BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to review the existing guiding framework set forth in Decision 99-10-064 (consistent with the Public Water System Investment and Consolidation Act of 1997) regarding acquisitions involving water utilities under the Commission's jurisdiction.	Rulemaking 22-04-003

THE PUBLIC ADVOCATES OFFICE RESPONSE TO SMALL WATER COMPANIES AND CALIFORNIA WATER ASSOCIATION'S JOINT APPLICATION FOR REHEARING OF DECISION 26-07-031

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I. INTRODUCTION

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this Response to the Joint Application for Rehearing of The Small Water Companies (SWC) and California Water Association (CWA) (jointly "Applicants") of Decision (D.) 26-07-031 issued on July 10, 2026[1] (Application for Rehearing) pursuant to the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rule), Rule 16.1(d).

As addressed herein, the Application for Rehearing fails to identify legal error. Instead, it attempts to relitigate policy determinations and reevaluate the evidentiary record in an effort obtain a preferred outcome. The Application for Rehearing fails as all the arguments raised by Applicants have already been considered and rejected by the Commission. The Application for Rehearing must be denied.

II. STANDARD OF REVIEW

Public Utilities Code Section 1732 establishes the applicable requirement for an application for rehearing before the Commission. Section 1732 provides:

> The application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in the application.

Consistent with Section 1732, Rule 16.1(c) provides that "[t]he purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously," and requires an applicant to identify specifically the grounds on which the challenged decision is unlawful or erroneous, with specific references to the record or law. The Commission has accordingly rejected rehearing claims where an applicant fails to identify legal error and instead merely expresses disagreement with the Commission's determination or seeks a different policy

[1] Decision (D.) 26-07-031, *Decision on Order Instituting Rulemaking Regarding Acquisitions Involving Water Utilities Under the Commission's Jurisdiction*, issued July 10, 2026.

outcome.[2] Thus, an application for rehearing is not an opportunity to relitigate policy determinations, reevaluate the record, reargue matters previously considered, or obtain an outcome the applicant would have preferred. Applicants must identify a specific ground demonstrating that the challenged decision is unlawful or erroneous.

Here, Applicants largely restate their disagreement with the Commission's decision to preserve its authority to consider gain-on-sale treatment in an appropriate future proceeding. Because Applicants fail to establish legal error in D.26-07-031, the Application for Rehearing must be denied.

III. DISCUSSION

A. The Decision is consistent with the rejection of a generally applicable gain-on-sale rule.

The Decision rejects a generally applicable gain-on-sale rule but preserves case-specific Commission authority.[3] The Decision's discussion section explains why the Commission chose not to implement the Staff Proposal's recommendation for gain-on-sale rules to be applied in every transaction.[4] The Commission instead opted to maintain its existing authority to apply gain-on-sale on a case-by-case basis if and when necessary due to the unique facts of each acquisition.[5]

Applicants cannot cite any evidence in this record where the Commission determined that there will never be a future situation where gain-on-sale is applicable. Instead, Applicants exaggerate the Decisions' language to claim the Commission

[2] See, e.g., D.10-07-051 at 5 (Rehearing applications must allege or identify legal error and cite legal authority); D.21-03-048 at 2-3 (Rehearing applications must address specific legal errors, not introduce alternative claims or new evidence.); D.13-07-047 (Rehearing applications cannot merely reiterate allegations or attempt to relitigate the matter without identifying specific legal errors); D.05-09-022 at 3 (rehearing applications are not for raising policy disagreements rather than legal error); and D.17-04-022 at 4-5 (rehearing applications should not seek to have the Commission reweigh evidence).

[3] D.26-07-031 at 92 (Conclusion of Law (COL) 29) and 99 (Ordering Paragraph (OP) 27).

[4] D.26-07-031 at 49.

[5] D.26-07-031 at 92, (COL 29), 99 (OP 27).

determined gain-on-sale treatment to be "destructive" and "counterproductive".[6] The Commission made no such global determinations.

