

Decision 12-02-023 February 16, 2012

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Lucas D. Hernandez, Martha Amezquita, Daniel Gonzalez, Gabriel Cabrera, Severo Rosa, Celia Ruiz, Martha Alvarado, Maria Palma, Federico Garcia, Luis Morales,

Complainants,

vs.

Sunbird Mobile Home Park, Hawkeye Asset Management, James Martin and Betty Martin,

Defendants.

Case 09-11-019  
(Filed November 25, 2009)

**DECISION SETTING MOBILHOME PARK WATER RATES AND CONDITIONS OF WATER SERVICE, AND MANDATING RELATED ACCOUNTS**

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## **DECISION SETTING MOBILHOME PARK WATER RATES AND CONDITIONS OF WATER SERVICE, AND MANDATING RELATED ACCOUNTS**

### **1. Summary**

This ratesetting decision substitutes just and reasonable water rates at the 87-space Sunbird Mobile Home Park in Thermal, California, for ones that were not just and reasonable. Under the new rates, residents will pay monthly \$0.90 per hundred cubic feet (one unit) for the first 10 units of water consumed, and \$1.30 per unit for all units consumed above that, in addition to a service fee of \$7.25 in 2011 and \$6.00 in 2012. Under the rate design and rates ordered in this decision, the average monthly bill per estimated billed connection for 2011 and 2012 is projected to be \$13.96 and \$12.71 (less an estimated refund of approximately \$6.19 for 2012), respectively, compared to \$23.74 in 2010. Two tiers of rates, rather than the previous four, are established with a 44.44% differential between the first and second tiers.

The earlier interim decision, Decision (D). 10-05-020, in this proceeding suspended the application of Tier 3 and Tier 4 rates, providing for a later adjustment if the suspension resulted in either an undercollection or an overcollection of the revenue requirement that would be determined later. That adjustment in rates resulted in an overcollection of \$495 from ratepayers based on collections for 2010 and 2011.<sup>1</sup> This decision authorizes Sunbird Mobile Home Park to refund each submetered connection in a monthly water bill in 2012 a sufficient amount to refund in the aggregate that amount.

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<sup>1</sup> The net overcollection is based on an estimated overcollection of \$1,807 for 2010 and an undercollection of \$1,302 for 2011.

Sunbird Mobile Home Park is directed to reconcile the actual operating expenses and revenues for 2011, carrying forward the net amount into 2012, and to establish a balancing account for 2012 to record actual operating expenses and revenues consistent with this decision. It is directed to file a letter with the Director of the Commission's Division of Water and Audit, at the end of 2012, or upon the completion of the connection to the District, whichever occurs first, requesting an adjustment for over or under collections in accordance with actual operating expenses and revenues for 2010, 2011 and 2012.

The claim for restitution for excessive payments made before the filing of the formal complaint is denied because the Commission lacks authority to grant such relief under the applicable statute. Today's decision approves a partial settlement agreement between the parties, appended as Attachment A, that addresses tainted water problems pending the planned connection, expected during 2012, of the mobile home park to a public water supply that is compliant with safe drinking water standards.

This decision supersedes the earlier interim decision, D.10-05-020, and closes the proceeding. Excerpts of the decision are translated into Spanish and appended as Attachment B.

## **2. Background**

This proceeding deals with the water rates and water service at the 87-space Sunbird Mobile Home Park (Sunbird) in Thermal, California, a Riverside County community in eastern Coachella Valley. The water system at Sunbird is composed of a 400-foot deep well, two 5,000-gallon pressurized storage tanks, six 10,000-gallon gravity storage tanks and a pipeline distribution system.

In 2002 Sunbird, concerned over excessive discharges into its septic system, implemented a rate structure involving a monthly service charge and a 3-tier increasing rate quantity charge. In mid-2006, convinced that the 2002 rate structure was not sufficiently stemming excessive discharges, Sunbird adopted a different rate structure, one that retained the monthly service charge of \$7.36 and the rates of 68 cents per unit (100 cubic feet) up to ten units for Tier 1 usage and \$1.10 per unit for the eleventh unit, Tier 2 usage, but set a rate of \$20 per unit for a Tier 3 (units 12-16) and a rate of \$40 per unit for a Tier 4 (units above 16).

The well water at Sunbird contains naturally occurring arsenic. This water has been tested at levels that exceed the safe drinking water standard that has been in effect since 2006.<sup>2</sup> Residents at Sunbird have been notified by Sunbird, as directed by the Riverside County Department of Environmental Health, that continued consumption of the well water that exceeds the standard may have potential adverse health effects. Also, Sunbird has made bottled water available for purchase at cost by the residents. In addition, since March 2011, Sunbird has voluntarily provided point-of-use (POU) filtered well water at a central spigot on the Sunbird premises at no special charge. There is pending an effort, described more fully later in this decision, to convert the water source for Sunbird from the local well to the supply of the Coachella Valley Water District, a public water agency not regulated by the Commission. The latter supply meets safe drinking water standards.

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<sup>2</sup> On January 23, 2006, the U.S. Environmental Protection Agency lowered the acceptable maximum contamination limit (MCL) for arsenic from 50 mg/l to 1 mg/l, and that standard has been adopted in California. Some of the well water tests at Sunbird since the new standard has been in place have revealed a range of arsenic from 11 mg/l to 15 mg/l. Supplemental Staff Report on the Sunbird Mobile Home Park. Thermal, CA, at 2.

The Commission received an informal complaint in December 2008 from then-resident Lucas D. Hernandez about his water bill and the quality of the water at Sunbird. Hernandez, supported by 29 other residents at Sunbird,<sup>3</sup> filed a formal complaint with the Commission on November 25, 2009, naming Sunbird, James and Betty Martin (Trustees of the Martin Family Trust that owns Sunbird), and Hawkeye Asset Management (the entity that manages Sunbird) as Defendants.

The Complaint alleges that Defendants are “charging unjustly and unconscionably high water rates” to Hernandez and “all other” Sunbird residents.<sup>4</sup> The Complaint seeks a determination that the tiered water billing system is unjust and illegal. It further requests an order fixing just and reasonable rates and mandating arsenic-free water within six months, as well as a “restitution award” of \$2,909.

Defendant’s Answer, denying the allegation that the water rates are unjust and unconscionably high, states that the rates for the first tier of consumption (which includes up to 250 gallons per day, the waste discharge limit allowed each mobile home space under state law) and the second tier (10 percent higher) represent “significantly lower rates for Sunbird residents compared to customers of the local utility.”<sup>5</sup> The Answer alleges that tiers three and four are “intended to help defray the cost of pumping excess effluent as well as encourage conservation” and that Hernandez’ “occasional high water bills” resulted from

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<sup>3</sup> Sunbird has approximately 450 residents.

<sup>4</sup> Complaint for Unjust Water Rates and for Restitution at 1. The pleadings and other filed documents in this proceeding are accessible at the online Docket Card: <http://docs.cpuc.ca.gov/published/proceedings/C0911019.htm>.

<sup>5</sup> Answer at 2-3.

“excessive water usage.”<sup>6</sup> The Answer further states that the statute cited as authority for “reparations” does not exist and the issue of arsenic in the water supply was being addressed by efforts to substitute a public agency water supply.<sup>7</sup>

The parties asked for and received the appointment of a mediator from the Commission’s Alternate Dispute Resolution program to aid them in an attempt to settle the dispute. The onset of the mediation effort awaited the issuance of a staff report from the Division of Water and Audits that Administrative Law Judge (ALJ) Weatherford had requested in a ruling of February 17, 2010. The staff report was issued on May 3, 2010. On May 6, 2010, the Commission took interim action in Decision (D.) 10-05-020 to modify rates and to enjoin evictions and disconnections at Sunbird. The parties met with a mediator in Indio on June 1, 2010, and pursued settlement negotiations over many weeks. By September 20, 2010, however, their efforts had failed.

The Prehearing Conference, conducted in Indio on November 4, 2010, was followed by the filing of Commissioner Dian Gruenich’s Scoping Ruling on December 22, 2010, which categorized the proceeding as rate setting, identified the issues to be resolved, denied a motion by Defendants to dismiss as to Complainant Hernandez (who no longer was a resident at Sunbird), and set a schedule for evidentiary hearings.

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<sup>6</sup> Id. at 3-4.

<sup>7</sup> Id. at 4.

Commission jurisdiction in this matter arises under Pub. Util. Code § 2705.6,<sup>8</sup> as the mobile home park owner provides water service to the residents “from water supplies and facilities that it owns.” Those jurisdictional facts are expected to change because plans are underway to convert the water supplies for domestic water service from those provided by Sunbird to those provided by the principal public water purveyor in the region, the Coachella Valley Water District (District).

Under a March 2011 conditional water delivery agreement signed between the owner of Sunbird and the District,<sup>9</sup> the District will deliver water to Sunbird’s meter and Sunbird will then distribute and bill for that water to individual submeters of the residents. Further, under that agreement, Sunbird’s public water supply permit is to be surrendered to Riverside County, the on-site

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<sup>8</sup> § 2705.6 states:

- (a) A mobilehome park that provides water service only to its tenants from water supplies and facilities that it owns, not otherwise dedicated to public service, is not a water corporation. However, that mobilehome park is subject to the jurisdiction of the commission to the extent that, if a tenant complains about the water rates charged or service provided by the mobilehome park, the commission shall determine, based on all the facts and circumstances, whether the rates charged are just and reasonable and whether the service provided is adequate.
- (b) Complaints filed pursuant to subdivision (a) are subject to the provisions of this code and to the Rules of Practice and Procedure of the commission governing complaints and commission investigations.
- (c) The commission may afford rate relief or may order the mobilehome park to improve its water supply, facilities, and services on those terms that it finds just and reasonable, or both.
- (d) The public adviser created pursuant to Section 321 and necessary staff of the commission shall assist the complainant.

<sup>9</sup> The Agreement between Coachella Valley Water District and James M. Martin and Betty A. Martin, Co-Trustees of the Martin Family Trust, dated March 16, 2011, can be found at Attachment G of Supplemental Staff Report on the Sunbird Mobile Home Park, Thermal, CA, filed June 17, 2011.

pipelines are to be disconnected from the Sunbird wellhead and connected to District facilities, and the District's water charges, billed to Sunbird, are to be passed through to the submetered residents at Sunbird. The District is to own, operate, maintain, and repair the off-site facilities. Sunbird is to operate, maintain, replace, repair, reconstruct, and improve the on-site pipelines that make up the distribution system from the point of connection and beyond the master meter.<sup>10</sup>

In light of Sunbird's plans to convert to a public agency water supply, Administrative Law Judge (ALJ) Weatherford requested on February 1, 2011,<sup>11</sup> that further and updated information be gathered by the Division of Water and Audits to take into account water expenses (separate from septic system expenses) and to consider the impact of unresolved water contamination on rates and service, as well as issues posed by Defendants. The resulting Supplemental Staff Report (hereafter Report), filed on June 10, 2011,<sup>12</sup> supersedes the May 3, 2010 staff report.

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<sup>10</sup> Id. at 3, Para. 4.

<sup>11</sup> Administrative Law Judge's Ruling, at 4.

<sup>12</sup> Supplemental Staff Report on the Sunbird Mobile Home Park, Thermal, CA, C.09-11-019 (Report). As authorized by an ALJ ruling, Defendant filed comments on this report on July 1, 2011, and Complainants replied on July 6, 2011. In the wake of the Report, Complainants also served supplemental testimony which Defendants countered with additional testimony.

