Decision 25-01-032 January 16, 2025

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CALIFORNIA WATER SERVICE COMPANY (U60W), a California corporation, for an order (1) authorizing it to increase rates for water service by $80,484,801 or 11.1% in test year 2023, (2) authorizing it to increase rates on January 1, 2024 by $43,582,644 or 5.4%, and (3) authorizing it to increase rates on January 1, 2025 by $43,197,258 or 5.1% in accordance with the Rate Case Plan, and (4) adopting other related rulings and relief necessary to implement the Commission's ratemaking policies.	Application 21-07-002

ORDER DENYING REHEARING OF DECISION 24-03-042

I. INTRODUCTION

On March 15, 2024, the Commission issued Decision (D.) 24-03-042 (Decision) resolving California Water Service Company's (Cal Water's) Test Year 2023 General Rate Case (GRC).[1] D.24-03-042 approves a partial settlement agreement between Cal Water and the California Public Advocates Office (Cal Advocates). In addition to approving the partial settlement agreement, D.24-03-042 resolves multiple issues that were unaddressed in the settlement. Relevant to the issues addressed in this Order, D.24-03-042: (1) denies Cal Water rate recovery for contingency costs for most

[1] Unless otherwise noted, citations to Commission decisions and resolutions are to the official pdf versions, which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx and https://docs.cpuc.ca.gov/ResolutionSearchForm.aspx.

capital projects;[2] (2) denies rate recovery for carryover projects, i.e., projects previously authorized in Cal Water's 2018 GRC but not completed; (3) denies rate recovery for two-step projects, i.e., projects that will take more than one rate case cycle to complete; and (4) denies rate recovery for Cal Water's Supplemental Executive Retirement Plan (SERP).

Cal Water filed a timely application for rehearing of D.24-03-042 on April 15, 2024. In general, Cal Water argues that the Commission's denial of rate recovery in this GRC cycle for contingency, carryover projects, two-step projects, and SERP are premised on legal error. Cal Advocates filed a response to the rehearing application on April 30, 2024, arguing that the rehearing application fails to demonstrate legal error or grounds for granting rehearing.

We have carefully reviewed each of Cal Water's contentions presented in its application for rehearing. For the reasons explained herein, we deny rehearing but modify D.24-03-042 in the manner described in the Ordering Paragraphs presented in this Order.

II. DISCUSSION

A. Cal Water fails to show legal error in the Commission's rejection of its proposed contingency factors.

D.24-03-042 rejects Cal Water's proposed approach to contingency wherein Cal Water applies a contingency factor of either 10 or 20%, depending on the type of project, to each of its 1,170 proposed capital projects.[3] (D.24-03-042, p. 26; Ex. CW-27, p. 122.) The Decision does approve contingency for Cal Water's Lucerne Pier and Water Treatment Equipment project (Lucerne project), in which Cal Water must

[2] A contingency factor is a cost added to the overall cost of a capital project intended to account for unforeseen conditions, uncertainties, or unknown variables that may increase the actual cost of a project. (See D.24-03-042, p. 25.)

[3] Cal Water proposed to apply a 10% contingency factor to routine replacements and equipment purchases, while all other projects would receive a 20% contingency, unless significant design has already been completed. (Exhibit (Ex.) CW-27, p. 122.)

replace equipment located at the end of a deteriorating pier that would be dangerous for Cal Water employees to walk on. (D.24-03-042, p. 69.) The Decision finds that Cal Water justifies the application of contingency for the Lucerne project given the utility's minimal experience with marine construction. (*Ibid*.)

The Decision explains that in a GRC, all costs must be shown to be just and reasonable. (D.24-03-042, p. 25; see also Pub. Util. Code §§ 451, 454(a).) The Decision draws heavily from past Commission decisions to further explain that contingency may not meet this just and reasonable standard as it is intended to account for costs that are inherently unknown. (D.24-03-042, p. 25.) The Decision finds that, with the exception of the Lucerne project, Cal Water fails to justify its application of contingency in this proceeding. (*Id*. at 24-27.)

Cal Water asserts that the Commission's contingency holding is premised on legal error because it misinterprets prior Commission decisions and is contrary to prior Commission decisions approving contingency requests. For the reasons explained herein, Cal Water fails to show legal error in the Decision.

1. Cal Water fails to show the Decision misinterprets prior Commission decisions.

The Decision reiterates the ratemaking principle that all costs must be just and reasonable in a GRC, and cites two prior decisions where the Commission denied cost recovery for Southern California Edison Company's (SCE's) requested contingency. (D.24-03-042, p. 24 citing *Decision on Test Year 2018 General Rate Case for SCE* (2019) [D.19-05-020]; *Decision on Test Year 2021 General Rate Case for SCE* (2021) [D.21-08-036].) Cal Water argues that the Commission commits legal error by misinterpreting D.19-05-020 and D.21-08-036. (Rehg. App., p. 3.)

Cal Water contends that the Commission's construal of D.19-05-020 and D.21-08-036 as decisions in which the Commission "disapproves of budgeting for contingencies in general rate cases where the utility must demonstrate the reasonableness of its forecast revenue requirement," is inaccurate. (*Ibid*. citing D.24-03-042, p. 25.) Cal Water offers a more limited reading of these cases, asserting that these cases merely show

examples of rejecting contingency "for specific projects" rather than "a categorical denial of all contingencies." (*Ibid*.)

Cal Water argues that the language denying contingency in D.19-05-020 is specific to SCE's software project only, and that D.19-05-020 "generally authorized contingency factors for all of [SCE's] proposed capital projects." (*Ibid*.) Cal Water is correct that D.19-05-020 denies contingency for SCE's capitalized software projects and that the statements cited to from D.19-05-020 in the Decision are in relation to SCE's software projects. (See D.19-05-020, pp. 149-152.) Cal Water similarly argues that the denial of contingency in D.21-08-036 is specific to SCE's proposed Seismic Assessment and Mitigation project capital expenditures, and cannot generally be applied to all contingency. (Rehg. App., p. 4.) While the Commission in D.21-08-036 finds that SCE did not establish that contingency costs for its Seismic Assessment and Mitigation project were reasonable, it also approves contingency for other SCE projects. (D.21-08-036, p. 333.) For instance, D.21-08-036 approves SCE's request for contingency for a separate fuel cell generation decommissioning project. (*Id*. at pp. 536-37.) For the decommissioning project, the Commission notes a level of project uncertainty, thus demonstrating a need for contingency. (*Ibid*.)