Contrary to standard legal concepts such as case-by-case adjudication,[7] fact-dependent discretion[8] and the prohibition on speculative rehearing claims,[9] Applicants argue that if the Commission's discretion is not applied in every single instance, then it cannot be applied in any instance.[10] Contrary to Applicant's claims, the mere potential for the future application of gain-on-sale rules to a specific acquisition with unique circumstances cannot logically be interpreted as overshadowing every single transaction regardless of the circumstances.

In essence, Applicants improperly seek to convert the Decision into a categorical prohibition on future gain-on-sale treatment that would establish a new substantive rule. However, the Decisions' rejection of a categorical rule is not the same as a categorical prohibition. As legal error has not been shown, the Application for Rehearing must be denied.

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[6] Application at 4.

[7] In *SEC v. Chenery Corp.* (Chenery II) (1947) 332 U.S. 194, 202–203, the U.S. Supreme Court held that agencies need not reduce every regulatory principle to a generally applicable rule. Some problems are too specialized or fact-dependent for a rigid rule, and an agency must retain the ability to address them "on a case-to-case basis." The choice between a general rule and individual adjudication lies primarily within the agency's informed discretion. California expressly adopted that principle in *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 413, recognizing that absent a contrary statutory directive, the choice between proceeding by general rule and ad hoc adjudication lies principally with the administrative agency.

[8] In *Protecting Our Water & Environmental Resources v. County of Stanislaus* (2020) 10 Cal.5th 479, the California Supreme Court rejected an all-or-nothing conception of administrative discretion, stating that merely because an agency cannot exercise a power in every circumstance does not mean it lacks discretion to exercise that power where the circumstances authorize it. The Court emphasized that discretion can turn on the characteristics of the particular project before the agency.

[9] In D.20-12-014 at 13 (The Commission rejected rehearing arguments premised on speculation about how retained discretion might be exercised in the future. The Commission observed that the applicant pointed to no evidence that the Commission would exercise its discretion in the manner feared and later rejected another claim about future utility conduct as "pure speculation.")

[10] Application at 3 (Applicants erroneously assert that it is a contradiction to both reject a general rule for all transactions while maintaining authority in individual acquisitions proceedings where necessary.)

B. Applicants' claimed "Chilling Effect" is merely an attempt to relitigate policy and factual issues the Commission already considered.

Applicants attempt to sidestep the legal requirements for an application for rehearing—namely, identifying legal error—by relying on unsupported factual assertions. They claim that the Decision strips small water company owners of the ability to retire,[11] eliminates more than two-thirds of company value,[12] and either *has already* slowed or stalled acquisitions and consolidations[13] or *will* bring the market to a standstill.[14]

These assertions are unsupported and merely attempt to relitigate policy and factual issues already considered by the Commission.[15] They do not identify legal error warranting rehearing.

C. The Decision is consistent with the law and does not impermissibly depart from Commission precedent.

1. Section 2720 governs rate-base valuation and does not categorically prohibit seller-side gain allocation.

The Application for Rehearing argues for an overly broad reading of Public Utilities Code Section 2720.[16] Section 2720 establishes the methodology the Commission must use in determining the rate-base value of an acquired public water system.[17] Section 2720(a) directs the Commission to use fair market value when establishing rate base, while Section 2720(b) governs whether amounts above

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[11] Application at 1, para 2.

[12] Application at 2, para 1.

[13] Application at 2, para 1.

[14] Application at 4, para 4.

[15] See, e.g., D.10-07-051 at 5 (Rehearing applications must allege or identify legal error and cite legal authority); D.21-03-048 at 2-3 (Rehearing applications must address specific legal errors, not introduce alternative claims or new evidence.); D.13-07-047 (Rehearing applications cannot merely reiterate allegations or attempt to relitigate the matter without identifying specific legal errors); D.05-09-022 at 3 (rehearing applications are not for raising policy disagreements rather than legal error); and D.17-04-022 at 4-5 (rehearing applications should not seek to have the Commission reweigh evidence).

[16] Application at 7.

[17] Pub. Util. Code § 2720.

reproduction cost may be included in rate base for ratesetting purposes.[18] The statute does not address, much less categorically prohibit, the Commission from considering the appropriate regulatory treatment of a gain realized by the seller.