Evidentiary hearings were held in Indio on July 18-19, 2011, and continued by a videoconference and telephone connection on July 21, 2011. Complainants and Defendants thereafter filed a joint motion for approval of a partial settlement agreement<sup>13</sup> covering water quality issues. Opening briefs were filed on August 30, 2011, reply briefs were filed on September 20, 2011, and the matter was submitted on October 7, 2011.

### **3. Issues Presented**

The issues scoped for this proceeding are:

- Whether the water and septic rates charged by Defendants are just and reasonable and, if not, what rate relief should the Commission afford and for what time period?
- Whether the service provided by Defendants is adequate and, if not, what improvements in water supply, facilities or services should the Commission order.<sup>14</sup>

The reference to “septic rates” for sewer service became irrelevant during the proceeding after the ALJ questioned whether the Commission had jurisdiction over septic rates in mobile home parks,<sup>15</sup> and in response the Complainants took the position that septic rates were not at issue<sup>16</sup> and Defendants averred that such jurisdiction was lacking in any event.<sup>17</sup>

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<sup>13</sup> Partial Settlement and Mutual Release Agreement, stated to be effective as of March 5, 2010, and attached here as Appendix A and attached also to the Joint Motion for Approval of Partial Settlement and Mutual Release Agreement filed August 26, 2011.

<sup>14</sup> Assigned Commissioner’s Ruling and Scoping Memo, filed December 22, 2010 at 4.

<sup>15</sup> February 1, 2011 Administrative Law Judge’s Ruling Rescheduling Evidentiary Hearing, Directing a Supplemental Staff Report and Requesting Briefing at 2.

<sup>16</sup> February 22, 2011 Complainants’ Brief Regarding the Applicability of Defendants’ Septic System to this Proceeding at 5.

<sup>17</sup> February 22, 2011 Defendants’ Brief Re: Jurisdiction of Commission Over Rates Charged for Septic Service at 1.

Subsequently, Commission staff endeavored to segregate costs associated with providing water service and septic service, respectively.<sup>18</sup>

#### 4. Staff Report and Positions of the Parties

##### 4.1. Background and Highlights of Staff Report

The tiered water rate schedule at Sunbird that went into effect in June 2006, that is being complained of in this proceeding, and that was partially suspended on May 6, 2010, by D.10-05-020, provides:<sup>19</sup>

**Table 1: Sunbird's Rates Since Mid-2006**

|        | Customer Charge                                                                      | \$7.36 flat fee per billing cycle  |
|--------|--------------------------------------------------------------------------------------|------------------------------------|
| Tier 1 | *Baseline Usage (per billing cycle)                                                  | \$0.68 per 100 cubic feet (1 unit) |
| Tier 2 | Over Baseline Usage (per billing cycle) (for the next 100 cubic feet, or 1 unit)     | \$1.10 per unit                    |
| Tier 3 | Over Tier 2 (per billing cycle) (for the next additional 500 cubic feet, or 5 units) | \$20.00 per unit                   |
| Tier 4 | Over Tier 3 (per billing cycle) (for any additional cubic feet over Tier 3)          | \$40.00 per unit                   |

\*Baseline is calculated at 33.5 cubic feet (250 gallons) per day for the number of days in the billing cycle.

As noted earlier, Commission staff prepared two reports in this proceeding. On February 17, 2010, assigned ALJ Weatherford requested that the Division of Water and Audits (Division) conduct an inquiry and issue a staff report concerning the issues of the reasonableness of the rates and the adequacy of service at Sunbird. Field interviews of residents and representatives of Sunbird were conducted and data requests and responses completed, resulting in an initial staff report dated May 5, 2010. On February 1, 2011, ALJ Weatherford

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<sup>18</sup> June 13, 2011 Supplemental Staff Report at 9.

<sup>19</sup> May 12, 2006 Memorandum from Hawkeye Asset Management to All Residents of Sunbird Mobilehome Park at 1, attached to Answer of Defendants.

directed the Division to conduct a further investigation that would cover newly supplied and updated operating expenses for water service (including those expenses shared with, or that overlap with, operating expenses for septic service); address alleged miscalculations in total operating expenses and in an allowance for uncollectibles; and consider and update the impacts of unresolved water quality problems on rates and quality of service.<sup>20</sup> On June 10, 2011, the Division distributed its Supplemental Staff Report<sup>21</sup> that reflected the further inquiry and superseded the May 2010 report.

#### **4.2. Recommendations of Staff Report**

The Supplemental Staff Report (Report) finds that the water rates at Sunbird create excess revenues for 2010 and 2011<sup>22</sup> and that the water service is inadequate due to contamination.<sup>23</sup> It proposes a modification of the water rates, based on findings as to segregated expenses and revenue requirements for 2010, 2011, and 2012, and to the application of specified rates of margin (ROM).<sup>24</sup> It recommends that POU filtered water, available since March 2011, continue to be made available until a connection to the District, expected some time in 2012, occurs; and, further, that bottled water be available via vending machines at cost.<sup>25</sup> It recommends the posting of notices in both English and Spanish concerning the availability of filtered and bottled water. It calls for Sunbird to

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<sup>20</sup> Ruling of February 1, 2011 at 4, para. 3.

<sup>21</sup> The full title is the "Supplemental Staff Report on the Sunbird Mobile Home Park, Thermal, California," and it was filed on June 16, 2011. The full document with exhibits is accessible at: <http://docs.cpuc.ca.gov/EFILE/REPORT/137385.htm>

<sup>22</sup> Report at 11.

<sup>23</sup> Id. at 1-7.

<sup>24</sup> Id. at 7-13.

<sup>25</sup> Id. at 14-15.

separately track water and septic expenses, and separately bill water services. Finally, it recommends that Sunbird establish memorandum and balancing accounts to deal, among other things, with any undercollections or overcollections, as well as any revenues foregone under the suspension of Tiers 3 and 4 resulting from D.10-05-020.<sup>26</sup>

### **4.3. Parties' Responses to Staff Report and Arguments on the Merits<sup>27</sup>**

#### **4.3.1. Relevance of Septic System Constraints and Expenses**

Defendants offer a general criticism that the Report totally ignores the central, overriding issue...which is the need and justification for Sunbird to maintain a tiered billing system that encourages efficient water use practices and discourages wasteful practices and the use of unauthorized washing machines.<sup>28</sup>

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<sup>26</sup> Id. at 15.

<sup>27</sup> The Parties filed both comments (July 1 and 6, 2011) and briefs (August 30 and September 20, 2011) responding to the Supplemental Staff Report and stating their positions on the merits. Those filings can be found at: <http://docs.cpuc.ca.gov/published/proceedings/C0911019.htm>.

<sup>28</sup> July 1, 2011 Defendants' Comments on Supplemental Staff Report, at 1 (unnumbered). Although the filed Comments are not paginated, citations to those comments in this decision bear a page number corresponding to the sequence of pages beginning after the cover page.

The Defendants fault the Report for an alleged lack of analysis of the residents' conduct concerning "excessive water use and unauthorized washing machines."<sup>29</sup> They cite the requirement of Sunbird's waste discharge permit that limits the discharge to 250 gallons per day per mobile home space, the maximum capacity provided in the Uniform Plumbing Code.<sup>30</sup> Defendants assert that the 250 gallon per day per space limit was "one of the factors used in designing Sunbird's current rate structure," that efforts by Sunbird "to control the excessive discharge of waste water by educating the residents and issuing notices promoting proper practices were unsuccessful," and that Sunbird maintains a laundry facility for its residents "at below market rates."<sup>31</sup>

Complainants counter that the Commission has not recognized water conservation or the protection of a septic system as appropriate bases for setting water rates for analogous small water utilities.<sup>32</sup> Rather, a profit-margin methodology governs, they argue.<sup>33</sup>

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<sup>29</sup> Ibid. Photographic evidence of the existence of washing machines at some individual spaces is in the record. Exhibit 2 of Defendants Exhib. 202.

<sup>30</sup> August 31, 2011 Defendants' Opening Brief, at 1-2, where relevant references are made to documentary evidence of record.

<sup>31</sup> Id. at 2-3.

<sup>32</sup> July 6, 2011 Complainants' Reply to Defendants' Comments on Supplemental Staff Report at 3.

<sup>33</sup> Ibid. Complainants cite Standard Practice Manual U-3-SM.

#### 4.3.2. Rate Design

Defendants argue that Complainants have the burden of proving that Sunbird's rates are unreasonable,<sup>34</sup> and that Complainants have not met that burden.

Defendants contest the Report's statement that no formal rate design preceded the advent of the current tiered rate structure. They argue that the 2006 four-tiered design evolved from the earlier 2002 three-tier design which was

designed to provide an affordable rate for consumption within the [250 gallon per day per space] discharge limit, a second tier to provide a 10 % cushion over the discharge limit, and a third tier based upon 50% of the cost to pump the excessive effluent from the septic system.<sup>35</sup>

Complainants contend that Defendants' explanation of how the 2002 rates were set is not matched by an explanation of the methodology used to set the 2006 rate structure, currently in effect (subject to the constraints of D.10-05-020).<sup>36</sup>

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<sup>34</sup> Defendants' Opening Brief at 14, citing Matthews v. Meadows Management Co., D.03-05-079.

<sup>35</sup> July 1, 2011 Defendants' Comments on Supplemental Staff Report at 1.

<sup>36</sup> July 6, 2011 Complainants' Reply to Defendants' Comments on Supplemental Staff Report at 3-4.

Defendants contend that the Report failed to deal with “the fact that after implementation of the tiered rate system in 2006, the water usage dropped each year, which demonstrates the tiered system is having the desired effect.”<sup>37</sup> The Commission’s 2008 decision in Duque v. Haynes, D.08-01-002, is cited as authority for the Defendants’ position that the rate differentials between Sunbird’s tiers are reasonable.<sup>38</sup>

Defendants also take issue with the Report’s contention that Sunbird’s monthly billings have been for water, exclusive of septic, services, citing examples of billings that used the phrase “water/septic” for the service rendered.<sup>39</sup> Their position is that, whether called “water” or “water/septic,” the charges reflect the combined costs of providing water and septic service, and that septic costs have been “a factor in designing rates at Sunbird since at least 2002.”<sup>40</sup> Complainants counter that the Hernandez’ rental agreement refers only to electricity and water as the utilities for which residents are to be billed, and add that Cal. Civ. Code Sec. 798.41 prohibits unilateral changes in rental billing.<sup>41</sup>

Regarding the allocation of water and septic revenue and expenses, Defendants believe it “logical to apportion the combined revenue and the combined expenses...based upon the ratio of direct water expense to direct septic

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<sup>37</sup> Defendants’ Comments on Supplemental Staff Report at 2 (unnumbered page).

<sup>38</sup> *Ibid.*, where Defendants state:

There is ... authority for a tiered system in a mobile home park similar to Sunbird, where the Commission approved rate increases over the initial tier of 966.7%, 1,233.3% and 1,566.7%. Sunbird’s Tier 2 and Tier 3 per cent increases are less than the percent increases previously approved in the *Duque* case.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> Complainants’ Opening Brief at 25-26.

expense.”<sup>42</sup> This is in contrast to the stance taken in the Report, which apportions all revenue, but only 13.6 percent of the combined expenses, to water.

