



MGA/nd3 7/30/2021

FILED
07/30/21
04:48 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

(NOT CONSOLIDATED)

Order Instituting Rulemaking to Address Energy Utility Customer Bill Debt Accumulated During the COVID-19 Pandemic.

Rulemaking 21-02-014

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
THIRD AMENDED SCOPING MEMO AND RULING**

This ruling sets the scope and schedule for the next phase of Rulemaking (R.) 17-06-024 (Phase III of R.17-06-024), pursuant to Public Utilities (Pub. Util.) Section 1701 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

1. Procedural Background

Since June 2017, R.17-06-024 has examined the various issues concerning affordability of clean, safe drinking water consistent with California's statutory recognition of the human right to water.¹ R.17-06-024 activities also facilitated

¹ California Water Code Section 106.3 (Stats. 2012, ch. 524). California Pub. Util. Code Section 739.8 (Stats. 1992, ch. 549).

coordination between the Commission and the State Water Resources Control Board (State Water Board), described in Section 3.

We resolved issues scoped for Phase I of R.17-06-024 in Decision (D.) 20-08-027,² including water sales forecasting relative to the Water Revenue Adjustment Mechanism and the Modified Cost Balancing Account, regionalization and consolidation (including voluntary and virtual) of at-risk water systems by Commission-regulated water utilities, standardizing the name of the Commission-regulated low-income water rate assistance program, and how best to consider potential changes in rate design such that there is a basic amount of water that customers receive at a low quantity rate.

In anticipation of a developing the statewide low-income water rate assistance program,³ the Phase I decision, D.20-08-027, deferred action on the following certain scoped issues:

2. Effectiveness of LIRA Programs;
3. Monthly Discounts;
4. Program Cost Recovery;
5. Commission Jurisdiction Over Other Water Companies;
and
6. Implementation of Any Changes to Existing LIRA Programs⁴

² D.20-08-027 was issued on August 27, 2020, in the instant Rulemaking, resolving many but not all Phase I issues in this proceeding.

³ D.20-08-047 at 15 and 99.

⁴ Remaining scoped issues numbered in accordance with D.20-08-047 at 14.

Phase II of R.17-06-024 was focused on aiding the water utilities respond as the COVID-19 pandemic evolved. We issued D.21-07-029,⁵ as Phase II Decision in R.17-06-024, and addressed the following issues:

- What are the impacts on Class A water utilities, ratepayers as a whole, and individual customers?⁶
- How to ease access to the low-income water rate assistance programs;⁷
- Whether the Commission should adopt criteria to allow for sharing of low-income customer data by regulated investor-owned energy utilities with municipal water utilities.⁸

2. Coordinated Approach to Relief for COVID-Related Water Utility Bill Debt and Water Affordability

In Phases I and II of R.17-06-024, the Commission coordinated with the State Water Board to ensure that public water systems, regardless of their regulatory jurisdiction, meet the same standards for safe and reliable drinking water which is affordable to all. The two agencies' goals, responsibilities and respective roles are defined in a Memorandum of Understanding, which also outlines protocols for sharing data consistent with applicable laws protecting customer data privacy.⁹

⁵ D.21-07-029 was issued on July 15, 2021 in the instant Rulemaking, resolving many but not all Phase II issues in this proceeding.

⁶ Phase II Scoping Memo issues A, C and D.

⁷ Phase II Scoping Memo issue G.

⁸ This issue was added to the Phase I scope in the Amended Scoping Memo issued July 19, 2018.

⁹ Memorandum of Understanding Between the State Water Resources Control Board and the California Public Utilities Commission Regarding the Regulation of Public Water Systems, December 9, 2020.

During the Phase II of R.17-06-024 and in response to the pandemic, the Commission and the State Water Board shifted the focus of the statewide coordination from development of a low-income water rate assistance program to coordinating relief for arrearages associated with COVID-19. At the Joint Workshop held by the Commission and State Water Board Workshop on October 30, 2020, parties indicated that coordination between the Commission and the State Water Board could still be improved, particularly with regard to data collection and securing state funding for COVID-19 relief.

We issued Phase II Decision in R.17-06-024, D.21-07-029, and required monthly data reporting working sessions to begin by Friday, August 27, 2021, to, among other things, pursue consistency between State Water Board and Commission required data reporting by water utilities.¹⁰

During Phase II of R.17-06-024, state and federal relief funding was appropriated for water utility bill relief. In the upcoming Phase III of R.17-06-024, we intend to shift the focus of our coordination to disbursement of the funding in the context of overall water affordability and implementation of relief according to the 2021/22 Budget Act Senate Bill (SB) 139 and Assembly Bill (AB) 832.

