



BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the Commission's )  
Own Motion into Addressing The Commission's ) **R.11-11-008**  
Water Action Plan Objective of Setting Rates that )  
Balance Investment, Conservation, and ) **(Filed November 10, 2011)**  
Affordability For the Multi-District Water Utilities )  
of: California-American Water Company (U210W), )  
California Water Service Company (U60W), Del )  
Oro Water Company, Inc. (U61W), Golden State )  
Water Company (U133W), and San Gabriel )  
Valley Water Company (U337W). )

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COMMENTS OF  
THE NATIONAL CONSUMER LAW CENTER  
AND THE UTILITY REFORM NETWORK  
ON DRAFT STAFF REPORT ON BALANCED RATE RULEMAKING

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## I. INTRODUCTION

On July 12, 2013, the Division of Water and Audits issued its draft report, “Report on Balanced Rate Rulemaking” (Draft Report), an “attempt to develop general policy guidelines and mechanisms to consider implementation of a ‘High-Cost’ fund or through consolidating districts and rates within the multi-district water utilities, to modify the 1992 guidelines or establish new consolidation guidelines for high cost areas for the multi-district water utilities.”<sup>1</sup> Pursuant to Administrative Law Judge Gary Weatherford’s electronic ruling on July 10, 2013 allowing comments on the Draft Report, the National Consumer Law Center (“NCLC”) and The Utility Reform Network (“TURN”) (collectively, “Joint Consumers”) now provide these Opening Comments.

Joint Consumers appreciate the effort by Commission staff to address the complicated and difficult issues in this docket. Like the Commission, Joint Consumers are concerned about affordability of water services in California. Real wages for low-income families are, on average, the same or lower than they were a decade ago.<sup>2</sup> Water that may appear to be affordable at the water system level can be unaffordable at the household level.<sup>3</sup> In addition to addressing the high cost of water for utilities at a system level, it is critical that the Commission also address affordability for California households.

Despite the Commission’s efforts to address affordability within the silos of each general rate case, there appears to be an undeniable increase of reported situations where customers face

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<sup>1</sup> Report on Balanced Rate Rulemaking, Docket No. R.11-11-008 (Draft dated July 12, 2013) (“Draft Report”) at 1.

<sup>2</sup> Jared Bernstein *et al.*, *Pulling Apart: A State-by-State Analysis of Income Trends* (Center on Budget and Policy Priorities, April 2008) at 2.

<sup>3</sup> Pacific Institute, *Assessing Water Affordability: New Report Shows Type of Measurement is Critical to Recognizing California’s Water Affordability Challenges: Thousands Could Go Uncounted*, (Aug. 14, 2013) available at <http://www.pacinst.org/publication/assessing-water-affordability/>. See also Matt Williams, *Report Looks at Complexity of Measuring Water Affordability*, Water News (Aug. 15, 2013), available at <http://www.acwa.com/news/water-rates/report-looks-complexity-measuring-water-affordability>).

water bills amounting to hundreds of dollars each month.<sup>4</sup> In some situations, customers are paying exorbitant amounts for water that is not even potable.<sup>5</sup> From the evidence adduced in this docket and others, it is clear that the problem of affordability of water service impacts customers of all socio-economic situations, different usage patterns, and different areas of the state.

This docket represents a valuable and important opportunity to address all of these problems with a comprehensive view across all Class A multi-district utilities. The Draft Report, which sets forth a proposed set of principles and recommendations, represents an attempt to synthesize the work so far by staff and the parties. This work will help guide future efforts by the Commission and the parties to address the issue of affordability by creating the beginnings of a well-developed, comprehensive and consistent policy. The mechanisms being discussed -- such as low-income programs, alternative rate design and billing, and consolidation -- are key to developing an effective toolkit for use in general rate cases. The screening framework proposed by the Draft Report, to determine whether and what type of high cost or affordability assistance is needed, has potential to provide much needed consistency and clarity to the high cost/affordability analysis, with some modifications, as discussed below. Joint Consumers also support the effort in the Draft Report to adopt a set of Policy Guidelines for achieving water affordability.

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<sup>4</sup> For example, Lake County estimates that the average bill is \$158.00 a month, prior to CalWater's proposed rate increase pending before the Commission. See Larson, Elizabeth *Lucerne residents appeal to CPUC to deny Cal Water rate hike*, April 13, 2013 Lake County News; In Antelope Valley customers are paying \$140 on average with individual reports of much higher bills. Diachun, Liz *Cal Water customers say rate increase is all wet*, May 21, 2013 (Antelope Valley Times); Testimony submitted in the GRC for Golden State by the Mayor of Claremont that customers pay on average \$156 bi-monthly for 17 CCF of water. A.11-07-017, Application of Golden State Water Company, Testimony of Mayor Samuel Pedroza, served February 21, 2012.

<sup>5</sup> The PPHs during recent Golden State Water and California Water Company GRCs brought out hundreds of residents across the state complaining about the quality of the water including the smell and the taste. See, for example, Larson, Elizabeth *Lucerne residents appeal to CPUC to deny Cal Water rate hike*, April 13, 2013 Lake County News. Last year, in *Hernandez v. Sunbird Mobile Home Park*, the Commission found that Sunbird Mobile Home Park was providing inadequate water service and tests found that drinking the water could have potential adverse health effects. D.12-02-023 (C.09-11-019).

However, Joint Consumers do not fully support the Policy Guidelines or Draft Report's recommendations as currently drafted. The Draft Report will likely become the "go to" document for the Commission and staff to review when creating the Commission's final decision in both this docket and in subsequent company-specific GRCs. Therefore, it is important that this document is accurate and clear in its recommendations and that the recommendations are appropriate and well supported. Accordingly, Joint Consumers respectfully submit the below comments on the Draft Report.

Joint Consumers highlight their recommendations as follows:

- The Draft Report's recommendation that the Commission forgo a water high cost fund is based on flawed assumptions and contains numerous errors in reasoning. The Commission should retain the flexibility to consider a water high cost fund.
- The Commission should clarify the definition of median income as an affordability criterion for low income assistance. Using median income without reference to household income could undercount the water affordability problem in California.
- The Draft Report's recommendation to modify Tier 1 rate design criteria should be carefully reviewed so that low income customers already struggling to pay their water bills do not receive a lesser benefit under Tier 1 rates than they currently receive.
- The high cost track and affordability track of the Draft Report's screening analysis should not be mutually exclusive and possible mitigation measures should not be limited.
- The rate support fund should be a benefit that varies with income. It should be designed so that payment-troubled customers do not support customers who need no assistance.
- Affordability measures should be accompanied by accountability measures such as reporting and tracking.
- The proposed supplements to the 1992 Consolidation Guidelines should be implemented with modifications. Condition of the infrastructure should be assessed by the utility and reviewed by the Commission; clarification is needed regarding what the Commission is required to find to determine that customers can support the costs of necessary improvements; whether rates resulting from

consolidation are just and reasonable should be determined only after new debt for improvements, surcharges, and offsetting efficiencies and savings can be factored in; the review of the possibility of securing government grants should be expanded to review of other sources of funding; and the Commission should recognize that public reaction to consolidation can change over time.

