

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Investigation on the Commission's Own Motion into the Operations and Practices of Live Oaks Springs Water Company (U-390-W), and its Owner/Operator, Nazar B. Najor; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Petition the San Diego County Superior Court for a Receiver to Assume Possession and Operation of the Live Oaks Water Company pursuant to the California Public Utilities Code section 855. Other Named Respondents Include City National Bank, Live Oak Holding, LLC, a Nevada Limited Liability Company; Matthew Semmer, Receiver for City National Bank.

Investigation No. 12-08-004
(Filed August 2, 2012)

**RESPONSE OF THE DIVISION OF WATER AND AUDITS TO
THE APPLICATION FOR REHEARING OF COMMISSION
DECISION 13-07-036 FILED BY LIVE OAK SPRINGS WATER
COMPANY AND AFFILIATED RESPONDENTS**

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I. INTRODUCTION

Pursuant to Rule 16.1(d) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), the Division of Water and Audits ("DWA") hereby files its Response to the *Application for Rehearing of the Commission Decision D1307036 Authorizing Superior Court Action for Appointment of a Receiver for Live Oak Springs Water Company* (Application for Rehearing).^{1 2} DWA timely requested a two-week extension in which to respond to the Application for Rehearing, *i.e.*, until September 5, 2013.³

II. THE APPLICATION FOR REHEARING FAILS TO IDENTIFY ANY LEGAL ERROR IN D.13-07-036.

As stated in Rule 16.1(c), "[t]he purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously." However, the instant Application for Rehearing fails to identify any legal error in Decision ("D.") 13-07-036.⁴

A. The Application for Rehearing Fails to Identify Any Violation of Due Process Rights.

1. DWA's Counsel Did Not Violate Any Party's Due Process Rights by Introducing Evidence that Supports the Analysis of DWA Staff.

Contrary to the assertions of the parties seeking rehearing, DWA's counsel did not violate their due process rights by introducing evidence that supports the analysis of

¹ *Application for Rehearing of the Commission Decision D1307036 Authorizing Superior Court Action for Appointment of a Receiver for Live Oak Springs Water Company*, I.12-08-004, August 7, 2013 (referred to below as "Application for Rehearing").

² As stated in the Application for Rehearing, it "is submitted on behalf of Respondents Nazar Najor, Daniel Najor, Lauren Najor, Live Oak Springs Water Company (LOSWC), Live Oak Holding, LLC and Live Oak Enterprises, LLC." Application for Rehearing, at p. 3. These respondents are collectively referred to below as the "parties seeking rehearing."

³ Motion Requesting Extension of Time in Which to Respond to Application for Rehearing of D.13-07-036, I.12-08-004, August 8, 2013.

⁴ *Modified Presiding Officer's Decision Authorizing Superior Court Action for Appointment of a Receiver for Live Oak Springs Water Company*, D.13-07-036, July 25, 2013.

DWA staff. The parties seeking rehearing accuse DWA's counsel of foul play for only introducing evidence in the proceeding that was "in the best interest of his client, the DWA."⁵ However, in prosecuting a Commission investigation, DWA's counsel is not required to introduce every piece of evidence that any party believes may have relevance to the proceeding. Here, DWA's counsel acted appropriately by introducing evidence, in compliance with all applicable requirements, that supported the analysis of DWA Staff. Accordingly, the actions of DWA do not support a claim that the due process rights of the parties seeking rehearing were violated.⁶

Of course, the parties seeking rehearing had a full opportunity to conduct discovery pursuant to Rule 10.1 and introduce any evidence that they deemed relevant in support of their position. Their failure to introduce any specific evidence reflects a decision on their part before or during the evidentiary hearings, not a violation of their due process rights.⁷ Because the parties seeking rehearing had a full opportunity to litigate all of the contested issues in this proceeding, by, among other things, introducing all evidence that they deemed relevant, any allegation that their due process rights were violated is false and without merit.⁸

⁵ Application for Rehearing, at p. 40 (noting, "[a]s Jonathan Knapp stated, he included whatever evidence he believed would be in the best interest of his client, the DWA"). The Application for Rehearing fails to provide any citation for this reference. See Reporter's Transcript, Evidentiary Hearing, January 11, 2013, I.12-08-004, Vol. 2, at pp. 388:17-28 – 389:1-16 (wherein Jonathan Knapp, during cross examination by Nazar Najor, explained the nature of his professional obligation to his client, DWA, in the proceeding).

⁶ *Application of Pacific Gas and Electric Company to Revise its Electric Marginal Costs, Revenue Allocation, and Rate Design, including Real Time Pricing, to Revise its Customer Energy Statements, and to Seek Recovery of Incremental Expenditures. (U39M)*, D.12-08-046, August 23, 2012, at p. *57 (holding that when parties comply with applicable rules their actions are not in error, and thus, cannot give rise to a claim that the due process rights of an adverse party were violated).

⁷ See e.g., Reporter's Transcript, Evidentiary Hearing, January 11, 2013, I.12-08-004, Vol. 2, at p. 390:4-12 (wherein Administrative Law Judge Michael Galvin explained to Nazar that as it was the second and last day of evidentiary hearings, this was his "last shot" to introduce evidence. And Nazar, referring to a tax return for Live Oak Management Corporation that he claimed to have provided to DWA during discovery and wanted to have admitted, but had failed to include in the numerous exhibits that he presented during the hearings, lamented, "[o]kay, well. This is a problem. Problematic. . .").

⁸ *In the Matter of the Application of Southern California Gas Company (U940-G) for Authority to Review its Rates Effective January 1, 1997, in its Biennial Cost Allocation Proceeding.; In the Matter of the Application of San Diego Gas & Electric Company (U 902-G) for Authority to Revise its Rates Effective*
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2. DWA Did Not Violate Any Party’s Due Process Rights by Introducing Relevant Evidence Provided by the Small Drinking Water Systems Division of the County of San Diego’s Department of Environmental Health.

DWA did not violate the due process rights of any of the parties seeking rehearing by introducing relevant evidence provided by the Small Drinking Water Systems Division of the County of San Diego’s Department of Environmental Health (“DEH”). The parties seeking rehearing essentially allege that an unlawful conspiracy exists between DWA and DEH, which regulates Live Oak Springs Water Company, because DWA subpoenaed DEH for evidence and they provided it.⁹ More specifically, the parties seeking rehearing contend that DWA’s introduction of two categories of evidence was improper: (1) testimony and documentary evidence provided by Peter Neubauer, an Environmental Health Specialist at DEH, showing Live Oak Springs Water Company’s history of non-compliance with local environmental health permitting and water quality

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January 1, 1997 in its Biennial Cost Allocation Proceeding, D.98-07-100, July 23, 1998, at pp. *10-11 (holding that where an applicant seeking rehearing “had an opportunity to fully litigate the issue in the instant proceedings . . . its due process allegation is without merit.”).

