BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California Water Service Company (U 60 W), a Corporation, for an Order Authorizing it to Increase Rates Charged for Water Service at its Bear Gulch District.	A.01-09-062
And related matters	A.01-09-063 A.01-09-064 A.01-09-065 A.01-09-066 A.01-09-067 A.01-09-068 A.01-09-069 A.01-09-070 A.01-09-071 A.01-09-072 A.01-09-073 A.01-09-074

COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE BUSHEY AND ON THE ALTERNATE DRAFT DECISION OF COMMISSIONER KENNEDY

173502

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... **ii**

I. INTRODUCTION **1**

II. PROCEDURAL HISTORY **2**

III. DISCUSSION **4**

A. IT IS REASONABLE AND LAWFUL TO APPLY THE APPLE VALLEY METHODOLOGY TO CAL WATER 4

B. THE FAILURE OF THE ALTERNATE DECISION TO CONSIDER THE INTERESTS OF RATEPAYERS IS ERROR 5

IV. CONCLUSION **7**

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

CASES

Duquesne v. Barasch (1989) 488 U.S. 308 5

FPC v. Hope Natural Gas Co. (1944) 320 U.S. 591..... 5

Pacific Telephone and Telegraph Company v. PUC (1965) 44
Cal. Rptr, 1..... 9

STATUTES

Public Utilities Code Section 451..... 5

Public Utilities Code Section 455.2..... 2

DECISIONS

In the Matter of the Application of Apple Valley Ranchos
Water Company (2003) D. 03-08-069..... 4

In the Matter of the Application of Apple Valley Ranchos
Water Company (2002) D. 02-03-046..... 2

In the Matter of the Application of California Water Service
(2003) D. 03-04-033 3

In the Matter of the Application of California Water Service
(2003) D. 03-09-021 4

Re Schedule for Processing Rate Case Applications by Water Utilities
(1990) 37 CPUC 2d 175; D.90-08-045.....3

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California Water Service Company (U 60 W), a Corporation, for an Order Authorizing it to Increase Rates Charged for Water Service at its Bear Gulch District.	A.01-09-062
And related matters	A.01-09-063 A.01-09-064 A.01-09-065 A.01-09-066 A.01-09-067 A.01-09-068 A.01-09-069 A.01-09-070 A.01-09-071 A.01-09-072 A.01-09-073 A.01-09-074

I. INTRODUCTION

Pursuant to Rule 77.3 of the Commission's Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) submits these Comments to the Proposed Decision of Administrative Law Judge (ALJ) Bushey and the Alternate Draft Decision (Alternate) of Commissioner Kennedy. ORA recommends that the Commission adopt as its final decision in this matter the Proposed Decision of Administrative Law Judge Bushey (Proposed Decision), and reject the Alternate of Commissioner Kennedy. The Proposed Decision applies a surcharge methodology that is consistent with the record and the law, and considers the interests of both ratepayers and the utility fairly. The Alternate Draft

Decision, on the other hand, fails to consider the interests of ratepayers at all and thus violates Section 451 of the Public Utilities Code.

II. PROCEDURAL HISTORY

The reason for the rate surcharge is based in the procedural history of the 15 General Rate Case Applications the California Water Company (Cal Water) filed for 15 of its 24 districts in September 2001. The fifteen districts were located throughout the state, from East Los Angeles to Chico and the rate increases Cal Water sought would affect over 286,000 customers. (*See* Attachment A to Administrative Law Judge's Ruling Requiring Calculations for Proposed Decision, mimeo, p. 5.)

ORA and the North Ranch Country Club filed Protests and, at a pre-hearing conference held in April 2002, Aglet Consumer Alliance joined the proceeding as a party. Six days of evidentiary hearings were held in April 2002.

Opening Briefs were filed May 15, 2002; Reply Briefs May 24, 2002. The parties were ordered to provide a comparison exhibit which was filed "...two months later than scheduled." (*See* Attachment A to Administrative Law Judge's Ruling Requiring Calculations for Proposed Decision, mimeo, p. 5.) Further delays resulted when the record had to be supplemented twice at the direction of the Administrative Law Judge. (*See* Id. at pp. 11-12.)