In sum, Cal Water is correct that D.19-05-020 and D.21-08-036 deny contingency for specific projects. However, Cal Water is incorrect that the Decision is inconsistent with the outcomes of either D.19-05-020 or D.21-08-036. All three cases confirm the principle that rate recovery for contingency may not be appropriate in a GRC where the utility needs to demonstrate the reasonableness of every dollar. (D.19-05-020, p. 150; D.21-08-036, p. 331.) Likewise, in all three cases, the Commission denies cost recovery for contingency where it finds that the utility fails to demonstrate the reasonableness of its contingency request. (See section II.A.2, *infra*, for a discussion of why Cal Water failed to demonstrate reasonableness.) As in D.19-05-020 and D.21-08-036, the Decision approves cost recovery for contingency where the utility does demonstrate reasonableness. Specifically, the Commission approves contingency recovery for the Lucerne project in D.24-03-042. (D.24-03-042, p. 69.) For these

reasons, Cal Water fails to show that the Commission misinterprets these past decisions in its denial of contingency costs in D.24-03-042.

Likewise, Cal Water fails to show that the Decision is inconsistent with prior Commission decisions that the utility points to in arguing that the Commission's approval of cost recovery for contingency is "routine." (Rehg. App., p. 5 citing *Decision Addressing the General Rate Case Application of Golden State Water Company* (2016) [D.16-12-067], p. 46; *Decision on Test Year 2012 General Rate Case for SCE* (2012) [D.12-11-051], pp. 36-37; *Final Decision Authorizing Rate Increases in Monterey Water District and Toro Service Area* (2009) [D.09-07-021], pp. 28-20; *Decision Addressing Pacific Gas and Electric Company's (PG&E's) Nuclear Decommissioning Cost Triennial Proceeding* (2002) [D.03-10-014], p. 32; *Decision Addressing the Test Year 2018 General Rate Cases of San Diego Gas & Electric Co. and Southern California Gas Co.* (2019) [D.19-09-051], p. 204.) Cal Water thus contends that the Decision errs in its statement that "[i]t has long been [the Commission's] practice, consistent with ratemaking policy, to disallow contingencies in order to motivate utilities to remain within their forecast budgets for their capital projects." (Rehg. App., pp. 4-5 citing D.24-03-042, p. 25.)

While it is correct that the Commission approves cost recovery for contingency in the cited cases, this is after the utility justifies the application of said contingency. D.16-12-067 notes, for instance, that Golden State Water Company presents its contingency requests with "sufficient detail" and "cited several factors that contribute to uncertainty of project costs." (D.16-12-067, *supra*, p. 46.) Similarly, in D.19-09-051, the Commission describes how Southern California Gas Company justifies its contingency request with a "project-specific" showing that "take[s] into account specific circumstances regarding each project," and is reviewed "by subject matter experts who examine and weigh the risks and contingencies surrounding each specific project." (D.19-09-051, *supra*, p. 204; see also *Decision on Test Year 2015 General Rate Case for SCE* (2015) [D.15-11-021], pp. 328-329 [disallows contingency in SCE's GRC and explains that SCE only described the process for developing contingency estimates in

general terms but "did not discuss project specifics or provide detail to support specific [contingency] amounts"].)

Further, even if the Decision reaches a different conclusion than in other proceedings, Cal Water fails to demonstrate that this constitutes legal error. Courts have previously held that "[t]he departure by the Commission from its own precedent . . . is not a matter under the control of [a] court." (*Postal Telegraph-Cable Co. v. Railroad Com. of California* (1925) 197 Cal.426, 436-437.) Departures from prior precedent will be upheld if there are factual distinctions between cases justifying the Commission's departure from prior precedent. (See *id*. at 437; see also *Order Modifying Decision and Denying Rehearing* (1993) [D.93-12-048] 52 CPUC.2d 673, pp. 4-5 ["The Commission may legally depart from its own precedent . . . so long as circumstances peculiar to a given situation may justify such a departure."] [internal citations omitted]; *Order Denying Rehearing of D.24-01-043* (2024) D.24-09-052, pp. 8-9 ["The Commission is not bound by its precedent and circumstances may justify departure from precedent."]; *Order Modifying D.24-04-034* (2024) D.24-04-041, p. 10 ["[I]t is not legal error for us to deviate from our prior decisions. As the California Supreme Court has long held, the Commission has the discretion to reach different conclusions in different cases as a matter of policy because of their unique facts."].)

In sum, while the Commission has previously approved cost recovery for contingency, the Commission has also repeatedly denied requests for cost recovery of contingency where the utility fails to justify its contingency request with a sufficient factual showing. D.24-03-042 is consistent with prior Commission precedent where it finds Cal Water's showing inadequate and determines that "we cannot conclude that the contingency factors are reasonable." (D.24-03-042, p. 27.) To the extent the Decision differs from prior decisions that have approved contingency requests, such cases are factually distinguishable in that the utility justified its application of contingency, which Cal Water failed to do here.

Finally, Cal Water appears to read the Decision as holding that contingency can never be recovered in a GRC when in fact, the Decision explains that Cal Water fails

to justify its contingency approach. (*Id*. at pp. 26-27.) Cal Water's interpretation of the Decision is plainly contradicted by the Decision's approval of contingency for the Lucerne project, where Cal Water did show sufficient uncertainty to justify contingency. (See *id*. at p. 69.) However, we will modify certain statements in the Decision's discussion of contingency to further clarify the Decision's holding, as set forth in the Ordering Paragraphs below.

2. Cal Water fails to show the Commission erred in its characterization of Cal Water's "indiscriminate application" of a contingency factor.

Cal Water alleges that the Decision factually errs by incorrectly characterizing Cal Water's contingency request as an "indiscriminate application" of contingency, an assertion that Cal Water argues is not supported by the record. (Rehg. App., p. 6.) This allegation lacks merit.

