



PUBLIC UTILITIES COMMISSION

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TO PARTIES OF RECORD IN APPLICATION 24-01-001:

Enclosed are the proposed decision of Administrative Law Judge (ALJ) Douglas M. Long previously designated as the presiding officer in this proceeding and the alternate decision of Commissioner Houck. The proposed decision and the alternate decision will not appear on the Commission's agenda sooner than 30 days from the date they are mailed.

Pub. Util. Code § 311(e) requires that the alternate item be accompanied by a digest that clearly explains the substantive revisions to the proposed decision. The digest of the alternate decision is attached.

When the Commission acts on these agenda items, it may adopt all or part of the decision as written, amend or modify them, or set them aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision and alternate decision as provided in Pub. Util. Code §§ 311(d) and 311(e) and in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 and served in accordance with Rules 1.9 and 1.10. Electronic copies of comments should be sent to President Alice Reynolds sponsoring the alternate, *e.g.*, Drew Hodel at dhl@cpuc.ca.gov.

The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ MICHELLE COOKE
Michelle Cooke
Chief Administrative Law Judge

MLC:hma
Attachment

Agenda ID #23047
Alternate Agenda ID #23088
Ratesetting

*DIGEST OF DIFFERENCES BETWEEN THE PROPOSED DECISION
OF ADMINISTRATIVE LAW JUDGE DOUGLAS LONG, AND THE
ALTERNATE PROPOSED DECISION OF COMMISSIONER DARCIÉ
L. HOUCK APPLICATION 24-01-001, 2024 GENERAL RATE CASE
APPLICATION OF SAN JOSE WATER COMPANY*

Pursuant to Public Utilities Code Section 311(e), this is the digest of the substantive differences between the Proposed Decision of Administrative Law Judge (ALJ) Douglas M. Long (mailed on November 18, 2024) and the Alternate Proposed Decision of assigned Commissioner Darcie L. Houck (also mailed on November 18, 2024).

The Alternate Proposed Decision of Commissioner Houck differs from the Proposed Decision of ALJ Long in its treatment of San Jose Water's Special Requests # 1 and 2. The ALJ's Proposed Decision accepts both requests. The Alternate Proposed Decision denies both requests. Neither request affects the applicant's authorized revenue requirement.

Decision **PROPOSED DECISION OF ALJ LONG (Mailed 11/18/2024)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SAN JOSE WATER COMPANY
(U168W) for an Order authorizing it to
increase rates charged for water
service by \$55,196,000 or 11.11% in
2025, by \$22,041,000 or 3.99% in 2026,
and by \$25,809,000 or 4.49% in 2027.

Application 24-01-001

**DECISION ADOPTING A SETTLEMENT AND RESOLVING TWO DISPUTED
ISSUES IN A GENERAL RATE CASE FOR SAN JOSE WATER**

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DECISION ADOPTING A SETTLEMENT AND RESOLVING TWO DISPUTED ISSUES IN A GENERAL RATE CASE FOR SAN JOSE WATER COMPANY**Summary**

This decision adopts rates for San Jose Water Company (San Jose Water) for Test Year 2025 and two subsequent attrition years, 2026 and 2027. All but two issues are resolved by the Settlement Agreement between San Jose Water and the Public Advocates Office. Appendix A, Tables A through H, show the adopted revenue requirement and rate base as well as the various expenses and other calculations necessary to fully implement the Settlement Agreement (Appendix B) and adopt rates and charges effective January 1, 2025.

This decision also resolves two issues not otherwise resolved by the Settlement Agreement: Special Request 1, to include chemical and waste disposal cost in its existing Full Cost Balancing Account, and Special Request 2, to authorize an update to use the actual days in the uniform formula used to calculate a daily rate for the service charge. This decision grants both requests. Neither request changes the revenue requirement as proposed in the settlement agreement.

This decision requires San Jose Water to serve certain specific testimony in its next general rate case addressing its operating structure, management processes and specific methodologies it uses to develop its capital expenditure forecast and its proposed contingency allowances within those estimates. This decision also points out instances where it appears that parties have misunderstood or at least misapplied prior Commission decisions and provides guidance for the next general rate case.

This proceeding is closed.

1. Background

San Jose Water Company (San Jose Water) is engaged in the supply and distribution of water for domestic and industrial purposes in portions of the City of San Jose and the City of Cupertino, in the Cities of Campbell, Los Gatos, Monte Sereno, and Saratoga, and in unincorporated territory in the County of Santa Clara. San Jose Water is a California corporation and a public utility subject to the jurisdiction of this Commission pursuant to Public Utilities (Pub. Util.) Code Section (§) 216(a)(1).¹ San Jose Water is owned by SJW Group, a publicly traded company listed on the New York Stock Exchange under the symbol SJW. SJW Group also owns Connecticut Water Company in Connecticut; Maine Water Company in Maine; and Texas Water Company in Texas.²

1.1. Class A Water Utilities Generally

In California, water companies that serve more than 10,000 customers are considered Class A water utilities. San Jose Water is one of nine Class A water utilities regulated by the Commission. As of 2019, these nine companies served 1,470,007 customers connections³ and San Jose Water was the third largest California Class A utility with 226,602 connections. Even as third largest, it was only 43% of the size of California Water Service Company (Cal Water) that serves 527,407 connections in California and three others served less than 35,000 each. Although these nine companies are viewed as the large water companies, they

¹ Pub. Util. Code § 216 (a)(1): “Public utility” includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

² (<https://www.sjwater.com/our-company>) as of September 11, 2024.

³ (<https://www.cpuc.ca.gov/about-cpuc/divisions/water-division>) as of September 11, 2024.

are not homogeneous. Several are subsidiaries of even larger national utility companies, (1) Cal Water;⁴ (2) Golden State Water Company;⁵ (3) San Jose Water; and (4) California-American Water Company (Cal-Am),⁶ are all parts of larger national companies. The nine Class A water utilities are regulated as stand-alone entities, independent of their parent and affiliates. Specific rules help ensure this stand-alone treatment,⁷ and independence of other utility functions.⁸ The Commission sets broad policies for the water industry and applies them to the specific needs and circumstances of the California customers served by the California jurisdictional utility in their separate, independent rate proceedings. Each rate proceeding is decided on the evidence in the record established for that specific proceeding in light of the regulatory policies we set and as required by the Public Utilities Code.

1.2. Procedural Background

On January 2, 2024, San Jose Water filed Application (A.) 24-01-001 (Application) for an order authorizing it to increase rates charged for water

⁴ Cal Water is the largest subsidiary of the California Water Service Group, which also includes Washington Water Service, New Mexico Water Service, Texas Water Service, and Hawaii Water Service. (<https://www.calwater.com/about/company-information/> as of September 11, 2024.)

⁵ American States Water Company is the parent of Golden State Water Company, Bear Valley Electric Service, Inc. and American States Utility Services, Inc., serving over one million people in nine states. (<https://www.gswater.com/who-we-are> as of September 11, 2024.)

⁶ American Water [parent company of Cal-Am] is the largest regulated water and wastewater utility company in the United States. With a history dating back to 1886, ... by providing safe, clean, reliable and affordable drinking water and wastewater services to more than 14 million people with regulated operations in 14 states and on 18 military installations. (<https://ir.amwater.com/ir-home/default.aspx> as of September 11, 2024.)

⁷ See, Decision 10-10-019, dated October 14, 2010, as modified by Decision 11-10-034 dated October 20, 2011.