⁹ Application for Rehearing, at p. 33 (italics added) (wherein, the parties seeking rehearing argue that by accepting evidence from “named defendants in [Nazar] Najor’s civil case against the County of San Diego, DWA attorneys “[Jonathan] Knapp and [Jason] Zeller *willfully and maliciously* contaminated the proceeding.”) *See* Reporter’s Transcript, Evidentiary Hearing, January 11, 2013, I.12-08-004, Vol. 2, at p. 310:27-28 – 311:1-4 (wherein Peter Neubauer, an Environmental Health Specialist with DEH, explains that he was subpoenaed by DWA to appear and provide testimony at the evidentiary hearing). Mr. Neubauer was one of eleven individual employees of the County of San Diego that were named as defendants in a civil suit filed by Nazar. *See* Complaint for Intentional Interference with Contractual Relations, *Live Oak Holding, LLC, et al. v. County of San Diego, et al.* (Super Ct. San Diego County, 2012, No. 37-2012-00069568-CU-NP-EC), dated September 25, 2012, at ¶¶ 4-16, attached to Motion of the Division of Water and Audits to Amend the Order Instituting Investigation to Add Necessary Respondents and Correct Inaccuracies, I.12-08-004, December 13, 2012, as Exhibit F) (naming the County of San Diego, the County Board of Supervisors, and eleven individuals, including Mr. Neubauer, as defendants).

Notably, the parties seeking rehearing also allege that a broader conspiracy exists that includes not only DWA and the County of San Diego, but also Matthew Semmer, the receiver appointed in *City National Bank v. Live Oak Holding, LLC, et al.* (“Live Oak Holding Judicial Foreclosure Action”) (Super Ct. San Diego County, 2012, No. 37-2012-00065199-CU-MC-EC). Application for Rehearing, at pp. 31-32.

requirements;¹⁰ and, (2) public court records of Nazar’s 2007 guilty plea to a felony charge for violating Penal Code Section 470(d)¹¹ – prohibiting forgery – by submitting a falsified lab report to DEH, and the record of Nazar’s sentencing for the offense, which shows that the charge was ultimately reduced from a felony to a misdemeanor.¹²

The Application for Rehearing, however, fails to offer any comprehensible explanation as to why the parties seeking rehearing believe that DWA’s use of this evidence was improper.¹³ Instead, they make desperate allegations, unsupported by any citations to the substantial record in this proceeding, *e.g.*, “County defendants tainted this proceeding with misrepresentations to advance their personal interests,” DWA and its attorneys “conspire[d] with the County in their wrongful acts,” and, D.13-07-036 “was in part based on DWA evidence that has been misrepresented”¹⁴ Further, the parties seeking rehearing make the outrageous – and again, entirely unsupported – assertion that by introducing the evidence identified above, “Mr. Knapp and [Jason] Zeller *willfully and*

¹⁰ Reporter’s Transcript, Evidentiary Hearing, January 11, 2013, I.12-08-004, Vol. 2, at pp. 258:22-28 – 259:1-5; 260:11-14. *Id.* at pp. 267:27-28 – 268:1-20 (wherein Mr. Neubauer explains that he has been responsible for regulating Live Oak Springs Water Company for the past eight years, and thus, has been dealing with Nazar as the water system’s operator during that period). *See* Application for Rehearing, at p. 36 (asserting, “Mr. Knapp should not have included any testimony whatsoever from any named defendants in the State Court Case that Mr. Najor has pending against the County of San Diego.”).

¹¹ Pen Code § 470(d) (providing, that “[e]very person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery [identifying specific documents].”)

¹² Rebuttal Testimony, DWA, January 4, 2013, admitted as Exhibit 3 (referred to below as “DWA’s Rebuttal Testimony”), at pp. 8-9 (attaching Nazar’s 2007 guilty plea as Exhibit 1 and Nazar’s 2008 misdemeanor conviction as Exhibit 2).

¹³ *See* Reply Brief of the Division of Water and Audits, I.12-08-004, March 18, 2013, (referred to below as “DWA’s Reply Brief”), at pp. 19-22 (explaining why despite Nazar’s contentions to the contrary, it was appropriate for DWA to use Nazar’s 2007 guilty plea and 2008 misdemeanor conviction for impeachment in the instant proceeding.).

¹⁴ Application for Rehearing, at p. 22 (stating, “County defendants tainted this proceeding with misrepresentations to advance their personal interests”); *id.* at p. 28 (“DWA and their attorneys have chosen to conspire with the County in their wrongful acts. The Presiding Officer’s Decision was in part based on DWA evidence that has been misrepresented, therefore a receiver should not be appointed.”).

maliciously contaminated the proceeding.”¹⁵ Significantly, despite their flailing allegations of an unlawful conspiracy, the parties seeking rehearing fail to identify *any* way in which the evidence provided by DEH was either improperly introduced by DWA or inaccurate, and thus, fail to identify any wrongdoing by DWA in obtaining and introducing this evidence.¹⁶

To the contrary, the record establishes that DWA complied with all applicable requirements for introducing the evidence at issue, *i.e.*, DWA submitted this evidence in accordance with the schedule for service established by Administrative Law Judge Michael Galvin (“ALJ”) for Opening and Rebuttal Testimony, and later modified at the joint request of all parties,¹⁷ Mr. Neubauer and Mr. Knapp were cross-examined by Nazar during the evidentiary hearings held in San Diego on January 10-11, 2013 regarding this evidence,¹⁸ among other topics, and the parties seeking rehearing had a full

¹⁵ Application for Rehearing, at p. 33 (italics added).

¹⁶ See *e.g.*, *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal. 4th 503, 511 (explaining that the essence of a civil action for conspiracy is the wrongful act, not the conspiracy to harm a third person). Here, the parties seeking rehearing have failed to allege *any* wrongful act related to introduction of the evidence provided by DEH to DWA under subpoena, and thus, there can be no civil action for conspiracy.

¹⁷ *Assigned Commissioner’s Scoping Memo and Ruling*, I.12-08-004, September 25, 2012, at p. 4 (stating deadlines for service of Opening Testimony as December 21, 2012 and Rebuttal Testimony as January 4, 2013). By joint agreement of all parties, the deadline for service of Opening Testimony was extended one week, to December 28, 2012. DWA’s service of its Opening and Rebuttal Testimony complied with these deadlines. See Opening Testimony, DWA, I.12-08-004, December 28, 2012, admitted as Exhibit 2 (referred to below as “DWA’s Opening Testimony”); DWA’s Rebuttal Testimony/Exhibit 3, at pp. 8-9 (attaching Nazar’s 2007 guilty plea as Exhibit 1 and Nazar’s 2008 misdemeanor conviction as Exhibit 2).

By contrast, as the parties seeking rehearing acknowledge in the Application for Rehearing, Nazar submitted Rebuttal Testimony on behalf of Live Oak Holding, LLC on the morning of January 10, 2013, shortly before the first day of evidentiary hearings was to begin. Application for Rehearing, at p. 36; see Respondent Nazar Najor’s Declaration of Rebuttal Testimony, I.12-08-004, admitted as Exhibit 5.