"Indiscriminate" is defined as "not marked by careful distinction: deficient in discrimination and discernment."[4] Cal Water grouped projects as either a Class 4 (routine replacements and equipment purchases) or a Class 5 project (all other capital projects unless significant design had been completed). (Ex. CW-27, p. 122.) Cal Water then applied a 10% contingency to Class 4 and a 20% contingency factor to Class 5 projects. (*Ibid*.) Thus, Class 4 projects received the same 10% contingency factor regardless of the details of the projects, as did Class 5 projects. For instance, Cal Water's application of contingency included projects as routine as vehicle replacements. (D.24-03-042, p. 140.) The Commission's use of the phrase "indiscriminate" is a reasonable description of Cal Water's approach. Cal Water did not make further distinctions between the type of projects or determine whether different contingency (or any contingency) was warranted, after having grouped projects into either Class 4 or Class 5.

[4] Merriam-Webster Dictionary Online (2024) https://www.merriam-webster.com/dictionary/indiscriminate [as of December 31, 2024].

Cal Water's own description of its contingency approach in its rehearing application supports the Decision's characterization of an "indiscriminate application" of contingency. (*See* Rehg. App., p. 7.) Cal Water explains that in its prior GRC, the utility introduced a contingency approach developed by a third-party consultant. (*Ibid*.) Cal Water applied those same contingency factors in the current proceeding. (*Ibid*.) Cal Water states that "[g]iven the total number of projects (>1200) and the number of users (project managers, engineers, and district staff) across a wide spectrum of geographical locations, simplifying the process for developing appropriate and consistent contingencies while improving estimates was imperative." (*Id*. at pp. 7-8.) Specifically, Cal Water used this process to apply either a 10% or 20% contingency factor to all capital projects.

A review of additional record material also supports the Commission's findings in the Decision and denial of Cal Water's proposed contingency factors. Cal Water's application and supporting evidence provide little information to support its contingency request. For instance, Cal Water's Capital Project Justification Book (Ex. 27) merely explains that:

> In the 2018 GRC, Cal Water developed a contingency spreadsheet and protocol for classifying cost estimates and identifying location factors. Contingency factors were based on estimate classes determined by project engineers based on company-wide guidelines provided to them. Routine replacements and equipment purchase projects were considered Class 4 estimates while all other projects were deemed Class 5 unless significant design has already been completed. Class 4 estimates were assigned a 15% contingency based on the AACE International figures; Class 5 estimates were assigned a 25% contingency based on those same figures. In settlement, Public Advocates and Cal Water agreed to adjust these values down to a contingency of 10% for Class 4 projects, 20% for Class 5 projects and to omit the risk factor entirely. This scheme appears in this rate case filing for contingency calculations on projects submitted in this application.

(Ex. CW-27, p. 122.)

The Commission's description of this process as an "indiscriminate application" and a "near blanket approach," the expressed concerned that Cal Water did not provide a more accurate budget for routine capital projects, and the finding that the Commission "cannot conclude that the contingency factors are reasonable" are all reasonable and based on the record evidence in this proceeding. (*See* D.24-03-042, p. 27.) Cal Water's application of the same contingency factor for all projects that the utility placed into the same class differs from utility showings in other proceedings where the Commission found cost recovery for contingency was justified. (See e.g., D.19-09-051, *supra*, p. 204 [utility justified its contingency request with a "project-specific" showing that "take[s] into account specific circumstances regarding each project"].) Cal Water may disagree with the Commission's characterization as "indiscriminate," but this is a reasonable conclusion based on the scant information and explanation Cal Water provided. Thus, the Commission's finding that it cannot conclude that Cal Water's contingency factors are reasonable is supported by substantial evidence in the record. (See *Ponderosa Telephone Co. v. Public Utilities Com.* (2019) 36 Cal.App.5th 999, 1013 [the Commission's "findings are not open to attack for insufficiency if they are supported by any reasonable construction of the evidence"]; *Clean Energy Fuels Corp. v. Public Utilities Com.* (2014) 227 Cal.App.4th 649, 658 [any substantial evidence will suffice to support a finding, so long as a reasonable person could reach the same conclusion].)

B. Cal Water fails to show any legal error in the Commission's determination with regard to carryover projects.

As part of its capital project request in this GRC, Cal Water requested approximately $194 million for capital projects "carried over" from its prior GRC rate cycle, i.e., projects that were authorized in the 2018 GRC but not completed. Cal Advocates recommended that the Commission deny all carryover projects on the grounds that these projects should have been completed in the prior rate case cycle. (D.24-03-042, p. 32.)

The Decision agrees with Cal Advocates' recommendation and states that the Commission is concerned with the magnitude of the projects previously authorized

but not completed. (*Ibid*.) Instead of allowing these projects into rates at the time of the Decision, D.24-03-042 authorizes Cal Water "to follow the Commission's existing process for adding previously authorized projects that are completed and used and useful to rate base through the Industry Division's approval process." (*Ibid*.)

1. Cal Water fails to show the Commission's determination to defer rate recovery for carryover projects is unsupported by the evidentiary record.

Cal Water argues that the Decision's determination with regard to carryover projects constitutes legal error because the deferral of rate recovery for carryover projects is not based on the evidentiary record. (Rehg. App., p. 9.) Cal Water asserts that the Commission's stated concern with the "magnitude" of carryover projects is provided with "little explanation of the purported concerns," and that it is also "unclear whether the final decision properly took into account the full context for these carryover projects." (*Id*. at p. 10.) Cal Water asserts that the only potentially related Finding of Fact in the Decision to support the concern over the magnitude of carryover projects is Finding of Fact 14, which states that "[t]he projected costs of constructing portions of or all the 'carryover' projects listed on Appendix 2-2 to this decision are concerning." (*Ibid.* citing D.24-03-042, p. 32.) However, as Cal Water points out, Appendix 2-2 is a list of two-step projects. (*Ibid*.) Appendix 2-3 lists carryover projects, but Cal Water also notes that Appendix 2-3 only lists seven carryover projects whereas the total number of requested carryover projects is 337. (*Id*. at pp. 10-11.) As such, Cal Water argues that it is "impossible to tell whether the concern over the 'magnitude of projects' was reasonable or supported by the evidentiary record." (*Id*. at p. 10.) In addition, Cal Water argues that Findings of Fact 15-18 set forth valid reasons why carryover projects occur and justify inclusion of these projects in rates. (*Id*. at 11.)