⁸ In particular, we ensure that the customers of the California jurisdictional utility do not cross-subsidize the operations of other affiliated companies owned by the same parent company.

service by \$55,196,000 or 11.11% in 2025, by \$22,041,000 or 3.99% in 2026, and by \$25,809,000 or 4.49% in 2027. The Application was filed pursuant to Section 454 of the Pub. Util. Code, Rule 3.2 of the Commission's Rules of Practice and Procedure, and the rate case plan (RCP) for Class A Water Companies adopted by the Commission in Decision (D.) 07-05-062.

On February 5, 2024, the Public Advocates Office (Cal Advocates)⁹ timely filed a protest. San Jose Water filed a timely Reply on February 13, 2024. A prehearing conference was held on February 14, 2024 to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. Water Rate Advocates for Transparency, Equity, and Sustainability (WRATES) requested and was granted party status during the prehearing conference.

Interested parties served testimony on May 15, 2024 and rebuttal on May 31, 2024. Parties notified the assigned ALJ that they were in settlement negotiations and waived evidentiary hearings. Opening and Reply Briefs were filed on two disputed issues on August 1, and August 19, 2024, respectively by both San Jose Water and Cal Advocates.

As provided by Ruling, on August 19, 2024, San Jose Water and Cal Advocates filed a timely joint motion for the adoption of a proposed Settlement Agreement. WRATES chose not to join in the Proposed Settlement after participating in discussions with San Jose Water and Cal Advocates. Comments

⁹ Cal Advocates is the Public Advocates Office as defined by SB 854 (Chapter 51, Statutes of 2018). Many documents have the full name Public Advocates Office in their titles but generally use "Cal Advocates" in the text of the documents. We use Cal Advocates throughout this decision.

on the proposed Settlement Agreement were filed on August 26, 2024 by WRATES.

On August 28, 2024, San Jose Water filed a motion to strike portions of WRATES Comments on the proposed Settlement Agreement asserting that various attachments to the Comments were not in the record. The Motion was granted on August 28, 2024, and San Jose Water and Cal Advocates were allowed extra time to file their reply and WRATES was allowed to refile corrected Comments no later than September 6, 2024. On September 3, 2024, San Jose Water filed a Reply to WRATES' Comments.

During this proceeding, the assigned ALJ made various Rulings on evidence, schedule, striking portions of testimony and filings, admission of exhibits, and other matters. We affirm all these Rulings.

1.3. Submission Date

This matter was submitted on September 27, 2024 upon filing of final corrections to the Settlement Agreement.

2. Issues

The issues identified in the assigned commissioner's scoping memo are addressed or otherwise considered herein are:

1. The adoption of just and reasonable to provide safe and reliable service and provide an opportunity for San Jose Water to earn a reasonable return on investment;
2. Whether San Jose Water adequately justified the requested increases and other reliefs it seeks in its application such that the Commission should authorize it to increase its rates and grant the requested reliefs it seeks as set forth in the application;
3. Whether San Jose Water's estimated revenue, expenses, plant, and rate base for Test Year 2025 (and escalation years 2026 and 2027) are just and reasonable;

4. Whether San Jose Water's results of operations model and all other calculation methods are both reliable and just and reasonable, including but not limited to escalation rates, contingencies, depreciation, pension and benefits accruals, projected tax expenses, tax deferrals, and treatment of any excess deferred tax reserves, etc.;
5. Whether San Jose Water's estimates for operating expenses, capital additions, and its operations are reliable and just and reasonable;
6. Whether to grant, modify, or deny the four Special Requests;
 - a. to include chemical and waste disposal cost in its existing Full Cost Balancing Account,
 - b. to authorize an update to use the actual days in the uniform formula used to calculate a daily rate for the service charge,
 - c. to update its Customer Assistance Program Surcharge, and,
 - d. to create a new bad debt balancing account;
7. Whether San Jose Water's water quality meets all applicable state and federal drinking water standards and other provisions of General Order 103 and whether San Jose Water complied with all Commission Rules, Decisions, and statutes;
8. Evaluation of the adequacy of San Jose Water's customer service;
9. Whether there are any safety concerns; and finally,
10. Whether there are impacts on environmental and social justice communities resulting from the Application, including the extent to which rate changes impact achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

We find that the above list of issues is inclusive of the issues enumerated by Cal Advocates in its protest and by WRATES in its participation. These issues

have all been resolved by the proposed Settlement Agreement and by the litigated outcomes for two of the special requests. We therefore find that there are no remaining unaddressed issues to be resolved.

3. Legal Principles

In reviewing the above issues and as necessary in adopting a just and reasonable revenue requirement, the Commission considers and applies its prior decisions and considers long-established general practices as appropriate to the facts and circumstances presented in this proceeding. Below is an overview of the applicable legal principles.

3.1. Just and Reasonable Rates

Pub. Util. Code § 451 provides that “all charges demanded or received by any public utility ... shall be just and reasonable.” Pub. Util. Code § 454(a) requires that “... a public utility shall not change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified.”

3.2. Prudent Manager Standard

When the necessity of San Jose Water’s actions is called into question, the Commission may in some circumstances apply the prudent manager standard. Under the prudent manager standard, the Commission does not evaluate reasonableness based on hindsight but based on what the utility knew or should have known at the time it made its decision.¹⁰ This standard reaches not just the activities and associated costs for which San Jose Water seeks recovery here but

¹⁰ D.22-06-032, Decision Addressing Southern California Edison Company’s Track 3 Request for Recovery of Wildfire Mitigation Memorandum and Balancing Account Balances (June 23, 2022) at 18.

extends to the actions or inactions that resulted in those activities being necessary.¹¹

3.3. Burden of Proof

It is well-established that an applicant, such as San Jose Water, must carry the burden of proving that it is entitled to the relief it is seeking. Thus, San Jose Water initially has the burden of affirmatively establishing the reasonableness of its position on each individual issue in its application.¹² Although the utility bears the ultimate burden to prove the reasonableness of the relief it seeks and the costs it seeks to recover, the Commission has held that when other parties propose a different result, they too have a “burden of going forward” to produce evidence to support their position and overcome the utility’s evidence.¹³

3.4. Standard of Proof

The standard of proof for all parties in rate cases is preponderance of the evidence. Preponderance of the evidence usually is defined “in terms of probability of truth, e.g., ‘such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.’”¹⁴ For

¹¹ D.18-07-025, Order Denying Rehearing of Decision (D.) 17-11-033 (July 12, 2018) at p. 3, 5, 6 (citing to D.87-06-021); D.21-11-036, Order Modifying Decision 19-09-025 and Denying Rehearing of Decision 19-09-025, as Modified (November 19, 2021) at 15.

¹² D.21-08-036, Decision on Test Year 2021 General Rate Case for Southern California Edison Company (August 19, 2021) at 9, citing to D.09-03-025, Alternate Decision of President Peevey on Test Year 2009 General Rate Case for Southern California Edison Company (March 13, 2009) at 8; D.06-05-016, Opinion on Southern California Edison Company’s Test Year 2006 General Rate Increase Request (May 11, 2006) at 7.

¹³ D.21-08-036, Decision on Test Year 2021 General Rate Case for Southern California Edison Company (August 19, 2021) at 10; D.20-07-038 at 3-4; D.87-12-067 at 25-26, 1987 Cal. PUC LEXIS 424, *37.

¹⁴ D.08-12-058, Decision Granting a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project (December 18, 2008) at 19, citing to Witkin, Calif. Evidence, 4th Edition, Vol. 1 at 184.

example, to meet its burden, a GRC applicant must produce a preponderance of evidence, when weighed against the evidence of those in opposition, that the forecasted costs are just, reasonable and necessary. For the opponents, the same is true, their evidence must outweigh that of the applicant on the issues they dispute.