2.1. California Water Shutoff Protection Act (SB 998)

In the first months of the pandemic, California's 2018 Water Shutoff Protection Act (Act),¹¹ was just going into effect.¹² The Act standardizes

¹⁰ D.21-07-029, Ordering Paragraph 12.

¹¹ Enacted by Senate Bill 998.

¹² By California Health and Safety Code (HSC) §116904, Commission-regulated water utilities and urban water supplies were required to comply with the Act by February 1, 2020, and all other urban and community water systems by April 1, 2020. Fifty-five Commission-regulated water utilities have filed Advice Letters conforming their credit and collections rules to the Act.

Footnote continued on next page.

customer protections between Commission-regulated water utilities and public water systems. The most widely applicable mandates of the Act (1) extend the time period before utilities may initiate collections action on unpaid water utility bills to 60 days, (2) enhance notice to customers of opportunities to make special arrangements to pay debt over longer terms, and (3) prohibit disconnection while a customer's appeal of the water bill is pending.¹³ For qualifying low-income customer, the Act caps reconnection fees and waives interest charges (including late fees¹⁴) once a year.¹⁵

The Act's longer timelines and more aggressive payment plan requirements are designed with the intention of minimizing disconnections for nonpayment.¹⁶ The protective impact of the Act has yet to be realized.¹⁷

Policies and procedures on customer payment and bill collection, including disconnection of service for nonpayment are contained in utility tariff rules 1, 5, 8, 10 and 11. *Also see* ALJ Ruling of January 28, 2021, Receiving Utility Annual Reports, Compliance Filings and Data Request Responses into the Proceeding Record and Directing Water Utilities to File Certain Future Advice Letters in the Proceeding.

¹³ HSC §116908.

¹⁴ See Commission Resolution 5223-W of June 25, 2020, clarifying the Act's reference to interest charges includes late fees.

¹⁵ California HSC §116914.

Because implementation of the Act began February 1, 2020, and the statewide moratorium on COVID-19 pandemic was the disconnection moratorium, still in effect today.

¹⁶ The Act's disconnection prohibition is applicable only to small subsets of water customers. As specified in HSC §116910, low-income customers that can get from a primary care provider documentation stating that discontinuation of water service would be life threatening or pose a serious threat to health and safety and remain compliant with the terms of special payment arrangements may not be disconnected unless they become delinquent again for at least 60 days. As specified in HSC §116916, renters whose landlord defaults on bills long enough that disconnection is imminent may not be disconnected until they have been given the opportunity to become the customer moving forward.

¹⁷ Because of the suspension of disconnections just about a month after water utilities had implemented the Act, followed by the statewide disconnection moratorium of Executive Order N-42-20, continued until September 30, 2021, by Executive Order N-08-21, the impact of
Footnote continued on next page.

2.2. Water and Wastewater System Payments Under the American Rescue Plan Act of 2021

On June 28, 2021, Governor Gavin Newsom signed the Budget Act of 2021, which includes \$1 billion to help Californians pay their overdue water bills.¹⁸ The \$1 billion appropriation will be allocated by the State Water Board through the Water and Wastewater System Payments. The source of the funding is the federal American Rescue Plan Act of 2021. On July 16, 2021, Governor Newsom signed SB 139, the Human Services omnibus trailer bill (Trailer Bill). The Trailer Bill included additional direction to the State Water Board on implementation of Water and Wastewater System Payments. Senate Bill 139 is included with this decision in Attachment A.

3. Issues in Phase III

The issues to be determined in Phase III of R.17-06-024 are:

- (a) How best to leverage the available relief funding?
- (b) Whether supplemental relief funding is needed;
- (c) What, if any, further improvements to water affordability are needed; and
- (d) Implementation issues, if any, relating to the new legislation affecting water affordability, including but not limited to SB 998, AB 401 and SB 139 enacted since R.17-06-024 was issued in 2017.

the Act on minimizing customers' ability to manage their water bills avoid disconnection is not yet evident.

¹⁸ AB 128, Budget Act of 2021, Section 19.55 (Legislative Deferrals in General Sections Statewide), subsection 17 appropriates \$1 billion for the Coronavirus Fiscal Recovery Fund of 2021 for water arrearage debt relief.