The Commission has described Public Utilities Code Sections 2718 through 2720 as statutes that "established how those systems are to be valued for establishing rate base after the sale of the system."[19] D.26-07-031 clarifies this statutory valuation requirement by explaining that fair market value will continue to be used in establishing rate base and that acquisition premiums will continue to be reviewed pursuant to Section 2720(b).[20] D.26-07-031 further recognizes that Section 2720 does not, by its terms, foreclose the Commission from considering gain-on-sale treatment when the circumstances of an individual acquisition warrant it.[21]

Applicants fail to identify how the Decision violates or conflicts with the provisions of Section 2720. The Application for Rehearing erroneously asks the Commission to infer from a statute governing what the acquiring utility may place in rate base an additional statutory limitation governing what regulatory treatment may be afforded to the seller's gain.

2. Applicants improperly conflate acquisition-premium treatment with gain-on-sale treatment.

Applicants conflate two related but distinct regulatory concepts. An acquisition premium concerns the amount that an acquiring utility seeks to include in rate base above reproduction cost and, consequently, the amount upon which the acquiring utility may earn a return from ratepayers.[22] Section 2720(b) addresses whether, and under what circumstances, that amount above reproduction cost may properly be included in the

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[18] Pub. Util. Code § 2720.

[19] D.16-11-014 at 17.

[20] D.16-11-014 at 30-31 (COL 15-17).

[21] D.26-07-031 at 92, (COL 29), 99 (OP 27).

[22] D.16-11-014 at 28 (FOF 18) (there is no premium when purchase price is less than replacement cost value).

acquiring utility's rate base for ratesetting purposes. A gain on sale, by contrast, concerns the financial gain realized by the seller in connection with the transfer and whether circumstances warrant allocating or otherwise accounting for some portion of that gain for regulatory purposes.[23]

The Decision recognizes this distinction, concluding that Section 2720 provides an adequate framework for addressing acquisition premiums without precluding consideration of gain-on-sale treatment in a future specific acquisition proceeding where necessary.[24] These conclusions are not contradictory; they concern different sides of the transaction.

Applicants' erroneously assert that once an appropriate rate-base value is determined under Section 2720, the Commission is divested of its authority to examine any separate seller-side consequences of the transaction.[25] Section 2720 does not say that. The Decision's preservation of the Commission authority does not modify the fair-market-value standard, reduce the acquiring utility's authorized rate base, or predetermine that any portion of a seller's gain will be allocated to ratepayers.

3. A hypothetical future exercise of Commission authority does not establish present legal error.

Applicants erroneously suggest the mere possibility that the Commission could exercise its authority in the future should be interpreted as if D.26-07-031 imposed gain-on-sale treatment on all water system acquisitions.[26] The Decision does no such thing.

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[23] D.26-07-031 at 88 (FOF 11) ("Gain on Sale in the context of water system acquisitions involves complex financial calculations and regulatory considerations that influence both the acquired and acquiring utilities.").

[24] D.26-07-031, at 99 (COL 28), 100 (COL 29) ("The Commission retains discretion in deciding how much of an acquisition premium associated with water rights can be passed on to ratepayers through rate base).

[25] Application at 7 ("By leaving gain-on-sale treatment up to individual consolidation proceedings, the Decision effectively provides a window for future decisions to circumvent [statutory requirements].")

[26] Application at 7. ("By leaving gain-on-sale treatment up to individual consolidation proceedings, the Decision effectively provides a window for future decisions to circumvent this statutory requirement or otherwise render it meaningless.")

The Commission expressly declined to adopt the Staff Proposal's gain-on-sale recommendation "at this time," concluding that additional work was necessary.[27] The Decision does not impose a gain-on-sale allocation on any utility or transaction. It simply declines to foreclose the Commission from considering the issue in an individual acquisition proceeding or future rulemaking.[28]

Accordingly, Applicants' claim that a future gain-on-sale allocation might conflict with Section 2720 is wholly speculative and premature.[29] If the Commission determines in a future acquisition proceeding that the particular facts warrant consideration of a gain-on-sale allocation, the affected parties may raise whatever statutory, factual, and policy arguments are applicable to ***that transaction***. Whether a particular future allocation would be lawful will depend upon the mechanism proposed, the governing law, and the record developed in that proceeding. The mere preservation of the Commission's ability to consider that question does not violate Section 2720 and provides no basis for rehearing D.26-07-031.

