



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).)

**REPLY 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 August 23, 2013, the National Consumer Law Center (“NCLC”) and The Utility Reform Network (“TURN”) (collectively, “Joint Consumers”), along with eight other parties, submitted Opening Comments in this proceeding.¹ The different parties raised numerous and various issues. Joint Consumers now submit their reply.

II. REPLY COMMENTS ON THE DRAFT REPORT

A. The Commission Should Not Delay in Addressing Low Income Affordability

Joint Consumers note that, with perhaps the exception of NRDC and Mr. Young, there appears to be a general sense of reluctance among the other commenters to move forward with many of the recommendations made in the Draft Staff Report. While Joint Consumers generally agree with the other parties that the Draft Report requires modification, it is frustrating for Joint Consumers who, until now, believed there to be a general willingness among the participants to undertake the efforts in this proceeding to improve affordability of California water utility customers’ bills. Joint Consumers therefore have participated in good faith by preparing comments throughout this proceeding and by actively participating in the all-day workshops.

The opening comments on the Draft Report correctly identify that a number of important changes must be made to properly reflect the record in this case regarding the workshop discussion and recommendations. However, many of the parties’ recommendations and

¹ See Comments of the National Consumer Law Center and The Utility Reform Network on Draft Staff Report on Balanced Rate Rulemaking (Joint Consumer DR Comments); California-American Water Company’s Comments on Draft Report on Balanced Rate Rulemaking (CAWC DR Comments); Comments of California Water Service Company (U-60-W) on July 12, 2013 Draft Staff Report (Cal Water DR Comments); City of Visalia Response to Draft Report on Balance Rate Rulemaking (Visalia DR Comments); Comments of the Division of Ratepayer Advocates on the Division of Water and Audits Report on Balanced Rate Rulemaking (DRA DR Comments); Opening Comments of Golden State Water Company (U133W) on Division of Water and Audits Draft Report on Balance Rate Rulemaking (GSWC DR Comments); Comments of the Natural Resources Defense Council on the Draft Workshop Report on Balanced Rate Rulemaking (NRDC DR Comments); Opening Comments of San Gabriel Valley water Company (U337W) in Responses to Draft Staff Report (San Gabriel DR Comments); Comments of Draft DWA Report – Jeffrey Young (Young DR Comments).

comments appear to try to limit or emasculate certain aspects of the Report. For example, the utilities believe that adding an affordability mechanism that would change the low income rate assistance programs should take place not the instant proceeding but in a multi-utility proceeding.² Because examining low income rate assistance programs is central to this docket on the issue of increasing affordability to water customers, this recommendation would gut a major and necessary issue from this affordability proceeding.

There are many more examples of attempts to limit the impact of this proceeding. California American Water Company (“CAWC”) repeatedly urges that the Commission forgo any mandates (or even guidance) and urges the Commission to leave the issue of affordability and the problem of service to high cost areas entirely to utility discretion.³ Adoption of CAWC’s recommendation would result in making the work in this docket almost worthless because it simply preserves the status quo. Similarly, DRA emphasizes that the purpose of the docket is “quite limited” and that many of the Report’s recommendations would create new burdens without corresponding benefit. While DRA promotes the idea of a “guidance document,” DRA generally argues that the recommendations of the Draft Report should not be allowed to go forward, and states that the utilities’ GRCs should instead be the primary forum to discuss the issues from this proceeding.⁴ San Gabriel Water states that it will not undertake any mitigation beyond what it is already doing for low-income assistance.⁵ The utility also states that there is no need for subsidization between its districts and that the company “will not report any districts with high cost issues requiring mitigation over and above what the company is already doing to address affordability through its low-income rate assistance program ” due to what it asserts are

² See, e.g., GSWC at 6, 10-11; CAWC DR Comments at 2.

³ See CAWC DR Comments at 2.

⁴ DRA DR Comments at 1, 9.

⁵ San Gabriel DR Comments at 3.

unique circumstances.⁶ In taking issue with the statements in the Report regarding certain billing mechanisms, Golden State Water Company (“GSWC”) states that the Draft Report should be modified to clarify that “water utilities are not in a position to offer financial assistance to [their] customers.”⁷ Finally, the utilities state that to address many of the issues in the Report, especially issues regarding the rate assistance programs, rate design, high cost fund and billing mechanisms, would be beyond the scope of this proceeding and should remain in the GRC.⁸ Not surprisingly, the utilities suggest that, despite the present opportunity for comment and reply comments and an extended comment period proposed by the utilities themselves, there should be yet another meeting to discuss the Draft Report.⁹ This is an additional and unnecessary step that will simply serve to delay a resolution in this proceeding. These are just some of the examples of how the comments attempt to minimize the Draft Report and the resulting impact of this docket. The Commission should recognize these as attempts to delay the instant proceeding by participants who are reluctant to change the status quo and subject themselves to new Commission requirements.

