



BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

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In the Matter of the Application of Golden  
State Water Company (U 913 E) for Authority  
to Increase Rates for Electric Service by its  
Bear Valley Electric Service Division

Application No. 08-06-034

**JOINT REPLY TO THE OPPOSITION OF SNOW SUMMIT, INC. TO THE  
JOINT MOTION OF THE DIVISION OF RATEPAYER ADVOCATES  
AND GOLDEN STATE WATER COMPANY  
(BEAR VALLEY ELECTRIC SERVICE DIVISION)  
TO APPROVE SETTLEMENT**

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June 29, 2009

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In the Matter of the Application of Golden State Water Company (U 913 E) for Authority to Increase Rates for Electric Service by its Bear Valley Electric Service Division

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**I. INTRODUCTION**

Pursuant to Rule 12.2 of the Commission’s Rules of Practice and Procedure (“Rules”), the Division of Ratepayer Advocates (“DRA”) and Golden State Water Company (“GSWC” or the “Company”) on behalf of its Bear Valley Electric Service Division (“BVES”) (together, the “Parties”) submit this Joint Reply to the Opposition of Snow Summit, Inc. to the Joint Motion to Approve the Settlement Agreement between the Division of Ratepayer Advocates and Golden State Water Company on general rate case issues (“Joint Reply”).<sup>1</sup>

The only comments or opposition to the Joint Motion to Approve the Settlement Agreement (“Joint Motion”) were filed by Snow Summit, Inc. (“Snow Summit”) on June 12, 2009 (“Opposition”). Unequivocally, Snow Summit’s *sole* objection to the Settlement Agreement concerns revenue allocation, and particularly, that the revenue allocation for large commercial customers, like itself, is too large. Its proposal reduces the revenue allocation for itself and other large commercial customers from that set forth in the Settlement Agreement, while further increasing the revenue allocation for other customers, including residential and

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<sup>1</sup> A copy of the Settlement Agreement Between the Division of Ratepayer Advocates and Golden State Water Company, on Behalf of its Bear Valley Electric Service Division (“Settlement Agreement”) is attached to the Joint Motion.

other small commercial customers. Snow Summit raises no objection to any other aspect of the Settlement Agreement.<sup>2</sup>

As set forth in this Joint Reply and in the Joint Motion, Snow Summit's Opposition is insufficient to preclude approval of the Settlement Agreement in its entirety, including provisions concerning revenue allocation. In light of the size of the overall general rate case ("GRC") increase customers will be experiencing, approving the revenue allocation as developed and agreed to by the Parties in the Settlement Agreement and not placing an even greater burden on residential customers at this time is reasonable in light of the whole record, consistent with the law, and in the public interest. As such, the Settlement Agreement satisfies all criteria required by Rule 12.1(d).

Moreover, as Snow Summit's objection fails to raise a material issue of fact, but solely one of policy, no further evidentiary hearing is necessary. For these reasons, the Commission should promptly grant the Joint Motion and approve the Settlement Agreement in its entirety.

**II. THE ENTIRE SETTLEMENT AGREEMENT, INCLUDING THE REVENUE ALLOCATION PROVISIONS, MEETS THE CRITERIA UNDER RULE 12.1.**

In the Joint Motion the Parties have demonstrated that the Settlement Agreement meets the standards for approval by the Commission as identified in Rule 12.1(d). No one has contested the propriety and reasonableness of the overwhelming majority of the Settlement Agreement – the sole exception being Snow Summit's objection to revenue allocation. Accordingly, the Parties will not repeat the uncontroverted support for approval of all other aspects of the Settlement Agreement here, but refer the Commission to the Joint Motion.

As for the issue of revenue allocation, as set forth in the Joint Motion and as supported by the prepared testimony and testimony at evidentiary hearings, the Parties' resulting agreement to use the System Average Percent Change ("SAPC") allocation method also is reasonable in light of the whole record, in accordance with Commission policy, and in the public interest.

**A. The Parties' Allocation Is Consistent With the Law and Prior Commission Decisions.**

Snow Summit claims that the Settlement Agreement is inconsistent with Commission decisions and that the Parties have ignored Commission policy and disregarded the results of the marginal cost study BVES performed. See Opposition at pp. 4-5. Snow Summit further claims

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<sup>2</sup> Snow Summit states that "[i]f such a change [to revenue allocation] were made to the settlement agreement, Snow Summit would support Commission approval." Opposition at p. 1.

that the Parties “have not explained why the complete rejection of a marginal cost-based allocation in this case would be reasonable.” *Id.* at p. 6. Snow Summit is incorrect on all counts.

Contrary to Snow Summit’s characterization of the Parties’ Joint Motion, the Parties do not contend that Snow Summit’s issue with revenue allocation is simply irrelevant or that it is to be wholly ignored or that the Commission should abandon its regulatory obligations. *See* Opposition at pp. 3-4. Rather, given the entirety and scope of the issues encompassed by this GRC proceeding (BVES’ first in 13 years) and the comprehensive Settlement Agreement, the Parties have demonstrated that notwithstanding Snow Summit’s objections, the Settlement Agreement as a whole, including the Parties’ resolution of revenue allocation, meets the criteria for approval of a settlement. *See* Joint Motion at pp. 14-16. That the Commission may reject a settlement if one or more of its components is inconsistent with policy or law is of no moment here because the revenue allocation aspect of the Settlement Agreement *is consistent with* Commission policy.

As supported by testimony in the record in this proceeding and the Joint Motion and as further discussed below, not only is the Parties’ agreement on revenue allocation consistent with Commission policy, but BVES’ Application and the resulting Settlement Agreement reflect that the Parties *did* consider Equal Percentage Marginal Cost (“EPMC”) principles, appropriately determined that a greater move towards EPMC allocation is not reasonable at this time, and incorporated marginal cost principles in rate design where reasonable.

