

Decision 18-12-020 December 13, 2018

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of California Water Service Company (U60W) for a Certificate of Public Convenience and Necessity to Provide Water Service to Travis Air Force Base and to Establish Rates.

Application 17-05-022

**ALTERNATE DECISION CONDITIONALLY APPROVING  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
TO SERVE TRAVIS AIR FORCE BASE**

## Table of Contents

Title	Page
ALTERNATE DECISION CONDITIONALLY APPROVING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO SERVE TRAVIS AIR FORCE BASE.....	1
Summary .....	2
1. Procedural Background.....	2
2. Substantive Background on Cal Water’s Request .....	5
3. Late Filed Exhibit ORA-4 .....	6
3.1. Motion and Responses/Replies .....	6
3.2. Discussion .....	7
4. Commission Jurisdiction to Issue CPCNs.....	8
4.1. Cal Water’s Position .....	10
4.2. Cal Advocates’ Position.....	11
4.3. Discussion .....	11
5. Definition of Public, Public utility, and Dedication of Facilities to Service the Public .....	13
5.1. Cal Water’s Position .....	14
5.2. Cal Advocates’ Position.....	15
5.3. Discussion .....	15
6. Potential for Conflict of Authority .....	16
6.1. Cal Water’s Position .....	17
6.2. Cal Advocates’ Position.....	18
6.3. Discussion .....	19
7. Commission Precedent for Policy on Water Service to Military Bases.....	25
7.1. Cal Water’s Position .....	25
7.2. Cal Advocates’ Position.....	26
7.3. Discussion .....	27
8. Need for a CPCN to Serve Areas Adjacent to Travis AFB .....	27
8.1. Cal Water’s Position .....	27
8.2. Cal Advocates’ Position.....	28
8.3. Discussion .....	28
9. Summary of CPCN Conclusion .....	29
10. Capital Expenditures .....	29
10.1 Cal Water’s Position.....	30
10.2 Cal Advocates’ Position .....	30
10.3 Discussion.....	30

**Table of Contents  
Con't.**

<b>Title</b>	<b>Page</b>
11. ORA Motion for Evidentiary Sanctions.....	31
11.1. Cal Water's Response .....	31
11.2. Cal Advocates' Reply.....	32
11.3. Discussion.....	33
12. Comments on Proposed Decision .....	35
13. Assignment of Proceeding.....	36
Findings of Fact.....	36
Conclusions of Law .....	39
ORDER .....	40

## **DECISION CONDITIONALLY APPROVING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO SERVE TRAVIS AIR FORCE BASE**

### **Summary**

This decision approves the request by the California Water Service Company (Cal Water) for a certificate of public convenience and necessity (CPCN) to serve the Travis Air Force Base (AFB) conditional upon modification of the Regulated Tariff Rate contract between the U.S. Department of Defense and Cal Water to provide water service to Travis Air Force Base as follows. First, the contract should be modified to reflect the Commission's ultimate jurisdiction over approval of future system deficiency corrections, upgrades, connections, renewals, and replacements funded through the Commission's ratemaking authority. Second, pursuant to General Order 96-B, Water Industry Rule 8.3 and Public Utilities Code Section 2712, the contract should be modified to reflect that the contract shall be subject to any modifications as the Commission may direct from time to time in exercise of its jurisdiction. The decision finds that it is in the public interest to authorize a CPCN subject to this condition. Cal Water may not provide service in areas outside of the Travis AFB without separate authorization from the Commission. Cal Water shall seek any such authorization by filing an application with the Commission. This proceeding is closed.

### **1. Procedural Background**

On May 15, 2017, California Water Service Company (Cal Water) filed an Application, seeking a Certificate of Public Convenience and Necessity (CPCN) to provide potable water service to Travis Air Force Base (AFB) and to establish rates for this service under the Commission's jurisdiction. The Public Advocates Office (Cal Advocates), formerly known as Office of Ratepayer Advocates

(ORA),<sup>1</sup> protested the application on July 7, 2017, and Cal Water filed a reply to the protest on July 17, 2017.

A prehearing conference (PHC) was held on September 5, 2017 to determine parties, discuss the scope and schedule, and discuss other procedural matters. A scoping memo was issued on September 19, 2017.

On September 28, 2017, Cal Advocates filed a motion to suspend the procedural schedule, along with a concurrently filed motion to dismiss the application. Cal Water filed a response to the motion to suspend the procedural schedule on October 2, 2017.

On October 3, 2017, the Administrative Law Judge (ALJ) issued an e-mail ruling denying Cal Advocates' motion to suspend, but instead revising the procedural schedule. Included in this ALJ Ruling was an amendment to the scope of the proceeding, to allow testimony to address the issue of potential service to the communities surrounding the Travis AFB.

On October 11, 2017, Cal Advocates filed a motion to vacate the ALJ's e-mail ruling on a motion to suspend current procedural schedule, arguing that Cal Water's October 2, 2017 response to Cal Advocates' motion to suspend the procedural schedule improperly attempted to introduce new evidence via an attachment to that filing.

On October 13, 2017, Cal Water filed a response to Cal Advocates' motion to vacate the ALJ ruling, as well as a separate response to the Cal Advocates' motion to dismiss the application.

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<sup>1</sup> Senate Bill 854 (Stats. 2018, Ch. 51) amended Pub. Util. Code Section 309.5(a) so that the Office of Ratepayer Advocates is now named the Public Advocate's Office of the Public Utilities Commission. We will refer to this party as Cal Advocates.

On October 23, 2017, Cal Advocates filed a reply to the response of Cal Water to Cal Advocates' motion to dismiss the application, both a public version and a confidential version.

On November 8, 2017, both Cal Water and Cal Advocates filed motions to request evidentiary hearings.

On November 15, 2017, an amended Scoping Memo was issued, denying Cal Advocates' motion to dismiss and granting the motions for evidentiary hearings.

Evidentiary hearings were held on November 20, 2017.

On December 7, 2017, concurrent opening briefs were filed by Cal Advocates and Cal Water. On December 22, 2017, both parties filed reply briefs.

Also on December 22, 2017, Cal Advocates filed a motion to mark and admit late-filed exhibit ORA-4, which contains an updated response of Cal Water to a Cal Advocates data request. Cal Water responded to Cal Advocates' motion on Exhibit ORA-4 on January 8, 2018, and Cal Advocates filed a reply on January 23, 2018.

On December 26, 2017, Cal Advocates filed a motion for evidentiary sanctions against Cal Water, to which Cal Water responded on January 10, 2018, and Cal Advocates replied on January 23, 2018.

On February 9, 2018, Cal Water filed a motion for additional evidentiary hearing, if necessary. On February 26, 2018, Cal Advocates filed a response to the motion for additional evidentiary hearing, opposing the motion. On May 3, 2018, an ALJ Ruling was issued denying the motion for additional evidentiary hearing.

The case was submitted as of the May 3, 2018 ALJ Ruling. This decision affirms all rulings by the assigned Commissioner and ALJ in this proceeding.