- Regarding the existing elements of the 1992 Consolidation Guidelines, the proximity criteria can be accorded lesser weight due to modern technology which reduces the impact of distance on consolidation.
- Consolidation can take many different forms, including operational and cost consolidation. The benefits and risks of each distinct form of consolidation should be clarified and appropriate mechanisms put into place to increase affordability and accountability.
- The proposed Policy Guidelines in the Draft Report should be revised to account for workshop discussions that are not currently reflected, plus additional detail and clarity is needed.
- Affordability in this proceeding should be viewed from the perspective of the ratepayer, not the utility.
- The terminology proposed to be used in this proceeding should not hinder a discussion of actual costs.
- The definition of affordability in this proceeding should include the ability to maintain utility services.
- In addition to other contexts where the mechanisms from this proceeding may be used, utilities should be required to propose mitigation mechanisms when a proposed GRC rate increase is at or above 20% in a particular district or serving area.

## **II. COMMENTS ON THE DRAFT REPORT**

### **A. Critique of Draft Report Recommendations**

1. The Commission Should Retain the Flexibility to Consider Implementing a Water High Cost Fund.

In previously filed comments and in the workshops, parties discussed the concept of a water high cost fund (“WHCF”) at the state level, analogous to the High Cost Fund mechanism of the federal or state Universal Service programs that attempt to promote universal service by

making telecommunications service in high cost areas more affordable to consumers.<sup>6</sup> The Draft Report recommends that, “[t]he Commission should not consider a Water High Cost fund for the water industry.”<sup>7</sup>

There are serious problems with this recommendation and the supporting rationale. First and foremost, the recommendation is overbroad and vague and therefore goes beyond the scope of this proceeding. Additionally, the Draft Report criticizes the concept of a High Cost Fund by making a faulty assumption about the customer base. Lastly, the reasoning provided to support this recommendation is inconsistent and contradictory.

The Draft Report’s recommendation to reject a WHCF for the entire California regulated water industry is overbroad. It violates the Scoping Memo’s specific limitation of this docket to multi-district utilities<sup>8</sup> that is also reiterated at the outset of the Draft Report itself, that “[r]ecommendations and criteria developed on the Rulemaking issues . . . are applicable to multi-district water utilities. *Any consideration of extending these to other, non-multi-district water utilities should be undertaken in a separate all-industry proceeding.*”<sup>9</sup> Importantly, customers of non-multidistrict water utilities were not notified of the instant proceeding, and summary dismissal in this proceeding of a high cost fund as an affordability mechanism will affect their rights as consumers to receive water at the lowest reasonable rate. Additionally, the overly broad statement fails to reflect the fact that the scope of this docket explicitly directed parties to not address intercompany WHCFs<sup>10</sup> and thus there is simply no record to support or reject the

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<sup>6</sup> See, e.g., Comments of the National Consumer Law Center and The Utility Reform Network, Docket No. R.11-11-008 (Joint Consumers Opening Comments on OIR) (Mar. 1, 2012) at 20-29.

<sup>7</sup> Draft Report at 3, 30 (Section 7.5). For purposes of this water proceeding, the Draft Report defines a High Cost Area as “a ratemaking area/district where the per customer cost of providing basic water service exceeds the state average cost of the same. Draft Report at n.3

<sup>8</sup> See June 20, 2012 Scoping Memo. Indeed, the caption of the docket clearly specifies the Class A multi district utilities as parties.

<sup>9</sup> Draft Report at 1 (emphasis added).

<sup>10</sup> June 20, 2012 Scoping Memo at 3-4 (“inter-company mechanisms will not be explored in this proceeding”)



adoption of an intercompany WHCF at this time. The Draft Report should reflect this important distinction between a lack of record versus a substantive rejection of the issue.

Under the recently enacted Section 106.3 of California's Water Code, the General Assembly has set forth, "It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."<sup>11</sup> The new provision further requires that state agencies "shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section."<sup>12</sup> To the extent that a Commission order bars the entire water industry from using a WHCF as a potential tool that could increase the water affordability for customers of non-multidistrict water companies, this negatively affects customers' rights to receive water at affordable rates.<sup>13</sup> The instant proceeding has been limited to multi-district water utilities and the Commission must not implement any recommendation that affects the rights of those who have not been included in this proceeding.

Secondly, the Draft Report's underlying rationale for this recommendation is flawed because it is based upon questionable assumptions. It asserts, "[w]ater utilities do not enjoy economies of scale and cost efficiencies akin to those enjoyed by communications or energy service providers that have interconnected systems that permit easy movement of voice/data traffic or electricity to customers."<sup>14</sup> First, nothing in the Draft Report demonstrates that economies of scale must be achieved, as a rule, before a High Cost Fund can be implemented. Similar to other mechanisms discussed in workshops and in comments, the existence of

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<sup>11</sup> California Water Code Section 106.3(a); AB 685, (Ch. 524, September 25, 2012).

<sup>12</sup> California Water Code Section 106.3(b).

<sup>13</sup> *See id.*

<sup>14</sup> Draft Report at 19 (Section 4.4)

economies of scope or scale are only one consideration in analyzing potential mechanisms. In fact, a WHCF may actually make the most sense to help achieve affordability when implemented in high cost areas with low economies of scale. Additionally, contrary to what the Draft Report currently suggests, California investor-owned water utilities can, in fact, enjoy economies of scale.<sup>15</sup>

The Draft Report's assertion appears to assume that interconnection of water systems is a prerequisite to economies of scale, and because some systems within California's multi-district companies are not interconnected, then it must be the case that economies of scale are impossible to achieve. However, interconnection is not the only factor that contributes to economies of scale, nor is it necessarily dispositive. Factors such as sharing operational costs among disparate utility systems, regardless of whether the systems are interconnected, can contribute to achieving economies of scale. Additionally, the Draft Report section asserts that water utilities are unlike energy and telecommunications industries because the latter generally have a large customer base but water utilities do not, on a per district basis.<sup>16</sup> This statement assumes that a water utility's customer base must be considered on a per district basis. But consolidation of districts is one possibility which the Commission has specifically highlighted for consideration in this proceeding.<sup>17</sup> The Draft Report neglects to recognize the interrelationship between the potential savings and efficiencies from consolidation and the impact on the effectiveness of a WHCF.

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<sup>15</sup> Even if it were true that water utilities cannot achieve economies of scale, this alone poses no legal bar nor prerequisite to implementing a WHCF where there is an overriding policy of increasing affordability to payment troubled customers in high cost areas.

<sup>16</sup> Draft Report at 19 (Section 4.5). The Draft Report misses the point that most of the telecommunication utilities participating in the California High Cost Fund A serve geographic areas with a population of between 5,000 and 10,000 making the total customer base extremely small.