1. *Commission Decisions Reflect a Balancing of Several Ratemaking Goals and Policy Concerns in Determining the Appropriate Allocation Method.*

In arguing that the Parties’ revenue allocation approach does not comply with Commission policy, Snow Summit urges adherence to an EPMC approach for the sake of applying EPMC principles, without true consideration of other ratemaking principles and concerns. *See* Opposition at pp. 4-5. As discussed below, Commission decisions, however, reflect that while EPMC-based allocation is an important goal, the Commission does not blindly impose EPMC allocation methods without balancing other important policy concerns, including rate stability and the impact of the resulting increase on a single class of customers and acceptance of rates by customers as fair and reasonable. *See, e.g., In the Matter of the Application of Southern California Edison Company*, D.92-06-020, 1992 Cal. PUC LEXIS 472, \*7-\*8.

Snow Summit relies on In Southern California Edison Company, D.96-04-050, in urging application of its EPMC cap proposal because the Commission therein stated it would not subjugate its goal of applying marginal cost principles in ratemaking to other rate impact issues. See Opposition at p. 8. In that decision, however, the Commission also repeatedly stated that it has tempered implementation of marginal-cost based rates to address concerns over bill impacts. D.96-04-050, 1996 Cal. PUC LEXIS 270, \*26-\*27 and \*130-\*131. It also explained that although the goal of obtaining cost-based rates is a primary goal, that does not mean that other concerns, such as customer understanding and acceptance are not as important, but that they should not be valued *above* cost-based rates. Id. at \*28. In that proceeding, the Commission did apply a 100% EPMC allocation. Id. at \*133-134. Critically, however, in that case, applying the 100% EPMC allocation *did not* present the severe bill impacts that would occur in this case. In fact, in that case there was a *system rate decrease of 4.4%* and all customer groups would experience an average rate *decrease* (except for streetlighting, which would experience only a 1.3% increase). Id. at \*133. Accordingly, the situation here involving an approximately 16% *increase* is wholly different from the Southern California Edison case cited by Snow Summit.

Snow Summit also relies on In Application of Pacific Gas and Electric Company, D.86-08-083, as support that its cap proposal sufficiently mitigates the impact on various customer classes and thus should be adopted. Opposition at pp. 8-9. As Snow Summit buries in a footnote, in that PG&E case, the overall rate change was, again, a *decrease* of 12.43%, and that even under a full EPMC allocation, the residential class would have faced only a 3% rate increase. Id. at p. 10, fn. 22. The Commission used a SAPC + % cap allocation method to limit the amount of the rate *decreases* the various customer classes would experience, and a result of the SAPC + % cap method, the residential class received a net 7.49% *decrease* in rates. D.86-08-083, 1986 Cal. PUC LEXIS, \*78. There, again, the Commission was not faced with the substantial overall rate increases evidenced by the Settlement Agreement.

In numerous other decisions, the Commission consistently has recognized the important policy concerns of rate stability and avoiding undue burdens on a particular class and has deemed increases of 20% or more to a single class to be *unreasonable*. For example, in Application of Pacific Gas and Electric Company, the projected system increase of roughly 10.6% would have resulted in a 58.25% increase for the agricultural class under the full EPMC method. D.90-12-066, 1990 Cal. PUC LEXIS 1385, \*14-\*15. While noting the goal of a full EPMC allocation for all classes, the Commission phrased the issues as “whether *any increase over and above the SAPC should be* imposed on the agricultural class at this time, and if so, to

what extent should progress to full EPMC be moderated.” *Id.* at \*28-\*29. The various parties proposed a range of allocation methods from straight SAPC to variations of a SAPC + % cap. *Id.* at \*29 (emphasis added). The Commission ultimately adopted a SAPC + 3.5% cap, resulting in an increase for the agricultural class of approximately 14%, which the Commission found provided the best balance of its goals of achieving a full EPMC allocation and avoiding excessively large rate increases for any particular customer class. The Commission rejected proposals with a higher SAPC + 5% cap because it “could lead to some agricultural schedules receiving increases in excess of 20%, with a class increase of approximately 16%. . . . ***In our judgment, a revenue allocation which yields schedule increases exceeding 20% in this proceeding does not represent a reasonable balancing of our ratemaking goals.***” *Id.* at \*32 - \*33 (emphasis added).

Similarly, in In the Matter of the Application of Southern California Edison Company, the Commission again recognized the importance of considering numerous policy concerns and not placing strict adherence to form over substance in determining the appropriate allocation method to adopt:

The selection of a cap requires a balancing of competing objectives, and ***that choice is ultimately one of judgment as to what is the maximum reasonable increase that can be imposed on a customer group.*** Thus, for example, while achievement of a full EPMC allocation by the next GRC is a reasonable goal, we do not consider it an inflexible goal that must be achieved regardless of present or future circumstances. ***Doing so could require that we suspend judgment on reasonableness in favor of a formulaic approach.***

D.92-06-020, 1992 Cal. PUC LEXIS 472, \*58 (emphasis added). The Commission also specifically noted that despite the goal of reflecting marginal costs in rates, “large and frequent rate fluctuations may do more to frustrate consumers than to encourage them to consume electricity more efficiently. Such a result would frustrate our goals of customer understandability and acceptance.” *Id.* at \*12-\*13.<sup>3</sup>

In another Southern California Edison Company proceeding, the Commission noted that with respect to revenue allocation the Commission had to “balance its goal of achieving marginal cost ratemaking against the potentially negative impact on certain customer groups of restructuring revenue responsibilities.” D.87-12-066, Part 2, 1987 Cal. PUC LEXIS 415, \*72.

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<sup>3</sup> See also, Application of Pacific Gas and Electric Company, in which the Commission recognized that when “increases are large, the interest of rate stability overwhelms the desire to reach full EPMC, and slower progress toward EPMC is justified.” D. 86-08-083, 1989 Cal. PUC LEXIS 687, \*178.

The Commission stated that while acknowledging its intent “to match cost responsibility to the appropriate customer group, *we do not intend to cause rate shock* to those customer groups (e.g., domestic) who have no options in purchasing or generating electricity other than accepting service from the utility.” *Id.* at \*90 (emphasis added). As a result, the Commission adopted a phase-in approach, resulting in no more than a 5% increase to any class in the first year. *Id.* at \*92-\*93.