3.5. Settlement Agreement Review Standard

As part of this proceeding, the Settlement Agreement was presented to be approved by the Commission under Rule 12.1 of the Commission's Rules of Practice and Procedure (Rule(s)). A settlement may only be approved under Rule 12.1, if the Commission finds it to be reasonable in light of the whole record, consistent with the law, and in the public interest. Here, San Jose Water and Cal Advocates, jointly moved for approval and adoption of their proposed Settlement Agreement, and they must demonstrate that the proposed settlement meets the requirements of Rule 12.1. Settlements need not be joined by all parties to the proceeding.¹⁵ Only upon meeting those requirements is a settlement agreement eligible for adoption by the Commission.¹⁶

The Settlement left two issues for litigation that we separately resolve on their merits without affecting the adoption of the Settlement or being affected by the Settlement.

Under the settlement rules we could, if we find significant flaws, propose modifications to the settlement. As discussed below we find the Settlement as a whole to be reasonable. We take to heart the admonition in *Hanlon v. Chrysler*

¹⁵ Rule 12.1(a).

¹⁶ D.12-10-019, Order Denying Rehearing of Decision (D.) 08-08-030 (October 11, 2012) at 14-15; D.09-11-008, Decision Denying Motion to Adopt Contested Settlement and Dismissing Application (November 20, 2009) at 6.

Corp.¹⁷ and propose no changes although we do impose some requirements for the next general rate case.

Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.

4. Settlement Agreement

4.1. Revenue Requirement Impact

Table 1, below, shows in summary form the impact of the revenue requirement resulting from the Settlement Agreement in Appendix B to be recovered from Great Oak's customers. Greater detail is in Appendix A.

	Present Rates	Test Year 2025	Escalation Year 2026	Escalation Year 2027
Revenue Requirement	\$556,461,108	\$566,477,943	\$581,481,224	\$599,712,746
Annual Increase		\$10,013,835	\$15,003,281	\$18,231,52
Percentage increase		1.80%	2.65%	3.14%
Rate Base		\$1,265,279	\$1,345,751,324	\$1,246,334,369
Rate of Return		7.86%	7.86%	7.86%
Service Charge 5/8 Inch Meter ¹⁸	\$55.51 per month	\$70.11 Per month	\$71.89 per month	\$74.02 Per month

¹⁷ 150 F.3d 1011, United States Court of Appeals for the Ninth Circuit.

¹⁸ A 5/8th inch service connection is the most common residential service connection. The Service charge is a fixed charge calculated on a monthly based to recover a large portion of San Jose Water's non-volumetric-related costs. All service charges are shown in Appendix A.

4.2. Capital Additions

The adopted Settlement resolves the issue of the reasonable capital budget for this proceeding. As discussed below we find the Settlement Agreement to be reasonable on this issue and consistent with the record. That outcome and its trade-offs is not binding on San Jose Water's next GRC. Therefore, regardless of the Settlement we will impose specific requirements on San Jose Water in its next GRC where we may be obliged to resolve a litigated capital additions budget, and our deliberations may be improved by having this information in the record.

In Appendix B, Table 5, the settling parties summarized the agreed upon capital budgets incorporated into the settlement's revenue requirements. That settlement also listed the specific agreed upon budgets by project in Appendix 2. The parties further agreed that "San Jose Water has the discretion to manage the overall capital budget to best serve its customers, including delaying, postponing, or substituting the projects listed in the attachment."¹⁹ This provision is within the normal ratemaking expectations of the Commission that the utility exercises its expert judgment to effectively and efficiently manage its operations. Our policy concerns and directives on this and related issues are enumerated below in Sections 4.2 and 4.3. These obligations for the next GRC do not modify the Settlement Agreement as proposed by San Jose Water and Cal Advocates and as adopted herein.

4.2.1. Application Overview - \$912,755,100 Between 2024 and 2031

San Jose Water presented in its testimony a request for 330 separately identified capital projects and the associated revenue requirement for those

¹⁹ Settlement Agreement Section VIII. UTILITY PLANT (CHAPTER 11), B. Capital Budget, at sheet 30 of 60.

projects during the test year and beyond. In Exhibit (Ex.) SJW-02²⁰ San Jose Water shows annual capital expenditures for these projects incurred or to be incurred from 2024 through 2031, where some project construction extends beyond the current rate case cycle of 2025-2027. The overall lifetime projected cost for these 330 projects is \$912,755,100. The costs in Test Year 2025 are \$180,018,000. For Attrition Years 2026 and 2027 San Jose Water forecasts \$219,986,400 and \$87,346,300, respectively. The balance of construction costs in Ex. SJW-02 were already spent in 2024 before the new test year, and after the new cycle in 2028 through 2031.²¹

Ex. SJW-02 demonstrates the reality that utility construction projects do not fit neatly into three-year rate case cycle packages. The Commission must necessarily consider and approve or reject proposed projects that may begin in the current rate cycle but not be completed before the next rate case cycle. This also means that the Commission can and should review projects under construction to ensure that any projects approved in this rate case, but which are not completed before the next, are still viable and necessary and that they should be completed rather than abandoned as no longer viable or necessary.

With 330 separate projects in San Jose Water's proposed budget, we must consider and accept the necessity that some projects may be deferred or even cancelled and replaced during the 2025-2027 rate cycle with unforeseen or more

²⁰ SJW-02 was served by San Jose Water as directed by a March 25, 2024 Ruling. It required San Jose Water to summarize its testimony and workpapers to show a project-by-project summary in descending order of total project lifetime costs (including costs from 2024 to in some cases 2031). The exhibit was served as an active Excel spreadsheet so that data could be rearranged or resorted for analytical purposes.

²¹ The costs shown in Ex. SJW-02 are as of March 25, 2024 and the then served testimony of San Jose Water.

urgent projects. San Jose Water continues to have the burden of proof for the necessity of these substituted projects and the reasonableness of the costs incurred. This obligation to serve overrides any limitations within the adopted settlement.

We order in this decision that San Jose Water must, in its next general rate case, provide a specific detailed exhibit listing any projects proposed as a part of this decision and included in Ex. SJW-02 that it defers or decides to no longer pursue during the rate case years 2025, 2026, and 2027 either as a result of the settlement or the application of its managerial decision-making. It must also specifically list and justify any new projects substituted for or pursued in lieu of projects included in the Settlement's capital additions. Finally, San Jose Water must specifically reconcile its total capital construction incurred in 2025-2027 to the approved 2025-2027 capital expenditures.²²

San Jose Water's 14 largest proposed projects each have a construction cost estimate over \$10,000,000 and have a combined construction life forecast of \$451,000,000. The next 21 projects each have a construction cost estimate over \$5,000,000 and have a combined forecast of \$129,600,000. We have carefully reviewed San Jose Water's estimates and Cal Advocates' testimony addressing these 35 proposed projects, due to their high costs and duration, and we have also considered the positions of all parties on all 330 projects which cover all aspects of San Jose Water's operations. We will not interfere with this portion of the settlement. We find that the Settlement Agreement has reasonably considered the scope of the capital additions as proposed, and the parties have agreed to a

²² For example, if this decision adopts \$450 million for 2025-2027 and San Jose Water actually spends either \$455 or \$445 million it must justify the reasons for the over- or under expenditures.

reasonable budget that reflects San Jose Water's projected needs for the test year cycle and beyond. We therefore find the settlement reasonable in its treatment of capital additions.

