has already declared that these projects are unreasonable and inequitable. Therefore, San Gabriel's argument to include the \$537,868 and \$1,158,602 costs for the Plant F7 retaining wall and the Walnut Avenue pipeline into rate base should be afforded no weight.

**C. San Gabriel's Supposed Plant F7 Retaining Wall Cost-Benefit Analysis Should Be Afforded No Weight.**

San Gabriel's further claim that it prepared a cost-benefit analysis before it began construction at the Plant F7 site<sup>4</sup> is unsubstantiated. San Gabriel has not provided, in the instant proceeding nor in its last general rate case, a comprehensive and valid cost-benefit analysis for this project. San Gabriel's Opening Brief claims that Mr. Yucelen's testimony presents the case for including the investment in rate base and cites Attachment B to Mr. Yucelen's testimony. (San Gabriel Opening Brief, p. 26.) San Gabriel asserts, "Attachment B also provided a cost/benefit analysis, evaluating the consequences of *not* constructing the wall. This would have required not only the storm water vaults (sic), sump pump and drainage system noted above, but also acquisition of a new site for future wells, reservoir and treatment facility, if necessary. Those alternative costs clearly would have exceeded the cost of the retaining wall." (*Id.* at 27.)

DRA disagrees. San Gabriel's cost-benefit analysis does not include any cost estimate for the storm water vaults, sump pump and drainage system. The only information provided in Attachment B on these plant items included the following declaration by San Gabriel, "[n]ot constructing a retaining wall at Plant F7 would have required San Gabriel to install expensive storm water vaults, and sump pump and drainage system." (Exhibit SG-12, Attachment B, Tab "Plant F7 Retaining Wall," p. 2.) Also, the cost data that San Gabriel provided in San Gabriel's Attachment B is the estimated cost in forecast years' dollars<sup>5</sup> "to acquire a different half-acre site" (\$250,000)

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<sup>4</sup> Tr. p.423:5 to p.424:6 (DRA/Yucelen)

<sup>5</sup> See, Tr. p. 431:28 – 432:19 (DRA/Yucelen). Under cross-examination, Mr. Yucelen confirmed that the

and “to construct associate improvements” (\$310,000). (*Id.* at p. 3.) As clearly described by Mr. Yucelen, these costs are “estimated costs for improvements at a new site for the future wells and future reservoir.” (*Id.*) DRA notes that the relevance of these cost estimates remains unclear.

San Gabriel’s entire performance regarding this retaining wall evinces the portrait of a utility that is unwilling to take a “no” answer from the Commission seriously. The notion that by operating a facility without Commission authorization, and concocting a post hoc justification for doing so somehow entitles the project to rate base treatment suggests that San Gabriel views prior Commission decisions as less than final determinations and more as a work in progress that is subject to modification in the absence of filing a formal petition for modification. This view of Commission decisions as malleable documents that are subject to alterations should give all practitioners at the Commission (including San Gabriel) significant pause.

**D. San Gabriel’s Supposed Walnut Avenue Cost-Benefit Analysis Should Be Afforded No Weight.**

In its Opening Brief, San Gabriel incorrectly claims that it has made a showing that the Walnut Avenue pipeline should be included in rate base by citing its response in Exhibit DRA-5, DRA Data Request AR4-002. (San Gabriel Opening Brief, pp. 31-32.) San Gabriel seems to suggest that it provided a cost-benefit analysis in its response to Exhibit DRA-5, DRA Data Request AR4-002. San Gabriel explains that its response points out that by constructing the Walnut Avenue pipeline in conjunction with the City of Fontana’s street improvements, San Gabriel was able to reduce its power and construction costs. (*Id.*)

San Gabriel’s argument is flawed. As explained below, San Gabriel does not compare the costs and benefits in any way, nor does San Gabriel perform any “analysis” to weigh the costs and benefits. San Gabriel has therefore failed to quantify or

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unit costs used in the cost estimates related to San Gabriel’s retaining wall request were the same as those used for its estimates for the Plant F15 project, with a planned construction period of 2012-2014.

demonstrate how the claimed benefits and avoided costs outweigh the \$1.16 million capital cost spent in 2006 on the Walnut Avenue Pipeline.