¹⁸ Reporter’s Transcript, Evidentiary Hearing, January 11, 2013, I.12-08-004, Vol. 2, at pp. 284:23-28 – 286:1-7 (wherein Nazar questioned Mr. Neubauer as to whether he was biased as a result of the pending lawsuit in Superior Court); *id.* at p. 295:5-10 (wherein Nazar questioned Mr. Neubauer regarding his communications with Mr. Knapp); Reporter’s Transcript, Evidentiary Hearing, January 10, 2013, I.12-08-004, Vol. 1, at pp. 36:6-28 – 45:22 (wherein Nazar extensively cross-examined Mr. Knapp on DWA’s introduction of public court records of Nazar’s 2007 guilty plea to a felony charge for violating Penal Code Section 470(d), prohibiting forgery, by submitting a falsified lab report to DEH, and the record of Nazar’s sentencing for the offense, which shows that the charge was ultimately reduced from a felony to a

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opportunity to both brief the merits of the case and appeal the Presiding Officer's Decision of May 14, 2013. Thus, DWA complied with all applicable requirements for introducing the evidence at issue, and the parties seeking rehearing had a full opportunity to challenge the evidence by cross-examining Mr. Neubauer and Mr. Knapp for any alleged bias, and, ultimately, in briefing. Accordingly, the admission of the evidence was not procedurally improper and does not constitute a violation of due process.

B. The Application for Rehearing Fails to Comprehensibly Allege Any Other Violation of Legal Rights.

Apart from the untenable due process arguments raised by the parties seeking rehearing, as detailed and dispensed with above, the Application for Rehearing fails to comprehensibly allege any other violation of legal rights. The Application for Rehearing states that D.13-07-036 deprives each of the remaining individual respondents, *i.e.*, Lauren Najor (Lauren), Daniel Najor (Daniel), Ramsey Najor (Ramsey) and Nazar, of “rights under the Constitution of the United States including due process, equal protection, protection from laws impairing contractual obligations, compensation for the public taking of private property, eminent domain, Fifth Amendment.”¹⁹ However, the parties seeking rehearing fail to comprehensibly allege how any of these legal theories – other than their untenable due process arguments – apply here. Instead, they simply reiterate, without any supporting citations to the substantial record in this proceeding, that each of these individuals is somehow an “innocent party.”²⁰

By not providing any comprehensible explanation of, or support for, how the legal rights of these individual respondents are allegedly violated by the challenged decision

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misdemeanor).

¹⁹ Application for Rehearing, at pp. 7-9. The only other individual respondent to this proceeding, Matthew Semmer, was previously removed. See *Decision Correcting Respondents Named in this Investigation*, D. 13-03-010, March 21, 2013, at p. 5, Ordering Paragraph No. 3 (stating, “[t]he Presiding Officer’s ruling that Matthew Semmer should be removed as a respondent of this Order Instituting Investigation is affirmed.”).

²⁰ Application for Rehearing, at pp. 7-9.

under the numerous legal theories identified above, the parties seeking rehearing fail to comply with Public Utilities Code Section 1732 – which requires a party to “set forth specifically the ground or grounds on which the applicant believes the decision or order to be unlawful” – and Rule 16.1(c) – which requires that applications for rehearing “set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and [] make specific references to the record or law.”²¹ As the Commission instructs, “[s]imply identifying a legal principle or argument, without explaining why it applies in the present circumstances does not meet the requirements of section 1732.”²² The Commission cannot analyze claims in an application for rehearing where it is forced to guess how the applicant believes that the law operates.²³ Such vague assertions in an application for rehearing “may be rejected for lack of specificity.”²⁴ Accordingly, the bare identification of legal principles in the Application for Rehearing, *e.g.*, “eminent domain, Fifth Amendment,” without any comprehensible explanation of how the identified legal principles might apply here, should be rejected by the Commission for lack of specificity.

III. THE PARTIES SEEKING REHEARING ATTEMPT TO IMPROPERLY USE THE APPLICATION FOR REHEARING AS A VEHICLE FOR RELITIGATION OF DISPUTED ISSUES THAT WERE RESOLVED BY D.13-07-036.

The parties seeking rehearing attempt to improperly use the Application for Rehearing as a vehicle for relitigation of disputed issues that were resolved by

²¹ See *e.g.*, *Order Instituting Rulemaking to Implement Senate Bill No. 1488 (2004 Cal. Stats., Ch. 690 Rulemaking 05-06-040 (Sept. 22, 2004)) Relating to Confidentiality of Information*, D.09-03-046, March 27, 2009, at pp. 15-16.

²² *Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006*, D.10-07-050, issued August 2, 2010, at p. 37.

²³ D.10-07-050, at p. 37 (“Consequently, we are forced to guess how AT&T believes that law operates, and we cannot properly analyze those claims.”).

²⁴ *Order Instituting Rulemaking Regarding Policies Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues*, D.07-03-018, dated March 1, 2007, at p. 25 (citation omitted).

D.13-07-036.²⁵ As noted, the parties seeking rehearing attempt to relitigate the *facts* of this case by asserting that Daniel, Ramsey, Lauren, and Nazar are each an “innocent party,” and thus, not liable for their well-documented violations of the Public Utilities Code, among other Commission requirements.²⁶ However, it is improper to ask the Commission to “reweigh the evidence” in an Application for Rehearing.²⁷ Such a request does not identify legal error, and thus, “does not meet the purpose for an application for rehearing.”²⁸

Significantly, to the extent that the parties seeking rehearing are challenging D.13-07-036 on the ground that the decision is not supported by record evidence, such a challenge would also be unavailing. As the Commission instructs,

When parties challenge a Commission decision on the ground that the decision is not supported by record evidence, courts generally will not reweigh the evidence or exercise independent judgment to draw conclusions from the record, but instead focus on whether our conclusions are reasonably supported. Conflicts of evidence are resolved in favor of the findings of the Commission, and the fact that evidence is contradicted does not have a bearing on whether that evidence meets the substantial evidence test. Moreover, if findings are based on inferences reasonably drawn from the record, the decision is considered to be supported by ‘substantial

²⁵ See e.g., *Southern California Edison Company (U338E), Defendant*, D.13-07-047, July 25, 2013, at p. *6 (“a rehearing application shall not be used as a vehicle for relitigation.”).

²⁶ See e.g., Application for Rehearing, at pp. 7-9 (asserting, without any reference to the substantial record in this proceeding, that Daniel, Ramsey, Nazar, and Lauren are each an “innocent party” that should not be held accountable for what they allege are Elia Najor’s (“Elia”) past violations of the Public Utilities Code and other Commission requirements.); *id.* at p. 27 (bold omitted) (stating, “[a]gain, Nazar Najor, Ramsey Najor, Lauren Najor and Daniel Najor, along with Live Oak Holding, LLC, Live Oak Enterprises, LLC, and [Live Oak Springs Water Company], are not responsible for any actions, omissions or errors prior to 2007, when they took over operations as a matter of law”).

²⁷ *Application of Southern California Gas Company (U904G) for Approval of Advanced Metering Infrastructure*, D.10-11-036, dated November 19, 2010, at p. 9 (citation omitted).