<sup>17</sup> *Order Instituting Rulemaking into Addressing the Commission's Water Action Plan Objective of Setting Rates that Balance Investment, Conservation and Affordability for Multi-District Water Utilities*, Docket R.11-11-008 (Nov. 10, 2011) ("OIR") at 2 & 16 (Conclusion of Law includes considering rate or district consolidation); *Scoping Memo and Ruling*, Docket No. R.11-11-008 (Jun. 20, 2012) ("Scoping Memo") at 3 (scope of proceeding includes considering new consolidation guidelines).

Consolidation for a utility could include, among other things, a consolidated customer base through the mechanism of single-tariff pricing as an alternative to district specific pricing.<sup>18</sup>

Indeed, the general argument in favor of single tariff pricing typically includes the reasoning that single-tariff pricing will, in fact, achieve economies of scale that are not achievable under district specific pricing.<sup>19</sup>

Lastly, the Draft Report's reasoning in rejecting a WHCF because of cross-subsidization is readily refuted. The Draft Report states that a WHCF will result in cross-subsidies between districts of multi-district utilities and may "possibly" result in low-income and disadvantaged communities subsidizing high cost areas.<sup>20</sup> The Draft Report states that the Commission has "adopted" guidelines against cross-subsidization, which Joint Consumers understand to be a reference to the 1992 Consolidation Guidelines. While the 1992 Consolidation Guidelines are a tool which the Commission certainly has referred to and used for guidance, they are not regulations and the Commission has stated that it does not consider them dispositive.<sup>21</sup>

Moreover, as to the "guideline" against cross-subsidization to which the Draft Report refers, the Commission correctly has noted that a cross-subsidization guideline specifically was *not* laid out as a fifth criterion of the 1992 Consolidation Guidelines.<sup>22</sup> Indeed, in the OIR, the Commission recognized its policy of allowing implicit cross-subsidization, stating its view that, "*generally, cross-subsidization may be justified when the benefits, including lower rates for customers in*

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<sup>18</sup> For more on consolidation and single tariff pricing, see Joint Consumer Opening Comments on OIR at 20-29.

<sup>19</sup> Cf. Janice A. Beecher, Ph.D., Consolidated Water Rates: Issues and Practices in Single-Tariff Pricing at 27 (USEPA-NARUC Sept. 1999) (describing the many ways multi-district utilities can achieve economies of scale through single tariff pricing, without physical interconnection).

<sup>20</sup> Draft Report at 20 (Section 4.5). See also Draft Report at 28 (Section 7.0 - Recommendations).

<sup>21</sup> See D.05-09-004 at 34 (Finding of Fact No. 3). Meeting the 1992 Consolidation Guidelines is only one means of making a *prima facie* showing of reasonableness for consolidation. See D.05-09-004 at 36 (Conclusion of Law No. 1).

<sup>22</sup> See Docket No. D.05-09-004 at 7-8; Guidelines for Combining of Water Utility Districts for Rate-Making and Public Utility Reporting Purposes (1992 Consolidation Guidelines) at 2-3 (Aug. 20, 1992). See also Joint Consumer Opening Comments on the OIR at 15.

*high cost areas, exceed the costs, such as higher rates for customers in lower cost areas and less-efficient management of water resources.*<sup>23</sup> The Commission in its OIR goes on to state that, “[a]s part of advancing the sixth objective in the Water Action Plan, the Commission will consider mechanisms such as a ‘High-Cost’ fund or consolidating districts and rates within the multi-district water utilities.”<sup>24</sup> As discussed elsewhere in the Draft Report, most mechanisms developed to address affordability involve some level of cross-subsidization, including those discussed in this docket such as CalWater’s Rate Support Fund and various types of consolidation. The Draft Report errs on citing cross subsidy as an absolute bar to the creation of a WHCF instead of developing a cost/benefit of the potential cross subsidy. Therefore, where the Draft Report dismisses a WHCF as a tool to achieve affordability by reasoning that a WHCF may result in cross-subsidization, this rationale must be rejected. It is inconsistent with the Commission’s policy to allow cross-subsidization where benefits outweigh the costs and it fails to support the Draft Report’s recommendation that the Commission forgo a WHCF.

Finally, the Draft Report bases its recommendation that the Commission not consider a WHCF on the possibility that low income customers in low cost areas may subsidize customers in high cost areas.<sup>25</sup> This raises concerns of fairness and equity that go beyond the cross subsidy concerns. This outcome, however, certainly is not inevitable. The Draft Report itself does acknowledge that a carefully crafted, WHCF may avoid this type of subsidization.<sup>26</sup> For example, WHCF assistance could be targeted as direct assistance only to those customers who are truly in need, and low-income customers could be exempt from contributing to the WHCF.

In sum, the Draft Report’s recommendation to reject the idea of a WHCF, not only for the

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<sup>23</sup> OIR at 4 (emphasis added).

<sup>24</sup> OIR at 4 (emphasis added), as discussed above the subsequent Scoping Memo only dismissed inter-company WHCF from consideration in this docket.

<sup>25</sup> Draft Report at 20.

<sup>26</sup> Draft Report at 28.

multi-district water companies in this proceeding but for the entire water industry, must be rejected as beyond the scope of this proceeding.<sup>27</sup> The concept of an intercompany WHCF should not be ruled out, especially where discussion of an *intercompany* fund was not undertaken, and where the proceeding lacks potentially interested parties. Additionally, a decision to forgo an *intracompany* WHCF should not be made based upon the mistaken assumption that economies of scale are either necessary or impossible to achieve. Rather, implementing options such as single-tariff pricing or consolidation can help achieve economies of scale within individual multi-district water companies. Lastly, a WHCF should not be rejected based on the possibility that cross-subsidization may occur. The Commission has already clarified that cross-subsidization can be appropriate in cases where the benefits outweigh the costs. Cross-subsidization of high cost areas by low-income customers can be avoided by exempting low-income customers from contributing to the WHCF.

The Draft Report fails to point to any empirical evidence to support the idea that expanding “other available mechanisms”<sup>28</sup> would be more cost effective than establishing a WHCF. The strongest argument that the Draft Report makes against a WHCF is its observation that a High Cost Fund currently lacks widespread support among most of the workshop participants,<sup>29</sup> namely the water utilities. However, Joint Consumers, as consumer group representatives, continue to strongly support the Commission’s authority to implement a High Cost Fund as described in the Commission’s OIR for this proceeding and as further discussed in filed comments.<sup>30</sup>

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<sup>27</sup> In 2000, the Commission defined the concept of a high cost fund in the context of water utilities as “a state-wide fund collected from all water customers to provide lifeline rates to customers in high-rate districts.” D.00-06-075 (June 22, 2000) at 14 (idea of high cost fund mentioned in an application case for rate consolidation).

<sup>28</sup> Draft Report at 20.

<sup>29</sup> Draft Report at 20.

<sup>30</sup> See Joint Consumers Opening Comments on the OIR at 24-28; Reply Comments of the National Law Center and The Utility Reform Network, Docket No. R.11-11-008 (Mar. 22, 2010) (“Joint Consumers Reply Comments on the

2. The Commission Should Clarify the Definition of Median Income as an Affordability Criterion for Low Income Assistance.