Defendants argue that the Report’s approach “is not logical because once all of the revenue is allocated to water, certain combined expenses [e.g., meter reading, calculation of charges, billing, collection and accounting] then become total water expenses.”<sup>43</sup> Since “tenants are only billed for water and not septic,”

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<sup>42</sup> Defendants’ Opening Brief at 24.

<sup>43</sup> Ibid. Cal. Civ. Code Sec. 798.41 reads in part:

798.41. (a) Where a rental agreement ...does not specifically provide otherwise, the park management may elect to bill a homeowner separately for utility service fees and charges assessed by the utility for services provided to or for spaces in the park. Any separately billed utility fees and charges shall not be deemed to be included in the rent charged for those spaces under the rental agreement, and shall not be deemed to be rent or a rent increase for purposes of any ordinance, rule, regulation, or initiative measure adopted or enforced by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent, provided that at the time of the initial separate billing of any utility fees and charges the rent chargeable under the rental agreement or the base rent chargeable under the terms of a local rent control provision is simultaneously reduced by an amount equal to the fees and charges separately billed. The amount of this reduction shall be equal to the average amount charged to the park management for that utility service for that space during the 12 months immediately preceding notice of the commencement of the separate billing for that utility service.

Utility services to which this section applies are natural gas or liquid propane gas, electricity, water, cable television, garbage or refuse service, and sewer service.

(b) This section does not apply to rental agreements entered into prior to January 1, 1991, until extended or renewed on or after that date.

(c) Nothing in this section shall require rental agreements to provide for separate billing to homeowners of fees and charges specified in subdivision (a).

(d) Those fees and charges specified in subdivision (a) shall be separately stated on any monthly or other periodic billing to the homeowner. If the fee or charge has a limited duration or is amortized for a specified period, the expiration date shall be stated on the initial notice and each subsequent billing to the homeowner while the fee or charge is billed to the homeowner.

Complainants respond, the Report properly apportioned all of the water revenues to the water account.<sup>44</sup>

The Report's position that regulatory expenses should not be included in setting rates but, if included, should be recovered over five years via advice letter, is countered by Defendants who state that such expenses were recognized in a data request and that the expected connection to the District will soon make inapplicable the existing rate system.<sup>45</sup> Defendants urge that some proportion of management expenses should be allowed, though not tracked by time sheets, and that attorneys fees and costs related to this proceeding also should be allowed.<sup>46</sup> Complainants invoke the Commissions' SP-U-26 Manual in which the elimination or spreading out of nonrecurring expenses is encouraged.<sup>47</sup> Complainants contend that Defendants' claims of water-related management<sup>48</sup> and testing expenses<sup>49</sup> are unfounded.

Defendants state that the Report's reduction of water testing expense is based on a false assumption that the testing of the point-of-use filtered water is no longer required. Issue is taken also with entries in and exclusions from the Report's Table 3 (Summary of Expenses for Water Services). Regulatory expenses, management expense, and depreciation do not appear on Table 3, but should appear according to the Defendants. They state that they could have provided depreciation schedules for water-related improvements (well, submersible pump, and several storage tanks), for example, if they had been

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<sup>44</sup> Complainants' Reply to Defendants' Comments on Supplemental Staff Report at 7.

<sup>45</sup> Defendants' Comments on Supplemental Staff Report at 3.

<sup>46</sup> Defendants' Opening Brief at 26.

<sup>47</sup> Complainants' Opening Brief at 30.

<sup>48</sup> *Id.* at 32-33.

<sup>49</sup> Complainants' Reply to Defendants' Comments on Supplemental Staff Report, at 9.

properly instructed to do so. They offer a contractor's estimate of replacement value (\$200,000) to suggest the magnitude of depreciation that they believe should be recognized.<sup>50</sup> Complainants respond that the replacement value estimate lacks supporting evidence and that the Commission's SP-U-4-SM specifies a much longer than 20 year service life for most of the assets making up the infrastructure.<sup>51</sup>

Complainants find Defendants' criticism that septic expenses were not used in the Report's calculations to be inconsistent with Defendants' position that the Commission lacks jurisdiction over Sunbird's septic service.<sup>52</sup> As to the applicability of the Duque case, Complainants contend that the ratio of Tier 1 to Tier 3 rates at Sunbird discloses a 2,941.2 percent differential, not the 781.3 percent that the Defendants represent (based reportedly on a typographical error in figures presented in the initial staff report of May 3, 2010).<sup>53</sup> They further argue that Duque is distinguishable because there, unlike what the Report reveals here, the mobile home park's water revenues were below its revenue requirement.<sup>54</sup>

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<sup>50</sup> Defendants' Comments on Supplemental Staff Report at 3; also, Defendants' Opening Brief at 26-27.

<sup>51</sup> Complainants' Opening Brief at 30.

<sup>52</sup> Complainants' Reply to Defendants' Comments on Supplemental Staff Report at 5.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.* at fn. 2.

### 4.3.3. Water Quality

Defendants fault the Report for an alleged lack of analysis of the residents' conduct concerning "excessive water use and unauthorized washing machines"<sup>55</sup> and for not acknowledging particular arsenic test results that revealed compliance with maximum contamination limits.<sup>56</sup>

They assert that the Report neglected to note Sunbird's policy of meeting the residents' need for after-hours access to the point-of-use filtered water.<sup>57</sup> Further, they find the Report's recommendation that a bottled water vending machine be installed to be senseless in light of what they contend has been an absence of demand for Sunbird-provided bottled water.<sup>58</sup> Complainants question whether residents have been adequately informed of the after-hours access to POU filtered water and suggest that absence of demand for bottled water might be explained by a lack both of awareness on the part of residents and of assurance that Sunbird staff is available to sell bottled water outside the after-hours time frame when POU filtered water is accessible.<sup>59</sup>

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<sup>55</sup> July 1, 2011 Defendants' Comments on Supplemental Staff Report at 1.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Complainants' Reply to Defendants' Comments on Supplemental Staff Report at 4.

In response to the Report's position that Sunbird's water should not be used for drinking and cooking, Defendants point out that the text of the notice to users required by the California Department of Public Health and the Riverside County Department of Environmental Health reads, in part: "You do not need to use an alternative water supply (e.g. bottled water)."<sup>60</sup>

Unlike the Defendants, Complainants agree with the Report's statement that the water provided by Sunbird does not meet drinking water standards. The Report was referring to the water distributed to each resident's space, not to the POU filtered water made available at the Sunbird office, and the former water fails to satisfy the requirements of the state and county health agencies, say the Complainants.<sup>61</sup>

Complainants and Defendants entered into an agreement, stated to be effective as of January 5, 2010, and attached here as Appendix A, that is offered as a settlement of the water quality issues. On August 26, 2011 they moved jointly the adoption of the agreement as a partial settlement in the proceeding.<sup>62</sup> We grant that motion below.

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<sup>60</sup> Ibid.

<sup>61</sup> Complainants' Reply to Defendants' Comments on Supplemental Staff Report at 6.

<sup>62</sup> See <http://docs.cpuc.ca.gov/EFILE/MOTION/142666.htm>.

## 5. Analysis and Resolution of Issues

### 5.1. Preponderance of Evidence Standard of Proof

This proceeding commenced with the filing of a complaint. While a complaint filing typically proceeds to an adjudicatory proceeding,<sup>63</sup> where the complainant has the burden of proof as noted by Defendants,<sup>64</sup> the instant proceeding was categorized for rate setting.<sup>65</sup> Both Complainants and Defendants came forward with evidence, and the record was further developed by a staff report, mooted any issue of which party bore what burden relative to making a prima facie case initially, or going forward thereafter, regarding proof.

The decision is made on the basis of the preponderance of evidence against the backdrop of the entire record to which both parties contributed.

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<sup>63</sup> In one document, ALJ Weatherford misspoke and referred to the proceeding as an “adjudication,” Ruling of February 17, 2010 at 3.

<sup>64</sup> Defendants’ Opening Brief, at 14, citing *Matthews v. Meadows Management Co.*, D.03-05-079 at 3. Matthews is distinguishable because it was adjudicatory while this proceeding is rate setting.

<sup>65</sup> The December 8, 2009, Instructions to Answer served on Defendants stated expressly that the complaint was being categorized as “ratesetting.” That categorization was understood by Defendants at the Prehearing Conference, R.T. at 18. The mobile-home-park-wide nature of the water rate issues posed by the complaint was described in the Assigned Commissioner’s Ruling and Scoping Ruling that confirmed the rate setting categorization and denied Defendants’ motion to dismiss Complainant Hernandez from the proceeding. Assigned Commissioner’s Scoping Ruling and Memo at 3, para. 3.

## **5.2. Inapplicability of Certain Policies Pertaining to Water Corporations**

Contrary to the contentions of Defendants, § 701.10 of the Pub. Util. Code does not apply to this rate setting, which has proceeded under § 2705.6(b). As Complainants correctly argue, § 701.10 expressly relates to “rates and charges established by the commission for water service provided by water corporations”<sup>66</sup> and, by definition, a “mobilehome park that provides water service only to its tenants from water supplies and facilities that it owns, not otherwise dedicated to public service,”<sup>67</sup> which is acknowledged by the parties to be the case here, “is not a water corporation.”<sup>68</sup> The narrow focus of Commission jurisdiction under.

§ 2705.6 is the determination, “based on all the facts and circumstances, whether the rates charged are just and reasonable and whether the service provided is adequate.”<sup>69</sup>

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<sup>66</sup> § 701.10, emphasis added.

<sup>67</sup> § 2705.6(a), emphasis added.

<sup>68</sup> Ibid., emphasis added.

<sup>69</sup> Ibid.

### **5.3. Limited Relevance of Septic System Evidence**

Although the Commission's jurisdiction under § 2705.6 does not extend to septic systems, Sunbird's problems with its septic system<sup>70</sup> have some bearing on this water rate setting proceeding. First, those problems motivated Sunbird's adoption of tiered water rates. Second, we must segregate water service expenses and revenues from septic service expenses and revenues (if any).

#### **5.3.1. Adoption of Tiered Rates**

Defendants point out that the adoption of tiered rates was prompted by the need to reduce residents' water consumption, and thus waste discharges, to avoid, reduce, or mitigate septic system failures. They cite both the Uniform Plumbing Code's 250 g.p.d. per space discharge limit imposed by the Regional Water Quality Control Board<sup>71</sup> and the Commission's policy of promoting water conservation through the adoption of increasing-block tiered rates for residential customers.<sup>72</sup> Complainants contend that there is no indication that the Commission's water conservation principles apply to mobile home parks, as distinct from water companies, and that the 250 gallon per day (g.p.d.) standard should not govern where an extended family occupies a mobile home space.<sup>73</sup>

The objective to be served by tiered water rates is a legitimate factor to consider in determining whether those rates are just and reasonable. Further, § 2705.6, while granting only limited jurisdiction to the Commission over mobile home park water service, should not be read so narrowly as to prohibit the

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<sup>70</sup> See e.g., Prepared Testimony of James Martin, Defendants' Exh. 201 at 3-4.

<sup>71</sup> Defendants' Opening Brief at 1-2.

<sup>72</sup> Complainants' Reply Comments, at 3, to Defendants' Comments on Supplemental Report.

<sup>73</sup> Complainants' Opening Brief at 12.

promotion of water-use efficiency and conservation. The lack of effective enforcement of rules at Sunbird against individual washing machines and excessive discharges into the septic system suggest that tiered water rates must be carefully constructed if they are to achieve their stated purpose, without unintended consequences.