²⁸ *Id.*

evidence in light of the whole record,’ and it will not be disturbed by the courts.²⁹

A. The Parties Seeking Rehearing Attempt to Improperly Relitigate Whether Live Oak Holding and the Individual Respondents Violated Public Utility Code Section 851 by Encumbering Utility Property in the Deed of Trust.

For example, the parties seeking rehearing attempt to improperly relitigate whether Live Oak Holding and the remaining individual respondents, *i.e.*, Daniel, Ramsey, Lauren, and Nazar, violated Public Utilities Code Section 851 by encumbering real property used by the public water utility without Commission authorization.³⁰

As chronicled in the *Joint Stipulations of Fact and Procedural History*, jointly filed by all of the parties in the proceeding on October 12, 2012 (“Joint Stipulations”) on July 5, 2006, Live Oak Holding, LLC (“Live Oak Holding”) executed a Business Loan Agreement with 1st Pacific Bank of California (“1st Pacific”).³¹ Pursuant to the Business Loan Agreement, 1st Pacific agreed to loan Live Oak Holding \$1,500,000 (“Loan”).³² The Loan was executed on behalf of Live Oak Holding by Daniel, Ramsey, and Nazar.³³ To secure performance of its obligations under the Loan, Live Oak Holding executed a Deed of Trust, dated July 5, 2006, for the property commonly known as “37820 Old Highway 80, Boulevard, California.”³⁴ As D.13-07-036 explains, “[t]he Deed of Trust identifies 22 [assessor parcel numbers, or APNs], five of which are identical to the APNs

²⁹ *Application of Calaveras Telephone Company (U1004C), Cal-Ore Telephone Co. (U1006C), Ducor Telephone Company (U1007C), Happy Valley Telephone Company (U1010C), Hornitos Telephone Company (U1011C), Kerman Telephone Co. (U1012C), The Ponderosa Telephone Co. (U1014C), Sierra Telephone Company, Inc. (U1016C), The Siskiyou Telephone Company (U1017C), Volcano Telephone Company (U1019C), and Winterhaven Telephone Company (U1021C) for Ratemaking Determination regarding Dissolution of Rural Telephone Bank, D.10-10-036, dated October 28, 2010, at pp. 16-17 (citations omitted).*

³⁰ All further statutory references are to the Public Utilities Code, unless otherwise specified.

³¹ *Joint Stipulations of Fact and Procedural History, I.12-08-004, October 12, 2012, at ¶ 4.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* at ¶ 6. *See D.13-07-036, at p. 29, Finding of Fact No. 35 (stating same).*

identified by [Live Oak Springs Water Company] as having public water utility property and one of which is identical to the APN identified in D.92-09-001 as being part of the [Live Oak Springs Water Company] water system.”³⁵ After hearing and weighing the evidence presented by all parties in this proceeding, the Commission determined that the real property used as collateral in the Deed of Trust “included real property known to have been previously owned by [Live Oak Springs Water Company] and real property used for public utility purposes”³⁶ This determination is supported by the extensive evidentiary record in this proceeding.³⁷

However, because Live Oak Spring Water Company never completed a land survey of its public utility property, as the Commission had required in D.92-09-001, the Commission recognized that such a survey was needed in order to definitively identify all of the real property used by the public water utility.³⁸ Thus, in D.13-07-036 the

³⁵ D.13-07-036, at p. 19; *id.* at p. 29, Finding of Fact No. 36. *See* Joint Stipulations, at ¶ 6 (identifying each of the twenty-two assessor parcel numbers pledged as collateral in the Deed of Trust).

³⁶ D.13-07-036, at p. 31, Finding of Fact No. 46 (stating, “[t]he collateralization of the Loan included 22 APNs, some of which included real property known to have been previously owned by [Live Oak Springs Water Company] and real property used for public utility purposes that were comingled with other business interests without Commission authorization.”).

³⁷ *See e.g.*, DWA’s Opening Testimony/Exhibit 2, at pp. 10-11; Motion of the Division of Water and Audits to Amend the Order Instituting Investigation to Add Necessary Respondents and Correct Inaccuracies, I.12-08-004, December 13, 2012, at pp. 4-5; DWA’s Rebuttal Testimony/Exhibit 3, at pp. 6-7; DWA’s Opening Brief, at pp. 18-35 (establishing that Live Oak Holding owned and controlled real property in July of 2006 when the Loan was executed); *id.* at pp. 35-44 (establishing the Live Oak Holding failed to substantiate its contention that the public water utility has not historically owned real property, but instead relied on easement rights to operate); *id.* at pp. 45-46 (establishing that pursuant to Section 2701, Live Oak Holding was public water utility regulated by the Commission when the Loan was executed in July of 2006 because, among other reasons, it owned real property used by the utility’s water system); DWA’s Reply Brief, at pp. 12-18 (establishing that the *Telephonic Ruling Granting Plaintiff Blackburne Mortgage Co., Inc.’s Motion for Summary Judgment*, dated January 21, 2004, No. GIC807556, attached to Respondent Nazar Najor’s Declaration of Rebuttal Testimony/Exhibit 5, as Exhibit 1, which DWA refers to as the “Summary Judgment Order,” and the parties seeking rehearing refer to as the “Quiet Title Action,” does not show that the public water utility never owned real property); City National Bank’s Response to Respondent Nazar Najor’s Brief, I.12-08-004, March 18, 2013, at p. 2 (concurring in DWA’s conclusion that Live Oak Holding failed to substantiate its contention that the public water utility has relied historically on easement rights to operate). In addition, this topic was extensively discussed during both days of the evidentiary hearings.

³⁸ *See* D.13-07-036, at p. 27, Finding of Fact Nos. 7-8 (noting that although D.92-09-001 required Live Oak Springs Water Company to prepare and record such a land survey, the utility never completed one).

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Commission ordered that the Loan “is void solely with regard to property necessary for the operation of the Live Oak Springs Water Company (Live Oak) to be determined by a receiver appointed by the Superior Court of San Diego and identified in a survey to be completed by a licensed land surveyor.”³⁹

Accordingly, pursuant to Section 2107, Live Oak Holding is liable for violating Section 851.⁴⁰ Live Oak Holding’s officers, agents, and employees are also liable pursuant to Section 2110.⁴¹ As explained above, the evidence, specifically Live Oak Holding’s tax records, establishes that the company had three partners in 2006: Daniel, Ramsey, and Lauren.⁴² In addition, Nazar was either a part owner or employee of Live Oak Holding in July of 2006.⁴³ Therefore, Live Oak Holding and its responsible officers and employees, *i.e.*, Daniel, Ramsey, Lauren, and Nazar, are all liable for violating Section 851 by encumbering utility property in the Deed of Trust. Notably, although in D.13-07-036 the Commission did not assess penalties “at this time,” it did conclude that “[t]he record regarding the severity of the offenses, conduct of the utility, and totality of the circumstances would support a substantial penalty.”⁴⁴

The request by the parties seeking rehearing that the Commission reweigh the evidence which supports its determination that utility property was encumbered in the Deed of Trust without Commission authorization is procedurally improper, and thus,

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See Reporter’s Transcript, Evidentiary Hearing, January 11, 2013, I.12-08-004, Vol. 2, at pp. 181:23-28 – 182:1-20 (wherein Nazar acknowledges that Live Oak Springs Water Company never completed the land survey required by D.92-09-001).