The Draft Report recommends modifying the affordability criteria for qualifying for low income subsidies.<sup>31</sup> It recommends that for low income subsidies, “median household income for the individual family size in the high cost area should replace the currently used total household income as the qualifying criteria.”<sup>32</sup>

The recommended median household income guideline is vague and, instead, should specify the defined high cost area to which “median” relates (*i.e.*, utility district, county, state, national or other defined area). Further, the Draft Report should clarify whether its proposal is to use 100% of median income or a percentage of median income as the qualifying criteria. Today, most of the utilities with Low Income Rate Assistance programs use the eligibility guidelines for the energy utility low income program, California Alternative Rates for Energy (CARE). For many of these programs, customers participating in CARE are automatically enrolled (or at least assumed eligible) for the water utility LIRA program.

While the Draft Report does not discuss what formula will be used for determining eligibility low income water assistance, and does not explain what role median income would play in the formula, Joint Consumers note that the median income could refer to the federal poverty guidelines, as is currently used for eligibility for California Alternative Rates for Energy (CARE).

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OIR”) at 2-4; Prehearing Conference Statement of the National Consumer Law Center (May 16, 2012), Docket No. R.11-11-008, at 2-4; Prehearing Conference Statement of The Utility Reform Network, Docket No. R.11-11-008 (May 16, 2012) at 3.

<sup>31</sup> Draft Report at 29-30 (Section 7.3).

<sup>32</sup> In discussing the affordability track of the screening framework, the Draft Report makes the recommendation that the Commission modify the current criteria for qualifying low income water service customer, *i.e.*, total family income, with median family income and actual customer bills. Draft Report at 22 (Section 5.1.2). This recommendation also needs clarification.

Additionally, the Draft Report states that either a 2.5 percent or 1.5 percent median income guideline can be used to determine whether the utility customer base in a serving area is able to afford the water bills and if further area-wide mechanisms are needed. However, the Draft Report neglects to represent both of these alternatives in the affordability tract of the flow chart, instead only reflecting the 2.5% figure.<sup>33</sup> The first step of the affordability analysis in the affordability track of the flow chart on page 23 of the Draft Report should be revised to include the alternative of using a 1.5% median household income threshold, as reflected in the discussion at the workshop.

However, Joint Consumers warn against the use of the annual water bill as a percent median income, without more, to measure affordability. This should be viewed with some circumspection in light of a recent report on California's water affordability challenges which found that using this traditional guideline, without reference to household income, could result in undercounting water affordability problems.<sup>34</sup>

3. Revised Rate Design Criteria Should Not Be Permitted to Decrease Any Affordability Benefit Currently Available to Low Income Ratepayers.

The Draft Report recommends modifying rate design criteria so that Tier 1 rates are based on median indoor water consumption in a district rather than approximate average water

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<sup>33</sup> Compare Draft Report at 22 (stating that either 2.5% or 1.5% median income thresholds can be used) with Draft Report at 23 (affordability track neglects to include the 1.5% median income threshold in the first step of the affordability analysis).

<sup>34</sup> Pacific Institute, Assessing Water Affordability: New Report Shows Type of Measurement is Critical to Recognizing California's Water Affordability Challenges: Thousands Could Go Uncounted, (Aug. 14, 2013) available at <http://www.pacinst.org/publication/assessing-water-affordability/>. See also Matt Williams, Report Looks at Complexity of Measuring Water Affordability, Water News (Aug. 15, 2013), available at <http://www.acwa.com/news/water-rates/report-looks-complexity-measuring-water-affordability>).

consumption in the district.<sup>35</sup> The Draft Report does not identify a rationale for this recommendation.

Joint Consumers' concern is that tying Tier 1 rates to median indoor consumption for the district rather than average winter consumption in the district may result in less affordable bills for low-income consumers, if the average winter consumption exceeds the median indoor consumption. The result would be that less expensive Tier 1 rates would apply to a smaller quantity of water on the bill and more expensive Tier 2 water rates would "kick-in" earlier at lower levels of consumption thereby increasing the bill amount for low income customers already struggling to pay their water bills.

There are logistical problems as well. How is it possible to measure indoor consumption? To date, winter water consumption is used as a proxy because of the difficulty of distinguishing outdoor use from indoor use. Potentially, the Commission could approve an industry-standard measurement, but that figure will have to be "tested" against actual consumption to determine whether particular districts have special circumstances or demographic or geographic considerations that are missed by the broad industry standard. One goal is to ensure that the Tier 1 rate accomplishes a water conservation goal, but it cannot be set so that it penalizes low income customers or creates unrealistic goals for residents.

4. The High Cost Track and Affordability Track on the Proposed Screening Flow Chart Should Not Be Mutually Exclusive.

Draft Report Sections 5.1, 5.1.1., and 5.1.2 discuss data screening requirements for the high cost track and affordability track. The Draft Report recommends implementing the high cost and affordability frameworks.<sup>36</sup>

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<sup>35</sup> Draft Report at 2, 30 (Section 7.4).



One of the major topics of discussion of the second workshop was the screening flow chart proposed by Commission staff as a straw man.<sup>37</sup> The parties deliberated over each box and criteria in the draft flow chart to ensure that the screening met its intended purpose.

Unfortunately, the screening flow chart included in the Draft Report does not reflect the workshop discussion, but instead is an exact copy of the proposed chart prior to the workshop and parties' comments. For example:

- The parties agreed that the initial screening for high cost districts-- considering a Revenue Requirement per customer --was ineffective and should be changed. There was significant discussion about the appropriate criteria, with agreement on Revenue Requirement *per unit of water* as the preferred metric, although the exact definition/amount was not settled.<sup>38</sup> Joint Consumers recommend that the criteria in the framework be revised to reflect a Revenue Requirement per unit of water standard, rather than Revenue per customer. The standard should be set to apply across all of the multi-district water utilities participating in this proceeding. Joint Consumers reserve the right to provide further comments on a specific unit of water, CCF amount or other related recommendation in reply.
- There appeared to be no agreement on what to compare the resulting Revenue Requirement/CCF figure against to determine what is a high cost area. It could be an intracompany measurement such as a utility average or it could be just for a particular geographic region. The Draft Report does not adequately raise or address this issue.
- There was also discussion on the initial criteria in the affordability screening track. The definition of "essential level of indoor water use" was discussed with no final agreement on a recommendation. There was, however, general agreement on a national figure such as the Health and Safety Inside Residential Use figures (HSIRU).<sup>39</sup> This issue is also left out of the Draft Report and should continue to be included.

In general, Joint Consumers support use of a screening framework flow chart, but note some concerns. Importantly, the chart should clarify that both the high cost track and affordability track queries should be analyzed in every case where affordability is a question or

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<sup>36</sup> Draft Report at 2.

<sup>37</sup> Draft Report at 19-24.