⁶ San Gabriel DR Comments at 3. Joint Consumers are unclear regarding San Gabriel’s discussion of why it will not report any high cost districts to the commission. It seems to reason that it does not have interconnected systems and its systems do not share a source of supply. However, the facts of whether systems are interconnected or share a supply source do appear relevant to the impact experienced by customers of unaffordable bills.

⁷ GSWC DR Comments at 7. Joint Consumers note that GSWC has provided no support for its statement that it, or California’s regulated water utilities in general, are “not in a position to offer financial assistance to customers.”

⁸ See CAWC DR Comments at 2, 6 (modifying affordability criteria and guidelines adopted in D.11.05-020 would be outside the scope of this proceeding). Below, Joint Consumers note that modifying affordability guidelines and criteria as proposed in the Draft Report does not conflict with D.11-05-020. CAWC also implies, incorrectly, that all parties reached a consensus that modifying the affordability criteria for qualifying low income customers would violate D.11-05-20. CAWC DR Comments at 6. Joint Consumers were not part of such “consensus” and offers the observation that D.11-05-20 focused on data sharing between energy and water utilities and ensuring that customers qualifying for CARE assistance also qualify for and are enrolled in LIRA. It did not prohibit expansion of water assistance eligibility criteria. Rather, it simply ensured that energy company customer data would be shared with water utilities to ensure that CARE customers became categorically eligible for water assistance and automatic enrollment in water assistance programs.

⁹ Cal Water DR Comments at 2. See also, GSWC at 4 and CAWC at 1-2. The utilities each note that this proceeding has new staff, another (and new) administrative law judge, and two new parties. However, late coming parties to a proceeding should take the docket as it stands. To hold up the entire docket and stall the work that so many have already accomplished through expenditure of considerable resource would be imprudent.

To the extent that these arguments suggest that the Commission is mandating utility-specific changes in this docket, they fail to properly characterize the scope and goal of this docket. The recommendations within the Draft Report reflect potential guidelines and policy goals that this Commission will be asked to adopt. The Draft Report's recommendations, with the modifications proposed by Joint Consumers and others, will have the ability to send a powerful message to California consumers that the Commission is concerned about water affordability and wants to set a state-wide, industry-wide policy for addressing affordability in a fair and even manner.

However, these guidelines and policy tools are not intended to bind either the Commission or a utility to a specific mitigation action.¹⁰ Instead, the parties to each individual GRC will have the obligation to use the screening framework, review these adopted mechanisms in the context of each of the individual utilities' GRCs and, if appropriate based on the initial analysis, recommend the tools and mechanisms that would address the specific affordability concerns within each utility's service areas.

Adopting the above-described positions of other parties, some of which appear based upon recalcitrance, will only serve to make the record in this docket stale and make the Draft Report's recommendations, should they finally issue, meaningless. There is an immediate need for water assistance that is not currently being fulfilled by the utilities. It is important for the Commission to continue to move forward with the goals underlying this proceeding of increasing the affordability, conservation and investment in investor-owned water service in California.¹¹

¹⁰ There is one exception from the Joint Consumers' Opening Comments wherein Joint Consumers recommend that the Commission require utilities that request a rate increase in any single district of more than 20% in its GRC to have to include an analysis of high cost and low income using the screening mechanism and, if necessary, propose the applicable mitigation mechanisms. *See* Joint Consumers DR Comments at 30-31.

¹¹ *See* Assigned Commissioner's Scoping Memo and Ruling, Docket R.11-11-008, at 1 ("The Commission initiated this proceeding to pursue the Water Action Plan's policy objective of setting rates that balance investment, conservation, and affordability for five multi-district investor-owned water utilities.").

1. *The Commission should reject requests to hold another workshop on the Draft Report.*

While the Draft Report has its flaws and requires modification as described in Joint Consumers' Opening Comments on the Draft Report, there is no need to hold another workshop on the Draft Report as Cal Water suggests.¹² The Commission has provided ample and extended opportunity for the parties to thoroughly review the Draft Report and submit their recommendations through the previously submitted comments and now these reply comments. A meeting on the Draft Report would be superfluous and would make the extensive time and resources that diligent parties have committed a wasted effort because the comments on the Draft Report will be disregarded in lieu of the statements made in the requested, subsequent meeting/workshop. The parties who have participated in good faith should not be penalized in time and resources by a stalling of this proceeding, and backtracking through a discussion on the Draft Report when that discussion is already taking place in written form for the record.

Additionally, one criticism of the Draft Report was that it failed to account for all of the points and discussions raised by various participants during the workshops.¹³ The remedy is for each party to use the current opportunity and make note of its thoughts for the record in written comments and reply comments. Holding another workshop would simply invite the problem of incomplete recording of oral comments, yet again.

2. *Low income affordability modifications on a global policy level are within the scope of the proceeding.*

The parties' comments note that the Draft Report addresses affordability in two different contexts. First, Section 5.1 of the Report includes a discussion of the screening framework that is proposed to identify service areas within a utility that qualify as high cost or have an

¹² See Cal Water DR Comments at 2.