4. Prior decisions describe the Commission's historical treatment of whole-system acquisitions but do not eliminate future Commission authority.

Applicants correctly observe that prior Commission decisions have distinguished between the sale of individual utility assets and the sale of an entire water system.[30] However, Applicants overextend their argument with a faulty generalization that those decisions establish that the Commission cannot consider gain-on-sale treatment in a future whole-system acquisition.[31] The cited decisions do not support that proposition.

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[27] D.26-07-031 at 99 (COL 27).

[28] D.26-07-031 at 92, (COL 29), 99 (OP 27).

[29] In D.20-12-014 at 13 (The Commission rejected rehearing arguments premised on speculation about how retained discretion might be exercised in the future. The Commission observed that the applicant pointed to no evidence that the Commission would exercise its discretion in the manner feared and later rejected another claim about future utility conduct as "pure speculation.")

[30] Application at 9 (The Application for Rehearing cites to D.16-11-014, D.21-08-002 and D.21-11-037).

[31] Application at 10.

The Commission concluded the gain-on-sale doctrine established in D.06-05-041 did not apply to the sale of the entire Geyserville Water Works system.[32] Similarly, the Commission concluded existing gain-on-sale decisions did not apply to the East Pasadena transaction.[33] Significantly, the Commission characterized the issue as whether certain specific gain-on-sale rules applied to the transaction and ultimately stated that it "decline[d] to apply them to this transaction."[34] D.21-11-037's subsequent denial of Cal Advocates' application for rehearing does not transform those transaction-specific determinations into a statutory limitation on the Commission's authority.

Those holdings establish the Commission's historical treatment under the gain-on-sale rules before it in those proceedings. Those decisions do not hold that Section 2720 divests the Commission of authority to consider different regulatory treatment where there is a different record, much less reach the absurd conclusion the Commission is permanently prohibited from revisiting its policies prospectively.

The relevant question here is whether D.16-11-014, D.21-08-002, and D.21-11-037 held that the Commission lacks legal authority to consider gain-on-sale treatment under different facts or through a subsequently developed regulatory framework. Those decisions did not. Commission precedent declining to apply an existing rule in a specific situation is not equivalent to a holding that the Commission lacks authority to ever to consider the subject again.

D.26-07-031 respects that logical and legal distinction. The Commission declined to adopt the Staff Proposal's generally applicable gain-on-sale recommendation,[35] thereby maintaining the existing framework, while also declining Applicants' request to convert that framework into a permanent prohibition against future Commission consideration.[36] Conclusion of Law 29 and Ordering Paragraph 27 therefore do not

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[32] D.16-11-014 at 16-19.

[33] D.21-08-002 at 29 ("we decline to apply [gain-on-sale] to this transaction.").

[34] D.21-08-002 at 26-29.

[35] D.26-07-031 at 99 (OP 27).

[36] D.26-07-031 at 100 (OP 29).

retroactively alter the outcome of D.16-11-014 or D.21-08-002, nor do they impose gain-on-sale treatment on future acquisitions. They simply preserve the Commission's ability to address circumstances that may arise in the future—including circumstances involving potential seller windfalls or material ratepayer impacts—rather than prejudging every future acquisition irrespective of its facts.

Applicants' request to strike Conclusion of Law 29 and modify Ordering Paragraph 27 would go substantially further than preserving prior precedent. It would interpret prior decisions declining to apply existing gain-on-sale rules to particular whole-system acquisitions as support for a categorical prospective prohibition against Commission consideration of gain on sale in any future acquisition. Nothing in D.16-11-014, D.21-08-002, or D.21-11-037 requires that result. Applicants therefore identify disagreement with the scope of the Commission's retained discretion, and fail to demonstrate legal error warranting rehearing.

D. There were no violations of notice, comment or due process requirements.

Applicants' procedural challenge rests on the incorrect premise that the June 30, 2026, Proposed Decision (Revision 1) introduced a new gain-on-sale issue that had not previously been presented to the parties and therefore constituted an alternate proposed decision requiring a new period for review and comment.[37] The record demonstrates otherwise.