4.3. The Meaning of Adopting a Test Year Forecast

Cal Advocates' testimony shows a confused and inaccurate understanding of what it means when the Commission adopts a test year capital additions forecast and the impact of that adoption on San Jose Water's ongoing obligation to serve. The Commission requires in a general rate case that the applicant sponsors and justifies a detailed specific forecast of projects that the utility asserts are necessary for continued safe and reliable service. San Jose Water was expected to present its best expert opinion of the necessary projects to be pursued and the estimated cost of those projects. Cal Advocates and other intervenors were expected and allowed to fully investigate via discovery and then challenge that forecast and methodology with their own expert testimony.

Actual events can cause a utility to determine that of the many projects it planned to pursue during the test year and attrition years some other more urgent needs may arise. The company has an obligation to provide safe and reliable service which means it must timely use its expert judgement to adapt its actions and not blindly adhere to an adopted forecast. The Commission authorizes rate recovery of the utility's budgeted amount of money and expects it to be used in the most responsible way. If a project included in the forecast for the test year is deferred the utility must justify that project again in the subsequent general rate case if it believes that the deferred project is still necessary. That subsequent justification can be disputed by intervenors in the next proceeding. Intervenors can also challenge the reasonableness of the substituted project in the next proceeding.

In its testimony Cal Advocates incorrectly asserts that the Commission should not include funds for a deferred (and re-justified) project because ratepayers already paid for it. That defies the reality that San Jose Water spent money on a different project and San Jose Water has the burden of proof to justify the ongoing recovery of that completed project which is now in rate base instead of the deferred project.²³ The question to be answered is whether on the whole San Jose Water was reasonable in its pursuit of some of the proposed projects and the different projects it substituted based on urgent operational needs.

Parties may dispute that San Jose Water significantly underspent its prior forecast which it partially recovered on an annualized revenue requirement basis.²⁴ If proven, that could affect how we view the reliability of the current capital forecast. But if the company significantly underspends then in its next general rate case the beginning rate base is significantly smaller by the absence of a completed project in rate base.

The adopted settlement, while only applicable to the test year, and not precedential or binding on future proceedings, in fact correctly recognizes the need for San Jose Water to have managerial flexibility, and managerial responsibility, for adapting its actions to the needs of the system and San Jose Water is able under the proposed Settlement Agreement to adjust, divert, delay, or change capital additions to do so. This is another reason why it is reasonable

²³ For simplicity this explanation assumes a hypothetical direct swap of projects proposed in the general rate case for different unforeseen and now urgently needed projects and that the costs are a roughly equal exchange.

²⁴ A project with a life of 30 years and which cost \$30,000,000 to build would be recovered at a rate of \$1,000,000 per year through depreciation, plus an allowance for return and taxes.

to adopt the Settlement Agreement. If San Jose Water deferred a project included in the last rate case's forecast and built a different more urgent project then the company needs to be prepared to justify those changes. If the deferred project is still needed, and San Jose Water includes it again in the subsequent rate case, it is not asking to collect rates for that project twice as asserted by Cal Advocates. The project never happened: a different project was built instead.

4.4. Project Forecast Methodology

In this section we discuss both industry standards and our expectations as well as review San Jose Water's specific practices as presented in its witnesses' testimony.

We believe that San Jose Water, like all other jurisdictional utilities, is obliged to have sufficient competent trained and experienced technical staff or contractors to design, construct, operate and manage its complex water service system. When designing or constructing utility plant it must have either competent in-house or contract personnel suitable to perform the necessary tasks. One such task is having in place a competent system for estimation; cost control; business planning and management science; profitability analysis; project management; and planning and scheduling of necessary utility plant.

We find that Cal Advocates' witnesses incorrectly applied or misinterpreted several prior Commission decisions where it unreasonably wanted to ignore projects which would be under construction during this rate cycle but would not be completed until a later rate cycle. The Commission must address the reasonableness of San Jose Water pursuing any project crossing over more than one rate cycle in order to make timely findings on the reasonableness

and necessity of those projects. Additionally, the Commission must make timely findings on the appropriate rate recovery mechanism for those projects.²⁵

4.4.1. AACE International: Association for the Advancement of Cost Engineering.

Cost Engineering is the application of scientific principles and techniques to problems of estimation; cost control; business planning and management science; profitability analysis; project management; and planning and scheduling.²⁶

The Association for the Advancement of Cost Engineering (AACE) for example publishes AACE International Recommended Practices (RPs) which are aligned with what it describes as the “Total Cost Management Framework,” and it established the technical foundation for its educational and certification products and services. The AACE’s RPs provide technical reference information, vetted by a review process, regarding specific competency areas. RPs may be industry-generic providing a broad overview of a specific practice that applies to most industries; or may be industry-specific describing a particular application of a practice in a specific industry.

Total cost management is that area of engineering practice where engineering judgment and experience are used in the application of scientific principles and techniques to problems of business and program planning; cost estimating; economic and financial analysis; cost engineering; program and project management; planning and scheduling; cost and schedule performance measurement, and change control.

²⁵ For example, should San Jose Water be allowed to include construction work in progress in rate base or should it accumulate an allowance for funds used during construction as it accrues costs in a construction work in progress account.

²⁶ <https://web.aacei.org/about/about-aace/what-is-cost-engineering> (Current as of May 22, 2024.)

Simply stated, it is a systematic approach to managing cost throughout the life cycle of any enterprise, program, facility, project, product, or service. This is accomplished through the application of cost engineering and cost management principles, proven methodologies, and the latest technology in support of the management process.²⁷

Our expectations on how our jurisdictional utilities are expected to conduct their engineering tasks are well described by this language and is a good representation of the performance by the utility that we expect before setting rates based on any utility's testimony and forecasts in a general rate case or any other rate setting proceeding.

We have not in the past definitively mandated to San Jose Water that it must specifically use AACE's RPs, nor do we make that specific order here. We will however require San Jose Water to demonstrate in its testimony in the next general rate case that it has adopted and embedded in its operations an overall formal system for designing and managing its capital expenditures using either AACE's RPs or some other industry standard and professionally recognized and documented system of cost engineering management in some form of industry best practices.

This additional testimony in the next general rate case will assist Cal Advocates, other intervenors, as well as the Commission to better understand and assess the capital forecasts proposed in the next proceeding and provide greater confidence in San Jose Water's project forecasts and costs estimates.

²⁷ Ibid.

4.4.2. Reasonable Degree of Reliability in a Forecast

We will require San Jose Water, in its next general rate case, to provide testimony and other evidence to support that all its project descriptions and costs estimates have a documentable level of reliability. We are not mandating that San Jose Water adopt and use AACE RP 18R-97 as summarized below.

However, we will require that San Jose Water use and describe in its testimony and workpapers for the next general rate case some industry-recognized system for classifying its cost estimates and the level of confidence or reliability of its estimates.

The AACE for example has a five-class definitional classification for project forecasts in its AACE RP 18R-97, “Cost Estimate Classification System, as Applied in Engineering, Procurement, and Construction for the Process Industries.”²⁸ Only portions of this information are publicly available for free. Widely known, however, is the five-class system. The classification designations are labeled Class 1, 2, 3, 4, and 5. A Class 5 estimate is based upon the lowest level of project definition, and a Class 1 estimate is closest to full project definition and maturity. This “countdown” approach considers that estimating is a process whereby successive estimates are refined until a final estimate closes the process.