4. Need for Evidentiary Hearing

At this time, there are no material facts anticipated to be in dispute. Thus, no hearings are required. However, we remain open to changing that designation should disputes over material facts arise.

5. Schedule

In the schedule below, we outline the main procedural activities we anticipate. The schedule below prioritizes statewide coordination around COVID-19 relief. The initial status conference for Phase III will be held jointly with R.21-02-014 to enhance coordination among entities and industries administering relief for energy and water utility customers. A separate ruling will issue to confirm the details of this initial joint status conference. The assigned Commissioner or assigned Administrative Law Judge (ALJ) may modify this schedule based on party comments and forthcoming implementation details and activities associated with COVID-19 relief. Additionally, party comments on the scoped issues may inform staff proposals on certain issues.

Exact dates and other relevant details, such as workshop agendas or staff analyses, will issue in forthcoming rulings. If we schedule workshops in this phase of R.17-06-024, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily calendar regularly for such notices.

EVENT	DATE
Joint Status Conference with R.21-02-014	August 16, 2021
First data reporting working session conducted by Commission Water Division staff	August 25, 2021, time and access details forthcoming

EVENT	DATE
Comments on Ruling Setting Joint Status Conference and Directing Comments	September 13, 2021
COVID-19 Arrearage Relief	
<i>If necessary</i> Joint Workshop with state agencies administering COVID-19 relief for utility bills	September 2021
Ruling issued with post-workshop questions or staff workshop report	October 2021
Comments due on Ruling	October 2021
Status conference	November 2021
Inter-Industry Affordability and Low-Income Program Issues	
Ruling issued with Commission staff proposal on affordability and low-income program issues	December 2021
Workshop and/or Comments on Commission staff proposal	January 2021
Opening briefs	March 2022
Reply briefs <i>[matter submitted]</i>	March 2022
Proposed decision	June 2022

The proceeding will stand submitted upon the filing of reply briefs, unless the ALJs require further evidence or argument. Based on this schedule, the proceeding will be resolved within 18 months as required by Pub. Util. Code Section 1701.5.

6. Category of Proceeding and *Ex Parte* Restrictions

This ruling confirms the determinations made in the January 9, 2018 scoping memo and the June 2, 2020 second amended scoping memo that this is a quasi-legislative proceeding.

7. Intervenor Compensation

Pursuant to Pub. Util. Code Section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation for Phase III issues by September 15, 2021, 30 days after the status conference.

8. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

9. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

10. Filing, Service, and Service List

The official service list has been created and is on the Commission’s website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission’s Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission’s website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on

the date scheduled for service to occur. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the “Information Only” category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission’s subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

11. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive e-mails from the Commission. Please add “@cpuc.ca.gov” to your e-mail safe sender list and update your e-mail screening practices, settings and filters to ensure receipt of e-mails from the Commission.

12. Assignment of Proceeding

Martha Guzman-Aceves is the assigned Commissioner and Camille Watts-Zagha and Robert Haga are the assigned ALJs. ALJ Watts-Zagha is the presiding officer for Phase III of the proceeding.

IT IS RULED that:

1. The scope of this proceeding is amended to include the additional Phase III issues described above in Section 3 of this ruling.
2. The schedule for Phase III of this proceeding is set forth above in Section 5 and is adopted.
3. Evidentiary hearings are not needed.
4. *Ex parte* communications are permitted without restriction or reporting as described at Public Utilities Code Section 1701.4(c) and Article 8 of the Commission's Rules of Practice and Procedure.
5. The joint status conference is set for August 16, 2021, at 9:00 a.m., with the understanding that further ruling will issue to confirm relevant details.
6. The January 9, 2018 scoping memo, the July 9, 2018 amended scoping memo and the June 2, 2020 second amended scoping memo remain in effect, unless modified by this Third Amended Scoping Memo and Ruling adopting the updated Phase III issues and schedule.
7. The Process Office shall serve this Third Amended Scoping Memo and Ruling on the service lists of Rulemaking (R.) 17-06-024 and R.21-02-014.

This order is effective today.

Dated July 30, 2021, at San Francisco, California.