**E. San Gabriel Failed To Submit Evidence Supporting The Benefits, Reliability, Or Efficiency Of The Walnut Avenue Pipeline.**

San Gabriel's argument that, "the Walnut Avenue pipeline is in active use for the benefit of San Gabriel's customers, and . . . provides particular value with respect to service reliability and efficiency" (San Gabriel Opening Brief, p.32.) should be afforded no weight. These are baseless claims since San Gabriel once again has not provided any determinations or quantifications of any added benefits to its customers or any comparisons to the reliability or efficiency of the pipelines that were in place before the Walnut Avenue pipeline project began in 2006. As the Commission stated in D.09-06-027, "[m]ere claims of need are not sufficient" to demonstrate that a project is needed. (D.09-06-027, p. 30.) The Commission was clear in its reasonableness review standard for this project, "general claims that the [Walnut Avenue Pipeline project] will enhance reliability without a convincing demonstration that it will do so is not sufficient to meet the burden of proof." (D.09-06-027, Finding of Fact Nos. 121,122.)

San Gabriel was provided with more than ample opportunity to meet its burden of proof in its last general rate case, yet it failed to provide the Commission with a convincing demonstration that the Walnut Avenue pipeline project was needed. Now, San Gabriel once again has asked the Commission to reconsider the reasonableness of this project, as well as, the reasonableness of the Plant F7 retaining wall project. San Gabriel fails to take accountability for its own wrongdoing of constructing these projects without a demonstrated need, a showing of increased reliability, or at a reasonable cost. A final Commission determination on the reasonableness of a given project should be just that, final. Allowing San Gabriel to attempt to re-litigate a settled issue such as the Walnut Avenue pipeline is not only inappropriate, it violates a sound public policy of treating Commission decisions as binding precedent for future Commissions.

### III. THE “SLEMMER” SETTLEMENT AND FONTANA UNION SHARES

#### A. San Gabriel Revisited The Ratemaking Treatment Issue But Failed To Provide An Adequate Explanation To Support Inclusion Of The \$2.6 Million Cost Into Rate Base.

San Gabriel’s Opening Brief makes several incorrect claims regarding the purchase and treatment of Fontana Union Shares. First, San Gabriel incorrectly asserts that the remaining \$2.6 million “Slemmer” settlement costs should be included in rate base because it has saved ratepayers millions of dollars and will continue to do so in perpetuity. (San Gabriel Opening Brief, p. 32.) San Gabriel then claims that it secured “clear, uncontested title to 537.8 shares of Fontana Union stock and the 1,506 acre-feet of water rights the stock represents.” (*Id.* at 40.) Third, San Gabriel asserts that DRA and the City are attempting to re-litigate previously decided issues, and therefore, their arguments should be afforded no weight. (*Id.* at 35.) San Gabriel’s, not DRA’s and the City’s arguments on the Fontana Union stock should be given no weight.. DRA’s Opening Brief and the City’s Opening Brief provide extensive discussions regarding the ratemaking treatment of the \$4.2 million Slemmer settlement costs and the Commission’s requirements in Ordering Paragraph No. 6 in D.09-06-027.<sup>6</sup> The Commission should reaffirm its finding that only \$1,585,920 of the Slemmer settlement costs be included into rate base, and should permanently reject San Gabriel’s request to include the remaining \$2,614,080 balance into rate base.

San Gabriel’s contention that the remaining \$2.6 million “has saved ratepayers millions of dollars” is completely unfounded. As detailed in both DRA and the City’s Opening Briefs, San Gabriel already held title to and owned 358.6 shares that it acquired from Western Water and Vulcan Materials prior to the Slemmer settlement.<sup>7</sup> Because San Gabriel already acquired and owned these shares, the value properly attributable to

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<sup>6</sup> See DRA’s Report, Exh. DRA-1, pp. 11-14; DRA Opening Brief, pp. 11-14; and City Opening Brief, pp. 22-27.

<sup>7</sup> See DRA Opening Brief, p. 13 and City Opening Brief, p. 24.

ratepayers remains the \$1,585,920 – the amount representing the 179.2 shares of Fontana Union stock which San Gabriel acquired as a result of the Slemmer settlement. (D.09-06-027, pp. 12-15.) Contrary to San Gabriel’s claim, the remaining \$2.6 million has not saved ratepayers any costs nor provided any added benefits.

