

Docket	:	<u>A.25-01-001</u>
Exhibit Number	:	<u>Cal Adv-06</u>
Commissioner	:	<u>Darcie L. Houck</u>
Administrative Law Judge	:	<u>Minh LeQuang</u>
Public Advocates Office	:	<u>Andrew B. Rubang</u>
Witness	:	



PUBLIC ADVOCATES OFFICE



REPORT ON
CONSTRUCTION WORK IN PROGRESS AND
BALANCING & MEMORANDUM ACCOUNTS

Application 25-01-001
(San Gabriel Valley Water Company)

Los Angeles, California
July 25, 2025

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 1 CONSTRUCTION WORK IN PROGRESS	1-1
I. INTRODUCTION.....	1-1
II. SUMMARY OF RECOMMENDATIONS.....	1-2
III. ANALYSIS	1-3
A. The Commission is a Substitute for Competition.	1-3
1. Ratepayers should not be charged for projects that will not provide service during the period for which rates are being established.	1-4
2. Ratepayers should not bear any financial risk of project completion.....	1-5
3. IDC is a reasonable alternative to adding CWIP in ratebase.....	1-6
B. Reasons for Including Construction Work In Progress in Ratebase No Longer Exist.....	1-8
1. SGVWC’s financing of lengthy construction projects creates ratepayer disbenefits.	1-8
2. SGVWC does not require the extraordinary financial protection of including CWIP in ratebase.....	1-10
IV. CONCLUSION	1-12
CHAPTER 2 BALANCING & MEMORANDUM ACCOUNTS	2-1
I. INTRODUCTION.....	2-1
II. SUMMARY OF RECOMMENDATIONS.....	2-3
III. ANALYSIS	2-4
A. SGVWC Indicated Closing and Deactivating Five Memorandum Accounts.	2-4
B. It is Reasonable to Amortize SGVWC’s Conservation Program Balancing Accounts by Tier 2 Advice Letter.....	2-6
C. The Land Parcels #215 and #221 Memorandum Account Should Be Closed Because, After Purchasing The Land Parcels Twenty Years Ago, SGVWC Identified Both Land Parcels as “Not Yet Being Used”.....	2-7
1. SGVWC should recover costs once a land parcel is used and useful and future costs should be limited.....	2-9

IV. CONCLUSION	2-10
APPENDIX A – QUALIFICATIONS OF WITNESS	
APPENDIX B - ATTACHMENTS	

CHAPTER 1 CONSTRUCTION WORK IN PROGRESS

I. INTRODUCTION

This chapter presents the California Public Advocates Office's (Cal Advocates) analysis and recommendation to deny San Gabriel Valley Water Company's (SGVWC) request to include its estimated Construction Work In Progress (CWIP) account balance in ratebase. SGVWC proposed including a forecasted balance of \$34,657,300 yearly for the next three fiscal years from its CWIP into ratebase.¹ Cal Advocates recommends the Commission deny this request and instead authorize Interest During Construction (IDC) for all capital projects as they are being completed.²

CWIP is an account that includes the total balance of costs for utility plant projects under construction.³ The estimated balance SGVWC proposes to include in ratebase, by definition, reflects projects that will not provide any beneficial customer service during the time in which rates will be set in a proceeding.⁴ The Commission has previously authorized water utilities to include an estimated CWIP balance in ratebase as one way of recovering the capital financing costs of projects.⁵ Under California's cost of service

¹ RO Model, tab P2 labelled as "Utility Plant & Depreciation", forecasted SGVWC CWIP per fiscal year is the sum of all divisions' CWIP at \$34,657,300. Forecasted General Division CWIP per year at \$680,700 found on line 29 columns BD, BK, and BR. Forecasted Los Angeles County (LA) Division CWIP per year at \$21,386,400 found on line 109 columns BD, BK, and BR. Forecasted Fontana Water Company (FWC) Division CWIP per year at \$12,590,200 found on line 362 columns BD, BK, and BR.

² Commission, Water Division, Uniform System of Accounts for Class A Water Utilities, Standard Practice U-38-W (hereinafter referred to as WD, USOA, SP U-38-W) at A53, Utility Plant Account Instructions, Section 5. Components of Construction Cost, "(17) 'Interest during construction' includes the net cost of borrowed funds used for construction purposes and a reasonable rate upon the utility's own funds when so used ... The period for which interest may be capitalized shall be limited to the period of construction. No interest charges shall be included in these accounts upon expenditures for construction projects which have been abandoned.", <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/water-division/reports/standard-practice/sp-u-38-w.pdf>.

³ WD, USOA, SP U-38-W at A27, Balance Sheet Accounts, Section 1, Utility Plant, 100-3. CONSTRUCTION WORK IN PROGRESS, "This account shall include the total of the balances of work orders for utility plant in process of construction but not ready for service at the date of the balance sheet."

⁴ *Id.*

⁵ Attachment 1.1: Policy for Including CWIP in Rate Base for Water Utilities. Hereinafter referred to as "1982 WD Memorandum".

regulation, also known as rate of return regulation, ratebase is the sole source for which ratepayers are directly charged for shareholder profit.⁶ Therefore, when CWIP is allowed in ratebase, ratepayers are charged for utility profit before the plant is providing any beneficial service. This is contrary to traditional ratemaking, unlike what occurs in a competitive environment, and causes an unreasonable burden on ratepayers. Shareholders should only receive a reasonable profit once a project is completed and provides service. As well as ratepayers should not be charged for utility profit prior to having a completed project because it shifts some financial risk of project completion from shareholders to ratepayers. Ratepayers should only pay the full cost when projects are used and useful, including interest for construction and a reasonable profit on the full cost. Instead of including SGVWC's forecasted CWIP in ratebase, the Commission should authorize IDC to accumulate on all projects under construction and be recovered from ratepayers when the project is complete or assumed to be complete and providing service.⁷

II. SUMMARY OF RECOMMENDATIONS

Cal Advocates recommends the following:

- The Commission should deny SGVWC's request to include its forecasted Construction Work In Progress (CWIP) account balance of \$34,657,300 per year for the next three fiscal years in ratebase.⁸
- The Commission should authorize a reasonable amount of Interest During Construction (IDC) in ratebase for authorized plant additions that are forecasted to be providing service over

⁶ Ratebase, defined by the Commission, is "The value of property on which the utility is allowed to earn a specified rate of return, in accordance with rules set by the Commission", <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/historical-electric-cost-data/rate-base>.

⁷ See Cal Advocates Report, *Report on Capital Projects, Historic Rate Base, Utility Plant, Depreciation, and Rate Base*, Chapter 11 for Cal Advocates' recommended IDC rate of 0.35%. Hereinafter referred to as "Cal Advocates' recommended IDC rate of 0.35%".

⁸ RO Model, tab P2 labelled "Utility Plant & Depreciation", lines 29, 109, and 362, and columns BD, BK, and BR. Forecasted SGVWC CWIP per fiscal year at \$34,657,300 is the sum of General, LA, and FWC Divisions' CWIP.

1 the period in which rates are being established in this
2 proceeding.²

- 3 • For all projects, the Commission should authorize SGVWC to
4 capitalize the actual interest costs used to finance projects during
5 construction and request those costs in ratebase in a subsequent
6 proceeding when the project is used and useful, meaning
7 complete and providing service to ratepayers.

8 **III. ANALYSIS**

9 **A. The Commission is a Substitute for Competition.**

10 The Commission has consistently held that in a closely regulated market,
11 regulation substitutes for competition and the Commission acts as a substitute for the
12 market.¹⁰ Because SGVWC is a monopoly investor-owned water utility, the Commission
13 must act as a substitute for competition when evaluating SGVWC's request to include its
14 estimated Construction Work In Progress (CWIP) in ratebase.

15 In a competitive environment, a business would never be able to collect profit on a
16 capital investment until it is complete and capable of generating revenue. For example, a
17 hotel under construction could not recognize profit while it is under construction because
18 it is unable to serve customers. Only after the hotel is open and guests begin to pay for
19 hotel services is it possible for the assets constructed to generate a profit. Similarly, it is
20 unreasonable for SGVWC to collect shareholder profit on assets that are under
21 construction and not yet providing service. Doing so results in unearned financial gain for
22 SGVWC's shareholders, an abuse of the water utility company's monopoly position. As a
23 substitute for competition, the Commission must prevent SGVWC from charging
24 ratepayers the shareholder profit that would be unavailable in a competitive market,
25 where assets are only capable of generating profit after completion and providing a
26 service to customers.

² Cal Advocates' recommended IDC rate of 0.35%.

¹⁰ D.24-12-007 at 14 and D.10-10-035 at 27, "In a closely regulated market, regulation substitutes for competition and the regulator, acting as a substitute for the market, provides investors an opportunity to earn a fair and reasonable return for accepting the degree of risk presented by the regulated business."

1 **1. Ratepayers should not be charged for projects that**
2 **will not provide service during the period for which**
3 **rates are being established.**

4 In a closely regulated market, the Commission should require ratepayers to only
5 pay for assets that provide service, known as the “used and useful” principle.¹¹ The
6 Commission has defined “used and useful” as “requir(ing) that utility property be actually
7 in use and providing service in order to be included in the utility’s ratebase.”¹² The
8 Commission highlighted specifically that “(w)e have regularly applied this principle to
9 exclude from ratebase any construction work in progress (CWIP), and have removed
10 from ratebase plant which has ceased to be used and useful.”¹³ By including SGVWC’s
11 CWIP in ratebase, the Commission has deviated from its traditionally applied “used and
12 useful” principle, requiring ratepayers to pay shareholder profit for assets that are not
13 providing service during the established rate period.

14 In SGVWC’s past three General Rate Cases (GRC), from 2017-2025, the
15 Commission has authorized recovery of CWIP from ratepayers for projects which were
16 neither used nor useful. Since 2017, the Commission authorized SGVWC to include
17 \$170.55M of CWIP projects in ratebase, requiring ratepayers to pay \$20.54M for assets
18 that didn’t provide service during the respective GRC cycle.¹⁴ On average per fiscal year,
19 the Commission authorized SGVWC to charge ratepayers \$1.17M to Los Angeles
20 County (LA) Division and \$1.38M to Fontana Water Company (FWC) Division

¹¹ John A. Lesser, *The Used and Useful Test: Implications for a Restructured Electric Industry*, Vol. 23, Energy L. J., 352-363 (2002).

¹² D.84-09-089 at 23; and

see also *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989), which upheld a Pennsylvania statute that required investments to be “used and useful” saying that “to the extent that utilities’ investments turn out to be bad ones (such as plants that are cancelled and so never used and useful to the public), the utilities suffer because the investments have no fair value and so justify no return.”

¹³ D.84-09-089 at 23.

¹⁴ Attachment 1.2, Table 1: Actual CWIP Ratepayer Impact v. Proposed IDC Ratepayer Impact, FY 2017-2025, at row “Total Ratepayer Impact for FY 2017-2025”; and

Id. at row “Total Authorized CWIP in ratebase, FY 2017-2025”.

ratepayers.¹⁵ Whereas, if the Commission authorized Cal Advocates proposed Interest During Construction (IDC) instead of CWIP, theoretically ratepayers would have paid on average per fiscal year approximately \$4.1K to the LA Division and \$4.8K to the FWC Division ratepayers.¹⁶ The Commission should not authorize ratepayers to continue paying for assets without a benefit. Strictly adhering to the Commission’s traditionally applied “used and useful” principle will protect ratepayers from SGVWC exploiting its monopoly position.

2. Ratepayers should not bear any financial risk of project completion.

By including CWIP in ratebase, the Commission shifts some of the risk of project completion from shareholders to ratepayers. This happens because ratepayers pay a shareholder profit on an asset as if it were complete, despite the possibility of it never actually being completed. In a competitive market, businesses are incapable of shifting any investment risk on customers. Similarly, the Commission should find that it is reasonable for shareholders to bear the full risk of project completion.

Since 2017, for the past eight fiscal years, the Commission has authorized SGVWC to shift \$20.54M of financial risk of project completion on ratepayers.¹⁷ This shift reduces utility risk, in turn promulgating an incentive for SGVWC to draw out construction projects in pursuit of higher shareholder profit. Permitting shareholders to receive an unearned profit on construction projects is likely to lead to inefficient construction project management. Additionally, unreasonable increases in construction duration may create an intertemporal equity shift, where future customers benefit without contributing to the upfront costs of projects.¹⁸ In other words, current ratepayers who

¹⁵ Attachment 1.2, Table 1: Actual CWIP Ratepayer Impact v. Proposed IDC Ratepayer Impact, FY 2017-2025, at two cells indicating each divisions’ average FY ratepayer impact in column “SGVWC Actual CWIP”.

¹⁶ *Id.*, at two cells indicating each divisions’ average FY ratepayer impact in column “If Commission Authorized Cal Advocate’s Proposed IDC Recommendation”.

¹⁷ Attachment 1.2, Table 1: Actual CWIP Ratepayer Impact v. Proposed IDC Ratepayer Impact, FY 2017-2025, at row “Total Ratepayer Impact for FY 2017-2025” and column “SGVWC Actual CWIP”.

¹⁸ Scholars at Harvard, “Decisions that have consequences in multiple time periods are intertemporal

1 don't receive service during project construction overpay for assets. Since 2017,
2 ratepayers have overpaid \$20.54M for investments, where some projects may never have
3 been completed.¹⁹ Since 2017, if the Commission authorized Cal Advocates
4 recommended IDC after project completion instead of an estimated CWIP during
5 construction, ratepayers would have paid approximately \$71.9K for project construction,
6 saving ratepayers approximately \$20.4M.²⁰ Authorizing IDC does not shift any burden,
7 nor does it require overpaying for assets.

8 Once an asset completes construction and provides service to ratepayers, it is
9 reasonable to include project construction costs (including capitalized interest) in
10 ratebase, allowing the utility to recover the full cost of projects and earn a reasonable
11 return on the total costs of the project. The Commission, as a substitute for competition,
12 should protect the ratepayer from bearing any financial risk of project completion and
13 overpaying for reasonable investments.

14 **3. IDC is a reasonable alternative to adding CWIP in**
15 **ratebase.**

16 The Commission has used different funding methods to compensate utilities for
17 the financing costs of projects under construction. The traditional method of financing
18 projects under construction is to allow the utility to recover the net cost of borrowed
19 funds used for construction purposes and a reasonable rate upon the utility's own funds
20 when so used.²¹ This method is referred to as IDC. Similar to a competitive environment

choices.” Since 2012, Harvard University Information Technology (HUIT) has offered the OpenScholar platform for members of the Harvard community to create websites, https://scholar.harvard.edu/files/laibson/files/intertemporal_choice.pdf.

¹⁹ Attachment 1.2, Table 1: Actual CWIP Ratepayer Impact v. Proposed IDC Ratepayer Impact, FY 2017-2025, at row “Total Ratepayer Impact for FY 2017-2025” and column “SGVWC Actual CWIP”.

²⁰ Attachment 1.2, Table 1: Actual CWIP Ratepayer Impact v. Proposed IDC Ratepayer Impact, FY 2017-2025. Total savings calculated by subtracting total balance if Commission authorized Cal Advocates' proposed IDC recommendation (\$71,915.72) from total SGVWC Actual CWIP Ratepayer Impact (\$20,547,347.18).

²¹ WD, USOA, SP U-38-W at A53, “‘Interest during construction’ includes the net cost of borrowed funds used for construction purposes and a reasonable rate upon the utility's own funds when so used...The period for which interest may be capitalized shall be limited to the period of construction.”

1 where businesses cannot earn a profit unless an asset provides service, IDC ensures that
2 ratepayers do not fund shareholder profit on projects that are still in the process of
3 construction. IDC allows ratepayers to pay the full cost of construction without including
4 a Return on Equity, and it aligns with US accounting standards for capitalized interest in
5 investor-owned water utilities.²²

6 Applying Cal Advocates recommended IDC would save ratepayers millions while
7 keeping SGVWC financially whole. If the Commission approves SGVWC's CWIP
8 request, ratepayers will be charged an estimated \$11.4M for construction projects that do
9 not provide service in the rate period covering this application, the next three fiscal
10 years.²³ SGVWC's requested CWIP in ratebase would charge ratepayers an estimated
11 fiscal year average of \$2.38M to LA and \$1.41M to FWC Division ratepayers.²⁴
12 Whereas, if the Commission denies SGVWC's CWIP request and alternatively authorizes
13 SGVWC to include IDC in ratebase, ratepayers will compensate SGVWC for the full
14 interest cost during construction at a total proposed \$39.9K, with an average fiscal year
15 charge to ratepayers of \$8.3K and \$4.9K to the respective divisions.²⁵ IDC is an equitable
16 construction financing approach.

17 At the time a project is completed and demonstrated to be reasonable, the
18 Commission should authorize SGVWC to include in ratebase the actual cost of the
19 project along with the actual interest cost of borrowed funds used to finance the project
20 during construction. Thereafter, the Commission should permit SGVWC to request the
21 full cost of completed projects in a subsequent proceeding. IDC would fairly compensate
22 SGVWC for its actual financing interest costs, leave the risk of project completion with

²² WD, USOA, SP U-38-W.

²³ Attachment 1.3, Table 1: Ratepayer Impact If SGVWC CWIP Request Approved v. Proposed IDC Ratepayer Impact, GRC 2026-2029, at row "Total Ratepayer Impact for GRC 2026-2029".

²⁴ *Id.* at cells indicating each FY average ratepayer impact in column "If Commission Authorizes SGVWC's Forecasted CWIP".

²⁵ Attachment 1.3, Table 1: Ratepayer Impact If SGVWC CWIP Request Approved v. Proposed IDC Ratepayer Impact, GRC 2026-2029, at column "If Commission Authorizes Cal Advocate's Proposed IDC Recommendation".

1 shareholders, and simulate the market forces of a competitive environment. In this
2 application, the Commission should authorize a reasonable amount of IDC in ratebase for
3 authorized plant additions forecasted to provide service in this rate period.²⁶

4 **B. Reasons for Including Construction Work In Progress in**
5 **Ratebase No Longer Exist.**

6 For decades CWIP was prohibited from ratebase. However, the Federal Energy
7 Regulatory Commission (FERC) and the Commission reversed course in the 1970-80s. In
8 1978, FERC explained its altered practice of including CWIP into ratebase was to benefit
9 ratepayers in aiding a utility's financial hardship.²⁷ In 1982, in part following suit with
10 FERC, the Commission held that the disbenefits of including CWIP for Class A water
11 utility construction projects were minimized due to short construction duration.²⁸ Forty
12 years later, water utility companies are in a drastically distinct regulatory environment.
13 SGVWC's construction duration and financial strength no longer require inclusion of
14 CWIP in ratebase.

15 **1. SGVWC's financing of lengthy construction**
16 **projects creates ratepayer disbenefits.**

17 In 1982, a memorandum from staff of the Commission's Water Division (WD)
18 recommended including CWIP in ratebase for Class A water utilities because "(w)ater
19 utility construction projects require on average about four months to complete."²⁹ The
20 WD stated that water utility construction duration "is a considerably shorter period of
21 time than comparable energy utilities."³⁰ The WD explained that "the perceived
22 disbenefits of CWIP for ratepayers of (1) reduction of utility risk and thus management

²⁶ Cal Advocates recommended IDC rate of 0.35%.

²⁷ Attachment 1.4: 39 FR 225, 40787-40789 (1974) at 1, FERC, then known as the Federal Power Commission (FPC), stated "The Commission *is* proposing these changes in policies and procedures primarily to help alleviate the current financing problems being experienced by utility companies. The changes would enable companies to obtain current cash flow applicable to investments in construction work in progress instead of waiting until plant is placed in service before any cash flow is received."

²⁸ Attachment 1.1: 1982 WD Memorandum.

²⁹ *Id.* at 1.

³⁰ *Id.*

efficiency, and (2) intertemporal equity shifts, are minimized for water utilities.”³¹ Forty years later, SGVWC’s construction durations have increased substantially and the disbenefits previously considered “perceived” have become a reality.

SGVWC’s actual construction durations have radically changed from the 1982 WD Memorandum assumptions. Since 2016, table 1-1 presents SGVWC’s construction times averaging 2 to 10 times longer than the four-month average used to justify WD’s recommendation. Table 1-1 compares monthly average construction duration of Class A water utility projects from the WD’s original recommendation to the past three SGVWC General Rate Case (GRC) average construction duration.

Table 1-1: Average Water Utility Construction Duration Comparison in Months.³²

Construction Category	1982 WD Memorandum	SGVWC Actual (2016-2024)
Tanks & Reservoirs	6.2	14
Transmission & Distribution Mains	3.9	5
Treatment Facilities	8.3	22
Wells	2.5	26

Because SGVWC’s construction projects now take much longer, the WD Memorandum’s basis for allowing CWIP in ratebase no longer exists. As mentioned in Chapter I, Section A.2, including CWIP in ratebase provides an incentive for SGVWC to prolong construction duration in pursuit of increased shareholder profit. Taken a step further, there is a profit motive to never complete projects because a completed project has a serviceable life that caps shareholder profit included in rates. In fact, from 2016-2024, SGVWC cancelled 573 projects, some projects being requested and cancelled multiple times and other “cancelled projects” transferring to another project (some projects with multiple transfers).³³ The Commission should find that including SGVWC’s

³¹ *Id.*

³² SGVWC response to DR ABR-002 (CWIP) excel sheets ABR-002 (CWIP 2016-2018) ATTACHMENT 1.a.xlsx, ABR-002 (CWIP 2019-2021) ATTACHMENT 1.b.xlsx, and ABR-002 (CWIP 2022-2024) ATTACHMENT 1.c.xlsx. Hereinafter collectively referred to as “SGVWC response to DR ABR-002, excel sheets for CWIP from past three GRCs”; and Attachment 1.1: 1982 WD Memorandum at 2.