## **2. Substantive Background on Cal Water's Request**

Travis AFB is a Department of Defense military base located in Solano County, California, near Cal Water's existing Dixon service area. In October 2012, the Department of Defense issued a Request for Proposal (RFP) for privatization of the water distribution system at Travis AFB.

After Cal Water submitted its proposal to the RFP, the contract was awarded to Cal Water on September 29, 2016 through the federal government's bid process to provide water services to Travis AFB for a term of 50 years. Under the terms of the contract, Cal Water would assume ownership, operation, and maintenance of the water distribution system at Travis AFB, and operate it as a Commission-regulated service area, if this application is approved. Cal Water would not provide the actual water distributed to the Travis AFB; the water would be separately sourced by the Department of Defense, with Cal Water responsible for testing and maintaining water quality.

The purchase price of the water distribution system is one dollar. Cal Water also proposes to make initial capital improvements to the water system in the amount of approximately \$12.7 million during the first five years, with an anticipated capital investment of approximately \$52 million over the 50-year term of the contract for utility service. Travis AFB will initially pay Cal Water a monthly service charge of \$155,612 per month for the first year, and an initial one-time transition payment of \$450,833. The contract contains a Price Adjustments clause that calls for future rates to be set using the Commission's cost of service methodology on a three-year rate case cycle. Cal Water has

included Travis AFB as a separate ratemaking district in its general rate case filing, A.18-07-001, filed on July 2, 2018.

Cal Water filed this application consistent with the terms of the contract with the Department of Defense, to request a CPCN from the Commission in order to provide regulated water utility service to the Travis AFB, and to set rates for that service. Future ratemaking would be handled through Cal Water's regular general rate case process.

### **3. Late Filed Exhibit ORA-4**

#### **3.1. Motion and Responses/Replies**

On December 22, 2017, Cal Advocates filed a motion to mark and admit late-filed exhibit ORA-4, which consists of a Cal Water update to a previous data request from Cal Advocates, detailing information and interactions about the possibility of extending water service to Georgetown Village apartments, which are located adjacent to Travis AFB. The data response includes correspondence with representatives of Hunt Investment Management (Hunt Companies), the owner/operator of the apartment complex. The exhibit would be late-filed because it was submitted after the close of evidentiary hearings and concurrent with reply briefs.

On January 8, 2018, Cal Water responded to Cal Advocates' motion, opposing the inclusion of Exhibit ORA-4 as irrelevant, because Cal Water is not seeking to provide service to the Georgetown Village apartments at this time in this proceeding.

Cal Advocates replied to Cal Water's response on January 23, 2018, providing a detailed chronology of this proceeding, including the following:

- 9/28/17 – Cal Advocates files its *Motion to Dismiss*, which argued among other things, that Cal Water's proposed service of Travis

Air Force Base does not comply with requirements in serving as a “public utility.”

- 9/28/17 – Cal Advocates files its *Motion to Suspend the Current Procedural Schedule*.
- 10/2/17 – Cal Water responds to Cal Advocates’ Motion to Suspend the Current Procedural Schedule and attaches a letter dated 9/28/17 from Hunt Companies expressing interest for Cal Water to serve its Georgetown apartment complex.
- 10/3/17 – ALJ Fitch issues an email ruling that, among other things, expands the scope of the proceeding by allowing the Hunt letter into the record and including service to surrounding communities other than Travis Air Force Base.
- 10/3/17 and 10/5/17 – Cal Advocates issues Data Requests.
- 10/6/17 and 10/9/17 – Cal Water responds to Cal Advocates data requests and includes correspondence and emails with Hunt.
- 11/14/17 – Cal Advocates issued a Subpoena for Mr. James Dobbie of Hunt Companies, Inc., to appear at Evidentiary Hearings set for November 21, 2017.
- 11/15/17 – *Assigned Commissioner and Administrative Law Judge Ruling Amending Scoping Memo, Denying Motion to Dismiss, and Granting Motions for Evidentiary Hearings* is issued. This Ruling amended the scope of the proceeding to include: “Does California Water Service Company plan to provide water service to communities surrounding the Travis Air Force Base?”
- 11/20/17 – Evidentiary Hearings held, including discussion of communications with Hunt Companies.
- 12/6/17 – Cal Water updates its responses to Cal Advocates data requests, including additional correspondence between Cal Water and Hunt Companies.

### **3.2. Discussion**

As pointed out by Cal Advocates and demonstrated by the chronology offered in their reply to Cal Water’s response to the Cal Advocates motion, the question of Cal Water’s intention to serve customers other than Travis Air Force

Base has been among the main disputed issues in this proceeding.

Cal Advocates originally raised the issue with respect to requirements for community outreach in the Commission's consideration of whether Cal Water has met the criteria for the granting of a CPCN. Cal Water's inclusion of the September 28, 2017 letter from Hunt Companies in its response to Cal Advocates' *Motion to Dismiss* originally created the focus on this issue.

Thus, the additional information provided in Exhibit ORA-4 is certainly relevant to the resolution of this proceeding. We therefore grant Cal Advocates' December 22, 2017 motion to mark and admit late-filed exhibit ORA-4. The weight and importance of this exhibit is discussed later in this decision.

#### **4. Commission Jurisdiction to Issue CPCNs**

The first issue in this case is whether the Commission has the jurisdiction to issue a CPCN for Cal Water to provide potable water service to the Travis Air Force Base.

The portions of the Public Utilities Code that govern issuance of CPCNs are Sections 1001 and 1002.<sup>2</sup> Section 1001 states as follows:

**1001.** No railroad corporation whose railroad is operated primarily by electric energy, street railroad corporation, gas corporation, electrical corporation, telegraph corporation, telephone corporation, water corporation, or sewer system corporation shall begin the construction of a street railroad, or of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

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<sup>2</sup> All further references herein are to the Sections of the Public Utilities Code unless otherwise indicated.

This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its street railroad, or line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If any public utility, in constructing or extending its line, plant, or system, interferes or is about to interfere with the operation of the line, plant, or system of any other public utility or of the water system of a public agency, already constructed, the commission, on complaint of the public utility or public agency claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable.

Section 1002 states:

**1002.** (a) The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors:

- (1) Community values.
  - (2) Recreational and park areas.
  - (3) Historical and aesthetic values.
  - (4) Influence on environment, except that in the case of any line, plant, or system or extension thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges therefrom would have a significant influence on the environment of this state.
- (b) With respect to any thermal powerplant or electrical transmission line for which a certificate is required pursuant to the provisions of Division 15 (commencing with Section 25000) of the Public Resources Code, no certificate of public

convenience and necessity shall be granted pursuant to Section 1001 without such other certificate having been obtained first, and the decision granting such other certificate shall be conclusive as to all matters determined thereby and shall take the place of the requirement for consideration by the commission of the four factors specified in subdivision (a) of this section.

Usually, when considering applications for CPCNs, the Commission looks to Section 1002, requiring consideration of the following factors included therein: 1) community values, 2) recreational and park areas, 3) historical and aesthetic values, and 4) influence on the environment.