San Gabriel’s next argument is linked to its first claim. San Gabriel inaccurately asserts that it cleared title to a total of 537.8 shares of Fontana Union stock as a result of the Slemmer settlement. San Gabriel’s calculation of the number of shares is inaccurate. As noted in DRA’s Opening Brief, 358.6 shares of Fontana Union stock was stock that San Gabriel had acquired before the Slemmer settlement. It would be absurd to lump together these shares of previously held stock with the 179.2 shares that San Gabriel did in fact acquire as a result of the settlement. Thus, it follows that San Gabriel’s claim that the acquisition of the 537.8 shares was “much needed additional local water entitlement” is also baseless since San Gabriel already owned the water entitlements associated with 358.6 shares of Fontana Union stock. (*See* Exhibit SG-34, Exhibit B listing Western Water and Vulcan materials as former shareholders)

San Gabriel’s final assertion that DRA and the City are attempting to re-litigate previously decided issues also lacks merit. This is simply another attempt by San Gabriel to mischaracterize DRA’s position. The Commission in D.09-06-027 allowed San Gabriel to revisit the issue of the ratemaking treatment of the Slemmer settlement costs, but also conditioned it on San Gabriel explaining in its exhibits why any information in its new exhibits and not provided in the prior proceeding regarding this issue, could not have been provided in the prior proceeding. (D.09-06-027, Ordering Paragraph 6.) Instead of following the Commission’s order, San Gabriel’s showing in this case is simply a rehash of what it provided in the previous proceeding.

In summary, San Gabriel was allowed the opportunity to revisit this issue and provide new information explaining why the additional \$2.6 million cost should be included into rate base, yet San Gabriel failed to submit any new data to substantiate its request. If the Commission adopts San Gabriel’s recommendation, ratepayers will be burdened and will be required to foot the bill for what is properly a shareholder expense.

#### **IV. SANDHILL WATER TREATMENT PLANT**

##### **A. San Gabriel Has Failed To Make An Affirmative Showing Regarding Edison's Contractual Obligation To Deliver Sufficient Water To Sandhill.**

In its Opening Brief, San Gabriel claims that it has made the showing as required by D.09-06-027 and asserts that, “the entire Sandhill Plant is used and useful and the entire investment in that plant, net of contributed facilities fees, should remain in rate base.” (San Gabriel Opening Brief, p. 4.) San Gabriel begins by claiming that it has met the Commission’s first requirement of making a thorough affirmative showing of Southern California Edison Company’s (“Edison”) contractual obligation. San Gabriel asserts that the 1942 indenture provided in Mr. DiPrimio’s testimony is “a contract imposing legal obligations,” that “specifically entitled Edison to divert Lytle Creek water for energy generation while also obligating Edison to return the water to the afterbay without diminution in quantity or quality.” (*Id.* at p. 49.)

In its Opening Brief, San Gabriel correctly pointed out that DRA acknowledged Mr. DiPrimio’s testimony “regarding San Gabriel’s rights to divert volumes of Lytle Creek streamflow in a range of 45 to 51 MGD” in its report. (*Id.* at p. 48.) However, San Gabriel misses the point once again. Edison’s obligation to return volumes of Lytle Creek water in the same quantity and quality that it received, does not prove Edison’s contractual obligation to provide 38 MGD to Sandhill. Furthermore, as both DRA and the City pointed out in their Opening Briefs, San Gabriel could not point to anything in the 1942 indenture agreements that specifically identified whether Edison is contractually required to deliver up to 38 MGD. (Tr. 66:11-22 (San Gabriel/DiPrimio); *See* also DRA Opening Brief, p. 19; City Opening Brief, p. 33.)

San Gabriel’s arguments are misleading. San Gabriel may be entitled to the Lytle Creek water Edison uses for power generation and Edison’s facilities may have been designed to transfer such water. However, none of this proves Edison’s contractual obligation to deliver 38 MGD, or any other specific amount, of Lytle Creek water to the afterbay. Thus, San Gabriel has failed to show that Edison has a contractual obligation to deliver sufficient water to its afterbay for Sandhill to operate at its full 29 MGD capacity.