³³ SGVWC response to DR ABR-002, excel sheets for CWIP from past three GRCs; and *see also* email

1 forecasted CWIP in ratebase disincentivizes project completion, thereby reducing
2 management efficiency.

3 Furthermore, as mentioned in Chapter I, Section A.2, SGVWC’s long construction
4 duration causes intertemporal equity shifts, which are tradeoffs between present and
5 future ratepayers.³⁴ As projects are consistently lasting for more than a year, current
6 ratepayers increasingly bear the financial risk of project completion while overpaying for
7 assets. The more dramatic intertemporal equity shifts come from projects that are
8 requested in multiple GRCs, where a ratepayer is continuously charged for CWIP on the
9 same project in the process of construction. Since 2016, SGVWC requested 242 projects
10 in multiple GRCs due to projects labelled as “still in progress”.³⁵ Meanwhile a ratepayer
11 who enters SGVWC’s service territory after a project is completed will pay for the base
12 construction costs but not the financing during construction despite receiving all the
13 benefits of the project. The Commission should deny SGVWC’s request to include CWIP
14 in ratebase because it is inconsistent with the 1982 WD Memorandum rationale.

15 **2. SGVWC does not require the extraordinary**
16 **financial protection of including CWIP in ratebase.**

17 In the 1970s, FERC reversed its policy on prohibiting the inclusion of CWIP in
18 ratebase largely due to the US Energy Crisis, a time when US energy utilities were
19 experiencing financing problems.³⁶ FERC held that including CWIP was necessary to
20 enable utilities to maintain its credit and attract capital.³⁷ Otherwise, utilities with

from Joel Reiker on Friday, 04/04/2025 at 9:35 am, “...our people could only confirm 573.”

³⁴ Scholars at Harvard, “Decisions that have consequences in multiple time periods are intertemporal choices.”, https://scholar.harvard.edu/files/laibson/files/intertemporal_choice.pdf.

³⁵ SGVWC response to DR ABR-002, excel sheets for CWIP from past three GRCs; and *see also* email from Joel Reiker on Friday, 04/04/2025 at 9:35 am, “... our people found 242 such projects”.

³⁶ Attachment 1.5: 41 FR 226, 51392-51396 (1976) at 3, “The FPC will also permit, in individual proceedings, inclusion of CWIP in rate base where the utility is in severe financial stress... we envision a situation in which the rate of return necessary to enable the utility to maintain its credit and attract capital in accordance with the standards of the *Bluefield* decision would be materially in excess of the cost of capital for otherwise similar utilities.”

³⁷ *Id.*

1 financing concerns would not be able to supply services at the lowest reasonable costs.³⁸
2 More than four decades later, the current federal regulation has maintained its original
3 intent to aid a utility with financing performance issues.³⁹ According to SGVWC's
4 profitability, the Commission should find that SGVWC does not require the financial
5 benefits of including CWIP in ratebase.

6 SGVWC is not a utility that is experiencing financing problems. From the last
7 three GRCs, SGVWC emerged from both the COVID-19 pandemic and a simultaneous
8 severe drought with strong profits, as a measure of Return on Equity (ROE).⁴⁰ According
9 to Harvard Business School, "Return on equity (ROE) is a financial ratio that indicates
10 how efficiently a business generates profit from its shareholders' equity. Put simply, it
11 represents how much profit your company makes for every dollar invested by
12 shareholders and the return those shareholders can expect."⁴¹ Since 2017, table 1-2
13 illustrates SGVWC has exceeded the Commission's authorized ROE six out of eight
14 years. Table 1-2 compares SGVWC's actual ROE against the Commission's authorized
15 ROE.

16 SGVWC's robust financial performance and strong status does not require the
17 extraordinary protection of including CWIP in ratebase. The Commission should deny

³⁸ Attachment 1.6: 48 FR 46012-46018 (1983) at 4, "This improvement in cash flow should result in higher interest coverage ratios and improve bond ratings. Utilities would then be in a better posture to pursue lowest cost generating strategies which will ultimately benefit the ratepayers when the new facilities go into service."

³⁹ Attachment 1.7: 52 FR 123, 23948-23951 (1987) at 2, FPC limited including CWIP in ratebase only in three circumstances, where the first two cases are due to pollution control and oil/gas conversion, and the more pertinent instance of "Where the utility requesting CWIP was in severe financial distress which could not be alleviated in the absence of CWIP in rate base without materially increasing the cost of electricity to consumers."; and *Id.* at 5, 18 CFR 35.25. Original language and 1983 amended language preserves limiting CWIP in ratebase to three instances: (1) pollution control, (2) fuel conversion, and (3) financial concerns, <https://www.ecfr.gov/current/title-18/chapter-I/subchapter-B/part-35/subpart-C/section-35.25>.

⁴⁰ Attachment 1.8: Governor Newsome's Executive Orders Terminating State of Emergencies, COVID-19 pandemic (03/04/2020 – 02/28/2023) and a 3-year drought (10/19/2021 – 09/04/2024).

⁴¹ Harvard Business School, *How To Calculate Return on Equity (ROE) & Why It Matters*, <https://online.hbs.edu/blog/post/return-on-equity-formula>.

SGVWC’s request to include CWIP in ratebase and instead allow Interest During Construction to accumulate and be recovered on capital projects.

Table 1-2: Comparison of SGVWC Actual Profit to Authorized Profit, as a measure of ROE.⁴²

Annual Report Year	SGVWC’s Actual Return on Equity	Commission Authorized Return on Equity
2017	10.8%	9.79%
2018	13.2%	9.79%
2019	11.2%	9.2%
2020	11.7%	9.2%
2021	11.0%	9.2%
2022	9.9%	9.2%
2023	8.8%	9.2%
2024	8.7%	9.34%

IV. CONCLUSION

This Commission should deny SGVWC’s request to include a forecasted Construction Work In Progress (CWIP) account balance of \$34,657,300 yearly for the next three fiscal years in ratebase. CWIP in ratebase is inconsistent with what occurs in a competitive environment, it conflicts with the Commission’s traditionally applied “used and useful” principle, and it results in ratepayers paying profit on assets that are not providing any beneficial service. The Commission, acting as a substitute for competition, should authorize a reasonable Interest During Construction (IDC) in ratebase for projects assumed to be complete during the period in which rates are being set in this proceeding and allow IDC to accumulate and be recovered at SGVWC’s actual borrowing cost along with all other project costs when projects are completed. Furthermore, justifications for allowing CWIP in ratebase, such as the Commission’s Water Division’s 1982 Memorandum or the Federal Energy Regulatory Commission’s attempt to counteract utilities undergoing financial distress, are not applicable to SGVWC’s current situation. The Commission should deny SGVWC’s CWIP request.

⁴² Attachment 1.9: SGVWC Actual Return on Equity v. Commission Authorized Return on Equity, SGVWC ROE calculated from Commission Water Division’s Annual Report.

LIST OF ATTACHMENTS FOR CHAPTER 1

(See Appendix B)

#	Attachment #	Description
1	1-1	Policy for Including CWIP in Rate Base for Water Utilities (referred to as “1982 WD Memorandum”)
2	1-2	Construction Work In Progress v. Interest During Construction Ratepayer Impact Tables, FY 2017-2025
3	1-3	Estimated Construction Work In Progress v. Proposed Interest During Construction Ratepayer Impact Tables, GRC 2026-2029
4	1-4	39 FR 225, 40787-40789 (1974)
5	1-5	41 FR 226, 51392-51396 (1976)
6	1-6	48 FR 46012-46018 (1983)
7	1-7	52 FR 123, 23948-23951 (1987) and 18 CFR 35.25 Construction Work in Progress
8	1-8	Governor Newsome’s Executive Orders Terminating State of Emergencies
9	1-9	SGVWC Actual Return on Equity v. Commission Authorized Return on Equity

CHAPTER 2 BALANCING & MEMORANDUM ACCOUNTS

I. INTRODUCTION

This chapter presents the California Public Advocates Office's (Cal Advocates) analysis and recommendations for San Gabriel Valley Water Company's (SGVWC) Balancing and Memorandum Accounts (BAMA). BAMAs, when used appropriately, are surcharge accounts that the Commission allows in order to "protect utilities from the financial impact of substantial unforeseen expenses beyond the utilities' management control."⁴³

A balancing account (BA) tracks authorized expenses against recorded expenses.⁴⁴ The difference, whether positive or negative, allows the Commission for appropriate rate adjustment through ratepayer surcharges (utility recovery) and surcredits (utility refund).⁴⁵ A memorandum account (MA) allows a utility to track costs arising from unforeseeable events of exceptional nature.⁴⁶ In the rare and necessary instances, BAMAs can provide a reasonable alternative ratemaking mechanism that benefits utilities and ratepayers. However, these surcharges are becoming a significant and unanticipated burden for customers, allowing the utility to circumvent the traditional ratemaking

⁴³ D.03-06-072 at 7, "Because of the steep increase in fuel prices in the early 1970s, the Commission authorized ratemaking adjustment mechanisms to protect utilities from the financial impact of substantial unforeseen expenses beyond the utilities' management and control."

⁴⁴ Commission, Utility Audits, Risk and Compliance Division, Utility Audits Branch, Standard Practice Manual Standard Practice U-27-W (hereinafter referred to as WD, USOA, SP U-27-W) at 5, "The primary purpose of a balancing account is to ensure that a utility recovers its CPUC-authorized revenue requirement from ratepayers for a given program or function, but not more or less. Balancing accounts track the actual costs and the related revenues the utilities collect from ratepayers for specified activities. The difference, whether positive or negative, will be considered by CPUC for appropriate adjustment or other action at the time of any subsequent rate adjustment", https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/utility-audits--risk--and-compliance-division/documents/2023-12-26_uab-standard-practice-manual_updated_clean.pdf

⁴⁵ *Id.*

⁴⁶ WD, USOA, SP U-27-W at 6, "In order to qualify for memo account treatment, the costs must be due to events of an exceptional nature that: (a) are not under the utility's control, (b) could not have been reasonably foreseen in the utility's last general rate case, (c) that will occur before the utility's next scheduled rate case, (d) are of a substantial nature in that the amount of money involved is worth the effort of processing a memo account and (e) have ratepayer benefits.", <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M090/K002/90002198.PDF>

1 process.⁴⁷ The proliferation of surcharge accounts has become a profitable source of
2 ratemaking.⁴⁸ Because the Commission does not verify whether recovery of these
3 surcharges would result in a utility exceeding its authorized Return on Equity (ROE),
4 BAMAs reduce ratepayer transparency and reduces a utility's incentive to responsibly
5 manage its expenses.

6 The Commission has authorized SGVWC to track costs in 37 BAMAs with a total
7 balance of \$19.72M.⁴⁹ In its last General Rate Case (GRC), A.22-01-003, SGVWC
8 amortized \$2.46M from BAMAs in its Los Angeles County Division amounting to a
9 \$0.2205 per Ccf surcharge on a customer's bill for 36 months.⁵⁰ Additionally, SGVWC
10 amortized \$2.84M from BAMAs in its Fontana Water Company Division with a
11 surcharge on customers' bill of \$0.2104 per Ccf for 12 months.⁵¹ Although SGVWC is
12 not requesting to amortize any of its surcharge accounts in this GRC, the delay in the last
13 GRC's decision has caused these accounts to be amortized outside the traditional
14 ratemaking cycle. As a result, BAMAs continue to impose significant bill impacts on
15 customers without being reflected in base rate increases, reducing transparency for
16 ratepayers.

⁴⁷ Attachment 2.1: Proliferation of Class A Investor-Owned Water Utilities Surcharge Accounts, <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/press-room/reports-and-analyses/230608-cal-advocates-surcharge-account-reform-white-paper.pdf>.

⁴⁸ *Id.*

⁴⁹ SGVWC Exhibit SG-12 (Navarro) at Attachment A, as of June 2024, a total overcollection of \$19,723,215 from all BAMAs.

⁵⁰ D.24-03-005 at 22, 5.53.1. *Resolution for Los Angeles County Division*. In addition, SGVWC did provide a 36-month fixed surcredit at \$4.45 a month per customer, negligible compared to the surcharge.

⁵¹ D.24-03-005 at 23, 5.53.2. *Resolution for Fontana Water Company Division*. In addition, SGVWC did provide a 12-month fixed surcredit at \$6.48 a month per customer, negligible compared to the surcharge.

II. SUMMARY OF RECOMMENDATIONS

The Commission should adopt the following recommendations:⁵²

- Los Angeles County (LA) Division
 - Catastrophic Event Memorandum Account-Covid 19 (CEMA) – deactivate account, transfer remaining balance of \$64,341 to LA Division’s Previously Authorized Balances Balancing Account (PABBA) and the preliminary statement should remain in the tariff book.
 - Water Conservation Memorandum Account (WCMA) – close account, transfer the remaining balance of \$40,358 to LA Division’s PABBA, and remove from its tariff book.
 - PABBA – after transferring LA Division’s CEMA and WCMA account balances, amortize total balance of \$99,428, and the preliminary statement should remain in the tariff book.⁵³
 - Conservation Program Balancing Account (CPBA) – approve SGVWC’s request to refund any over-collected balance that exists as of June 30, 2026, by Tier 2 advice letter.
- Fontana Water Company (FWC) Division
 - CEMA – deactivate account, transfer remaining balance of \$52,654 to FWC Division’s PABBA, and the preliminary statement should remain in the tariff book.
 - WCMA – close account, transfer remaining balance of \$29,515 to FWC Division’s PABBA, and remove from its tariff book.
 - PABBA – after transferring FWC Division’s CEMA and WCMA account balances, amortize total balance of \$123,855, and the preliminary statement should remain in the tariff book.⁵⁴

⁵² All account balances can be found in the respective excel sheet from SGVWC’s response to DR ABR-001 (BAMA), Excel files saved in the folder \ABR-001 ATTACHMENT 1b.zip, excel sheets labelled, “LAC CEMA-Covid 19 Memo”, “LAC Water Conservation Memo”, “LAC PABBA Balancing”, “FWC CEMA-Covid 19 Memo”, “FWC Water Conservation Memo”, “FWC PABBA Balancing”, “Payment Options Memo Account”, and “FWC Land Parcels Memo”.

⁵³ Total LA Division PABBA Balance after transfers (\$64,341 + \$40,358 - \$5,271) at \$99,428. As of December 2024, the PABBA account has a total over collection balance of \$5,271.

⁵⁴ Total FWC Division PABBA balance after transfers (\$52,654 + \$29,515 + \$41,686) at \$123,855. As of December 2024, the PABBA account has a total balance of \$41,686.

- Payment Options Memorandum Account (POMA) – close account without amortizing, do not transfer balance of \$44,174, and remove from its tariff book.
- CPBA – approve SGVWC’s request to promptly refund any over-collected balance that exists as of June 30, 2026, by Tier 2 advice letter.
- Land Parcels #215 and #221 Memorandum Account – close account, future recovery should be allowed when the respective land parcel is “used and “useful”, and the cost for future recovery should be limited to the following: \$162,616 cost recovery for Land Parcel #215 and \$385,996 cost recovery for Land Parcel #221.

III. ANALYSIS

A. SGVWC Indicated Closing and Deactivating Five Memorandum Accounts.

SGVWC indicated and confirmed that it will transfer balances and close or deactivate five memorandum accounts (MA). SGVWC determined that both Los Angeles County (LA) and Fontana Water Company (FWC) Divisions will deactivate and transfer its respective Catastrophic Event Memorandum Accounts (CEMA) to the respective Previously Authorized Balances Balancing Accounts (PABBA) in each division.⁵⁵ Additionally, SGVWC declared it will close, transfer to the respective PABBA in each division, and remove from its tariff book its Water Conservation Memorandum Accounts

⁵⁵ SGVWC Exhibit SG-(Navarro) at 6, “As part of Special Request No. 3, San 1 Gabriel requests authority to inactivate the CEMAs and transfer the balances to the respective Previously Authorized Balances Balancing Account (“PABBA”) in each division.”;

SGVWC’s response to DR ABR-004 (BAMAs), response to question 1, “The WCMAs and POMAs will be closed and their preliminary statements will be removed from the tariff book. The CEMA has been deactivated since there is not currently an emergency, but its preliminary statement will remain in the tariff book pursuant to Resolution E-3238 (it’s balance will remain \$0 unless/until there is another emergency), at which time San Gabriel is required to notify the CPUC’s Executive Director if the Company intends to re-activate the memo account in response to a future emergency.” (hereinafter referred to as SGVWC’s response to DR ABR-004 (BAMAs)); and

Resolution W-5043 at 8, Ordering Paragraph 4, “San Gabriel Valley Water Company’s proposal to establish two Previously Authorized Balances Balancing Accounts (PABBAs) to record unamortized balances transferred from other balancing and memorandum accounts that the Commission has previously approved for amortization is approved.”

1 (WCMA).⁵⁶ Lastly, SGVWC stated that it will close, transfer to the respective PABBA in
2 each division, and remove the General Division's Payment Options Memorandum
3 Account (POMA).⁵⁷ The Commission should authorize closing and deactivating
4 SGVWC's two CEMAs, two WCMAs, and its POMA from the respective divisions.

5 SGVWC should only transfer balances from its CEMAs and WCMAs to their
6 respective PABBA accounts. The Commission has provided explicit BAMA amortization
7 directives for Class A water utilities. Class A water utilities shall amortize BAMAs in
8 two instances, part of a General Rate Case (GRC) or through an advice letter when the
9 account's over or under collection exceeds the utility's 2% annual revenue.⁵⁸ Moreover,
10 the Commission requires utilities to promptly file advice letters and a utility which does
11 not request recovery for an under collection that is over three years old forfeits its ability
12 to recover an account's balance.⁵⁹ In 2015, the Commission authorized SGVWC's
13 POMA and required review of the account in the next GRC.⁶⁰ In June of 2016, SGVWC
14 inputted its last POMA entry.⁶¹ Nearly a decade, POMA has only accrued interest for the

⁵⁶ SGVWC Exhibit SG-12 (Navarro) at 8, "As part of Special Request No. 3, San Gabriel requests authority to close the WCMAs and transfer these relatively low balances to the respective PABBA in each division."; and SGVWC's response to DR ABR-004 (BAMAs)).

⁵⁷ SGVWC's Exhibit SG-12 (Navarro) at 11, "As part of Special Request No. 3, San Gabriel requests authority to transfer the balance in the POMA for the General division to the PABBAs in the L.A. County and Fontana Water Company divisions."; and SGVWC's response to DR ABR-004 (BAMAs)).

⁵⁸ WD, USOA, SP U-27-W at 10, "Reserve account amortization for Class A utilities will be part of the General Rate Case or may be by advice letter when the account over or under collection exceeds 2%, at the utility's option.",

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M090/K002/90002198.PDF>.

⁵⁹ General Order 96-B, Industry Rule 9. Procedures for Specific Types of Advice Letters, 8.5 Balancing Account Amortization (see Industry Rule 7.3.1(1)), "A Utility shall promptly file an advice letter seeking to amortize an over- or under-collected balancing account when the balance exceeds two percent of the most recent annual report revenue for the Utility (or district of the Utility). An over-collection shall be refunded as soon as possible by crediting the service charge. An under-collection shall be recovered within one year by a surcharge on the service charge or commodity charge, as appropriate (see Standard Practice U-15-W). A Utility may not request recovery for an under-collection that is over three years old."

⁶⁰ Resolution W-5023 at 8, Ordering Paragraph 3, "Any net balance in the memorandum account established in Ordering Paragraph 2 above shall be reviewed in San Gabriel Valley Water Company's next general rate case.", referring to the 2017-2020 GRC.

⁶¹ SGVWC's response to DR ABR-001 (BAMA), Excel files saved in the folder \ABR-001 ATTACHMENT 1b.zip., excel sheet labelled "Payment Options Memo Account."

1 past three GRCs, totaling \$7,426.81 of interest. Because SGVWC did not amortize within
2 three years, either through a GRC or an advice letter, SGVWC has forfeited its ability to
3 recoup costs in its POMA. The Commission should deny SGVWC's request to transfer
4 the balance of its POMA. Rather, the Commission should require SGVWC to close its
5 POMA without amortization and remove the account from its tariff book.

6 For each division, SGVWC should amortize its PABBAs. To prevent the PABBAs
7 from accruing interest, SGVWC is required to amortize the PABBAs in both the LA and
8 FWC Divisions in every GRC. SGVWC should amortize \$99,428 from its LA Division
9 PABBA and \$123,855 from its FWC Division PABBA.⁶² Because the PABBA is an
10 account that is used to consolidate other BAMAs, SGVWC's PABBAs in both divisions
11 should remain on its tariff books.