Cal Water is correct that Finding of Fact 14 does not refer to the correct appendix. Cal Water is also correct that Appendix 2-3 is not a complete list of carryover projects. However, as Cal Water notes in its rehearing application, Appendix W to the Decision does contain a complete list of carryover projects. (*Id*. at 10.) Therefore, we

modify Finding of Fact 14 to refer to carryover projects in Appendix W.[5] Furthermore, upon further review, we find Findings of Fact 15-18 are not material to the treatment of carryover projects reached in the Decision. (Rehg. App., p. 11; see Pub. Util. Code, § 1705 [requiring Findings of Fact on all issues material to the decision].) As such, to clarify our reasoning for denying these projects, we remove Findings of Fact 15-18 from the Decision.

However, as modified, we do not find there is a basis to grant rehearing of the Decision. There is substantial evidence in the record in support of the Commission's expressed concern with the magnitude of carryover projects, as well as the rejection of rate recovery for Cal Water's carryover projects at this time and requirement for Cal Water to instead submit advice letters once projects are actually completed. Cal Water itself acknowledges that there are 337 carryover projects previously approved but not completed. (Rehg. App., p. 11.) Cal Water's testimony lists carryover projects for each district (see, *e.g.,* Ex. CW-5 (Report on the Results of Operations – Bakersfield District), RO Plant Table 3) as does Cal Advocates' testimony. (See, *e.g.,* Ex. Cal Adv-7 (Report on Plant), Attachments 1-5, 2-3, 3-3, 4-5, 5-3, 6-3.) Cal Water also submitted testimony explaining that increasing delays caused by factors such as global supply chain issues have contributed to the carryover project issue. (Ex. CW-54, pp. 23-29.)

Cal Advocates also argued that "[p]rojects that have spanned at least two GRCs as carryover requests demonstrate a disturbing pattern: Cal Water has no incentive to complete or stay within budget or schedule." (Cal Advocates Opening Brief, p. 86.) As an example, Cal Advocates pointed to a Bakersfield district project that Cal Water proposed to put into rates with a budget of over $2.3 million. (*Ibid*.) This project was previously approved in a prior GRC at a budget of $858,709, and then re-authorized again at an increased budget of over $1.5 million. (*Id*. at pp. 86-87; see also Ex. CW-5,

[5] Subsequent to D.24-03-042, the Commission issued D.24-04-043, which corrects several errors in D.24-03-042, including corrections to Appendix W. As such, the modified Finding of Fact shown below refers to the corrected Appendix W.

Attachment A, p. 126.) Cal Advocates' example shows the impact that carryover projects can have on ratepayers.

In sum, there is substantial evidence in the record to support the Commission's statement that it is concerned with the magnitude of Cal Water's carryover projects. Cal Water itself acknowledges carryover projects as an issue to be addressed. (See, *e.g.,* Ex. CW-54, pp. 23-29.)

Further, the Commission's determination to have Cal Water submit advice letters to place these projects in rates once they are actually completed is a reasonable policy determination, particularly given Cal Water's own expressed uncertainty about the timing of project completion, and the prior multi-year delays in completing carryover projects. (*Ibid*.) The Commission's established process for utilities to obtain cost recovery via advice letter ensures that ratepayers are protected from paying for projects not actually in service while also ensuring that the utility is compensated once projects are completed. Such policy decisions are within the Commission's discretion and do not constitute legal error. (See *SFPP, L.P. v. Public Utilities Com.* (2013) 217 Cal.App.4th 784, 798 [policy choices about ratemaking are the responsibility of the Commission, not a court].) Likewise, courts have held that that they will not disturb the Commission's procedural choices provided those choices do not constitute an abuse of discretion or an unreasonable interpretation of the statutes governing its procedures. (See *Pacific Bell v. Public Utilities Com.* (2000) 79 Cal.App.4th 269, 282-283 [whether a utility may proceed by advice letter or formal application is a decision peculiarly within the Commission's expertise and judgement]; *Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 292-293 [Public Utilities Code leaves to the Commission the determination of the appropriate procedures to be followed].) Finally, this process is working as intended, as Cal Water has already submitted two advice letters for approval of carryover projects that have now been completed. (See section, II.B.3, *infra*.)

2. Cal Water fails to show it is legal error not to add the utility's carryforward offset adjustment back into rates.

Cal Water argues that D.24-03-042 errs by failing to remove a voluntary $100 million ratemaking adjustment made by Cal Water to account for carryover projects. (Rehg. App., p. 13.) Cal Water asserts that, as an attempt to address the carryover issue, the utility voluntarily reduced the total capital budget it sought to recover in this rate cycle by $100 million. (*Ibid*.) Cal Water thus argues that because it had already eliminated $100 million in capital costs from the budget, the Decision unfairly penalizes Cal Water by adopting a capital budget that reflects this $100 million reduction, as well as the $194 million reduction for the carryover projects not authorized for inclusion in rate base. (*Id*. at pp. 13-14.)

Cal Water fails to demonstrate that the Decision's adoption of Cal Water's request to reduce its capital budget constitutes legal error. Cal Water's testimony and supporting materials do not indicate that the requested carryforward adjustment is contingent on approval of its separate requests for $194 million in carryforward projects. Cal Water's testimony asserts that "[b]ecause Cal Water recognizes that some projects will not stay on schedule, a blanket reduction of $100 million in capital costs is also included in Cal Water's capital request, which we call a 'carryforward' adjustment." (Ex. CW-55, p. 194.) Cal Water fails to show any nexus between the amount it chose to remove and the actual amount of carryover projects, and indeed, the amount of carryover projects exceeds the carryforward adjustment. The record before the Commission is adequate to support the Decision's finding that Cal Water failed to justify inclusion of costs for projects carried over from the 2018 GRC at the time of the Decision and that a carryforward adjustment is reasonable given that not all projects (not necessarily limited to projects carried over from the 2018 GRC) will stay on schedule.

Moreover, since the effective date of the decision, Cal Water has submitted advice letters to the Commission's Water Division for rate recovery of carryover projects. (See section II.B.3, *infra*.) Cal Water's submission of these projects demonstrates that

the process set forth in the Decision is working as intended and that Cal Water is able to place costs associated with projects into rates as these projects become used and useful.