³⁹ D.13-07-036, at p. 33, Ordering Paragraph No. 5.

⁴⁰ *See* DWA’s Opening Testimony/Exhibit 2, at pp. 12-14.

⁴¹ *Id.*

⁴² DWA’s Opening Testimony/Exhibit 2, at Exhibit 7 (2006 tax return for Live Oak Holding).

⁴³ DWA’s Opening Testimony/Exhibit 2, at p. 11 (explaining that although Nazar signed the Loan as an owner of Live Oak Holding, he was not identified as one of the partners of the company in its 2006 tax return).

⁴⁴ D.13-07-036, at p. 25.

unavailing.⁴⁵ As shown, the Commission’s ultimate determination in this matter is supported by “substantial evidence in light of the whole record,” and thus, this determination cannot be disturbed by a reviewing court.⁴⁶

B. The Parties Seeking Rehearing Attempt to Improperly Relitigate Whether Partial Ownership of the Public Water Utility was Transferred from Lauren to Nazar Without Commission Authorization Between 2008 and 2009.

Similarly, the parties seeking rehearing attempt to relitigate the Commission’s determination that partial ownership of the public water utility was improperly transferred from Lauren to Nazar without Commission authorization between 2008 and 2009. The Application for Rehearing states that Lauren “still owns her share of the water company”⁴⁷ This account directly contradicts the Commission’s factual findings in D.13-07-036.⁴⁸ More specifically, in D.13-07-036, the Commission stated, “[t]he most

⁴⁵ Although the parties seeking rehearing do not expressly request that the Commission reweigh the evidence supporting its determination, they dispute and challenge the Commission’s relevant factual findings. See *e.g.*, Application for Rehearing, at p. 23 (bold omitted) (italics added) (wherein the parties seeking rehearing challenge Finding of Fact No. 35 in D.13-07-036, although incorrectly identify it as “Finding #45,” by asserting, “[a]gain, all of the corporate information for the company is in good standing according to the law. The documents speak for themselves. *The address is the same, because the water company rents a small, separate office building, on the same property.*”); *id.* at p. 31 (italics added) (stating, “Jonathan Knapp did not perform due diligence regarding water company ownership of water rights. The first use of water is the right for public use. Additionally, the land survey and recording of property results in the San Diego County’s Recorder’s office, did not take place because there was no purchase of land ever made. *Land was never purchased by Elia Najor and therefore, was never recorded for the utility.*”); *id.* at p. 27 (bold omitted) (italics added) (stating, “[a]s Nazar Najor testified, [Live Oak Springs Water Company] *has historically asserted the water rights to the property, without actual land ownership, for over 80 years. This is an undisputed fact.* However, that is the way it has operated long before the Najor’s [sic] arrived on the property. Again, Nazar Najor, Ramsey Najor, Lauren Najor and Daniel Najor, along with Live Oak Holding, LLC, Live Oak Enterprises, LLC, and [Live Oak Springs Water Company], *are not responsible for any actions, omissions or errors prior to 2007, when they took over operations as a matter of law*”). Of course, despite frequent, incorrect references to purported “undisputed fact[s]” in the Application for Rehearing, all of the referenced *facts* were the subject of intense debate during the proceeding.

⁴⁶ D.10-10-036, at pp. 16-17 (citations omitted) (internal quotation omitted).

⁴⁷ Application for Rehearing, at p. 17.

⁴⁸ D.13-07-036, at pp. 10-11 (citation omitted) (stating, “[t]he most recently known change in ownership of Live Oak Enterprises took place in 2008 when Nazar Najor acquired Lauren Najor’s (wife of Nazar) partnership share of Live Oak Enterprises, a violation of Section 854(a)”, and explaining that the tax records for Live Oak Holding identify Daniel, Ramsey, and Lauren as the partners of the company in

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recently known change in ownership of Live Oak Enterprises took place in 2008 when Nazar Najor acquired Lauren Najor’s (wife of Nazar) partnership share of Live Oak Enterprises,” in violation of Section 854(a).⁴⁹ In short, the Commission’s factual findings are amply supported by the record.⁵⁰

The request by the parties seeking rehearing that the Commission reweigh the evidence which supports its determination that partial ownership of the public water utility was transferred from Lauren to Nazar between 2008 and 2009 without Commission authorization is procedurally improper, and thus, unavailing.⁵¹ As the evidentiary record amply demonstrates, the Commission’s ultimate determination in this

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2006, yet the tax records for 2008-2011 identify Daniel, Ramsey, and Nazar as the company’s partners, and omit any reference to Lauren); *id.* at p. 27, Finding of Fact No. 11 (“Live Oak Holding’s federal tax returns identified a change in the ownership of Live Oak Holding, doing business as Live Oak Enterprises in California in 2008.”).

⁴⁹ D.13-07-036, at p. 10.

⁵⁰ See *e.g.*, DWA’s Opening Testimony/Exhibit 2, at pp. 27-28 (explaining, among other things, that tax records for Live Oak Holding identify Ramsey, Daniel and Lauren as a partners/member managers of the company in 2006, yet the company’s tax records for 2008–2011 omit any reference to Lauren, and instead only identify Ramsey, Daniel, and Nazar as partners/member managers.). See DWA’s Opening Brief, at pp. 59-61 (establishing that the nonsensical explanation that Lauren still owns a share of the “water company” even though she transferred her share of ownership in Live Oak Holding, registered to do business as Live Oak Enterprises, LLC, to Nazar between 2008 and 2009, is not only contradicted by the evidentiary record, but also contradicts Nazar’s own testimony during the evidentiary hearings, in which he acknowledged that the public water utility, or “water company,” and Live Oak Holding and Live Oak Enterprises, LLC are all the same legal entity.); see Reporter’s Transcript, Evidentiary Hearing, January 11, 2013, I.12-08-004, Vol. 2, at pp. 249:19-28 –250:1-11 (wherein Nazar acknowledges that the water company and Live Oak Holding, LLC are the same legal entity). See also City National Bank’s Response to Respondent Nazar Najor’s Brief, I.12-08-004, March 18, 2013, at p. 2 (italics added) (stating, “Live Oak Holding, LLC currently owns the real property referenced in the Deed of Trust. *Live Oak Holding, LLC and the water company are currently the same legal entity.* Thus, the water company currently owns the real property referenced in the Deed of Trust.”).