The Commission consistently has considered and given considerable weight to the impact of the size of the rate increase on customers, even after D.96-04-050 relied on by Snow Summit. As DRA discussed in its post-hearing Reply Brief in this proceeding (page 19), in the 2003 SDG&E Rate Design Window proceeding, the Commission approved a settlement that provided for a cap that would vary depending on the revenue increase to be allocated, which increase was to be determined in a separate proceeding. Depending on the size of the revenue increase different caps could be used. However, if the revenue increase was large enough that the SAPC revenue change equaled or exceeded 12%, the cap would be zero -- *i.e.*, all classes would receive only the SAPC increase. D.04-04-042, pp. 9-11. The Commission noted its concurrence with a gradual movement toward cost-based distribution rates and that the ““derived marginal cost basis used in the revenue allocation process can itself be volatile. The Commission should avoid imposing radical rate swings each time a cost study is produced with potentially differing results from the last adopted marginal cost study.”” *Id.* at p. 10 (internal citation omitted). Consequently, the Commission rejected EPMC uncapped allocations that would lead to unreasonable increases and decreases for some classes and determined that the “more moderate allocations proposed in the settlement are reasonable.” *Id.* at p. 11.

In In the Matter of the Application of Sierra Pacific (“Sierra Pacific”), the Commission *rejected* CSAA’s allocation proposal based on strict marginal cost principles because it ignored the mitigating circumstances the Commission “has always considered” when allocating rate increases – namely, whether the size of the increase to be borne is substantial and a hardship. D.04-01-027, p. 16. The EPMC method would have resulted in a 16.51% increase for the residential class and decreases of over 10% and 17% for other commercial classes. *Id.* The Commission chose to adopt ORA’s allocation proposal, which resulted in no more than an 8.8% increase to any class. *Id.* Thus, notwithstanding marginal cost principles, the Commission found it “would be imprudent to increase rates substantially for one class of customers while substantially decreasing rates for others.” *Id.*

2. *The Settlement Agreement, Not Snow Summit's Proposal, Reflects a Reasonable and Proper Balancing of Ratemaking Goals.*

Here, Snow Summit advocates rejection of the Parties' SAPC revenue allocation, which already results in a 15.85% overall increase for residential customers. Instead, Snow Summit urges adoption of its proposal under which residential and small commercial customers would see even greater increases, while large commercial classes would either see decreases or much smaller increases. Opposition at p. 10, Table 1. The outcome under Snow Summit's proposal is similar to the unreasonable and imprudent outcomes resulting from solely following EPMC regardless of its ultimate impact, which has been repeatedly rejected by the Commission as discussed at length above. The Parties' Settlement Agreement best balances policy concerns and ratemaking objectives.

In reaching an agreement on revenue allocation and as reflected by the record, the Parties have considered marginal cost principles. BVES also identified the numerous difficulties of implementing EPMC methods at this time and other important ratemaking policy concerns. These include the undue burden it would place on permanent residential customers and how adding the controversy of inter-class shifts of the revenue requirement along with changes to the baseline allowance and price structure and demand rates and TOU would undermine the goal of providing rates that are simple, understandable, free of controversy, stable and publicly acceptable. See Ex. BVES-6 at pp. 3-5 and 20; Ex. BVES-28 at pp. 3 and 6. As BVES has indicated, the next GRC should provide a better opportunity for BVES to evaluate making further movement towards EPMC at that time. Ex. BVES-6 at pp. 3-4. As explained below, the Settlement Agreement does implement marginal cost based principles in the rate design proposals it advocates. The Settlement Agreement rate design includes movement toward marginal cost based rates by implementing demand charges for some classes, increasing demand charges for others, establishing energy rate relationships, and creating additional mandatory TOU rate classes. These changes reflect a reasonable application of the underlying principle of EPMC – marginal cost based rates. It is simply too much of a burden on residential customers and small commercial customers at this time to make a shift to EPMC in addition to the overall increase required at this time. Given that there has not been a base rate increase since BVES' last GRC 13 years ago and given the current economic climate, a further shift to EPMC resulting in any increase in the average residential bill of more than 16% places an undue burden on residential customers. Thus, the Settlement Agreement reflects a balancing of policy concerns

and ratemaking goals and outcomes that are reasonable, in compliance with Commission policy, and in the public interest.

By contrast, under Snow Summit's proposal, the average residential and small commercial customers would see on average a *21% increase in their bills*, while the average A-4 TOU (large commercial) would see a *1% decrease*, streetlights would see a *31% decrease*, and both A-3 (large commercial) and A-5 TOU (primary), which is Snow Summit, would only see a *4% increase*. Opposition at p. 10, Table 1. The average 21% increase the residential class (BVES' largest class)<sup>4</sup> would experience under Snow Summit's proposal is unacceptable and unreasonable.<sup>5</sup> While Snow Summit attempts to cast its proposal favorably as providing relief to the residential class from a full EPMC allocation of 66% (Opposition at p. 10), which technically may be true, it ignores the fact that the resulting increase under its proposal still would result on average in a 21% increase to customer bills in 2009. As reflected in the decisions discussed above, the Commission has deemed increases greater than 20% to be unreasonable and not in the public interest. The Commission also has approved a straight SAPC allocation depending on the size of the system increase, and specifically approved use of straight SAPC where the increase was 12% -- less than the increase here. The Commission has used a variety of allocation methods and approaches, but has consistently given great consideration to the resulting impact any particular method yields. The critical point is that under the Settlement Agreement residential customers will see a 16% increase, and it will be an undue burden and inequitable at this time for them to bear any greater increase, much less the 21% advocated by Snow Summit, while other larger commercial classes see decreases or only minimal increases.

Lastly, that the revenue requirement increase for 2009 under Snow Summit's proposal is 21%, which is less than the 22.7% originally proposed in BVES' Application, does not render

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<sup>4</sup> The residential class represents 56% of revenues. Ex. BVES-6 at p. 4.