3. Cal Water fails to show legal error in its argument that the Decision will create an "unworkable" number of advice letters.

Cal Water also alleges that the Decision's outcome "would require an unworkable number of advice letters to be filed with and processed through Water Division." (Rehg. App., p. 9.) Cal Water further asserts that the Commission improperly dismissed this concern. Cal Water fails to explain how this allegation constitutes legal error. (See D.93-12-048, p. 8 [rehearing application is without merit where applicant does not set forth a claim or analysis of legal error].)

In any event, events subsequent to the Decision demonstrate that this is not the case. Pursuant to the Decision, Cal Water has batched groups of now completed carryover projects into advice letters for Water Division approval. Cal Water filed Advice Letter 2514 on March 20, 2024, which requested approval for revenue increases for the costs associated with 145 capital projects previously authorized in D.20-12-007 and D.24-03-042, for a total cost recovery of over $39 million. The Water Division approved Cal Water's advice letter on April 26, 2024.[6]

On October 28, 2024, Cal Water submitted its second advice letter (Advice Letter 2536) pertaining to 28 carryover projects authorized in Cal Water's 2018 GRC and D.24-03-042 for a total cost recovery request of approximately $5.7 million.[7] Advice Letter 2536 was approved by Water Division on November 21, 2024. The carryover-projects approved therein are scheduled to go into rate base and increase rates beginning January 1, 2025.

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[6] *See* Advice Letter 2514 and Water Division Approval letter at: https://www.calwater.com/docs/rates/advice_letters/all/2514_Rate_Base_Offsets_(2021_GRC)_20240501AN.pdf.

[7] *See* Advice Letter 2536 at: https://www.calwater.com/docs/rates/advice_letters/bk/2536_Rate_Base_Offsets_(2021%20GRC)_20241127PN.pdf.

In sum, the process for approving carryover projects once completed is working as intended and Cal Water fails to show that the process implemented by the Commission constitutes legal error or is unworkable.

C. Cal Water fails to show any legal errors in the Commission's determination to disallow cost recovery for two-step projects.

As set forth in the Decision, Cal Water seeks budget recovery in this GRC for thirty projects that require longer than the three-year GRC cycle to complete. (D.24-03-042, p. 27.) Cal Water proposed a "two-step" review process for these thirty projects whereby it would recover costs associated with the design and permitting work for various projects in this GRC, while the costs of the construction phase of the project would be presented for approval in Cal Water's next GRC. (*Id*. at p. 28.)

The Decision rejects this two-step approach, stating that it is contrary to the used and useful ratemaking principle and inconsistent with the Commission's adopted Uniform System of Accounts.[8] (*Id*. at pp. 27-28.) The Decision also explains that the "costs of the thirty projects are speculative at best at this point in time since the timing and completion are uncertain," and therefore, the reasonableness of the permit/design costs Cal Water seeks to recover in this GRC cannot be determined. (*Id*. at p. 30.) The Decision holds that phased cost review is applicable only in "select cases," not as a blanket approach, and rejects Cal Water's request to place design and permitting costs into rates in this GRC. (*Id*. at p. 31.)

In its application for rehearing, Cal Water asserts that this holding constitutes legal error because it is inconsistent with prior Commission decisions that have "routinely" granted proposals to include design and permitting costs in rates, even when no construction is contemplated for that GRC cycle. (Rehg. App., p. 15.) Cal Water thus contends that the Commission's assertion in the Decision that the denial of

[8] Cal Water did not take issue with the Decision's determination that its two-step project proposal is inconsistent with the Commission's Uniform System of Accounts in its rehearing application.

two-step projects "is consistent with prior Commission decisions" is incorrect. (Rehg. App., p. 15.)

Cal Water is correct that the Commission has previously granted cost recovery for two-step projects. In D.10-11-035, for instance, the Commission granted Golden State's cost recovery request for two booster pumps. (*Decision Adopting Golden State Revenue Requirement and Resolving La Serena Plant Improvement Project Costs* (2010) [D.10-11-035], p. 69.) The Commission found that since the overall project was reasonable based on the need to increase system reliability, the approval of cost recovery for the permitting and design work was likewise reasonable. (*Ibid*.) However, the cases cited by Cal Water differ from the current proceeding in that they do not discuss a significant level of project uncertainty as to when and if the projects will come to fruition. (See section II.A.1, *supra*, explaining that the Commission may depart from prior precedent when factual circumstances differ.) This is distinguishable from the current proceeding where Cal Water itself states that design and permitting costs are proposed for projects with "significant unknowns, design challenges, and/or permitting concerns. . ." (Ex. CW-27, p. 159) As summarized in the Decision, "[t]he costs of the thirty projects are speculative at best at this point in time since the timing and completion are uncertain." (D.24-03-042, p. 30.) The Decision finds, therefore, that "the reasonableness of those costs cannot be determined," and as such, "use of a one-step approach is more reasonable," in this proceeding. (*Ibid*.)

In sum, the Commission has granted approval for two-step projects in the past, but this is when the utility demonstrates that cost recovery for the two-step projects is just and reasonable. The Decision specifically explains and discusses the significant level of uncertainty surrounding Cal Water's various two-step projects. (*See ibid*.) As such, the Decision reasonably concludes that Cal Water has failed to justify placing costs for two-step projects into rates. This finding is consistent with prior decisions that require utilities to meet their burden of proof before placing any costs in rates, including costs for two-step projects. (See, *e.g.,* D.10-11-035, p. 69.) Regardless, we will make

some modifications to the Decision's discussion of two-step projects to clarify this holding, as set forth in the Ordering Paragraphs below.

D. Cal Water fails to show legal error with regard to the Commission's determination to deny authorization for Supplemental Executive Retirement Plan (SERP) costs.

The Decision denies Cal Water's request to place costs associated with its Supplemental Executive Retirement Plan (SERP) costs in rates. (D.24-03-042, pp. 106-107.) Cal Water's SERP is provided to the utility's officers and is designed to compensate those officers for limitations imposed by the Internal Revenue Code on benefits that may be paid to those officers. (See Application, Attachment B (2020 Proxy Statement), p. 58.) Cal Water argues that the Commission's determination with regard to SERP constitutes legal error for multiple reasons, each of which is discussed below. Cal Water fails to show legal error in the Decision's SERP determination.