¹³ See Joint Consumers DR Comments at 14.

affordability problem. Second, Section 7.2 of the Draft Report includes proposals for expanding the utilities' current low income rate assistance programs. Low income affordability and the problem of reasonably priced service to high cost areas is squarely within the scope of the proceeding.¹⁴ As such, recommendations on expanding individual low income rate assistance programs to create more affordable water service is entirely appropriate and was discussed as part of the "tool kit" during the workshops.

The utilities claim that the Draft Report's recommendations on changes to the low income rate assistance programs are out of the scope of the docket and may conflict with the Commission's requirements from R. 09-12-017. For example, GSWC asserts that "any" changes to low income rate assistance programs can only be addressed in a larger, multi-utility proceeding.¹⁵ This creates a barrier that is administratively burdensome and too slow to be viable to address low income needs that require affordability right now. Parties to this docket were on notice that changes to low income programs may be considered as a mitigation tool.¹⁶ Further, the recommendation concerning these LIRA tools only impacts the multi-district utilities that are parties to this case and thus lack of notice to other water utilities is irrelevant.¹⁷

Additionally, the utilities have argued or implied that changes to the income qualification guidelines for assistance programs in this docket may conflict with the decision in R.09-12-

¹⁴ See OIR, Docket R.11-11-008 at 8 (Question No. 1, inviting comment on current mechanisms such as low income rates and rate support funds). 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 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."

¹⁵ GSWC DR Comments at 10-11.

¹⁶ See Draft Report at 23 (Expansion of Low Income Assistance Programs is a consideration in the affordability track flow chart and decision tree).

¹⁷ Cal Water DR Comments at 2 (Commission legally limited by lack of involvement of all water companies); CAWC DR Comments at 2 (not all companies have been made aware of "broad changes in scope.")

017.¹⁸ CAWC also implies, incorrectly, that all parties reached a consensus that modifying the affordability criteria for qualifying low income customers would violate D.11-05-20.¹⁹

First, Joint Consumers agree that the Draft Report, and by extension the Final Decision in this docket, should acknowledge and accommodate the requirements of D.11-05-020 and the work that the utilities have done to implement those requirements. To avoid conflict, any specific requirements or mandates to change the structure or criteria of an individual LIRA program should be handled in the utility GRC or other application.

Second, D.11-05-020 in R.09-12-017 does not prohibit expansion of water assistance eligibility criteria, which is what is being discussed in this docket. Specifically, modifying water utilities' assistance program eligibility criteria, by expanding them with additional basis of eligibility beyond that used by energy companies for CARE, does not conflict with D.11-05-020.²⁰ Rather, D.11-05-202 basically ensures that energy companies' customer data would be shared with water utilities to ensure that CARE customers are categorically eligible for and can be automatically enrolled in water assistance programs. In other words, to accept the utilities' argument that the efforts in this proceeding to expand LIRA as an affordability tool conflict with the resolutions of D.11-05-020, one would have to adopt the position that a customer's receipt of water assistance is dependent upon receiving energy assistance, which has never been suggested to be the case.

Moreover, D.11-05-020 focused on enrollment of individual customers into water assistance programs. In contrast, the affordability screen in the instant docket is focused on

¹⁸ See Cal Water DR Comments at 4.

¹⁹ CAWC DR Comments at 6. See also GSWC DR Comments at 14. Joint Consumers were not part of such "consensus" and offer the observation that D.11-05-20 did not prohibit expansion of water assistance eligibility criteria. Rather, it simply ensured that energy company customer data would be shared with water utilities so that CARE customers became categorically eligible for both water assistance and automatic enrollment in water assistance programs.

²⁰ Compare D.11-05-020 with OIR, Docket R.11-11-008 and Scoping Memo, Docket R.11-11-008.

identifying an entire group of payment-troubled customers in a particular geographic area who are in need of water assistance. This docket has a different focus than the data sharing docket. Here, once the customer group and geographic area is identified, this docket discusses a host of mitigation measures that should become available, including an expanded LIRA program.

While implementation of mitigation measures specific to each company should take place in each individual company's GRC, the larger policy guidance is appropriately discussed in this proceeding. To deflect an industry-wide policy discussion to each individual water company's GRC would be beyond the scope of each individual water utility's GRC proceeding which does not concern other water utilities. Additionally, the WAP specifically set forth low income affordability as a topic to address within the scope of conservation, investment and affordability.²¹

3. *Guidelines from the Commission are needed where policies and practices pursuant to utility discretion have failed to adequately identify and address the issue of unaffordable water service for customers.*

Regarding concerns that guidelines from this proceeding would infringe upon utility discretion and that critical review should be undertaken solely in the GRCs,²² Joint Consumers note that the utilities have had discretion to address these issues up until now, with only limited results. Despite diligent work in the GRCs, the stakeholders have failed to solve the problem of unaffordable and high cost water bills in some areas of the state on their own. The Commission's guidance, as informed by industry-wide participants and consumer advocates, is sorely needed to intervene for struggling consumers.