12 The Commission should require SGVWC to close and deactivate, transfer
13 balances, remove from tariff books, and amortize the aforementioned BAMAs.

14 **B. It is Reasonable to Amortize SGVWC's Conservation**
15 **Program Balancing Accounts by Tier 2 Advice Letter.**

16 As part of Special Request No. 3, SGVWC requests a review of their Conservation
17 Program Balancing Accounts (CPBA) in each division.⁶³ Moreover, SGVWC requests
18 authority to refund CPBAs' over-collected balances at the end of the current GRC cycle,
19 June 30, 2026, by Tier 2 advice letter.⁶⁴ Cal Advocates review of SGVWC's CPBAs for
20 both LA and FWC divisions and its request to amortize via a Tier 2 Advice Letter the
21 balance of these accounts as of June 30, 2026, to bring the account balance to zero, is
22 reasonable. The Commission should require SGVWC to file the Tier 2 Advice Letter as
23 soon as reasonably possible.

⁶² As of December 2024, after transferring SGVWC's WCMA's and CEMAs, total balance for LA Division PABBA at \$99,428 and total balance for FWC Division PABBA at \$123,855.

⁶³ SGVWC Exhibit SG-12 (Navarro) at 10-11.

⁶⁴ *Id.*

1 **C. The Land Parcels #215 and #221 Memorandum Account**
2 **Should Be Closed Because, After Purchasing The Land**
3 **Parcels Twenty Years Ago, SGVWC Identified Both Land**
4 **Parcels as “Not Yet Being Used”.**

5 After purchasing two land parcels in 2003 and 2004, SGVWC has declared “Land
6 parcels 215 and 221 are not yet being used.”⁶⁵ In 2009, the Commission authorized
7 SGVWC to establish the Land Parcels #215 and #221 Memorandum Account for the
8 purchased land parcels, providing SGVWC recovery if used as planned.⁶⁶ Since
9 establishing the MA, SGVWC has not tracked any costs for land parcel improvement.
10 The balance in the Land Parcels MA consists of only the original recorded cost and
11 interest, totaling \$118,755 of interest.⁶⁷ Though SGVWC has indicated that the purpose
12 of the MA is for investment for future use, the Commission has already found that Plant
13 Held for Future Use (PHFU) is inappropriate for the Land Parcels MA.⁶⁸ Because
14 SGVWC has not used the land parcels, not included investment costs associated with
15 lands (other than interest), not demonstrated definite plans for land use, and not indicated
16 definite dates for such use, the Commission should require SGVWC to close its Land
17 Parcels MA.

⁶⁵ Decision 09-06-027 at 32, referring to Land Parcel #215, “The land was purchased in 2003 at a recorded cost of \$162,079.”; *Id.* at 36, referring to Land Parcel #221, “The land was purchased in 2004... The recorded cost is \$382,694.”; and

SGVWC Exhibit SG-12 (Navaro) at 7, “Land parcels 215 and 221 are not yet being used.”. Hereinafter Land Parcels #215 and #221 Memorandum Account referred to as Land Parcels MA.

⁶⁶ Decision 09-06-027 at 113, Ordering Paragraph 10, “San Gabriel Valley Water Company is authorized to establish a memorandum account for Land Parcel Nos. 215 and 221 that will list the costs incurred or associated with holding the property for future use. If the properties are ultimately used as planned, San Gabriel Valley Water Company may request recovery of such costs.”

⁶⁷ SGVWC’s response to DR ABR-001 (BAMA), Excel files saved in the folder \ABR-001 ATTACHMENT 1b.zip., excel sheet labelled “FWC Land Parcels Memo” indicates a balance as of December 2024 at \$663,528 (hereinafter referred to as Land Parcels MA excel sheet). \$663,528 - \$162,079 (#215) - \$382,694 (#221) = \$118,755.

⁶⁸ SGVWC Exhibit SG-12 (Navarro) at 7, “The purpose of the Land Parcels 215 and 221 Memorandum Account is to track the investment in land parcels #215 and #221 being held for future use.”; and

Decision 09-06-027 at 34, “In this case, while SGV asserts it has a definite plan, the date is uncertain due to the uncertainty as to when customer growth will resume to a level that would require the expansion of Plant F53. Therefore, treatment as PHFU is inappropriate.”

1 In 2003, SGVWC purchased Land Parcel #215 (#215), which does not currently,
2 nor plans to in the near future, provide service to ratepayers. Over twenty years ago,
3 SGVWC held that #215 was purchased to improve Plant F53.⁶⁹ In 2009, SGVWC
4 indicated that construction of projects would be included “no later than 2010.”⁷⁰
5 Furthermore, in 2009, SGVWC asserted that the forecasted growth for Plant 53 was not
6 expected until 2014.”⁷¹ Fifteen years after SGVWC indicated a deadline, #215 has sat
7 idly collecting interest and SGVWC has not demonstrated a need to address growth.
8 Since its purchase over two decades ago, #215 has not yet been used with no definite
9 plans of use. The Commission should require SGVWC to stop tracking costs, which have
10 been mainly interest, for #215.

11 In 2004, SGVWC purchased Land Parcel #221 (#221) which does not currently,
12 nor plans to in the near future, provide service to ratepayers. Over twenty years ago,
13 SGVWC held that purchasing #221 was for projects at Plant F51, initially requested in
14 2003.⁷² In 2009, the Commission authorized the MA for the project expecting to be
15 requested by at least July 2014.⁷³ Ten years after SGVWC indicated a deadline, #221 has
16 sat idly collecting interest with no definite plans of use. The Commission should require
17 SGVWC to stop tracking costs, which have been mainly interest, for #221.

⁶⁹ Decision 09-06-027 at 32, section 20. *Reasonableness Review-Job No. 4822-Plant-F53 Acquisition of Land Parcel No. 215*, #215 was purchased to construct a reservoir and booster station at Plant F53.

⁷⁰ *Id.* at 33, SGVWC stated that it “planned to build the improvements at Plant F53 in 2010,” and confirmed, “that the Master Plan includes construction of Plant F53 no later than 2010.”

⁷¹ *Id.*, regarding the Plant 53 improvement, SGVWC forecasted that “(s)uch growth will not occur during this GRC cycle, and may not occur in the next GRC cycle” where SGVWC was alluding to the 2011-2014 GRC cycle, prior to the Rate Case Plan consolidation.

⁷² *Id.* at 36, section 22. *Reasonableness Review-Job No. 4895-Plant F51 Acquisition of Land Parcel No. 221*, purchasing #221 was for construction of three wells, a reservoir and a booster station for plant 51. In addition, Cal Advocates (formerly Division of Ratepayer Advocates) “point[ed] out that the project for this parcel, Plant F51, was proposed in the last two GRCs, but has been delayed until SGV decides to pursue the California Environmental Quality Act (CEQA) process.” The previous two GRCs refers to GRC 2003-2006 and GRC 2006-2009.

⁷³ *Id.* at 37, the Commission established the Land Parcels MA. SGVWC explained that “the project remains part of its plans to improve its water system and it plans to include the project in its next GRC.”, referring to the next expected FWC Division GRC 2011-2014, prior to the Rate Case Plan consolidation.

1 SGVWC does not satisfy the criteria for which the Commission established and
2 authorized its Land Parcels MA. After twenty years, SGVWC has not demonstrated the
3 use of either #215 or #221 as was originally planned when the Commission authorized
4 the MA. The Commission should require SGVWC to close its Land Parcels MA.

5 **1. SGVWC should recover costs once a land parcel is**
6 **used and useful and future costs should be limited.**

7 The Commission holds that SGVWC may request recovery costs if the property is
8 ultimately used as planned.⁷⁴ The Commission should permit SGVWC to recover future
9 costs on Land Parcels MA once #215 or #221 is used and useful, meaning a project is
10 completed on the land parcel and providing service.⁷⁵

11 Once the Commission authorizes recovery, the Commission should limit recovery
12 to the cost of the land parcel and all other costs associated with the land parcel up to the
13 original expectation. At the time the MA was established SGVWC explicitly provided
14 dates for land use. Because #215 was expected to include construction no later than 2010,
15 it is reasonable for SGVWC to recover the recorded cost of #215 and all other associated
16 costs prior to January 2011.⁷⁶ Similarly, because #221 was expected to include a project
17 by 2014, the Commission should find that it is reasonable for SGVWC to recover for the
18 recorded cost of #221 and all other associated costs prior to July 2014.⁷⁷ When a land
19 parcel becomes used and useful, and the Commission authorizes SGVWC to recover

⁷⁴ D. 09-06-027 at 117, Ordering Paragraph 10, “If the properties are ultimately used as planned, San Gabriel Valley Water Company may request recovery of such costs.”

⁷⁵ D.84-09-089, at 23, the Commission has defined “Used and Useful” as “requir(ing) that utility property be actually in use and providing service in order to be included in the utility’s ratebase.”

⁷⁶ D. 09-06-027 at 33, SGVWC stated that “the Master Plan includes construction of Plant F53 no later than 2010.”; and Land Parcels MA excel sheet, adding up the total interest up to F30, December 2010: \$162,079 (recorded cost) + \$537 (interest) = \$162,616.

⁷⁷ D. 09-06-027 at 33, regarding the Plant 53 improvement, SGVWC forecasted that “(s)uch growth will not occur during this GRC cycle, and may not occur in the next GRC cycle” alluding to the expected FWC Division GRC 2011-2014, prior to LA and FWC Division consolidation for joint filing since 2013 as required by the Rate Case Plan.; and Land Parcels MA excel sheet adding up the total interest on column J72, June 2014: \$382,694 (recorded cost) + \$3,302 (interest) = \$385,996.

costs, recovery costs should be limited accordingly: #215 recovery cost limited to \$162,616 and #221 recovery cost limited to \$385,996.

The Commission should require SGVWC to stop tracking costs and close the Land Parcels MA, permit SGVWC to request recovery at the time #215 or #221 becomes used and useful, and the recovery cost of each land parcel should only include recorded purchase price with the appropriate limited interest.

IV. CONCLUSION

The Commission should require SGVWC to close and deactivate six memorandum accounts and limit the transfer and recovery accordingly. Specifically, the Commission should authorize SGVWC to close its respective divisions' Water Conservation Memorandum Accounts (WCMA), Payment Options Memorandum Account (POMA), and Land Parcel's #215 and #221 Memorandum Account (Land Parcels MA), and deactivate its Catastrophic Event Memorandum Accounts (CEMA). The Commission should transfer the remaining balances from SGVWC's WCMA's and CEMAs to the respective Previous Balance Balancing Accounts (PABBA) and deny transferring its POMA balance. The Commission should require SGVWC to amortize its PABBAs after account balances have been transferred. The Commission should approve SGVWC's request to amortize its Conservation Program Balancing Accounts in each division at the end of the current GRC cycle by Tier 2 advice letter. Lastly, the Commission should authorize recovery of SGVWC's Land Parcels MA once a land parcel is used and useful, and limit its recovery according to the original expectations.

LIST OF ATTACHMENTS FOR CHAPTER 2

(See Appendix B)

#	Attachment #	Description
1	2-1	Proliferation of Class A Investor-Owned Water Utilities Surcharge Accounts
2	2-2	Construction Work In Progress v. Interest During Construction Ratepayer Impact Tables, FY 2017-2025

APPENDIX A

QUALIFICATIONS OF WITNESS

1 **QUALIFICATIONS AND PREPARED TESTIMONY**
2 **OF**
3 **ANDREW B. RUBANG**
4

5 Q.1 Please state your name and address.

6 A.1 My name is Andrew B. Rubang and my business address is 505 Van Ness Avenue,
7 San Francisco, CA 94102.

8
9 Q.2 By whom are you employed and what is your job title?

10 A.2 I am a Public Utilities Regulatory Analyst V employed by the Public Advocates
11 Office.

12
13 Q.3 Please describe your educational and professional experience.

14 A.3 I received a Juris Doctor in 2022 from the University of California, College of the
15 Law, San Francisco, a Master of Public Administration in 2017 from the
16 University of San Francisco, and a Bachelor of Science in Biological Sciences in
17 2005 from the University of California, Irvine. Prior to working with the Public
18 Advocates Office, I was a Public Utilities Regulatory Analyst III for a year and a
19 half with the CA Public Utilities Commission as a staff for the External Affairs
20 Division. Before the Commission, I was a Senior Water Treatment Operator for
21 over eight years with East Bay Municipal Utility District.

22
23 Q.4 What is your area of responsibility in this proceeding?

24 A.4 In this proceeding I prepared analysis and testimony addressing San Gabriel
25 Valley Water Company's proposal for its Construction Work In Progress account
26 and its Balancing & Memorandum Accounts.

27
28 Q.5 Does that complete your prepared testimony?

29 A.5 Yes.

APPENDIX B

ATTACHMENTS

LIST OF ATTACHMENTS FOR CHAPTER 1

#	Attachment #	Description
1	1-1	Policy for Including CWIP in Rate Base for Water Utilities (referred to as “1982 WD Memorandum”)
2	1-2	Construction Work In Progress v. Interest During Construction Ratepayer Impact Tables, FY 2017-2025
3	1-3	Estimated Construction Work In Progress v. Proposed Interest During Construction Ratepayer Impact Tables, GRC 2026-2029
4	1-4	39 FR 225, 40787-40789 (1974)
5	1-5	41 FR 226, 51392-51396 (1976)
6	1-6	48 FR 46012-46018 (1983)
7	1-7	52 FR 123, 23948-23951 (1987) and 18 CFR 35.25 Construction Work in Progress
8	1-8	Governor Newsome’s Executive Orders Terminating State of Emergencies
9	1-9	SGVWC Actual Return on Equity v. Commission Authorized Return on Equity

Attachment 1.1: 1982 WD Memorandum, Page 1

State of California

M E M O R A N D U M

Date : May 11, 1982
(For June 2 Conference)

To : THE COMMISSION

From : M. Abranson, Acting Director, Revenue Requirements Div. *me*
W. R. Ahern, Director, Util. Div. *WRA*
B. Barkovich, Director, Policy Div. *B*

Subject: Policy for Including CWIP in Rate Base for Water
Utilities

RECOMMENDATION: It is recommended that the current policy of including construction work in progress (CWIP) in rate base for water utilities be continued. This should not lead the Commission to endorse a similar policy for energy and telecommunications utilities where construction time often exceeds one year.

SUMMARY: Water utility construction projects require on the average about 4 months to complete. This is a considerably shorter period of time than comparable energy utilities. Approximately 69% of new construction is company funded. New construction approximates 6% of the total plant in service and the amount of company funded CWIP, carried into a succeeding year, is only about 0.4%. Thus the perceived disbenefits of CWIP for ratepayers of (1) reduction in utility risk and thus management efficiency, and (2) intertemporal equity shifts, are minimized for water utilities. The financial benefit of disallowing CWIP in rate base is very small, and would, in the long run, be reduced and made even smaller, by the offsetting revenue requirement increase associated with the interest charges.

DISCUSSION: There are nearly 400 water jurisdictions (companies and districts) under regulation. Because of the inherent difficulty of studying a large number of districts, it was decided that to analyze typical construction projects, a few districts would be chosen as representative of the many systems throughout California. The data came from eight water districts representing

Attachment 1.1: 1982 WD Memorandum, Page 2

Page 2

five water companies (see below). The data is from 1980 company records. Our choice was based on readily available data and a desire to include districts of various sizes, water sources and geographical locations.

<u>Name</u>	<u>No. of Customers</u>	<u>County</u>
Asuza Valley Water	15,467	Los Angeles
California American Water Monterey	33,090	Monterey
California Water Service		
East Los Angeles	27,618	Los Angeles
Oroville	3,724	Butte
Selma	3,550	Fresno
South San Francisco	15,395	San Mateo
San Jose Water	187,195	Santa Clara
Southern California Water Calipatria - Niland	1,030	Imperial

Water Utility Construction *

Water projects with significant construction periods fall into five major categories: 1) miscellaneous structures, 2) tanks and reservoirs, 3) transmission and distribution mains, 4) treatment facilities and 5) wells. Transmission and distribution mains represent the largest on-going construction projects. Treatment facilities are usually major projects but are infrequently constructed and as a result the dollar impact in any given year is minimal. The average construction time and project costs for 1980 as a percentage of total plant by categories are:

<u>Category</u>	<u>Construction Time</u>	<u>% of Plant</u>
Miscellaneous Structures	3.1 months	1.2%
Tanks and Reservoirs	6.2	.2
Trans. and Distribution Mains	3.9	4.0
Treatment Facilities	8.3	.5
Wells	2.5	.1

Attachment 1.2, Table 1: Actual CWIP Ratepayer Impact v. Proposed IDC Ratepayer Impact, FY 2017-2025¹

	SGVWC Actual CWIP	If Commission Authorized Cal Advocate's Proposed IDC Recommendation
Total Ratepayer Impact for FY 2017-2025	\$20,547,347.18	\$71,915.72
Average FY LA Div. Ratepayer Impact	\$1,178,499.67	\$4,124.75
Average FY FWC Div. CWIP Ratepayer Impact	\$1,389,918.73	\$4,864.72

Attachment 1.2, Table 2: Commission Authorized CWIP, FY 2017-2025²

Fiscal Year	Authorized CWIP for LA Division	Authorized CWIP for FWC Division	Authorized CWIP for General Division	LA Div. Authorized General Off. Four Factor Allocation	Gen Div. CWIP Charged to LA Div. Ratepayer (v)*(w) =	FWC Div. Authorized General Off. Four Factor Allocation	Gen Div. CWIP Charged to FWC Div. Ratepayer (v)*(y) =
	(t)	(u)	(v)	(w)	(x)	(y)	(z)
Test Yr. 2017-18	\$2,307,345	\$6,298,937	\$340,354	49.85%	\$169,666.41	50.15%	\$170,687.48
Esc. Yr. 2018-19	\$2,459,630	\$6,695,770	\$362,477	49.85%	\$180,694.73	50.15%	\$181,782.16
Esc Yr. 2019-20	\$2,575,232	\$7,104,212	\$382,051	49.85%	\$190,452.25	50.15%	\$191,598.40
Test Yr. 2020-21	\$9,405,100	\$7,072,136	\$585,431	49.27%	\$288,441.64	50.73%	\$296,988.93
Esc. Yr. 2021-22	\$10,044,647	\$7,637,907	\$628,752	49.27%	\$309,786.32	50.73%	\$318,966.11
Esc. Yr. 2022-23	\$10,687,504	\$8,203,112	\$672,136	49.27%	\$331,161.58	50.73%	\$340,974.77
Test Yr. 2023-24	\$19,644,000	\$22,107,700	0	49.50%	0	50.50%	0
Esc. Yr. 2024-25	\$20,979,792	\$24,362,685	0	49.50%	0	50.50%	0
Total	\$78,103,250	\$89,482,459	\$2,971,201				
Total Authorized CWIP in ratebase, 2017-2025				total (t) + total (u) + total (v) = \$170,556,909			

¹ See Attachment 1.2, Tables 3 and 4, total CWIP Ratepayer Impact, 2017-2025 is the sum of Total LA Div. CWIP Ratepayer Impact (\$9,427,997.35) + Total FWC Div. CWIP Ratepayer Impact (\$11,119,350). Total IDC Ratepayer Impact, 2017-2025, is the sum of Total LA Div. proposed IDC Ratepayer Impact (\$278,507.09) + Total FWC Div. proposed IDC Ratepayer Impact (\$318,442.10).

² SGVWC's Commission authorized CWIP, columns (t), (u), and (v), found in excel sheet "SGVWC Adopted CWIP Balances Last 3 GRCs" provided in email by Joel Reiker on Wednesday, June 18, 2025, at 09:06 am.

General office four factor allocation rate, columns (w) and (y), provided in email from Joel Reiker on Monday, June 23, 2025, at 1:42pm.

**Attachment 1.2, Table 3: LA Division Actual CWIP v. Proposed IDC
Ratepayer Impact, FY 2017-2025**

Fiscal Year	LA Div. Net-Gross³	Commission Authorized Rate of Return⁴ (weighted)	Commission Authorized CWIP for LA Division + General Office Allocation⁵ (t) + (x) =	LA Division's Actual CWIP Ratepayer Impact (a)*(b)*(c) =	LA Div. Proposed IDC Ratepayer Impact⁶ (Cal Advocate proposed) (a)*(b)*(c) *(IDC) =	LA Div. Proposed IDC v. Forecasted CWIP Ratepayer Impacts (proposed difference) (d)-(e)
	(a)	(b)	(c)	(d)	(e)	
Test Year 2017-2018	1.80103	8.49%	\$2,477,011.41	\$378,753.49	\$1,325.64	\$377,427.85
Esc. Year 2018-2019	1.80067	8.305%	\$2,640,324.73	\$403,644.61	\$1,412.76	\$402,231.86
Esc. Year 2019-2020	1.80067	8.12%	\$2,765,684.25	\$404,382.87	\$1,415.34	\$402,967.53
Test Year 2020-2021	1.60213	8.12%	\$9,693,541.64	\$1,261,061.49	\$4,413.72	\$1,256,647.77
Esc. Year 2021-2022	1.40359	8.12%	\$10,354,433.32	\$1,180,110.38	\$4,130.39	\$1,175,979.99
Esc. Year 2022-2023	1.40359	8.12%	\$11,018,665.58	\$1,255,813.93	\$4,395.35	\$1,251,418.58
Test Year 2023-2024	1.40413	7.97%	\$19,644,000	\$2,239,717.65	\$7,839.01	\$2,231,878.64
Esc. Year 2024-2025	1.40466	7.82%	\$20,979,792	\$2,304,512.92	\$8,065.80	\$2,296,447.12
Total LA Div. Ratepayer Impact, 2017-2025				\$9,427,997.35	\$32,997.99	\$9,394,999.36
Avg. Fiscal Year LA Div. Ratepayer Impact, 2017-2025				\$1,178,499.67	\$4,124.75	\$1,174,374.92

³ LA Division's net to gross multiplier, column (a), provided to Cal Advocates in email from Joel Reiker on Monday, June 9, 2025, at 1:34pm. D.11-05-036, "The Net-to-Gross Multiplier indicates the unit change in gross revenues required to produce a unit change in net revenues. It is a factor that accounts for the additional revenue required to pay taxes and achieve a given revenue requirement after taxes."