1. Cal Water fails to show that the Decision's SERP determination is unsupported by the evidentiary record.

Cal Water takes issue with the statement in the Decision that "neither the purpose, the size of the fund, nor the proposed rate recovery associated with SERP are defined in Cal Water's Application." (Rehg. App., pp. 16-17 citing D.24-03-042, p. 107.) Cal Water contends that this statement is contradicted by "extensive materials" on the record, and as such, the Decision's SERP determination is not supported by the evidentiary record. (*Id*. at p. 17.)

In support of its contention that there is extensive record material on SERP, Cal Water points to only two sources. The first is Cal Water's 2020 Proxy Statement (Proxy Statement) included as Attachment B to the utility's Application. (*See id*. at pp. 16-17 *citing* Application, Attachment B, pp. 50, 54, 59-60.) According to Cal Water, the Proxy Statement explains the purpose of SERP, the details on how it is implemented, and the present value of the accumulated benefit for each of the officers under SERP. (Rehg. App., p. 17.)

A review of the actual document however, does not show any persuasive reason to rehear the Decision's determination to disallow SERP costs. The Proxy Statement has only a short section specific to SERP. Similar to the reiteration in Cal Water's rehearing application, the Proxy Statement states that SERP is designed to compensate for limitations imposed by the Internal Revenue Code on allocations and benefits that may be paid to officers. (Application, Attachment B, p. 58.) The Proxy Statement also states that the SERP is:

> designed to assist in attracting and retaining key officers while providing a competitive, total compensation program. The annual expenses of the pension and SERP have allowable costs recovered in rates through the regulatory process in California and other states. We believe that pension benefits are an important recruitment and retention tool for our employees and is consistent with practice among most of our peers.

(*Ibid.*) Given this generalized explanation for SERP and a nebulous assertion of ratepayer benefits, it was reasonable for the Commission to conclude that Cal Water fails to meet its burden to show the reasonableness of recovering SERP expenses in rates. (See *Opinion on SCE's Test Year 2006 General Rate Increase* (2006) [D.06-05-016], p. 7 [the burden of demonstrating the relief requested is on the applicant]; see also *Securus Technologies, LLC v. Public Utilities Com.* (2023) 88 Cal.App.5th 787, 802 [any substantial evidence will suffice to support a finding, so long as a reasonable person could reach the same conclusion.]; *Clean Energy Fuels Corp., supra,* 227 Cal.App.4th at 658 [holding same].)

Cal Water also relies on Attachment E of Exhibit CW-01, Cal Water's General Report, which the utility describes as actuarial opinions from its consultant Ernest & Young projecting the specific expenses associated with both pension and SERP for the relevant years. (*See* Rehg. App., p. 17 citing Ex. CW-01 (General Report), Attachment E, pp. 13-15 and 123.) These actuarial are also unpersuasive. The Ernest & Young material merely identify the over $7 million annual expense for administering SERP. (Ex. CW-01 (General Report), Attachment E, p. 13-15.) Again, this does not

present a basis to claim that the Commission's determination not to allow rate recovery for SERP is in error.

Cal Water argues that, based on these sources, "it is demonstrably false to claim that such information about the SERP was not present in Cal Water's Application and supporting testimony." (Rehg. App., p. 17.) This statement misconstrues the Decision. The Decision does not state that Cal Water did not present *any* information about the SERP in its Application and supporting testimony. Instead, the Decision includes a statement that Cal Water provides a lack of detail on SERP. (D.24-03-042, p. 107.) The Commission's conclusion that Cal Water fails to justify recovery of SERP costs in rates is reasonable given the scant information that Cal Water presents on SERP and the lack of justification as to why ratepayers should fund this particular cost. (*Securus Technologies, supra,* 88 Cal.App.5th at 802 [any substantial evidence will suffice to support a finding, so long as a reasonable person could reach the same conclusion]; see also D.24-03-042, pp. 12-13 [applicant has burden of proof to justify all costs it seeks to place in rates].)

2. Cal Water's assertion that the SERP provides ratepayer benefits has already been litigated.

In its application for rehearing, Cal Water continues to assert that it must offer benefits commensurate with its peers, and that this includes SERP. (Rehg. App., p. 18.) Cal Water further contends that SERP helps to retain skilled and qualified officers, which benefits customers. (*Ibid*.)

Cal Water's assertions regarding SERP in its application for rehearing are essentially identical to the claims it presented in its application material. (See Application, Attachment B, p. 58.) The Commission has already considered Cal Water's arguments that SERP expenses help to retain qualified employees. (*See e.g.,* Cal Water Opening Brief, pp. 55-56.) The Commission reasonably found Cal Water's arguments and scant evidence in support unpersuasive. (See section II.D.1, *supra*, and section II.D.4, *infra*.) Merely because the Commission did not reach Cal Water's preferred finding does not constitute legal error. (*Order Denying Rehearing of Decision 21-03-056*

(2021) [D.21-09-045], p. 7.) The Commission is under no obligation on rehearing to reweigh the evidence or to explain why it did not reach a party's preferred finding. (*Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 540; D.96-07-027, 1996 Cal. PUC Lexis 750, *4 [it is not a function of the appeals process to reweigh evidence]; see also Rule 16.1(c) [the purpose of a rehearing application is to alert the Commission to a legal error].)[2] Cal Water's resuscitation of its argument for why SERP should be recovered in rates has already been considered, and need not be reweighed here.

3. Cal Water inappropriately attempts to use past settlements as precedent.

Cal Water argues that "[i]n at least its three most recent GRC proceedings," it followed the same practice of presenting information on SERP in a proxy statement included with its Application. (Rehg. App., p. 18.) Cal Water then states that "[w]hile these previous GRC proceedings were resolved through settlement agreements, it is notable that the rates adopted by the Commission in those proceedings as just and reasonable incorporated Cal Water's proposed SERP expenses." (*Ibid*.) Cal Water argues that the Decision fails to adequately explain why a "deviation" was warranted in the current proceeding, and as such, the Decision's SERP determination is arbitrary and capricious. (*Ibid*.)