**B. San Gabriel's Claims That Edison's Facilities Are Adequate To Deliver Sufficient Water To Sandhill Are Unsupported.**

San Gabriel's Opening Brief makes incorrect claims that Edison's facilities are adequate to deliver sufficient water for Sandhill to operate at its 29 MGD capacity. (San Gabriel Opening Brief, pp. 49-50.) San Gabriel could not and did not provide any evidence to support this claim. San Gabriel suggests that Edison's facilities have operated at and delivered up to 60 cubic feet per second ("cfs") (38 MGD). (*Id.*) However, as pointed out in DRA's Opening Brief, the most recent evidence suggesting that Edison's facilities have operated at 60 cfs or greater was from April 1958, more than fifty years ago. (DRA Opening Brief, p. 22.) San Gabriel also misguidedly relies on the use of an "existing bypass line" and State Water Project water to bolster its argument that enough water can enter the afterbay from the bypass line, and from other lines delivering State Water Project water, to allow delivery of the full 60 cfs capacity to the afterbay. (*Id.* at pp. 51-52.) San Gabriel uses this misguided approach to suggest that DRA's analysis is erroneous because it failed to take into account the additional path to Sandhill via the bypass line. (*Id.* at p. 54.)

San Gabriel's counters to DRA's arguments are without merit. First, San Gabriel's reliance on using the bypass pipeline to supplement flows to the Sandhill plant is merely speculative. The bypass line has not yet been put into service or fully installed. According to San Gabriel, the anticipated completion date for installation of the bypass line was not until March 2012. (*Id.* p. 54; *see also* Tr. 43:17-20 (DiPrimio/SG.)) In fact, as of the date that opening briefs were filed in this proceeding (June 1, 2012) San Gabriel did not confirm that the bypass line was complete, but instead only referred to its previous testimony that the estimated time for completion was March 2012. Thus, it is unclear whether installation of the bypass line has in fact been completed and is providing the additional flows that San Gabriel assured it would. San Gabriel's arguments suggesting that the bypass line renders Edison's facilities adequate should be disregarded.

Accordingly, DRA did not include the additional path for Lytle Creek water to flow into Sandhill in its analysis simply because this path did not exist. It would be premature for DRA, and the Commission, to rely on this theoretical bypass line to demonstrate the adequacy of Edison's facilities. As DRA and the City correctly point out in their opening briefs, "no binding agreements have been reached" and there are no design drawings, specific plans, or performance information available for intervenors, or the Commission, to consider. (DRA Opening Brief, p. 23; City Opening Brief, p. 35.) Furthermore, nor do any "studies or analyses exist to document whether the proposed project [bypass line] could work." (Tr. 542:9-543:16 (City/Thornton); City Opening Brief p. 35.) Even if DRA, the City, and the Commission were to accept San Gabriel's claim that the bypass line is currently in use and supplements flows to Sandhill, the problem still remains that Edison's facilities remain inadequate to provide sufficient water for Sandhill to operate at its full 29 MGD capacity. (See DRA Opening Brief, p. 23 for a more thorough explanation.)

Next, San Gabriel attempts to rebut DRA's conclusion that in order for the Sandhill Plant to operate at its full 29 MGD capacity, the flow rate down Edison's penstock, power plant, and leaving Edison's afterbay "must sometimes equal up to 35.7 MGD (55.3 cfs)." (San Gabriel Opening Brief, p. 52.) San Gabriel's argument inaccurately relies on "other lines delivering SWP [State Water Project] water." (*Id.*) This argument has little merit. The reasonableness review in D.09-06-027 required San Gabriel to make a thorough affirmative showing of the adequacy of Edison's facilities and the capability of Sandhill to treat 29 MGD of Lytle Creek water; D.09-06-027 did not include consideration of Lytle Creek and State Water Project water combined. (D.09-06-027, Ordering Paragraphs 18, 19.) Nevertheless, DRA's report included a review of the daily recorded flowrate of the total influent to Sandhill, including Lytle Creek surface water and State Water Project sources combined. Even considering both sources, DRA

concluded that Sandhill has never had a daily recorded flowrate of 29 MGD.<sup>8</sup> Thus, DRA’s analysis is without error.