The Commission revised the Proposed Decision after receiving opening and reply comments that raised and contested the issue reflected in Conclusion of Law 29 and Ordering Paragraph 27—whether the Commission should retain authority to consider gain-on-sale treatment in individual acquisition proceedings.[38]

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[37] Application at 8.

[38] D.26-07-031 at 86.

Indeed, CWA specifically urged the Commission to reject Cal Advocates' request to preserve its authority to revisit gain-on-sale in future unique situations.[39] Applicants therefore cannot establish either a violation of the Commission's procedural requirements or any resulting prejudice.

1. Applicants incorrectly rely on Public Utilities Code Section 310 rather than Section 311.

As an initial matter, Applicants repeatedly rely on Section 310 for the statutory requirements governing alternate proposed decisions.[40] The applicable statute is Section 311, not Section 310.[41] Although this mis-citation alone does not resolve Applicants' procedural claim, it obscures an important part of the governing statutory framework.

Section 311(e) addresses alternate proposed decisions, while Section 311(d) expressly authorizes the Commission, when issuing its final decision, to adopt, modify, or set aside a proposed decision or any portion thereof.[42] The Commission has accordingly recognized that revisions following party comments are an ordinary part of the decision-making process and do not automatically trigger another round of notice and comment.[43] The Commission has further explained that Section 311(d) permits modification of a proposed decision following comments and that the Commission has not interpreted Section 311(e) to require recirculation merely because a proposed decision was revised in response to those comments.[44]

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[39] CWA's Reply Comments, dated June 23, 2026, at 1 ("As both CWA and the Small Water Companies have detailed in this proceeding [they disagree with Cal Advoc's support for on gain-on-sale and acquisition premium concepts]").

[40] Application at 8-9.

[41] Pub. Util. Code § 311.

[42] Pub. Util. Code § 311.

[43] D.17-08-017 (Issued August 10, 2017, in A.15-05-014) at 20 ("It is normal practice for decisions to contain changes made by an ALJ following comments on the proposed decision… We have "never interpreted Section 311(e) to require circulation of a revised proposed decision for comment if the revisions are based on party comments.")

[44] D.17-08-017 at 12.

Applicants' analysis focuses exclusively on the statutory definition of an "alternate" while disregarding the Commission's authority under Section 311(d) to revise a proposed decision in response to the parties' comments.[45] When the correct statutory provision and the Commission's implementing rules are considered together, Revision 1 did not require a new 30-day comment period.

2. Revision 1 did not constitute an alternate requiring a new comment period.

Applicants contend that the addition of Conclusion of Law 29 and Ordering Paragraph 27 transformed the Proposed Decision into an "alternate" because those provisions substantively addressed gain-on-sale treatment.[46] Applicant's contention does not account for Rule 14.1 or Commission precedent.

Rule 14.1(d) defines an alternate proposed decision as a substantive revision by a Commissioner to a proposed decision not proposed by that Commissioner that materially changes the resolution of a contested issue or substantively adds to the findings, conclusions, or ordering paragraphs.[47] The Rule further provides that a substantive revision is not an alternate when it does no more than make changes suggested in prior comments.[48] Proposed Decision (Revision 1) continued to identify the document as the Proposed Decision of Assigned Commissioner Darcie L. Houck, and the Decision expressly states that, following opening and reply comments, changes were incorporated as appropriate.[49]

More importantly, the Commission has previously rejected materially similar rehearing claims. In A.15-05-014, the rehearing applicant argued that revisions adding language to a conclusion of law and ordering paragraph transformed the proposed

[45] Application at 8.

[46] Application at 8-9.

[47] Rule 14.1.

[48] Rule 14.1.