<sup>38</sup> NRDC Comments on November ALJ Ruling at 3 (recognizing substantial discussion on use of Revenue Requirement per CCF) and GSWC Comments on November ALJ Ruling at 3.

<sup>39</sup> GSWC Comments on November ALJ Ruling at 3-4; *See also* NRDC Comments on November ALJ Ruling at 2 (recommending essential levels of indoor water use).

issue. For example, under the proposed flow chart for the high cost track, an examination into whether the utility customer is foregoing basic necessities to afford water service (*i.e.*, where the water bill exceeds 2.5% of median household income) only occurs where Revenue Requirement Per Customer is less than or equal to 150% of the utility's Average Revenue Per Customer. Joint Consumers recommend that the concerns addressed by the affordability track of the flow chart should not be mutually exclusive with the concerns addressed by the high cost track. If the affordability track is not reviewed alongside the high cost track in every instance, low-income consumers within high cost districts may fail to be identified. Additionally, the possibility of low income consumers subsidizing high cost areas becomes more likely to occur when the high cost track analysis is undertaken without an analysis of affordability concerns to low income customers outside the high cost areas.

Another concern is that under the flow chart, a low income area is much more limited in the mitigation mechanisms it can consider, compared to the mitigation mechanisms for a high cost area. Under the low-income track, mitigation mechanisms are simply (1) expansion of low income assistance programs or (2) implementation of targeted low income conservation programs. In contrast, the high cost track lists four different consolidation mechanisms alongside four additional mitigation measures that can be implemented. Joint Consumers recommend that mitigation measures, especially for the affordability track, not be limited to the items currently represented in the flow chart. Allowance should be made for the introduction of additional mitigation measures as may be needed.

Joint Consumers recommend that the Commission make it clear that the mitigation measures listed under the high track analysis are not limited only to areas above the 150% average Revenue Requirement threshold. In other words, while they are especially recommended

for consideration in the high cost track analysis, it should be clarified that there is no prohibition against using the high cost track mitigation mechanisms (consolidation, intracompany grant/loan funding, budget plans, and changes to rate design and Tier 1 rates) outside the context of a high cost area, as tools to achieve affordability in districts that are at or below the 150% threshold.

5. The Rate Support Fund (RSF) Should Be a Benefit That Varies with Need or Income and Additional Criteria Should Be Established to Avoid a Mechanism That Requires Payment Troubled Customers to Subsidize Customers Who Do Not Need Assistance.

The Draft Report recommends extending California Water Service Company's Rate Support Fund (RSF) program.<sup>40</sup> It recommends that "all multi-district utilities should investigate the option of the RSF model."<sup>41</sup> Joint Consumers agree that a program modeled after the RSF should be a part of the "regulatory toolkit."<sup>42</sup> The Draft Report includes a directive to compare the resulting rate relief with the cost burden on other ratepayers of the utility developing the Fund.

To mitigate possible cross subsidy concerns and fairness concerns relating to increased burdens on low income customers,<sup>43</sup> Joint Consumers recommend that the final Draft Report recommend that the RSF be created as a benefit that varies with income. In other words, while an entire district may be considered high cost under the screening mechanism discussed in Section 5.1.1 of the Draft Report, this does not necessarily mean that all customers in that district

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<sup>40</sup> Draft Report at 2, 29 (Section 7.2).

<sup>41</sup> Draft Report at 29.

<sup>42</sup> Joint Consumer Opening Comments on the OIR at 17 and Joint Consumers Reply Comments on the OIR at 2 (concept of regulatory toolkit discussed); 26-28 (discussing possible programs modeled on RSF).

<sup>43</sup> In addition to the extensive discussion during the workshops on the potential risks of the RSF, TURN has been participating in the CalWater GRC where a proposal to expand the RSF is being proposed by CalWater. It is very true that low cost districts such as Visalia do not support the concept that their ratepayers, and in particular their low income ratepayers, should be paying a surcharge to support a benefit going to other districts (current RSF districts) where the costs may be high, but the customers are not considered "disadvantaged."

will have trouble paying their bill, as the Draft Report acknowledges.<sup>44</sup> Therefore, once the Commission determines that a particular district is high cost it should also determine whether the rates are unaffordable by a significant portion of the district, to see if an RSF is the right mechanism. The RSF should be designed such that low income customers in that district, including the working poor that might not normally qualify for LIRA benefits but would still have trouble paying these exorbitant bills, receive a greater benefit than non-low income customers. This could be done through a modified LIRA program.

The Commission must also consider additional criteria for the RSF, which will both ensure that only those who most need the help receive the benefit, and that low income consumers are not required to contribute to the RSF.<sup>45</sup> Not only is this equitable, but hopefully it also will decrease the costs of the program, address the concern of cross subsidies, and ensure that disadvantaged districts do not add to their cost burden in any significant amount by supporting the RSF. LIRA customers throughout the company should be exempt from the RSF surcharge. While this makes the program more expensive for the rest of the ratepayers, the impact may only be a few cents while low income customers are protected.

Finally, before implementing an RSF in other districts, the Commission could first consider expanding the company's existing LIRA program with emphasis on expanding LIRA eligibility and increasing benefit levels to LIRA customers in high cost districts so that there is some link to income level. To the extent that expanding LIRA will fail to achieve the desired affordability for customers, an RSF could play a role of supplemental assistance.

6. Affordability Measures Should Be Accompanied by Accountability Measures and Tracking Mechanisms to Encourage Efficiency and Enable Analysis of the Affordability Problem.

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<sup>44</sup> Draft Report at 11.

<sup>45</sup> Joint Consumers Opening Comments on the OIR at 27 (eligibility standards could be adopted).

The Draft Report recommends mitigating the impacts of water rates and rate shock with a number of suggestions by the parties.<sup>46</sup> Joint Consumers urge the Commission to guard against the use of these “quick fixes” that may mask larger affordability problems. While these tools are important and have been used in the past to varying degrees by different utilities, they cannot be used as a substitute for a critical analysis as to the reasons why costs have increased to cause the potential for rate shock. As Joint Consumers have stated elsewhere in comments and the workshop, when customer assistance programs are ratepayer funded but utility directed, accountability measures such as tracking and reporting are essential to ensure that expenditure of that ratepayer funds can be tracked and justified.<sup>47</sup>

7. The Proposed Supplements to the 1992 Consolidation Guidelines Should Be Implemented with Some Modifications.

In Section 7.1, the Draft Report recommends that the Commission supplement the 1992 Consolidation Guidelines with other criteria to analyze a consolidation request.<sup>48</sup> Joint Consumers support this recommendation, with a few caveats.

In Opening Comments, Joint Consumers stated that the Commission should not focus on consolidation as the only effort to address affordability in this docket, but instead use it as a “tool in its regulatory tool kit to address market failures.”<sup>49</sup> Joint Consumers also suggested that the ultimate goal of consolidation should be: economic efficiency, distribution of costs in a fair and reasonable manner (thereby presumably resulting in just and reasonable rates), and improvements in customer support. Joint Consumers proposed a series of additional

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<sup>46</sup> Draft Report at 3 (Section 5.3).