San Gabriel makes one final attempt to support its claim that Edison’s facilities are adequate. San Gabriel disagrees with DRA’s 39% capacity rate base adjustment and cites to the portion of DRA’s testimony where DRA witness, Ms. Rasmussen, acknowledges that 24.3 MGD correlates to the current 48 cfs flow through Edison’s facilities. (San Gabriel Opening Brief, pp. 55-56 citing Tr. 459:20-460:10 (Rasmussen/DRA).) Next, San Gabriel cites to DRA’s testimony where Ms. Rasmussen acknowledged that, “during the period May through August 2011, the Sandhill plant operated at a rate of water treatment above 24.3 MGD on many days – and did so *every* day from mid-July to mid-August.” (San Gabriel Opening Brief, p. 56.) It is true that Ms. Rasmussen admitted that, “there is a time in July when Edison exceeded that 48 cfs through the afterbay, which then allowed slightly over 25 mgd to go to Sandhill.” (San Gabriel Opening Brief, p. 56, citing Tr. 468:14-469:9 (Rasmussen/DRA).) But, DRA also noted times earlier in the year when far less than 29 MGD was going to Sandhill. (Tr. 468:14-469:9 (Rasmussen/DRA).) It is also true that Ms. Rasmussen could not say whether limited demand might have constrained production at the Sandhill Plant during the time when far less than 29 MGD was going to Sandhill. (San Gabriel Opening Brief, p. 56.)

Nonetheless, this is a mere ploy by San Gabriel to distract the Commission by suggesting that limited demand is the reason why Sandhill is not treating 29 MGD when ample Lytle Creek water has been available. San Gabriel forgets that it already documented its “*Explanations for Reduced Lytle Creek Flow to the Sandhill Water Treatment Plant*” in its response to DRA data request AR4-001. (Exhibit DRA-1, Attachment 15-5.) In that explanation, San Gabriel lists 13 events from January 1, 2011 through August 31, 2011, when Lytle Creek flow to Sandhill was reduced. Of those 13 events, only two events on two consecutive days (February 22 – February 23, 2011) were

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<sup>8</sup> See Exhibit DRA-1 pp. 15-20 to 15-21.

potentially due to limited demand, or in San Gabriel's words, from the "Fontana system being full."

Therefore, the Commission should ignore San Gabriel's unsupported claims regarding the adequacy of Edison's facilities. San Gabriel has not offered sufficient proof to show that Edison's facilities are in fact adequate and able to deliver sufficient water for Sandhill to operate at its full 29 MGD capacity. DRA's position to implement a 39% capacity rate base adjustment and a corresponding refund to ratepayers is fully supported and fair to San Gabriel and its ratepayers.

**C. The Commission Should Reject San Gabriel's Argument That It Has Demonstrated The Capability Of The Sandhill Plant To Treat 29 MGD.**

**1. San Gabriel mischaracterizes DRA's analysis of the Sandhill Hydraulic Assessment.**

In its Opening Brief, San Gabriel alleges that it has "addressed and demonstrated" in its Hydraulic Assessment<sup>2</sup> the capability of the Sandhill plant to treat 29 MGD. (San Gabriel Opening Brief, pp. 57-58.) San Gabriel claims that "DRA's criticisms of the Sandhill Assessment lack merit" and "do not effectively challenge San Gabriel's showing that the Sandhill plant is capable of treating Lytle Creek water at the rate of 29 MGD." (*Id.* at p. 59.) San Gabriel begins by accusing DRA of misunderstanding how the Sandhill plant is designed, including the function and use of the Influent Equalization Reservoir. (*Id.* at 59-60.) San Gabriel further goes on to inaccurately state that DRA's view of the Sandhill Hydraulic Assessment and the G-007 Black & Veatch construction design drawings as inconsistent also stems from misunderstanding use of the Influent Equalization Reservoir. (*Id.*)

San Gabriel contradicts itself and attempts to mislead the Commission by stating that DRA does not fully understand the function, use, and operation of the Sandhill plant. DRA is surprised that San Gabriel would make such a claim as a means to divert the Commission's attention from what is at issue in this proceeding. San Gabriel's own

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<sup>2</sup> Exhibit SG-13 (prepared for San Gabriel by Civiltec Engineering Inc. dated April 2011).