[49] PD (Revision 1) at 85, 86, *Comments on Proposed Decision*.

decision into an alternate requiring an additional 30-day comment period.[50] The Commission rejected that argument, explaining that revisions made after an issue was raised in comments did not constitute an alternate and that requiring recirculation whenever a proposed decision is modified in response to comments would result in successive rounds of comments and unnecessarily prolong Commission proceedings.[51] The Commission has likewise held that neither Section 311 nor Rule 14.1 requires an additional opportunity for comment simply because the Commission modifies a proposed decision based upon comments already received.[52]

The same reasoning applies here. Revision 1 did not introduce an unrelated issue into the proceeding or resolve a matter that parties had no reason to anticipate. Gain-on-sale treatment was extensively litigated throughout the proceeding, was addressed in the original Proposed Decision,[53] and was directly addressed in comments on that Proposed Decision. The revision merely resolved the extent to which the Commission's rejection of a generally applicable gain-on-sale proposal should constrain its authority in future individual acquisition proceedings.[54] Because that question was squarely presented by the parties' comments, the resulting revision did not constitute an alternate requiring recirculation.

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[50] D.17-08-017, issued August 11, 2017, in A.15-05-014, at 12-13 ("We have "never interpreted Section 311(e) to require circulation of a revised proposed decision for comment if the revisions are based on party comments. To require recirculation of the proposed decision in such instances would subject the Commission and the parties to endless rounds of comments and unnecessarily prolong Commission proceedings and thus waste limited Commission resources. (D.14-02-042, pp. 7-8.)")

[51] D.17-08-017 at 12-13.

[52] D.17-08-017 at 11.

[53] Proposed Decision issued May 29, 2026, at 42 (gain on sale), 82 (FOF 11), 85(COL 27), 86 (COL 28), 92 (OP 27).

[54] D.26-07-031 at 92, (COL 29), 99 (OP 27).

3. Applicants cannot establish prejudice where they had notice and an opportunity to be heard; CWA's own reply comments addressed the precise issue reflected in Conclusion of Law 29 and Ordering Paragraph 27.

Due process in Commission proceedings requires, at its core, adequate notice and a meaningful opportunity to be heard. The Commission has recognized that parties must receive sufficient notice of the matters to be decided and a reasonable opportunity to present argument and evidence concerning those matters; due process does not, however, guarantee any particular procedural format or require repeated opportunities to address an issue that has already been presented for comment.[55] The California Supreme Court likewise recently explained that adequate notice must permit parties to participate meaningfully and advocate effectively concerning the issue before the Commission.[56]

Applicants' assertion that they were "completely deprived" of an opportunity to review, analyze, and comment on the Commission's retention of case-specific gain-on-sale authority is directly contradicted by CWA's own June 23, 2026, Reply Comments.[57] Cal Advocates' opening comments challenged the Proposed Decision's treatment of gain on sale and argued that seller-side gain allocation was a distinct transaction effect that could serve as a ratepayer-protective offset against seller windfalls.[58] Both SWC and CWA expressly responded to arguments supporting gain-on-sale.[59] More importantly,

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[55] *Railroad Com. of California v. Pacific Gas & Electric Co*., 302 U.S. 388, 393-394 (1938)("When the rate-making agency of the State gives a fair hearing, receives and considers the competent evidence that is offered, affords opportunity through evidence and argument to challenge the result, and makes its determination upon evidence and not arbitrarily, the requirements of procedural due process are met"); D.06-04-075 at 42 (""Bias and prejudice are not implied and must be clearly established. A party's unilateral perception of bias cannot alone serve as a basis for disqualification…. The challenge to the fairness of the adjudicator must set forth concrete facts demonstrating bias or prejudice.")

[56] *Golden State Water Co. v. Public Utilities Commission* (2024) 16 Cal.5th 380, 398. (A scoping memo does not need to detail every possible outcome of a proceeding, it merely must "describe the issues to be considered" at a basic level).

[57] See Application at 8; CWA Reply Comments at 1 ("As both CWA and the Small Water Companies have detailed in this proceeding [they do not support application of gain-on-sale and acquisition premium concepts]… Cal Advocates attempt to keep an opening for the Commission to revisit the gain-on-sale issue in individual acquisition proceedings should be denied as well.").

[58] Cal Advocates' June 18, 2026, Opening Comments on the Proposed Decision, at 1-4.