²¹ 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 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." See also Draft report at 23 (decision tree is in the nature of a global policy to identify an affordability problem in a geographic area rather than an individual customer's affordability problem).

²² See CAWC DR Comments at 5.

B. The Commission Should Be Careful to Ensure that the Right Measurement is Used for Determining Affordability Issues.

The filed comments indicate a general concern over the Draft Report's use of various measurements to identify areas of high cost and problems with affordability. Joint Consumers generally agree with the spirit of those comments, that in order to help ensure that the high cost and affordability mitigation mechanisms from this proceeding are effective, it is essential that the Commission design the right type of screening measurement to identify which areas in California are in need of assistance and would benefit from the adopted mitigation measures. If a measure is poorly tailored, it will be inaccurate and ineffective in identifying the group of customers and/or geographic area in need of affordability assistance.

With regard to the affordability screening process discussed in Section 5 of the Draft Report, commenters noted similar problems with the Draft Report as Joint Consumers. Mr. Young, for example, agreed with Joint Consumers that the initial screen should use the lower threshold of a bill constituting 1.5% of median income to trigger an affordability concern instead of 2.5%.²³ Water consumption is just one part of a family's budget. To suggest that, on a district or serving area level, families must have dedicated 2.5% of their monthly income to water to warrant further affordability analysis is too harsh.

Further, there is agreement to using EIU (essential water for indoor use) when calculating an average water bill to conduct the affordability analysis.²⁴ GSWC notes further specification of a standard figure for EIU of 10 CCF per month default for EIU.²⁵ GSWC also noted that when using EIU or average bill, the 2.5% of median income threshold, and applying its CARW discount, none of the service areas would qualify as low income or unaffordable. There are two

²³ Young DR Comments at 2.

²⁴ See e.g., NRDC DR Comments at 3; GSWC DR Comments at 23 (redlines to Draft Report Section 5.1.2).

²⁵ GSWC Comments at p.7; redline at pg. 23; See also Visalia at p. 8 noting that households using more than 15 CCF per month are clearly making a "lifestyle" choice based on an EIU figure of 10 CCF.

ways to look at this. The first way is GSWC's interpretation. GSWC interprets this to mean that its CARW program positively impacts affordability, such that all of its bills for CAWR customers at EIU are affordable. However, Joint Consumers submit that it is highly unlikely that 100% of its GSWC's CAWR customers find their water bills affordable. As Joint Consumers discussed in Opening Comments, certainly the public participation hearings in GSWC territory does not support that assumption.²⁶

Joint Consumers have a potential explanation as to why the data may show no significant affordability impacts. First, as discussed above, using the higher 2.5% of income threshold will provide an inaccurate picture of affordability and the threshold of 1.5% of median income as recommended by the Department of Public Health should be used instead of the 2.5% threshold used by GSWC. Second, the correctness of GSWC's underlying assumptions should be tested (i.e., amount used as EIU, choice of population sample for median income).²⁷ Third, the screening criteria may not be granular enough to accurately capture the affordability experiences in each district.

A similar problem in measurement appears to exist in the measure proposed for the High Cost track, as exemplified by the Draft Report and DRA's application of the measure. DRA notes that Tables 1 and 2 of the Draft Report, which employs the 150% of system average screen, results in only three districts that are identified as high cost areas.²⁸ DRA notes that these communities are affluent and do not appear to be the type of payment-troubled communities or customers that this docket hopes to assist. Viewing Table 1 and Table 2 alone, DRA's comments appear to make sense. However, viewing Table 1 and Table 2 in light of public comments on the

²⁷ If it is correct, GSWC's CARW program should be seriously studied as an affordability model for water service customers.

²⁸ See DRA DR Comments at 3-4.

lack of water affordability paints a different picture.²⁹ It becomes clear that the measures used for determining what are high cost districts that pose affordability problems may be inaccurate. GSWC proposes that the Staff Report screening be corrected to reflect the workshop consensus that the utility should use a figure of “revenue requirement per unit of water” instead of the current analysis of revenue requirement per customer. This may create a more accurate result under the high cost screening analysis than what Tables 1 and 2 of the Draft Report show.

Additionally, the Pacific Institute study serves as a caution for both employing the affordability track and high cost track screening measures proposed in the Draft Report and interpreting the results under those screens. The Pacific Institute issued a report concluding that use of different measurement criteria results in different conclusions regarding whether there is an affordability problem in an area.³⁰ It used an affordability measure that, unlike the Draft Report’s screening mechanism, does not “overlook the reality of households with income below the median.”³¹ The Pacific Institute used the Census Bureau’s 2011 American Community Survey to look at households within particular income ranges to get a better picture of the household income levels in the area than a median figure would provide. The Pacific Institute found that assessing water affordability using median income at a system level neglects to account for affordability issues at the household level, so that the affordability problem in the serving area can be significantly understated.³²

The above discussion of GSWC’s application of the Draft Report’s affordability track screening mechanism demonstrates that the Draft Report screening measures inadequately

²⁹ See Joint Consumers DR Comments at n. 4 and accompanying text.