<sup>5</sup> In part of its Opposition, Snow Summit characterizes its proposal as a 100% EPMC +4% cap, resulting in a 21% increase for residential and other customer classes. See Opposition at p. 10, Table 1, and p. 12. Snow Summit reached this 21% result coming from a different approach of applying a multiplier to the 16% SAPC revenue increase ( $1.04 \times 116\% = 121\%$ ) rather than adding a percentage to SAPC. See *id.* at p. 10, fn. 24. Elsewhere, Snow Summit states that "[a]pplying a 4% cap would mean that no customer class would be allocated a revenue increase in excess of 4% of the *system average increase*." *Id.* at p. 8 (emphasis added). These statements appear to be inconsistent or, at minimum, are confusing. Starting with the Settlement Agreement's 15.85% SAPC increase (rounded up to 16%), the 21% increase proposed by Snow Summit is not SAPC +4%, but SAPC +5%. As set forth in D.92-06-020, 1992 Cal. PUC LEXIS 472, \*53, caps are typically defined as the total of the SAPC % change plus an additional percentage above present rates -- not as a 100% EPMC + % cap based on a multiplier of the SAPC increase. Thus, to maintain consistency with the Commission's accepted way of expressing caps as SAPC +% cap, the Parties will refer to Snow Summit's proposal of a 21% increase as a SAPC +5% cap.

Snow Summit's proposal reasonable, much less use of the SAPC approach unreasonable, as Snow Summit argues. See Opposition at p. 9. In BVES' Application, BVES sought a revenue requirement increase of 22.7% for 2009. Importantly, however, concerned with the size of that increase and avoidance of rate shock, BVES proposed a rate increase mitigation plan ("RIMP") that was integrally tied to BVES' requested revenue increase. Under that RIMP plan, the 2009 increase would be 8% plus an approximately 7% increase due to an interim rate increase (based on an increase in BVES' General Office ("GO") allocation previously approved by the Commission in 2007, but not reflected in rates), for a total of nearly 15%. See Ex. BVES- 4, Table A-2. Thus, the 21% increase proposed by Snow Summit is *not* less than what BVES originally proposed in its Application when BVES' full proposal is considered.

3. *In Trying to Advance its Own Interests, Snow Summit Unreasonably Compromises the Public Interest Because Its Proposal Places the Survivability of the Comprehensive Settlement Agreement at Risk.*

Snow Summit presents its alternative as simple percentage increases or decreases to the revenue allocation for each customer class, but it does so in a vacuum. Its revenue allocation proposal is not as straightforward as it seems. Increasing the residential, small commercial and A-5 TOU secondary classes' allocations from 16% to 21% does not just mean more revenue would be recovered from those classes and less from larger customers like Snow Summit. Shifting revenue allocation and further increasing the allocation for certain classes (and decreasing the allocation for others) has impacts on other critical aspects of the global Settlement Agreement that Snow Summit overlooks, placing the viability of the settlement at risk.

Snow Summit's proposed changes to the revenue allocation in the Settlement Agreement could require a complete re-working and reconstruction of the Settlement Agreement's rate design. Under the Settlement Agreement, base rate revenue will be substantially increased by about 39%<sup>6</sup> in 2009. Increases beyond that level may result in the inability of the base rate structure to absorb Snow Summit's proposed additional overall increases without major reworking of the rate design for several customer classes. Any further rate increase would not only result in a number of key rate classes needing more than a 21% increase in total revenue, it would increase the base rate component by about 50%. Should the increase be restricted to the third tier of the residential rate, it could result in an increase of over 100% to that component of

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<sup>6</sup> Settlement Agreement, Section X, "Summary Table" (page 15) shows present base rate revenue (in thousands) at \$12,212.8 and 2009 proposed base rate revenue at \$17,023.3, resulting in an increase of 39.4%.

the residential rate, suggesting the need for a possible additional fourth rate tier. Not only could such significant increases be felt by many permanent residential customers, it would also disproportionately impact certain users in those rate classes for which the Snow Summit's proposal assigns more than a 16% overall increase. To correct such an unreasonable result, the rate structure would likely require substantial re-working.

To illustrate the problem we can see from Attachment C to the Settlement Agreement that the total revenue (Base + PPAC) increases by 16%. This total rate increase for permanent residential has been accomplished by raising base rate energy rates for all three tiers by about 62%<sup>7</sup>. The additional increase in total residential revenues proposed by Snow Summit would increase the base rate increase to about 80% on average, but if restricted to Tier 3 it would be more than 100%<sup>8</sup>. Thus, implementing the Snow Summit proposal could require a rate design change, such as possibly adding a fourth tier in permanent residential rates. Similar problems will also arise in absorbing the proposed changes for other classes (small commercial and A-5 TOU secondary) that receive a higher allocation under the Snow Summit proposal. As a result, substantial changes also would have to be made to rate designs and charges for those other classes.

Snow Summit, however, fails to consider, much less justify or provide the Commission an assessment of the implications its allocation proposal has on the Settlement Agreement as a whole. Despite opportunities to do so, at no time in this proceeding has Snow Summit acknowledged the need for, much less presented or provided support for, any rate design alternative under its revenue allocation proposals – either its original 50% EPMC proposal or its latest SAPC +5% proposal. Moreover, Snow Summit's argument that the Commission should impose an EPMC allocation also is internally inconsistent with Snow Summit's support for all other aspects of the global settlement, including the rate design component. Snow Summit's EPMC argument has not and cannot be supported and should be denied.

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<sup>7</sup> From Attachment C to the Settlement Agreement, present rates for Tier 1 through Tier 3 are 3.476, 4.536, and 5.446 cents/kWh, respectively, whereas the corresponding Settlement Agreement rates are 5.616, 7.328 and 8.798 cents/kWh, respectively. Thus, each tier experiences a 61.6% increase over present rates.

<sup>8</sup> The increase to the permanent residential class proposed by Snow Summit found in the supporting Work Paper to Table 1 on page 10 of its Opposition is approximately \$400,000 (\$9.5 with 4% cap vs \$9.1 million at present rates). However, this increase must be absorbed exclusively by the residential base rate energy charge as a key part of the Settlement Agreement states that the residential customer charge shall be held to the present level. Since the energy component of the base rate revenue for this class at present rates is \$2.0 million (\$2.6 million less \$0.6 million customer charge revenue), the Snow Summit proposal of an additional \$400,000 will result in an increase in excess of 18% to present base energy rates. And, if this increase is passed along exclusively to the third tier, it would become an increase of 48% for that tier.