This argument is a blatant attempt to use prior settlement agreements as precedent and is contrary to the Commission's clearly stated rule that settlements do not create precedent. (See Rule 12.5 [the Commission's adoption of a settlement agreement does not constitute precedent regarding any principle or issue in the proceeding or in any future proceeding]; see also *Opinion on Recovery by PG&E for a Catastrophic Event Memorandum Account* (2008) [D.08-01-021], p. 10 [settlements do not create precedent]; *Decision Authorizing General Rate Increases for California Water Service Company*,

[2] Unless otherwise specified, all references to a Rule are to the Commission's Rules of Practice and Procedure.

(2010) [D.10-12-017], p. 44 [a prior settlement did not set precedent and therefore there is no requirement that the parties follow a methodology or principles adopted in the prior settlement]; *Interim Order on Phase I Settlement* (1988) [D.88-08-059], 1988 Cal. PUC Lexis 569, *118 ["We recognize that the settlement was the result of give and take among the participating parties and that the settlement is a balancing of varied and competing interests."].) As such, Cal Water fails to show legal error. Merely because the Commission has deemed settlements that approved SERP costs as reasonable in the past does not create any precedent or otherwise bind the Commission's hands.

4. Cal Water is incorrect that there is no evidence supporting the conclusion that SERP costs are excessive or unnecessary.

Cal Water argues that there is no evidence in the record supporting Cal Advocates' argument endorsed in the Decision that proposed SERP costs are excessive or unnecessary for retaining officers. (Rehg. App., p. 18.) Cal Water states that Cal Advocates did not present written testimony on SERP expenses, despite the fact that Cal Water's application material proposed to include SERP expenses in the revenue requirement. (*Ibid*.) Cal Water asserts that Cal Advocates "apparently chose to wait until evidentiary hearings and briefing to raise its objections on this issue for the first time." (*Ibid*.) As such, Cal Water contends that Cal Advocates "failed to meet its burden of going forward to produce evidence in support of its arguments regarding the SERP sufficient to refute Cal Water's presentation of evidence." (*Id*. at pp. 18-19.) Cal Water thus contends that all of the evidence in the record supports the inclusion of SERP in rates and that the "one-sided record" makes it erroneous for the Decision to reject cost recovery for SERP. (*Id*. at p. 19.)

This argument fails for several reasons. First, Cal Water misconstrues the record. While it is correct that Cal Advocates did not issue written testimony opposing SERP, Cal Advocates did cross-examine Cal Water's witness, Thomas Smegal, on this issue during evidentiary hearings. (Reporter's Transcript (RT), Vol. 10, pp. 371-380.) This cross-examination produced evidence (in the form of Mr. Smegal's testimony), that

supports Cal Advocates' argument that SERP costs are unreasonable. Specifically, Cal Water's witness was not able to testify to the exact number of participants in SERP, but acknowledged that it was probably between 50 and 100. (RT, Vol. 10, p. 376: 20-27.) Cal Advocates explains in its brief that the approximate $7 million annual cost to administer SERP is close to the administrative cost of Cal Water's pension plan, which has 1,083 active participants plus all additional retired participants. (Cal Advocates Opening Brief, p. 35.) As such, the evidentiary record is not "one-sided" but includes evidence casting doubt on the reasonableness of SERP costs.

Further, as the applicant, Commission case law places the burden of proof on Cal Water to justify all costs it seeks to place in rates. (See, *e.g.*, *Order Modifying Decision and Denying Rehearing* (2020) [D.20-07-038], pp. 3-4; *Decision Approving Application* (2009) [D.09-12-014], p. 9 ["the burden of making a showing that the proposed rates are just and reasonable rests with the utility requesting the change in rates"]; see also Rehg. App., p. 18 [acknowledging that as the applicant, Cal Water has the burden of proof].)

Cal Water relies on the principle that "[w]here other parties propose a result different from that asserted by the utility, they have the burden of going forward to produce evidence, distinct from the ultimate burden of proof." (Rehg. App., p. 19 citing *Decision Approving PacificCorp's 2021 Energy Cost Adjustment Clause Rates* (2021) [D.21-11-011], pp. 10-11; see also D.20-07-038, pp. 3-4 ["Yet when other parties propose a different result, they too have a 'burden of going forward' to produce evidence to support their position and raise a reasonable doubt as to the utility's request."].) However, the Commission holds utilities to the preponderance of the evidence standard in the context of a requested rate increase. (See D.21-11-001, p. 10 ["Public utilities have . . . the burden of affirmatively establishing the reasonableness of all aspects of [their] request by a preponderance of the evidence."] [internal citations omitted]; *Decision on PG&E Test Year 2011 General Rate Increase* (2011) [D.11-05-018], p. 68; D.12-11-051, p. 9; *Decision Authorizing PG&E General Rate Case Revenue* (2014) [D.14-08-032], p. 17.) Intervenors, on the other hand, must "rais[e] a reasonable doubt as to the utility's

position." (D.21-11-001, p. 10.) "Where this counterpoint causes the Commission to entertain a reasonable doubt regarding the utility's position, and the utility does not overcome this doubt, the utility has not met its ultimate burden of proof." (*Ibid*.; see also D.20-07-038, pp. 3-4 [The "burden of going forward" is one in which the party proposing the different result must "produce evidence to support their position and raise a reasonable doubt as to the utility's request."].)

This is an apt summary of the current proceeding. Cal Water presented inadequate information on its SERP, particularly information that explains why it is reasonable for ratepayers to fund this expense. Cal Advocates elicited witness testimony during evidentiary hearings that raised a reasonable doubt as to whether placing SERP expenses in rates is justified. Cal Water failed to overcome this doubt, thus not meeting its burden of proof.

Even assuming however, that Cal Advocates did not produce any additional evidence on SERP, the Commission has the ability to draw reasonable inferences from undisputed evidence. (See *Southern Pac. Co.* v. *Public Utilities Com.* (1953) 41 Cal.2d 354, 362; *Pacific Telephone & Telephone Co. v. Public Utilities Com.* (1965) 62 Cal.2d 634, 647; *Toward Utility Rate Normalization, supra,* 22 Cal.3d at 538 ["When conflicting evidence is presented from which conflicting inferences can be drawn, the commission's findings are final."].) The Commission evaluated the scant information Cal Water presented on SERP and reasonably determined that there was "insufficient evidence to determine whether the administrative and related costs excluding the benefits costs for the SERP are reasonable or unreasonable." (D.24-03-042, Finding of Fact 61; see *Ponderosa Telephone Co.*, *supra*, 36 Cal. App. 5th at 1013 [If the Commission's "findings are supported by any substantial evidence, they may not be set aside."].)