#### **4.1. Cal Water's Position**

Cal Water's position in this proceeding has been that this is a routine matter and that it is not proposing anything materially different from regulated services offered in its other districts. Cal Water generally asserts that it has met all of the requirements for the issuance of a CPCN, and that the Commission should grant the request.

Further, Cal Water argues that nothing in the Public Utilities Code prevents granting of a CPCN for this service, and none of the provisions of its contract with the U.S. Department of Defense would conflict with Commission authority or precedent.

In addition, Cal Water argues that the Department of Defense in this case will "simply be one more public utility customer"<sup>3</sup> to be treated as any other customer served by regulated water service.

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<sup>3</sup> Cal Water Application at 4.

Cal Water further asserts that its CPCN request is exempt from the California Environmental Quality Act (CEQA) review under Article 19, Section 15301 – Existing Facilities<sup>4</sup>, because it is assuming control of the existing facilities of a utility service. As such, Cal Water contends that it meets the requirements of Public Utilities Code Section 1002.

#### **4.2. Cal Advocates' Position**

Cal Advocates argues that Cal Water has not met the terms of Sections 1001 and 1002 of the Public Utilities Code. Cal Advocates believes that Section 1001 provisions require construction of a new water system or extension of an existing system for granting of a CPCN, neither of which is proposed in this case.

Cal Advocates also argues that Cal Water has failed to provide information adequately addressing the requirements of Section 1002, related to 1) community values, 2) recreational and park areas, 3) historical and aesthetic values, and 4) influence on the environment. Cal Advocates' original protest pointed out that Cal Water failed to provide evidence that it had undertaken any type of community outreach prior to filing this application, and that a simple assertion of the transfer being exempt from the CEQA is not proof of eligibility for such an exemption.

#### **4.3. Discussion**

While Cal Advocates is correct that the plain language of Section 1001 discusses construction or extension of facilities in order to obtain a CPCN, we are not convinced that Section 1001 prohibits the issuance of a CPCN in this case.

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<sup>4</sup> CEQA Article 19 Categorical Exemptions includes Section 15301 (b) that states "Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services," are exempt from CEQA.

We can envision uncommon situations where physical water conveyance and delivery assets are proposed to be acquired by regulated entities where the assets were not in use for public purposes prior to that acquisition. We believe the Commission has the option to grant a CPCN in such cases even if there is no further construction or extension proposed. Thus, our decision does not agree with Cal Advocates' narrow reading of Section 1001.

As to Section 1002, the Commission has previously found that the review process established by CEQA "is the primary vehicle for review of all Section 1002(a) issues except community values<sup>5</sup>." In this case, we concur with Cal Water that CEQA Article 19, Section 15301, is applicable, because subsection "b" of this section exempts water utility infrastructure and thereby exempts the transfer of the Travis AFB water system to Cal Water from CEQA review. As such, three of the four factors that Section 1002 requires the Commission to consider when granting a CPCN – (1) recreational and park areas, (2) historical and aesthetic values and (3) influence on environment – are not at issue in this application. The remaining issue, community values, stays. Cal Water contends that the award of the contract by the Department of Defense to it demonstrates that the community supports the project. Cal Water points out that the community proposed to be served is solely the Travis AFB. In assessing community values, the Commission considers the views of the local community,

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<sup>5</sup> D.10-12-025, Application of Wild Goose Storage, LLC to Amend its Certificate of Public Convenience and Necessity to Expand and Construct Facilities for Gas Storage Operations, at 6.

including the positions of the elected representatives of the area who address this matter on behalf of their constituents.<sup>6</sup>

The award of the contract by Travis AFB demonstrates that the community – Travis AFB – values privatization of its water utility services. Cal Advocates is concerned that the application does not address the community values of any community other than the Travis AFB. Cal Advocates contends that Cal Water may use the Travis AFB contract as a beachhead to serve areas adjacent to the base, as evidenced by the Hunt letter. Even so, this argument only bolsters the view that community values are served by issuance of a CPCN to Cal Water.

Any correspondence from potential customers outside the base in favor of the contract, further demonstrates support from the greater Travis AFB community. No local person or entity has registered opposition to the project. Given these factors, we conclude that due consideration has been given to community values as required by Section 1002.

#### **5. Definition of Public, Public Utility, and Dedication of Facilities to Service the Public**

Additional issues relevant to our consideration of this case are related to the definition of what constitutes the “public” and a “public utility.” These definitions are contained in Sections 207 and 216.

Section 207 states:

“Public or any portion thereof” means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the State,

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<sup>6</sup> Lodi CPCN Decision, 2000 Cal. PUC LEXIS 394 at \*41, as modified by D.00-08-024, 2000 Cal. PUC LEXIS 546 at \*26-27.

for which the service is performed or to which the commodity is delivered.

Section 216(a) states:

“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.

In addition, the other factor usually considered by the Commission in deciding whether to issue a CPCN is whether the company has dedicated utility facilities to public use. The Commission has stated that the test to determine whether dedication has occurred is:

...whether or no [a person has] held himself out, expressly or impliedly, as engaged in the business of supplying [a service or commodity] to the public as a class, not necessarily to all of the public, but to any limited portion of it, as contradistinguished from his holding himself out as serving or ready to serve only particular individuals, either as [an] accommodation or for other reasons peculiar and particular to them.<sup>7</sup>

### **5.1. Cal Water’s Position**

Cal Water argues that a CPCN should be granted here because in serving the Travis AFB, Cal Water would be providing service to the military base and treating the U.S. Department of Defense just like any other water utility customer. The application makes it clear that the sole customer will be the Travis AFB in the event of the granting of the CPCN.

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<sup>7</sup> D.11-12-056, *In the Matter of the Application of the Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-serrano 500 kV Interconnect Project*, Order Denying Rehearing of Decision (D.) 11-07-036, at 9, citing *Independent Energy Producers Association, Inc. v. State Board of Equalization*, 125 Cal.App.4th 425, 442-443 (2004).

Cal Water likens serving the military base to serving a gated community or a private golf course, where public access is restricted but the customer is nonetheless a utility ratepayer like any other. Thus, Cal Water argues that it would be serving as a public utility providing service to the Travis AFB, similar to the service provided in its other districts.

In addition, Cal Water argues that should the CPCN be granted, Cal Water would have dedicated the Travis system to serving the public, and that it is in the public interest for Cal Water to provide this regulated water service to the Travis AFB. Cal Water represents that the express language of the contract with the Department of Defense, as well as the actions of Cal Water in seeking a CPCN through this application, provide a basis for finding that there would be dedication of utility facilities to serving the public. Though Cal Water plans only to serve Travis AFB at the present time, they represent that they could serve the broader public beyond Travis AFB in the future.

## **5.2. Cal Advocates' Position**

Cal Advocates argues that Cal Water, if granted a CPCN to serve the Travis AFB, would not be serving the “public or any portion thereof” as defined in Sections 207 and 216. In particular, Cal Advocates argues that the federal government does not fall under the definition of “public” included in Section 207. Thus, by definition, Cal Advocates does not believe that Cal Water could be dedicating utility assets to serving the public since the U.S. Department of Defense is not part of the public.