³⁰ See 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) (Pacific Institute) available at <http://www.pacinst.org/wp-content/uploads/2013/08/assessing-water-affordability.pdf>; Joint Consumers DR Comments at 1 & 12.

³¹ See Pacific Institute at 9.

³² See generally, Pacific Institute.

describe California’s water service affordability problem. Under the affordability track screen, “Median “ income may be an under-inclusive and inappropriate measurement in some instances. The Commission should add a more granular proxy for household income than median income in the first step of the affordability screening analysis to render a more accurate picture of the state’s water affordability problem. Measuring income at the household level need not be performed house by house, but can be done for a geographic area by population weighting.³³ The Commission should consider household income, in tandem with median income, as part of the formula for identifying areas in water utilities’ service territories where customers are in need of water assistance.

Similarly, DRA’s application of the Draft Report’s high cost track screening mechanism to conclude that there are no affordability problems, compared with customer complaints of excessive water rates, indicate that the Draft Report’s measurement for a high cost area is flawed. For the high cost track, the Commission should investigate whether using average Revenue/CCF, as discussed above, may result in a more accurate result than using average Revenue/Customer.

C. Joint Consumers’ Response to Other Parties’ Edits to the Report

1. *DRA’s revised screening framework deletes important steps for affordability and high cost analysis.*

DRA’s oversimplifications in revising the screening framework flow chart results in the unfortunate deletion of a few important points. DRA’s model does not review affordability alongside a high cost analysis in every instance, and as such the affordability problem will be undercounted.³⁴

³³ See Pacific Institute at 9.

³⁴ See Joint Consumers DR Comments at 14-16 (pointing out that Draft Report should not make consideration of the affordability track and high cost track mutually exclusive).

DRA calls the screening framework “overly prescriptive,”³⁵ but when offering a revised model of the framework, DRA appears to make very limited substantive changes. While DRA’s proposed revisions to the screening framework appear to simplify it, the revisions do not change the subject of the analysis, but depict the analysis as organized into slightly different stages and steps.

One change made by DRA which concerns Joint Consumers, however, is DRA’s elimination of a step of analysis in the affordability track which would have referred the analysis to the high cost track if the answer is “No” to the question, “Is average total customer bill > 2.5% of med household? In the Draft Report, the answer “No” would result in shooting the affordability analysis into the high cost track to see if high cost mitigation is warranted; but under DRA’s chart, the analysis stops at “No”. Also, DRA’s chart contains a similar problem as the Draft Report. If the answer to the third question in either the high cost track or affordability track is “No” or “Yes,” respectively, only then does the analysis shoot over to the other track for consideration. As argued in Joint Consumer’s Opening Comments, one criticism of the Draft Report’s screening framework is that it can be interpreted as making the high cost and affordability analyses mutually exclusive. For example, if a area is a high cost area (i.e., the answer to first question of the high cost track is “Yes”), then under the Draft Report’s flow chart, there is no affordability track analysis. Under the Draft Report’s Affordability track analysis, if the answer to the secondary affordability screening threshold is “No”, proceeding to the high cost track is only an option, and need not be undertaken in every case. As argued in Joint Consumers’ Opening Comments, both analyses should be done each time to ensure that all mitigation tools are reviewed in the scenario of a high cost or affordability problem.

³⁵ DRA DR Comments at 1. However, Joint Consumers understand that the purpose of this proceeding is to establish guidelines, not detailed prescriptions.

2. *Adding changes to Tier 1 as an affordability mechanism*

The Draft Report proposes changes to the Tier 1 rate in utilities' rate designs in order to help with affordability issue identified under the affordability screen. Other parties such as NRDC and DRA have indicated that maintaining Tier 1 usage at an affordable level is a critical element to the guidelines that issue from this proceeding.³⁶ Joint Consumers strongly agree.

However, as discussed by Joint Consumers in opening comments, the Draft Report's specific recommendations regarding the Tier 1 break point are unclear. CalWater agrees that the recommendation should be clarified. It notes that the recommendation of setting the Tier 1 rate at median indoor usage is the current methodology used in its rate design for Tier break points and is, therefore unclear whether the Draft Report was intending to create a new standard or reflect current practice.³⁷ GSWC suggests that the Draft Report confuses usage and rates and certain statements should be deleted.³⁸ GSWC's redline goes too far in its elimination of references to the importance of tiered rates to combine conservation and affordability. However, Joint Consumers agree that the Draft Report should be clarified to ensure the discussion regarding rates and usage is clear.

Joint Consumers agree that Tier 1 rates should be set at EIU instead of average usage for a particular area, in order to balance the need for conservation with affordability.³⁹ The proposed 10 CCF is a reasonable starting point for setting Tier 1;⁴⁰ however, the Commission should allow for modification as may be needed based upon evidence and experience following this proceeding. For this mechanism, the specific tier break points should be set during a utility's

³⁶ NRDC DR Comments at 4; Visalia DR Comments at 6; DRA DR Comments at 5, 7 (tiered rates give proper signals to conserve that in turn reduces bills).