However, we do make modifications to the Decision's findings with regard to executive compensation as set forth in the Ordering Paragraphs below to correct a typographical error and clarify our reasoning for denying SERP.

Finally, to whatever extent Cal Water suggests that it is procedurally inappropriate for Cal Advocates to oppose SERP costs without issuing testimony, Cal

Water does not allege any due process violations. Likewise, the record does not reflect that Cal Water ever raised due process concerns or otherwise objected when Cal Advocates cross-examined its witness on SERP or opposed SERP costs in its brief.

E. Cal Water's request for oral argument should be denied.

As part of its rehearing application, Cal Water requests that the Commission hold oral argument. (Rehg. App., p. 19.) The Commission has the discretion to determine the appropriateness of oral argument in any particular matter. (See Rule 16.3(a) ["The Commission has complete discretion to determine the appropriateness of oral argument in any particular matter."]; *Ordering Denying Rehearing* (2024) [D.24-06-027], p. 12 [noting same].) Given that Cal Water has failed to show legal error in the Decision, the Commission denies rehearing and denies Cal Water's request for oral argument.

F. Minor corrections not directly related to Cal Water's application for rehearing should be made to the Decision.

One minor error was noted in D.24-03-042 while reviewing the Decision in light of Cal Water's application for rehearing. Page five of the Decision discusses the City of Bakersfield submitting a motion to intervene as a party to the proceeding, then states that "[t]hat motion was granted by the Administrative Law Judge (ALJ) on November 23, 2021. A prehearing conference (PHC) was held on November 23, 2021." Both of the references to November 23, 2021 should be corrected to November 18, 2021. (*See* RT, Vol. 1, p. 1 [noting date of prehearing conference as November 18, 2021] and p. 6 [granting the City of Bakersfield's motion for party status].) This modification does not substantively modify the Decision or impact the issues discussed in Cal Water's rehearing application.

In addition, Ordering Paragraph 10 of the Decision, which addresses two-step projects, incorrectly refers to Appendix 2-3 instead of Appendix 2-2. This Ordering Paragraph should be corrected as set forth below.

III. CONCLUSION

For the reasons stated above, D.24-03-042 is modified as set forth in the Ordering Paragraphs below. The application for rehearing of D.24-03-042, as modified, is denied because no legal error has been shown.

THEREFORE, IT IS ORDERED that:

1. Decision (D.) 24-03-042, as corrected by D.24-04-043, is modified as follows:

   a. Section 1.1, page 5, the third and fourth sentences in the second paragraph are modified to state:

      That motion was granted by the Administrative Law Judge (ALJ) on November 18, 2021. A prehearing conference (PHC) was held on November 18, 2021.

   b. Section 5.1, page 25, the second full sentence is modified to state:

      D.19-05-020 and D.21-08-036 disapproves of budgeting for contingencies in general rate cases where the utility must demonstrate the reasonableness of its forecast revenue requirement, and where the utility fails to justify the application of contingency.

   c. Section 5.1, page 25, the third full sentence is modified to state:

      Since contingency allowances are intended to cover "unforeseen conditions," these amounts are also unpredictable, and therefore, the utility must establish these costs to be reasonable.

   d. Section 5.1, page 25, the first sentence in the second paragraph is modified to state:

      It has long been our practice, consistent with ratemaking policy, to disallow contingencies when a utility fails to justify the application of contingency in order to motivate utilities to remain within their forecast budgets for their capital projects, and whenever possible to "do it for less" as a way to benefit both ratepayers and shareholders.

e. Section 5.2, page 27, the fifth sentence in the Section is modified to state:

> Cal Water's proposed two-step approach to review the 30 projects listed in Appendix 2-2, is contrary to the used and useful doctrine of ratemaking because Cal Water has failed to justify inclusion of cost recovery for these projects at this time given the significant uncertainty that exists with regard to the timing and total cost of these projects.

f. Section 5.2, page 30, is modified to delete the sentences reading:

> Cal Advocates' position is consistent with prior Commission decisions.
>
> The general rule held by Courts is that expenditure for an item may be included in a public utility's rate base only when the item is "used and useful" in providing service; that is, current ratepayers should bear only legitimate costs of providing service to them.[33] Thus, it would be unreasonable to require current ratepayers to bear costs for projects which currently provide no current benefit and are not expected to provide benefits during the current GRC cycle.

g. Section 5.2, page 31, the last full paragraph in that Section is modified to state:

> In sum, Cal Advocates' recommended approach reflects established practice where the utility fails to show the reasonableness of its requested costs and is consistent with the Commission's USA. Phased cost review is applicable only where the utility meets its burden to show the reasonableness of a phased approach based on a specific factual showing, not as a blanket approach. Therefore, Cal Water's two-step phased cost review for these thirty Cal Water projects is denied.

h. Finding of Fact 14, page 165, is modified to state:

> The projected costs of constructing portions of or all the "carryover" projects listed on Appendix W to this decision are concerning.

i. Page 165 is modified to delete Findings of Fact 15 through 18 in their entirety.

j. Page 170 is modified to delete Finding of Fact 57.

k. Page 170, Finding of Fact 59, is modified to state:

Cal Advocates selected a reasonable list of proxy utilities.

l. Page 180, Ordering Paragraph 10, is modified to state:

The proposed pre-construction budgets for the 30 capital projects listed on Appendix 2-2, totaling $11,035,985 in the aggregate, are not approved. Cal Water can request rate base treatment of these projects either via Tier 3 advice letter or by subsequent general GRC cycle when they are used and useful.

m. Appendix 2-3 is deleted.

2. As modified, the application for rehearing of Decision 24-03-042 is denied.

3. Application 21-07-002 is closed.

This order is effective today.

Dated January 16, 2025, at San Francisco, California.

ALICE REYNOLDS
President
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

Commissioner Matthew Baker recused himself and did not participate in the vote of this item.