<sup>47</sup> See Joint Consumers Opening Comments on OIR at 26.

<sup>48</sup> Draft Report at 28-29 (Section 7.1).

<sup>49</sup> Joint Consumers Opening Comments on OIR at 16.

considerations that the Commission could look at, in addition to the 1992 Guidelines, to allow for a more relevant and current determination of whether consolidation would be appropriate.<sup>50</sup> In many instances those additional considerations came from the Commission itself in its analysis of previous consolidation proposals.

Joint Consumers support the Draft Report's recommendation to maintain consolidation as a regulatory tool that the Commission may use to address affordability.<sup>51</sup> Joint Consumers also support supplementing the 1992 Guidelines.

The Draft Report recommends that the Commission consider five additional elements as supplemental to the 1992 Guidelines. It has, however, provided no discussion of why these particular elements were chosen. The Draft Report has no discussion of the original criteria, and whether there should be some weighting of the old and new criteria. The Draft Report should be revised to recommend that both the parties and the Commission take these issues into consideration in future GRCs. The revised recommendation should include the directive that the new elements be given comparable weight of consideration as the existing four criteria and that they are the applicant's burden to show, as in the case of the original consolidation elements. Further, as to each proposed new element:

a. Condition of the infrastructure.

This is an important factual analysis that the utility should be responsible to perform as part of the consolidation request, and then that analysis should be reviewed closely by staff. The analysis could help inform the question of whether a district has functional, adequately

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<sup>50</sup> Joint Consumers Opening Comments on OIR at 18-19.

<sup>51</sup> While the Draft Report, in Section 3.2, discusses the different types of consolidation, it fails to address the lengthy and detailed discussion and comments regarding the need to define consolidation, determine which consolidation is appropriate in various circumstances, and to acknowledge the utilities' general comments that consolidation is not the appropriate solution to an affordability problem in every instance.

maintained and updated infrastructure or whether a district has problems with its infrastructure that would require significant investment in order to provide adequate service.

b. Whether each district in question and its customers can support the costs of necessary improvements.

While this element appears to be modeled on proposals from Joint Consumers and DRA, the language of this recommended guideline is unclear. Clarification should be provided regarding what the Commission is required to find to determine that customers can support the costs of necessary improvements.

c. Whether the rates and terms of service of the districts under consideration will continue to be just and reasonable.

Use of the wording that rates “will continue to be just and reasonable” makes an assumption, unnecessarily, that the rates in each of the districts currently are just and reasonable. This guideline should be revised to state, “whether the rates and terms of service of the districts under consideration are likely to be just and reasonable after consolidation.” The final determination of the just and reasonable rates following consolidation should take place only once any new debt for improvements, other surcharges such as WRAM calculations, and offsetting efficiencies and savings can be factored in.

d. Whether consolidation will enhance the possibility of securing state and federal grants for improvements.

Joint Consumers recommended this element in our previous comments and support the Commission’s use of this guideline. We add here that the Commission should not limit this question to the possibility of obtaining state and federal grants, but should consider other sources of funding as well and ensure that the funding is properly factored into the utility’s revenue requirement.

e. Reaction of impacted customers.

Customer reception to consolidation is a very important consideration and was the subject of significant discussion in comments and during the workshops. The Draft Report has not provided guidance regarding what weight this consideration should bear relative to the other consolidation elements. However, the customer reaction to both perceived and real cross subsidy is critical to the success of any affordability program.

Public opposition can quickly turn into political opposition and calls for elimination of a program. As Joint Consumers stated in Reply Comments on the OIR, “[t]herefore, while the Commission must be sensitive to and take into account customer preference, loud voices complaining about having to ‘pay for someone else’s water’ cannot alone serve to frustrate the broader policies contained in the Water Action Plan and set forth in statute.”<sup>52</sup> The primary purpose for creating a state-wide, multi-district, Class A Rulemaking was to ensure that the Commission addressed the “bigger picture” issues relating to fairness and economic and environmental justice. There may be situations where despite the outcries of loud, local groups, consolidation is the right choice to apply to the situation at hand.

For example, during the workshop, CalAm representatives noted that many different ratemaking areas that exist today are the result of past consolidation of multiple districts or areas.<sup>53</sup> Over the years, however, customers forget that they were once in separate districts and can take consolidation and single tariff pricing for granted. While the lack of memory can mean that the negative impacts of consolidation are masked or forgotten, it also demonstrates that public opinion does change over time. This fact should be considered.

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<sup>52</sup> Joint Consumers Reply Comments on the OIR at 16.

<sup>53</sup> During Workshop 2, CalAm representatives used their Sacramento District as an example of former disparate areas combined into one area with a single tariff. From the CalWater GRC process (A.12-07-007), TURN has learned that Visalia (serving over 40,000 customers) is also the product of consolidation.



f. Weighting the proximity elements of the consolidation criteria.

The additional consolidation criteria recommended by staff add a level of sophistication to the consolidation analysis that was not consistently applied in previous cases. However, the Draft Report should go further to explain these additional elements and to use the record to discuss the reasons for different types of consolidation.<sup>54</sup>

In his November 2012 Ruling, the ALJ requested specific comments on whether the proximity criteria should be revised. In comments, there was general agreement that this criterion remains relevant but that the specification of a 10 mile distance between districts as one of the criteria should be changed. In light of modern technology and the emphasis on affordability more than regulatory efficiency, the proximity criteria should be accorded lesser weight in the analysis.<sup>55</sup> The Draft Report and its recommendations should be revised to reflect this discussion.

g. Benefits and risks of different types of consolidation should be clarified.

Joint Consumers note that the various types of consolidation discussed in the Draft Report pose different benefits and risks and the Draft Report should be clearer on the impact of each. In particular, rate consolidation masks conservation signals, for example. Cost consolidation increases the risk that the Commission will have less data and less granularity in its review of expenses, costs and investments during a utility GRC to conduct a robust reasonableness review.<sup>56</sup> As noted by NCLC in the workshop, cost consolidation can also create a utility disincentive for pursuing maximum cost savings and efficiencies, if spreading costs

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<sup>54</sup> For example, Joint Consumers described the different types of consolidation in Opening Comments. Joint Consumers Opening Comments at 13.

<sup>55</sup> Joint Consumers Opening Comments on the OIR at 17.

<sup>56</sup> Draft Report at 9.

across a larger customer base means the impact of increased expenses will be more diffuse. Therefore, if costs are consolidated, utilities should continue to track and report expenses, costs and investments on district specific level, so that documentation exists to ensure that resulting rates are just and reasonable. Tracking and reporting on a district level directly addresses one of the biggest criticisms of similar funds - the risk of gold plating - so that this problem can be avoided.<sup>57</sup> The Draft Report does not discuss these concerns regarding cost consolidation despite numerous references to them during the workshop. Further, the Draft Report should note that operational consolidation is generally taken on by the utility with little involvement by the Commission except during the GRC process.<sup>58</sup> While operational consolidation may have its issues, in general the Commission should encourage the practice to the extent it is a cost-saving measure while still providing sufficient customer support.