On the surface, a Class 2 or 3 estimate might be the minimum level of reliability in a cost forecast that would be sufficient for setting rates to be paid by a utility customer. We expect San Jose Water, Cal Advocates and any other

²⁸ [18R-97: Cost Estimate Classification System - As Applied in Engineering, Procurement, and Construction for the Process Industries \(aacei.org\)](#) (Current as of May 22, 2024.)

intervenors in the next general rate case to address the minimum acceptable level of cost estimates suitable for test year ratemaking forecasts.

4.4.3. Contingencies in Cost Estimates

This proceeding has a Settlement Agreement and therefore we are not resolving the dispute raised in testimony over whether and how San Jose Water forecast and included contingency allowances in its capital additions forecast. Nevertheless, we are compelled to address how this issue was presented in testimony by Cal Advocates and how its testimony showed a failure to correctly apply prior Commission decisions where the Commission adopted specific adjustments to an applicant's request to include a contingency factor in its capital additions forecast. Based on San Jose Water's rebuttal testimony and our own prior decisions, Cal Advocates incorrectly characterized and misapplied D.19-05-020 and D.21-08-036 in its testimony.

In D.19-05-020, a GRC decision for Southern California Edison Company (SCE), the Commission authorized contingency factors for all of SCE's proposed capital projects, with only one exception for software packages. For SCE's purchases of software packages only, the Commission removed the contingency factors as there was no basis to anticipate any contingency, unlike all the rest of SCE's capital projects which were approved with contingency factors if they were initially assigned one. The unknown risks associated with purchasing existing software programs from a vendor and installing them with one's own employees, as SCE proposed, posed few, if any, contingent risks. That said, all other projects approved in that decision, were approved with contingency factors, and they posed various uncertainties associated with the planning, designing, and permitting of electric utility facilities, as well as the hiring of

general contractors and subcontractors, and constructing the components of a utility's plant.

Similarly, in the second decision, D.21-08-036, the Commission examined the evidence and considered the merits of the contingency factors proposed. D.21-08-036 does not stand for the proposition that the Commission summarily disfavors and disallows all contingency factors. The Commission examined and rejected a proposed 35 percent contingency factor employed by SCE on one or more projects, but at the same time allowed use of a 20 percent contingency factor on one type of project and approved a 15 percent factor on another project.

The above cited decisions are consistent with and reflect the Commission's historical allowance of appropriate contingency factors, so long as the contingency factors are reasonable in the context of the project to which they are applied.

The issue of any, or the appropriate allowance for contingencies in capital additions forecasts remains an open one for the next general rate case regardless of the outcome in this current Settlement Agreement.

4.4.4. Escalation Rates

Escalation rates are used to adjust a forecast made in a base year's dollars for the effects of inflation over time.²⁹ For example, if a project would cost \$1,000 today, but the work will not occur for two more years, then applying an appropriate escalation rate would give a better idea of the cost in two years' time. If the expected rate is 3% per year, then in two years the cost would be \$1,061.

²⁹ Any allowance for escalation is completely separate from any allowance for contingencies. Escalation provides a uniquely different estimate to account for inflation or other increases in costs whereas a contingency provides a uniquely different allowance for unforeseeable changes to the project.

The Commission has long recognized the need for escalation to cost forecasts and has often resolved disagreements between the utilities and the intervenors on the most reasonable rate(s) to apply over time.

San Jose Water proposed an escalation rate 4% that was based on “historic pre-pandemic escalation rates, expected increases in company and contract labor wages, and published forecasts for national inflation which are predicting a slow return to pre-pandemic levels of inflation.”³⁰

Cal Advocates on the other hand proposed rate of 3.5%. Cal Advocates used pre-pandemic regional escalation rates to derive its escalation rate.³¹

The difference of only one-half a percent can be significant: in one year for a budget of \$10,000,000 the difference is \$50,000. San Jose Water has 330 projects with a 2025 budget of \$180,000,000 and that have lifetime budgets of \$913,000,000.³² The escalation components in these forecasts are therefore quite significant.³³

The issue of what escalation rate to apply for the test year and attrition years was resolved by the Settlement Agreement. We will not revisit that outcome because it was a part of the bargained for trade-offs between settling parties.

³⁰ Ex. SJW-20 Rebuttal Testimony on Capital Improvements at 41.

³¹ Ex. CalAdv-01 Cal Advocates Testimony, Report and Recommendations on Capital Improvement Projects, at 7-1 to 7-3.

³² Ex. SJW-02 Capital Improvements Spreadsheet.

³³ It is reasonable to note that Ex. SJ-02 shows San Jose Water forecasts for projects planned to begin during the 2024-2027 timeframe and beyond to 2031. We address the issue of long-lived projects separately.

4.4.5. San Jose Water's Capital Forecast Methodology

San Jose Water presented a detailed budget for the 330 projects it proposed for the GRC cycle, and beyond. The budgets were individually project focused and did not offer a pragmatic or programmatic philosophy to how San Jose Water plans for the decades to come and not just the “right now” of a three-year rate case cycle. San Jose Water has done what has been expected of them in the GRC process. Cal Advocates has not identified organizational or methodological faults because it did not analyze San Jose Water's process. Cal Advocates' testimony shows that it instead focused on challenging the details of specific projects and by unilaterally opposing any consideration of projects not fully completed within the rate cycle even though Ex. SJW-02 has projects extending for years beyond this cycle and even beyond the next scheduled GRC. For these reasons, we are requiring San Jose Water to present its philosophical and technical program for capital addition planning in detail in the next GRC and why we expect intervenors, including Cal Advocates, to look at the long-term as well as the three-year ratesetting of a general rate case when reviewing San Jose Water's next capital budget.

4.5. Expenses as Proposed in the Settlement Agreement

We have reviewed the proposed Settlement Agreement's treatment of various expense categories, and we find that the parties' agreement is consistent with providing a sufficient revenue stream for San Jose Water to effectively operate in a safe and reliable fashion. We defer to the judgement and agreement by the parties on the numbers of new employees, the appropriate employee related expenses, as examples of reasonable compromises considering the range of positions proposed in their respective testimony. As with all other expense

items we find the parties have demonstrated that they both had a sufficient understanding of the issues to reach a reasonable settlement. As with all expenses, San Jose Water has the discretion and obligation to actually spend the amounts necessary to provide safe and reliable service. This includes having the discretion to reallocate revenue by spending either more or less in various categories as necessary. The adopted expense allowances are not a cap that would justify San Jose Water not spending what is actually necessary to provide safe and reliable service. For example, even though the Settlement Agreement does not add any of the requested additional employees,³⁴ San Jose Water must actually maintain or engage a sufficient number of employees to provide safe and reliable service.

4.6. WRATES Comments on the Settlement Agreement

WRATES was an active participant in this proceeding. It performed discovery; filed motions; served proposed testimony and other proposed exhibits; and participated in settlement discussions with San Jose Water and Cal Advocates. WRATES ultimately chose not to join the settlement and instead filed Comments as allowed under Rule 12.2. No party requested hearings on the Settlement Agreement under Rule 12.3.

As discussed below, we reviewed WRATES' Comments that were within the scope, and we find that WRATES has not shown that proposed Settlement Agreement fails to meet the Commission's rules and criteria for approving a settlement. WRATES did not show the settlement is unreasonable, or that the Settlement Agreement ignores either the record or the Commission's general practices for setting rates in a general rate case.

³⁴ Settlement Agreement at sheet 21 of 40.