⁵¹ Although the parties seeking rehearing do not expressly request that the Commission reweigh the evidence supporting its determination, they dispute and challenge the evidentiary support for the Commission’s relevant factual findings. See *e.g.*, Application for Rehearing, at p. 17 (asserting, “[Lauren] never requested a change, sold or transferred her portion of the asset to any person. Nazar Najor did become a member of the Live Oak Enterprises, LLC. However, Lauren Najor as a matter of law, did not remove herself from ownership of the Public Utility. . . . She is still one of the owners of the utility. She never requested a change in ownership and there is no evidence that she did.”).

matter is supported by “substantial evidence in light of the whole record,” and thus, this determination cannot be disturbed by a reviewing court.⁵²

C. The Parties Seeking Rehearing Attempt to Improperly Relitigate Whether Nazar was the Operator of the Public Water Utility During Time Periods Relevant to the Commission’s Investigation.

The parties seeking rehearing attempt to improperly relitigate whether Nazar was the operator of the public water utility during time periods relevant to the Commission’s investigation. The Application for Rehearing states,

[Nazar] had limited duties from 1984, including repairs to the infrastructure of [Live Oak Springs Management Company]. He assumed full responsibility of management of the [Live Oak Springs Management Company] in 2007, when his father could no longer assume responsibility. . . . Nazar Najor did not participate except in a limited capacity, in the business of the [Live Oak Springs Water Company], under Elia Najor or the Krauths and there was no evidence which would substantiate a theory that he did.⁵³

Nazar Najor has managed part but not all of [Live Oak Springs Water Company] as far back as 1984. He testified to the following in the proceeding that Elia Najor had his own attorneys, bookkeepers and was not responsible for the purchase of the Property and had nothing to do with those aspects of the company.⁵⁴

However, in D.13-07-036, the Commission found that Nazar has managed the public water utility since 1984.⁵⁵ This finding is amply supported by the record.⁵⁶

⁵² D.10-10-036, at pp. 16-17 (citations omitted) (internal quotation omitted).

⁵³ Application for Rehearing, at p. 8.

⁵⁴ *Id.* at p. 19 (underline in original) (bold omitted).

⁵⁵ D.13-07-036, at p. 26, Finding of Fact No. 4.

⁵⁶ See *e.g.*, Joint Stipulations, at ¶ 12 (explaining that D.08-09-008, which approved transfer of the public water utility from Elia Najor to Daniel, Ramsey and Lauren, referenced Nazar’s involvement as follows: “Elia Najor’s other son, Nazar, who had managed the water utility since 1984, had been retained by Live Oak Enterprises to continue on in that capacity.”); *see also* D.08-09-008, at p. 2 (wherein the Commission stated, “Nazar Najor, the manager of the utility since 1984 has been retained and will continue as manager (continued on next page)

In addition, as further evidence of Nazar’s long-term involvement with the public water utility, D.13-07-036 cites a letter, filed on February 10, 1993, in which Nazar accepts the Commission’s decision in D.92-09-001, which approved the 1982 sale of the public water utility to Elia Najor, and identifies Elia Najor, Ramsey and himself as equal partners in the utility.⁵⁷ Again, this finding is amply supported by the record.⁵⁸ Notably, although the parties seeking rehearing incorrectly state that the February 10, 1993 letter “was not disclosed in the hearing,”⁵⁹ DWA extensively cross-examined Nazar regarding the letter.⁶⁰ Significantly, during DWA’s cross-examination of Nazar regarding the letter, he attempted to explain away a previous misrepresentation, *i.e.*, that he had not been involved “at all” in interacting with the Commission regarding A.90-10-058, by stating that his managerial responsibilities had changed by 1992, when the Commission’s decision in D.92-09-001 was issued.

Q Okay. So when you told me a moment ago that you weren’t involved with this application at all, that would be incorrect?

A In 1990 I wasn’t involved, but this came in 1992.

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of the utility.”); DWA’s Opening Testimony/Exhibit 2, at p. 11 (citing the application submitted by Elia Najor to obtain Commission approval for the prior 1982 sale of the public water utility, Application (“A.”) 90-10-058, attached to DWA’s Opening Testimony as Exhibit 20, at p. 3 (explaining that in 1990, when A.90-10-058 was filed, Nazar had operated the public water utility for six years, *i.e.*, since 1984.)); DWA’s Opening Testimony/Exhibit 2, at p. 11 (citing the 2005 and 2006 annual reports submitted to the Commission by Live Oak Springs Water Company, attached to DWA’s Opening Testimony as Exhibits 21 and 13, respectively) (noting that each of these annual reports identifies Nazar as the “[p]erson responsible for operations and services” at page 4, paragraph 3)); Reporter’s Transcript, Evidentiary Hearing, January 10, 2013, I.12-08-004, Vol. 1, at p. 131:13-27 (wherein Nazar testifies that he managed the public water utility since 1984).

⁵⁷ D.13-07-036, at p. 28, Finding of Fact No. 22.

⁵⁸ See Motion of the Division of Water and Audits to Amend the Order Instituting Investigation to Add Necessary Respondents and Correct Inaccuracies, I.12-08-004, December 13, 2012, at p. 11 (attaching February 10, 1993 letter as Exhibit J).

⁵⁹ Application for Rehearing, at p. 22.

⁶⁰ See also Reporter’s Transcript, Evidentiary Hearing, January 10, 2013, I.12-08-004, Vol. 1, at pp. 131:13-28 – 136:28 (wherein DWA cross-examined Nazar regarding the February 10, 1993 letter).

Q So that's what you intended to say. You just intended to mean in 1990 you weren't involved?

A Right.

Q Some period of time later you might have been involved?

A I was involved later.

Q Like in '92 two years later on the same application?

A Yeah. *Because I was then managing and starting to do the books and records and sending in the reports to the PUC.*

Q Okay. *So you were functioning in a different capacity as a manager in 1992 than you were in '84 –*

A Yes.

Q – through 1991?

A Because I was a partner in the – in another company with my dad. So I thought the two were together.

Q That's your position?

A Yes.⁶¹

Thus, Nazar stated that by 1992 he was responsible for managing the books, record keeping and filing required documents with the Commission on behalf of the public water utility. Of course, this testimony directly contradicts the assertion in the Application for Rehearing that prior to 2007 Nazar did not have significant managerial responsibilities for the public water utility, such as bookkeeping. Suffice it to say, the record in this proceeding is replete with similarly contradictory statements and misrepresentations by Nazar and Live Oak Holding.⁶²

⁶¹ Reporter's Transcript, Evidentiary Hearing, January 10, 2013, I.12-08-004, Vol. 1, at pp. 135:28 – 136:26 (italics added).

⁶² See *e.g.*, DWA's Opening Testimony/Exhibit 2, at pp. 31-35 (establishing that Nazar violated Rule 1.1 by falsely representing that the public water utility does not currently own any real property.). See also City National Bank's Response to Respondent Nazar Najor's Brief, I.12-08-004, March 18, 2013, at p. 2 (italics added) (stating, "Live Oak Holding, LLC currently owns the real property referenced in the Deed of Trust. *Live Oak Holding, LLC and the water company are currently the same legal entity.* Thus, the water company currently owns the real property referenced in the Deed of Trust."). It is worth noting that the parties seeking rehearing continue to cling to this blatant misrepresentation, stating, "[t]here is no real property that [Live Oak Springs Water Company] presently owns." Application for Rehearing, at p. 5.