On February 3, 2003, the California Water Service Company (Cal Water) filed a motion stating that the Commission's decision in this proceeding had been delayed beyond that contemplated by the Rate Case Plan. (Proposed Decision, p. 2.) Cal Water claimed that the delay had caused it financial harm and asked that the Commission either grant Cal Water an interim rate increase or set an early effective date for the anticipated increase. (Id.) In support of its request, Cal Water cited to Apple Valley Ranchos Water Company (Apple Valley) Decision (D.) 02-03-046 and Public Utilities Code Section 455.2. (Id.) Cal Water did not propose a methodology for calculating the surcharge to grant the request for an immediate effective date.

ORA opposed Cal Water's Motion on the grounds that the delays in the proceeding had been the fault of Cal Water. In the Rate Case Plan, the Commission set a three-year schedule for the larger regulated water utilities to make general rate case filings. The Rate Case Plan is intended to "… assure that each utility has a fair opportunity to file a general rate case… and to assure that the Commission's workload is balanced over time." (*See* Attachment A to Administrative Law Judge's Ruling Requiring Calculations for Proposed Decision, mimeo, p. 6 citing Re Schedule for Processing Rate Case Applications by Water Utilities (1990) 37 CPUC 2d 175, 188; D.90-08-045.) The schedule adopted provided for Cal Water to file rate cases for its districts in three equal increments over a three-year span.

The 15 rate increase applications Cal Water filed at once hardly complied with the intent of the Rate Case Plan to "… assure that the Commission's workload is balanced over time." In fact, as the ALJ pointed out, "...the challenges presented by the proportions of this proceeding were exacerbated by the skeletal direct case filed by Cal Water." (*See* Attachment A to Administrative Law Judge's Ruling Requiring Calculations for Proposed Decision, mimeo, p. 6.) The deficiencies of Cal Water's direct case were numerous: requested increases were neither described nor explained, and "updates" were made with changes that were not identified. Every delay in this case was directly attributable to Cal Water. The ALJ properly concluded, therefore, that "good cause exists to modify the Rate Case Plan schedule to accommodate the extraordinary facts of this case." (*See* Attachment A to Administrative Law Judge's Ruling Requiring Calculations for Proposed Decision, mimeo, p. 7.)

In deciding Cal Water's Motion, the Commission denied Cal Water's request for an interim rate increase but granted Cal Water's request for an immediate effective date. (D. 03-04-033) After that decision issued in April 2003, Cal Water filed no subsequent motion proposing a methodology for calculating the surcharge. (Proposed Decision, p. 2.) On September 4, 2003, the Commission

issued D. 03-09-021 which, among other things, granted the company a substantial rate increase and included a specific surcharge based on a method adopted in an earlier decision for Apple Valley. (*See* In the Matter of the Application of Apple Valley Ranchos Water Company (2003) D. 03-08-069.)

Cal Water filed an application for rehearing alleging a number of errors, most of which were found to be without merit. The Commission did grant limited rehearing to consider whether the Apple Valley methodology should be applied to Cal Water.

The Proposed Decision of ALJ Bushey finds that application of the Apple Valley methodology is both lawful and reasonable; the Alternate Decision of Commissioner Kennedy adopts the utility's preferred approach.

Although ORA took no position on the issue earlier, ORA files these Comments in support of the Proposed Decision of ALJ Bushey for two reasons. First, the Apple Valley methodology is simple to apply and easily verified. The proposal of the company, which the Alternate Decision would adopt, would require multiple rate increases in rapid succession. (*See* PD, p. 7.) Second, application of the Apple Valley methodology considers the interests, not just of the company, but also of Cal Water's ratepayers. The Alternate Decision does not consider the interests of ratepayers at all.