⁴ Commission authorized rate of return (weighted), column (b), 2017-2018 rate found in D. 13-05-027, 2019-2023 rate found in D. 18-12-002, and 2024-2025 rate found in D. 24-12-007.

- Esc. Year 2018-2019: $(8.49\% + 8.12\%)/2 = 8.305\%$
- Esc. Year 2023-2024: $(8.12\% + 7.82\%)/2 = 7.97\%$

⁵ See Attachment 1.2, Table 2: Commission Authorized CWIP from 2017-2025, for columns (t) and (x).

⁶ Proposed IDC rate of 0.35% found in Cal Advocates Report, *Report on Capital Projects, Historic Rate Base, Utility Plant, Depreciation, and Rate Base*, Chapter 11 for Cal Advocates' recommended IDC rate of 0.35%. Hereinafter referred to as "Cal Advocates' recommended IDC rate of 0.35%".

**Attachment 1.2, Table 4: FWC Division Actual CWIP v. Proposed IDC
Ratepayer Impact, FY 2017-2025**

Fiscal Year	FWC Div. Net-Gross⁷	Commission Authorized Rate of Return⁸ (weighted)	Commission Authorized CWIP for FWC Div. + General Office Allocation⁹ (u) + (z) =	FWC Div.'s Actual CWIP Ratepayer Impact (a)*(b)*(c) =	FWC Div. Proposed IDC Ratepayer Impact¹⁰ (Cal Advocate proposed) (a)*(b)*(c)*(IDC) =	FWC Div. Proposed IDC v. Actual CWIP Ratepayer Impacts (proposed difference) (d)-(e)
	(a)	(b)	(c)	(d)	(e)	
Test Year 2017-2018	1.79897	8.49%	\$6,469,624.48	\$988,122	\$3,458.43	\$984,663.84
Esc. Year 2018-2019	1.79658	8.305%	\$6,877,552.16	\$1,049,031	\$3,671.61	\$1,045,358.96
Esc. Year 2019-2020	1.79658	8.12%	\$7,295,810.40	\$1,064,330	\$3,725.15	\$1,060,604.42
Test Year 2020-2021	1.59846	8.12%	\$7,369,124.93	\$956,475	\$3,347.66	\$953,127.55
Esc. Year 2021-2022	1.40034	8.12%	\$7,956,873.11	\$904,757	\$3,166.65	\$901,590.36
Esc. Year 2022-2023	1.40034	8.12%	\$8,544,086.77	\$971,528	\$3,400.35	\$968,127.32
Test Year 2023-2024	1.40095	7.97%	\$22,107,700	\$2,514,909	\$8,802.18	\$2,506,106.54
Esc. Year 2024-2025	1.40156	7.82%	\$24,362,685	\$2,670,199	\$9,345.70	\$2,660,853.11
Total FWC Div. Ratepayer Impact, 2017-2025				\$11,119,350	\$38,917.72	\$11,080,432.10
Avg. Fiscal Yr. FWC Div. Ratepayer Impact, 2017-2025				\$1,389,918.73	\$4,864.72	\$1,385,54.01

⁷ FWC Division's net to gross multiplier, column (a), provided to Cal Advocates in email from Joel Reiker on Monday, June 9, 2025, at 1:34pm. D.11-05-036, "The Net-to-Gross Multiplier indicates the unit change in gross revenues required to produce a unit change in net revenues. It is a factor that accounts for the additional revenue required to pay taxes and achieve a given revenue requirement after taxes."

⁸ Commission authorized rate of return (weighted), column (b), 2017-2018 rate found in D. 13-05-027, 2019-2023 rate found in D. 18-12-002, and 2024-2025 rate found in D. 24-12-007.

- Esc. Year 2018-2019: $(8.49\% + 8.12\%)/2 = 8.305\%$
- Esc. Year 2023-2024: $(8.12\% + 7.82\%)/2 = 7.97\%$

⁹ See Attachment 1.2, Table 2: Commission Authorized CWIP from 2017-2025, for columns (u) and (z).

¹⁰ Cal Advocates recommended IDC rate of 0.35%.

Attachment 1.3, Table 1: Ratepayer Impact If SGVWC CWIP Request Approved v. Proposed IDC Ratepayer Impact, GRC 2026-2029¹

	If Commission Authorizes SGVWC's Forecasted CWIP	If Commission Authorizes Cal Advocate's Proposed IDC Recommendation
Total Ratepayer Impact for GRC 2026-2029	\$11,402,517.70	\$39,908.81
Average FY LA Div. Ratepayer Impact	\$2,385,325.09	\$8,348.64
Average FY FWC Div. CWIP Ratepayer Impact	\$1,415,514.15	\$4,954.30

Attachment 1.3, Table 2: If SGVWC's CWIP Request Is Approved, GRC 2026-2029²

Fiscal Year	Authorized Forecasted CWIP for LA Division	Authorized Forecasted CWIP for FWC Division	Authorized Forecasted CWIP for General Division	LA Div. Authorized Forecasted General Off. Four Factor Allocation	Gen Div. Authorized Forecasted CWIP Charged to LA Div. Ratepayer (v)*(w) =	FWC Div. Authorized Forecasted General Off. Four Factor Allocation	Gen Div. Authorized Forecasted Charged to FWC Div. Ratepayer (v)*(y) =
	(t)	(u)	(v)	(w)	(x)	(y)	(z)
Test Yr. 2026-2027	21,386,400	12,590,200	680,700	50.30%	\$342,392.10	49.70%	\$338,307.90
Esc. Yr. 2027-2028	21,386,400	12,590,200	680,700	50.30%	\$342,392.10	49.70%	\$338,307.90
Esc. Yr. 2028-2029	21,386,400	12,590,200	680,700	50.30%	\$342,392.10	49.70%	\$338,307.90
Total	\$64,159,200	\$37,770,600	\$2,042,100				
Total Requested CWIP in ratebase, 2026-2029				total (t) + total (u) + total (v) = \$103,971,900			

¹ See Attachment 1.3, Tables 3 and 4, total CWIP Ratepayer Impact for GRC 2026-2029 is the sum of Total LA Div. CWIP Ratepayer Impact (\$7,155,975.26) + Total FWC Div. CWIP Ratepayer Impact (\$4,246,542.55). Total IDC Ratepayer Impact for GRC 2026-2029 is the sum of Total LA Div. proposed IDC Ratepayer Impact (\$25,045.91) + Total FWC Div. proposed IDC Ratepayer Impact (\$14,862.90).

² SGVWC's requested CWIP, columns (t), (u), and (v), found in RO Model, tab P2 labelled as "Utility Plant & Depreciation". Forecasted General Division CWIP per year at \$680,700 found on line 29 columns BD, BK, and BR. Forecasted Los Angeles County (LA) Division CWIP per year at \$21,386,400 found on line 109 columns BD, BK, and BR. Forecasted Fontana Water Company (FWC) Division CWIP per year at \$12,590,200 on line 362 columns BD, BK, and BR. General office four factor allocation rates, columns (w) and (y), provided in SGVWC Exhibit SG-4, p. 42, lines 16-18.

Attachment 1.3, Table 3: If Commission Approves SGVWC's LA Division CWIP Request v. Cal Advocates Proposed IDC Ratepayer Impacts, GRC 2026-2029

Fiscal Year	SGVWC Requested LA Div. Net-Gross³	Commission Authorized Rate of Return⁴ (weighted)	SGVWC Requested Forecasted CWIP for LA Div. + General Office Allocation⁵ (t) + (x) =	SGVWC Requested Forecasted LA Div.'s CWIP Ratepayer Impact (a)*(b)*(c) =	LA Div. Proposed IDC Ratepayer Impact⁶ (Cal Advocate proposed) (a)*(b)*(c) *(IDC) =	LA Div. Proposed IDC v. Forecasted CWIP Ratepayer Impact (proposed difference) (d)-(e)
	(a)	(b)	(c)	(d)	(e)	
Test Yr. 2026-2027	1.4038	7.82%	\$342,392.10	\$2,385,325.09	\$8,348.64	\$21,720,443.46
Esc. Yr. 2027-2028	1.4038	7.82%	\$342,392.10	\$2,385,325.09	\$8,348.64	\$21,720,443.46
Esc. Yr. 2028-2029	1.4038	7.82%	\$342,392.10	\$2,385,325.09	\$8,348.64	\$21,720,443.46
Total LA Div. Ratepayer Impact, 2026-2029				\$7,155,975.26	\$25,045.91	\$65,161,330.39
Avg. FY LA Div. Ratepayer Impact, 2026-2029				\$2,385,325.09	\$8,348.64	\$21,720,443.46

³ RO Model has the net-to-gross multiplier in Workpaper GI1, rows 103 and 104.

⁴ Commission authorized rate of return (weighted), column (b), found in D. 24-12-007.

⁵ See Attachment 1.3, Table 2: If SGVWC's CWIP Request Is Approved, FY 2026-2029, for columns (t) and (x).

⁶ Proposed IDC rate of 0.35% found in Cal Advocates recommended IDC rate of 0.35%.

Attachment 1.3, Table 4: If Commission Approves SGVWC's FWC Division CWIP Request v. Cal Advocates Proposed IDC Ratepayer Impacts, GRC 2026-2029

Fiscal Year	SGVWC Requested FWC Div. Net-Gross ⁷	Commission Authorized Rate of Return ⁸ (weighted)	SGVWC Requested Forecasted CWIP for FWC Div. + General Office Allocation ⁹ (u) + (v) =	SGVWC Requested Forecasted FWC Div.'s CWIP Ratepayer Impact (a)*(b)*(c) =	FWC Div. Proposed IDC Ratepayer Impact ¹⁰ (Cal Advocate proposed) (a)*(b)*(c) *(IDC) =	FWC Div. Proposed IDC v. Forecasted CWIP Ratepayer Impact (proposed difference) (d)-(e)
	(a)	(b)	(c)	(d)	(e)	
Test Yr. 2026-2027	1.4001	7.82%	\$338,307.90	\$1,415,514.15	\$4,954.30	\$1,410,559.85
Esc. Yr. 2027-2028	1.4001	7.82%	\$338,307.90	\$1,415,514.15	\$4,954.30	\$1,410,559.85
Esc. Yr. 2028-2029	1.4001	7.82%	\$338,307.90	\$1,415,514.15	\$4,954.30	\$1,410,559.85
Total FWC Div. Ratepayer Impact, 2026-2029				\$4,246,542.55	\$14,862.90	\$4,231,679.54
Avg. FY FWC Div. Ratepayer Impact, 2026-2029				\$1,415,514.15	\$4,954.30	\$1,410,559.85

⁷ RO Model has the net-to-gross multiplier in Workpaper GI1, rows 103 and 104.

⁸ Commission authorized rate of return (weighted), column (b), found in D. 24-12-007.

⁹ See Attachment 1.3, Table 2: If SGVWC's CWIP Request Is Approved, FY 2026-2029, for columns (u) and (z).

¹⁰ Proposed IDC rate of 0.35% found in Cal Advocates recommended IDC rate of 0.35%.

PROPOSED RULES

40787

of this section since the Commissioner's exception order based on fuel shortage in § 225.3(a) will be considered a plan revision requiring EPA approval. The 45-day exception order under § 225.3(b) is also a plan revision requiring EPA approval and should not be approved.

This notice is issued to advise the public that, as required by section 110 of the Clean Air Act (42 U.S.C. 1857c-5(a)), comments may be submitted on whether the proposed revision should be approved or disapproved. Only comments received on or before the end of the 30-day comment period will be considered. The Administrator's decision to approve or disapprove the proposed revision will be based on whether the revision meets the requirements of section 110(a)(2)(A)-(H), (42 U.S.C. 1857c-5(a)(2)(A)-(H)), and EPA regulations in 40 CFR Part 51.

Copies of the proposed plan revision are available for public inspection during normal business hours at the Office of Public Affairs, EPA, Region II, 26 Federal Plaza, New York, New York 10007 and at the New York State Department of Environmental Conservation, Air Pollution Control Program, 50 Wolf Road, Albany, New York 12233. Additional copies are available at the Freedom of Information Center, EPA, 401 M Street, SW., Washington, D.C. 20460. All comments should be addressed to the Regional Administrator, EPA, Region II, 26 Federal Plaza, New York, New York 10007.

Dated: November 8, 1974.

ERIC B. OUTWATER,
Acting Regional Administrator.
[FR Doc. 74-27069 Filed 11-19-74; 8:45 am]

FEDERAL POWER COMMISSION
[18 CFR Parts 35, 101, 104, 154, 201, 204]

[Docket No. RM75-13]

ACCOUNTS AND REPORTS
Construction Work in Progress

NOVEMBER 14, 1974.

Amendments to Uniform Systems of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C and D) and to Regulations Under the Federal Power Act and the Natural Gas Act, to Provide for Inclusion of Construction Work in Progress in Rate Base.

Pursuant to 5 U.S.C. 553, sections 3, 4, 208, 301, 304, 308 and 309 of the Federal Power Act (41 Stat. 1063, 1065; 49 Stat. 853, 854, 855, 858; 16 U.S.C. 796, 797, 824g, 825c, 825g, 825h) and sections 6, 8, 10 and 16 of the Natural Gas Act (52 Stat. 824, 825, 826, 830; 15 U.S.C. 717e, 717g, 717i, 717o), the Commission gives notice it proposes to amend:

A. An instruction in the Uniform System of Accounts for Class A and Class B Public Utilities and Licensees, prescribed by Part 101, Chapter I, Title 18, CFR.

B. An instruction and an account in the Uniform System of Accounts for Class C and Class D Public Utilities and Licensees, prescribed by Part 104, Chapter I, Title 18, CFR.

C. Regulations Under the Federal Power Act, Subchapter B, Chapter I, Title 18, CFR.

D. An instruction in the Uniform System of Accounts for Class A and Class B Natural Gas Companies, prescribed by Part 201, Chapter I, Title 18, CFR.

E. An instruction and an account in the Uniform System of Accounts for Class C and Class D Natural Gas Companies, prescribed by Part 204, Chapter I, Title 18, CFR.

F. Regulations Under the Natural Gas Act, Subchapter E, Chapter I, Title 18, CFR.

The Commission proposes to change its ratemaking policy regarding investments in plant under construction to provide for the inclusion of such investment in the rate bases of electric utilities and natural gas companies in determining the allowable rates to be charged by such companies subject to its jurisdiction, and to amend its Uniform Systems of Accounts and Regulations Under the Federal Power and Natural Gas Acts to reflect this change. Amounts allowable for inclusion in the rate bases of natural gas companies pursuant to this policy would be those amounts expended and recorded in Account 107, Construction Work in Progress, related to the gas plant accounts as provided for in the Uniform Systems of Accounts as of the time the rates became effective either after suspension or after final Commission action. Expenditures on facilities subject to certification by the Commission would be includible only if the certificate had been granted. Amounts allowable for inclusion in the rate bases of electric utilities would be those expended or to be expended during the test period, included or includible in Account 107, related to the electric plant accounts as provided for in the Uniform Systems of Accounts.

For electric utilities, an allowance for funds used during construction (AFUDC) would not be allowed on construction work in progress equal to that proportion of electric plant in service included in rate base to support rates subject to the jurisdiction of the Commission. For natural gas companies, no AFUDC would be allowed upon expenditures for construction projects allowed in the utility's rate base.

The Commission is proposing these changes in policies and procedures primarily to help alleviate the current financing problems being experienced by utility companies. The changes would enable companies to obtain current cash flow applicable to investments in construction work in progress instead of waiting until plant is placed in service before any cash flow is received.

In relation to the foregoing, it may be noted that although a higher current revenue requirement would initially be established if the proposed ratemaking policy is adopted, the effect of the cessation of accruing AFUDC on construction costs could be to reduce the cost of facilities and revenue requirements in the future.

Comments are invited regarding the necessity and feasibility of providing for a transition period during which a gradual shift to the proposed ratemaking treatment of construction work in progress would be made. Comments are also invited as to a method of providing reasonable assurance that customers subject to rates set by the Commission would not be required to pay depreciation, return and taxes on plant costs which include AFUDC after having rates set on a rate base in which plant construction costs have been allowed.

Changes to reflect the adoption of this new policy would be required in one electric plant instruction and one gas plant instruction in each of the Commission's Uniform Systems of Accounts, in one account of the Class C and Class D Uniform Systems of Accounts for both Public Utilities and Licensees and Natural Gas Companies, and in one section of one part of both the regulations Under the Federal Power Act and the regulations Under the Natural Gas Act.

Under Electric and Gas Plant Instruction 3, *Components of Construction Cost*, for Classes A and B Public Utilities and Natural Gas Companies, item (17) "Allowance for funds used during construction" would be amended to provide that no allowance for funds charges would be included in these (electric and gas plant) accounts upon amounts, in the case of electric companies, of construction work in progress equal to that proportion of electric plant in service included in rate base, or upon amounts, in the case of gas companies, expended for construction projects allowed in the utility's rate base.

Similarly, Electric and Gas Plant Instruction 2, *Components of Construction Cost*, for Classes C and D Public Utilities and Natural Gas Companies, would be amended to provide for the same restrictions.

The text of Account 419.1, Allowance for Funds Used During Construction, for Classes C and D Public Utilities and Natural Gas Companies, would be amended by adding a statement directing reference to electric and gas plant instruction 2, as noted above.

Section 35.13 of the Commission's regulations Under the Federal Power Act would be amended by changing the requirement under *Statement D—Cost of plant*, to provide for a statement of the cost of plant including construction work in progress, and by adding a new *Statement D1—Construction work in progress*, to provide for filing a list of uncompleted work orders claimed in the rate base, with supporting detail.

Section 154.63 of the Commission's regulations Under the Natural Gas Act would be amended by deleting the requirement under *Schedule C-1 of Statement C—Cost of plant*, that Account 107 shall be adjusted to exclude plant in process of construction which is not expected to be in service by the end of the test period.

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than Dec. 30,

40788

PROPOSED RULES

1974, data, views, comments or suggestions in writing concerning the amendments proposed herein. Written submittals will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Washington, D.C. 20426, during regular business hours. The Commission will consider all such written submittals before acting on the matters herein proposed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should indicate the name, title, mailing address and telephone number of the person to whom communications concerning the proposal should be addressed, and whether the person filing them requests a conference with the staff of the Federal Power Commission to discuss the proposed revisions. The staff, in its discretion, may grant or deny requests for conference.

(A) The following is a proposed amendment to the Uniform System of Accounts for Class A and Class B Public Utilities and Licensees in Part 101, Chapter I, Title 18 of the Code of Federal Regulations:

Amend subparagraph "(17) Allowance for funds used during construction" of Electric Plant Instruction "3. Components of Construction Cost," by revising the last sentence. As amended, subparagraph (17) will read:

Electric Plant Instructions

3. Components of Construction Cost.

(17) "Allowance for funds used during construction" includes the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used. No allowance for funds used during construction charges shall be included in these accounts upon expenditures for construction projects which have been abandoned, or upon amounts of construction work in progress equal to that proportion of electric plant in service included in rate base.

NOTE: ***

(B) The following are proposed amendments to the Uniform System of Accounts for Class C and Class D Public Utilities and Licensees in Part 104, Chapter I, Title 18 of the Code of Federal Regulations:

(1) Amend Electric Plant Instruction "2. Components of Construction Cost," by adding a new sentence. As amended, Instruction 2 will read:

Electric Plant Instructions

2. Components of Construction Cost.

The cost of construction of property chargeable to the electric plant accounts shall include, where applicable, the cost of labor, materials and supplies, transportation, work done by others for the utility, injuries and damages incurred in construction work, privileges and

permits, special machine service, allowance for funds used during construction, training costs and such portion of general engineering, administrative salaries and expenses, insurance, taxes, and other analogous items as may be properly includible in construction costs. No allowance for funds used during construction charges shall be included in these accounts upon amounts of construction work in progress equal to that proportion of electric plant in service included in rate base. (See Operating Expense Instruction 3.)

(2) Amend the text of the Income Accounts by amending Account "419.1, Allowance for funds used during construction," by adding a reference sentence at the end of the account text. As amended, Account 419.1 will read:

Income Accounts

2. OTHER INCOME AND DEDUCTIONS.

419.1 Allowance for funds used during construction.

This account shall include concurrent credits for interest charged to construction based upon the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate upon other funds when so used. No interest shall be capitalized on plant which is completed and ready for service. (See electric plant instruction 2.)