³⁷ CalWater DR Comments at 3.

³⁸ GSWC DR Comments at 13.

³⁹ Visalia DR Comments at 6.

⁴⁰ Joint Consumers note that 10 CCF per month equates to the EPA standard of 35 gallons/day/person in a household of 7. This will capture high-occupancy households, but may be a high figure.

GRC so that demographics and topography and other factors of a specific service area can be considered in setting the break point. Therefore, for the purpose of creating an affordability mechanism relating to the Tier 1 breakpoint, the Commission should not adopt a specific number (e.g. 10 CCF) for the breakpoint. NRDC seems to agree that adopting a very specific tier breakpoint would not be appropriate here. However, its recommendation to use the winter average usage in a district is too broad. Joint Consumers agree that in some instances, using winter usage to determine the Tier 1 break point is reasonable, although the parties in each utility's GRC should conduct an analysis to see if winter usage may include some wasteful water usage.⁴¹

D. Consolidation

The parties, including Joint Consumers, devoted considerable portions of their opening comments to the issue of consolidation. Other parties' comments represent a predictable range of opinion on consolidation. Some utilities, in particular CAWC, strongly urge the Commission to adopt guidelines that would directly encourage consolidation as a means to mitigate high cost and tackle affordability issues. At the opposite end of the spectrum, DRA and NRDC mostly suggest that the negative impacts from consolidation on conservation, ratemaking transparency and overall fairness, are so likely occur and be extreme, making most types of consolidation inappropriate.

Joint Consumers supported, with some changes, the Draft Staff Report's discussion of the need to expand and update the current 1992 Consolidation Guidelines to better reflect the state of the industry in California, the recent emphasis on conservation, and the changes in costs of

⁴¹ NRDC DR Comments at 5; Joint Consumers also agree with NRDC DR Comments at 4, that clear bills with useful information on usage data specific to each customer will not only support conservation, but help make total bills more affordable. San Gabriel DR comments at 8, also promotes increased consumer education, albeit with a slightly different message.

purchased water. However, Joint Consumers have also noted the risks of consolidation and cautioned the Commission to pursue consolidation only where benefits may outweigh those risks.⁴²

Joint Consumers disagree with the utilities' perspective that consolidation should be a model for high cost mitigation techniques. Their comments too often downplay or even ignore, the negative impacts of consolidation. Indeed, GSWC's redline edits to the Staff Report are indicative of the utilities' approach to this issue. Their edits would delete almost every single reference to the negative impacts of cross subsidy currently in the Draft Report.⁴³

However, the negative impacts of consolidation are hard to ignore in light of the comments by Visalia. Visalia is a geographic area where customers have lived through the impacts of consolidation over the past decades. Those customers discuss with frustration the unfairness of the cross subsidy where one low income community has had to bear the burden of another low income communities' investments in the water systems.⁴⁴ Visalia makes the strong argument that the Commission should not only look at the consolidation proposal currently before it, but also the cumulative impacts of previous consolidation on each of the serving areas in the proposed consolidation.⁴⁵

DRA, on the other hand, states that it is not in favor of revising or revamping the Guidelines and recommends the status quo be maintained while it generally opposes the idea of consolidation. It is frustrating that after extensive discussion by stakeholders in four days of workshops, DRA has returned to its original position as stated in its first set of comments,

⁴² Joint Consumers DR Comments at 18-21 (noting that consolidation should only be one of many tools in the toolkit and the analysis of proposals must ensure the benefits outweigh risks).

⁴³ GSWC DR Comments at 4, 8, 9 (see also redline, Attachment A at p. 1, 2, 10).

⁴⁴ Visalia DR Comments at 2, 5.

⁴⁵ Visalia DR Comments at 5.

seemingly unaffected by any of the discussion or, perhaps, even more recalcitrant.⁴⁶ DRA appears to prefer to leave everything in the individual silos of the GRCs. Reviewing this issue in the discrete setting of each utility's GRC with each utility's unique circumstances makes it difficult, if not impossible, to ensure that the Consolidation Guidelines and other analysis surrounding consolidation are applied fairly and consistently across the utilities as a whole.⁴⁷ DRA does not address the fact that the expansion and additional detail added to the Consolidation Guidelines as proposed by the Draft Report recommendations are not necessarily designed to make consolidation easier and, in fact, may allow the Commission to more easily determine when a consolidation proposal is inappropriate and unfair. This docket is the place to expand the Consolidation Guidelines to provide a roadmap for the GRC participants to use. This roadmap, like the "guidance document" that DRA reluctantly proposes in its comments, would not be a mandated, binding way of analyzing possible consolidation, but would help create a more uniform approach by the Commission.⁴⁸ Joint Consumers agree with DRA's goal of creating this guidance framework, but disagree that DRA's recommendations will aid the Commission in achieving the goals of a uniform industry approach to consolidation.