## **5.3. Discussion**

Cal Advocates is correct that Section 207 does not explicitly include the federal government in the definition of “public or any portion thereof.” However, almost every utility regulated by the Commission serves a group of

customers in the state where some subdivision of the federal government is treated simply as another utility customer, similar to other commercial customers. Thus, we do not believe that Sections 207 and 216 would prohibit our issuance of a CPCN for these reasons. Similarly, since Cal Water's representations in this case and evidence contained in Exhibit ORA-4 provide ample reason to believe that Cal Water intends to dedicate the water system on Travis AFB to public service, our policy on dedication of utility assets also would not prohibit issuance of a CPCN here.

The difference in this situation, however, for purposes of service to Travis AFB, is that the U.S. Department of Defense would be the only utility customer in this district, coupled with the fact that the award of this service to Cal Water would be implemented via a contractual arrangement with the Department of Defense. This raises questions about the exercise of the Commission's regulatory authority given provisions of the contract between Cal Water and the Department of Defense. These issues are discussed in the next section.

## **6. Potential for Conflict of Authority**

In this application, Cal Water included a copy of the contract signed between Cal Water and the U.S. Department of Defense when the privatization of the water system on Travis AFB was awarded to Cal Water. The contract is described by the parties as a "Regulated Tariff Rate" <sup>8</sup> contract based upon Cal Water's procurement of a CPCN for Travis AFB. The contract includes a Price Adjustments clause that provides for utility services to "be provided under the CPUC authorized tariff service rates."<sup>9</sup> While the contract includes certain

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<sup>8</sup> Contract Section B.2.1, Type of Contract, at 2.

<sup>9</sup> Contract Section G.4, Price Adjustments, at 31.

provisions that allow the Department of Defense contract officer to request additional connections or disconnections (from Cal Water), as well as to approve system upgrades and capital investments, the contract accedes utility operations and infrastructure investments to Cal Water by making it responsible for "...all required SDCs (System Deficiency Corrections), upgrades, and renewals and replacements necessary to maintain and operate the utility system in a safe, reliable condition..."<sup>10</sup>

The federal government also retains ownership over the actual water to be conveyed through the infrastructure that would be owned and operated by Cal Water under the CPCN, if granted as requested in the application.

Finally, the contract contains provisions for the federal government, at its discretion, to re-establish ownership of the water system at the end of the 50-year contract, or in the event the contract is terminated for the convenience of the government or for default. If the contract exercises its repurchase option, however, the government "shall pay the Contractor (Cal Water) the amount of the Contractor's Unrecovered Investments in the System."<sup>11</sup>

### **6.1. Cal Water's Position**

Cal Water represents that the contract between itself and the U.S. Department of Defense is a standard contract that the federal government has used to award other privatized systems on military bases throughout the country. In Cal Water's view, should the Commission grant a CPCN in this case, the Commission would have sole authority over all retail rates, rate schedules

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<sup>10</sup> Contract Section C.11.1, Responsibility, at 19.

<sup>11</sup> Contract Section H.7, Government Repurchase Option, Paragraph Nos. 3 and 8, at 37.

and items directly related to rates and rate issues through Cal Water's general rate case, and the federal government would become simply a ratepayer.

Cal Water also argues that the Commission has never imposed a minimum number of customers for regulated utility service and therefore it is immaterial that the Department of Defense happens to be the only customer to be served by Cal Water's proposed district.

Cal Water's witness represented at the evidentiary hearing that if the federal government objected to the Commission's ratemaking or capital investment decisions, it could intervene in the Cal Water rate case just like any other customer of the utility and make its case before the Commission. Cal Water deems it extremely unlikely that there would arise a conflict between the Department of Defense's contract officer and the Commission's rate case process. However, Cal Water represents that the Commission would be the primary authority with respect to ratemaking issues.

Finally, Cal Water's position is that ownership of the actual water to be delivered remaining with the federal government is similar to other arrangements in other districts where Cal Water is responsible for water conveyance but not supply of the water itself.

## **6.2. Cal Advocates' Position**

Cal Advocates is concerned that the presence of a contractual arrangement between the federal government and Cal Water could, at best, create potential for conflict between federal and state law and, at worst, set up a situation where the Commission is delegating its authority to the Department of Defense contract officer. Cal Advocates points to the supremacy clause of the U.S. Constitution, with concerns that any conflict between the Department of Defense contract and

the Commission's regulatory authority would automatically result in limitations on the Commission's authority.

Cal Advocates also questions the legal arrangement whereby Cal Water does not own but only conveys the water to be distributed within Travis AFB.

### **6.3. Discussion**

As discussed earlier, it is not unusual for a water utility regulated by the Commission to serve a utility customer that also happens to be a subdivision of the federal government. Cal Water is correct that there is no Commission policy or law that requires that the number of customers in a water district must be greater than one. But it is unusual, in combination, for the U.S. Department of Defense to be the sole utility customer of a district and for the provision of service to be governed by a contractual arrangement. However, the contract is unique in that it is a Regulated Tariff Rate contract calling for utility services to be provided under Commission authorized tariffs. The contract describes, at some length, how the cost of service utility rate model will be used as the methodology to set rates. The contract authorizes the use of the Commission's Uniform System of Accounts (USOA) as the prescribed accounting procedure, and calls for the Commission's three-year general rate case cycle to be used for setting rates, with a provision requiring Cal Water to "forecast investments in each rate filing."<sup>12</sup> Our review of the contract finds that it mostly comports with the Commission's regulatory authority. Where the contract contains provisions regarding rates and ratemaking, the contract accedes authority in these areas to the Commission.

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<sup>12</sup> Contract Section G.4.2, CPUC Rate Methodology, at 32.

It is hard to imagine the Supremacy Clause of the U.S. Constitution coming into play, because it is highly unlikely that the Commission would order something in a general rate case that would be in direct conflict with federal law. More likely, this is a practical consideration related to how decisions made by the Department of Defense contract officer might conflict with investment decisions to be made by the Commission under its ratemaking authority.

Cal Advocates cites contract provisions that it believes conflict with or undermine the Commission's regulatory authority. Cal Advocates states that the contract gives the federal government authority to "...designate any location within the service area where utility services...shall commence or be discontinued,"<sup>13</sup> and that the contract only allows Cal Water to serve customers outside the service area with concurrence from the federal government. Cal Advocates believes that these provisions affect the Commission's jurisdiction and authority.

We do not find this to be the case. Since Travis AFB controls all the property on the base and the service area requested in this application is limited to the Travis AFB, the customer – Travis AFB – can request service or discontinue service at any time. This is no different than any other existing or potential Cal Water customer. The contract allows Cal Water to serve areas outside of the certificated area with the concurrence of Travis AFB. But Cal Water also needs Commission approval before it could expand its service area. We note that this process normally requires that an advice letter be filed with the Commission's Water Division requesting for administrative approval from the division. Since

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<sup>13</sup> Contract Section C.4, Service Area, at 7.

the Commission acts upon utility applications, if there ever arises a situation where Cal Water is unable to agree with the federal government on a service area expansion, this issue would never come before the Commission. Contrary to Cal Advocates' argument, the Commission's authority remains intact. But to assuage Cal Advocates' concerns, if Cal Water seeks, in future, to expand its service territory beyond what this decision grants, we will require Cal Water to file an application to do so instead of an advice letter.