(C) The following are proposed amendments to the Uniform System of Accounts for Class A and Class B Natural Gas Companies in Part 201, Chapter I, Title 18 of the Code of Federal Regulations:

Amend subparagraph "(17) Allowance for funds used during construction" of Gas Plant Instruction "3. Components of construction cost," by revising the last sentence, and amend the Note to subparagraph (17) by changing "Electric Plant in Service" to read "Gas Plant in Service". As amended, subparagraph (17) and the Note thereto will read:

Gas Plant Instructions

3. Components of construction cost.

(17) "Allowance for funds used during construction" includes the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used, except when such other funds are used for exploration and development on leases acquired after October 7, 1969, no allowance on such other funds shall be included in these accounts. No allowance for funds used during construction charges shall be included in these accounts upon expenditures for construction projects which have been abandoned, or upon amounts expended for construction projects allowed in the utility's rate base.

NOTE: When a part only of a plant or project is placed in operation or is completed and ready for service but the construction work as a whole is incomplete, that part of the cost of the property placed in operation, or ready for service, shall be treated as "Gas Plant in Service" and allowance for funds used during construction thereon as a charge to construction shall cease. Allowance for funds used during construction on that part of the cost of the plant which is incomplete may be continued as a charge to construction until such time as it is placed in operation or is ready for service, except as limited in item 17, above.

(D) The following are proposed amendments to the Uniform System of Accounts for Class C and Class D Natural Gas Companies in Part 204, Chapter I, Title 18 of the Code of Federal Regulations:

(1) Amend Gas Plant Instruction "2. Components of Construction Cost," by adding a new sentence. As amended, Instruction 2 will read:

Gas Plant Instructions

2. Components of Construction Cost.

The cost of construction of property chargeable to the gas plant accounts shall include, where applicable, fees for construction certificate applications paid after grant of certificate, the cost of labor, materials and supplies, transportation, work done by others for the utility, injuries and damages incurred in construction work, privileges and permits, special machine service, allowance for funds used during construction, training costs, and such portion of general engineering, administrative salaries and expenses, insurance, taxes, and other analogous items as may be properly includible in construction costs. When the utility employs its own funds in exploration and development on leases acquired after October 7, 1969, no interest on such funds shall be included in these accounts. No allowance for funds used during construction charges shall be included in these accounts upon amounts expended for construction projects allowed in the utility's rate base. (See Operating Expense Instruction 3.)

(2) Amend the text of the Income Accounts by amending Account "419.1, Allowance for funds used during construction," by adding a sentence at the end of the account text. As amended, Account 419.1 will read:

Income Accounts

2. OTHER INCOME AND DEDUCTIONS.

419.1 Allowance for funds used during construction.

This account shall include concurrent credits for interest charged to construction based upon the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate upon other funds when so used. No interest shall be capitalized on plant which is completed and ready for service. (See gas plant instruction 2.)

PROPOSED RULES

40789

(E) The following are proposed amendments and additions to Part 35—Filing of Rate Schedules, Chapter I, Title 18 of the Code of Federal Regulations:

In Section "35.13, Filing of changes in rate schedules," amend paragraph (b) (4) (iii), by amending the text of "Statement D—Cost of plant," and adding a new Statement D1—Construction work in progress, to read as follows:

§ 35.13 Filing of changes in rate schedules.

(b) (4) (iii)

Statement D—Cost of plant. A statement of the cost of plant by functional classification, including construction work in progress functionalized separately, as of the beginning and the end of Periods I and II.

Statement D1—Construction work in progress. A statement showing in respect of Account 107, as of the beginning and end of Period I and Period II, a list of uncompleted work orders (small items grouped) claimed in the rate base, giving the work order number, description and amount of each and the amounts of each type of undistributed construction overheads. Each work order shall show the amounts claimed, itemized by major functional classification, and shall identify components assignable to each specific utility service for all or part of the anticipated service life.

(F) The following is a proposed amendment to Part 154—RATE SCHEDULES AND TARIFFS, Chapter I, Title 18 of the Code of Federal Regulations:

In Section "154.63, Changes in a tariff, executed service agreement or part thereof," amend subparagraph "(f) Description of statements," by amending the text of "Statement C—Cost of plant," by deleting the third paragraph under "Schedule C-1," to read as follows:

§ 154.63 Changes in a tariff, executed service agreement or part thereof.

(f) Description of statements.

Statement C—Cost of plant.

Schedule C-1 in columnar form similar to Statement C showing for each of the above accounts the amounts by detailed plants prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies (Part 201 of this Chapter) with subtotals thereof by functional classifications, i.e. Intangible Plant, Manufactured Gas Production Plant, Natural Gas Production and Gathering Plant, Products Extraction Plant, Underground Storage Plant, Local Storage Plant, Transmission Plant, Distribution Plant and General Plant: *Provided, however,* That to the extent plant costs are not available by detailed plant accounts they may be shown by functional classifications.

Accounts 101, 105, and 106 shall be adjusted to exclude the cost of major items

of plant, the retirement of which is expected by the end of the test period.

Schedule C-2

The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

By direction of the Commission.

KENNETH F. PLUMS,
Secretary.

[FR Doc.74-27091 Filed 11-19-74; 8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 438]

ADVERTISING, DISCLOSURE, COOLING
OFF AND REFUND REQUIREMENTS
CONCERNING PROPRIETARY VOCATIONAL
AND HOME STUDY SCHOOLS

Extension of Time for Submitting Data,
Views or Arguments

Notice of the opportunity to submit data, views, or arguments regarding the proposed Trade Regulation Rule relating to Advertising, Disclosure, Cooling Off and Refund Requirements Concerning Proprietary Vocational and Home Study Schools was published in the FEDERAL REGISTER on August 15, 1974 (39 FR 29385). The Notice also set forth the text of the specific proposal about which comment was requested.

Because the scheduled public hearings will commence in this proceeding on November 18, 1974 and not conclude before February 5, 1975, the Commission has determined that the closing date for submitting written comment should be extended from that originally announced so as to allow the widest participation possible prior to conclusion of the public hearing phase of the proceeding.

Accordingly, all interested persons desiring to submit written data, views or arguments with respect to the proposed Rule are hereby notified that the closing date for receiving such comments has been extended from November 15, 1974 to January 15, 1975. Such written data, views or arguments should be submitted to the Special Assistant Director for Rulemaking, Federal Trade Commission, Washington, D.C. 20580.

Copies of the proposed Rule may be had upon request to the Federal Trade Commission.

Approved: November 13, 1974.

By the Commission.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.74-27145 Filed 11-19-74; 8:45 am]

SECURITIES AND EXCHANGE
COMMISSION

[17 CFR Parts 231, 271]

[Release No. 33-5537; IC-8571; File No.
S7-537]

SALES LITERATURE FOR MUTUAL FUNDS
Policy Statement

Notice is hereby given that the Securities and Exchange Commission has under

consideration the amendment of the Statement of Policy adopted by the Commission August 11, 1950, and amended January 31, 1955, and November 5, 1957 (15 FR 5469, as amended 20 FR 793, 22 FR 8977). The proposed amendment would add Sample Charts E, F, G, and H described in this release to the Sample Charts now permitted under the statement of policy. Sample Charts E and F apply to mutual fund sales literature. The principles embraced by these charts are carried over in Sample Charts G, and H which apply to sales literature employed in the sale of variable annuity contracts. It is further proposed that where any open-end investment company sales literature of prospectus represents or implies a compound rate of total return for an investment in a mutual fund or variable annuity the representation must be accompanied by a chart substantially similar in text, graphic detail and arrangement to Sample Chart F (in the case of a mutual fund) or Sample Chart H (in the case of a variable annuity contract).

BACKGROUND OF THE PROPOSAL

In the recent period of generally falling securities prices, net redemptions of mutual fund shares, and declining investor interest in securities generally, the Commission has focused increasing attention on the effectiveness of various aspects of the mutual fund distribution system. Therefore, in Investment Company Act Release No. 7475 "Announcement of Hearings on Mutual Fund Distribution and the Potential Impact of the Repeal of section 22(d) of the Investment Company Act of 1940," the Commission sought comments on a wide range of issues in addition to retail price maintenance, stating that "It would be appropriate to reexamine traditional administrative positions and to explore new possibilities in order that mutual funds may be marketed more efficiently and at a reasonable cost to investors."

One of the specific issues proposed for consideration at the hearings was the need to revise the statement of policy.

A number of its basic approaches have been questioned over the years. These include limitations on projections (i.e., illustrations of results based on hypothetical investment returns), use of mountain charts to convey cumulative performance, prohibitions against a total yield approach, and absence of data upon which to base conclusions as to average annual performance and variability of performance from year to year. To what extent are these elements of the statement of policy no longer appropriate?

These and other matters were discussed at the hearings and in the written comments received by the Commission. The responses to Release No. 7475 and the discussion of the participants at the hearings cited a lack of investor awareness and comprehension of the risks and returns of mutual fund investment, and the public's inability to make meaningful comparisons among funds, and between funds and alternative investments, as factors contributing to the decline in net fund sales. It was also felt that a better

51392

(Secs. 313(a), 314, 601, and 602 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1355, 1421 and 1422) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

In consideration of the foregoing, Part 61 of the Federal Aviation Regulations is amended, effective December 22, 1976, as follows:

§ 61.5 [Amended]

1. Section 61.5 is amended by deleting the parenthetical words "(land and sea)" in paragraph (c) (2) (i) and (ii).

2. Section 61.9 is amended by revising paragraph (f) to read as follows:

§ 61.9 Exchange of obsolete certificates and ratings for current certificates and ratings.

(f) *Free balloon pilot certificate.* The holder of a free balloon pilot certificate is issued a commercial pilot certificate with a lighter-than-air category rating and a free balloon class rating. However, a free balloon class rating may be issued with the limitations provided in § 61.141.

§ 61.55 [Amended]

3. Section 61.55 is amended by deleting the words "after January 22, 1973" in paragraphs (a) and (b).

4. Section 61.69 is amended by revising paragraph (c) (1) to read as follows:

§ 61.69 Glider towing: Experience and instruction requirements.

(c)
(1) At least three flights as sole manipulator of the controls of an aircraft towing a glider while accompanied by a pilot who has met the requirements of this section and made and logged at least 10 flights as pilot-in-command of an aircraft towing a glider; or

5. Section 61.83 is amended by revising paragraph (b) to read as follows:

§ 61.83 Eligibility requirements: General.

(b) Be able to read, speak, and understand the English language, or have such operating limitations placed on his pilot certificate as are necessary for the safe operation of aircraft, to be removed when he shows that he can read, speak, and understand the English language; and

§ 61.87 [Amended]

6. Section 61.87 is amended by deleting the word "gyroplanes", and the commas, in the flush paragraph immediately following paragraph (c) (3) (iii).

7. Section 61.123 is amended by revising paragraph (b) to read as follows:

§ 61.123 Eligibility requirements: General.

RULES AND REGULATIONS

(b) Be able to read, speak, and understand the English language, or have such operating limitations placed on his pilot certificate as are necessary for safety, to be removed when he shows that he can read, speak, and understand the English language; . . .

§ 61.153 [Amended]

8. Section 61.153 is amended by deleting the reference to "§ 61.141" and inserting "§ 61.151" in place thereof and by deleting the reference to "§ 61.145" and inserting "§ 61.155" in place thereof.

§ 61.155 [Amended]

9. Section 61.155 is amended by deleting the reference to "§ 61.31" in paragraph (a) and inserting "§ 61.73" in place thereof and by revoking and reserving paragraph (f).

§ 61.157 [Amended]

10. Section 61.157 is amended by deleting the reference to "§ 61.37(c)" and "§ 61.37(c) (2)" in paragraph (b) and inserting "§ 61.85(g)" in place thereof.

§ 61.159 [Amended]

11. Section 61.159 is amended by deleting the reference to "§ 61.143" in paragraph (b) and inserting "§ 61.153" in place thereof.

§ 61.165 [Amended]

12. Section 61.165 is amended by deleting the reference to "§ 61.151" in paragraph (a) and inserting "§ 61.159" in place thereof, by deleting the reference to "§ 61.155" in paragraph (a) and inserting "§ 61.163" in place thereof, by deleting the reference to "§ 61.151" in paragraph (b) and inserting "§ 61.159" in place thereof, by deleting the reference to "§ 61.153" in paragraph (b) and inserting "§ 61.161" in place thereof, by deleting the reference to "§ 61.155" in paragraph (b) and inserting "§ 61.163" in place thereof, and by deleting the reference to "§ 61.143 through 61.147" in paragraph (c) and inserting "§ 61.153 through 61.157" in place thereof.

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C., on November 15, 1976.

JOHN McLUCAS,
Administrator.

[FR Doc.76-34374 Filed 11-19-76; 8:45 am]

[Airspace Docket No. 76-WE-26]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Temporary Control Zone

On October 7, 1976, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (41 FR 44193) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would establish a new tem-

porary control zone at Anaheim, California.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received and the proposed amendment is hereby adopted without change.

Effective date: This amendment shall be effective 0901 GMT, February 3, 1977.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Los Angeles, California on November 9, 1976.

LYNN L. HINK,
Acting Director, Western Region.

In § 71.171 (41 FR 355) the following temporary control zone is added:

ANAHEIM, CALIFORNIA (DISNEYLAND HELIPORT)

Within a 3-mile radius of Disneyland Heliport (latitude 33°48'40" North, longitude 117°55'30" West), excluding that airspace within the Fullerton and Long Beach, California airport control zones. This control zone is effective during the time period of February 3, 1977 through February 12, 1977.

[FR Doc.76-34375 Filed 11-19-76; 8:45 am]

Title 18—Power and Water Resources

CHAPTER 1—FEDERAL POWER COMMISSION

[Docket No. RM76-13; Order No. 555]

PART 2—GENERAL POLICY AND INTERPRETATIONS

Uniform Systems of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C, and D); Inclusion of Construction Work in Progress in Rate Base

NOVEMBER 8, 1976.

On November 14, 1974, at 39 FR 40787, this Commission issued a Notice of Proposed Rulemaking in Docket No. RM75-13. The proposed rule would have allowed the inclusion of construction work in progress (CWIP) in the rate base of natural gas pipelines and jurisdictional electric utilities. Comments were received from over one hundred parties, about evenly divided between those favoring and opposing the rulemaking, with many offering suggested changes.

In January 1976, at 41 FR 4605, the Commission announced an oral argument to be held on March 8, 1976. In response to that notice over fifty parties presented oral argument. Written comments were also submitted by most of those parties as well as by ten additional parties.

Among the modifications proposed in the notice of November 14, 1974, were amendments to the Uniform System of Accounts (USA) providing for the exclusion of certain levels of investment in CWIP from the base upon which the Allowance for Funds Used During Construction (AFUDC) would be calculated. After reviewing the comments received on this subject, we find that, while other changes in the regulations are appro-

RULES AND REGULATIONS

51393

prate, no amendments to the Uniform Systems of Accounts are necessary. The systems, as now promulgated, provide for inclusion of AFUDC as a construction cost, where applicable. We believe that this provision is sufficient to govern the capitalization or exclusion of AFUDC on CWIP consistent with the rate treatment given such amounts. We have, however, decided to adopt specific principles determining the rate base treatment we will accord CWIP for ratemaking purposes. The changes adopted and the reasons therefore are discussed herein.

The question of the proper treatment for ratemaking purposes of capital expenditures which have not yet been placed in service is one which is subject to a play of conflicting principles. On the one hand, public utility regulation has generally adhered to the principle that a rate base should only include items which are "used and useful." On the other hand, regulation has also always recognized that the expense of financing construction to serve customers is itself a legitimate expense which must ultimately be borne by the ratepayers. In the past this latter principle has been accommodated by the institution of AFUDC. By this method, the financing costs of the construction are added to the overall cost of the plant, which is then paid by the ratepayers in the form of depreciation and rate of return on the augmented rate base. The ratepayers do not avoid payment of financing costs by either method; only the timing of their payment differs.

Regulatory commissions have adopted both AFUDC and CWIP as legitimate approaches. A large number of states have permitted the inclusion of CWIP in the rate base, provided that AFUDC is not capitalized (and thus no credit is made to operating income). See *Re General Teleph. Co. of the Southwest*, 89 PUR 3d 92 (1971); *Re General Teleph. Co. of Alabama*, 77 PUR 3d 375 (1969); *Re Potomac Electric Power Co.*, 84 PUR 3d 236 (1970). In fact, about half of the states now permit inclusion of at least some portion of CWIP in rate base. This inclusion has been upheld by Federal as well as State Courts. See *Goodman v. Public Service Commission*, 497 F. 2d 661 (D.C. Cir. 1974).

While this Commission has previously refused to permit electric utilities and natural gas pipelines to earn a return on plant in the process of construction,¹ there is abundant legal authority for the proposition that an administrative agency has the right to change a given

policy when the agency finds such change to be in the public interest. *Consolidated Gas Supply Corp., et al. v. F.P.C.* 520 F.2d 1176 (D.C. Cir. 1975); *Greater Boston Television Corp. v. F.C.C.* 444 F.2d 841, 852 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971).

Most recently, in *Consolidated Gas*, supra, the Court of Appeals for the District of Columbia Circuit reiterated:

The legal system does not compel rigidity, or bureaucratic inflexibility, least of all in the area of energy policy where flexibility may be essential to the public interest. It is the genius of the administrative process to be flexible in response to observed developments, and an agency may 'switch rather than fight the lessons of experience.' [citations omitted]. *Consolidated Gas*, supra, 520 F.2d at 185, quoting *PSC of New York*, 511 F.2d 338, 353 (D.C. Cir., 1975).

In addition to this general authority for changes in Commission policy, the courts have traditionally given this commission wide latitude in changing its ratemaking policies to produce just and reasonable results.² As recently as October of last year, the Commission's establishment of a national rate for jurisdictional wellhead sales of natural gas was upheld by the United States Court of Appeals for the Fifth Circuit.³ And on November 3, 1975, the D.C. Circuit affirmed the Commission's adoption of the "future test year" concept for electric utility ratemaking.⁴

Until recent years, the construction period for new plant was fairly short, construction costs were low, and financial conditions were such that the accounting and ratemaking question was more of academic interest than a matter of serious financial concern to utilities. In addition, until quite recently the amounts of money tied up in construction work in progress, and the proportion of income represented by AFUDC, were quite small. Considered as a proportion of net income available for common stock of electric utilities, AFUDC has risen from 3.9% in 1965 to 19.4% in 1970, to 28.2% in 1972, and to 35% in 1974, before dipping slightly to 32% in 1975. As a proportion of net electric utility plant in service, CWIP rose from 6.3% in 1965-66 to 19.4% in 1973-74. Perhaps most importantly, AFUDC as a proportion of dividends paid on common stock rose to over 50% in the 12-month period ending November 1975. Because AFUDC is not cash income, these figures mean that the cash flow available to finance expansion is greatly reduced, with a corresponding increase in borrowing, and interest charges.

Materials in this record provided by the National Power Survey Technical Advisory Committee on Finance indicate that the electric utility industry will need

to raise \$175 billion to \$335 billion in the next 10 years, of which some \$115 billion to \$220 billion is projected to come from the capital market. Whether this figure is exactly accurate or not, it is clear that electric capital demands will be very large. In those circumstances, there is a serious question as to whether external capital can be raised if the "quality of earnings" is diluted by large amounts of AFUDC, and whether the necessary internally generated cash can be achieved.

There is substantial evidence in the record that beyond some point the investment community simply does not treat the accounting earnings attributed to AFUDC as the equivalent of actual cash income. This view of AFUDC "earnings" reduces the amount of borrowing that can be sustained based on the income allowed by regulatory commissions.

To explain further, under the present system of rate base calculation, utilities are allowed to include the cost of funds used during construction in the total plant cost which will be included in rate base upon completion. They must correspondingly include such amounts as an addition to income, even though no corresponding amount of cash will be received until after the plant is placed in service. Because of the lack of current cash flow, potential investors are apt to discount the value of income attributable to AFUDC. As public utility consultant W. Truslow Hyde, Jr. recently noted:

Investors can hardly be expected to give full value to earnings so heavily dependent on the credit for interest charged to construction which results from nothing more than an arbitrary credit and an assumption that the plant under construction will produce sufficient earnings to offset the decline in this credit when the plant is placed in service. Affidavit filed with the North Carolina Utilities Commission in *Re Duke Power Co.*, Docket No. E-7, Sub. 128.

The New York Public Service Commission also pointed out that investors and bond rating agencies view income which includes interest capitalized during construction in a less favorable light than income derived from the sales of utility services. *Re Long Island Lighting Co.*, 99 PUR 3d 460 (1973).

Finally, investors may also justifiably be skeptical of AFUDC "earnings", as their realization may be dependent on the timely allowance of future rate increases.

The weakening of the "quality of earnings" means that a company with large amounts of CWIP/AFUDC may be required to pay more for capital than it would if it had equivalent amounts of cash earnings as the result of the initially higher revenues caused by the inclusion of CWIP. Under such circumstances, including CWIP in the rate base will benefit consumers by the lower cost of both new and equity capital which are reflected in the rates. In addition, ratepayers will have lower rates in the future under CWIP, because the rate base will then not be inflated by capitalization of AFUDC.