As discussed above, DRA finds that most of the mitigation mechanisms proposed in the Draft Report, including consolidation, are "solutions in search of problems" because the data demonstrates that very few areas would fall under a high cost or unaffordable threshold.⁴⁹ DRA uses the data contained in Tables 1 and 2 of the Draft Report to note that the multi-district utilities cumulatively only have three service territories that would be considered high cost. This

⁴⁶ DRA Opening Comments on OIR, March 1, 2012 at 15 (Use of Guidelines only for limited purpose and unnecessary to modify the guidelines at this time, but would "welcome" the opportunity to discuss refining existing Guidelines and adding additional criteria)

⁴⁷ DRA Comments at 7.

⁴⁸ DRA Comments at 2.

⁴⁹ DRA DR Comments at 3-4.

“fact” would appear to make a complicated mitigation measure like consolidation unnecessary.⁵⁰

If DRA is suggesting that rate consolidation should be taken off the table entirely and prohibited from consideration in GRCs, the record does not support such a move by the Commission.

DRA also addresses the other forms of consolidation with the same tepidness as it addresses rate consolidation, seemingly suggesting that any consolidation proposal with the possibility of bringing benefits to consumers has already been considered by the Commission, and that future GRCs are the only place to achieve cost savings through mechanisms like operational or cost consolidation.⁵¹ Of course, Joint Consumers agree, and have previously commented, that it should be a priority of the Commission and the utilities to seek out cost savings and efficiencies at every opportunity, including within the GRCs.⁵² However, as discussed above, the Commission, utilities and DRA have had a chance to address affordability through the GRC process and the Commission has found the results unsatisfactory.⁵³ DRA’s recommendations that downplay the value of any consolidation merely propose the status quo and do not reflect a position informed by the extensive discussion on this issue.

E. Arguments to Forgo a High Cost Fund Should Be Rejected as Internally Inconsistent, Weak, and Unsupported.

Several parties state that they agree with the Draft Report that a high cost fund should not be implemented at this time.⁵⁴ However, Joint Consumers remind the Commission of the

⁵⁰ As discussed in Section II.B. of these reply comments, DRA’s conclusion that the affordability problem may be overstated (DRA cites to Tables 1 and 2 of the Draft Report) is likely based on a faulty measurement and is likely inaccurate.

⁵¹ DRA DR Comments at 4-5, 8.

⁵² Joint Consumers DR Comments at 18-19, 23 (one of the goals of consolidation is economic efficiency, operational consolidation should be looked at in GRC.) NRDC also notes that the Commission should prioritize cost-reductions before subsidies, including rate, cost or ratebase consolidation. NRDC DR Comments at 4.

⁵³ Order Instituting Rulemaking, R.11-11-008, at 3 (need OIR to “advance the objectives” of the WAP including keeping rates just and reasonable, which can be challenging).

⁵⁴ See DRA DR Comments at 6, 8; GSWC DR Comments at Attachment 1 (redlined DR preserves rejection of the high cost fund); NRDC DR Comments at 3. See also Visalia DR Comments at 5 (concern with high cost fund). However, CAWC only opposes an intercompany high cost fund. Compare CAWC DR Comments at 1 with CAWC DR Comments at 7.

numerous errors made in the Draft Report in coming to its recommendation that the Commission forgo implementing a high cost fund.⁵⁵ The parties' arguments that are based upon agreement with the faulty reasoning in the Draft Report on the subject of the high cost fund should similarly be found to be unsubstantiated and unsupported.

Joint Consumers note that Cal Water's Rate Support Fund (RSF), of which most parties support implementing some version,⁵⁶ can be considered an intracompany high cost fund. It is a fund that can be applied to any CalWater territory and is supported by all non-LIRA customers of one utility. The RSF applies to the customers in an entire geographic area (districts or serving areas) rather than to particular low-income customers and is funded through a surcharge for all metered non-LIRA customers and a flat rate surcharge for flat rate customers throughout Cal Water's territory.⁵⁷ Where parties simultaneously have indicated support of using the RSF as an affordability model yet at the same time reject the notion of a high cost fund, their arguments are inconsistent.⁵⁸ The arguments against a high cost fund should be considered weak and given little weight by the Commission.

Additionally, GSWC's Region 1, made up of 7 different ratemaking areas/districts, has a California Alternate Rate for Water (CAWR) that is funded across that entire region.⁵⁹ While Cal Water's RSF has been discussed as a model, GSWC's CARW may also potentially be a model for an intracompany high cost fund. It is a low income assistance program, distinct from

⁵⁵ Joint Consumer DR Comments at 4-10.

⁵⁶ See Joint Consumer DR Comments at 16-17; DRA DR Comments at 6 (supports a limited RSF); GSWC Comments at Attachment 1 (redlines at p. 3 of attachment); CAWC DR Comments at 6. *But see* San Gabriel DR Comments at 4; Visalia DR Comments at 6.