We adopt a two-tiered rate design (below).

### **5.3.2. Identification of Expenses and Revenues for Ratesetting**

An initial joint position<sup>74</sup> that there is combined billing for water service and sewer service at Sunbird dissolved over the course of the proceeding. Complainants came to argue that all of the pre-November 2008 billing evidence reflects water charges alone, not combined water-septic charges, and that the selective billings thereafter containing the “water-septic” language cited by Defendants reveal a late effort to bolster the Defendants’ position that there has been combined billing.<sup>75</sup> Defendants stand by their position that all water-related billings have been combined water-septic billings.<sup>76</sup>

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<sup>74</sup> In the October 29, 2010 Joint Case Management Statement, at 2, the Parties said: “Water and sewer are billed together, i.e. one combined charge representing both services.” At the Prehearing Conference on November 4, 2010, Defendants’ counsel stressed that the “combined rate ... can’t be separated out into two different rates” and Complainants’ counsel, noting the Defendants’ position, stated that the combined billing language was “left in the joint statement but we still consider it a water rate issue.” R.T. at 6-7.

<sup>75</sup> Complainants’ Opening Brief at 24-27.

<sup>76</sup> Defendants’ Opening Brief at 19.

This factual issue of whether or not there is combined billing is relevant only to the extent that it bears on the identification and allocation of expenses and revenues in the process of applying (below) the ROM method of rate setting. The preponderance of evidence shows that combined billing was not an operative fact, but more likely a revised characterization arising in the wake of the complaints voiced by Complainant Hernandez. Both the April 2004 and the May 2006 written notices to residents regarding tiered rates bear the subject “water rates,” and refer to “water charges” and “water usage” in the context of metered quantities of water.<sup>77</sup> The pre-December 2008 water bills introduced in evidence reflect only water service billing, not combined billing.<sup>78</sup> Defendants cite bills from December 2008, January 2009, June 2010, August 2010, December 2010 and January 2011 that have the phrase “water/septic” at the head of the column containing meter reading dates.<sup>79</sup> Complainants citation of Civil Code § 798.41, however, supports the conclusion that a clear separation of billing for those utility services being charged in addition to rent is required in mobile home parks. Here, any intent on the part of Sunbird to charge for septic services outside the rent and in conjunction with water charges was not communicated in a timely or effective manner. Accordingly, no portion of the itemized revenues related to water service are being allocated to septic service in the application of ROM below.

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<sup>77</sup> Report, Appendix E.

<sup>78</sup> Complainants’ Exhs. 2 (at 14-66), 12 (at 213, 215-220), 32 (at 439), 33 (at 442), 34 (at 445), 35 (at 448-449), 36 (at 452-455); and Defendants’ Exh. 204 (at 14, 24, 38 and 44).

<sup>79</sup> Defendants’ Exh. 207 at 3 and Ex. 1.

The septic-related expenses have been segregated from the water-related expenses in the Report. After review, we find the segregation presented in the Report to be reasonable.

#### **5.4. Revenue Requirement**

##### **5.4.1. Application of Rate of Margin Methodology**

The Report properly chose to apply the (ROM methodology set out in D.92-03-093,<sup>80</sup> given that insufficient information was supplied by Defendants concerning plant or rate base for the return on rate base method to be used. Under the ROM method, a percentage rate (i.e., rate of margin deemed to provide a reasonable return) is determined annually (by the Division of Water and Audits);<sup>81</sup> it is applied to the operating expense; and the resulting figure is added back on to the operating expense to produce the revenue requirement. For example, if the ROM is set at 25% and the operating expense is \$10,000, the revenue requirement would be \$12,500 for the relevant year. (Total revenues received above or below the requirement would represent overcollections or undercollections, respectively.)

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<sup>80</sup> In D. 92-03-093, effective April 30, 1992, the Commission adopted the operating ratio method of ratemaking as an alternative to the rate of return method on rate base for Class C and D utilities. (See Ordering Paragraph No. 8 of D.92-03-093.) Given the similarity in size between Class D companies (500 service connections or less) and Sunbird (87 service connections), Sunbird's operations can be considered analogous to Class D water utilities' operations for this purpose.

<sup>81</sup> The rate of margin includes an allowance for a reserve to be used for replacement of plant and new capital expenditures. (See D.92-03-093.) This benefit designed for Class C and D utilities is being accorded to Sunbird here even though there is no evidence that Sunbird, not being a public utility, has or will set aside a reserve.

The parties do not dispute that ROM is the appropriate method to apply in these circumstances. As noted earlier, the Defendants disagree with how the Report determines the makeup of operating expenses and of revenues, respectively. Defendants assert that the Report excludes or inadequately considers regulatory expenses, management expenses, water testing, and depreciation. Defendants also assert that only 13.6 percent of the water-related portion of the billing revenue should be ascribed to water service. We resolve these issues below in Sections 5.4.2 through 5.4.9.

#### **5.4.2. Regulatory Expenses**

At issue is whether Defendants' legal expenses incurred in this proceeding should be included within its recorded (for 2010) or estimated (for 2011 and 2012) operating expenses for purposes of calculating the revenue requirement. Reported and estimated legal expenses constitute Defendants' largest operating expense for each of those years.<sup>82</sup> Defendants infer that the inclusion of regulatory expenses as a category in a data request by staff<sup>83</sup> may allow "unpredictable regulatory costs," incurred because of the customer complaint provision of § 2705.6, to be part of the operating expenses to which ROM is applied.<sup>84</sup> Requests for information, however, carry no determination as to the ultimate eligibility, or lack thereof, of that information for particular accounting treatment. Defendants cite D.03-05-079 (Matthews) for the proposition that legal costs prompted by one mobile home park tenant's complaint are recoverable in the rates applicable to all tenants.<sup>85</sup> In Matthews,

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<sup>82</sup> \$27,000.

<sup>83</sup> Defendants' Comments on Supplemental Staff Report at 3.

<sup>84</sup> Defendants' Opening Brief at 25-26.

<sup>85</sup> D.03-05-079 (Matthews v. Meadows Management) at 4.

however, unlike here, there was no evidence that the water rates in question were unjust or unreasonable, raising concerns about the impact on other tenants of groundless claims by a single tenant.<sup>86</sup> Here, Sunbird's overcollection from the residents led to a legitimate complaint that prompted a ratemaking proceeding. To allow the ROM to be applied to legal expenses incurred directly in the defense of indefensible rates and water contamination claims would not be just and reasonable as it would reward the act of overcharging.<sup>87</sup> The Report correctly excluded them from operating expenses in the calculation of the revenue requirement.

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<sup>86</sup> Id. at 9: "We therefore caution those inclined to file a complaint challenging the rates for a small system such as Meadows' that they should be prepared to make an adequate evidentiary showing, in fairness to other tenants."

<sup>87</sup> It is worth noting that complainant mobile home park residents proceeding under § 2705.6 do not qualify under existing law to be reimbursed for advocate's fees and costs within the Commission's Intervenor Compensation Program because no public utility is involved. (See § 1802 limiting compensation to proceedings involving public utility corporations.)

### **5.4.3. Management Expenses**

The Report recommends against allowance of management expense for 2010 because the \$1,502 claim lacked specifically-tracked time sheets, and expected water-related activities, such as billing, meter reading and water testing, are charged separately.<sup>88</sup> Defendants state that the claim was based on a ratio of water expense to total park operating expense, that precise tracking is not practical in “a small, rural, mobilehome park such as Sunbird,” and, accordingly, that “Sunbird should not be penalized for being a small operation.”<sup>89</sup> While the claim is an estimate and lacks documentation expected of a large water companies, some level of water-related management expenses outside those separately charged seems both unavoidable and reasonable. Many of the water management functions are separately expensed (e.g., meter reading, water testing, water billing), however, so we think a reduction in Sunbird’s claim is in order and find \$600 to be a reasonable allowance for the management expense.

### **5.4.4. Water Testing**

Because Sunbird provides both POU filtered water and water delivered directly to resident’s sub-meters, it now has water testing expenses for the unfiltered well water and the POU filtered water. Should both types of water testing expense be included in the operating expenses to which the ROM is applied? The partial settlement agreement expressly states that “Sunbird shall make the filtered water ... available to the tenants, at no additional charge.”<sup>90</sup> In this context we construe “additional charge” to refer to a separate and distinct fee, not an incremental increase within the general rate structure. Therefore, the

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<sup>88</sup> Report at 10.

<sup>89</sup> Defendants’ Opening Brief at 26.

<sup>90</sup> Partial Settlement and Mutual Release Agreement at 2, appended here as Appendix A.

expenses incurred to monitor the quality of the water as required by state regulations<sup>91</sup> can be included in Sunbird's revenue requirement and in the resulting water rates. Since the testing of the POU filter unit is a requirement *once* such a filter is installed, that full expense should be allowed, not reduced as recommended in the Report. This allowance results in an annual water testing expense of \$3,000 for 2011 and 2012.

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<sup>91</sup> AB 2515 (Perez), finding that the "arsenic groundwater problem in the southeastern Coachella Valley in Riverside County is largely naturally occurring and is creating barriers to accessing safe drinking water," mandated that the State Department of Public Health develop emergency regulations to, among other things, govern point-of-use (in lieu of centralized) treatment of water in the small, unincorporated communities of that area. § 116380, Health and Safety Code. Those regulations (which went into effect on December 3, 2010, and are to remain in effect until the earlier of January 1, 2014, or the effective date of regulations adopted pursuant to Health and Safety Code § 116380(a)), require at a minimum a point-of-use monitoring protocol (for the first two years) that involves quarterly source water monitoring and, after installation-day sampling, monthly POU effluent monitoring. 22 CCR § 64418.5(a). On February 9, 2011, the County of Riverside Department of Environmental Health issued an amended domestic water supply permit (No. 3301755) to Sunbird, on an interim approval basis and within the framework of those regulations, for a point-of-use arsenic treatment unit. The permit, at condition No. 4 on page 3, requires:

The treated water from this point of use filtration system shall be tested for arsenic weekly for 4 consecutive weeks and the results shall be forwarded...Following the initial 4 week period the operation and water quality data will be evaluated and a reduction to once monthly sampling may be considered.

#### **5.4.5. Meter Reading**

The Report allocates 13.6 percent<sup>92</sup> of the meter reading expense to water service whereas Defendants seek a 100 percent allocation to water service, observing that the “meters measure water going into each mobilehome, and not wastewater going into the septic system...”<sup>93</sup> Defendants’ position is undercut by the importance they ascribe elsewhere to the 250 g.p.d. per space limit on discharges of the resulting waste water. The metering of the water inflow appears to be the sole means by which per-space wastewater discharge can be estimated and monitored at Sunbird. The water meters thus serve a dual purpose, allowing for a reasonable degree of proration between water and septic expenses. Under the circumstances, for meter reading expense, we will use the 13.6 percent allocation to water service that is followed generally in this decision as a reasonable basis for the recognition of the dual purpose and a proration of water and septic expenses.

#### **5.4.6. Taxes (Other Than Income)**

Defendants assert that the Report does not, but should, include non-income taxes in operating expenses. Defendants attempt to quantify such tax liability not by providing documentation of taxes billed and paid but by invoking a now-dated replacement value estimate provided by a licensed

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<sup>92</sup> The Report at 9, notes:

Sunbird estimates that the water related expenses account for 13.6% of the total expenses for water and sewer services. \*\*\* Staff agrees with Sunbird’s suggestion that the 13.6% factor should be applied to common expenses.