The record also indicates, however, a number of factors that would militate

¹ *City of Detroit, et al. v. Panhandle Eastern Pipe Line Company, et al.*, 3 F.P.C. 273 (1942).

² National Association of Regulatory Utility Commissioners, 1974 Annual Report on Utility and Carrier Regulation, Washington, D.C., 1976, pp. 391-392.

³ *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944); *Georgia Power Company*, Docket No. E 9091, order issued August 5, 1975 and September 10, 1975; *Philadelphia Electric Company*, Docket No. E 9388, order issued September 20, 1975.

⁴ *F.P.C. v. Hope Natural Gas Co.*, supra n. 3; *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

⁵ *Shell Oil Co., et al. v. F.P.C.*, 520 F.2d 1091 (5th Cir. 1975), cert. denied, sub nom. *California Co. v. F.P.C.*, No. 75-1289, et al., June 14, 1975.

⁶ *American Public Power Association, et al. v. F.P.C.*, 522 F.2d 142 (D.C. Cir. 1975).

51394

RULES AND REGULATIONS

against the blanket inclusion of CWIP in all cases. These relate primarily to state commission treatment, and to the lack of identity between the present ratepayers, who benefit in the short run from the use of AFUDC, and the future ratepayers, who are the primary beneficiaries of the use of CWIP. This lack of identity may be due to geographical mobility, as with service to areas of expanding population, or to intergenerational factors, as explained by the witness Rose Kryzak at our oral argument, who indicated that some present ratepayers would not live long enough to be future ratepayers. It may also be due to the possibility that a present wholesale customer of the utility may not be such a customer in the future.

The New York Public Service Commission recently had occasion to discuss the identity of ratepayers and the need to include CWIP in rate base under appropriate circumstances:

"... [W]e recognized that large and growing CWIP balances can be expected to continue in the foreseeable future as utilities attempt to meet expanding demands for energy. The traditional argument that interest on construction should be capitalized in order to prevent present customers from being burdened with costs incurred for the benefit of future customers has less validity today, since a substantial portion of these construction requirements result from increasing demands made by present customers rather than growth in the number of customers. (*Long Island Lighting Co.*, 69 PUR 3d 460 (1973))

All of the above considerations lead this Commission to conclude that it will not adhere to an absolute rule that plant must be "used and useful" in the traditional sense before it may be included in rate base. Of course, in a very real sense, a plant under construction, which will go on line in the future, is quite useful to consumers. Were the plant not under construction, the consumers might well be facing a certain danger of future power insufficiency, which threat will be alleviated by the new plant.

We are excluding natural gas companies from the scope of this rulemaking. There are several differences in the situations of the gas and electric industries which justify this distinction. In 1974 the Class A & B Electric Utilities had over \$23 billion in CWIP, while the comparable gas companies had only a little over one-half billion dollars, which is only about 3% of gas plant in service. While the gas industry is undertaking a number of major, even mammoth projects, these are generally of a distinctive character which would make the instant rule an undesirable a priori solution to the questions they raise. For just this reason, these projects have in the past frequently been undertaken by some form of project financing. The possible use of this tool should not be curtailed by the too easy availability of CWIP financing.

Additionally, the general condition of identity between present and future electric consumers is much less true in the gas industry. There are serious questions as to the trend of future gas usage. Current ratepayers could well be curtailed

in the future, making it unfair to force them to pay now for facilities they will not be able to use. Similarly, if the Commission were to heed arguments for incremental pricing of supplemental gas supplies, automatic inclusion of CWIP in rate base could lead to a serious mismatch between costs and benefits. The basic problem in the gas pipeline industry is one of supply, not transmission capacity, and can best be dealt with directly through measures to encourage supplies.

The allowance of CWIP in the rate base involves a judgement that it is equitable for present ratepayers to provide funds that would otherwise be provided by future ratepayers. At the present time, there is only one area where the Commission has agreed for all companies that this outcome would be equitable. This is in the area of facilities which are required because of the current generation's commitment to the control of pollution, or its consumption of existing stocks of natural resources. Thus, we will allow the inclusion of CWIP in rate base where the construction is of facilities to be used for pollution control, or for the conversion to the burning of other fossil fuels of plants which now burn oil or gas. In these cases, it is the profligacy of the present generation which requires the new facilities, and we consider that the equitable argument favoring this allocation of costs is sufficient to tip the balance in favor of the allowance of CWIP on these facilities.

The definition of the facilities to be thus treated requires some care. It is our intention that pollution control facilities shall include identifiable structures or portions of structures which are designed to reduce the amount of pollution produced by the underlying power facility. It is not the intention of this section to permit such treatment for facilities which lessen pollution, by substituting a different non-polluting method of generation.

We note as a useful guide the language adopted by the Internal Revenue Service in connection with certain tax treatment of "pollution control" facilities. That definition includes "a new identifiable treatment facility which is used . . . to abate or control water or atmospheric pollution or contamination by removing, altering, disposing or storing of pollutants, contaminants, wastes, or heat. . . ." While we do not adopt the full regulation contains certain time provisions, and requires a local certification which frequently does not occur until after completion of the facility, we believe the quoted language is a fair statement of the types of facilities which will be approved by the Commission.

We would also note that certification by a local, state, or federal agency as being in conformity with, or required by, a program of pollution control would be extremely important evidence.

A comparable definition is found at page 501 of the present FPC Form 1 covering plant and equipment to be reported by companies as environmental protection facilities. That definition is

"... any building, structure, equipment, facility or improvement designed and constructed solely for control, reduction, prevention or abatement of discharges or releases into the environment of gaseous, liquid or solid substances, heat, noise . . ."

The examples given at items 4A to 4D of that schedule are a useful, though not definitive guide, to items coming under this category, as follows:

- A. Air pollution control facilities:
 - 1. Scrubbers, precipitators, tall smokestacks, etc.
 - 2. Changes necessary to accommodate use of environmentally clean fuels such as low ash or low sulfur fuels including storage and handling equipment
 - 3. Monitoring equipment
- B. Water pollution control facilities:
 - 1. Cooling towers, ponds, piping, pumps, etc.
 - 2. Waste water treatment equipment.
 - 3. Sanitary waste disposal equipment.
 - 4. Oil interceptors.
 - 5. Sediment control facilities.
 - 6. Monitoring equipment.
- C. Solid waste disposal costs:
 - 1. Ash handling and disposal equipment.
 - 2. Land.
 - 3. Settling ponds.
- D. Noise abatement equipment:
 - 1. Structures.
 - 2. Mufflers.
 - 3. Sound proofing equipment.
 - 4. Monitoring equipment.

Although the operation of such facilities may require some additional power, the Commission under this definition will not allow the inclusion of any construction simply designed to provide additional power or generating capacity required because of, or for the operation of, such facilities. Nor would we allow CWIP for recreational, aesthetic, or wildlife facilities under this definition. Thus, the items listed in Sections 4E through 4G of the schedule on page 501 would not be allowed under the category defined as pollution control facilities.

With regard to fuel conversion facilities, current national policy likewise supports the policy that plants previously burning gas convert to use of other fuels, and that many oil burning plants convert to fuels other than gas. The reasons for such conversion include curtailment of the gas supply and related policies of this agency under the Natural Gas Act and Federal Power Act. Thus, we will allow the inclusion of CWIP for facilities which are used to make conversion possible, regardless of the specific reason for the conversion. This involves both alterations to the internal plant workings, such as oil or coal burners, soot blowers, bottom ash removal systems, and concomitant air pollution control, as well as facilities needed for receiving and storing the alternate fuel, which would not be necessary if the plant continued to burn gas, or oil, as originally designed.

The effect on FPC jurisdictional wholesale rates of allowing CWIP of pollution control devices and conversions in rate base would be an initial rate

RULES AND REGULATIONS

51395

increase of from one to two percent. This increase will, of course, be offset on a present worth basis, and more than offset on a gross dollar basis, by lower rates after the equipment goes into service. In 1975, if the pollution control equipment CWIP reported on FPC Form 1 had been allowed in rate base and rate schedules all had been adjusted, wholesale rates would have been higher by less than one percent.

However, during roughly the next five years the CWIP for pollution control equipment and conversions is expected to rise as a percentage of total CWIP. This change primarily reflects the need to retrofit air pollution control equipment in existing coal plants and in plants converting to coal, and the expected large proportion of coal plants in new construction with their need for controls. In the early 1980's retrofitting and conversions should be largely completed and nuclear plants may become a large percent of new construction. During the next 10 years, the impact of allowing CWIP for pollution control equipment and conversions in rate base, exclusive of the offsets mentioned above, is projected to be wholesale electric rates one to two percent higher than what they otherwise would be. The figure is likely to be closer to two percent initially, with a decline after a few years.

If a plant is not placed in service or its start-up is inordinately delayed, the Commission would, under its usual powers to review expenses for prudence, entertain arguments that appropriate measures should be taken to redress the excess costs based on inclusion in rate base of CWIP for that unit. While in many instances such a delay or abandonment will have occurred under conditions that indicate prudent management throughout, we feel it is appropriate to warn that the inclusion of CWIP for these limited purposes is not a blank check, freeing utilities from the necessity to use ordinary care in their construction programs.

The FPC will also permit, in individual proceedings, inclusion of CWIP in rate base where the utility is in severe financial stress. The financial circumstances that we contemplate are those in which it would be clearly detrimental to utility wholesale customers if some amount of CWIP were not permitted in rate base. In particular, we envision a situation in which the rate of return necessary to enable the utility to maintain its credit and attract capital in accordance with the standards of the Bluefield decision would be materially in excess of the cost of capital for otherwise similar utilities. Such a circumstance might arise, for example, where the exigencies of the utility's construction program are such as to reduce its interest coverage to such an extent that additional capital cannot be raised at reasonable rates and that an amount of earnings sufficient to attract capital would require a rate of return on equity substantially in excess of the cost of equity capital to otherwise similar electric utilities. Under such circum-

stances, it would be to the benefit of the consumer if the additional earnings necessary to attract capital were permitted by way of a return on CWIP rather than by way of an inflated return on the traditional rate base since the former treatment would eventually be reflected in a lower rate base by way of reduced AFUDC allowance, while the latter would not.

We cannot emphasize too strongly, however, that we will not consider any inclusion of CWIP in rate base (apart from the exceptions mentioned above) absent a clear showing of severe financial difficulty which cannot be otherwise alleviated without materially increasing the cost of electricity to consumers. Where such a showing is clearly and convincingly made, we will consider the inclusion of some amount of CWIP in rate base on a case-by-case basis. Under no circumstances will inclusion of CWIP in rate base, solely because of severe financial stress, be permitted prior to a final Commission determination on rehearing that financial circumstances justify inclusion.

The Commission finds: (1) The notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently before this Commission through the submission, in writing, of data, views, comments and suggestions in the manner as described above are consistent and in accordance with the procedural requirements prescribed by 5 U.S.C. 553.

(2) The additions to section 2 of the Federal Power Commission's Rules and Regulations, General Policy and Interpretations, herein prescribed are necessary and appropriate for the administration of the Federal Power Act.

(3) It is necessary and appropriate in the public interest and to aid in the enforcement of the Federal Power Act to permit rate base treatment for pollution control and conversion devices as hereinafter provided.

(4) Good cause exists to adopt in part the instant rulemaking and to terminate the proceedings in Docket No. RM75-13, as hereinafter ordered and conditioned.

(5) Since the revisions prescribed herein which were not included in the notice of this proceeding, are consistent with the prime purpose of the Proposed Rulemaking, further compliance with the notice provision of 5 U.S.C. 553 is unnecessary.

The Commission orders: (A) Part 2 of the Federal Power Commission's Rules and Regulations, General Policy and Interpretations, is amended by adding a new § 2.16 to read as follows:

§ 2.16 Inclusion of construction work in progress in rate base of electric utilities:

(a) The Commission will allow, upon application, in a rate case filed on or after December 8, 1976, and subject to paragraph (c) of this section, the inclusion in rate base of CWIP on:

(1) *Pollution control facilities*: i.e. including identifiable structures or portions of structures which are designed to

reduce the amount of pollution produced by the underlying power facility; *Provided, however*, That facilities which lessen pollution by substituting a different non-polluting method of generation shall not be included within this definition; and *Provided further*, That the definition herein prescribed shall not include facilities for generation of additional power necessitated by the operation of pollution control facilities. In determining which facilities qualify as pollution control facilities, the Commission will consider:

(i) Whether such facilities fall within the Internal Revenue Service language, 26 U.S.C. 169; i.e. "a new identifiable treatment facility which is used * * * to abate or control water or atmospheric pollution or contamination by (the) removing, altering, disposing or storing of pollutants, contaminants, wastes or heat;"

(ii) Whether such facilities have been certified by a local, state, or federal agency as being in conformity with, or required by, a program of pollution control;

(iii) Whether such facilities meet the definitions of environmental protection facilities under Sections 4A through 4D of page 501 of FPC Form 1; as well as

(iv) Any other relevant evidence tending to show that such facilities are for pollution control; and

(2) *Fuel conversion facilities*: i.e. facilities which enable a plant which previously burned natural gas to convert to use of other fuels and facilities which enable oil-burning plants to convert to fuels other than natural gas. Such facilities would include those which alter internal plant workings, such as oil or coal burners, soot blowers, bottom ash removal systems, and concomitant air pollution control facilities, as well as facilities needed for receiving and storing the alternate fuel, which would not be necessary if the plant continued to burn gas, or oil, as originally designed.

(b) With the exception of the devices discussed and defined in paragraph (a) of this section, the Commission shall permit CWIP in rate base only after: (1) An electric utility has made application therefor, and (2) The Commission by final order has approved such application, and (3) The utility has, following (b) (1) and (2) of this section, filed to include the CWIP in its rate base in a rate case filing under section 205 of the Federal Power Act. In its application, the utility must show severe financial difficulty which cannot be otherwise alleviated without materially increasing the cost of electricity to consumers and also must show that it has met the requirements of paragraph (c) of this section. In no event shall a utility collect amounts related to CWIP under this subsection, subject to refund, prior to the issuance of a final order on rehearing approving inclusion of such amounts in rate base.

(c) As a necessary condition of meeting the requirements of (a) (1) and/or (a) (2) and/or (b) of this section, the utility must show it will discontinue the capitalization of AFUDC on such

Attachment 1.6: 48 FR 46012-46018 (1983), Page 1

Construction Work in Progress for Public Utilities, 48 FR 46012-03

48 FR 46012-03, 1983 WL 107956(F.R.)
RULES and REGULATIONS
DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission
18 CFR Parts 2 and 35
[Docket Nos. RM81-38-001 etc.]

Construction Work in Progress for Public Utilities

Tuesday, October 11, 1983

***46012** Issued: October 4, 1983.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting in part and denying in part applications for rehearing.

SUMMARY: The Commission grants, in part, and denies, in part, applications for rehearing of order No. 298. The Commission grants rehearing, in part, to modify the initial rate impact limitation in the Construction Work in Progress (CWIP) rule. Order No. 298 is a final rule which provides that any public utility engaged in the sale of electric power for ***46013** resale may file to include in rate base (1) up to 50 percent of CWIP, subject to a rate impact limitation in the first two years, and (2) all CWIP associated with pollution control and fuel conversion facilities.

EFFECTIVE DATE: October 4, 1983.

FOR FURTHER INFORMATION CONTACT:

Michael R. Postar, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8033.

Ronald L. Rattey, Federal Energy Regulatory Commission, Office of the Regulatory Analysis, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8154.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is granting in part and denying in part the applications for rehearing filed pursuant to the Commission's Order No. 298, a final rule that establishes new regulations to govern the inclusion of construction work in progress (CWIP) in the rate base of public utilities. [FN1] The new rule replaces present CWIP policy, codified in 18 CFR 2.16, with a new § 35.26 which provides that any public utility engaged in the sale of electric power for resale may file to include in rate base up to 50 percent of CWIP, subject to a rate impact limitation in the first two years, and all CWIP associated with pollution control and fuel conversion facilities. In addition, the rule amends the requirements of certain cost of service statements in § 35.13 in order to obtain information about construction programs pertinent to the utility's rate change filing. Under these new filing requirements, applications for inclusion of CWIP in rate base will enable the Commission, at an earlier stage in each rate proceeding than under present policy, to evaluate the prudence of the claimed costs, including the extent to which the investment is part of a least-cost power supply strategy.

Attachment 1.6: 48 FR 46012-46018 (1983), Page 2

Construction Work in Progress for Public Utilities, 48 FR 46012-03

On rehearing, the Commission clarifies the final rule, in part by modifying the rate impact limitation, and addresses the issues raised by applicants.

II. Background

Applications for rehearing of Order No. 298 were filed on June 15, 1983 by: Alabama Electric Cooperative, Inc., jointly with Kansas Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, Oglethorpe Power Corporation, Old Dominion Electric Cooperative, Inc., Sam Rayburn G&T, Inc., and the South Mississippi Electric Power Association (ACE); Public Systems; Consumer-Owned Power Systems (COPS); Municipal Electric Distribution Group (MEDG) (above are "wholesale customers"); Edison Electric Institute (EEI); Montaup Electric Company (Montaup); New England Power Company (NEPCO); American Public Power Association (APPA); National Rural Electric Cooperative Association (NRECA); American Paper Institute (API); and Consumers Union of United States, jointly with Natural Resources Defense Council (CU). Two untimely applications for rehearing were filed, one by the Mountain Plains Congress of Senior Citizens Organization, et al. (Mountain Plains) (June 16, 1983), and a second by the U.S. Small Business Administration, (SBA) (June 22, 1983). The Commission considers these as petitions for reconsideration.

Applicants claim that the Commission erred in several fundamental respects. First, while several applicants support the Commission's approach, they claim that the new rule restricts utilities from filing superseding rate schedules for 10 months if the superseded rate schedule contains any CWIP under subparagraph (c)(3), i.e., CWIP other than that associated with pollution control and fuel conversion facilities, even if the superseding rate does not increase the level of such CWIP. Second, some other applicants believe the Commission failed to ensure that wholesale utilities are not assessed CWIP costs for any plant that will not serve them due to their imminent departure from the utility's system. Third, some applicants address certain inadequacies in the environmental analysis, the regulatory flexibility analysis and the record support for the rule generally. Finally, applicants argue that public utility management is not necessarily biased against capital investment under current rate regulation with respect to the FERC-jurisdictional portion of utility rates. Applicants also request rehearing on other issues discussed in the final rule, including the price signal and rate stability rationales used by the Commission, the intergenerational matching of costs and benefits, price squeeze, how the prudence of construction is determined, the industry's financial condition, and the benefits of alternatives to CWIP such as contributions in aid of construction and joint ventures.

On July 15, 1983, the Commission issued an "Order Granting Rehearing for Purposes of Further Consideration and denying Petitions for Stay of Final Rule" which tolled the period for consideration of the issues raised by the rehearing applications.[FN2]

III. Discussion of Applications for Rehearing

A. Limitation on Rate Filings Under the CWIP Rule

NEPCO, Montaup, and EEI apply for rehearing with respect to the operation of the initial limitation in paragraph (d) of § 35.26 of the final rule,[FN3] as it applies to CWIP allowed under paragraph (c)(3), that is, CWIP other than that associated with pollution control and fuel conversion facilities. First, these applicants state that paragraph (d) has the potential to restrict utilities that have received any CWIP under subparagraph (c)(3) from requesting additional CWIP in rate base for a much longer period than the Commission intended, due to the Commission's ability to suspend rates for up to 5 months from the proposed effective date. In other words, utilities may not be able to request additional CWIP in rate base for possibly as long as 17 months from the initial request for CWIP in rate base if the CWIP-related rate is suspended for five months. Second, these applicants read paragraph (d) of § 35.26 to prevent any general rate change requests during the ten-month restriction, even if that request does not increase the level of CWIP in rate base. The three applicants state that the Commission did not intend to restrict general rate applications that do not change the level of existing CWIP in rate base but intended only to prevent, for a specified time, higher rates due solely to requests for increased amounts of CWIP in rate base under paragraph (c)(3). Consequently, the applicants recommend amending § 35.26(d).

Attachment 1.6: 48 FR 46012-46018 (1983), Page 3

Construction Work in Progress for Public Utilities, 48 FR 46012-03

action. The Commission has considered the issues raised with respect to the EA on rehearing and has responded to all significant arguments.

Several applicants also cite as procedural error the Commission's references in the final rule to the EA. Since the EA was not available for public comment, the applicants believe that the public was denied an opportunity to comment on a part of the record support for the final decision.

Environmental Assessments are prepared to assist in determining whether an Environmental Impact Statement must be prepared. The Commission recognizes that preparation of NEPA documents can frequently improve the quality of agency decisions overall, for other than environmental purposes, particularly by examining available alternatives. The Commission's EA had that salutary effect in this case and the information and perspective that it furnished the Commission was useful. However, an agency's obligations under the National Environmental Policy Act of 1969 to engage in environmental analysis is based on there existing a sufficiently direct connection between the agency's action, in this case the inclusion in rate base of some costs at an earlier time than previously allowed, and an actual environmental consequence, in this case the construction of utility plant.[FN15] Regardless of whether such a causal relationship exists with respect to the CWIP rule, the preparation of an EA ensures that a reviewable environmental records exists, including an examination of available alternatives that the Commission believes were less than fully explicated by the commenters.