## **B. Policy Guidelines**

During the discussions and comments, it became clear that the Commission should create a set of broader principles to help guide the application of the mechanisms in each GRC. Joint Consumers understand the need in each GRC for a case-by-case analysis to determine whether there is an affordability problem, where within the utility's service territory the problem exists, the nature of the problem (high cost, low income, improper rate design, lack of economy of scale, water quality, etc.) and which mechanisms will be most appropriate to address the situation. However, Joint Consumers also urge the Commission to take a look at the principles,

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<sup>57</sup> During the workshop, Commission staff gave a presentation on the telecommunications High Cost Fund-A and the fact that the Commission found that companies participating in that program were "gold plating" by spending much more on unnecessary investment compared to non-participating companies. While consolidation is a slightly different context than High Cost Fund-A, to the extent that increased costs of higher cost districts might be obscured through cost consolidation with lower cost districts, implementing consolidation without accountability measures lessens the incentive for the utility to control costs. Joint Consumers' proposal to ensure accountability is possible through tracking and reporting requirements that address this issue.

<sup>58</sup> See Draft Report at 10.

mechanisms and thresholds to develop a detailed set of recommendations. Others have also stated that a detailed discussion in this docket is needed.<sup>59</sup>

The parties began discussing the Policy Guidelines during the second workshop when staff presented a straw man proposal. The parties had further opportunity to comment on the Policy Guidelines in written comments. Unfortunately, the recommended Policy Guidelines in Section 2.4 of the Draft Report do not reflect any of the discussion or further written comments by the parties, even where there was significant agreement.<sup>60</sup> Further, there is neither a discussion of the Policy Guidelines in the Draft Report nor justification for the rejection of parties' comments to revise those guidelines. Joint Consumers support the development of Policy Guidelines, but the Draft Report should explain why it has failed to incorporate the Parties' comments, or it should be revised to make changes as discussed below.

1. Policy Guideline No. 1: Mechanisms identified herein should be selectively considered in the general rate cases and further developed and tailored in light of the specific circumstances of each district and utility in question.

Joint Consumers agree that further discussion and review of the mechanisms must be conducted in the context of the specific circumstances of each GRC. However, this principle leaves too many open questions for the GRC process, thereby risking that the mechanisms will be inconsistently applied or significantly altered in their application. This creates the risk of unfair treatment among different customer groups and uncertainty among utilities and customer groups as to the expectations of the Commission in

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<sup>59</sup> For example, CalWater has stated that it “may be more appropriate in this proceeding to provide more details, rather than fewer details, as a means to limit the unnecessary controversy that a proposed decision could evoke,” and that this docket should produce something that would be “effective in moving the conversation forward in GRCs.” CalWater Comments on November 14, 2012 ALJ Ruling at pg. 2 (December 5, 2012).

<sup>60</sup> See Draft Report at 6-7.

addressing affordability.<sup>61</sup> Developing greater detail in this proceeding is what is needed.

2. Policy Guideline No. 2: To be adopted, the relief provided by any mechanism should be sufficiently substantial and its cost insignificant relative to other customers.

There was significant opposition to the wording of this guideline that the Draft Report ignores. Cal Am, GSWC and TURN all expressed concern that use of the terms “sufficient substantial” and “insignificant relative to other customers” was too subjective and that the guideline should instead recommend a cost/benefit analysis in less subjective terms.<sup>62</sup> There is no discussion or explanation why, despite broad concern, the Draft Report continues to recommend this guideline as drafted before multiple parties raised their concerns. Joint Consumers agree that there is a cost/benefit analysis that must be conducted by the Commission in its analysis of implementing affordability mechanisms. The proposed guideline should simply state that the Commission must weigh the costs to the utility (and ultimately the impact on rates to the customers) against the benefits that are intended to flow from the change or the implementation of a new program.

3. Policy Guideline No. 3: Water quality issues should have a higher priority in high-cost, low-economy of scale disadvantaged communities than in other high cost areas.

TURN proposed to delete this principle as unnecessary and unclear. GSWC and CalAm both agreed that the principle was unclear.<sup>63</sup> Joint Consumers urge the Commission to find that water quality issues are generally important, and in districts without economies of scale the “fixes” for water quality issues may cause significant economic

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<sup>61</sup> Use of the terms “selectively considered” is a vague and confusing directive and “further developed and tailored” provides too much latitude to pick and choose pieces of the recommendations in the Draft Report. *See* TURN Opening Comments on November ALJ Ruling at 7.

<sup>62</sup> TURN Comments on November 14, 2012 ALJ Ruling (December 5, 2012) at 7; GSWC Comments on November 14, 2012 ALJ Ruling at 21 CalAm Comments on November 14, 2012 ALJ Ruling at 13.

<sup>63</sup> TURN Comments on November 14, 2012 ALJ Ruling (December 5, 2012) at 8; GSWC Comments on November 14, 2012 ALJ Ruling at 21 CalAm Comments on November 14, 2012 ALJ Ruling at 13.

hardship on customers, which in turn disadvantage low income customers most significantly. However, if water is undrinkable, that circumstance should be quickly addressed in all districts. In any district where the necessary investment will significantly impact affordability and rates, this problem should be addressed with the level of urgency and priority that is commensurate with the severity of the situation, including the level of water quality problems and the amount of money the utility must expend to address the problem.

4. Policy Guideline No. 4: Not all high cost areas identified by the policy framework provided herein will merit mitigation of high costs.

This guideline had general support during the workshop discussion and in the parties' comments. The Draft Report echoes DRA's comments that just because a district is considered "high cost" does not make water service unaffordable to the customers in that district. Joint Consumers agree that high cost alone does not necessarily create an affordability problem. Affordability is the function of many factors. However, this guideline should be clarified to communicate that even if specific actions are not necessary to address affordability, the Commission still has a statutory obligation to fulfill. The Commission must analyze, address, and mitigate high cost problems, ensure that costs are reasonable, and ensure that rates are just and reasonable.

5. Policy Guideline No. 5: Subsidies by disadvantaged communities to non-disadvantaged communities and significant adverse cost impacts to disadvantaged communities must be avoided.

Joint Consumers agree with the spirit of this guideline, but acknowledge, as other

parties have, that the absolute language makes this guideline rigid and inflexible.<sup>64</sup> The Draft Report must not ignore the concerns raised on the record. However, both GSWC's and CalAm's proposed edits to the guideline would have it state only that adverse impacts must be avoided "if possible" and if not they should be "kept to a minimum" and that some cross-subsidy is "unavoidable." These edits swing the pendulum too far in the other direction and make the principle too accepting of adverse impacts to disadvantaged communities.

Joint Consumers recommend that this guideline should be revised to read:

When applying the mechanisms developed here, all reasonable steps must be taken to (1) avoid subsidies by disadvantaged communities to non-disadvantaged communities; and (2) avoid significant adverse cost impacts to disadvantaged communities-

6. Policy Guideline No. 6. Adverse effects on efficient water use resulting from any mechanism should be minimized and mitigated.