⁵⁷ Comments of the National Consumer Law Center and The Utility Reform Network at 25 (Mar. 1, 2012) (citing to Cal Water discovery responses and Tariff Schedule No. RSF, Revised Cal. P.U.C. Sheet No. 8595-W).

⁵⁸ Compare DRA DR Comments at 6 (supports a limited RSF) with DRA Comments at 8 (opposes high cost fund); see GSWC Comments at Attachment 1 (redlines at p. 3 of attachment both supports an RSF fund and opposes a high cost fund).

CAWC states that the RSF should be limited, but it fails to provide any reasoning or support for this recommendation, which must fail. See CAWC DR Comments at 6.

LIRA, that is funded by all GSWC's customer classes.⁶⁰ Some version of the CARW, modified with the goal of addressing affordability in high cost areas, may conceivably constitute a model for an intracompany high cost fund.

F. The Commission's Order in this Proceeding Should Recognize the Widespread and Strong Support for Expanding Existing Low Income Programs.

Numerous parties noted their support for robust low income programs and their expansion. For example, CAWC notes that it "does support a universal and ambitious program to support low income customers in all areas."⁶¹

Notably, NRDC has stated that it "strongly supports the expansion of low income programs."⁶² It recommends that the LIRA benefit should increase from a discount of 15% to a discount of 20%, which would be consistent with the discount that energy customers enrolled in CARE receive.⁶³

Joint Consumers agree with the above recommendations of various parties to improve and support the LIRA and low income programs. LIRA could be expanded to assist the working poor who currently are not eligible for LIRA and the LIRA benefit level could be increased.⁶⁴ Joint Consumers also strongly agree with NRDC that expanding existing low income programs is a tool for affordability that should be considered. One consideration should include expansion of the LIRA benefit for water customers by increasing the discount or by broadening eligibility criteria, as discussed above.

AWC states that the RSF should be limited, but it fails to provide any reasoning or support for this recommendation, which must fail. *See* CAWC DR Comments at 6.

⁶¹ CAWC DR Comments at 6.

⁶² NRDC DR Comments at 3.

⁶³ NRDC DR Comments at 4. NRDC notes that the increased discount was achieved in the Cal Water GRC settlement in which NRDC was a party.

⁶⁴ Joint Consumers DR Comments at 17.

G. Bill Mechanisms Should Improve Affordability of Bills to Customers, and Not Be Counterproductive to the Goal of Affordability.

The Draft Report includes a laundry list of some mechanisms that can be used to mitigate the high cost of water or, presumably be added as a mechanism to address affordability. Some of the mechanisms already exist, such as flexible payment plans, phased-in rate increases and budget billing.⁶⁵ Interestingly, many of the comments were not supportive of some of these key tools.⁶⁶ This includes GSWC comments that take issue with the Draft Report’s recommendation that the utility provide “financial assistance” to customers who face an emergency.⁶⁷ Instead of merely stating that the utilities are not in a position to provide financial assistance, it would have been more productive to propose an alternative, narrower, recommendation acknowledging that utilities should be in a position to assist customers with temporary measures during a personal or community emergency.

While Joint Consumers agree with some of NRDC’s proposals, Joint Consumers disagree with NRDC when it states that adoption of budget billing should be discouraged due to “negative impact on water conservation.”⁶⁸ NRDC fails to provide evidence of negative impact beyond generalities. Even assuming that negative impact to conservation were demonstrated, however, the importance of budget billing to increase affordability of bills to customers should not be underestimated and should be an overriding policy concern. Budget billing averages a customer’s annual overall bill payments and spreads them in equal billing amounts monthly, throughout the year. This helps avoid the scenario of a consumer facing an unaffordable bill

⁶⁵ Draft Report, at 4, 15-16.

⁶⁶ San Gabriel DR Comments at 7-8 (some mitigation measures impose more cost than benefit).

⁶⁷ GSWC DR Comments at 7.

⁶⁸ NRDC DR Comments at 5.

given a spike in the balance on a given month. Budget billing is valuable as a tool to increase affordability that can benefit any customer, not just low-income customers.⁶⁹

Additionally, in commenting on rate base consolidation and a rate base cap, GSWC argues that rate base caps should be removed.⁷⁰ Joint Consumers submit that rate base caps serve an important function that should be maintained -- they “help limit rate increases by a predictable amount.”⁷¹ Joint Consumers disagree with GSWC that rate base caps should be removed but agree with GSWC, however, that there is no “shortfall” of revenue with a rate base cap because “[a] rate Base cap by definition would limit the Revenue requirement therefore; there would be no shortfall to be made up.”⁷²

⁶⁹ Theoretically, budget billing can be applied to benefit any customer; however, it is possible that a utility may currently have a practice of applying budget billing only for certain customers.

⁷⁰ GSWC DR Comments at 9-10.

⁷¹ Draft Report at 10.

⁷² GSWC DR Comments at 10.