The Report, however, disagrees with Sunbird’s position that the 13.6% factor should be applied to water *revenues*, as opposed to water *expenses*.

<sup>93</sup> Defendants’ Opening Brief at 27.

contractor.<sup>94</sup> We do not include non-income taxes in operating expenses here due to the speculative nature of the claim.

#### **5.4.7. Depreciation**

The information provided by Defendants concerning depreciation expense likewise is not sufficient to allow for recognition of this expense in the calculation of operating expense. The sole evidence presented is a licensed contractor's estimate of \$200,000 for the aggregate replacement value of the water facilities.<sup>95</sup> Lacking reliable evidence as to the value and amortized life of individual assets, the inception and duration dates for amortization purposes, or how those assets were treated for tax purposes, no depreciation expense is allowed in the ratemaking here.<sup>96</sup>

#### **5.4.8. Revenue Allocation**

As resolved above in Section 5.3.2., the segregation of water service and septic service in this decision is based on our finding that water service has been billed as a separate charge whereas septic service has been covered by the rent paid by the residents. Accordingly, the revenue from payment of the water charges is allocated here entirely to water service.

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<sup>94</sup> Def. Exh. 208, at 2. *See* Defendants' Opening Brief at 27-28.

<sup>95</sup> Def. Exh. 207 at 4.

<sup>96</sup> Depreciation commonly is not a consideration in the application of ROM to small water companies where rate base and the value of assets do not determine the return allowed the provider of services.

#### **5.4.9. Revenue Requirements for 2010, 2011, and 2012**

The recommended ROM for Class D utilities for 2010 and 2011 is 23.04 percent<sup>97</sup> and 24.89 percent,<sup>98</sup> respectively. We extend the 24.89 percent to 2012 for purposes of this decision. The total operating expenses, determined above, to which those percentages apply are \$10,709 (2011) and \$9,768 (2012). This results in the following revenue requirement determination: \$13,374 (2011) and \$12,199 (2012). We are allowing for an accounting of 2012 expenses and revenues in a balancing account to support the possibility of an adjustment by request letter.

#### **5.5. Rate Design and Rates**

Under the revenue requirement calculated above, the water revenues due from Sunbird residents are reduced. The issue then becomes, first, how to allocate each year's revenue requirement between a monthly flat service charge (connection charge) and a monthly quantity charge (for volume of water consumed), and, second, whether and how to subdivide the quantity charge portion into graduated tiers.

##### **5.5.1. Monthly Service Charge**

The Report recommends that the fixed monthly service charge be set at \$7.98 for 2011 and \$5.90 for 2012 (in contrast to the \$7.36 charge previously in effect and maintained in the May 2010 interim decision). We find, however, that in light of the revenue requirements we are finding appropriate for those years a more balanced and reasonable allocation to this charge for 2011 is \$7.25, and for 2012 is \$6.00. (*See* Tables 2 and 3 below.)

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<sup>97</sup> "Rates of Return and Rates of Margin for Class C and Class D Water Utilities," Memo from Rami Kahlon and Kayode Kajopaiye to the Commission, Dated March 1, 2010.

<sup>98</sup> "Rates of Return and Rates of Margin for Class C and Class D Water Utilities," Memo from Rami Kahlon and Kayode Kajopaiye to the Commission, Dated March 1, 2011.

### **5.5.2. Tiered Quantity Charge**

We find that Sunbird, in its search for a solution to recurring septic system failures, has overburdened the water rate structure. Neither the third tier in effect from 2002 through mid-2006, nor the third and fourth tiers in effect from mid-2006 until the Commission's interim decision in May 2010, appears to have prevented the unauthorized washing machine use faced by Defendants. Further, the rate differentials between the second and third tiers (1,818 percent) and the third and fourth tiers (200 percent) are excessive and unreasonable. The water rate structure should not bear the weight of deficient enforcement. Two tiers, as the Report recommends, with a 44.44 percent differential between those tiers, when combined with effective enforcement against unauthorized washing machines, should be sufficient in this setting to provide an incentive against waste.

**5.5.3. Sunbird Water Rates Once This Decision Takes Effect Compared to Previous Water Rates**

Table 2: Comparative Rate Schedules

| Tier                                                                                                   | Units<br>(1 Unit - 100 cf) | Mid 2006  | Pursuant to              | Adopted rates |           |
|--------------------------------------------------------------------------------------------------------|----------------------------|-----------|--------------------------|---------------|-----------|
|                                                                                                        |                            | Rates     | C & D Order <sup>2</sup> | 2011          | 2012      |
|                                                                                                        |                            | Rate/Unit | Rate/Unit                | Rate/Unit     | Rate/Unit |
| 1a                                                                                                     | < 10 units                 | \$0.68    |                          |               |           |
| 1b                                                                                                     | First 10 units             | -         | \$ 0.68                  | \$0.90        | \$0.90    |
| 2a                                                                                                     | 10-11 units                | \$1.10    |                          |               |           |
| 2b                                                                                                     | > 10 units                 | -         | \$ 1.10                  | \$1.30        | \$1.30    |
| 3                                                                                                      | 12 - 16 units              | \$20.00   |                          |               |           |
| 4                                                                                                      | > 16 units                 | \$40.00   |                          |               |           |
| Service Charge / Connection per month                                                                  |                            | \$7.36    | \$ 7.36                  | \$7.25        | \$6.00    |
| Notes                                                                                                  |                            |           |                          |               |           |
| 1. This schedule is applicable till a permanent connection with Coachella Valley Water District (CVWD) |                            |           |                          |               |           |

**5.5.4. Effect on Average Monthly Water Bill**

The Report revealed that, under the rates set in the interim decision, the average monthly water bill for residents in 2010 based on average number of billed connections was \$23.74. Under the rate design and rates ordered in this decision, the average monthly bill per estimated billed connection for 2011 and 2012 is projected to be \$13.96 and \$12.71, respectively.