/s/ CAMILLE WATTS-ZAGHA

Camille Watts-Zagha
Administrative Law Judge

/s/ MARTHA GUZMAN ACEVES

Martha Guzman Aceves
Assigned Commissioner

ATTACHMENT A

SB 139

Existing law prohibits an urban and community water system, defined as a public water system that supplies water to more than 200 service connections, from discontinuing residential water service for nonpayment until a payment by a customer has been delinquent for at least 60 days. Existing law requires an urban and community water system to have a written policy on discontinuation of residential service for nonpayment, including, among other things, specified options for addressing the nonpayment. Existing law requires an urban and community water system to provide notice of that policy to customers, as provided.

The California Safe Drinking Water Act makes it a crime for any person to knowingly commit certain acts, including making a false statement or representation in any record submitted, maintained, or used for the purposes of compliance with the act, possessing a record required to be maintained by the act that has been altered or concealed, and destroying, altering, or concealing any record required to be maintained by the act.

This bill would establish the California Water and Wastewater Arrearage Payment Program in the State Water Resources Control Board. Pursuant to the program and following an appropriation in the annual Budget Act for these purposes, the State Water Resources Control Board would be required to survey community water systems to determine statewide arrearages and water enterprise revenue shortfalls and adopt a resolution establishing guidelines for application requirements and reimbursement amounts for those arrearages and shortfalls. If there are insufficient funds appropriated for purposes of the program, the bill would require the State Water Resources Control Board to disburse the funds on a proportional basis to each community water system applicant based on reported arrearages and shortfalls. If there are sufficient funds appropriated for purposes of the program, the bill would require the State Water Resources Control Board to establish a similar program for funding wastewater treatment provider arrearages and shortfalls with the remaining funds.

This bill would require a community water system to provide customers with arrearages accrued during the COVID-19 pandemic bill relief period, as defined, a notice that they may enter into a payment plan, as prescribed. The bill would prohibit a community water system from discontinuing water service due to nonpayment before September 30, 2021, or the date the customer misses the enrollment deadline for, or defaults on, a payment plan, whichever is later. The bill would require the State Water Resources Control Board to coordinate with the Department of Community Services and Development in allocating program funding to certain community water systems.

This bill would apply certain enforcement provisions of the California Safe Drinking Water Act, including the above-described crimes, to the foregoing provisions.

The bill would thereby impose a state-mandated local program by expanding the application of a crime.

This bill would make these provisions inoperative on July 1, 2025.

SEC. 61.

Chapter 4.7 (commencing with Section 116773) is added to Part 12 of Division 104 of the Health and Safety Code, to read:

CHAPTER 4.7. Water and Wastewater System Payments Under the American Rescue Plan Act of 2021

116773.

This chapter shall be known, and may be cited, as the Water and Wastewater System Payments Under the American Rescue Plan Act of 2021.

116773.2.

For purposes of this chapter, the following definitions apply:

(a) "Community water system" has the same meaning as defined in Section 116275.

(b) "COVID-19 pandemic bill relief period" means the period from March 4, 2020, to June 15, 2021, inclusive, and includes any customer billing period that includes these dates.

(c) "Past-due bills" means customer water bills that are 60 days or more past due and includes both active and inactive accounts, and accounts that have payment plans or payment arrangements.

(d) "Proportional basis" means based on the percentage of the total statewide need for community water system reimbursement under this chapter, estimated by the state board, and the total assistance available for disbursement.

(e) "Small community water system" has the same meaning as defined in Section 116275.

(f) "State board" means the State Water Resources Control Board.

(g) "Wastewater treatment provider" means a city, county, special district, or joint powers authority that provides wastewater collection, treatment, or disposal service through a publicly owned treatment works.

116773.4.

(a) The California Water and Wastewater Arrearage Payment Program is hereby established in the state board to implement this chapter.

(b) (1) Within 90 days of receiving funds pursuant to an appropriation in the annual Budget Act for this purpose, the state board shall survey community water systems to

determine statewide arrearages and water enterprise revenue shortfalls and adopt a resolution establishing guidelines for application requirements and reimbursement amounts for those arrearages and shortfalls. Within 14 days of adopting the resolution, the state board shall begin accepting applications from community water systems for funds to assist customers who have past-due bills from the COVID-19 pandemic bill relief period.

(2) There shall be an initial 60-day application timeframe in which a community water system may apply to the state board for reimbursement. The state board shall contact any community water systems that do not apply during the initial application period to assist the community water systems in applying.

(3) The state board shall use the survey results to determine the total amount of residential and commercial arrearages from community water systems that have submitted that information. The survey shall also quantify revenue shortfalls for community water systems unable to disaggregate customer arrearages.