WRATES argues that the Settlement Agreement did not identify and directly address Items 1, 7, 8, or 9 as identified in the Scoping Memo:

1. The adoption of just and reasonable to provide safe and reliable service and provide an opportunity for San Jose Water to earn a reasonable return on investment;
7. Whether San Jose Water's water quality meets all applicable state and federal drinking water standards and other provisions of General Order 103 and whether San Jose Water complied with all Commission Rules, Decisions, and statutes;
8. Evaluation of the adequacy of San Jose Water's customer service;
9. Whether there are any safety concerns.

WRATES incorrectly asserts that the Settlement Agreement must specifically discuss each enumerated issue as listed in the Scoping Memo. By the simple act of settling, San Jose Water and Cal Advocates are agreeing that they accept the rates resulting from the settlement are just and reasonable and San Jose Water accepts that it has an opportunity to earn a reasonable return. If they did not believe all of these requirements were met, they would have been foolish to settle and would proceed to litigate their disputes.

Cal Advocates has as a part of its mission to ensure that rates are sufficient to provide safe and reliable service.³⁵ San Jose Water has no incentive to

³⁵ Cal Advocates states that "its mission is to advocate for the lowest possible bills for customers of California's regulated utilities consistent with safety, reliability, and the state's climate goals." (See <https://www.publicadvocates.cpuc.ca.gov/about> as of September 16, 2024. Cal Advocates authority is found at Pub. Util. Code § 309.5(a):

There is within the commission an independent Public Advocate's Office of the Public Utilities Commission to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the office shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the office shall primarily consider the interests of residential

Footnote continued on next page.

deliberately offer unsafe or unreliable service. WRATES offers emotional rhetoric, without persuasive evidence, that the Settlement Agreement would result in unsafe or unreliable service. WRATES also fails to show that any component, or the whole of the settled revenue requirement or capital budgets are unjust or unreasonable.

Our own review of the evidence, the application, the served testimony, and the briefs, shows that the Settlement Agreement is within the range of probable litigated outcomes had the application proceeded to contested evidentiary hearings and detailed briefing. Our review also tells us that the parties adequately addressed the issues as determined by the assigned Commissioner in the scoping memo.

WRATES objects that somehow San Jose Water, with the complicity of Cal Advocates, is deliberately disguising the amount of the rate increase to be borne by customers. WRATES cannot substantiate this allegation. We see no reason to reject or amend the Settlement Agreement based on this objection. In our summary of the adopted rates and in the attached rates we provide all the relevant information to show what was adopted and the changes in the new rates are clearly shown.

WRATES also disputes whether Cal Advocates considered the Commission's policy on affordability when it chose to participate in the Settlement Agreement. We have no misgivings about Cal Advocates' commitment to honor our policy directives on affordability, or safety or

and small commercial customers.

(https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PU&division=1.&title=&part=1.&chapter=2.&article= as of September 16, 2024.)

environmental justice. We see no lack of consideration of affordability. San Jose Water and Cal Advocates reasonably considered the update of data when finalizing the Settlement Agreement. We reject as unfounded all of WRATES' assertions that Cal Advocates has in anyway failed to honor our policy directives or adhere to its own mission to protect the best long-term interests of ratepayers and vigorously investigate a proceeding and make its best effort to provide a sound professional assessment and recommendations.

WRATES raises several specific objections to individual component costs which are part of the greater trade-offs made by the settling parties whereby they compromise on their specific positions for individual issues in exchange for the overall trade-offs negotiated to settle. None of WRATES' objections show any unreasonable behavior by San Jose Water or Cal Advocates and we do not piecemeal unravel those tradeoffs.

San Jose Water and Cal Advocates uniformly rebutted all of WRATES' specific objections to the Settlement Agreement. They correctly point out, for example that WRATES has not provided persuasive evidence of a cybersecurity problem at San Jose Water and that in fact numerous projects included in the settlement are directly focused on funding cybersecurity activities and projects.³⁶ Similarly the Reply Comments show that San Jose Water and Cal Advocates presented extensive testimony on plant security and in negotiations for the settlement reached an agreement on budget for the test year.³⁷

We find that WRATES has not raised any persuasive objections to the Settlement Agreement.

³⁶ Joint Reply at 13-14.

³⁷ Joint Reply at 15.

5. Special Request 1- Including Chemical and Waste Disposal Costs in the Full Cost Balancing Account

San Jose Water asks to include the costs of chemicals and waste disposal³⁸ associated with water treatment in a balancing account arguing that the costs are increasing rapidly and difficult to reasonably estimate. We agree to include the costs in a balancing account, although we are concerned that San Jose Water might have overstated the risks of accurately forecasting and controlling its costs. Therefore, we will limit recovery by imposing a “dead band” of plus or minus 5% where San Jose Water must absorb the first 5% over the forecast and need not refund any savings up to 5% under the forecast.

At the time of filing this application San Jose Water had an authorized Full Cost Balancing Account which is described in its authorized Tariff Sheet No. 2217-W:

1. Purpose

The purpose of [the Full Cost Balancing Account] FCBA is to track the supply expense difference cause[d] (sic) by the the (sic)³⁹ difference between the recorded unit cost for supply (\$/CCF)⁴⁰ and adopted unit cost supply (\$/CCF).

2. Applicability

The FCBA is applicable to the following supply costs:

- a. Purchased Water (Potable and Recycle)
- b. Pump Tax
- c. Purchased Power

³⁸ Regardless of the outcome on the inclusion of these costs in a balancing account these forecast amounts were otherwise settled.

³⁹ Both typographical errors are in the published tariff language.

⁴⁰ Dollars per 100 cubic feet.

San Jose Water's request would add chemicals and waste disposal costs to this account. Its forecast, as filed in the application, was \$1,116,025 which is a significant cost to ratepayers.⁴¹ The amounts were not changed in reaching a settlement.

The basic underlying system of ratemaking in California has been, and remains, a forward test year of the expected cost and scope of a utility's operations. That is, the utility's rates are set prospectively in a general rate case based upon a forecast of sales and operating costs, plus taxes, interest, and an expected return for the investors based on the investment in long-lived assets that serve the customers. Rates are set to give the company a reasonable opportunity to earn a fair return, but not a guarantee of a specific profit during the actual test year. Balancing accounts were created to reduce the risks to ratepayers as well as investors where some costs are too uncertain to forecast accurately in a general rate case. Refundable rates are set for the program based upon the best available forecast. The courts have accepted that when the Commission approves the scope of a program in advance, and when there is a subsequent review of the reasonableness of the utility's decision-making and management of the program, then forecast costs can subsequently be "trued up" to actual and any revenue shortfall or overcollection is recoverable by the utility or refundable to ratepayers. The preapproval of the scope of the balancing account averts a finding of retroactive ratemaking, i.e., it becomes an exception to

⁴¹ San Jose Water asked for \$861,067 for chemical costs and \$254,958 for waste disposal costs in Test Year 2025. (See San Jose Water Workpapers: CH-08, WP 8-21, Cell K13 and Cell K18, respectively.)

the test year forecast requirement. For a gas utility, for example, the costs of natural gas are highly competitive and difficult to forecast and so a balancing account reduces the risk of overcharging ratepayers if the forecast for the test year proves later to be too high and protects the shareholders if the forecast is too low.

Memorandum accounts are much more uncertain: for an activity that has not yet been found to be reasonable and necessary, and where the costs are very uncertain, a utility may be given authority to track those costs and apply to recover the costs later after the utility demonstrates the reasonableness of its actions and the benefit of the activity to the ratepayers. Before the use of memorandum accounts, utilities were generally at risk of absorbing activities unforeseen in between general rate cases and the company would only be able to recover forecast costs in its next test year.