The references to the EA in the final rule provide collateral support for the Commission's analysis and the studies submitted by commenters that the Commission relies upon in the final rule. The Commission wishes to ensure recognition of the information in the EA which lends perspective and understanding to the other analyses in the record. The Commission sees no reason not to utilize the information that was developed in the course of preparing the EA.

MEDG claims that the Commission dealt inadequately, procedurally and substantively, with empirical studies relied upon in its final rule. MEDG claims the Commission relied upon an EIA study and two other studies[FN16] which were not part of the record nor made available for public comment. MEDG also contends that the Commission failed to respond to the comments made by parties on three other cited studies that were part of the record.[FN17]

***46017** Any non-record studies that the Commission considered in reaching its decision complemented and supported the findings of the on-the-record studies and the Commission's policy analysis contained in the final rule. Among those non-record studies were the time trend analyses for CWIP-based rates relative to AFUDC-based rates. The Commission believes that the disparity between CWIP-based and AFUDC-based rates would obviously be greatest in the early years and diminish over time, unless one hypothesized unreasonably high growth rates in CWIP. While the EIA study provided initial rate impacts which may have been less accurate than the FERC study (due to data and modeling problems), the results over time and regionally were consistent in showing decreasing disparities over time. With regard to the initial rate impacts, primary reliance is placed by the Commission on the FERC study which was issued for public comment and which forms part of the rulemaking record.[FN18] There is thus an adequate basis for the rule without the EIA study.

With regard to MEDG's criticism of the Commission for failing to respond to comments on the FERC staff study or other record impact studies, no one—including MEDG—commented on or criticized the FERC study. With regard to the Commission's purported failure to respond to comments on the other record impact studies (by Oglethorpe and Appalachian Power), MEDG has provided no specific references to such comments that the Commission may have overlooked except with regard to MEDG's own reply comments. However, MEDG's reply comments were responding to a cost of capital study rather than the challenged rate or cash flow impact studies, as MEDG seems to allege. Review of the EA and the final rule indicates that the Commission relied extensively upon comments on the cost of capital studies, including those of MEDG.[FN19]

E. The Investment Bias Question

Several applicants assert that the rationale for the CWIP rule is flawed because the primary cause of any bias against capital investment attributable to earnings attrition[FN20] is, they assert, inadequate retail rate regulation by the various state

Attachment 1.6: 48 FR 46012-46018 (1983), Page 4

Construction Work in Progress for Public Utilities, 48 FR 46012-03

commissions. The absence of earnings attrition at the wholesale level is ascribed by these applicants to the "pancaking" of rate cases, this Commission's practices of using forecasted test years, and the policy of granting one-day suspensions for rate increases that fall within specified bounds. In addition, these applications claim that any need for CWIP has been eliminated by changes in economic conditions, especially the moderation of inflation and the decline in nominal interest rates. As a result, applicants claim, there is no need to allow utilities to file to include CWIP in rate base.

The fact that the financial condition of utilities has improved somewhat does not undermine the Commission's fundamental point since there is no guarantee that the dramatic fluctuations in economic conditions that strained the financial condition of utilities in the 1970's will not prove cyclical, i.e., that the improved circumstances will be more than a short-lived phenomenon. Further, while inflation has moderated and nominal interest rates have fallen, interest rates remain very high. Accordingly, the carrying costs on an investment remain unusually high in real terms.

A review of the comments on the Notice of Proposed Rulemaking indicates that it is not possible to determine whether earnings attrition is attributable solely to the state-regulated retail rates level, as claimed by some applications. This is an area which may benefit from further study and, in fact, members of the Commission staff are presently engaged in further analysis of the question. The results of this study will be released upon completion. But, at least on the basis of presently available information and analysis, it cannot be shown that wholesale rates are immune from earnings attrition.

Moreover, concern over attrition is not the only source of a possible investment bias. As long as utilities are required by reasonable demand projections to maintain large construction programs, their cash flow requirements will be large. Under present ratemaking practices, the utility must capitalize the carrying costs on its investment as AFUDC, which of course represents non-cash earnings. The comments support the conclusion that AFUDC earnings are viewed by investors as inferior quality earnings.[FN21] The prevalence of a high proportion of such non-cash earnings tends to result in lower interest coverage ratios which then tend to restrict a utility's flexibility in meeting its public utility obligations and may encourage the utility to pursue short-term strategies designed more to respond to these financial constraints rather than to meet long term demand for electric power at the lowest reasonable cost.

As stated in Order No. 298, conversion of non-cash AFUDC into cash earnings under the CWIP approach will significantly improve utilities' cash flow with respect to their jurisdictional operations. This improvement in cash flow should result in higher interest coverage ratios and improve bond ratings.[FN22] Utilities would then be in a better posture to pursue lowest cost generating strategies which will ultimately benefit the ratepayers when the new facilities go into service.[FN23] The concern over financing will remain even where utilities are earning their allowed rates of return.[FN24] Thus, even if earnings attrition is controlled, the utility faced with a cash flow problem will be encouraged to favor less capital-intensive facilities, which may have higher operating costs with higher overall costs, over more capital intensive facilities with lower overall costs.

It is emphatically not in the Nation's interest for a regulatory policy to encourage utilities to favor high-cost power supply alternatives over low-cost strategies. Yet the Commission's present ratemaking practice may do just that. By allowing the utility to recover on a current basis the carrying costs on new investments, the CWIP rule will mitigate the financial drain and allow the utility to pursue a least-total-cost generating strategy, even if immediate cash flow requirements associated with such a least-cost approach are high. This should also tend to reduce the cost to ***46018** the utility of financing the construction. Any such reduction in financing costs redounds to the benefit of the ratepayer, of course.

Applicants are correct in noting that the Commission's action alone will not materially affect any attrition-related bias where the FERC regulates only a small portion of a utility's sales as is the case generally. In determining the proper policy to apply in setting electric rates, the Commission must rely on its best judgement of the facts and circumstances as it understands them. The states must also use their best judgement. The Commission's limited jurisdiction over electric rates cannot be the guiding factor in the Commission's decisions. State commissions have widely varying policies on CWIP. In those states where CWIP is allowed in rate base, the Commission's CWIP rule will work in tandem with theirs. If CWIP is not allowed in rate base at

Attachment 1.6: 48 FR 46012-46018 (1983), Page 5

Construction Work in Progress for Public Utilities, 48 FR 46012-03

the retail level, the Commission's final CWIP rule may have little impact on the utilities' overall operations. This is the same for all of the Commission's ratemaking policies.

Nor ought the Commission try to make major changes in our ratemaking policies on the basis of today's financial headlines which change from month to month. For example, while the average market to book ratio of one group of utilities did attain 1.0 for one month during the spring of 1983, it since has drifted back down under 1.0, as shown by Table 1, below.

The concerns underlying the CWIP rule go further than daily fluctuations in utility stock performance. As detailed in Order No. 298, the Commission is also attempting to take some fairly modest steps to coordinate utility decisions as to how much capacity needs to be constructed with consumer decisions as to how much power to purchase.

In so doing, the Commission is essentially predicting that a CWIP in rate base policy will benefit the ratepayer over the long run notwithstanding the recognized increased in present rates. The Commission can offer no historical proof [FN25] beyond the appeal to economic analysis and common sense detailed in Order No. 298 and with which the extensive comments in this proceeding are replete. This is not surprising since "the very essence of policymaking is predicting what kind of behavior will be effected by what kind of incentives or sanctions." [FN26]

In any event, no CWIP will be allowed to be collected without a proper filing that conforms to the revised regulations, including the information required by the expanded reporting requirements of § 35.13. As a result, the Commission, the parties, and the public will have the necessary information to review and monitor developments under Order No. 298. Accordingly, while the Commission relies today on predictive judgments as to the effects of Order No. 298 on utilities, their customers, and their financial situation, the Commission expressly does not foreclose the public and the Commission's ability tomorrow to assess the accuracy of those predictions. [FN27]

The CWIP rule is not experimental in the sense of striking out on uncharted seas. Rather the rule represents the fruit of our past experience under the CWIP rules as they have evolved over the last decade. But in another sense the expanded CWIP rule is plainly "experimental," in that it represents a fairly significant modification of existing practice. The Commission retains all the necessary information and the procedural capability for modifying the rule in the future should future experience so dictate. Thus, the Commission holds to its approach, fully anticipating that "a month of experience will be worth a year of hearings." [FN28]

F. Price Signals and Rate Stability.

Applicants argue that the inclusion of CWIP in rate base is counterproductive in terms of price signals because in many cases that policy overstates the present and future cost of electricity, including the cost relative to substitute energy sources. For example, several applicants state that the CWIP policy fails to account for any reduction in fuel cost associated with the new plant, or the ability to spread fixed costs over an expanding customer base.

In response, Order No. 298 states that new generating capacity will not inevitably reduce the price of electricity in the future. [FN29] In fact, the opposite seems to be the general rule. For this reason, present customers should be fairly apprised that the cost of future capacity is likely to be more expensive. While applicants' assertion that the price signals from a CWIP in rate base policy will prove misleading to consumers if costs decline may be technically correct, the possibility of declining costs is nonetheless remote. The Commission continues to believe that signalling consumers that electricity costs can be anticipated to increase as old facilities are retired and new ones are built is a valid and important reason for the CWIP policy adopted.

Another basis for placing CWIP in rate base, as the Commission explained, [FN30] is the rate surge that inevitably occurs when a new plant becomes operable and, under the old rules, is eligible for rate base treatment. However, several applicants state that rate stability does not justify the CWIP rule. AEC states that the examples of "rate shock" relied upon in the final rule reflect retail rate situations. This applicant states that the effect of the rule will be to create rate shock for wholesale customers.

Attachment 1.7: 52 FR 123, 23948-23951 (1987), Page 1

23948

Federal Register / Vol. 52, No. 123 / Friday, June 26, 1987 / Rules and Regulations

1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane (\$40). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. By adding the following new airworthiness directive:

Saab-Fairchild: Applies to model SF-340 airplanes, manufacturer's serial numbers SF340A-003 through -078 inclusive, certificated in any category. Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To ensure the reliability of the emergency main landing gear extension system, accomplish the following:

A. Modify the wiring and connectors of the main landing gear emergency extension system in accordance with the instructions contained in SAAB Service Bulletin SF340-32-028, Revision 1, dated November 25, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer, may obtain copies upon request to SAAB, Aircraft Product Support AB, S-58188, Linköping, Sweden.

This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 3, 1987.

Issued in Seattle, Washington, on June 19, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-14501 Filed 6-25-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM86-6-000; Order No. 474]

Electric Rates; Construction Work in Progress, Anticompetitive Implication

Issued June 18, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting revised regulations concerning filings to include costs associated with construction work in progress (CWIP) in the rate base of public utilities, under Part II of the Federal Power Act, pursuant to a remand of the Commission's prior CWIP rule by the United States Court of Appeals for the District of Columbia Circuit, which affirmed in part but vacated in part the Commission's prior CWIP rule (Order No. 298), while expressing concerns about the anticompetitive implications of CWIP in rate base. *Mid-Tex Electric Cooperative, Inc., et al. v. FERC*, 773 F.2d 327 (1985). The present regulations are substantially different from those presented in Order No. 298, but are similar to those put into effect on an interim basis after the *Mid-Tex* decision (Order No. 448), with certain modifications intended to more thoroughly address the *Mid-Tex* court's concerns. The final rule prescribes treatment of CWIP filings generally and establishes procedures and guidelines for addressing and remedying potential anticompetitive effects of CWIP in rate base.

EFFECTIVE DATE: July 27, 1987.

FOR FURTHER LEGAL INFORMATION

CONTACT: Andre Goodson, Donna Bobbish, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St., NE, Washington, DC 20426, (202) 357-8467.

FOR FURTHER TECHNICAL INFORMATION

CONTACT: Ronald Rattey, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North

Capital St., NW., Washington, DC 20426, (202) 357-8293.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

On remand from the United States Court of Appeals for the District of Columbia Circuit,¹ the Federal Energy Regulatory Commission (Commission) is promulgating revised regulations concerning construction work in progress (CWIP)² for public utilities. These regulations are substantially the same as those adopted by the Commission in Order No. 448 (interim CWIP rule),³ with certain modifications concerning the anticompetitive implications of CWIP in rate base pursuant to the court's remand. In addition, in section III of this preamble, the Commission addresses specific comments concerning the implications of "price squeeze"⁴ and "double whammy"⁵ in considering filings that

¹ *Mid-Tex Electric Cooperative, Inc., et al. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985) (hereinafter referred to as *Mid-Tex*).

² CWIP represents the capital expenditures and unrecovered financing costs associated with the ongoing construction of projects for the replacement of operating plant and additions of new plant. To the extent a regulatory commission permits CWIP investment in an electric utility's rate base, the resulting rate level are affected initially only by the return allowed on that CWIP investment and related income taxes on the associated cost of equity embedded within the return on that investment and ultimately by lower rate base when the CWIP goes on-line.

³ Order No. 448, 51 FR 7774 III, FERC Statutes and Regulations (Regulations Preambles) § 30.689 (1986), *reh. denied*, 35 FERC ¶ 61,328 (1986).

⁴ A "price squeeze" occurs when a utility's wholesale rate (in relation to costs) is higher than its retail rates (in relation to costs), creating the potential for an anticompetitive effect because the wholesale customer is inhibited in its ability to compete at the retail level against the wholesale supplier.

⁵ "Double whammy," as defined in the accompanying rule, is a situation which may arise when a wholesale electric rate customer embarks upon its own or participates in a construction program to supply itself with all or a portion of its future power needs, thereby reducing its future dependence on the CWIP of the rate applicant, but is simultaneously forced to pay to the CWIP rate applicant the CWIP portion of the wholesale rates that reflects existing levels of service or a different anticipated service level. It is argued that this is anticompetitive because it would cause the wholesale customer to essentially subsidize other wholesale customers who would shoulder less of the CWIP burden as a result, thereby putting the first wholesale customer at competitive disadvantages *vis-a-vis* the utility and the other wholesale customers. As suggested in Order No. 298, 48 FR 24328, FERC Statutes and Regulations (Regulations Preambles 1982-1985) § 30.455 at 30.496 (1983), the Commission anticipates that double whammy implications will arise principally, if not entirely, in the case of requirements rates as opposed to coordination rates.

include CWIP-related amounts. The definition of price squeeze herein is revised from Order No. 448 in response to the *Mid-Tex* court's concern about price squeezes caused by disparities between Federal and State CWIP policies.

Another anticompetitive effect similar to double whammy is where a wholesale customer contracts to purchase its future power needs from a supplier other than the CWIP rate applicant, thereby reducing its future dependence on the CWIP of the rate applicant, but is forced to pay the CWIP portion of the wholesale rates that reflects existing levels or service or a different anticipated service level. Thus, this anticompetitive effect is similar to double whammy in that the wholesale customer would essentially subsidize other wholesale customers who would shoulder less of the CWIP burden as a result, thereby putting the first wholesale customer at competitive disadvantages *vis-a-vis* the utility and the other wholesale customers. The *Mid-Tex* court did not address the situation of a wholesale customer contracting to purchase its future power needs from an alternative supplier. However, given the similarity of the potential anticompetitive effects between this situation and double whammy, the Commission considers it appropriate to address both situations. Under the final rule, anticompetitive effects can be prevented in both situations. Thus, for purposes of this preamble, double whammy discussion should be deemed to also apply to situations in which a wholesale customer has contracted to purchase future power needs from a supplier other than the CWIP rate applicant.

The final rule does not change the substance of the general provisions of the interim CWIP rule under which public utilities could seek to include in rate base, in addition to pollution control and fuel conversion CWIP, up to 50% of all non-pollution control/fuel conversion (non-PC/FC) CWIP. After reviewing the *Mid-Tex* decision and the comments to the interim CWIP rule,⁶ the Commission believes that the principal reasons for departing from prior practice and adopting the present approach to CWIP remain sound. In this preamble, the Commission addresses the particular anticompetitive concerns expressed by

the *Mid-Tex* court. The Commission believes that it has developed adequate procedures to address and remedy potential CWIP-related price squeeze on a case-specific basis and prevent double whammy situations generally.

II. Background

A. Order No. 555

Prior to Order Nos. 555 and 555-A,⁷ the policy of this Commission's predecessor, the Federal Power Commission, was to prohibit the inclusion of any CWIP in rate base,⁸ even though the Commission had the discretion to consider the justness and reasonableness of a rate supported by the inclusion of CWIP in rate base on a case-by-case basis.

In Docket No. RM75-13,⁹ the Federal Power Commission proposed a change in its policy of prohibiting any CWIP in rate base "primarily to help alleviate the current financing problems being experienced by utility companies."¹⁰ In Order No. 555, the Federal Power Commission modified its prior CWIP policy and agreed to consider requests for CWIP in rate base in three instances:

- (1) Where the construction involved facilities to be used for pollution control;
- (2) Where the construction involved conversion of facilities to the burning of other fossil fuels which previously burned oil or gas; and
- (3) Where the utility requesting CWIP was in severe financial distress which could not be alleviated in the absence of CWIP in rate base without materially increasing the cost of electricity to consumers.

As to pollution control and fuel conversion CWIP, the Commission determined that, because of the current generation's commitment to the control of pollution and to preserve existing stocks of natural resources, it was proper to allow CWIP for these types of facilities. Order No. 555 permitted pollution control and fuel conversion CWIP to be reflected in rates at the same time the non-CWIP portion of a requested rate became effective.

With respect to CWIP requests concerning severe financial distress, the Federal Power Commission noted that it would permit such CWIP only where "the rate of return necessary to enable the utility to maintain its credit and attract capital in accordance with the standards of the *Bluefield* decision

would be materially in excess of the cost of capital for otherwise similar utilities."¹¹ The Federal Power Commission determined that under these circumstances it would be to the benefit of the consumer if the additional earnings necessary to attract capital were permitted by way of an immediate return on CWIP, rather than by way of an inflated return on rate base (excluding the CWIP), since the CWIP treatment would eventually be reflected in a lower rate base, while the rate of return treatment would not. However, the Federal Power Commission decided to permit CWIP claimed under the severe financial distress test only after a final Commission determination on rehearing that financial circumstances justified such inclusion.¹²

During the six and one-half years that Order No. 555 remained in effect, over 275 rate increase applications in which the applicants requested pollution control or fuel conversion CWIP were filed with the Commission. However, given the stringency of the severe financial distress threshold, only thirteen utilities attempted to meet this test; the Commission has not granted CWIP to any company under that very stringent test.¹³

B. Order No. 298

In Docket No. RM81-38, the Commission again considered its policy with respect to requests for CWIP in rate base. Ultimately, the Commission issued Order Nos. 298 and 298-A.¹⁴

⁶ 41 FR 51395, 56 FPC 2946 (1976).

¹² The Commission granted one waiver from the prospective-only requirement in Montaup Electric Co., Docket No. ER82-325-000, 19 FERC ¶ 61,062 (1982). In that case, the Commission held that the particular facts and circumstances warranted an exception to the Commission's general rule. A CWIP surcharge was suspended for one day and permitted to go into effect subject to refund. The Commission affirmed the judge's initial decision to disapprove the CWIP surcharge. Montaup Electric Co., Opinion No. 287, 38 FERC ¶ 61,252 (1987) order on reh'g, 38 FERC ¶ 61,147 (1987).

¹³ Seven of these cases were settled before an initial decision was rendered. One case, Public Service Company of New Hampshire, Docket Nos. EL78-15 and ER78-339 (Phase I), was settled after an initial decision was rendered (the settlement agreement provided that the Phase I proceedings, which concerned CWIP and rate of return issues, would not be terminated before rates that included the Seabrook No. 1 generating plant in rate base went into effect, and that the company could move to reopen Phase I in the event it needed emergency wholesale rate increases). The case is pending on appeal of an initial decision which would terminate Phase I. 31 FERC ¶ 63,054 (1985). Five cases resulted in Commission opinions denying the requested CWIP.

¹⁴ 48 FR 24323, FERC Statutes and Regulations (Regulations Preambles 1982-1985) ¶ 30,455 (1983), and 48 FR 46012, FERC Statutes and Regulations (Regulations Preambles 1982-1985) ¶ 30,500 (1983).

⁶ See *Mid-Tex*, 773 F.2d at 344. In Order No. 448, the Commission permitted parties to seek to demonstrate that the relevant conditions, particularly regarding price squeeze and double whammy, have changed since Order No. 298, the prior CWIP rulemaking was issued. [48 FR 24323, FERC Statutes and Regulations (Regulations Preambles 1982-1985) ¶ 30,455 (1983)].

⁷ 41 FR 51392, 56 FPC 2939 (1976), and 42 FR 3022, 57 FPC 6 (1977).

⁸ Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944); Georgia Power Co., 54 FPC 458 (1975); Philadelphia Electric Co., 54 FPC 1394 (1975).

⁹ 39 FR 40787 (1974).