(4) (A) If there are insufficient funds in the appropriation described in paragraph (1) to reimburse the total amount of reported arrearages and revenue shortfalls of community water systems, the state board shall disburse the funds on a proportional basis to each community water system applicant based on reported arrearages and the state board ' s estimation of customer arrearages for community water systems unable to report arrearages that report water enterprise revenue shortfalls.

(B) If there are sufficient funds in the appropriation described in paragraph (1) to reimburse the total amount of reported arrearages and revenue shortfalls of community water systems, the state board shall establish a program for funding wastewater treatment provider arrearages and shortfalls in accordance with this chapter with the remaining funds. Notwithstanding the deadlines specified in subdivision (c), the wastewater service program shall commence following substantial completion of the water service program under this chapter, and in no instance later than February 1, 2022.

(5) A community water system applicant shall calculate or estimate, based on its billing frequency, the total amount of outstanding past-due bills that have accumulated during the COVID-19 pandemic bill relief period. The calculations shall include documentation to support the amount of outstanding customer arrearages that were incurred during that period, if available. Community water system applicants shall also report their water enterprise revenue shortfalls during the COVID-19 pandemic bill relief period. A community water system ' s authorized representative, or its designee, shall attest that the application is true and accurate.

(6) (A) The state board shall prioritize the timing of the disbursement of funding to small community water systems.

(B) The state board shall establish guidelines for community water systems to prioritize residential water customers and customers with the largest arrearages.

(7) If a community water system uses customer classes for purposes of its billing program, the following customer classes are eligible for funding under this chapter and may be included in the application:

(A) Residential customers.

(B) Commercial customers.

(c) The state board shall begin disbursing funds under this chapter to community water systems no later than November 1, 2021, and shall complete distribution of funds to community water systems no later than January 31, 2022.

(d) A community water system shall, within 60 days of receiving funds under this chapter, allocate payments as bill credits to customers to help address past-due bills incurred during the COVID-19 pandemic bill relief period and notify customers of the amounts credited to their accounts.

(e) (1) A community water system shall provide customers with arrearages accrued during the COVID-19 pandemic bill relief period a notice that they may enter into a payment plan and that they have 30 days from the date of the notice to enroll in the payment plan. A payment plan and its associated rules offered by a community water system of any size shall conform with Chapter 6 (commencing with Section 116900), notwithstanding limitations in that chapter relating to a community water system's size. A community water system shall not discontinue water service to a customer that remains current on a payment plan.

(2) A community water system receiving funds under this chapter shall not discontinue water service due to nonpayment of past-due bills before either of the following dates, whichever date is later:

(A) September 30, 2021.

(B) For a customer that has been offered an opportunity to participate in a payment plan, the date the customer misses the enrollment deadline for, or defaults on, the payment plan.

(f) A community water system shall remit any moneys disbursed to the community water system under this chapter not credited to customers within six months of receipt back to the state board.

(g) Customer information collected under this chapter is subject to Section 6254.16 of the Government Code.

(h) A community water system receiving assistance under this chapter may expend up to 3 percent, or up to one million dollars (\$1,000,000), whichever amount is less, of that assistance for costs incurred in applying for the assistance or complying with use and reporting conditions of the assistance.

116773.6.

(a) Actions by the state board to implement this chapter, including the adoption or development of any plan, handbook, guidelines, reporting and audit requirements, or

forms, are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Actions by the state board to implement this chapter, including entering into contracts for services or equipment, are exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The state board may award a contract under this chapter on a noncompetitive bid basis as necessary to implement the purposes of this chapter.

(c) The state board shall coordinate with the Department of Community Services and Development in allocating funding under this chapter to community water systems that are publicly owned utilities providing electric and water services.

(d) The state board may use its authority granted pursuant to Chapter 4 (commencing with Section 116270) to implement the requirements of this chapter. For purposes of Article 7 (commencing with Section 116525), Article 8 (commencing with Section 116625), and Article 9 (commencing with Section 116650) of Chapter 4, a violation of any requirement imposed in connection with funding under this chapter or the associated program is a violation of Chapter 4.

(e) This chapter satisfies the requirement for subsequent legislation in Provision 2 of Item 3940-062-8506 and Provision 3 of Item 3940-162-8506 of Section 2.00 of the Budget Act of 2021.

116773.8.

This chapter shall become inoperative on July 1, 2025, and, as of January 1, 2026, is repealed.

(END OF ATTACHMENT A)