contradiction lies within its cross-examination testimony and San Gabriel's Standard Operating Procedures for the Sandhill plant. In fact, San Gabriel's witness, Mr. LoGuidice, testified that the Hydraulic Assessment "states that the Sandhill plant can treat up to 30 MGD of Lytle Creek water without using the Influent Equalization Reservoir, and noted that the reservoir 'is not intended for use when treating only Lytle Creek water.'" (*Id.* at p. 61.) This is in direct conflict with San Gabriel's Standard Operating Procedures for the Sandhill plant which state the following, "[a]n influent EQ reservoir provides for blending of raw water flows AND equalization of fluctuating flows from Lytle Creek." (DRA Opening Brief p. 30; *see* also Exh. DRA-1 p. 15-17; Tr. 474:14-26; and Sandhill Water Treatment Plant Standard Operating Procedures (emphasis added).) Even so, San Gabriel chooses to ignore this inconsistency and does not make any comment referencing the language in the Sandhill Standard Operating Procedures.

The Commission should completely disregard San Gabriel's spurious claims that DRA misunderstands the function, use and operation of the Sandhill plant. San Gabriel's claims are simply an attempt to undermine DRA's credibility and do nothing to dispute DRA's conclusion that use of the Influent Equalization Reservoir would allow San Gabriel to *maximize* the capacity of the Sandhill Plant. DRA performed a full analysis based on all of the evidence and information provided in the record, including San Gabriel's own design drawings and Standard Operating Procedures for the Sandhill plant, and DRA's own independent field research.

## **2. San Gabriel mischaracterizes the 29 MGD operation of the Sandhill plant.**

In an attempt to counter DRA's "second issue" with the Hydraulic Assessment, San Gabriel asserts that DRA's second argument that the Hydraulic Assessment "describes 'an instantaneous capacity that does not represent the daily flow capacity' of the Sandhill Plant" also lacks merit. (San Gabriel Opening Brief, p. 59.) In its Opening Brief, San Gabriel makes the following inconceivable claim: "DRA's assumption that the 29 MGD capacity of the upgraded Sandhill plant should translate into daily production at

that volume on a regular basis is unjustified.” (*Id.* at 62.) San Gabriel seems to suggest that the 29 MGD capacity at Sandhill does not translate into daily production at this volume. However, this is contrary to what San Gabriel itself has stated in its rebuttal testimony, cross-examination, and sections of its opening brief. For instance, in rebuttal testimony San Gabriel states, “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.” (DRA Opening Brief, p. 38 citing Exh. SG-19, p. 14, lines 28-30 (emphasis added).) Then in its opening brief, San Gabriel describes the capacity of Sandhill as being greater than 29 MGD, first in its ability to receive raw water from Lytle Creek at 33.36 MGD, and then that the maximum permitted instantaneous flow rate through its filters at 41.53 MGD. (San Gabriel Opening Brief, pp. 58-59.) San Gabriel summarizes these findings and states, “the Sandhill plant is capable of treating 29 MGD and more.” (San Gabriel Opening Brief, p. 66.)

As DRA pointed out in its Opening Brief, the Commission determined in D.07-04-046 that the Sandhill plant is supposed to function 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.” (DRA Opening Brief p. 38 citing D.07-04-046 p. 38.) By disputing DRA’s assumption regarding daily production, San Gabriel is now indicating that it is impossible for Sandhill to operate as a baseload unit. San Gabriel claims that operating Sandhill or any other facility on a 24-hour seven-days-a-week continuous basis at maximum capacity “is just not practical” and “averaging production at 29 MGD is unrealistic.” (Tr. 367:24-368:17 (LoGuidice/SG); San Gabriel Opening Brief p. 65.) Nevertheless, as demonstrated above, San Gabriel has made the contrary claim that the Sandhill plant can process water (Lytle Creek or water from other sources) at a rate of 29 MGD on a consistent basis.<sup>10</sup>

Given San Gabriel’s blatant contradictions and its inability to make a coherent case for including all Sandhill costs in rate base, the Commission should pay no attention

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<sup>10</sup> See citation to San Gabriel’s rebuttal testimony in preceding paragraph, Exh. SG-19, p. 14, lines 28-30.

to San Gabriel's criticisms of DRA's positions. San Gabriel's argument that it has demonstrated the showing required by D.09-06-027 regarding the capability of Sandhill to treat 29 MGD of Lytle Creek water should be afforded no weight.

