

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

07/14/20
04:59 PM

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low – Income Customers of Investor-Owned Water Utilities, and Affordability.

Rulemaking 17-06-024

**REPLY COMMENTS OF THE PUBLIC ADVOCATES OFFICE
ON THE SECOND AMENDED SCOPING MEMO AND RULING OF ASSIGNED
COMMISSIONER AND ADMINISTRATIVE LAW JUDGE
DIRECTING COMMENTS TO CONSIDER POTENTIAL COMMISSION
RESPONSE TO COVID-19**

SUZIE ROSE

Senior Utilities Engineer

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1254
E-mail: Suzie.Rose@cpuc.ca.gov

SELINA SHEK

Attorney

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-2423
E-mail: Selina.Shek@cpuc.ca.gov

July 14, 2020

I. INTRODUCTION

Pursuant to Assigned Commissioner Guzman Aceves and Administrative Law Judge (ALJ) Haga's *Second Amended Scoping Memo And Ruling Of Assigned Commissioner and Administrative Law Judge Directing Comments to Consider Potential Commission Response to COVID-19* (Ruling) issued on June 2, 2020, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) timely submits these reply comments.

II. SUMMARY OF RECOMMENDATIONS

The Commission should:

- Require California Water Investor Owned Utilities' (water IOUs) shareholders to share the burden of COVID-19 costs with customers.
- Require Water IOUs to Track Off-Setting Savings.
- Clarify the Terms Used in the New Reporting Requirements to Ensure Uniformity of Data.
- Use a Data-Driven Approach to Investigate Disconnections and AMPs for water IOUs.

III. DISCUSSION

A. **California Water Association's Claims Regarding Financial Hardship are Unsubstantiated and Its Recommendations Regarding Revenue Shortfalls are Unreasonable.**

California Water Association (CWA) claims the potential revenue under-collections during the COVID-19 emergency "threatens the financial health of water utilities and their ability to continue providing safe and reliable water service at affordable rates."¹ CWA then recommends that the Commission consider ways to improve collection of revenue shortfalls caused by COVID-19, including through the rate case process.²

¹ CWA Opening Comments at 11.

² CWA Opening Comments at 11.

CWA's claim regarding financial hardship is unsubstantiated. First, CWA has not shown there have been increased revenue shortfalls because of under-collections. Even if under-collections do occur during the COVID-19 pandemic, it may be difficult to determine what portion of under-collections are a direct result of the pandemic. As Great Oaks Water Company states in its Opening Comments, "in almost all cases in which a water customer does not pay a water bill, the reason for nonpayment is not and will not be known by the water utility."³

Second, and more importantly, utility customers are not responsible for ensuring that a utility achieves its rate of return. Rather, when a Public Utilities Commission designs rates, it seeks to give utilities the opportunity to recover their costs and a fair rate of return which includes the risk that the utility may earn a higher or lower rate of return than assumed in determining rates.⁴ Thus, even when a utility is permitted to record lost revenues in a memorandum account, the Commission still reviews those costs to determine whether the utility acted prudently and whether it is appropriate for ratepayers to pay for these costs in addition to otherwise authorized rates.⁵

Recently, the Indiana Public Utilities Commission agreed and concluded that customers should not be responsible for lost revenues experienced by a utility during the COVID-19 pandemic.⁶ The Indiana Public Utilities Commission stated regarding a joint utilities' request for regulatory accounting authority for lost revenues during COVID-19, "[a] utility's customers are not the guarantors of a utility earning its authorized return. Instead, utilities are given the opportunity to recover their costs and a fair rate of return,

³ Great Oaks Water Company Opening Comments at 3.

⁴ Bluefield Waterworks & Imp. Co. v. Public Service Commission of W. Va. (1923) 262 U.S. 679, 692-693.

⁵ Resolution Authorizing a Surcharge of \$0.265/CCF for Kenwood Water Company(W-5061), Oct. 1, 2015 at 2-3, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M154/K638/154638459.pdf>.

⁶ Indiana Public Utilities Commission, Cause No. 45380 issued June 29, 2020 at 8-9, https://www.in.gov/iurc/files/45380Phase1_ord_062920.pdf.

which includes a certain level of risk...”⁷ The same applies to CWA’s claims regarding financial hardship for water IOUs.

Finally, CWA recommends that customers alone should bear the burden of revenue shortfalls associated with unpaid bills. This recommendation is unfair and inequitable. As stated above, water IOUs are not guaranteed a risk-free return, at the expense of its customers. Rather than guarantee shareholder profits, during this global pandemic, the Commission must also protect customers whose sources of income have been diminished or eliminated. Therefore, if the Commission determines that revenue shortfalls attributable to COVID-19 have occurred, then the Commission should require water IOU shareholders to share the burden of the COVID-19 shortfalls with customers.

B. The Commission Should Require Water IOUs to Track Off-Setting Savings.

The Center for Accessible Technology, the Community Water Center, the Leadership Counsel for Justice and Accountability, and the Pacific Institute’s (Joint Advocates’) Opening Comments recommend that utilities track the cost of offering and implementing Arrearage Management Payment Plans (AMPs), along with any offsetting savings.⁸ The Commission should adopt this recommendation, but the tracking of offsetting savings should not be limited to AMP Plans. The Commission should require water IOUs to track all savings associated with the COVID-19 emergency. Water IOUs currently are authorized to track costs associated with the COVID-19 pandemic in their respective Catastrophic Event Memorandum Accounts⁹ and, while there are opportunities for savings to offset costs related to COVID-19, there is no corresponding order to track savings. For example, savings from reduced discretionary spending, lower interest rates and financing costs, as well as savings related to reduced operations and maintenance are not tracked. The Commission should require water IOUs to track these and other savings associated with COVID-19.