Because of the inter-relatedness of the various aspects of the comprehensive, global Settlement Agreement, a change to the revenue allocation could unwind the carefully considered and constructed Settlement Agreement. As discussed above, the Settlement Agreement's revenue allocation complies with Commission policy. It is neither reasonable nor in the public interest to jeopardize the viability of the Settlement Agreement in order to *further* benefit *one* customer. As a result of negotiations and the Parties' compromises, Snow Summit has already received the benefit of a reduction to the revenue requirement originally requested in BVES' Application. It would undermine the public interest purpose to undo a global settlement that is acceptable in all but *one* respect to all but a *single* large commercial customer, whose argument against approval of the Settlement Agreement is internally inconsistent and self-serving. An alternate revenue allocation proposal more favorable to Snow Summit, but at the expense of residential customers that places the survival of the Settlement Agreement at risk, does not outweigh all of the benefits of the Settlement Agreement as a whole and is not in the public interest.

4. *In No Way Does DRA's Position in Another Proceeding Provide a Basis to Not Approve the Settlement Agreement Here.*

Snow Summit's characterization of DRA's position in the pending Sierra Pacific Power Company proceeding as inconsistent with its position here and as a ground to reject the Settlement is both incorrect and irrelevant and again places form over substance. See Opposition at pp. 5-6, 9 and 11. That DRA may advocate the use of a cap in the Sierra Pacific proceeding, under the circumstances of *that* proceeding, is by no means inconsistent with its settlement position here to limit increases to 16% under a SAPC allocation.

First, the facts and circumstances of the Sierra Pacific case are different from those involving BVES in this proceeding. Moreover, Snow Summit describes DRA's initial position in the Sierra Pacific case, whereas what DRA agreed to in the Settlement Agreement here comes after a review of the full record and lengthy negotiations and compromise. DRA, as it should, evaluates and determines its position and the reasonableness of the resolution of any issues based on the particulars of each case. In addition, the Commission has not yet issued a decision in the Sierra Pacific case, and the evidentiary hearings in this proceeding were closed several months ago in February. Snow Summit had an opportunity at that time to cross-examine DRA's witness on revenue allocation, which it chose not to do. Thus, the pending Sierra Pacific case is irrelevant to this proceeding.

A brief discussion of another proceeding demonstrates also that DRA's ultimate position with respect to settlements rightly vary depending on the facts and circumstances of each case. In the 2003 SDG&E Rate Design Window proceeding previously discussed, the Commission approved a settlement to which DRA was a party, providing for a cap that would vary depending on the revenue increase to be allocated. If the revenue increase was large enough such that the SAPC revenue change equaled or exceeded 12%, there would be no cap and all classes would receive *just* the SAPC increase. D.04-04-042, p. 9. This not only demonstrates the need for a case-by-case evaluation, but that DRA has in the past, when appropriate, agreed to limit revenue allocation to the SAPC increase depending on the size of that increase.

Second, in the Sierra Pacific proceeding, although DRA recommended a SAPC + 4.5% cap, which DRA stated was consistent with the goal of EPMC principles, that method resulted in an increase *to all customer classes of no greater than 10.15%*. See Opposition at p. 9. Thus, recommending an allocation method that limits increases to 10% is not inconsistent with recommending a 16% increase, even though the latter increase is reached using a different approach. In fact, the two positions are actually consistent in that DRA has followed a policy of limiting the size of the increase so as not to unduly burden a particular customer class. Finally, contrary to Snow Summit's implication of inconsistency (Opposition at pp. 5-6), DRA has been consistent in acknowledging that an EPMC study is a *starting point*, as the Parties here also considered and reviewed the results of an EPMC study as a starting point.

Thus, not only is DRA's position in the Sierra Proceeding irrelevant to what is reasonable and in the public interest under the circumstances of this proceeding, but in any event, actually reflects DRA's consistency in balancing ratemaking objectives.

5. *The Parties' Agreed-Upon Allocation and Rate Design Reflects Consideration of and a Reasonable Implementation of Marginal Cost Principles While Mitigating Rate Shock.*

As discussed above, BVES did conduct a marginal cost study. See also, Ex. BVES-6, pp. 7-16. In addition to identifying various competing policy concerns and ratemaking principles, BVES also noted that the available data and results of the study are limited at this time and were less than sufficient to significantly rely on the results in order implement EPMC allocation. Ex.

BVES-28 at p. 3.<sup>9</sup> Thus, at this time, inter-class allocation could not be adjusted without resulting in too great a rate increase for residential customers.

Notwithstanding these concerns, BVES did propose certain changes in rate design that reflect a move towards rates better reflecting marginal cost. See, e.g., Ex. BVES-6 at p. 5. The Settlement Agreement reflects these changes and the Parties' efforts to incorporate and reflect marginal cost principles where possible and when reasonable to avoid rate shock. For example, increases and decreases were made to customer charges for various classes to better reflect marginal cost.

Table A below reflects the monthly customer charges resulting under the Settlement Agreement, which are derived from Attachment C to the Settlement Agreement (which expresses the charges on a daily basis):

**Table A**  
**Proposed Monthly Customer Charges (\$/Customer-Month)**  
**Settlement Agreement**

Rate Group	Current Rate	2009	2010	2011	2012
Residential	\$6.40	\$6.39	\$6.39	\$6.39	\$6.39
A-1	\$7.30	\$7.91	\$9.13	\$10.04	\$10.95
A-2	\$50.00	\$54.75	\$60.83	\$63.88	\$69.96
A-3	\$500.00	\$450.17	\$401.50	\$349.79	\$301.13
A4-TOU	\$500.00	\$498.83	\$498.83	\$498.83	\$498.83
A5-TOU sec	\$2,000.00	\$2001.42	\$2001.42	\$2001.42	\$2001.42
A5-TOU pri	\$2,000.00	\$2001.42	\$2001.42	\$2001.42	\$2001.42

With two exceptions, the increases/decreases in customer charges shown in Table A bring those charges more in line with marginal cost data submitted in evidence during the GRC proceeding.<sup>10</sup> The first exception is the A-5 TOU charges, to which no change was made, as the two A-5 classes consist of only five total customers and the customer charge represents a small portion of both their bill and total revenues. The second exception is the residential charge. While BVES proposed an increase in the residential charge, as a compromise, the customer

<sup>9</sup> The Commission has noted that when load research data and similar information is not available, it limits the ability to use marginal costs for revenue allocation on a schedule-by-schedule basis. D.92-06-020, 1992 Cal. PUC LEXIS 472, \*13-\*14.