**5.5.5. Summary of Rate-Related Findings**

**Table 3: Summary of Water Rate - Related Findings**

| Line | Item                                                                                           | @ Current Rates |          | Staff Estimates @ Current Rates               |                                                |         | Adopted Rates |         |        |
|------|------------------------------------------------------------------------------------------------|-----------------|----------|-----------------------------------------------|------------------------------------------------|---------|---------------|---------|--------|
|      |                                                                                                | 2010            | 2011     | Before C & D Order<br>1/1 - 5/7<br>(127 days) | After C & D Order<br>5/8 - 12/31<br>(238 days) | Total   | 2011          | 2011    | 2012   |
|      |                                                                                                |                 |          |                                               |                                                |         |               |         |        |
| a    | b                                                                                              | c               | d        | e                                             | f                                              | g       | h             | i       | j      |
| 1    | <b>Service Connections</b>                                                                     |                 |          |                                               |                                                |         |               |         |        |
| a    | Total # connections <sup>1</sup>                                                               | 87              | 87       | 87                                            | 87                                             | 87      | 87            | 87      | 87     |
| b    | Average # Billed connections / Mo                                                              | 80              | 80       | 80                                            | 80                                             | 80      | 80            | 80      | 80     |
| 2    | <b>Uncollectible %</b>                                                                         | 3.4%            | 3.40%    | 3.4%                                          | 3.40%                                          |         | 3.40%         | 3.40%   | 3.40%  |
| 3    | <b>Charges /connection</b>                                                                     |                 |          |                                               |                                                |         |               |         |        |
| a    | Service charge (\$/connection)                                                                 | \$ 7.36         | \$ 7.36  | \$ 7.36                                       | \$ 7.36                                        | \$ 7.36 | \$ 7.25       | \$ 6.00 |        |
| b    | Water consumption charge per unit (1 Unit=100 ccf)                                             |                 |          |                                               |                                                |         |               |         |        |
| 1a   | Tier 1 - < 10 units                                                                            | \$ 0.68         | \$ 0.68  | \$ 0.68                                       | -                                              | -       | -             | -       | -      |
| 1b   | Tier 1 - First 10 units                                                                        | -               | -        | -                                             | \$ 0.68                                        | \$ 0.68 | \$ 0.90       | \$ 0.90 |        |
| 2a   | Tier 2 - 10-11 units                                                                           | \$ 1.10         | \$ 1.10  | \$ 1.10                                       | -                                              | -       | -             | -       | -      |
| 2b   | Tier 2 - > 10 units                                                                            | -               | -        | -                                             | \$ 1.10                                        | \$ 1.10 | \$ 1.30       | \$ 1.30 |        |
| 3    | Tier 3 - 12-16 units                                                                           | \$ 20.00        | \$ 20.00 | \$ 20.00                                      | -                                              | -       | -             | -       | -      |
| 4    | Tier 4 - > 16 units                                                                            | \$ 40.00        | \$ 40.00 | \$ 40.00                                      | -                                              | -       | -             | -       | -      |
| 4    | <b>Water consumption ( Ccf)</b>                                                                |                 |          |                                               |                                                |         |               |         |        |
| a    | Tier 1                                                                                         | 6,288           | 6,288    | 2,188                                         | 4,100                                          | 6,288   | 6,288         | 6,288   | 6,288  |
| b    | Tier 2                                                                                         | 175             | 175      | 61                                            | 114                                            | 175     | 175           | 601     | 601    |
| c    | Tier 3                                                                                         | 289             | 289      | 101                                           | 188                                            | 289     | 289           | -       | -      |
| d    | Tier 4                                                                                         | 137             | 137      | 48                                            | 89                                             | 137     | 137           | -       | -      |
| e    | Total Water consumption (In 4a through 4d)                                                     | 6,889           | 6,889    | 2,397                                         | 4,492                                          | 6,889   | 6,889         | 6,889   | 6,889  |
| 5    | <b>Operating Revenue for all billed connections</b>                                            |                 |          |                                               |                                                |         |               |         |        |
| a    | Service Charges (In 3a * In 1b)                                                                | 7,066           | 7,066    | 2,458                                         | 4,607                                          | 7,066   | 7,066         | 6,960   | 5,760  |
| b    | Water consumption charges <sup>4</sup>                                                         |                 |          |                                               |                                                |         |               |         |        |
| 1    | Tier 1 (In 3b1 * In 4a)                                                                        | 4,276           | 4,276    | 1,488                                         | 2,788                                          | 4,276   | 4,276         | 5,659   | 5,659  |
| 2    | Tier 2 (In 3b2 * In 4b)                                                                        | 193             | 193      | 67                                            | 126                                            | 193     | 193           | 781     | 781    |
| 3    | Tier 3 (In 3b3 * In 4c)                                                                        | 5,780           | 5,780    | 2,011                                         | 207                                            | 2,218   | 318           | -       | -      |
| 4    | Tier 4 (In 3b4 * In 4d)                                                                        | 5,480           | 5,480    | 1,907                                         | 98                                             | 2,005   | 151           | -       | -      |
| c    | <b>Total Operating Revenue (In 5a + In 5b)<sup>2</sup> *</b>                                   | 22,794          | 22,794   | 7,931                                         | 7,826                                          | 15,757  | 12,003        | 13,401  | 12,201 |
| 6    | <b>Operating Revenue Per billed Connection</b>                                                 |                 |          |                                               |                                                |         |               |         |        |
| a    | Total Revenue Per billed Connection (In 5c/In 1b)                                              | 265             | 265      | 99                                            | 98                                             | 197     | 150           | 168     | 153    |
| b    | Revenue Per billed Connection/mo (In 6a/12)                                                    | 24              | 24       | 8                                             | 8                                              | 16      | 13            | 14      | 13     |
| 7    | <b>Operating Expenses for water services</b>                                                   |                 |          |                                               |                                                |         |               |         |        |
| 8    | Purchased Power                                                                                | 2,760           | 2,760    | 960                                           | 1,800                                          | 2,760   | 2,760         | 2,760   | 2,760  |
| 9    | Contract Work - Well repairs                                                                   | -               | 900      | -                                             | -                                              | 900     | 900           | -       | -      |
| 10   | Water Testing <sup>3</sup>                                                                     | 2,325           | 3,000    | 809                                           | 1,516                                          | 2,325   | 3,000         | 3,000   | 3,000  |
| 11   | General Expenses - Permit/Operator                                                             | 1,574           | 1,574    | 548                                           | 1,026                                          | 1,574   | 1,574         | 1,574   | 1,574  |
| 12   | Filtered Water Unit/Installation/Signage                                                       | 2,215           | 104      | 771                                           | 1,444                                          | 2,215   | 104           | 104     | 104    |
| 13   | Pilot Test Station Expense                                                                     | -               | -        | -                                             | -                                              | -       | -             | -       | -      |
| 14   | Subtotal 1(In 8 through 13)                                                                    | 8,874           | 8,338    | 3,088                                         | 5,786                                          | 8,874   | 8,338         | 8,338   | 7,438  |
| 15   | <b>Other Expenses</b>                                                                          |                 |          |                                               |                                                |         |               |         |        |
| 16   | Uncollectible Expense (In 5c * In 2)                                                           | 775             | 775      | 270                                           | 266                                            | 536     | 408           | 456     | 415    |
| 17   | Regulatory Commission Expenses <sup>7</sup>                                                    | 27,049          | -        | -                                             | -                                              | -       | -             | -       | -      |
| 18   | Management/operator expenses <sup>11</sup>                                                     | 1,502           | -        | 209                                           | 391                                            | 600     | 600           | 600     | 600    |
| 19   | Meter Reading/Billing Charges <sup>4</sup>                                                     | 129             | 136      | 45                                            | 84                                             | 129     | 136           | 136     | 136    |
| 20   | Flood Insurance/pumphouse                                                                      | 459             | 438      | 160                                           | 299                                            | 459     | 438           | 438     | 438    |
| 21   | Insurance <sup>5</sup> *                                                                       | 741             | 741      | 258                                           | 483                                            | 741     | 741           | 741     | 741    |
| 22   | Depreciation <sup>6</sup>                                                                      | 10,000          | -        | -                                             | -                                              | -       | -             | -       | -      |
| 23   | Taxes other than Income <sup>8</sup>                                                           | 125             | -        | -                                             | -                                              | -       | -             | -       | -      |
| 24   | Income Taxes                                                                                   | -               | -        | -                                             | -                                              | -       | -             | -       | -      |
| a    | State                                                                                          | -               | -        | -                                             | -                                              | -       | -             | -       | -      |
| b    | Federal                                                                                        | -               | -        | -                                             | -                                              | -       | -             | -       | -      |
| 25   | Interest <sup>9</sup>                                                                          | 63              | -        | -                                             | -                                              | -       | -             | -       | -      |
| 26   | <b>Sub-Total 2 (In 16 through 25)</b>                                                          | 40,842          | 2,090    | 941                                           | 1,524                                          | 2,464   | 2,323         | 2,371   | 2,330  |
| 27   | <b>Total Operating Expenses (In 15 + In 26)</b>                                                | 49,716          | 10,428   | 4,028                                         | 7,310                                          | 11,338  | 10,661        | 10,709  | 9,768  |
| a    | Total operating expenses w/o Depreciation                                                      | 12,667          | 10,428   | 4,028                                         | 7,310                                          | 11,338  | 10,661        | 10,709  | 9,768  |
| b    | & Regulatory Expenses (In 27a - In 22-In 17)                                                   |                 |          |                                               |                                                |         |               |         |        |
| 28   | <b>Net Operating Revenue (In 5c - In 27a)</b>                                                  | (26,922)        | 12,366   | 3,903                                         | 516                                            | 4,419   | 1,342         | 2,692   | 2,433  |
| b    | <b>Net Operating Revenue w/o Regulatory Expenses &amp; Depreciation expense (In 5c-In 27b)</b> | 10,127          | 12,366   | 3,903                                         | 516                                            | 4,419   | 1,342         | 2,692   | 2,433  |
| 29   | <b>Rate Base</b>                                                                               |                 |          |                                               |                                                |         |               |         |        |
| 30   | <b>Rate of Return</b>                                                                          |                 |          |                                               |                                                |         |               |         |        |
| 31   | <b>Recommended rate of Margin<sup>8</sup></b>                                                  | 23.04%          | 24.89%   | 23.04%                                        | 23.04%                                         | 23.04%  | 24.89%        | 24.89%  | 24.89% |
| 32   | <b>Revenue reqt. based on ROM (In 27b * (1+In 31))</b>                                         | 15,585          | 13,023   | 4,956                                         | 8,994                                          | 13,951  | 13,315        | 13,374  | 12,199 |
| b    | Revenue Over/(Under) collected (In 5c - In 32a)                                                | 7,209           | 9,771    | 2,975                                         | (1,168)                                        | 1,807   | (1,312)       | 27      | 2      |
| c    | % Revenue Over/Under collected (In 32b / In 5c)                                                | 31.63%          | 42.86%   | 37.51%                                        | -14.92%                                        | 11.47%  | -10.93%       | 0.20%   | 0.01%  |

**Notes:**

- 1 86 mobilehome spaces and one rental cottage on property
- 2 Line 5C does not include allowance for uncollectibles
- 3 For 2012, use same as water testing expenses as 2011 estimate.
- 4 Percentage of Park Management Fees and Park Manager Wages
- 5 Pro-rated for water service from the Commercial Package Policy, Umbrella Insurance Policy, Tenant Discrimination Policy, Medical insurance and Worker's Comp Insurance
- 6 Utility provided an estimated replacement value by licensed general contractor and licensed plumber -20 year/straight line. Depreciation schedules for each asset used for water service was not provided. Therefore, the depreciation amount is disallowed.
- 7 Excluded from normal operating expenses as this is deemed to be a one time only charge.
- 8 Recommended by Division of Water and Audits
- 9 Decision 10-05-020 dated May 7, 2010
- 10 Amounts shown are pro-rated

\* These items reflect the water portion of the combined water/septic based upon the 4 year average (2007-2010) of the water expenses as a percentage of the combined total water and septic expenses for the same period, equal to 13.6%.

## **5.6. Adjustments and Balancing Account**

### **5.6.1. Revenues Not Billed as a Result of D.10-05-020**

The interim decision in this proceeding (D.10-05-020),<sup>99</sup> preserved an opportunity for Sunbird to recover revenues not billed as a result of the suspension of Tier 3 and Tier 4 rates in the event there was a later determination that Sunbird collected less than a reasonable level of revenues due to that suspension. We find that, but for the interim decision, Sunbird would have overcollected \$7,209 in 2010, which represents a 31.63 percent return rather than the 23.04 percent ROM authorized for 2010.<sup>100</sup> This means there is no basis for recovery of unbilled revenues for 2010. We estimate that, but for the interim decision, Sunbird would have overcollected \$9,771 in 2011, which would represent a 42.86 percent return rather than the 24.89 percent ROM authorized for 2011.<sup>101</sup> For 2010, Sunbird overcollected a total of \$1,807 for a return of 11.47 percent rather than a return of 23.04 percent from ratepayers.<sup>102</sup> For 2011, Sunbird is expected to undercollect by \$1,312, which represents a negative return of 10.93 percent loss rather than the 24.89 percent positive return authorized for that year. The net overcollection for 2010 and 2011 will be \$495<sup>103</sup> or \$6.19 per average billed connection. Under those circumstances, a refund of that dollar amount to ratepayers would be in order. Through balancing accounts, discussed

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<sup>99</sup> At 8-9 and 13-14.

<sup>100</sup> See Table 3, Row 32 and 33, Col. c.

<sup>101</sup> See Table 3, Rows 32 and 33, Col. d.

<sup>102</sup> Sunbird overcollected \$2,975 for January 1 through May 7, 2010 and undercollected \$1,168 after the suspension of Tiers 3 and 4 rates on May 8, 2010. See Table 3, Lines 32 and 33, Cols. e and f.

<sup>103</sup> Net overcollection is \$495 based on overcollection of \$1,807 for 2010 adjusted for undercollection of \$1,312 for 2011.

next, adjustments can be made for under or over collections occurring in 2010 through 2012 based on actual operating expenses and revenues.

### **5.6.2. Balancing Accounts for 2012**

Sunbird should reconcile the actual operating expenses and revenues for 2011, carrying forward the net amount into 2012. Sunbird should establish balancing accounts for 2012, to record actual operating expenses and revenues.<sup>104</sup> Sunbird is directed to file a letter with the Director of the Commission's Division of Water and Audit, at the end of 2012, or upon the completion of the connection to the District, whichever occurs first, requesting an adjustment for over or under collections in accordance with actual operating expenses and revenues.<sup>105</sup>

### **5.7. Restitution Claim**

Claimant Hernandez' claim for restitution in the amount he alleges was charged in excess of just and reasonable rates, from June 2006 through the end of his tenancy in December 2008, poses the issue of whether § 2705.6 allows for the retroactive remedy of rebating rates. Complainants note that § 2705.6 was read liberally enough in the December 22, 2010 assigned Commissioner's Ruling and Scoping Memo to authorize a Commission award of rebates.<sup>106</sup> Duque contains a

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<sup>104</sup> Sunbird is encouraged to consult with the Commission's Division of Water and Audits for guidance in establishing the balancing account. The balancing accounts need not be segregated bank accounts.

<sup>105</sup> One balancing account will match for that particular year recorded expenses with authorized expenses as set forth in Table 3. Another will match the authorized revenue (revenue requirement) with actual revenue for that particular year. The review by the Division of Water and Audits of Sunbird's letter requesting an adjustment should include a determination of whether the expenses incurred were reasonable. The balancing account and adjustment process adopted here is designed to meet the circumstances of this particular proceeding and is not intended to have precedent value for other proceedings arising under § 2705.6.

<sup>106</sup> Assigned Commissioner's Ruling and Scoping Memo at 9.

statement that can be reasonably interpreted as viewing § 2705.6 as lacking such authority.<sup>107</sup> Toward the end of the evidentiary hearing the assigned ALJ asked the parties to brief<sup>108</sup> the issue of the Commission's ability to make refunds for the time period before the filing of the Complaint. The parties duly briefed the issue<sup>109</sup> but only one of the decisions cited in that briefing, Estate of Jessie Henderson v. Bonita Paradise, D.11-02-024 (denying a hearing of D.10-09-002), supports restitution in the context of wrongful billing for utilities in a mobile home park. Denying a claim for damages attributable to non-utility service fees, the Commission in Henderson did order restitution of sums paid for utilities, including water, in the wake of a customer's death.<sup>110</sup> The decision in Henderson can have no precedent value here because it was the result of an Expedited Complaint Procedure.<sup>111</sup>

The narrower reading of § 2705.6 to exclude reparations is more compatible with the Commission practice generally of regulating rates only prospectively, giving both the provider and user of utility services advance notice of the parameters of just and reasonable rates, allowing reparation where

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<sup>107</sup> D.08-01-002 at 3.