⁷ Id.

⁸ Joint Advocates Opening Comments at 16.

⁹ Authorized by Resolution M-4843 issued April 16, 2020.

As stated by the Joint Advocates, the Commission should take note of “the recent actions of the Federal Reserve to ease the flow of credit to non-financial companies, setting the stage for borrowing costs that are historically low.”¹⁰ Utilities may benefit at this time from a sharp drop in the cost of borrowing. The Commission should require water IOUs to investigate refinancing long-term debt at lower interest rates. The water IOUs should also track any savings associated with lower financing costs as savings associated with COVID-19.

Similarly, the Joint Advocates correctly argue that regulated water companies may receive state or federal governmental assistance to account for shortfalls in anticipated revenues due to the effects of the pandemic, and that the Commission should ensure that water IOUs utilize these funds to retire arrearages.¹¹ If water IOUs receive such governmental assistance, these funds should also be used to offset any costs tracked in water IOUs’ COVID-19 memorandum accounts.

Under the unprecedented COVID-19 circumstances, it is only reasonable for the utilities to reduce discretionary expenses to minimize bill impacts to ratepayers. The Commission should require water IOUs to identify areas for reduced spending and potential cost reductions. This includes postponing or foregoing non-essential costs for at least 24 months – for example, postponing hiring and capital projects that are not critical to maintaining safe and reliable service, and foregoing executive and management bonuses.¹²

All savings associated with the COVID-19 pandemic should be tracked and subtracted from the costs tracked in water IOUs’ COVID-19 pandemic memorandum accounts before any amount is considered for recovery from customers. Additionally, the Commission should require water IOUs to demonstrate that it has reduced its spending and subtracted the savings from the costs it requests for recovery.

¹⁰ Joint Advocates Opening Comments at 17.

¹¹ Joint Advocates Opening Comments at 15-16.

¹² As discussed in more detail in the Public Advocates Office Opening Comments at 4.

The instant proceeding is the appropriate forum for the Commission to require water IOUs to track savings and identify ways to reduce spending associated with COVID-19.

C. The Commission Should Clarify the Terms Used in the New Reporting Requirements to Ensure Uniformity of Data.

A number of water IOUs point out in their Comments that the terms used in the new reporting requirements need clarification.¹³ Great Oaks states that “arrearages” are defined as unpaid bills, whether or not the bill is past due.¹⁴ From the context of the reporting requirements, it seems likely that the Commission intends to collect data on past due bills, not unpaid bills. Additionally, Great Oaks opines that the Ruling appears to use the terms “unpaid bills” and “uncollectibles” interchangeably. As stated in California Water Services’ Opening Comments, uncollectibles and unpaid bills are not interchangeable.¹⁵

The Commission should clarify the terms used in its new reporting requirements to ensure uniformity of data collected across water IOUs and across time periods. The Commission should require water IOUs to:

- 1) Separate data by customer class.
- 2) Report uncollectibles (unpaid bills that have been in collections for x amount of time).
- 3) Report over-due bills (bills x days past due).
- 4) Report the number of customers with payment plans with up to date payments.
- 5) Report the number of customers with payment plans behind on payments (including data on how many payments the customer missed).

¹³ For example, Great Oaks Water Company Opening Comments at 5 and 15 and California Water Service Comments at 2 and 3.

¹⁴ Great Oaks Water Company Opening Comments at 5.

¹⁵ California Water Service Opening Comments at 4.

Additionally, if some of data requested by the Commission is not readily available,¹⁶ the Commission should hold a (virtual) workshop to explore the most cost effective and efficient way for utilities to make this data more accessible for future reporting.

D. The Commission Should Use a Data-Driven Approach to Investigate Disconnections and AMPs for Water IOUs

In their Opening Comments CWA and numerous other water IOUs discuss the “differing circumstances” between water and energy IOUs and argue that the findings and recommendations in the Energy disconnections proceeding may not be applicable to water IOUs.¹⁷

There are differences between energy IOUs and water IOUs, particularly in regard to the statutory requirements that govern disconnections and in the size of their customer bases (energy IOUs larger customer bases allow costs to be spread among more customers).¹⁸ These differences emphasize the importance of utilizing a data-driven approach and assessing costs to all customers before adopting any changes.

Moreover, the work done on the energy side in relation to disconnections and payment plans are not entirely inapplicable to water IOUs. Senate Bill 998, the Water Shutoff Protection Act, was passed *before* the current COVID-19 pandemic. It provides a baseline level of protections for water customers, but it does not preclude the Commission from adopting further protections. Given the nature of the current pandemic, it is an immediate public health necessary that all households have access to clean and affordable water. Additionally, it is possible that customers will experience financial consequences that extend beyond the timeframe of the State’s COVID-19 emergency declaration. Therefore, the Commission should explore how to best avoid disconnections for customers while maximizing recovery of unpaid bills. As proposed by

¹⁶ For example, Suburban Water Services states in its Opening Comments that historic information is not available separately for past due amounts for residential versus non-residential customers (at 3).

¹⁷ For example, CWA Opening Comments at 8-10.

¹⁸ CWA Opening Comments at 8-10.

the Joint Advocates, the Commission's work in R.18-07-005 regarding disconnections and AMPs can serve as a template for an investigation into these issues for water IOUs.¹⁹

IV. CONCLUSION

Cal Advocates appreciates the opportunity to provide these reply comments and respectfully requests the Commission adopt the recommendations presented herein.

Respectfully submitted,

/s/ SELINA SHEK
Selina Shek

Attorney for The Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-2423
E-mail: selina.shek@cpuc.ca.gov

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¹⁹ The Joint Advocates recommend that the core structure of the energy AMPs be positioned as a straw proposal in this proceeding (Joint Advocates Opening Comments at 15.)