III. DISCUSSION

A. It is Reasonable and Lawful to Apply the Apple Valley Methodology to Cal Water

As the Proposed Decision notes, the Apple Valley methodology is derived from the Commission's basic ratemaking approach using forecasts of annual revenue requirements and annual water consumption. These forecasts are made on a yearly basis, rather than a daily or monthly one. (PD, p. 4.) Where, as in this case, the resolution of the rate case is delayed, these forecasts support calculating lost revenue based on the ratio of the number of delayed days to the total number of days in a test year. Multiplying this ratio by the total annual revenue yields the

amount of revenue requirement "lost" due to the delay. The revenue requirement is then divided by forecast sales for the one-year prospective surcharge period to determine the specific surcharge. As the Proposed Decision states, "[I]n sum, the surcharge is calculated based on the forecasts that the Commission routinely uses to set rates and is consequently consistent with those forecasts." (PD, p. 4.)

As the Proposed Decision of ALJ Bushey notes, the Apple Valley methodology also avoids the problem of successive rate increases which can lead to additional administrative costs for the utility, billing errors, customer confusion and customer complaints. (PD, pp. 5-7.) Avoiding these problems is a valid ratemaking goal which can be achieved through the reasonable means of the Apple Valley methodology.

Cal Water, however, claimed that the Apple Valley methodology "would constitute an unconstitutional taking under applicable law" and that "the Apple Valley Methodology is not suited to Cal Water." (*See* AD, p. 3.) The Proposed Decision addresses each of Cal Water's arguments and shows them to be specious.

The Proposed Decision thoroughly analyzes Cal Water's constitutional claim in the context of the actual language of the U.S. Supreme Court in Duquesne v. Barasch and FPC v. Hope Natural Gas Co., and the California Supreme Court in Pacific Telephone and Telegraph Company v. PUC and, appropriately, finds that "Cal Water's lack of evidence on the 'end result,' i.e. Cal Water's overall financial return, and the lack of record in this case thus disprove any allegations of confiscation." (PD., p. 11) As the careful analysis of the Proposed Decision shows, the Apple Valley Methodology is unquestionably constitutional as applied to Cal Water.

B. The Failure of the Alternate Decision to Consider the Interests of Ratepayers Is Error

Section 451 of the Public Utilities Code states:

> All charges demanded or received by any public utility….shall be just and reasonable.

A determination of "just and reasonable" must consider the interests of both ratepayers and the utility. The Alternate Decision, however, appears to discuss only the interests of the utility. ORA has only been able to find one mention of "ratepayers" in the Alternate Draft Decision. It is in the following paragraph:

> In its application for rehearing of D.-3-09-021, Cal Water objected to using the Apple Valley Methodology to calculate its effective date surcharge. Cal Water contended that it had developed an alternate methodology more consistent with the intent of D. 03-04-033 and the season pattern of water usage in its service districts. This alternate methodology, which uses actual water sales to calculate lost revenues, **would result in $358,547.91 in additional revenue being collected from ratepayers**. Cal Water argued that failure to use its methodology would 'deprive Cal Water of the revenues to which the Commission has already determined Cal Water is entitled. (Alternate Draft Decision, p. 3, emphasis added.)

The Commission cannot lawfully confine its review of utility rate increase requests to the interests of the utility, and the Proposed Decision of Administrative Law Judge Bushey recognizes that fact. The Apple Valley Methodology, already applied by the Commission in the Apple Valley Ranchos district, allows the utility to collect a retroactive effective date surcharge in a manner that is consistent with the record and with the law and Commission policy of considering the interests of both the utility and its ratepayers.

///

///

///

IV. CONCLUSION

For all of the foregoing reasons, ORA recommends that the Commission adopt the Proposed Decision of Administrative Law Judge Bushey in its entirety.

Respectfully submitted,

/s/ LAURA J. TUDISCO

Laura J. Tudisco
Staff Counsel

Attorney for the Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2164
Fax: (415) 703-2262)

June 1, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document "**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE BUSHEY AND ON THE ALTERNATE DRAFT DECISION OF COMMISSIONER KENNEDY**" in **A.01-09-062, et al**.

A copy was served as follows:

[X] **BY E-MAIL**: I sent a true copy via e-mail to all known parties of record who have provided e-mail addresses.

[X] **BY MAIL**: I sent a true copy via first-class mail to all known parties of record.

Executed in San Francisco, California, on the **1st** day of **June, 2004**.

/s/ REBECCA ROJO

Rebecca Rojo