The request by the parties seeking rehearing that the Commission reweigh the evidence which supports its determination that Nazar has managed the public water utility since 1984 is procedurally improper, and thus, unavailing.⁶³ As shown, the Commission’s ultimate determination in this matter is supported by “substantial evidence in light of the whole record,” and thus, this determination cannot be disturbed by a reviewing court.⁶⁴

IV. THE APPLICATION FOR REHEARING CONCERNS MATTERS THAT ARE BEYOND THE SCOPE OF THIS PROCEEDING AND WHICH ARE UNSUBSTANTIATED BY THE EVIDENTIARY RECORD IN THIS CASE.

The application for rehearing concerns matters that are beyond the scope of this proceeding and which are unsupported by the evidentiary record in this case.

A. The Issue of Live Oak Holding’s Unauthorized Water Sales to Third Parties is Beyond the Scope of this Proceeding.

More specifically, as explained in detail in DWA’s Reply Brief, the issue of the public water utility’s authorized water sales to third parties is beyond the scope of this proceeding.⁶⁵ Further, ALJ Galvin recognized that the water sales issue is beyond the scope of the proceeding during the evidentiary hearing, and therefore, curtailed questioning and testimony regarding the subject.⁶⁶ Accordingly, D.13-07-036 does not

⁶³ Although the parties seeking rehearing do not expressly request that the Commission reweigh the evidence supporting its determination, as noted, they challenge the Commission’s relevant factual findings.

⁶⁴ D.10-10-036, at pp. 16-17 (citations omitted) (internal quotation omitted).

⁶⁵ DWA’s Reply Brief, at pp. 23-26 (explaining that DWA has consistently stated that the issue of the public water utility’s unauthorized water sales is beyond the scope of this proceeding and that ALJ Galvin concurred with this understanding of the scope of the proceeding during the evidentiary hearing); *see also* DWA’s Opening Brief, at p. 9 (italics added) (explaining, “DWA’s recommendations regarding applicable violations of the Public Utilities Code and/or other Commission requirements *will be included in a subsequent report or citation to be issued outside of this proceeding.*”). *See also* DWA’s Opening Testimony, at p. 36 (explaining that DWA’s recommendations to the Commission regarding applicable violations of the Public Utilities Code and/or other Commission requirements regarding the public water utility’s unauthorized water sales “will be included in a subsequent report issued by DWA in connection with the company’s advice letter filing [seeking authorization for water sales to third parties]”).

⁶⁶ See *e.g.*, Reporter’s Transcript, Evidentiary Hearing, January 11, 2013, I.12-08-004, Vol. 2, at pp.

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reference the water sales issue. Thus, the water sales issue is not used to support the Commission's decision in any way, and more specifically, has no bearing on the Commission's determination that the appointment of a receiver is necessary.

Nonetheless, the parties seeking rehearing claim that they were prejudiced by not being able to extensively cross-examine Mr. Neubauer regarding substantive issues pertaining to the water sales issue, such as whether a source capacity test that DEH has required the public water utility to perform in order to demonstrate that its third party water sales will not impair the utility's ability to serve its existing customers/ratepayers is the most economical testing method available.⁶⁷ In short, such a substantive inquiry pertaining to various methods of hydrogeological testing is entirely beyond the scope of the proceeding, as ALJ Galvin properly concluded.⁶⁸

B. The Application for Rehearing Concerns Matters which are Unsubstantiated by the Evidentiary Record.

The application for rehearing concerns matters which are unsubstantiated by the evidentiary record.

1. The Public Water Utility's Legal Disputes with the County of San Diego are Unsubstantiated by the Evidentiary Record.

In short, again, the public water utility's legal disputes with the County of San Diego, and its allegations that employees and/or counsel for DEH committed "professional and ethical misconduct" by providing evidence in response to DWA's

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299:22-28 – 300:1-17.

⁶⁷ Application for Rehearing, at p. 25. See DWA's Reply Brief, at pp. 23-26 (providing complete explanation of Live Oak Holding's cross-examination of Mr. Neubauer during the evidentiary hearing, and ALJ Galvin's rulings regarding the proper scope of the proceeding).

⁶⁸ As the water sales issue is beyond the scope of the proceeding, DWA has not responded to the other allegations of legal error contained in the Application for Rehearing pertaining to the water sales issue, e.g., their incomprehensible argument pertaining to double jeopardy. See Application for Rehearing, at pp. 25-26.

subpoena, are unsubstantiated by the evidentiary record, and thus, will not be responded to in detail here.⁶⁹

2. No Documentary Evidence of any DWA Audit of the Public Water Utility Was Introduced in this Proceeding.

No documentary evidence of any prior DWA audit of the public water utility was introduced in this proceeding. The Application for Rehearing asserts, “Nazar Najor testified about the audit by the PUC. It is in evidence.”⁷⁰ While it is correct that Nazar testified during the evidentiary hearing about a prior DWA audit of the public water utility, his testimony was neither supported nor verified, by any documentary evidence.⁷¹ As noted, pursuant to Rule 10.1 the parties seeking rehearing had a full opportunity to obtain relevant discovery from any other party in the proceeding, including DWA. Nonetheless, the parties seeking rehearing did not request *any* discovery from DWA.

The Commission considered Nazar’s testimony regarding the prior DWA audit along with all of the other evidence introduced in this proceeding. That the Commission appears to have found his testimony unpersuasive is not surprising given Nazar’s overall lack of credibility. Significantly, “[t]he Commission need not explain in minute detail why it credits some evidence and discredits others.”⁷² Further, the fact that the Commission does not “discuss every piece of evidence set forth in the record is

⁶⁹ Application for Rehearing, at p. 33 (wherein the parties seeking rehearing allege, “San Diego County Counsel Rodney Lorang, and others at the County, Environmental Health, are named defendants in the Najor’s State Case against the County. They committed professional and ethical misconduct by interfering in the PUC investigation.”). See DWA Reply Brief, at pp. 26-29 (explaining why the public water utility’s legal disputes are unsubstantiated by the evidentiary record).

⁷⁰ Application for Rehearing, at p. 19.

⁷¹ See *e.g.*, Reporter’s Transcript, Evidentiary Hearing, January 10, 2013, I.12-08-004, Vol. 1, at pp. 75:18-22 (wherein Nazar acknowledges that he has no documentation regarding the audit that supports or verifies his description of DWA’s purported conclusions).

⁷² D.10-11-036, at p. 9 (citation omitted).

irrelevant” to whether a Commission decision is supported by substantial evidence in light of the whole record.⁷³

3. There is No Evidence of the Public Water Utility’s “Outstanding” Water Quality Reports in the Record.

Contrary to the assertions of the parties seeking rehearing, there is no evidence of the public water utility’s “outstanding” water quality reports in the record.⁷⁴ The Application for Rehearing indicates that since 2007, “[t]here have been no water quality issues and the company and its management have had outstanding water quality reports.”⁷⁵ Of course, like the vast majority of all of the statements in the Application for Rehearing, this statement is not supported by any citation to the substantial evidentiary record in this proceeding. More importantly, there is no evidence in the record that substantiates such a statement.