Cal Advocates is concerned that any capital investments by Cal Water will be made as specified in the contract without any Commission review of the need for such investment or the costs of the improvements. Cal Water is required to make an initial capital investment of about \$12.7 million in the first five years of operation, with an anticipated capital investment of about \$52 million over the 50-year life of the contract. Cal Advocates contends that the contract gives Travis AFB primary approval authority for capital investments and thus, as such, is an improper delegation of Commission authority.

While the contract requires Cal Water to make system improvements over its 50-year life, the contract also makes clear that the rates established will reflect the Commission's adopted infrastructure investment.<sup>14</sup> In this case, the sole customer – the federal government – will work with its water utility purveyor, Cal Water, to determine necessary capital investments needed to meet the needs of the Travis AFB. Cal Water in turn will use this information to propose infrastructure investments, which in turn, will be reflected in final rates

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<sup>14</sup> Contract Section G.4.2, CPUC Rate Methodology, at 32.

determined by the Commission. Cal Water is still obligated by the contract to provide safe and reliable water service.

If there is a disputed capital project that the Travis AFB contract officer does not approve of, Cal Water is not prohibited by the contract from bringing such project forth in a general rate case review. In fact, we would expect Cal Water to bring such projects forth to the Commission, particularly if the project(s) is needed for the provision of safe and reliable water service. During the general rate case review, the disputed project can be further evaluated and the parties, Cal Water and Travis AFB, can argue the merits of the project(s).

Section G.4.2 Rate Methodology of the contract states that Cal Water is expected to forecast infrastructure investments and the Commission will set final rates based upon its “adopted infrastructure investment.” The contract does, however, give the federal government the option to pay for capital investments “...as a lump-sum payment rather than by amortizing the...costs.”<sup>15</sup> By exercising this option, capital investment costs will not necessarily be included in rates. This is similar to a developer contributing plant to a water utility; the water system improvement is made at no cost to customers.

Cal Water argues that the public interest is in the benefits of transparency and oversight that come with public utility status under the Commission’s jurisdiction. They also point to the potential for economies of scale benefiting not only the Travis AFB, but also existing Cal Water customers, through a larger customer base and fees that would be paid by the Travis AFB as a regulated utility customer.

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<sup>15</sup> Contract Section C.11.4.1, SDCs/Upgrades, at 20.

Our examination of the Department of Defense contract does not reveal any obvious conflicts with the Commission's regulatory process. To the contrary, the contract specifies (1) that the Commission's rate methodology is to be used to establish rates and (2) that rates will reflect the Commission's adopted infrastructure investment. While the contract contains provisions that require the federal government to reach agreement with Cal Water on issues such as connections, expansion of service outside of the Travis AFB, and capital investments, agreement or disagreement on these types of issues between the utility and the federal government do not usurp the Commission's regulatory authority.

The Commission's regulatory and ratemaking authority is established through the granting of a CPCN in order to ensure just and reasonable rates to all members of the public taking regulated utility service within a particular geographic area. With both Cal Water and the federal government in agreement on Commission regulation and its authority over all ratemaking matters relating to the contract, we see no detriment in granting a CPCN.

Although, as discussed, the contract generally conveys the parties' intent to submit to Commission jurisdiction, Section C.11.4 of the contract arguably conflicts with the notion of sole Commission regulatory authority over the utility. As presently written, Section C.11.4 requires Cal Water to prepare an annual "SDC/Upgrades/Connections and Renewals and Replacements Plan" that is subject to "approval" by the Department of Defense Contract Officer. The provisions of Section C.11.4.1 - C.11.4.4 fail to explicitly recognize or articulate the Commission's sole jurisdiction over the utility, and the grant of approval authority in the contract to a Department of Defense Contract Officer appears to conflict with the Commission's authority.

Section H.14.1 of the contract contemplates the need for Commission approval of the contract, and states, “Should the CPUC impose any substantive conditions on its regulatory approval that are unacceptable to either the Government or the Contractor, the parties shall negotiate in good faith to modify the contract to alleviate any objectionable provisions.”

We will condition approval of the CPCN in this case on the modification by the parties of two aspects of the contract.

First, we require parties to modify Section C.11.4 of the contract to make clear that the Commission retains final authority over approval of all future system deficiency corrections, upgrades, connections, renewals, and replacements that are funded through the Commission’s ratemaking authority. The Commission does not wish to inhibit future capital upgrades funded directly by the Department of Defense, nor is it prescribing the exact language the parties can use for modification, but Section C.11.4 of the contract should be clear that the Commission retains ultimate jurisdiction over rate-based changes to utility infrastructure.

Second, pursuant to General Order 96-B, Water Industry Rule 8.3 and Public Utilities Code Section 2712, the contract should be modified to reflect that it shall, at all times, be subject to such modifications as the Commission may direct from time to time in the exercise of its jurisdiction.

We grant the parties 90 days from the issuance of this decision to modify the contract for compliance with this condition and submit the modified contract and a blackline reflecting changes made to the original version of the contract to the Commission’s Water Division through a Tier 2 Advice Letter filing for compliance approval before a CPCN is granted. Pursuant to General Order 96-B,

Water Industry Rule 8.3, the Tier 2 Advice Letter shall be filed at least 30 days before the effective date of providing service to Travis AFB.

On the issue of ownership of the water to be delivered to the Travis AFB, we see no particular issue with the federal government retaining ownership of the water commodity, since, as Cal Water points out, not all water distribution or conveyance utility operations include water commodity provision as part of the service. The ownership of the water remains with the federal government as a provision of the contract between the Department of Defense and Cal Water and we do not see the need for any prohibition on that arrangement.

## **7. Commission Precedent for Policy on Water Service to Military Bases**

Another question raised in the record of this proceeding is whether the Commission already has established policy about how privatized water service should be provided on military bases in California.

### **7.1. Cal Water's Position**

Cal Water and the federal government would prefer to operate the water service on Travis AFB through a CPCN under the regulation of the Commission. This was clear with the filing of this application, and Cal Water represents that the provision of regulated service under Commission regulatory authority was one of the key reasons why Cal Water was the winning bidder for the contract with the U.S. Department of Defense in the first place. Cal Water points to a decision by the Kentucky Public Service Commission regarding the Hardin County Water District, where the Fort Knox military installation water services were being privatized, and the water service was determined to be provided under the state's regulatory authority. Cal Water points to this case as illustrative but acknowledges that it is not binding on this Commission.

## **7.2. Cal Advocates' Position**

Cal Advocates' position is that a CPCN is not required in this situation for Cal Water to provide service to Travis AFB. Cal Advocates argues that the Kentucky case referenced by Cal Water is irrelevant to California. Instead, Cal Advocates cites to two instances in California where privatized water service is being provided on U.S. military bases by non-regulated affiliates of California water companies.