<sup>108</sup> R.T. at 189-190.

<sup>109</sup> Complainant's Opening Brief at 40-41; Complainant's Reply Brief, at 35-39; Defendant's Opening Brief, at 28-30.

<sup>110</sup> Restitution of \$217.55 for water, gas and electric charges was ordered in D.10-09-002, at 8 and 9, Ordering Paragraph No. 1. In D.11-02-024, at 10, leaving that order in effect, the Commission stated: "It is only within our power to order restitution for improper charges relating to public utility service."

<sup>111</sup> "Decisions rendered pursuant to the Expedited Complaint Procedure shall not be considered as precedent or binding on the Commission or the courts of this state." Rule 4.5(i), Rules of Practice and Procedure.

the previously authorized and reasonable rates were exceeded.<sup>112</sup> The Commission's jurisdiction appears only upon the lodging of a complaint about rates or service. The statutory language gives the Commission more limited jurisdiction over mobile home parks compared to public utilities, also weighs against granting restitution here under the guise of implied authority, notwithstanding language to the contrary in the earlier assigned Commissioner Ruling and Scoping Memo. Due process concerns further weigh against the retroactive application of rates to support an award of restitution.

The Hernandez restitution claim is denied. While retroactive water bill relief for one resident, Hernandez, is not given here, water rate relief for Sunbird residents as a class is being given, where appropriate, for water service received after the December 2009 filing of Hernandez' formal complaint.

## **5.8. Water Quality**

### **5.8.1. Partial Settlement Agreement**

The partial settlement agreement, Appendix A to this decision, is "reasonable in light of the whole record, consistent with the law, and in the public interest,"<sup>113</sup> so the joint motion for its approval is granted. It provides to Sunbird residents a contract right<sup>114</sup> to point-of-use (POU) filtered water without charge pending the planned connection to the public water supply of the District. It furthers the public interest by providing a reasonable framework for resolution

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<sup>112</sup> See Public Utilities Code Section 734 which applies only to a "public utility." Because Sunbird is not a public utility, this section is inapplicable. Furthermore, the Commission's authority to grant remedies is limited to "rate relief," and water supply, facility and service improvements by PU Code Section 2705.6(c).

<sup>113</sup> Rule 12.1(d).

<sup>114</sup> Partial Settlement and Mutual Release Agreement, Paragraph 3 at 2, Appendix A to this decision.

of the water quality issues pending connection to a water supply that is in compliance with safe drinking water standards.

**5.8.2. Planned Connection to Coachella Valley Water District**

Defendants represent that under its agreement with the District<sup>115</sup> Sunbird's public water supply permit will be surrendered to Riverside County, the on-site water distribution pipelines will be disconnected from the wellhead and connected to District facilities, and the District's water charges, billed to Sunbird, will be passed through to the sub-metered residents of Sunbird. Should the connection to the District not come to pass for any reason, leaving the local well water system in use, the Commission's jurisdiction over complaints by Sunbird residents under § 2705.6 would continue.

**5.8.3. Water Quality Conditions Pending the Connection**

As specified in the partial settlement agreement, Sunbird must continue to provide its residents water that satisfies safe drinking water requirements using the installed point of use filtration system. We also order Sunbird to continue to have bottled water available to residents at cost on the premises. Notice of the availability of filtered water through the filtration system and of bottled water must be posted in a conspicuous area on the premises in English and Spanish. Such notice should also be included in the monthly water bills to Sunbird residents. Finally, Sunbird must take all reasonable precautions to prevent any contamination of the well water by the septic system.

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<sup>115</sup> See Agreement between Coachella Valley Water District and James M. Martin and Betty A. Martin, Co-Trustees of the Martin Family Trust, dated March 16, 2011, affixed to Report as Attachment G.

## 6. Comments on Proposed Decision

The proposed decision of ALJ Weatherford in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by each party on December 22, 2011, and reply comments were filed on December 27, 2011, by Complainants.

Complainants contest the allowance of expenses associated with management of the water system<sup>116</sup> and with water-related meter-reading and billing.<sup>117</sup> Complainants cite inadequacies in Sunbird's record keeping and in its responses to Commission staff requests, invoking Standard Practice U-3-SM as a basis for judgment. They argue that an allowance of the subject expenses will have the precedential effect of encouraging lax accounting in mobile home park water systems.

While Sunbird's documentation and reporting of the contested expenses were deficient by general utility standards, the amounts allowed in the Proposed Decision are reasonable under the circumstances. Standard Practices are guidelines for the Commission staff in the ongoing regulation of investor-owned water utilities. They are not mandates upon those utilities. Even less are they binding standards on mobile home parks that are not public utilities and that are subject to Commission jurisdiction only on the basis of ad hoc complaints of residents.

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<sup>116</sup> Complainants' Comments on Proposed Decision at 4-7.

<sup>117</sup> *Ibid.* at 7-9. Also, Complainants' Reply to Defendants' Comments on Proposed Decision, at 2-4.

Complainants comments<sup>118</sup> seeking a reading of § 2705.6 that would authorize retrospective rate relief are not persuasive. No revisions related to that issue were made in the Proposed Decision.

Defendants seek to have the meter reading expenses allocated 100 percent to water service for months in which there is no separate charges for water and septic and a relative percent based on the income of each service for months in which there are separate charges for water and septic.<sup>119</sup> Upon review, we find that the 13.6 percent factor used to determine the water-related meter reading expense is reasonable and no related revisions in the Proposed Decision have been made.

Defendants request for a revision<sup>120</sup> in Conclusion of Law No. 1 is rejected as no clarification is needed there. Their request<sup>121</sup> has been accepted for a revision in Ordering Paragraph No. 2 to make it clear that refunds can be made by credits to water bills. Also accepted is their request<sup>122</sup> for a clarification that a balancing account is ordered only for the year 2012.

## **7. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Gary Weatherford is the assigned ALJ in this proceeding.

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<sup>118</sup> *Ibid.* at 9-11.

<sup>119</sup> Defendants' Comments on Proposed Decision, at 1.

<sup>120</sup> *Id.*

<sup>121</sup> *Ibid.* at 2.

<sup>122</sup> *Id.* The subheading and text of Section 5.6.2 of the Proposed Decision were changed accordingly.

### **Findings of Fact**

1. Each of the complainants in Case 09-11-019 (collectively, the complainants) is, or formerly was, a resident at the Sunbird Mobile Park (Sunbird) in the East Coachella Valley town of Thermal in Riverside County, California.

2. Sunbird provides water service only to its residents, approximately 450 in number, from water supplies and facilities that it owns and that are not otherwise dedicated to public service. The water system at Sunbird is composed of a 400-foot deep well, two 5,000-gallon pressurized storage tanks, six 10,000-gallon gravity storage tanks and a pipeline distribution system. Sunbird delivers water to meters located at the spaces of its tenants by means of its own distribution system, but has plans, dependent on funding, to disconnect that distribution system from the well during 2012 and connect it to the water supply of the Coachella Valley Water District, a public agency not regulated by the Commission.

3. Sunbird is owned by the Martin Family Trust, of which Defendants James Martin and Betty Martin are Trustees. Defendant Hawkeye Asset Management manages Sunbird.

4. The substance of the instant complaint is that the water rates charged by Sunbird are unjust and unreasonable and that the water service is inadequate due to substandard water quality.

5. Concerned about excessive discharges into its septic system, Sunbird adopted its current four-tiered rate structure in June of 2006, charging progressively more per cubic foot in each tier for consumption of larger quantities of water. In doing so Sunbird intended to encourage its tenants to limit water use to the 250 g.p.d. standard set out in its waste discharge permit

and in the Uniform Plumbing Code in order to avoid overburdening the septic system.

6. In D.10-05-020 (May 6, 2010), the Commission ordered the suspension of Tiers 3 and 4 at Sunbird, pending the outcome of this ratemaking proceeding.

7. The preponderance of evidence shows that water services have been billed separately and not combined with charges, if any, for septic services. Any intent on the part of Sunbird to charge for septic services outside the rent and in conjunction with water charges was not communicated to the residents in a timely or effective manner.

8. There is a preponderance of evidence of unjust and unreasonable water rates and of inadequate water service in the record in this proceeding.

9. The well water at Sunbird contains arsenic that has been tested at levels exceeding the safe drinking water standards that have been in effect since 2006. Residents at Sunbird have been notified by Sunbird, as directed by the Riverside County Department of Environmental Health, that continued consumption of that well water may have potential adverse health effects.

10. Sunbird has made bottled water available for purchase at cost by the residents. In addition, since March of 2011, Sunbird has voluntarily provided POU filtered well water at a central spigot on the Sunbird premises at no special charge, pending connection to the supply of the Coachella Valley Water District which meets safe drinking water standards.

11. Defendants' regulatory expenses in the form of attorney's fees and costs are non-recurrent expenses and should be excluded from operating expenses for purposes of calculating revenue requirements.

12. There is not sufficient evidence in the record to allow inclusion of depreciation in the calculation of Sunbird's revenue requirements.

13. There is sufficient evidence in the record from which to infer a reasonable annual management expense related to water service of \$600.

14. There is sufficient evidence in the record to allow inclusion of an annual water testing expense of \$3,000 for 2011 and 2012.

15. There is sufficient evidence in the record to support as reasonable a 13.6 percent allocation of water meter expense to water service.

16. There is not sufficient evidence of non-income taxes to recognize a claim of such taxes relative to operating expenses.

### **Conclusions of Law**

1. Pursuant to Pub. Util. Code § 2705.6, the Commission has jurisdiction in this proceeding to determine whether Sunbird's water rates are just and reasonable, and whether the water service is adequate. That jurisdiction should cease if and when the connection to the local well is replaced by a connection to the Coachella Valley Water District and charges to residents for water are limited entirely by the amount the District charges Sunbird.

2. Under Civil Code § 798.41 separate billing for utility services not included in the rent for mobile home spaces should be clear and unambiguous.

3. Pub. Util. Code § 701.10, applicable to water corporations, should not be applied to Sunbird, which is not a water corporation.

4. By a preponderance of the evidence in the record, the rates charged for water service at Sunbird should be found to be unjust and unreasonable and just and reasonable rates should be substituted.

5. By a preponderance of the evidence in the record, the water service provided by Sunbird should be found to be inadequate and the joint settlement agreement providing for filtered water at no special charge should be approved.

**O R D E R**

**IT IS ORDERED** that:

1. The rate design and associated water rates charged for water service by the Sunbird Mobile Home Park are not just and not reasonable. Sunbird Mobile Home Park shall implement the following rate design and rates instead:

|                         |                                                                          |                |
|-------------------------|--------------------------------------------------------------------------|----------------|
| Customer Service Charge | 2011: \$7.25/monthly billing cycle<br>2012: \$6.00/monthly billing cycle |                |
| Tier 1                  | 0 - 10 hundred cubic feet (ccf)                                          | \$0.90 per ccf |
| Tier 2                  | Over 10 ccf                                                              | \$1.30 per ccf |

2. No later than May 1, 2012, Sunbird Mobile Home Park shall refund, through a credit on the water bill, each submetered connection a sufficient amount to refund, in the aggregate, \$495 that was overcollected for 2010 and 2011.