4. There is No Evidence of Any Federal Bankruptcy Filings in the Record.

Although the parties seeking rehearing appear to reference a federal bankruptcy case number in the Application for Rehearing that purports to relate to “Elia Najor’s Chapter 7 Bankruptcy,” no records of any federal bankruptcy proceeding are in the evidentiary record.⁷⁶

⁷³ *In the Matter of the Application of Southern California Gas Company (U940-G) for Authority to Review its Rates Effective January 1, 1997, in its Biennial Cost Allocation Proceeding; In the Matter of the Application of San Diego Gas & Electric Company (U 902-G) for Authority to Revise its Rates Effective January 1, 1997 in its Biennial Cost Allocation Proceeding*, D.00-07-023, July 6, 2000, at p. 9.

⁷⁴ Application for Rehearing, at p. 22.

⁷⁵ *Id.*

⁷⁶ *Id.* at p. 12 (wherein the Application for Rehearing cites “Federal Bankruptcy Case Number 3:88-bk-08727.”).

V. THE APPLICATION FOR REHEARING APPEARS TO IMPROPERLY REQUEST THAT THE COMMISSION REVERSE A FINAL AND UNAPPEALABLE COMMISSION DECISION, D.13-03-010.

The application for rehearing appears to improperly request that the Commission reverse a final and unappealable Commission decision, D.13-03-010.⁷⁷ More specifically, the Application for Rehearing states,

[Live Oak Springs Water Company] does not agree that that receiver Matthew Semmer should have be [sic] removed as a respondent. It was his illegal action of seizing the water company funds, \$4,500 of which he still has in his possession, which caused the opening of the OII. The permit fee would have been paid if the receiver had returned the company funds. Although Mr. Semmer testified that there were funds available to pay the fee, he did not account for outstanding expenses of the company or payroll. *The decision to remove Mr. Semmer as a respondent and not hold him accountable for the unlawful possession of public utility funds is in violation of PUC Code 855.*⁷⁸

At all material times, DWA staff, attorneys and County staff and the *receiver* directly and indirectly shared a common purpose to interfere with Respondents' lawful entitlement to a fair investigation and evidentiary hearing. . . . *If the Presiding Officer's Decision is upheld*, it will cause irreparable harm to the Najors and the water company.⁷⁹

Thus, the Application for Rehearing appears to request that the Commission reverse the determination in D.13-03-010 to remove Mr. Semmer as a respondent from the proceeding.⁸⁰ However, no party applied for a rehearing of D.13-03-010 within 30 days

⁷⁷ *Decision Correcting Respondents Named in this Investigation*, D.13-03-010, I.12-08-004, March 21, 2013.

⁷⁸ Application for Rehearing, at p. 39 (italics added).

⁷⁹ *Id.* at p. 32 (italics added).

⁸⁰ D.13-03-010, at p. 5, Ordering Paragraph No. 3 (affirming Presiding Officer's ruling during the evidentiary hearing that Mr. Semmer should be removed as a respondent from the proceeding).

after the date upon which it was issued, March 21, 2013. Thus, pursuant to Public Utilities Code section 1731(b)(1), D.13-03-010 is final and unappealable.⁸¹

VI. THE REQUEST FOR A STAY OF THE APPOINTMENT OF A RECEIVER SHOULD BE DENIED BECAUSE IT IS HIGHLY UNLIKELY THAT THE PARTIES SEEKING REHEARING WILL PREVAIL ON THE MERITS.

The request for a stay of the appointment of a receiver in the Application for Rehearing should be denied because it is highly unlikely that the parties seeking rehearing will prevail on the merits. The parties seeking rehearing request a stay of the appointment of a receiver.⁸² “Two factors are relevant in determining whether a stay request is meritorious: (1) whether the moving party will suffer imminent irreparable harm if the stay is denied; and (2) whether the moving party is likely to prevail on the merits.”⁸³ Of course, if the Commission determines that the allegations of legal error in an Application for Rehearing lack merit, then it summarily denies any associated request for a stay of the challenged Commission decision.⁸⁴ Here, as shown above in Section II, the parties seeking rehearing have failed to identify any legal error in D.13-07-036. Thus, it is highly unlikely, and effectively impossible, for them to prevail on the merits.

In accordance with the Commission’s directive in D.13-07-036 to “immediately” petition the Superior Court of San Diego County for the appointment of a receiver to assume possession and operation of the public water utility, and pursuant to Section

⁸¹ Pub. Util. Code § 1731(b)(1) (providing, “[n]o cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property.”).

⁸² Application for Rehearing, at p. 40.

⁸³ *Applications for Rehearing of Decision 01-11-048 Approving Water Management Program Plan of Valencia Water Company by Angeles Chapter of the Sierra Club, et al., and Ventura County, and Request for Oral Argument and Request for Stay by Angeles Chapter of the Sierra Club, et al.*, D.02-04-002, dated April 4, 2002, at pp. 15-16.

⁸⁴ *Id.* at p. 16 (“Given the conclusion that the allegations of legal error in Sierra Club’s application for rehearing lack merit, the request for a stay is denied.”).

1735, the Commission’s Legal Division has the authority to file a petition in Superior Court for the appointment of a receiver during the pendency of the Application for Rehearing.⁸⁵ However, in order to avoid potential argument in Superior Court regarding the requested stay, DWA respectfully requests that the Commission issued an interim order on an expedited basis denying the request for a stay.

VII. CONCLUSION

As shown, the Application for Rehearing fails to identify any legal error in D.13-07-036. Instead, by in large, it reflects an improper attempt by the parties seeking rehearing to relitigate contested issues that have already been resolved by the Commission, and another disingenuous ploy to divert attention from the issues in controversy with a lot of noise regarding matters that are beyond the scope of the proceeding and which are entirely unsubstantiated by the evidence.⁸⁶ In short, the parties seeking rehearing have made one last ditch effort to obfuscate the facts of this case in the minds of the Commission’s decisionmakers by throwing spaghetti against the wall to see if they can get anything to stick. Instead, all they’ve managed to do is make a big mess, which others are obligated to clean up.

Clichés aside, the continuing, egregious misrepresentations and calculated efforts to mislead the Commission by Live Oak Holding, and, specifically, Nazar Najor, have, to date, resulted in an incredible waste of limited government resources and underscore the need for the appointment of a receiver. Thus, DWA respectfully asks that the

⁸⁵ D.13-07-036, at p. 32, Ordering Paragraph No. 3. *See* Pub. Util. Code § 1735 (italics added) (“*An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs.*”).

⁸⁶ *See* DWA’s Reply Brief, at 2 (noting, “[i]n short, Live Oak Holding’s Opening Brief represents yet another disingenuous effort by the company to obfuscate the facts of this case with misrepresented, inaccurate, and ultimately, irrelevant information.”)

Commission expedite its issuance of an interim order denying the request of the parties seeking rehearing to stay the appointment of a receiver over the public water utility.

Respectfully submitted,

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