San Jose Water has 14 separate balancing accounts, including the Full Cost Balancing Account, as well as a number of memorandum accounts. The costs of chemicals and waste disposal meets the first criterion of a definable and necessary cost for potential inclusion in a balancing account. The critical issue here is whether chemicals and waste disposal costs are too uncertain to forecast accurately in a general rate case and meets the second criterion.

Cal Advocates argues against including chemicals and waste disposal costs in a balancing account on both a general concern that there is an over-reliance on balancing accounts which removes any incentive for San Jose Water to more carefully manage its costs and negotiate with suppliers, etc., as well as asserting that these costs are not in fact hard to forecast or currently experiencing an unpredictable trajectory. Cal Advocates offers no specific alternative forecast, essentially accepting San Jose Water's.

The Commission is always concerned that any adopted allowance in rates is the result of well-managed actions by the utility and that costs are kept to the lowest reasonable level. It has in the past imposed a “dead band” for over or under-collections where the company may keep a minor savings – as it would in isolation from other events if it achieved a lower cost than was included in a test year forecast – and not refund the small savings to ratepayers. Equally, with a dead band the utility would not recover a minor higher difference over the forecast, and it would absorb the minor shortfall. Larger over or under-collections beyond the dead band would be refunded or collected.

Rather than denying the balancing account request, we will include chemicals and waste disposal costs in San Jose Water’s Full Cost Balancing Account on a trial basis for this rate cycle. We will impose a 5% deadband on refunds or recovery. This is a deadband of plus or minus \$55,801 for 2025.⁴² There is no magic or science to the 5% range, but it does protect both the company and the ratepayers against a major error in the forecast. Additionally, should San Jose Water’s actual cost variance exceed the dead band in either direction it must explain in detail in the next general rate case the cause(s) of the variance exceeding the 5% plus or minus range. We caution both sides that there is no presumption that we would again authorize recovery of chemicals and waste disposal costs in San Jose Water’s Full Cost Balancing Account, with or without a dead band, unless a detailed and convincing argument is made to justify either future inclusion or exclusion of these costs in the balancing account.

⁴² \$1,116,025 x 0.05 = \$55,801.

6. Special Request 2 - Use the Actual Days in the Uniform Formula to Calculate a Daily Rate for the Service Charge

The service charge for San Jose Water is a large monthly fixed dollar amount because it recovers a very large amount of San Jose Water's total costs which are necessary for it to function and stand ready to serve. We need therefore to ensure that both the gross amount of costs that San Jose Water is authorized to recover is just and reasonable⁴³ and the rate mechanism used to recover those costs is fair to all customers. There is no litigated dispute on the service charge as included in the Settlement Agreement. We adopt San Jose Water's allocation methodology and dollar value for the calculation of the daily factor of the monthly service charge.⁴⁴

San Jose Water makes a compelling argument that the current method is not accurate. The current method was one of many component parts of a prior settlement in San Jose Water's last GRC. The dispute here is how to allocate those costs to a "daily" rate, for example, if a customer is only a customer for 13 days in the first billing cycle they take service, how much should that customer pay per day?⁴⁵ The Commission's settlement rules explicitly state they are not binding on future proceedings.⁴⁶ It is the Commission's prerogative, not the

⁴³ Which is exactly what we try to do in general rate cases.

⁴⁴ This change is in addition to an earlier change where the Commission authorized a change in service charge to reflect the size of a meter beginning August 24, 2022, and reflecting the number of billing days in a billing cycle, rather than a flat fixed charged.

⁴⁵ Similarly, as billing cycles may vary in length, how much should be charged in any given cycle?

⁴⁶ Rule 12.5 Adoption Binding, Not Precedential.

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption

Footnote continued on next page.

settling parties, to determine whether a prior settlement is relevant to a subsequent proceeding.

The prior settlement used the weighted number of 365.25 days which accounts for leap years, to derive a daily rate. But neither the current or the proposed charge is simply the total of annual fixed costs divided by 12 and paid equally by all customers as a fixed monthly charge. The billing cycle for each customer does not always include the same number of days and more importantly not every installed meter is actively in service every day for the entire year. Customers are billed for the actual number of days they received service and a daily rate for the service charge is used. If a customer began service the day before the meter was read, their first bill would only have one-day's service charge, not a "full-month's." We will adopt San Jose Water's proposal to use its calculated actual, or effective number of 362.02 days, to calculate the most accurate billing factor for a daily rate of the service charge.⁴⁷

Cal Advocates testimony demonstrates an erroneous understanding of the ratesetting process, as it attempts incorrectly to bootstrap its position using a prior settlement in violation of the Commission's settlement rules, Rule 12.5.⁴⁸ The settlement rule correctly recognizes that settling parties make numerous trade-offs, accepting settlement outcomes on individual issues which on their

does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

⁴⁷ Billing cycles and the number of days reflected in each month's bills is more complicated than it might appear because meters are not precisely read, and customers then precisely billed, on a precisely identical routine.

⁴⁸ Ex. CalAdv-03 Expenses, Taxes, Rate Base, Rate Design, Balancing and Memo Accounts, Capital Improvement Projects, and Special Requests at 16-9 to 16-11.

own would otherwise be unacceptable to them. We cannot know or ever unravel whether a single settlement component in isolation was in fact mutually acceptable or was a win for one and a loss for another. Here, Cal Advocates tries to imply that *because* an isolated outcome was included in the settlement that this prior inclusion *confers* a form of truth or reasonableness. It does not.

Cal Advocates did not challenge San Jose Water's calculation of effective customer days, instead it incorrectly relies on the inclusion of a "uniform" calculation as a part of a prior settlement calculating service charges and that this resulted in overcharges. (CalAdv-03 at 16-9.) This is only the opinion of the witness, not a finding by the Commission. Settlements are considered as a whole and not all parts can individually be presumed to be reasonable in isolation.

San Jose Water proposes a 362.02-day figure. The shortfall of three days from the number of days in a calendar year represents the impact of meters with no customers. San Jose Water explains its derivation of its version of "actual days" in this manner:

On August 24, 2022, SJWC [San Jose Water] filed Advice Letter 578 to implement the new uniform formula⁴⁹ to its billing practice. This calculation assumes that every account would be active for a full 365.25 days of the year whereas $365.25/12=30.4375$. Once the change was implemented, SJWC noticed that actual bill days is not the assumed 365.25 days but actual 362.02 days. Starts and stops happen frequently when customer move in and out of premise. Through reviewing 12-month (August 2022-July 2023) worth of bi-monthly bill data for residential and non-residential customer, (sic) the actual bill days is 362.02 days.

San Jose Water says that a calendar may have 365 days, with the occasional 366 in a Leap Year, but as a business billing its customers there are effectively

⁴⁹ i.e. The new uniform formula from its last GRC's settlement.

362.02 billing days a year because not every account is active every single day of a 365-day year because when there is no billable customer at the end of every installed meter, it is reasonable to recognize the revenue loss impact of the days when some meters have no customer. No water flows out of those customer-less meters so there are no volumetric costs to be recovered. But the service charge primarily recovers fixed costs which reflect the costs of San Jose Water standing ready to serve. Looking at it daily, San Jose Water has a different customer count every day of the year because every day there are potentially a non-matching numbers of customers ending or beginning service and customer-less connections. If we do not account for those days when an installed meter has no billable customer, but that meter is used to derive the daily rate, San Jose Water will not collect the full adopted forecast of the service charge. The 362.02 weighted calculation should more accurately ensure San Jose Water collects the entire service charge from the customers who are billable for an installed meter.