<sup>10</sup> See Ex. BVES-6, Chapter 2, "Marginal Cost Study" at Table 2-1. Dividing the revenue amounts by bill months results in marginal cost based monthly customer charges of \$14.65 for residential, \$27.30 for A-1, \$87.78 for A-2, \$178 for A-3, \$179 for A-4, \$1,528 for A-5 Secondary and \$5,661 for A-5 Primary.

charge was not increased, but energy rates were increased by a greater amount. See Settlement Agreement, Attachment C.<sup>11</sup>

The Settlement Agreement also provides a difference in energy rates between A-5 TOU primary customers and A-5 TOU secondary customers in recognition of marginal cost principles. Whereas current rates show no difference between the energy rates for these two classes of customers, the Settlement Agreement rates provide a small movement in price by TOU. This movement partially reflects the differences in voltage delivery to each class, recognizing that the lower voltage deliveries to A-5 TOU secondary customers have higher losses than power delivered to A-5 TOU primary customers. Under the Settlement Agreement, this difference between the A-5 TOU primary and A-5 TOU secondary energy rates increases starting in 2009, which again reflects a movement towards better reflecting marginal costs. See Settlement Agreement, Attachment C (e.g., compare the difference between A-5 TOU/sec summer on-peak with A-5 TOU/pri summer on-peak “Present Rates” to the same difference in the “Proposed 2009 Rates”). Similarly, the differences between peak and off-peak rates have been adjusted starting in 2009 from current rates. The relationship of peak to off-peak rates under the Settlement Agreement more closely reflects their marginal cost relationship. Id.

Movement towards a marginal cost basis also is reflected by the introduction of demand charges for many commercial users. Prior to BVES’ Application and the Settlement Agreement, the A-3 TOU class did not have a T&D demand charge. Under the Settlement Agreement, the A-3 TOU class will have a T&D demand charge during maximum demand in order to help reduce erratic fluctuations in energy use. This new charge better reflects marginal costs, as it costs BVES more to provide energy during periods where energy use spikes. A-5 TOU customers also will have a T&D demand charge for mid-peak demand, where they previously did not. This demand charge better reflects costs of providing power during peak periods. These demand charges were discussed and supported in BVES’ prepared testimony at Ex. BVES-6, pages 30-33 and Table 4-6, and the charges are reflected in Attachment C to the Settlement Agreement.

Moving former A-3 customers with a peak demand of 200kW or greater to a mandatory A-4 TOU customer class is another example of how the terms of the Settlement Agreement incorporate marginal cost principles. These customers, which do not currently have a demand

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<sup>11</sup> Incorporating the increase in the energy rates rather than the customer charge also has an additional benefit in that the increase in rates and changes in rate design should send a better price signal to consumers.

charge, will have an on-peak demand charge under the Settlement Agreement. In addition, these customers also will have energy charges based on TOU and different energy rates that are better reflective of marginal costs. This mandatory move of customers to the A-4 TOU class and attendant demand charges and increased energy rates were discussed and supported in BVES' prepared testimony at Ex. BVES-6, pages 34-35 and Tables 4-6 and 4-7, and the charges are reflected in Attachment C to the Settlement Agreement.

The foregoing are examples in the record of where marginal cost principles have been implemented in rate design, rather than changes inter-class allocation, in order to achieve some movement towards EPMC while still addressing other policy concerns, including mitigating the rate increase experienced by residential customers.

**B. The Parties' Agreed-Upon Allocation Approach Is Reasonable in Light of the Record as a Whole and in the Public Interest.**

1. *Use of the SAPC Approach, Which Results in an Average 16% Increase to Each Rate Class, Is Both Reasonable and In the Public Interest.*

As discussed in detail in Section II.A. above, the record reflects and the Parties have demonstrated that the Settlement Agreement, including the use of a SAPC revenue allocation method, is reasonable in light of the entire record and is in the public interest. BVES' testimony sets forth various reasons for the significant increase in marginal costs since its last rate case 13 years ago. Ex. BVES-6, Chapter 3, pp. 19-20. As discussed above, the record also provides support for consideration of ratemaking principles that militate against application of a full EPMC allocation or a SAPC +% cap variation, including the concern for rate stability, rate understanding and acceptance, and the fact that more data needs to be obtained in order for marginal cost study to provide sufficiently accurate and meaningful results. The Parties further have demonstrated that the Settlement does not completely disregard marginal cost principles, but incorporates them where reasonable at this time, and primarily in aspects of rate design. A balancing of ratemaking principles and policies supports adoption of the 16% increase under the Settlement's SAPC allocation, compared to a 21% increase for most customer classes as proposed by Snow Summit, and represents a favorable outcome for ratepayers and is reasonable in light of the record as a whole.

Faced with this obstacle, Snow Summit claims that the revenue allocation portion of the Settlement is unreasonable and not in the public interest because it would allow cross-subsidization by large power and commercial customers of residential customers to continue.

Opposition at p. 6. Given the overall revenue increase and the trade-offs in balancing ratemaking policies that are not always in alignment, under the current circumstance the policies of rate stabilization and customer understanding and acceptance of rates justify not attempting to further reduce cross-subsidization or to further improve price signals for energy conservation than what is proposed in the Settlement Agreement.