In one case, Cal Advocates references the current general rate case of California American Water Company (Cal-Am) (Application 16-07-002) where Cal-Am is providing service to the Vandenberg AFB through its non-regulated affiliate, American Water Enterprises, and the Commission is examining allocation of expenses between the General Office of the regulated utility and the non-regulated affiliate.

In the second case, Golden State Water Company (Golden State), through an affiliate of its parent company, American States Water, called American States Utility Services (ASUS), is serving various military installations in California and elsewhere.

Cal Advocates points out that the contract between the U.S. Department of Defense and Cal Water already includes provisions which would come into play in the event that the Commission does not grant a CPCN in this case, whereby a fixed price contract would be negotiated and service would continue to be provided.

Thus, Cal Advocates argues that the Commission should not grant a CPCN, but instead should allow Cal Water to provide service to the Travis AFB either by: 1) referring the contract to one of its existing non-regulated affiliates; 2) creating a new non-regulated affiliate to provide the service; or 3) providing

the service under the Commission's rules Governing Affiliate Transactions and the Use of Regulated Assets for Non-Tariffed Utility Services.<sup>16</sup>

### **7.3. Discussion**

While a CPCN may not be necessary to allow Cal Water to provide water service to Travis AFB, the application before us requests a CPCN based upon an executed Regulated Tariff Rate contract. The Commission retains its ratemaking authority under this arrangement. Preserving the Commission's ratemaking authority provides Travis AFB with regulatory oversight and ensures that safe, reliable water service will be provided, with an appropriate level of capital investment, at just and reasonable rates. This type of regulatory oversight would be absent from an affiliate operated water system where the terms and conditions of water service are exclusively between the contract signatories.

### **8. Need for a CPCN to Serve Areas Adjacent to Travis AFB**

In the record of this proceeding, as well as during the evidentiary hearings, much attention was focused on the question of Cal Water's intentions to serve areas adjacent to the Travis AFB, should a CPCN be granted in this case. This was the subject of the original letter from the Hunt Companies to Cal Water expressing interest in service to the Georgetown Village apartments, and the resulting disputes about the scope of this proceeding and the inclusion of Late-Filed Exhibit ORA-4 in the record.

#### **8.1. Cal Water's Position**

Cal Water's original application and subsequent representations in this proceeding have made it clear that the intention in this proceeding was to serve only the Travis AFB subject to the Commission's grant of a CPCN.

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<sup>16</sup> See the requirements of D.10-10-019.

However, Cal Water also made it clear in its representations in this case that it may have the opportunity to add new customers to its proposed Travis District in the future, both on the Travis AFB and off the base, including privatized residential housing, a golf course, a school, and leased facilities, which it described in its supporting materials to the application in this proceeding.

It is also clear from Exhibit ORA-4 that Cal Water is also interested in the potential to serve areas adjacent to Travis AFB. But at this point, Cal Water characterizes the Hunt Companies and the Georgetown Village apartments as a potential customer not located within the service area proposed in this proceeding.

### **8.2. Cal Advocates' Position**

Cal Advocates does not dispute that this application is for water service only to the Travis AFB and one customer, the U.S. Department of Defense. Cal Advocates is concerned, however, about Cal Water's potential interest in serving additional customers adjacent to the Travis AFB, should a CPCN be granted in this proceeding, and the steps that would be required for Cal Water to serve such customers, if a CPCN were to be granted.

### **8.3. Discussion**

The scope of this proceeding was originally expanded to take in the original letter from the Hunt Companies about potential service adjacent to the AFB because Cal Advocates had raised the requirements of Section 1002 with respect to "community values" in its protest. It initially appeared that Cal Water's purpose in attaching the letter to its response to Cal Advocates' motion to dismiss the proceeding was to demonstrate that there was support from the wider community for Cal Water's provision of service at Travis AFB. Cal Water later clarified that the purpose was to address the issue raised by

Cal Advocates about a CPCN to serve only one customer, with the intention of demonstrating that there could be other customers in the near future.

However, provision of the letter raised the broader question of Cal Water's intentions in the event of a CPCN being granted as requested, and the possible expansion of service to adjacent geographic areas.

To ensure no confusion going forward, given we are granting Cal Water a CPCN to provide service to Travis AFB only, we state affirmatively that if Cal Water wishes to serve any customers in areas outside the geographic boundary of Travis AFB and the proposed service area at issue in this application, with regulated service, a new application for service area expansion will be required.

## **9. Summary of CPCN Conclusion**

It is within the discretion of the Commission to grant a CPCN in this proceeding and we do so here, subject to the conditions described with respect to certain contract provisions. Cal Water has met its burden to show compliance with Sections 1001 and 1002 of the Public Utilities Code that govern the issuance of CPCNs. The contract executed by Cal Water and the federal government is a Regulated Tariff Rate contract that, with the modifications described, will preserve the Commission's ratemaking authority.

## **10. Capital Expenditures**

The Regulated Tariff Rate contract contains an Initial System Deficiency Correction (ISDC), schedule that lists seven projects that Cal Water has agreed to complete and place in service over the next 38 months. Two of these projects are expected to be completed in the first year of operation by Cal Water and are included in the projected Year One rate base. The first project is known as ISDC

#4 Reconfigure Existing Piping from Reservoir 3, and the second project is known as ISDC #7, Independent Water Quality Monitoring Station.

### **10.1 Cal Water's Position**

Cal Water requests that the Commission find that both ISDC #4 and ISDC #7 projects are just and reasonable and be included in Year One rates. For the remaining five ISDC projects, Cal Water states that as these projects are scheduled for a later completion date, they can instead be considered in Cal Water's 2018 General Rate Case application – which it filed on July 1, 2018 for Test Year 2020. In its application Cal Water has requested that the Commission establish rates for the Travis AFB district including the remaining ISDC projects.

### **10.2 Cal Advocates' Position**

Cal Advocates agrees with Cal Water that ISDC #4 and ISDC #7 projects are needed and necessary in Year One, and Cal Advocates further agrees with Cal Water's cost estimates of \$12,500 and \$65,900, respectively. For the other five projects contained in the ISDC, Cal Advocates contends that it is premature for the Commission to consider these projects in the instant application. Instead, Cal Advocates recommends that these costs for these projects be reviewed in Cal Water's next GRC proceeding.

### **10.3 Discussion**

Cal Water and Cal Advocates are both in agreement to only include in Year One rates as needed and necessary ISDC project #4 Reconfigure Existing Piping from Reservoir 3, for \$12,500, and ISDC project #7 Independent Water Quality Monitoring Station," for \$65,900. We find the inclusion of these two ISDC projects in Year One rate base just and reasonable.

## **11. Cal Advocates Motion for Evidentiary Sanctions**

On December 26, 2017, Cal Advocates filed a motion seeking “evidentiary sanctions” against Cal Water for alleged misrepresentations in this proceeding related to the progress of communications between Cal Water and Hunt Companies with respect to the potential for serving the Georgetown Village apartment complex. Cal Advocates accuses Cal Water of withholding evidence until after discovery was completed and until just before briefs were due in this case, effectively depriving Cal Advocates of the ability to conduct additional discovery and cross-examine Cal Water’s witness in hearings on this issue. Cal Advocates also asserts that Cal Water effectively misled the Commission during the evidentiary hearings by misrepresenting the status of conversations with Hunt Companies about potential water service.