**D. San Gabriel Has Not Made A Thorough Affirmative Showing That The Entire Sandhill Plant Is Used And Useful.**

In its Opening Brief, San Gabriel contends that it has 'effectively refuted DRA's claim that only 61% of the Sandhill plant is used and useful.'" (San Gabriel Opening Brief, p. 66.) DRA disagrees. San Gabriel does not effectively refute DRA's claim that only 61% of the Sandhill plant is used and useful.

San Gabriel's first argument – that the restriction in Edison's facilities is temporary and the bypass line will increase flows to the afterbay and to Sandhill – is without merit and unsupported. As demonstrated in this Reply Brief and in the City's and DRA's Opening Briefs, it is inappropriate to rely on the bypass line, either the existing portion or the proposed connection, since it is unclear whether it is in service. Thus, it is premature for San Gabriel to speculate on any hypothetical flows the bypass line would supplement into the Sandhill plant. Moreover, even accepting San Gabriel's argument that the restriction in Edison's facilities is temporary and the flow will be restored to its full 60 cfs with use of the bypass line as valid, Sandhill has not been fully used and useful from the time of its upgrade until now.

San Gabriel's second argument – that Sandhill is not solely reliant on the water supply in the afterbay and can accept flows from State Water Project water and Lytle Creek to reach its full 29 MGD capacity – is also unsupported and lacks merit. Again, San Gabriel attempts to mislead the Commission by making incorrect claims. San Gabriel contends that, "when water from Lytle Creek is available, it can be delivered to Sandhill, and the Sandhill plant can process it at a rate of 29 MGD." (*Id.* at 68.) This statement by San Gabriel goes against the evidence that when Lytle Creek water was available in 2011 it was often not delivered to Sandhill, and certainly never delivered at a flowrate of 29 MGD. (*See* Exhibit DRA-1, p. 15-14 and Attachments 15-14, "Daily

Recorded Available Lytle Creek Surface Water and the Daily Recorded Flow Diverted to the Sandhill Water Treatment Plant.”)

San Gabriel’s final attempt to justify its contention that the entire Sandhill plant is used and useful is also meritless. San Gabriel cites to its rebuttal testimony stating that “the entire facility is used and useful to the company in meeting its customers’ water demands.” (San Gabriel Opening Brief, p. 67.) San Gabriel has not presented any evidence that demonstrates the Sandhill plant is entirely used and useful. In fact, San Gabriel has provided evidence to the contrary. One example is San Gabriel’s own cross-examination testimony that it is “just not practical” to operate the Sandhill plant as a baseload unit operating on a 24-hour, seven-day-per-week continuous basis at its 29 MGD capacity. Another example is the fact that the Sandhill plant has not operated at its full 29 MGD capacity because of a “temporary”<sup>11</sup> restriction in Edison’s facilities, which are currently operating at a reduced capacity of 48 cfs instead of its design capacity of 60 cfs.

## **V. CONCLUSION**

For the reasons stated herein, and in DRA’s Opening Brief, the Commission should reject San Gabriel’s attempt to revisit the Plant F7 retaining wall and the Walnut Avenue pipeline project costs in this general rate case and should disallow San Gabriel’s attempt to include the associated \$537,868 and \$1.16 million costs into rate base. The Commission should also reject San Gabriel’s attempt to include the \$2.6 million cost associated with the Fontana Union shares since San Gabriel failed to introduce any new evidence in its exhibits to support that the \$2.6 million has saved ratepayers costs or provided ratepayer benefits. Finally, the Commission should reject San Gabriel’s claim that it has satisfied the reasonableness review and requirements set forth in D.09-06-027 regarding the delivery, adequacy, and capability of Sandhill to perform at its 29 MGD

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<sup>11</sup> San Gabriel has described this restriction in Edison’s penstock pipeline as being “temporary” and contends that “Edison is investigating the problem and is working toward restoring the full operating capacity as soon as practicable.” (San Gabriel Opening Brief, p. 51.)

capacity. Because San Gabriel has failed to meet its burden of proof and satisfy the requirements set forth in D.09-06-027, the Commission should adopt DRA's recommendation to apply a 39% capacity rate base adjustment, and a corresponding ratepayer refund. San Gabriel has been given more than enough opportunities to demonstrate the propriety of including these projects in its rate base. It is time for the Commission to recognize the obvious, that San Gabriel cannot make the showing required to justify including these projects in its rate base and reject all three of these requests.

Respectfully submitted,

/s/ MARTHA PEREZ

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