[59] CWA Reply Comments at 1 ("The Comm. should reject Cal Advocates' arguments on gain-on-sale

(continued on next page)

CWA's Reply Comments even devoted a separate section to gain-on-sale treatment to specifically oppose Cal Advocates' attempt to preserve an opening for the Commission to revisit gain on sale in individual acquisition proceedings.[60]

Thus, before the Proposed Decision (Revision 1) was issued CWA understood both the issue and the precise relief Cal Advocates was seeking, i.e., preservation of the Commission's ability to consider gain-on-sale treatment on a case-by-case basis. CWA then exercised its opportunity under Rule 14.3(d) to argue that the Commission should reject that position. Conclusion of Law 29 subsequently provides that Section 2720 does not preclude the Commission from considering gain-on-sale treatment in individual acquisition proceedings where necessary.[61]

Applicants therefore cannot characterize the substance of Conclusion of Law 29 and Ordering Paragraph 27 as an unforeseen "last-minute" issue. The record shows that case-specific gain-on-sale authority was squarely before the parties. The Commission's decision not to adopt Applicants' preferred resolution does not establish a lack of notice or opportunity to be heard.

Applicants' due process claims fail for the same reason. The parties had notice of the issue and an opportunity to present their positions before the Commission acted. Because Applicants were able to address the issue ultimately reflected in Conclusion of Law 29 and Ordering Paragraph 27, they cannot show that the Commission's revision deprived them of a meaningful opportunity to be heard.

D.17-08-017 is particularly instructive. There, the Commission rejected a procedural challenge to revisions made after proposed-decision comments because the underlying issue had been raised in comments and the rehearing applicant had an

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treatment for water system acquisitions"); SWC Reply Comments at 2. ("Cal Advocates Misreads the Proposed Decision's Rationale for Rejecting Staff's Proposed Application of Gain on Sale Rules").

[60] CWA Reply Comments at 1 ("**As both CWA and the Small Water Companies have detailed in this proceeding**… Cal Advocates attempt to keep an opening for the Commission to revisit the gain-on-sale issue in individual acquisition proceedings should be denied as well.")

[61] D.26-07-031 at 92, (COL 29).

opportunity to respond.[62] The Commission concluded that, under those circumstances, Commission Rules were not violated.[63] Here, the record is even clearer: CWA did not merely have the theoretical opportunity to address the issue; **it actually did so.** Its Reply Comments specifically opposed retaining the very case-specific authority ultimately reflected in Conclusion of Law 29 and Ordering Paragraph 27.[64]

Applicants identify no information, legal theory, or factual contention concerning the Commission's retention of case-specific gain-on-sale authority that they were prevented from presenting. Nor do they explain how an additional comment period would have afforded them an opportunity they had not already exercised. Their procedural claim ultimately rests on the proposition that, after considering the parties' competing comments, the Commission adopted language with which Applicants disagree. That is not a deprivation of notice or an opportunity to be heard. Accordingly, Revision 1 did not deprive Applicants of procedural due process, did not constitute an alternate proposed decision requiring a new comment period, and provides no basis for rehearing.

IV. CONCLUSION

Applicants have not identified legal error in D.26-07-031. The Decision reasonably declined to adopt a generally applicable gain-on-sale rule while preserving the Commission's authority to consider gain-on-sale treatment in an appropriate future acquisition proceeding. Applicants' contrary arguments largely seek to relitigate policy determinations already considered by the Commission and incorrectly assert that prior Commission decisions establish a categorical prohibition against the Commission considering gain-on-sale in a future proceeding.

Applicants' procedural claims fail because the challenged revision did not constitute an alternate requiring a new comment period, and CWA's own reply comments

[62] D.17-08-017 at 11.

[63] D.17-08-017 at 12.

[64] CWA Reply Comments at 1 ("Cal Advocates attempt to keep an opening for the Commission to revisit the gain-on-sale issue in individual acquisition proceedings should be denied as well.")

demonstrate that Applicants had notice of and an opportunity to address the precise issue ultimately reflected in Conclusion of Law 29 and Ordering Paragraph 27.

Because the Application for Rehearing merely reflects disagreement with the Commission's retained discretion, and fails to identify any legal error, it must be denied.

Respectfully submitted,

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