Cal Advocates’ proposed remedy is an “adverse inference” or an assumption by the Commission of the worst possible facts against Cal Water. Essentially, Cal Advocates would like the Commission to ignore any evidence in this case related to the potential for Cal Water to serve the Hunt Companies and their facilities adjacent to the Travis AFB.

### **11.1. Cal Water’s Response**

Cal Water responds that it updated its data request responses to Cal Advocates at the direction of the ALJ during the evidentiary hearing, which was held November 20, 2017, the week of Thanksgiving. Cal Water asserts that holiday schedules and the necessity to review a great deal of correspondence resulted in provision of the additional material so close to the due date for briefs in the case.

Cal Water also represents that it has “gone well out of its way” to provide extra information to Cal Advocates in this proceeding, including with short response times.

Cal Water also strongly objects to the suggestion by Cal Advocates that Cal Water had intentionally or deliberately tried to prejudice Cal Advocates’ case in this proceeding. In particular, Cal Water addresses certain statements by its witness, Mr. Townsley, in written testimony and evidentiary hearing testimony, to explain the “introductory” and “preliminary” nature of Cal Water’s discussions with the Hunt Companies. Cal Water sticks to this characterization, noting that Cal Water had only received one letter expressing interest in the potential for Cal Water to serve the Georgetown Village apartments.

#### **11.2. Cal Advocates’ Reply**

Cal Advocates’ reply to Cal Water’s response to the Cal Advocates motion for evidentiary sanctions contends that Cal Water had a continuing obligation to provide updated information to Cal Advocates related to its data requests, regardless of the timing of the ALJ’s ruling to require provision of that information during the evidentiary hearings.

Cal Advocates also reiterates that Mr. Townley’s testimony characterizing the Hunt Companies discussions as introductory and preliminary was misleading to the Commission and that the updated data request responses are relevant to this proceeding.

In addition, Cal Advocates recommends that the Commission consider issuing an Order to Show Cause why Cal Water should not be penalized for violating Rule 1.1 of the Commission’s Rules of Practice and Procedure.

### **11.3. Discussion**

Cal Advocates' motion and the whole set of issues related to the potential for Cal Water to serve the Hunt Companies' properties adjacent to Travis AFB is one of the more confounding issues in this proceeding, given that it occupied a great deal of attention.

On the one hand, Cal Water is correct in pointing out that this proceeding is addressing service to the Travis AFB, and the Hunt Companies' properties are not part of the Travis AFB but rather adjacent to it and would not be served by either a CPCN granted in this proceeding or an affiliate company transaction. In that sense, the issue of potential future service to the Hunt Companies is indeed irrelevant to this proceeding.

On the other hand, Cal Water voluntarily introduced this issue into this proceeding. Thus, Cal Advocates has a valid point that Cal Water appears to be trying to have it both ways, utilizing the Hunt Companies' interest in Cal Water's regulated water service as support for its application, while simultaneously arguing that this expression of interest is irrelevant to the issues in the proceeding.

We take allegations of misleading the Commission, intentionally or unintentionally, seriously. While this issue did not end up being material to our decision in this case, that was not a settled issue at the time of the evidentiary hearings.

In those evidentiary hearings, Cal Water's witness was asked very specific questions about the status of discussion with the Hunt Companies, which were characterized as "introductory" and "preliminary" with only one letter expressing interest.

Evidence provided in Cal Water's updated response to Cal Advocates' data request, however, indicates a deeper level of engagement than this characterization would imply.

Cal Advocates had subpoenaed the signatory to the original letter from Hunt Companies to Cal Water to appear at the evidentiary hearings, and Cal Water characterized this as an overreach by Cal Advocates, since the individual was from out of state and the evidentiary hearings were taking place the week of Thanksgiving.

In subsequent evidence provided in the updated data request response contained in Exhibit ORA-4, it is clear that the same individual was, in fact, present in California at Cal Water's offices having detailed discussions about the potential for provision of water service, only the week before the evidentiary hearings were taking place. This information was known to Cal Water at the time of the evidentiary hearings and was not disclosed at that time.

Thus, Cal Water's witness, who by inclusion in numerous e-mails contained in the data request response appeared to be participating in the meetings the previous week, did appear to minimize or downplay the level of engagement occurring between the Hunt Companies' representatives and Cal Water.

We admonish Cal Water for this behavior and remind them of their obligation to be truthful and forthcoming with the Commission on all aspects of their engagement with the Commission, regardless of whether or not Cal Water deems the matter in question relevant to the ultimate disposition of the proceeding before the Commission. We decline to initiate a process for potentially imposing penalties for violation of Rule 1.1 in this case, as requested by Cal Advocates. We note that Cal Water did make a motion for additional

evidentiary hearings, which was denied, in part to attempt to clear up confusion surrounding this issue, which we consider a mitigating factor. We do, however, put Cal Water on notice that should we see similar behavior in the future with data responses or other testimony that is less than forthcoming about the facts of a case, we will consider penalties at that time. We intend to be vigilant in monitoring this type of behavior in Cal Water's future proceedings before us.

## **12. Comments on the Alternate Proposed Decision**

The proposed alternate decision of Commissioner Rechtschaffen 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.

Opening comments on the alternate proposed decision were served by Cal Water and Cal Advocates on November 29, 2018 and reply comments were served by both parties on December 4, 2018.

In its opening comments, Cal Advocates argues that the APD's order to revise the language in Cal Water and the federal government's contract does not resolve the jurisdictional problems between the federal government and the Commission pointed out by Cal Advocates; that a CPCN is not an option a utility can choose to obtain; that the APD commits legal error by failing to impose penalties against Cal Water for Rule 1.1 violations; and that the APD contains factual errors. In its opening comments, Cal Water supports the APD and proposes no changes to it. In response to Cal Advocates' comments to the APD, we have made changes to the proposed decision, further clarifying the scope of the Commission's jurisdiction.

### **13. Assignment of Proceeding**

Carla J. Peterman is the assigned Commissioner and Julie A. Fitch is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. The Commission evaluates applications for CPCNs according to Sections 1001 and 1002 of the Public Utilities Code.
2. Cal Water's application met the terms of Sections 1001 and Section 1002.
3. Section 207 defines "public" for purposes of a CPCN and the U.S. Department of Defense could be considered a member of the public.
4. Section 216(a) defines "public utility" and the Travis AFB water distribution system owned and operated by Cal Water could qualify under this definition.
5. The Commission requires dedication of utility facilities to public use prior to issuance of a CPCN.
6. Cal Water was the recipient of an award of a contract through the federal government's request for proposal process for privatization of the water distribution system at Travis Air Force Base.
7. The term of the contract between the U.S. Department of Defense and Cal Water is 50 years. At the end of the contract term, the U.S. Department of Defense may, at its sole discretion, re-establish ownership of the water system.
8. The purchase price of the water distribution system transfer from the U.S. Department of Defense to Cal Water is one dollar.
9. Under the terms of the contract between Cal Water and the U.S. Department of Defense, Cal Water would assume ownership, operation, and maintenance of the water distribution system at Travis AFB.