2. *DRA's and Snow Summit's Participation in This Proceeding Sufficiently Protects the Public Interest.*

Snow Summit claims the revenue allocation portion of the Settlement Agreement should be rejected because allegedly all ratepayers' interests are not represented in the Settlement Agreement. Opposition at p. 6. In support of its position, Snow Summit relies on Public Utilities Code section 309.5(a), which provides that DRA shall *primarily* consider the interests of residential and small commercial customers (emphasis added). Section 309.5(a) neither states nor means that DRA wholly abandons consideration of the interests of all other ratepayers other than residential and small commercial. For Snow Summit to imply that DRA has *only* considered the interests of residential and small commercial customers in this proceeding is simply unfair and inaccurate.

In working for and obtaining an agreement on a lower revenue requirement than requested in the Application, DRA has acted on behalf of, and clearly provided a benefit to, *all* ratepayers. Throughout this proceeding Snow Summit has been silent on the amount of the requested revenue requirement, and the Settlement Agreement's reduction thereof, and has focused solely on revenue allocation. DRA's consideration of all customer interests in reaching this global settlement also is reflected in the fact that Snow Summit appears to be satisfied with all other aspects of the global Settlement Agreement (which also affect Snow Summit), as Snow Summit did not present any testimony or support on any of those other aspects at any time during this proceeding. Further, Section 309.5(a) must be considered in the context of all that DRA is charged to do in electricity regulation, not just in GRC proceedings, which is to ensure that those ratepayers least able to afford their own representation in all public utilities regulation are, at least, protected. In any event, in ratemaking, as in most regulation, the interests of all customers in keeping rates down are consistently aligned, and DRA's representation serves *all* customers, as well as it serves residential and small customers.

Section 309.5(a) also does not negate the history of all parties' involvement in this proceeding or that DRA comprehensively reviewed and negotiated BVES' requests account by

account or that DRA is “ideally positioned to comment on the operation of the utility and ratepayer perception” as required by D.92-12-019 at page 16. See Joint Motion at p. 15.

Thus, not only are the sponsoring Parties fairly reflective of the affected interests, but Snow Summit does not, and cannot, dispute that it has had full opportunity to participate in this proceeding: it submitted prepared testimony, cross-examined BVES’ witnesses during evidentiary hearings on the issue of revenue allocation (see, e.g., 2/23/09 RT at pp. 159-171; 2/24/09 RT at pp. 259-268<sup>12</sup>), and submitted post-hearing briefs. Snow Summit also participated in the settlement conference with the Parties, but did not join in executing the Settlement Agreement, and instead filed its Opposition brief to the Settlement Agreement.

Understandably, Snow Summit urges a position that best advances its interests, but in so doing it downplays DRA’s critical role in reaching the global Settlement Agreement. Considering the information in the record, Snow Summit’s participation in the proceedings, the balancing of various interests and policies, and the lengthy negotiations and numerous compromises by both Parties, that DRA is a signatory to the Settlement Agreement *is* significant. DRA’s participation and approval *is* indicative that the Settlement Agreement is reasonable in light of the entire record and that the interests of the public as a whole have been represented as the Parties accurately stated in their Joint Motion (at page 14).

**III. AN EVIDENTIARY HEARING IS NEITHER REQUIRED NOR NEEDED.**

Snow Summit claims that if the Commission does not reject the Settlement Agreement and adopt Snow Summit’s revenue allocation proposal, the Commission should set a hearing on the Settlement Agreement. Opposition at p. 11. A hearing is neither required nor needed here.

**A. As the Reasonableness of the Settlement Agreement’s Revenue Allocation is a Question of Law and Policy, A Hearing is Not Warranted.**

Rule 12.3 provides “If there are no material contested issues of fact, or if the contested issue is one of law, the Commission may decline to set hearing.” As well-established by case law and Commission decisions, a party’s right to present evidence and testimony on contested issues in a settlement agreement is *permissive*, not mandatory. See, e.g., Application of Southern California Edison Company, D.05-01-036, 2005 Cal. PUC LEXIS 26, \*8 and \*10 (in declining to set a hearing, the Commission noted that the alleged disputed facts concerned issues that were

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<sup>12</sup> Snow Summit chose not to cross-examine DRA’s witness on revenue allocation and rate design, Mr. Fest. See 2/27/09 RT at pp. 690-694.

immaterial, were not new, and were actively litigated during evidentiary hearings); In Touch Communications, D.04-05-033, 2004 Cal. PUC LEXIS 266, \*16, citing Costle v. Pacific Legal Foundation, 455 U.S. 198, 214 (1980) (“[d]ue process does not require a hearing merely to ‘sharpen the issues’ or ‘fully develop the facts’; rather, there must be disputed issues of material fact in order to merit a hearing.”); OIR Regarding Implementation of the Suspension of Direct Access, D.03-04-030, p. 44 (because evidentiary hearings had already been held on the underlying issues to establish the factual record for its decision-making and because the objection to the settlement posed questions of policy and not fact, the Commission declined to hold further hearings on the settlement); and In the Matter of the Application of Southern California Edison Company, D. 94-09-064, 1994 Cal. PUC LEXIS 632, \*14 (to the extent comments in opposition to a proposed settlement raised immaterial facts and issues of law, the Commission resolved the issues of law without hearing).

Here, Snow Summit’s objection to the Parties’ revenue allocation does not raise any factual issue, but rather, is solely an issue of law and/or policy. Even assuming for the sake of argument that Snow Summit could belatedly (after evidentiary hearings have already been held and witnesses have been made available for cross-examination) provide a witness who would testify as to how its new cap allocation proposal was developed and calculated, it still does not create a factual issue that warrants a hearing. Whether the Parties’ agreed-upon allocation (resulting in a 15.85% increase for residential customers and a 15.85% increase for Snow Summit) versus Snow Summit’s alternative proposal (resulting in a 21% increase for residential customers and a 4% increase for Snow Summit) is reasonable and in the public interest is a policy decision for the Commission to make. A hearing is not only unwarranted, but would only further delay a decision in this proceeding and waste precious Commission resources.

**B. Snow Summit’s Purported Justification for a Hearing Ignores the Procedural History of and the Record Developed in This Proceeding.**

Snow Summit attempts to justify its request for a hearing on the grounds that “the Settling Parties have provided no factual analysis demonstrating the need to use the SAPC approach to mitigate adverse rate impacts to residential customers[,]” and that the “reasonableness of using the SAP approach and whether such an approach should be adopted by the Commission can only be determined by an examination of the underlying facts – in this case, the impact of various revenue allocation approaches on rates.” Opposition at p. 11. In making

these arguments, Snow Summit conveniently ignores the volumes of prepared testimony, rebuttal testimony, and the evidentiary hearings already conducted.