Joint Consumers agree with this guideline to the extent that consumers, who already conserve water, or are low-income customers, are protected from unreasonable rate and affordability impacts that result from the mitigation mechanisms.

7. Policy Guideline No.7. Mechanisms should not encourage service territory expansions into new, previously unserved high cost areas.

Joint Consumers acknowledge that there is no general agreement on this Guideline. Joint Consumers agree with the concept, as put forth by the Commission in the OIR, that sending improper economic signals regarding the "true" cost of water may lead to unsustainable development in certain areas. However, due to the multi-faceted issues in real estate

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<sup>64</sup> GSWC and CalAm opposed the absolute nature of language. GSWC Comments on November 14, 2012 ALJ Ruling at 22; CalAm Comments on November 14, 2012 ALJ Ruling at p. 14.

development, it may be difficult to prospectively analyze the impact of a particular mechanism on decisions by investors or a community to eventually develop a new area.

**C. Other Clarifications**

1. Affordability Should Be Viewed from the Perspective of the Ratepayer.

Draft Report Section 2.1 states that the Rulemaking will establish policies to help set rates that balance investment, conservation and “affordability for multi-district water companies.”<sup>65</sup>

To support this aim, the Draft Report states that it is consistent with the WAP Objective #5 that rates and ratemaking mechanisms will be developed to further the goals of “affordability, conservation, and investment in necessary infrastructure.”<sup>66</sup> Joint Consumers submit that the Draft Report contains a misstatement and should be clarified such that “affordability” should be viewed from the perspective of the customers of multi-district water companies.<sup>67</sup> The Commission should clarify that affordability in this docket is to be examined in regards to the consumer because considering both investment and affordability from the perspective of the company presents an obstacle to the Commission achieving a fair and balanced consideration of all of the interests involved.

2. The Terminology Used in this Affordability Proceeding Should Not Hinder a Discussion of Actual Costs.

The Draft Report has proposed that Cost-of-Service be defined as:

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<sup>65</sup> Draft Report at 4. To quote this statement in full: “Consistent with the fifth policy objective of the WAP, the aim of this Rulemaking is to establish policies that will help the Commission in setting rates that balance investment, conservation and affordability for multi-district water utilities.” Id.

<sup>66</sup> Draft Report at 3.

<sup>67</sup> The call for balance of “investment, conservation and affordability” in WAP #5 clearly refers to the WAP principles of “Promoting infrastructure investment,” “Strengthen conservation programs” and “Assist Low-Income ratepayers” (i.e., “affordability”), respectively. *See* Water Action Plan 2010 at 7. The principles and objectives of WAP 2010 remain the same as WAP 2005). The principle of “Assist Low-Income ratepayers” is the only principle that explicitly refers to “affordability.”

“Cost-of-Service”- The total costs incurred by a utility in providing utility service, described by a utility’s revenue requirement, or the total sum required to pay all operating expenses and capital costs, including a fair return on investment.<sup>68</sup>

This proposed definition for cost of service is unnecessarily restrictive.<sup>69</sup> Although in other contexts the proposed definition of cost of service may be acceptable, in this proceeding about enhancing affordability, it is important to have an ability to clearly discuss the concept of *actual* costs of service. The Draft Report’s current definition of cost of service includes a “return on investment,” or the amount related to return on equity to shareholders. The return to company shareholders, however, is discretionary and unrelated to the direct costs of providing water utility service to customers. The cost of service definition for use in this proceeding could be revised by deleting the phrase “including a fair return on investment.”<sup>70</sup> Alternatively, the term “actual cost of service” should be added and defined as follows:

“Actual Cost-of-Service”- The total costs of service incurred by a utility in providing utility service, excluding return on equity.”

3. The Definition of “Affordability” Should Clearly Reference Affordable Utility Service.

The Draft Report Section 3.4 defines rates as affordable “when they are low enough so that basic food, shelter, medical, education and clothing needs do not have to be foregone.”<sup>71</sup>

The proposed definition is lacking because a definition of “affordability” in this proceeding should leave no doubt and explicitly integrate an additional, key, affordability

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<sup>68</sup> Comments of the National Consumer Law Center and The Utility Reform Network on Proposed Definitions of Terms, Phrases and Concepts for Use in this Proceeding (Jul. 3, 2013), Docket No. R.11-11-008 (“Joint Consumers Proposed Definitions”) at 1.

<sup>69</sup> Joint Consumers Proposed Definitions at 5.

<sup>70</sup> See, e.g., alternative definition of cost of service in Texas Administrative Code, 30 TX ADC § 291.34(d)(2)-(d)(3).

<sup>71</sup> Draft Report at 11 (adopting Raucher, Bob presentation as cited by DRA Opening Comments at 2).



concept – the ability to pay and maintain utility service.<sup>72</sup> The intent of this docket is not to allow customers’ arrearages from utility bills to mount. The definition should read,

“Affordability” – A customer’s ability to pay rates low enough such that basic necessities such as food, shelter, medical, education, clothing, and essential utility services do not have to be foregone or disrupted.

4. Utility Should be Required to Propose Mitigation Mechanisms when Proposed GRC Rate Increase is Above a Certain Threshold.

The Draft Report, with the proposed edits discussed above, represents the significant work and creative thinking dedicated to this issue by both the Commission staff and the parties to the docket. With these recommendations, the Commission and the utilities will have tools and mechanisms to help address a persistent and growing problem of water affordability. There is an assumption that in the utilities’ respective GRCs, the utility or possibly DRA will identify an issue of affordability or high cost and propose the implementation of one or multiple mechanisms discussed above. However, Joint Consumers are concerned about leaving the decision of whether or not to propose mechanisms solely up to the discretion of the utility or even DRA.

In its comments on the ALJ Ruling after Workshop 2, TURN proposed that,

...in any circumstance where a utility is proposing a rate increase of 20% (specific figure can be discussed) or more, the utility be required to present a proposal, based on the principles, framework and mechanisms from this docket, that would provide a high cost or affordability mechanism for the serving area impacted by that rate increase or make an affirmative showing why such a remedy is not needed.<sup>73</sup>

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<sup>72</sup> Joint Consumers Proposed Definitions at p. 1-2. Here again, the Draft Report does not reflect the discussion during the Workshop or written comments on this issue, but instead includes its recommendation without support.

<sup>73</sup> TURN Comments on ALJ Ruling at 4.

The Draft Report is silent on this proposal and Joint Consumers would like to renew the request to include this in any Final Decision adopted in this docket. This issue was not discussed in the workshops but the parties did discuss, at some length, the role and viability for these mechanisms during a GRC. This proposal is designed to ensure that the work done in this docket is not ignored and should be implemented where appropriate.

### III. CONCLUSION

Joint Consumers respectfully request that the Commission consider the comments and make the above recommended changes to the Draft Staff Report before relying on that document to make its final conclusions in this docket.

DATED: August 23, 2013

Respectfully Submitted,

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