¹⁰ *Id.*

which modified the Commission's basic policy with respect to CWIP. Order No. 298 continued to permit electric utilities to file rates which included pollution control and fuel conversion CWIP in rate base. However, Order No. 298 discarded the prospective-only rule and the severe financial distress test, permitting electric utilities to file and attempt to support rates which, in addition to including pollution control and fuel conversion CWIP, also included up to 50% of all remaining allocable CWIP in rate base.¹⁵

In Order No. 298, the Commission stated that including CWIP in rate base would advance three public interest objectives:

- (1) Mitigation of any bias against the construction of new generating facilities;
- (2) Providing for electric rates to more accurately reflect the costs of future service, allowing the need for new facilities to be tested, so far as possible, by the marketplace; and
- (3) Furthering the goal of rate stability by providing for more gradual increases in electric rates to consumers.¹⁶

With respect to the first objective—mitigating bias against capital investment—the Commission concluded that economic regulation biases utility decisions concerning the construction of new generation facilities in two ways. First, economic regulation creates a bias against the creation of new capacity. Second, to the extent that new capacity is built, economic regulation creates a bias in favor of minimizing capital costs, rather than minimizing total economic costs. These regulatory biases have two sources: utilities' inability to earn a return equal to their cost of capital; and a cash flow problem created by the high cost of new base load plant in relation to present rate base.¹⁷

The Commission concluded that inclusion of CWIP in rate base would reduce but not completely eliminate the first source of bias. As to the second source of bias, the Commission concluded that there were two ways to address this problem. The Commission could either increase the allowed rate of

return to produce higher earnings or allow an immediate return on construction investments by including CWIP in rate base. The Commission elected to permit CWIP in rate base since this action would decrease future rate base, and, thus, lower future rates, while increasing the allowed rate of return would not be matched by similar future reductions.¹⁸

The second public interest objective—ensuring more accurate price signals—was desirable in order to permit the need for new capacity to be tested, so far as possible, by the marketplace. The Commission noted that utilities build new capacity, in part, based upon estimates of future demands, and that these estimates had become more difficult for three reasons. First, the assumption that demand will grow faster than the economy may no longer be valid. Second, the increased length of time between the beginning and the completion of new capacity requires demand projections farther into the future. The third reason was the difference between the price of electricity at the time that demand estimates are made and the price at which electricity must be sold when the new capacity comes on line.¹⁹

The Commission recognized that it could only have an impact on the third cause since the first two causes were not within its regulatory reach. As to the third cause, the Commission determined that since the addition of new facilities is likely to mean higher prices rather than lower ones, CWIP-based rates would provide a more accurate picture of the trends in power costs and, therefore, including CWIP in rate base would tend to lead to more efficient investment decisions by utilities.²⁰

The third public interest objective discussed in Order No. 298—rate stability—is closely related to the second objective. The Commission determined that "[r]atepayers should not face rates that fluctuate radically according to the completion of base load units. . . . Moreover, as large central station generation plants presently under construction are completed over the next few years, the Commission anticipates that the rate shock phenomenon will continue. By revising its CWIP policy, the Commission is

attempting to minimize this problem, to the extent possible."²¹

C. The Mid-Tex Remand

On September 24, 1985, the court issued its opinion in *Mid-Tex* which vacated and remanded certain portions of Order No. 298. The court's mandate issued on November 18, 1985.

The *Mid-Tex* court found that the Commission's stated purposes in adopting Order No. 298 were valid and affirmed the Commission's conclusion that CWIP in rate base would help achieve those purposes. 773 F.2d at 362. However, the court determined that the Commission had not adequately considered whether and to what extent the purposes of the rule outweigh the regulatory objective of promoting competition, in the context of potential price squeeze and double whammy effects.

Therefore, the court vacated those portions of Order No. 298 related to the following decisions: (1) The decision to allow CWIP in rate base; (2) the choice of a 50% CWIP allowance; (3) the rejection of a CWIP rule that tracks the regulatory policies of the several states; (4) the decision to resolve CWIP-related price squeeze issues only on a case-by-case basis; (5) the decision to resolve CWIP-related double whammy issues only on a case-by-case basis; and (6) the decision to allow CWIP in rate base subject to refund. The court concluded that the Commission must reconsider each of these decisions unless it reasonably determines that the CWIP rule will have no significant anticompetitive effects, or unless it convincingly explains why it can consider those effects exclusively on a case-by-case basis (and, in the case of regulatory price squeeze effects, can generally refuse to consider them even in particular cases).²²

D. Order No. 448: The Interim CWIP Rule

In Order No. 448, the Commission adopted interim procedures, pending final action to resolve the *Mid-Tex* court's concerns about the potential price squeeze and double whammy implications of CWIP in rate base. The interim rule followed Order No. 298 insofar as it permitted public utilities to seek to include in rate base, in addition to pollution control and fuel conversion

¹⁵ The 50% cap on non-pollution control and non-fuel conversion CWIP was subject, until July 1, 1985, to the further limitation that any increases in the utility's wholesale revenues directly attributable to such CWIP could not exceed 6% of the utility's wholesale revenues under the rate schedules to be superseded. See 18 CFR 35.26(d) (1985).

¹⁶ 48 FR 24329, FERC Statutes and Regulations (Regulations Preambles 1982-1985) § 30.455 at 30.497 (1983). The *Mid-Tex* court accepted the first two objectives as valid regulatory objectives. It also noted that the Federal Power Act gives the Commission discretion to give at least some weight to the third objective. 773 F.2d at 345.

¹⁷ 48 FR 24330, FERC Statutes and Regulations (Regulations Preambles 1982-1985) § 30.455 at 30.498 (1983).

¹⁸ 48 FR 24330, FERC Statutes and Regulations (Regulations Preambles 1982-1985) § 30.455 at 30.499 (1983).

¹⁹ 48 FR 24330, FERC Statutes and Regulations (Regulations Preambles 1982-1985) § 30.455 at 30.499 (1983).

²⁰ 48 FR 24331, FERC Statutes and Regulations (Regulations Preambles 1982-1985) § 30.455 at 30.499 (1983).

²¹ 48 FR 46019, FERC Statutes and Regulations (Regulations Preambles 1982-1985) § 30.500 at 30.720 (1983).

²² 773 F.2d at 362.

CWIP, up to 50% of all non-PC/FC CWIP.²³

In support of its approach to CWIP in Order No. 448, the Commission stated that it believed it was significant that "the *Mid-Tex* court ratified in large measure the Commission's rationale for departing from its earlier CWIP policy and did not specifically reinstate the Commission's prior rule under Order No. 555. Clearly, the thrust of the court's concern, while significant, was relatively narrow."²⁴ Given that posture, the Commission stated that it did not consider it appropriate to revert generally to the superseded CWIP approach of Order No. 555 on a temporary basis.

The Commission also invited comments to its interim rule in order to assist in its evaluation of the anticompetitive implications of CWIP. Comments and reply comments were solicited concerning the interim procedures for addressing CWIP filings, and the issues of CWIP-related price squeeze and double whammy. The Commission also invited comments concerning whether the relevant circumstances in the electric utility industry have changed since the issuance of Order No. 298. The Commission received comments from several commenter groups, including electric utilities, cooperatives and municipalities, electric industry trade associations, a state regulatory commission, a government agency, and end-use customers.

E. Commission Experience with CWIP Filings

The Commission regulates the rates of approximately 200 public utilities. Since the effective dates of Order Nos. 298 and 448, few utilities have availed themselves of the non-PC/FC CWIP option. As of January 17, 1987, only 27 utilities have filed non-PC/FC CWIP based rates (*i.e.*, rates based upon inclusion of non-pollution control/non-fuel conversion CWIP in rate base) in 46 rate applications, including one rate reduction. Over this same period of time beginning July 1, 1983, 262 rate applications were filed which were eligible to, but did not, include non-PC/FC CWIP in rate base (*i.e.*, rate applications for firm requirements and transmission service, and commitments of system capacity). Trial staff initiated discovery related to the non-PC/FC CWIP programs in 23 of the 46 rate

applications where non-PC/FC CWIP was requested.

Only 10 utilities filed for non-PC/FC CWIP more than once, most notably New England Power Company (NEP) and Montaup Electric Company which are essentially 100 percent jurisdictional. For these utilities, there is little prospect for CWIP-related price squeeze or double whammy since their wholesale sales are made to their affiliates rather than retail competitors. Of the \$702,333,000 of total rate increases requested in these 46 applications, about one-third (\$279,919,000) of the increases was attributable to non-PC/FC CWIP. NEP and Montaup were responsible for \$132,209,000 (47%) and \$38,367,000 (14%), respectively, of the \$279,919,000 of the total non-PC/FC CWIP related increases requested.

Of the 46 non-PC/FC CWIP applications, the non-PC/FC CWIP issue was settled in 33 cases including three in which non-PC/FC CWIP was expressly excluded from rate base under the settlement agreement. Six of the non-PC/FC CWIP rate applications were accepted without formal hearing and one was withdrawn. Three of the applications [made by Southern California Edison Company, Southwestern Public Service Company and Southwestern Electric Power Company (SWEPCO)] are awaiting Commission opinions. In a fourth application (made by Utah Power & Light Company), the initial decision from an administrative law judge did not address CWIP as an issue in contention. Two cases are in hearing.

Price squeeze was alleged in 27 of the non-PC/FC CWIP applications, including 23 that have since settled. Also, in 7 of these 27 dockets, double whammy was alleged. Of the 7 dockets in which double whammy was alleged, one case is pending (Southern California Edison Company, (Docket No. ER84-75-000), Virginia Electric Power Company (Docket No. ER83-618-000), Georgia Power Company (Docket Nos. ER85-659-000 and ER85-660-000), Florida Power & Light Company (Docket No. ER84-679-000), Kansas Gas & Electric Company (Docket No. ER83-628-000), and Gulf States Utilities Company (Docket No. ER84-568-006) have settled.

In a Montana Power Company settlement, which specifically provided for the exclusion from rate base of non-PC/FC CWIP, neither price squeeze nor double whammy was alleged.

Between February 28, 1986²⁵ and January 17, 1987, only 6 non-PC/FC CWIP applications were filed.²⁶

III. Discussion

A. Changed Circumstances in the Electric Utility Industry Do Not Warrant Reversal of the CWIP Policy

The interim rule stated that the Commission did not consider it necessary to revisit its decision to allow CWIP in view of changed circumstances in the electric utility industry. However, the Commission invited comments on this issue. Commenters representing wholesale customers, State of California regulatory authorities, and end-use customers opposed a rule allowing public utilities to request and seek to support non-PC/FC CWIP in rate base. Most of these commenters asserted that circumstances in the electric utility industry have changed since the time Order No. 298 was issued. They argued that, in light of those changes, CWIP in rate base is no longer justified. Generally, the wholesale and end-use customers contended that the industry trends evidence reduced capital costs, improved financial condition of utilities, and less construction. They cited several factors in support of these projections, including increased average market-to-book ratios, decreases in yields for both debt and equity since 1984, decreased inflation, lower interest rates, decreased capital expenditures, increased cash flow as a percentage of construction requirements, and projected excess capacity.²⁷ NRECA stated that several

²³ The date on which Order No. 448 was issued.

²⁴ The six non-PC/FC CWIP applications are: Maine Public Service Company (MPS) (Docket No. ER86-180-000); Montaup Electric Company (Montaup) (Docket No. ER86-202-000); Virginia Electric Power Company (Vepco) (Docket No. ER86-372-000); SWEPCO (Docket No. ER86-506-001); Illinois Power Company (IPC) (Docket No. ER86-540-000); and NEP (Docket No. ER86-687-000). The MPS and IPC cases were accepted for filing, the Montaup case settled, and the SWEPCO and NEP cases are pending. NEP has withdrawn its phase II rates which included CWIP for Seabrook I in rate base. In the Vepco case, the CWIP issue was settled, but the parties reserved the right to revisit the issue in the event of modification of Order No. 298 by the Commission or the court.

²⁷ See Initial Comments (I.C.) of National Rural Electric Cooperatives Association, *et al.* (National Rural Electric Cooperatives Association, American Public Power Association, Mid-Tex Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., and Magic Valley Electric Cooperative, Inc., (collectively, NRECA)) at 12-17; G&T Systems (North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., and Sam Rayburn G&T, Inc.) I.C. at 32-64; Allegheny Electric Cooperative, Inc., *et al.* (Allegheny Electric Cooperative, Inc., Deseret Generation and Transmission Cooperative, Kansas Electric Power Cooperative, Oglethorpe Power

Continued

²³ An appeal of the interim rule is pending before the D.C. Circuit. *Mid-Tex Electric Cooperative, Inc., et al. v. FERC*, No. 86-1414.

²⁴ 51 FR 777, FERC Statutes and Regulations (Regulations Preambles) ¶ 30.689 at 30.142.

Attachment 1.7: Code of Federal Regulation. Title 18, Section § 35.25 Construction Work in Progress, Page 5

§ 35.25 Construction work in progress.

- (a) **Applicability.** This section applies to any rate schedule filed under this part by any public utility as defined in subsection 201(e) of the Federal Power Act.
- (b) **Definitions.** For purposes of this section:
 - (1) **Constuction work in progress or CWIP** means any expenditure for public utility plant in process of construction that is properly included in Accounts 107 (construction work in progress) and 120.1 (nuclear fuel in process of refinement, conversion, enrichment, and fabrication) of [part 101 of this chapter](#), the Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Major and Nonmajor), that would otherwise be eligible for allowance for funds used during construction (AFUDC) treatment.
 - (2) **Double whammy** means a situation which may arise when a wholesale electric rate customer embarks upon its own or participates in a construction program to supply itself with all or a portion of its future power needs, thereby reducing its future dependence on the CWIP of the rate applicant, but is simultaneously forced to pay to the CWIP public utility rate applicant the CWIP portion of the wholesale rates that reflects existing levels of service or a different anticipated service level.
 - (3) **Fuel conversion facility** means any addition to public utility plant that enables a natural gas-burning plant to convert to the use of other fuels, or that enables an oil-burning plant to convert to the use of other fuels, other than natural gas. Such facilities include those that alter internal plant workings, such as oil or coal burners, soot blowers, bottom ash removal systems and concomitant air pollution control facilities, and any facility needed for receiving and storing the fuel to which the plant is being converted, which facility would not be necessary if the plant continued to burn gas or oil.
 - (4) **Pollution control facility** means an identifiable structure or portions of a structure that is designed to reduce the amount of pollution produced by the power plant, but does not include any facility that reduces pollution by substituting a different method of generation or that generates the additional power necessitated by the operation of a pollution control facility.

Attachment 1.8: Governor Newsome's Executive Orders Terminating State of Emergencies, Page 1

Executive Order Terminating COVID-19 State of Emergency (SOE) on February 28, 2023.
COVID-19 pandemic SOE lasted for three years, beginning on March 4, 2020,

EXECUTIVE DEPARTMENT STATE OF CALIFORNIA

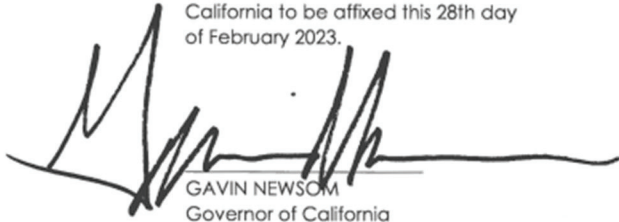
A PROCLAMATION BY THE GOVERNOR OF THE STATE OF CALIFORNIA TERMINATING STATE OF EMERGENCY

I, **GAVIN NEWSOM**, Governor of the State of California, having found pursuant to Government Code section 8629 that the conditions of extreme peril to the safety of persons and property declared in the State of Emergency proclamation listed below no longer exist, therefore proclaim that the State of Emergency proclaimed on the following date and in the following jurisdiction no longer exists, effective at 11:59 p.m. on February 28, 2023. Accordingly, any Executive Orders related to the terminated State of Emergency will also no longer be in effect as of 11:59 p.m. on February 28, 2023.

PROCLAMATION		
Emergency	Date Proclaimed	Jurisdiction
COVID-19	March 4, 2020	Statewide

I **FURTHER DIRECT** that as soon as hereafter possible, this Proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Proclamation.

IN WITNESS WHEREOF I have
hereunto set my hand and caused
the Great Seal of the State of
California to be affixed this 28th day
of February 2023.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY WEBER, PH.D.
Secretary of State

Attachment 1.8: Governor Newsome's Executive Orders Terminating State of Emergencies, Page 2

Executive Order Terminating SOE three-year drought on September 4, 2024. SOE drought began on October 19, 2021, lasting three years.

EXECUTIVE DEPARTMENT STATE OF CALIFORNIA

A PROCLAMATION BY THE GOVERNOR OF THE STATE OF CALIFORNIA TERMINATING STATES OF EMERGENCY

I, **GAVIN NEWSOM**, Governor of the State of California, having found pursuant to Government Code section 8629 that the conditions of extreme peril to the safety of persons and property declared in the State of Emergency proclamations listed below no longer exist in the following jurisdictions, therefore proclaim that the States of Emergency proclaimed on the following dates no longer exist in those jurisdictions, effective immediately. Accordingly, any Executive Order provisions related to the terminated States of Emergency are no longer in effect in the following jurisdictions.

PROCLAMATIONS		
Emergency	Date Proclaimed	Jurisdictions
Drought	10/19/2021	Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Francisco, Ventura Counties
Drought	7/8/2021	Inyo, Marin, Mono, Monterey, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz Counties
Drought	4/21/2021	Mendocino, Sonoma Counties

I **FURTHER DIRECT** that as soon as hereafter possible, this Proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Proclamation.

IN WITNESS WHEREOF I have
hereunto set my hand and caused
the Great Seal of the State of
California to be affixed this 4th day
of September 2024.


GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY WEBER, PH.D.
Secretary of State

Attachment 1.9, Table 1: SGVWC Actual Return on Equity v. Commission Authorized Return on Equity

Profit, measured as Return on Equity (ROE), calculated from Commission's Water Division Annual Reports.

WD's Annual Report Year	Net Profit (Annual Report Schedule B: Line 39)	Total Equity (Annual Report Schedule A: Line 56)	SGVWC's Actual ROE (a)/(b)	Commission Authorized ROE or Cost of Equity ¹	Commission Decision for Authorized ROE or Cost of Equity
	(a)	(b)			
2017	\$2,237,869	\$206,672,167	10.824%	9.79%	D. 13-05-027
2018	\$3,254,216	\$229,902,707	13.160%	9.79%	D. 13-05-027
2019	\$28,295,547	\$251,568,324	11.248%	9.2%	D. 18-12-002
2020	\$32,331,412	\$276,041,891	11.713%	9.2%	D. 18-12-002
2021	\$32,385,931	\$295,422,103	10.963%	9.2%	D. 18-12-002
2022	\$31,660,840	\$320,013,097	9.894%	9.2%	D. 18-12-002
2023	\$29,594,748	\$337,757,277	8.762%	9.2%	D. 18-12-002
2024	\$30,887,761	\$355,466,606	8.689%	9.34%	D. 24-12-007

¹ Commission authorized ROE from respective Commission decision.

LIST OF ATTACHMENTS FOR CHAPTER 2

#	Attachment #	Description
1	2-1	Proliferation of Class A Investor-Owned Water Utilities Surcharge Accounts

Attachment 2.1: Proliferation of Class A Investor-Owned Water Utilities Surcharge Accounts

The Public Advocates Office, *Surcharge Account Reform for California's Class A Investor-Owned Water Utilities*, Water affordability policy to protect customers of California's largest independently owned water utilities, May 2023.

**Attachment 2.1, Table 1: Class A Water Utilities' Surcharge Account Totals,
2005-2020¹**

Utility	Total Values recorded in Surcharge Accounts			
	2005	2010	2015	2020
Cal Water	\$7,560,144	\$1,425,152	\$52,273,000	\$157,578,000
Cal-American	not reported	\$110,987,013	\$201,704,117	\$320,897,662
Golden State	\$4,192,860	not reported	\$132,695,585	\$37,713,677
Great Oaks	not reported	not reported	\$3,845,454	\$4,560,164
Liberty - total	\$711,859	\$7,979,267	\$11,548,265	\$5,655,093
San Gabriel	\$4,338,179	\$9,919,723	\$28,455,779	\$2,111,728
San Jose	\$500,227	\$8,557,349	\$50,338,805	\$26,634,087
Suburban	\$713,063	\$13,263,253	\$6,642,974	\$18,634,087
Total	\$18,016,332	\$152,131,757	\$487,503,979	\$573,846,820
Average	\$2,252,042	\$19,016,470	\$60,937,997	\$71,730,853

**Attachment 2.1, Table 2: The Number of Class A Water Utilities' Surcharge
Accounts, 2005-2020²**

Utility	Total Number of Surcharge Accounts			
	2005	2010	2015	2020
Cal Water	not reported	not reported	34	32
Cal-American	not reported	50	100	49
Golden State	45	not reported	24	28
Great Oaks	not reported	not reported	25	22
Liberty - total	19	34	67	76
San Gabriel	8	11	25	24
San Jose	13	23	42	33
Suburban	7	26	26	31
Total	92	144	343	295
Average	11.5	18	42.9	36.9

¹ Using information reporting in Schedule E-1 in Class A Water Utilities' 2005, 2010, 2015 and 2020 Annual Reports submitted to the Commission.

² *Id.*