We adopt San Jose Water's 362.02 billing days because it is a reasonable attempt to reflect the daily fluctuation in total customers receiving service and thus liable to absorb a daily share of the fixed costs recovered through the service charge. Cal Advocates' methodology did not refute the daily customer count fluctuation and its reliance on a prior settlement fails as well.

7. Environmental and Social Justice Issues

The Commission is committed to serving Californians in a way that helps address inequities for those facing higher barriers in accessing safe and affordable utility and transport services. In February 2019, the Commission adopted the Environmental and Social Justice (ESJ) Action Plan, with nine goals to serve as a roadmap to expand public inclusion in Commission decision-making and improve services to targeted communities across California. The

Commission's ESJ Action Plan identifies ways the Commission can use its regulatory authority to achieve these goals.

ESJ communities include those that may be subject to a disproportionate impact from one or more environmental hazards, or that are likely to experience disparate implementation of environmental regulations and socioeconomic investments in their communities. With respect to these communities, the Commission considers: (1) whether the proposed action may have a disproportionate impact on service quality and availability of service in the community, or (2) whether the proposed action may have a disproportionate safety impact or burden on the community.

Specifically, ESJ Action Plan Goal 3 is directly pertinent to this proceeding. It provides that the Commission will "strive to improve access to high-quality water ... for ESJ communities." The following sub-goal for Goal 3 is also pertinent:

3.2 Water Customer Resilience: Support ESJ customers and communities with discounted rates for low-income customers and sustainable systems.

The Settlement Agreement funds San Jose Water's low-income and other customer assistance programs. The tiered rate program also ensures customers have the lowest possible costs for basic needs. The Commission believes that this decision is consistent with its ESJ Action Plan.

8. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the appropriate online Docket Card for that proceeding on the Commission's website.

From February 1, 2024 through September 11, 2024, 388 public comments were submitted on this proceeding and are available on the Commission's web

site.⁵⁰ The most consistent comments were concerns over affordability and whether San Jose Water had sufficiently justified its requested rate increase and its need for its proposed capital expenditures. The Commission is aware of and shares these concerns. The adopted revenue requirements are the lowest reasonable rates we could adopt consistent with allowing San Jose Water an opportunity for a reasonable return and sufficient revenues to provide safe and reliable water service to its customers.

9. Comments on Proposed Decision

The proposed decision of ALJ Douglas M. Long in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

10. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Douglas M. Long is the Presiding Officer and assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. San Jose Water is a Class A water utility subject to the jurisdiction of this Commission.
2. Cal Advocates and WRATES actively investigated this application and performed extensive discovery.
3. San Jose Water and Cal Advocates entered into a comprehensive Settlement Agreement that resolved all but two issues.

⁵⁰ <https://apps.cpuc.ca.gov/apex/f?p=401:65> (Current as of September 16, 2024.)

4. San Jose Water incurs costs for both chemicals and waste disposal associated with its water treatment processes.
5. San Jose Water has shown that chemicals and waste disposal costs are highly variable primarily due to the variability of the volume of water that requires treatment.
6. Including the costs of chemicals and waste disposal associated with its water treatment processes in the Full Cost Balancing Account eliminates most of the potential for over- or under-collection.
7. A trial use of a dead-band on the recovery of chemicals and waste disposal costs would allow ratepayers to recover any over-estimated amount, after the dead band, and would protect San Jose Water from an under-collection, after the dead band.
8. San Jose Water has a service charge which collects a significant portion of its fixed costs. This charge is included on every customer's bimonthly bill.
9. Not every service connection is assigned to a billable customer every single day. Customers are only billed for the days when they are an active customer.
10. The current methodology assumes that every meter is always billable to an active customer. San Jose Water has shown that not every meter is active 365 days a year, instead the weighted average is about 362 days.
11. The weighted average of billable days will more accurately collect the full costs intended to be recovered in the service charge.

Conclusions of Law

1. San Jose Water's revenue requirements and rate increases are, as set forth in this decision, just and reasonable.
2. San Jose Water and Cal Advocates bear the burden of proof to show that their request for approval of their Settlement Agreement demonstrates that the

Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest.

3. The Settlement Agreement is a reasonable compromise between San Jose Water and Cal Advocates that represent a broad range of interests, is reasonable in light of the whole record, consistent with law, and in the public interest and should be approved.

4. The issue of the appropriate allowance for contingencies in capital additions forecasts remains an open one for the next general rate case regardless of the outcome in this current Settlement Agreement.

5. The issue of the appropriate allowance for escalations in capital additions forecasts remains an open one for the next general rate case regardless of the outcome in this current Settlement Agreement.

6. It is reasonable to include the costs of chemicals and waste disposal associated with its water treatment processes in the Full Cost Balancing Account.

7. It is reasonable to impose a trial dead band to share a portion of the risk of either an over- or under-collection of the costs of chemicals and waste disposal between ratepayers and San Jose Water.

8. San Jose Water's calculation of 362.02 billing days is a reasonable attempt to reflect the daily fluctuation in total customers receiving service and thus liable to absorb a daily share of the fixed costs recovered through the service charge.

9. It is reasonable to require San Jose Water to justify and explain any and differences in its actual capital expenditures in 2025, 2026 and 2027 in its next general rate case caused by the deferral of any approved projects and/or the substitution of projects not otherwise considered in this proceeding.

10. It is reasonable to require San Jose Water to include testimony that clearly demonstrates that it has adopted and embedded in its operations some overall

formal system for designing and managing its capital expenditures or some other industry standard and professionally recognized and documented system of cost engineering management form of best practices.

11. It is reasonable to require San Jose Water to include a reconciliation of completed, deferred and alternative capital projects in the next general rate case.

12. It is reasonable to require San Jose Water to present testimony on its methodology for estimating and managing its capital expenditures in its next general rate case.

13. A.24-01-001 should be closed.

O R D E R

IT IS ORDERED that:

1. San Jose Water Company is granted \$566,477,943 in revenue requirement for Test Year 2025 in this general rate case and \$581,481,224 and \$599,712,746 for attrition years 2026 and 2027, respectively.

2. The Settlement Agreement between San Jose Water Company and the Public Advocate's Office of the Public Utilities Commission attached as Appendix B is adopted.

3. San Jose Water Company shall file a Tier 1 Advice letter to implement the rates and charges as adopted in the Settlement Agreement and as shown in Appendix B to this decision.

4. San Jose Water Company shall file a Tier 1 Advice Letter to include the costs of chemicals and waste disposal incurred in its Preliminary Statement for its Full Cost Balancing Account along with a 5% deadband.

5. San Jose Water Company shall use its forecast weighted average of 362.02 billing days to allocate its service charge to customers. This change shall be included in the Tier 1 Advice Letter filed to implement the rates adopted herein.

6. San Jose Water Company (San Jose Water) must, in its next general rate case, serve a specific detailed exhibit with supporting testimony listing any projects approved as a part of this decision that it subsequently deferred or otherwise decided to no longer pursue during the rate case years 2025, 2026, and 2027. San Jose Water must specifically list and justify any new projects substituted for, or pursued in lieu of, projects approved in this decision. San Jose Water must specifically reconcile total actual capital construction incurred in 2025-2027 to the approved 2025-2027 capital expenditures as included in the Settlement Agreement.

7. San Jose Water Company must, in its next general rate case, serve a specific detailed exhibit with supporting testimony that clearly demonstrates it has adopted and embedded in its operations a formal system for designing and managing its capital expenditures or an industry standard and professionally recognized and documented system of cost engineering management best practices.

8. Application 24-01-001 is closed.

This order is effective today.

Dated _____, at San Francisco, California