Starting with BVES' Application and the Parties' prepared testimony and through evidentiary hearings and post-hearing briefing, BVES and/or DRA advocated and provided support for a SAPC revenue allocation and the impact on rates. Not surprisingly, due to the concerns and principles set forth in the Parties' testimony and the overall revenue increase, the Settlement Agreement also contains a SAPC allocation. Settlement Agreement at Section XIV.

First, the Parties provided ample evidentiary support in their prepared testimony for use of SAPC allocation. Ex. BVES-6; Ex. BVES-28; Ex. DRA-14. Snow Summit also submitted testimony on the revenue allocation issue and chose to argue solely for a 50% EPMC allocation. Ex. SS-101. Thereafter, ALJ Farrar conducted a week of evidentiary hearings in this matter. During this time Snow Summit had an opportunity to cross-examine DRA and BVES witnesses on rate design and cost allocation issues. However, Snow Summit elected to only cross-examine BVES' witnesses. Under cross-examination by Snow Summit, BVES witnesses explained BVES' EPMC study and explained why, given the results of that study, EPMC allocation was not reasonable or in the public interest and why BVES supported the use of SAPC allocation given other policy concerns, primarily the size of the increase in rates to residential customers. See 2/24/09 RT at pp. 259-268; 2/23/09 RT at pp. 159-171. Snow Summit also could have presented alternative allocation proposals in its prepared testimony, not just one, but did not.

After the conclusion of hearings, all parties, including Snow Summit, submitted post-hearing opening and reply briefs. Snow Summit still advocated only a 50% EPMC method. After reaching a settlement and conducting an all party settlement conference, the Parties entered into the Settlement Agreement and filed the Joint Motion. Attachment C to the Settlement Agreement shows the resulting rates for the various customer classes. Thus, the Parties have provided ample factual and legal support for their use of the SAPC approach over any approach put forth by Snow Summit, whether it be a 50% EPMC approach or its latest SAPC +5%<sup>13</sup> cap approach.

Snow Summit has had numerous opportunities to challenge the revenue allocation method consistently espoused by the Parties from the outset. That the overall revenue requirement in the Settlement Agreement is less than the \$6.8 million requested in BVES' Application does not warrant additional hearings as Snow Summit argues. See Opposition at p.

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<sup>13</sup> See, supra, fn. 5 explaining how Snow Summit's proposal is actually a SAPC +5% cap approach.

11. As previously explained, while BVES originally sought a 22.7% increase, under its RIMP proposal the resulting increase was just under 15% for 2009. Thus, the 15.85% increase for 2009 as agreed to by the Parties under the Settlement Agreement is very similar to the nearly 15% increase that would have resulted if a RIMP were adopted to mitigate the 22.7% increase as BVES had proposed. This slight difference does not justify granting Snow Summit's request for additional hearings.

In addition, as discussed above, DRA's position in this Settlement is not inconsistent with its position in a completely different proceeding involving a different utility, facts, witnesses and circumstances, such that a hearing is warranted to cross-examine different DRA witnesses on their respective positions in unrelated actions.<sup>14</sup> See Opposition at p. 12.

Whether the Parties' agreed-upon SAPC allocation or Snow Summit's alternative proposal is reasonable, comports with Commission policy, and is in the public interest is a policy decision for the Commission to make. All parties have briefed the issue of why their respective proposal should be adopted. Given the procedural history of this proceeding, all parties have been afforded ample due process. Whether the Settlement Agreement should be adopted in its entirety is ready for determination.<sup>15</sup>

Conducting another evidentiary hearing is not required, serves no meaningful purpose, and would only result in an unnecessary expenditure of additional time and scarce resources and further delay a decision in this proceeding.

#### **IV. CONCLUSION**

For the reasons stated above, the Parties urge the Commission to grant the Joint Motion and approve the Settlement Agreement without modification as quickly as possible. As discussed, the Settlement Agreement is reasonable in light of the whole record, consistent with law, and is in the public interest. In addition, Snow Summit's request for another evidentiary hearing is neither required nor warranted. The record has been fully developed through discovery, testimony, and prior evidentiary hearings. With such knowledge of all parties'

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<sup>14</sup> This argument also leads to the absurd result that unless DRA settles and agrees to the same approach on any given issue in every proceeding, a hearing is warranted and DRA witnesses should be cross-examined on the differences and similarities in their settlements with numerous and varying utilities.

<sup>15</sup> If the Settlement Agreement is not approved in its entirety and the Commission rejects or materially alters the Settlement Agreement, the Parties are no longer bound by its terms. The Parties agreed, however, to negotiate in good faith regarding any change to restore the balance of benefits and burdens and to refrain from exercising their right to withdraw unless such negotiations are unsuccessful. Settlement Agreement at p. 2. To risk unraveling a carefully balanced global settlement of the GRC to further the interests of Snow Summit is neither warranted nor in the public interest.

positions and the information obtained through the course of this proceeding, the Parties believe strongly that the Settlement Agreement accomplishes a mutually acceptable and reasonable outcome of the TY 2009-2012 revenue requirement issues in this proceeding and BVES' Special Requests, as well as revenue allocation issues.

Dated at San Francisco, California  
June 29, 2009

Dated at San Dimas, California  
June 29, 2009

Respectfully submitted,

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that I have by electronic mail this day served a true copy of the attached JOINT REPLY TO THE OPPOSITION OF SNOW SUMMIT, INC. TO THE JOINT MOTION OF THE DIVISION OF RATEPAYER ADVOCATES AND GOLDEN STATE WATER COMPANY (BEAR VALLEY ELECTRIC SERVICE DIVISION) TO APPROVE SETTLEMENT on all parties listed on the attached Service List.

Dated: June 29, 2009, at Los Angeles, California.

/s/ Teresa Amos

Teresa Amos

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