3. Pending connection to the Coachella Valley Water District, Sunbird Mobile Home Park shall:

- a. Separately track all water and septic service related expenses;
- b. Bill residents for water service separate from cost recovery, if any, for septic service;
- c. Modify its rates for water services for 2012 as indicated in Ordering Paragraph No.1 above;
- d. Reconcile the actual operating expenses and revenues for 2011, carrying forward the net amount into 2012; and
- e. Establish balancing accounts for 2012 to record actual operating expenses and revenues. Interest to be computed based on the 90 day commercial paper rate as reported in the Federal Reserve Publication H-15.

4. Pending connection to the Coachella Valley Water District, Sunbird Mobile Home Park shall:

- a. Continue to provide to its residents water that satisfies safe drinking water requirements using the installed Point of Use filtration system;
- b. Continue to have bottled water available to residents at cost on the premises;
- c. Post in a conspicuous area on the premises in English and Spanish a notice of the availability of filtered water through the POU filtration system and of bottled water. Such notice should also be included in the monthly water bills to Sunbird residents; and
- d. Take all reasonable precautions to prevent any contamination of the well water by the septic system.

5. Sunbird Mobile Home Park shall file a letter with the Director of the Commission's Division of Water and Audit, at the end of 2012, or upon the completion of the connection to the District, whichever occurs first, requesting an adjustment for over-or-under collections in accordance with actual operating expenses and revenues for 2011 and 2012.

6. The Parties joint motion for adoption of their agreement effective January 5, 2010, to settle partially the rate setting as to issues of water quality is granted and that agreement, appended hereto as Attachment A, is adopted.

7. Any and all other outstanding requests and motions are denied.

8. Decision 10-05-020 is superseded by this decision.

9. Case 09-11-019 is closed.

This order is effective today.

Dated February 16, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners

**ATTACHMENT A**  
**Partial Settlement and Mutual Release Agreement**

**ATTACHMENT B**  
**Spanish Executive Summary**

**RESUMEN DE CONFERENCIANTE EN ESPAÑOL SOBRE  
LA DECISIÓN DE FIJAR TARIFAS DE AGUA DEL PARQUE DE CASAS  
RODANTES Y LAS CONDICIONES DEL SERVICIO DE AGUA, Y LA  
OBLIGATORIEDAD DE LAS CUENTAS VINCULADAS**

(Los siguientes extractos traducidos al español han sido tomados de la versión completa en inglés de la decisión C.09-11-019, Hernandez y otros contra V. Sunbird Mobile Home Park y otros).

**Resumen**

Esta decisión de fijación de tarifas sustituye con tarifas justas y razonables las de las casas rodantes en los 87 espacios de Sunbird Mobile Home Park, en Thermal, California, cuyas tarifas no eran justas y razonables. De acuerdo con las nuevas tarifas, los residentes pagarán \$0.90 mensuales por cada cien pies cúbicos (una unidad) por las primeras 10 unidades de agua que se consuman; y \$1.30 por unidad por todas las unidades consumidas en exceso, además de un cargo por servicio de \$7.25 en el 2011 y \$ 6.00 en el 2012. De conformidad con el diseño de tarifas y las tasas que se disponen en esta decisión, se prevé que la cuenta mensual promedio por conexión facturada estimada en 2011 y 2012 será de \$ 13.96 y \$ 12.71 (menos el estimado de un reembolso de aproximadamente \$6.19 por 2012), respectivamente, comparado con 23.74 dólares en el 2010. Se fijan dos niveles de tasas, en lugar de los cuatro anteriores, con un diferencial de 44.44% entre el primer y el segundo nivel.

La decisión provisional D. 10-05-020 anterior en este procedimiento suspendió la aplicación de las tarifas del nivel 3 y nivel 4, ordenando un ajuste posterior si la suspensión resultara teniendo como consecuencia una cobranza insuficiente o en exceso del requisito de ingresos a determinarse posteriormente. Ese ajuste en tarifas, resultó en una cobranza de más por \$495. de los consumidores basado en cobros hechos en los años de 2010 y 2011.<sup>1</sup> Esta decisión autoriza a Sunbird Mobile Home Park a reembolsar a cada conexión de submedidor en la factura mensual de agua de 2012 por una cantidad para reembolsar esa cantidad en el total.

Se dispone que Sunbird Mobile Home Park reconcilie los actuales costos operacionales y ganancias del 2011, y lleve el saldo de la cantidad neta al 2012, y establezca una cuenta de balance para 2012 para capturar los actuales costos operacionales y ganancias consistentes con esta decisión. Se dispone que dirija una carta al Director de la División de Agua y de Auditoría de la Comisión a finales de 2012 o tras la finalización de la conexión con el Distrito, lo que ocurra primero, solicitando un ajuste por cobranza insuficiente o en exceso de acuerdo con los gastos e ingresos operativos reales de 2012.

Se deniega la solicitud de devolución de los pagos en exceso realizados antes de la presentación de la denuncia formal debido a que la Comisión carece de autoridad para conceder dicha reparación de conformidad con la legislación aplicable. La decisión de hoy aprueba una conciliación parcial entre las partes, la cual se adjunta al presente como Anexo A, que atiende los problemas de agua contaminada estando

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<sup>1</sup> El total exceso en cobros esta basado en un estimado de cobros excesivos de \$1,807 durante 2010 y unos cobros insuficientes por \$1,302 durante 2011.

pendiente la conexión prevista – la cual se espera que se haga durante el año 2012- del parque de casas rodantes con un suministro público de agua que cumpla con los estándares de seguridad del agua potable.

Esta decisión sustituye a la anterior decisión provisional D.10-05-020, quedando cerrado con ello el procedimiento. Extractos de esta decisión han sido traducidos al español y se adjuntan como Anexo B

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**Tabla 2: Lista de Tarifas Comparativas<sup>2</sup>**

| Nivel | Unidades<br>(1 Unit<br>= 100cf)         | Tarifas de<br>Medios<br>de 2006 | Acuerdo a<br>la Orden <sup>3</sup><br>C y D | Tarifas Recomendadas |               |
|-------|-----------------------------------------|---------------------------------|---------------------------------------------|----------------------|---------------|
|       |                                         |                                 |                                             | 2011                 | 2012          |
|       |                                         | Tarifa/Unidad                   | Tarifa/Unidad                               | Tarifa/Unidad        | Tarifa/Unidad |
| 1a    | < 10                                    | \$0.68                          | \$0.68                                      | \$0.90               | \$0.90        |
| 1b    | unidades<br>Primera<br>s 10<br>unidades | \$1.10                          |                                             |                      |               |
| 2a    | 10-11<br>unidades                       |                                 |                                             |                      |               |
| 2b    | > 10<br>unidades                        |                                 | \$1.10                                      | \$1.30               | \$1.30        |
| 3     | 12-16<br>unidades                       | \$20.00                         |                                             |                      |               |

<sup>2</sup> Esta lista es aplicable hasta que exista una conexión permanente con Coachella Valley Water District (CVWD). Después de la conexión con CVWD, las tarifas de CVWD serán aplicables.

<sup>3</sup> Decisión 10-05-020.

|                                                              |                     |         |        |        |        |
|--------------------------------------------------------------|---------------------|---------|--------|--------|--------|
| 4                                                            | >16<br>unidad<br>es | \$40.00 |        |        |        |
| Cargo<br>por<br>Servicio<br>de<br>Conexi<br>ón<br>Por<br>mes |                     | \$7.36  | \$7.36 | \$7.25 | \$6.00 |

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### ORDEN

SE DISPONE que:

1. El diseño de tarifas y las tarifas de agua asociadas cobradas por el servicio de agua por parte de Sunbird Mobile Home Park no son justos ni razonables. Sunbird Mobile Home Park implementará el diseño de tarifas y las tarifas siguientes:

|                              |                                                                                        |                |
|------------------------------|----------------------------------------------------------------------------------------|----------------|
| Cobro de servicio al cliente | 2011: \$7.25/ciclo de facturación mensual<br>2012: \$6.00/ciclo de facturación mensual |                |
| Cobro de servicio al cliente | 2011: \$7.25/ciclo de facturación mensual<br>2012: \$6.00/ciclo de facturación mensual |                |
| Nivel 1                      | 0 - 10 ciento de pies cúbicos (ccf)                                                    | \$0.90 per ccf |
| Nivel 2                      | Más de 10 ccf                                                                          | \$1.30 per ccf |

2. A más tardar el 1 de mayo de 2012, Sunbird Mobile Home Park debe reembolsar, a través de crédito en la factura de agua, a cada conexión con submedidor una cantidad suficiente al agregado de \$495 que se cobró en exceso por 2010 y 2011.

3. Estando pendiente la conexión con el Distrito de Agua del Valle de Coachella, Sunbird Mobile Home Park procederá como sigue:

- a. Hacer un seguimiento por separado de todos los gastos relacionados con el servicio de agua y séptico.
- b. Facturar a los residentes el cobro de los servicios de agua en forma separada a la recuperación de costos, en su caso, por el servicio séptico.
- c. Modificar sus tarifas para los servicios de agua para 2012, según se indica en el Párrafo No. 1 de la Orden anterior.
- d. Reconciliar los actuales costos operativos y ganancias de 2011, y lleve el saldo por la cantidad neta al 2012.e.
- e. Establecer cuentas de balance para 2012 para capturar los actuales costos operativos y ganancias. El interés debe ser computado basado en la tasa de papel comercial a 90 días como se reporta en la publicación de la Reserva Federal (Federal Reserve Publication) H-15.

4. Estando pendiente la conexión con el Distrito de Agua del Valle de Coachella, Sunbird Mobile Home Park procederá como sigue:

- a. Continuará suministrando a sus habitantes el agua que satisfaga los requisitos de seguridad del suministro de agua potable utilizando el sistema de filtración instalado Punto de Uso (POU).
- b. Seguirá teniendo el agua embotellada disponible para los residentes en las instalaciones al costo.
- c. Pondrá en un lugar visible de las instalaciones, en inglés y español, un aviso sobre la disponibilidad de agua filtrada a través del sistema de filtración POU y de agua embotellada. Dicho aviso también irá incluido en la cuenta mensual de agua de los residentes de Sunbird.

- d. Adoptará todas las medidas de precaución que sean razonables para prevenir la contaminación de los pozos de agua por el sistema séptico.
5. Sunbird Mobile Home Park dirigirá una carta al Director de la División de Agua y de Auditoría de la Comisión a finales de 2012 o tras la finalización de la conexión con el Distrito, lo que ocurra primero, solicitando un ajuste por la cobranza insuficiente o en exceso de acuerdo con los gastos e ingresos operativos reales de 2011 y 2012.
6. Se concede la moción conjunta de las partes para la adopción de su acuerdo efectivo al 5 de enero de 2010, para resolver en parte la fijación de tarifas en cuanto se conceden cuestiones de calidad del agua, y se adopta dicho acuerdo que se adjunta como Anexo A.
7. Se deniegan todas y cada una de las demás solicitudes y mociones pendientes.
8. La Decisión (D) 10-05-020 queda revocada mediante esta decisión.

9. Este procedimiento # 09-11-019 queda cerrado.

Esta orden entra en vigor en la fecha de hoy.

Fecha Febrero 16, 2012, en San Francisco, California

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners

**(END OF ATTACHMENT B)**

[D1202023 ATTACHMENT A Weatherford](#)