10. Cal Water would not be responsible for providing the water supplied through the distribution system at Travis AFB.

11. Award of the contract to Cal Water demonstrates that the community supports the project.

12. No local person or entity has registered opposition to the contract between Travis AFB and Cal Water.

13. The contract is a Regulated Tariff Contract based upon Cal Water's procurement of a CPCN.

14. The contract authorizes the use of the Commission's USOA and the three-year rate case cycle for setting rates.

15. Cal Water requires the Commission's authority to expand its service area beyond Travis AFB.

16. Cal Water must file an application with the Commission to expand its service territory beyond that granted in this decision.

17. The contract requires necessary infrastructure investments subject to federal government input and approval of rates by the Commission.

18. The federal government has an option to pay for capital investments as a lump-sum rather than through amortization.

19. The contract provides that the federal government and Cal Water reach agreement on connections, service area expansion, and capital investment, reducing conflicts in general rate case applications.

20. The ownership of water delivered to Travis AFB under the contract remains with the federal government.

21. The proposed method to serve Travis AFB is through a CPCN and contract which provides Commission authority for ratemaking.

22. The provisions of Section C.11.4.1 – C.11.4.4 of the contract fail to explicitly recognize or articulate the Commission’s sole jurisdiction over the utility, and the grant of approval authority in the contract to a Department of Defense Contract Officer appears to conflict with the Commission’s authority.

23. If the federal government exercises its option to repurchase the water system at, or prior to, expiration of its 50-year contract term, the Department of Defense is responsible for paying for Cal Water’s unrecovered investments in the system.

24. The Georgetown Village Apartments owned by the Hunt Companies and adjacent to the Travis AFB would not be served as part of the contract between Cal Water and the U.S. Department of Defense or under the proposed CPCN in this proceeding and Cal Water has not sought permission to serve this set of customers in this application.

25. Cal Water’s intention to serve customers outside of or adjacent to Travis AFB in this proceeding has been a disputed issue emanating from Cal Water’s attachment of a letter from the Hunt Companies to Cal Water expressing interest in water service to its response to Cal Advocates’ original motion to suspend the procedural schedule.

26. Cal Water proposes that two projects be included in its Year One rate base: the first project is known as ISDC #4 Reconfigure Existing Piping from Reservoir 3, at a cost of \$12,500, and the second project is known as ISDC #7, Independent Water Quality Monitoring Station, at a cost of \$65,900.

27. Cal Water’s witness was not fully forthcoming about the number and detailed nature of exchanges between Cal Water and the Hunt Companies representatives about potential service to the Georgetown Village apartment complex adjacent to the Travis AFB.

## **Conclusions of Law**

1. Cal Advocates' December 22, 2017 motion to mark and admit late-filed Exhibit ORA-4 should be granted to allow more detailed consideration of the issues related to Cal Water's plans or intentions to serve additional customers adjacent to the Travis AFB and its obligations for community outreach.
2. Under the requirements of Section 1001 of the Public Utilities Code, the Commission is not prohibited from issuing a CPCN where there is no construction of facilities or extension of service.
3. Cal Water met its burden to show compliance with Section 1002 of the Public Utilities Code for purposes of issuing a CPCN.
4. Sections 207 and 216 of the Public Utilities do not prohibit the Commission from granting a CPCN in this proceeding.
5. There is no legal requirement or Commission precedent requiring that a utility district serve more than one utility customer.
6. Utility facilities could theoretically be dedicated to serving the public without serving more than one utility customer.
7. Ownership of water supply is not necessarily a requirement for a CPCN for water distribution service.
8. Commission regulatory authority over public utilities, through general rate cases, serves to protect customer/ratepayer interests.
9. CEQA Article 19, Section 15301 is applicable and exempts the transfer of the Travis AFB water system to Cal Water from CEQA review.
10. Consideration has been given to Community Values as required by Public Utilities Code Section 1002.
11. Commission CPCN and ratemaking oversight of the contract between the U.S. Department of Defense and Cal Water is beneficial.

12. The Commission has not established a general industry-wide policy on how privatized water service should be provided on military bases in California.

13. If Cal Water wishes to serve customers in areas outside of the geographic boundary of Travis AFB and/or the area covered by its contract with the U.S. Department of Defense, Cal Water should be required to file a new application with the Commission.

14. Cal Water's request for approval of two projects in its Year One rate base is reasonable and should be approved: the first project is known as ISDC #4 Reconfigure Existing Piping from Reservoir 3, at a cost of \$12,500, and the second project is known as ISDC #7, Independent Water Quality Monitoring Station, at a cost of \$65,900.

15. All rulings of the assigned Commissioner and ALJ in this proceeding should be affirmed.

## **O R D E R**

### **IT IS ORDERED** that:

1. The December 22, 2017 motion of the Public Advocates Office (Cal Advocates) to mark and admit late-filed exhibit ORA-4 is granted.

2. The application of the California Water Service Company for a certificate of public convenience and necessity to serve the Travis Air Force Base is granted subject to the condition in Ordering Paragraph 3.

3. California Water Service Company will have 90 days to renegotiate and modify the contract as follows. First, Section C.11.4 of the Regulated Tariff Rate contract shall be modified to reflect the Commission's ultimate jurisdiction over approval of future system deficiency corrections, upgrades, connections, renewals, and replacements that are funded through the Commission's

ratemaking authority. Second, pursuant to General Order (GO) 96-B, Water Industry Rule 8.3 and Public Utilities Code Section 2712, the contract shall be modified to reflect that it shall, at all times, be subject to such modifications as the Commission may direct from time to time in the exercise of its jurisdiction. California Water Service Company shall submit the modified contract and a blackline reflecting changes made to the original version of the contract to the Commission's Water Division through a Tier 2 Advice Letter filing for compliance approval before a Certificate of Public Convenience and Necessity is granted. Pursuant to GO 96-B, Water Industry Rule 8.3, the Tier 2 Advice Letter shall be filed at least 30 days before the effective date of providing service to Travis AFB.

4. Assuming that the Advice Letter required by Ordering Paragraph 3 is approved, and only after this step has taken place, California Water Service Company shall file, pursuant to Public Utilities Code Section 454, supplemental Tier 2 advice letters to implement tariff rate schedules attached to Application 17-05-022 – Appendix B Potable Water Service, and Appendix C, Service Area Map. The effective date of the revised schedules shall be five days after the date of filing.

5. If California Water Service Company wishes to serve customers in areas outside of the geographic area covered by the terms of its contract with the U.S. Department of Defense to serve the Travis Air Force Base (AFB) and/or adjacent to the Travis AFB, Cal Water shall file a new application with the Commission for this purpose.

6. The December 26, 2017 motion of the Office of Ratepayer Advocates for evidentiary sanctions is denied.

7. All rulings of the assigned Commissioner and assigned Administrative Law Judge in this proceeding are hereby affirmed.

8. Application 17-05-022 is closed.

This order is effective today.

Dated December 13, 2018, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners