

Decision 05-11-030 November 18, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Casmalia Community Services District,

Complainant,

vs.

Unocal Corporation, also known as Casmite
Water System,

Defendant.

Case 03-09-001
(Filed September 2, 2003)

In the Matter of the Application of The Casmite
Corporation for a Certificate of Public
Convenience and Necessity to Operate a Public
Utility Water System Near Casmalia in the
County of Santa Barbara and to Establish Rates
for Service.

Application 03-12-024
(Filed December 22, 2003)

(See Attachment A for List of Appearances.)

**OPINION ISSUING CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY, AUTHORIZING INITIAL RATES,
AND IMPOSING SANCTIONS**

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C.03-09-001, A.03-12-024 ALJ/JET/tcg

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**OPINION ISSUING CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY, AUTHORIZING INITIAL RATES,
AND IMPOSING SANCTIONS**

In this decision, the Commission issues a Certificate of Public Convenience and Necessity to The Casmite Corporation (Casmite) to operate, as a public utility, an existing water system near the community of Casmalia, Santa Barbara County. The decision also authorizes initial rates for the water utility and imposes certain sanctions due to Casmite's operation of a public utility without a CPCN.

I. Background

In the 1940s, The Casmite Corporation (a Nevada corporation organized in 1936) commenced oil field operations in Santa Barbara County along U.S. Highway 1, half-way between San Luis Obispo and Santa Barbara. As part of these operations, Casmite constructed a water system. As an accommodation, Casmite began to provide nearby residents with water from the system. In 1953, The Union Oil Company of California (Unocal) acquired all of Casmite's stock. In 1994, Unocal sold off the oil field operations but retained the water system. Application Ex. G at 2.

This proceeding began on September 2, 2003, when those nearby residents and property owners living in Casmalia, a small community near Vandenberg Air Force Base, filed a complaint alleging that Casmite has been operating as a public utility for many years without the Commission's authorization. The complaint (Case (C.) 03-09-001) was filed by the Casmalia Community Services District's board of directors and appended the signatures of 25 Casmalia residents or property owners (the complainants are referred to herein as "Casmalia"). The complaint asks that Casmite be declared a public utility,

prevented from raising current water rates, and enjoined from terminating water service.

Following a prehearing conference in C.03-09-001, Casmite indicated that it intended to file an application for a Certificate of Public Convenience and Necessity (CPCN). This application was filed on December 19, 2003, and docketed as Application (A.) 03-12-024. The Commission's Water Division protested Casmite's application on January 22, 2004. A joint prehearing conference was held in both proceedings on February 17, 2004; and the two proceedings were consolidated as a ratesetting proceeding. The Scoping Memo was issued on March 3, 2004. Casmite amended its application on May 7, 2004. The Water Division filed its findings and recommendations on July 8, 2004.

The parties indicated their desire to mediate the issues in the consolidated case, a stay was entered, and the proceeding was referred to Administrative Law Judge (ALJ) Ken Koss for mediation. A one-day mediation session was held in Casmalia in June 7, 2004, and appeared to result in a settlement. The settlement anticipated that the water system would be turned over at no cost to the Casmalia residents and property owners for them to operate as a nonregulated entity (*e.g.*, a mutual water system). However, on August 10, 2004, the Casmalia Community Services District reported to the assigned ALJ that its board had not approved the settlement, citing the inability to raise sufficient funds to operate the system (although Casmite had offered initial financial assistance as part of the settlement).

Thereafter, an evidentiary hearing was held on September 13, 2004, on the merits of both Casmalia's complaint and Casmite's CPCN application. Christian L. Aldinger, a certified public accountant with Peasley, Aldinger & O'Bymachow, and Robert Hall, vice-president of the Casmite Water System

(employed as a project manager for Unocal), testified for Casmite. Terri Strickin testified for the Casmalia Community Services District. Sazedur Rahman testified for the Water Division.

A formal public participation hearing was not held on-site during the proceeding because of travel cost; however, the residents of Casmalia had the opportunity to provide comments to the assigned ALJ during a video conference on October 27, 2004. Santa Barbara County Supervisor Joni L. Gray addressed the Commission, as did Bill Ostini, President of Casmalia Community Services District. Ostini also owns and operates the only active business in Casmalia, the Hitching Post restaurant. Gray commented that, if Casmite's proposed rates were approved, "I believe it would shut the town down. I believe that the people would have to move out of the community, leave their homes if the rates went up at that particular . . . speed." Tr. 102:16-19 (Gray, Oct. 27, 2004). Ostini commented, among other things, that the Casmalia median household income is \$24,000, Casmalia residents cannot afford to pay \$100 to 125 per month for water, and the cost of water for his business will increase from \$350 to almost \$1200 per month. Tr. 109:1-2, 111:22-23 & 113:23-25 (Ostini, Oct. 27, 2004).

The record closed on September 21, 2004; and, after briefing, the proceeding was submitted on October 29, 2004. At the parties' request, issuance of the ALJ's proposed decision was delayed until August 15, 2005, to allow further settlement discussions that eventually were unsuccessful.

II. System Description

The Casmite water system obtains its water by pumping from an underlying aquifer. Production is approximately 79 acre-feet per year. The water is pumped into two 11,000-gallon plastic holding tanks. The water is then

distributed by gravity flow to the system's customers through 4-inch water mains. The water is considered potable as pumped from the aquifer.

Casmite provides water to seven customers, and no new customers have been added to the system since the 1960s.¹ Six of the customers are metered; one is not. One of the metered customers, however, is the Casmalia Community Services District, an entity created under California law. Casmalia takes delivery of water from Casmite at a meter and, in turn, delivers the water to 52 residential and two commercial properties through its own pipe system. Each of the Casmalia properties is metered and billed by the Community Services District for its usage. Casmite's unmetered customer is Mrs. David Tompkins who receives water in exchange for an unrecorded easement. Other than names and addresses, nothing else is in the record concerning the other metered customers. *See* Tr. 62:2-11 (Stricklin, Sept. 13, 2004).

III. Questions Presented

This proceeding addressed the issues of (1) whether Casmite should be issued a CPCN; (2) if so, whether the company should be sanctioned for past operation of a public utility without a CPCN; (3) what initial rates should be authorized; and (4) environmental compliance concerning water quality and the applicability of the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code §§ 21000-21177 (2005).

¹ The pleadings are confusing about the number of Casmite customers. This decision is based on the seven customers identified in the application of December 22, 2003.

IV. CPCN Requirements

For a small water provider like Casmite, the provisions of the Public Utilities Code, the Commission's *Rules of Procedure and Practice* (Rules), and Resolution M-4708 (Aug. 28, 1979) set forth requirements and criteria that must be satisfied before a CPCN is granted.

A. Public Utilities Code

The Public Utilities Code contains both substantive and procedural requirements for an entity to be considered a public utility and issued a CPCN. Section 2701 defines a Commission-regulated water utility as a person or entity that "sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, whether under contract or otherwise," Judicial decisions have also required that the entity dedicate or hold out its property to public use. *Thayer v. California Development*, 164 Cal. 117 (1912).

In this proceeding, Casmite affirmatively seeks public utility status. Casmite's application indicates it will continue to provide water to seven customers including Casmalia Community Services District that, in turn, distributes water to 54 other residential and business customers (the town's population is estimated at 200 persons). Casmite proposes that this water service be provided under rates approved by the Commission. Under the substantive law, Casmite will operate as a public utility.

The Public Utilities Code also includes several procedural requirements. The applicant for public utility status must file a certified copy of its articles of incorporation or charter and evidence that the applicant has received any necessary consent of public agencies. Pub. Util. Code § 1004. The code also requires that the Commission, in evaluating the application, consider the

potential impact of utility operations on community values, recreation and park areas, historical and aesthetic values, and the environment. *Id.* § 1002(a).

In its application, Casmite has provided its Certification [articles] of Incorporation filed with the Nevada Secretary of State on October 30, 1936, as well as the Nevada Secretary of State's Certificate of Existence with Status in Good Standing (Oct. 17, 2003). Application Ex. A. Casmite has also provided the California Secretary of State's own certificate indicating that the corporation is qualified to transact intrastate business in California. Application Ex. B. Finally, Casmite has filed its Water Supply Permit, issued by the California Department of Public Health (Sept. 30, 1960) and its Amended Water Supply Certificate No. 0511, issued by the County of Santa Barbara (June 1, 1987). Application Ex. H. Casmite has submitted all the formal documentation required by statute for the issuance of a CPCN.

Unfortunately, the rates we authorize as part of this decision (*see* Part VII, *infra*) are a substantial increase for persons receiving water from the Casmite system. A rate increase would be likely no matter who operated the water system. In any event, the disadvantage of a rate increase, we believe, is outweighed by the benefits of imposing rate and quality-of-service regulation on a water provider that, for decades, has operated without a CPCN and beyond Commission supervision. In this manner, community values will be enhanced.

Because we are issuing a CPCN to an existing water system, there are no identified impacts to recreation and park areas or historical and aesthetic values. Any impact to the environment is addressed under the discussion of CEQA. *See* Part VI, *infra*.

B. Rules of Practice and Procedure

Rules 18 and 23 set forth requirements that must be satisfied as part of an application for a CPCN and to authorize rates. The relevant requirements of Rule 18 include a full description and map of the system, identification of potential competitors, financial information, ratesetting information, and facts supporting the issuance of a CPCN. Perhaps the most important provision of Rule 18 is the requirement that the application demonstrate “[f]acts showing that public convenience and necessity require . . . the proposed construction or extension, and its operation,” Rule 18(e), or in this case, the operation of the existing system as a public utility. The application demonstrates that public utility regulation is necessary to safeguard a small number of customers who have no water supply alternatives, ensure reasonable and fair rates for both the ratepayers and the company, and monitor water service and quality in an industrial area prone to water quality problems.

Rule 23 requires more specific financial information justifying rate increase applications. Because Casmite proposes a substantial increase over existing charges for water, Rule 23 is applicable. Casmite’s application and supporting exhibits provide the information required by these rules.

The evaluation of the proposed rates, however, is set forth later in this decision. *See* Part VII, *infra*.

C. Resolution M-4708

For its part, Resolution M-4708 sets forth six basic criteria that are used to evaluate the applications of small water companies (Class D companies, *i.e.*, those serving less than 500 customers). As pertinent to this application, the resolution specifies that the Commission will issue CPCNs only when the water company is able to render adequate service; remain financially viable; and no

other existing, viable water provider is available to serve the proposed area. The Water Division's report specifically addresses these six areas and concludes that Casmite has satisfied all of Resolution M-4708's relevant criteria under present circumstances.

Two of the six criteria are especially applicable to Casmite's application and warrant further comment here: (1) whether need for the utility is demonstrated by the applicant's showing that no other viable "entity is willing and able to serve the development and concrete present and/or future customer demand exists"; and (2) whether the applicant's "viability is demonstrated, ordinarily through the following tests: [a] proposed revenues would be generated at a rate level not greatly exceeding that set for comparable service by other water purveyors in the general area; [b] the utility would be self-sufficient . . .; [c] the applicant would have a reasonable opportunity to derive a fair return on its investment"

No other potentially viable water provider exists to serve the Casmalia area. As indicated by the Water Division, "[t]he closest public water system (Southern California Water Company – Santa Maria district) is located several miles away, does not share a contiguous boundary to the Casmite system, and has expressed no interest to acquire Casmite." Water Division, Findings and Recommendations at 6 (July 8, 2004).

If rates are established in the manner discussed later in this decision, *see* Part VII, Casmite can be a viable, self-sustaining utility. The rates necessary to do so will be high and burdensome to ratepayers, but these rates are required in order to provide adequate service for an extraordinarily small system while allowing Casmite a reasonable opportunity to earn a fair rate of return. Casmite

and its customers should remain alert to opportunities to fold this system into a larger water supply entity where economies of scale may result in reduced rates.

V. Past Operations

Before Casmite submitted its CPCN application, the Casmalia Community Services District had complained to the Commission and asked that the company be declared a public utility based on its prior water delivery activities. The district's complaint raises the issue of whether Casmite impermissibly operated as a public utility without authority from the Commission.

Casmite's own application sets forth the undisputed facts. In 1945, Casmite acquired the groundwater well to provide water for oil-producing activities in the Casmalia oil field. Casmite also provided surplus water to some neighbors including William Tognetti who, in turn, supplied water to the community of Casmalia. In 1953, Unocal purchased all of Casmite's stock. Pursuant to inter-company agreements, Unocal continued to operate the system to supply water for both the oil field and neighbors. In 1994, Unocal sold the oil field to Capco Resources, Inc., and through Casmite, has continued to provide water to the oil field and Casmalia neighbors. Application at 4 (Dec. 22, 2003).

Historically, each of Casmite's six metered customers has signed a revocable license agreement with Casmite indicating that they are receiving surplus water and the water is not dedicated to public use. *Id.* Since before 1986, Casmite has charged most of its customers for the water. *Id.* at 7.

These facts are similar to other cases to come before the Commission where a dominant economic enterprise, such as a railroad, begins to provide water for local residents (many of whom are directly or indirectly employed in the enterprise). Years later, the basic economic activity may have ceased or moved, but the firm remains the water provider for residents (many of whom are

no longer associated with the original business). While the company may now want to terminate water service, local residents rely on the water and argue that the company has a continuing obligation to serve. *See, e.g., In re Keene Water System*, Decision (D.) 02-04-017, 2000 Cal. PUC LEXIS 1108 (April 4, 2002).

Prior to 1994, Casmite was not a public utility since it qualified for the exemption set forth in Section 2704. This section indicates that an “owner of a water supply not otherwise dedicated to public use and primarily used for . . . industrial purposes by him” is not regulated as a public utility if it “sells or delivers a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water . . . is equally available” During those years, Casmite was primarily involved in oil field operations; it was using water in those operations, and, secondarily, providing surplus water to Casmalia and other users.

When Unocal/Casmite sold the oil field operations in 1994, however, it ceased to qualify for the Section 2704 exemption since the primary use of the water was no longer for industrial purposes. In determining whether the company should be considered a public utility under these circumstances, the Commission looks to see if the company has expressly or impliedly dedicated its property to public use. Like Union Pacific Railway in *Keene*, Casmite has not, until its December 2003 application, expressly represented itself as a public utility. This case is similar to *Keene* in other respects. Since the 1994 oil field sale to Capco, Casmite has sold the water primarily for the use of the seven customers including the Casmalia residents – and not for use in Casmite’s or Unocal’s oil field operations. In recent years, Casmite (to its credit) has contracted for water quality testing, tank replacement and, more recently, pipe replacement. These activities constitute, as in *Keene*, “a long course of conduct . .

. from which implied dedication arises.” D.02-04-017 at 10. Consequently, since 1994, Casmite has operated as a water utility without Commission authority. In doing so, Casmite has violated Public Utilities Code Section 1001 (“No . . . water corporation . . . shall begin the construction . . . of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction”).

Section 2111 authorizes the Commission to impose a penalty of not less than \$500 nor more than \$20,000 on any corporation or person, other than a public utility, which knowingly violates or fails to comply with provisions of the Public Utilities Code which, in this circumstance, include the requirement of holding a CPCN when providing public utilities services. Since 1994, Casmite itself has failed to comply with Section 1001. Section 2111 also indicates that any corporation or person which “aids or abets” a violation of the Public Utilities Code also violates that section. Casmite is a wholly owned subsidiary of Unocal, and Unocal has been deeply intertwined in the operations of the water system. Unocal provides much of the management, labor, and equipment for system operations. On its own books, Unocal has allocated various operational costs to Casmite and advanced Casmite money. Many of the Casmite officers are also employees or officers of Unocal. Unquestionably, Unocal has aided and abetted Casmite in failing to comply with Public Utilities Code Section 1001, and Unocal’s conduct may also be sanctioned under Section 2111.

The Commission discussed the overall guidelines for determining fines in D.98-12-075, *In re Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates*, 84 CPUC 2^d 155 (Dec. 17, 1998), and reiterated them in D.99-11-044, *Strawberry Property Owners Ass’n v. Conlin-Strawberry Water Co.*,

1999 Cal. PUC LEXIS 875 (Nov. 18, 1999). The purpose of a fine is to deter future violations by the perpetrator or others. The severity of the offense and the perpetrator's conduct guide the Commission in setting a fine that is proportionate to the offense. Also, the Commission must consider the financial resources of the perpetrator in balancing the need for deterrence with the constitutional prohibition on excessive penalties.

Operating as a public utility without holding a CPCN is usually a serious violation of law and Commission orders because such conduct deprives the ratepayers of the Commission's scrutiny of rates and service in monopolistic circumstances. With no competitors and no other firm offering to provide services, Casmite holds monopoly power over its customers. Fortunately, the record contains no evidence that Casmite has sought to abuse its monopolistic position. Over the years, rates have been modest and service has been adequate. Indeed, the company has operated at a loss with its deficits covered by its parent company Unocal.

Casmite's operations without a CPCN, however, have deprived ratepayers of an important Commission regulatory function: periodic "cost-of-service" ratesetting. Had Casmite obtained a CPCN in 1994, rates would likely have increased over the years, but ratepayers would have had a decade to adjust accordingly. By failing to obtain a CPCN in 1994, Casmite has now caused a situation where a dramatic increase in rates is necessary – producing considerable rate-shock to the few customers of the system and indirect adverse consequences to the entire Casmalia community, as described by Supervisor Gray and community resident Ostini during public comment. The evidence indicates that Casmalia is economically ill-equipped to suffer such shock. To deter such regulatory-avoidance behavior that can cause ultimately severe

economic disruption to small communities, the nature of Casmite's and Unocal's offenses must be considered moderately severe and should be sanctioned accordingly. This factor weighs heavily against Casmite and Unocal.

As indicated above, the perpetrator's conduct is also considered in determining appropriate sanctions. Casmite has operated, and Unocal has abetted, an uncertified public utility for ten years. However, they have operated the system reasonably well. The evidence indicates that, during this period, they sought to sell or transfer the water system to a utility holding a CPCN or a governmental entity. Once Casmalia's complaint was filed, Casmite took immediate steps to bring itself into compliance and apply for a CPCN and ratesetting. Casmite also engaged in negotiations to convey the system to Casmalia with some initial financial assistance. In all, Casmite's and Unocal's conduct, especially during the course of this proceeding, has been constructive; and this factor weighs in their favor.

Finally, we consider the financial resources of the perpetrators. Casmite's financial resources, even after the rates authorized in this proceeding, are slender while Unocal's are considerable. As of December 31, 2002 (the most recent financial statement in evidence), Casmite had plant and equipment of only \$106,543 and accounts payable to Unocal of \$520,460. The imposition of a monetary sanction against Casmite would only further jeopardize the financial condition of the water system.

The Commission proposes to take official notice of Unocal's current financial condition.² By comparison to Casmite's slender resources, Unocal had

² The Commission proposes to take official notice Unocal's filing of its Quarterly Report for Quarter Ending Sept. 30, 2004, Form 10-Q, with the U.S. Securities and Exchange

Footnote continued on next page

gross revenues of more than \$5.8 billion, and net earnings of \$940 million, during the first nine months of 2004. On September 30, 2004, Unocal had total assets of \$12.5 billion and \$4.8 billion in stockholders' equity.

Under Section 2108, continuing violations of the Public Utilities Code are normally calculated on a daily basis. Based on the foregoing analysis, a penalty of between \$1.8 million (\$500 per day) and \$73 million (\$20,000 per day) could be appropriately levied against both Casmite and Unocal for ten years of violations of the Public Utilities Code.

As an alternative to such a direct monetary sanction, Casmite's rate of return should be adjusted to (a) mitigate ratepayer rate-shock during a transitional period, and (b) after the transitional period, provide only the lower threshold of what constitutes a reasonable rate of return. Additionally, Casmite should be denied the full addition of the water main replacement project (installed in 2004 at the cost of \$70,000) to the utility's rate base. Only one-half of that cost (\$35,000) should be authorized for inclusion in the rate base. The Commission has undertaken a similar approach when sanctioning impermissible activities between a utility and an affiliate. *See* D.98-12-075, 84 CPUC 2^d at 187 ("[T]he Commission may do any or all of the following: . . . (b) Prospectively limit or restrict the amount, percentage, or value of transactions entered into between the utility and its affiliate(s);").

Commission, Common File No. 1-8483 (filed Nov. 5, 2004). The financial information in this filing, provided by Unocal itself and readily available on the SEC's web site, are "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." CAL. CODE OF EVID. § 452(h) (2004). In comments on this proposed decision, Casmite or Unocal may "meet such information" before official notice is finally taken. *Id.* § 455(b).

Because of its more substantial financial resources, a monetary sanction is even more properly levied against Unocal. The penalty should be in the amount of \$500 per day for the ten years of violations of the Public Utilities Code, or a total of \$1.8 million. However, since Unocal did not abuse its monopoly position and has now taken actions to rectify the violation, we will suspend the imposition of this specific monetary sanction on the condition that Unocal unconditionally foregoes claims, preceding the effective date of this decision, for the reimbursement of any and all loans or advances to Casmite.

We reiterate our statement in D.99-11-044 that sanctions are fashioned to the unique facts of each case. Consequently, we have calculated the violations and tailored the sanctions imposed against Casmite and Unocal to address the circumstances presented herein.

VI. CEQA

We must consider whether the Commission's approval of Casmite's application for a CPCN triggers the California Environmental Quality Act (CEQA) and, if so, what steps must be taken to satisfy the statute's requirements. CEQA applies to governmental activity that involves the exercise of discretion, has the potential of causing a direct or reasonably foreseeable indirect physical change in the environment, and satisfies the definition of "project." The issuance of a CPCN is a project since it involves discretionary governmental activity in issuing a "certificate or other entitlement." CAL. PUB. RES. CODE §§ 21001.1, 21002 & 21080. A CPCN is an entitlement since it allows an entity to operate as a public utility within a specified service area. The remaining question is whether the issuance of a CPCN in this case will cause a direct or reasonably foreseeable indirect physical change in the environment.

The Commission has previously held that the mere granting of a CPCN involving existing facilities is exempt from CEQA. In D.02-06-005, *In re Cypress Ridge Service Co.*, 2002 Cal. PUC LEXIS 347 (June 6, 2002), we held that CEQA does not apply when the applicant is seeking to provide public utility service using “exactly the same facilities as are now in place and in operation.” *Id.* at 18. In this proceeding, Casmite has been operating the water system as a *de facto* public utility for ten years and now seeks to do so in conformity with the Public Utilities Code. The Commission’s granting of a CPCN will only establish the service area and authorize rates for the existing public water system. The Commission’s decision will not authorize any construction or modification of the system. Under these circumstances, the granting of a CPCN presents no possibility of having a significant adverse impact upon the environment. *See* D.04-05-042, *In re Quality Telephone, Inc.*, 2004 Cal. PUC LEXIS 260, at *4-5 (May 27, 2004). As such, the issuance of a CPCN is exempt from CEQA under Section 15061(b)(3) of the CEQA Guidelines.

The record does indicate that Casmite anticipates replacing 4200 feet of existing water main with larger 4-inch pipes. This construction, which we understand will be completed before the CPCN is granted, does not change our determination that the issuance of a CPCN is exempt from CEQA. So long as Casmite is not yet a public utility, it does not require our approval to replace existing pipe. The Commission’s granting of a CPCN provides no authority or approval of the pipe replacement. If the pipe replacement happens to occur after a CPCN is granted, this activity is eligible for a categorical exemption for existing public utility facilities. *See* CEQA Guidelines §15301(b) (“Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;”); and D.91-05-037, *In*

re Alpine CA-3, L.P., 1991 Cal. PUC. LEXIS 364 (May 22, 1991) (Issuance of CPCN allowing new antenna at existing antenna farm is eligible for categorical exemption for minor alterations).

VII. Ratesetting

In addition to its request for a CPCN, Casmite also seeks ratesetting to establish the initial authorized rates for the utility. Most of the ratesetting information is set forth in the Supplement to Casmite's application. However, an error in double-counting an item of equipment was noted at the evidentiary hearing. Casmite was granted leave to file corrections now set forth in Exhibit No. 3. These corrections resulted in modest changes to depreciation, the depreciation reserve, expenses, and net operating income – all of which are reflected in the discussion below.

The following discussion is organized around the three main components of cost-based ratemaking: net operating income, rate base, and rate of return. This is followed by a discussion of the utility's revenue requirements and rate impact on customers. The schedules necessary to effectuate these ratesetting decisions and other determinations made in this decision are attached as Appendices A and B.

A. Net Operating Income

Net operating income is gross operating revenue less operating and maintenance expenses, depreciation, income taxes, and other operating taxes. For test year 2004, Casmite estimates operating expenses of \$70,967, depreciation of \$2302, and taxes of \$1319, or a total of \$74,588. Ex. No. 3, Workpaper H, Sheet 1 (revised; depreciation corrected). At current rates, Casmite estimates only \$22,436 in operating revenues during test year 2004, producing a net operating loss of \$51,152. Workpaper F, Sheet 1, Supplement to Application (May 7, 2004).

The Water Division agrees that the company's proposed expenses are reasonable. Water Division, Findings and Recommendations at 7. With a minor change for taxes (\$519 instead of \$1319), we accept \$73,788 as the operating expenses for test year 2004.

Casmite does not have any employees and all labor is either obtained under contract or provided by Unocal. Workpaper B, Sheet 11, Supplement to Application (May 7, 2004); Tr. 15:18-16:17 (Aldinger, Sept. 13, 2004). Casmite's insurance is also provided by Unocal. *Id.* at Sheet 17; Tr. 18: 16-23 (Aldinger, Sept. 13, 2004). Other operating expenses incurred by Unocal for Casmite's benefit are allocated to Casmite on at least an annual basis. Tr. 15:18-16:17 (Aldinger, Sept. 13, 2004).

B. Rate Base

The Casmite physical plant is fully depreciated except for improvements made in 2001 and following periods. These improvements include new water storage tanks installed in 2003 (\$15,731), a new well pump purchased in 2004 (\$10,121), and 4200 feet of replacement water main being installed in 2004 (\$70,000). This results in an estimated average depreciation reserve for test year 2004 of \$92,633 and an average rate base of \$75,616. Ex. No. 3, Workpaper C, Sheet 1. The Water Division does not dispute these figures. The sum of \$35,000, however, will be deducted from the rate base for the reasons discussed in Part V, *supra*.

C. Rate of Return

At present rates, Casmite would be receiving a negative 68% return on rate base (net operating loss of \$51,152 ÷ average rate base of \$75,616). The Water Division does not challenge this figure. One of the few contested legal issues is the appropriate rate of return for such a small company. Citing D.92-03-093,

Financial and Operational Risks of Commission-regulated Water Utilities, 43 CPUC 2^d 568 (Mar. 31, 1992), Casmite presents two different rate of return possibilities using the alternative rate of return methodologies authorized by that decision. Referencing the recommended rate of return range there authorized (13.9%-14.4%), as periodically updated by the Water Division, Casmite suggests 13.75%. Using the operating ratio method authorized in the decision, Casmite suggests a margin of 20% over operating and maintenance expenses. Since that decision indicates the higher result should be selected, *see* 43 CPUC 2^d at 586, Casmite argues for use of the 20% operating ratio method.

The record, however, is deficient in supporting the 20% margin. Upon cross-examination, Casmite's accountant testified that as a result of the 1992 decision, "the Commission identified the operating ratio method as an alternative in the rate calculation and used 20 percent in their example. It's not guaranteed." Tr. 29:27-30:2 (Aldinger, Sept. 13, 2004). The witness is correct that the decision does not guarantee 20% or another margin. In fact, the decision makes no reference to 20% or any other margin. The witness may have been confused by the Commission's finding that "[t]he operating ratio method of ratemaking would produce a higher rate of return than cost-of-service regulation in only about 20% of small water companies." 43 CPUC 2^d at 591. Because of applicant's failure to establish the appropriate percentage margin for application of the operating ratio method, we will start by calculating the rate of return using the recommended range authorized in D.92-03-093. However, as indicated below, the rate of return will be modified to mitigate the rate shock to customers resulting from Casmite's operation without a CPCN and avoiding rate review for at least a decade.

Casmite's previous operations may have benefited its customers by providing water and apparently adequate service for many years while collecting revenues far below costs; however, in another respect, the company has not done itself or its customers any favors. Had Casmite been subject to the Commission's ratesetting authority during this period, rates would have gradually risen over time providing more revenues to the company and enabling customers to adjust their water use and budgets accordingly. Also, through its monitoring of other water providers, the Commission's Water Division would have had more opportunities to facilitate the acquisition of Casmite by another water provider.

In its July report, the Water Division approved Casmite's proposed revenues based on use of the operating ratio method. However, in testimony at the evidentiary hearing, the Water Division's expert witness, Sazedur Rahman, indicated that the Water Division had changed its rate of return position both as to Class D water companies, in general, and as to Casmite, specifically. Rahman testified that the Water Division's position now was that Class D providers should recover 13.75%, regardless of the method used. Upon cross-examination, Rahman indicated that this new policy had been developed over the last two months, was evidenced only by an internal memo, and was not necessarily final. Tr. 92:14-15 (Rahman, Sept. 13, 2004). Because of questions about the formal status of this "new" policy, the Water Division's argument is rejected as uncertain.³

³ On March 17, 2005, after the record had closed in this proceeding, the Commission adopted Resolution W-4524 regarding the rate of return and rate of margin for Class C and D water utilities.

Another of the Water Division's new recommendations at hearing was to grant Casmite the same rate of return as a typical Class A water company. Rahman argued that since Casmite was wholly owned by Unocal and had received money from the parent corporation in the past, "it should be treated like a part of a big corporation, like, for example, a part of a Class A water utility." *Id.* at 88:28-89:2. Class A water utilities, Rahman's argument continued, recently have received a rate of 8.9% return on rate base and a rate of return on equity of 9.7% (citing D.03-10-005, *In re California Water Service Co.*, 2002 Cal. PUC LEXIS 1026 (Oct. 2, 2003)). Rahman concluded that 9.7% is the appropriate rate of return figure.

Rahman's analogy between a Class A water company and Casmite (owned by Unocal, which normally is not in the business of operating water utilities) is unconvincing, but we agree that 9.7% under the circumstances is a constitutionally acceptable, reasonable, and just rate of return for Casmite. As we indicated with reference to Class D water utilities in D.92-03-093, the "[r]ate of return may be set at a level above or below this range if facts so warrant in a particular case." 43 CPUC 2^d at 592.

Casmite's longstanding operation without a CPCN and periodic ratesetting is responsible for the potential rate shock to customers (and accompanying negative community impacts) as rates are increased to produce a fair rate of return. To further sanction Casmite for its impermissible operation without a CPCN (*see Part V, supra*), mitigate rate shock, and reduce adverse community impacts, we accept the Water Division's recommendation that the rate of return be phased-in over a four-year period. Water Division, Opening Brief at 4 (Oct. 18, 2004). The rate increase for the first year (test year 2004) will be calculated to cover expenses only (0%). The rate of return for the second year

will be 3.26%. The rate of return for the third year will be 6.52%. The rate of return for the fourth year will be 9.7%. As the Water Division indicates, “This phase-in is the maximum relief that the Commission can provide to avoid rate shock and ensure sufficient revenues to cover costs, while avoiding a negative rate of return.

To enable the Commission to actively monitor the condition of this water system after the fourth year, Casmite is ordered to apply for ratesetting for the fifth year.

In closing, it is useful to remember that we are under no constitutional obligation when ratesetting to ensure that a utility actually earns a reasonable rate of return – only that the utility is afforded a reasonable opportunity to do so. Nor are we required to ensure that the utility earn a specific rate of return each and every year – only that the utility is afforded a reasonable opportunity to do so over a reasonable holding period. *See Public Service Comm’n of Montana v. Great Northern Utilities Co.*, 289 U.S. 130, 135 (1933) (due process clause of Fourteenth Amendment “does not assure to public utilities the right under all circumstances to have a return based upon the value of the property so used”).

D. Revenue Requirement and Rate Design

Using test year 2004 figures accepted by the Water Division, Casmite has estimated operating expenses of \$70,967 and revenues of \$22,436. The company estimates it needs \$51,152 in additional revenue just to break even (without factoring in any rate of return).

Prior to Casmite’s application, Casmite was charging its customers \$20 per month or \$1.24 per 100 cubic feet consumed, whichever was greater. Complaint of Casmalia Community Services Dist. at 2 (Sept. 2, 2003). At hearing, Casmite proposed to recover \$92,902 in operating revenues using a rate design that

would impose a monthly service charge of \$73.16 per month for the basic 5/8" x 3/4" meter plus a commodity charge of \$4.63 per 100 cubic feet. The commodity charge would increase 269%. The monthly service charge for Casmalia's 2" meter would be \$585.28. Ex. A, Revised Workbook at p. 17, Supplement to Application (May 7, 2004).

As indicated above, we adopt the Water Division's recommendations and authorize a 0% rate of return for the first year. Casmite still must be authorized rates to raise sufficient gross revenues to meet estimated operating expenses of \$71,000 (2004 figures); however, these rates will be lower than requested.

Casmite has proposed a rate design based on our criteria for water utilities, as implemented by the Water Division. *See In re Water Rate Design Policy*, D.86-05-064, 21 CPUC 2^d 158 (1986). We approve the proposed rate design, modified as necessary by other determinations made in this decision. For test year 2004, we adopt a monthly service charge of \$55.08 for the basic 5/8" x 3/4" meter plus a commodity charge of \$3.71 per 100 cubic feet. The details of the rates and rate design are set forth in Appendix B.

Based on our determinations in this part, Casmite shall file an advice letter and tariff with the Water Division effectuating these rates.

VIII. General Order 103 Requirements

General Order (GO) 103 sets forth the Commission's rules governing water service and the minimum standards for design and construction. We address two issues that implicate GO 103 requirements.

A. Water Quality

General Order 103 requires that a public utility supplying water for human consumption (a) hold a permit as provided by the state's Health and Safety Code, and (b) comply with the laws and regulations of the state or local

Department of Health Services. GO 103 at ¶ II(1)(a). The Commission may inquire into these water quality issues under the holding of the California Supreme Court in *Hartwell Corp. v. Superior Court*, 27 Cal.4th 256, 272 (2002) (The Commission has “the authority to adopt a policy on water quality and to take the appropriate actions, if any, to ensure water safety”). *See also* D.99-06-054, *Standards and Policies re Drinking Water Quality*, 1999 Cal. PUC LEXIS 312 (June 10, 1999) (jurisdiction of the Commission to inquire into the safety of drinking water provided by public utilities).

The evidence indicates that Casmite was issued a domestic water supply permit by the California Department of Public Health in 1960. After enforcement authority was transferred to the County of Santa Barbara, an amended water supply permit was issued in 1987. *See* Application Ex. H. The county public health department performed its routine inspection of the system in July 2003 and found only minor deficiencies such as a leak needing repair and an abandoned tank needing to be removed. The county department also reported that it had received no complaints about the system during the previous year. The county indicated that an updated permit would be issued to the company. Within a month, Casmite notified the county that all deficiencies within its control had been corrected. In particular, Casmite indicated that it had obtained the required testing of unregulated chemicals. *See* Application Ex. I & Ex. No. 4.

B. Pipe Replacement

As of the evidentiary hearing, Casmite was in the process of replacing 4200 feet of water mains in the system main with 4-inch PVC pipe. Most, if not all, of this pipe will be installed before the CPCN is issued to Casmite. In its July 8, 2004, report, the Water Division noted that GO 103, ¶ III(2), establishes 6 inches as the minimum diameter for new water mains or replacements.

However, due to the small size of the Casmite system (and associated problems of maintaining adequate flow rates in larger pipes), the Water Division has represented to applicant and the assigned ALJ as follows: “As Casmite is not under the jurisdiction of the CPUC [prior to the issuance of a CPCN], Casmite is under no obligation to follow the design standards of GO 103. If Casmite is placed under CPUC jurisdiction, its existing 4 inch mains will not be required to be replaced unless they are found to be inadequate for public utility service.”

Another question is whether some of the water mains are impermissibly above ground. While GO 103 indicates a preference that water mains be buried, the only requirement is that pipes be protected to prevent freezing and covered by 30 inches of dirt in streets and alleys. GO 103 ¶ IV(3)(a); *see also Galbreath v. San Jose Water Co.*, D.95-07-033, 1995 Cal. PUC LEXIS 585, at *18 (July 19, 1995) (use of unburied pipe allowed). The evidence is that only a few hundred feet of main will be left uncovered after the replacement project is complete. There is no indication that uncovered pipe is in streets or alleys. *See* Ex. No. 4 at 2. The Commission takes official notice that the Casmalia area rarely freezes. The application satisfies GO 103 as it pertains to system water mains.

IX. Other Issues

A question was raised during this proceeding as to whether Casmite may collect alleged past-due water bills from its customers. The Water Division takes the position that these charges cannot be collected because the Commission did not authorize them. We do not resolve this question because it was not among those issues identified in the Scoping Memo (Mar. 3, 2004) for resolution in this proceeding.

X. Comments on Proposed Decision

On August 23, 2005, the principal hearing officer's proposed decision was filed with the Commission and served on the parties in accordance with Section 311(d) of the Public Utilities Code and Rule 77.1 of the *Rules of Practice and Procedure*. Comments were received on September 12, 2005, from The Casmite Corporation. The comment clarified that Mrs. David Tompkins receives water in exchange for an unrecorded easement (see page 6 and Finding of Fact 6). No other comment was filed.

XI. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and John E. Thorson is the assigned ALJ and principal hearing officer in this proceeding.

Findings of Fact

Background

1. In the 1940s, Casmite (a Nevada corporation organized in 1936) commenced oil field operations in Santa Barbara County along U.S. Highway 1, half-way between San Luis Obispo and Santa Barbara. As part of these operations, Casmite constructed a water system and began pumping from an underlying aquifer, which remains the source of water today. As an accommodation, Casmite began to provide nearby residents with water from the system.
2. In 1953, The Union Oil Company of California (Unocal) acquired all of Casmite's stock.
3. In 1994, Unocal sold off the oil field operations but retained the water system.

4. Casmite provides water to seven customers, and no new customers have been added to the system since the 1960s. Six of the customers are metered; one is not.

5. One of the metered customers is the Casmalia Community Services District, a public entity created under California law. Casmalia takes delivery of water from Casmite at a meter and, in turn, delivers the water to 52 residential and two commercial properties through its own distribution system. Each of the Casmalia properties is metered and billed by the Community Services District for water usage.

6. The unmetered customer receives water from Casmite in exchange for an unrecorded easement.

CPCN Requirements

7. Casmite has and represents that it will continue to deliver water, for consideration, to customers in the Casmalia area.

8. Casmite has filed its application for a CPCN and supplemental information and documents including certified copies of its articles of incorporation, certificate of good standing, authorization to do business in California, water supply permit (and amendment) issued by the State of California or its subdivision, description and map of water system, potential competitors, financial information, and ratesetting information.

9. Because Casmite has been in operation since the 1940s, the issuance of a CPCN will not affect recreation, park areas, or historical or aesthetic values.

10. The uncontroverted record indicates that Casmite is able to render adequate water service and remain financially viable, so long as just and reasonable rates are authorized.

11. The uncontroverted record indicates that no other existing, viable water provider is able or willing to serve the Casmalia area.

Past Operations

12. Historically, each of Casmite's customers has been required to sign a revocable license agreement with Casmite indicating that they are receiving surplus water and the water is not dedicated to public use. Since prior to 1986, Casmite has charged most of its customers for the water.

13. In 1953, after it purchased all of Casmite's stock, Unocal continued to operate the system to supply water for both its oil field operations and its Casmalia neighbors. In 1994, Unocal sold the oil field to Capco Resources, Inc., and through its Casmite subsidiary, has continued to provide water to its customers including Casmalia.

14. Since its purchase of Casmite stock (and including the period of 1994 to the present), Unocal has been deeply intertwined in the operation of the Casmite water system. Unocal has provided labor and equipment, advanced money, provided management, and allocated costs to Casmite.

15. While Casmite has operated without a CPCN (with the active involvement of Unocal), there is no evidence that Casmite abused its position as the sole provider of water to the Casmalia area. Casmite's existing rates are not based on "cost-of-service" ratesetting and, as a result, Casmite has provided water service at a loss.

16. Casmite's failure to obtain a CPCN has deprived its customers of ongoing Commission regulatory review and ratesetting. Periodic rate adjustments since 1994 would have cushioned the rate shock customers are likely to experience as rates as now set based on the cost of service. This rate shock will also be detrimental to the Casmalia community.

17. As of December 31, 2002 (the most recent financial statement in evidence), Casmite had plant and equipment of only \$106,543 and accounts payable to Unocal of \$520,460.

18. During the first nine months of 2004, Unocal had gross revenues of more than \$5.8 billion and net earnings of \$940 million. As of September 30, 2004, Unocal had assets of \$12.5 billion and stockholders' equity of \$4.8 billion.

19. While impermissibly operating without a CPCN, Casmite and Unocal did not abuse their monopoly position by charging excessive rates or delivering inadequate service.

CEQA

20. Casmite has been operating the water system since the 1940s and now seeks to do so in conformity with the Public Utilities Code. The Commission's granting of a CPCN will only establish the service area and authorize rates for the existing public water system. The Commission's decision will not authorize any construction or modification of the system.

21. Under these circumstances, we find with certainty that there is no possibility that the granting of a CPCN in this proceeding will have a significant impact on the environment. Therefore, no further environmental review by the Commission is required.

Ratesetting

22. Because of the small size of the Casmite system, it is impossible to compare proposed revenues for comparable service provided by other water suppliers in the general area.

23. For test year 2004, Casmite estimates operating expenses of \$70,967, depreciation of \$2,302, and taxes of \$1319, or a total of \$74,588. At current rates,

Casmite estimates only \$22,436 in operating revenues during test year 2004, producing a net operating loss of \$51,152.

24. With one exception, Casmite's proposed levels of expenses for test year 2004 are reasonable. With a minor change for taxes (\$519 instead of \$1319), we accept \$73,788 as the operating expenses for test year 2004.

25. Casmite has an estimated average depreciation reserve for test year 2004 of \$92,633 and an average rate base of \$75,616. Casmite's rate base will be reduced by \$35,000, however, as a sanction imposed in this decision.

26. At present rates, Casmite would be receiving a negative 68% return on rate base (net operating loss of \$51,152 ÷ average rate base of \$75,616).

27. The record does not support a rate of return based on an operating margin of 20%.

28. Casmite's operation without a CPCN and avoidance of rate review for at least since 1994 warrants a reduction of the rate of return range authorized for Class D water companies in D.92-03-093. Had Casmite been subject to the Commission's ratesetting authority during this period, rates would have gradually risen over time, providing more revenues to the company and enabling customers to adjust their water use and budgets accordingly.

29. A 9.7% rate of return under the circumstances of this case provides a constitutionally acceptable, reasonable, and just rate of return for Casmite. To adequately sanction Casmite for its impermissible operation without a CPCN, mitigate rate shock, and reduce adverse community impacts, this rate of return should be phased in over a four-year period commencing with test year 2004.

30. Casmite's proposed rate design, modified as necessary by the determinations made in this decision, satisfies our criteria set forth in D.86-05-064.

Conclusions of Law

CPCN Requirements

1. Casmite has satisfied all of the applicable requirements of Public Utilities Code Sections 1002(a) and 1004 and Rules 18 and 23.
2. Once granted a CPCN, Casmite will be classified as a Class D water utility.
3. Casmite has satisfied the applicable requirements of Commission Resolution M-4708 concerning Class D water utilities.
4. Public utility regulation of Casmite is necessary and convenient to safeguard a small number of customers who have no water supply alternatives, ensure reasonable and fair rates for both the ratepayers and the company, and monitor water service and quality in an industrial area with potential water quality problems.
5. Casmite should be awarded a CPCN authorizing it to operate as a public water utility within the state of California with all the rights and obligations thereof.
6. In being awarded a CPCN, Casmite assumes the obligation to serve, as set forth in the Public Utilities Code (including, but not limited to, Sections 451 and 453).

Past Operations

7. Casmite has violated Public Utilities Code Section 1001 by operating a water utility since 1994 without a CPCN.
8. Unocal has violated Public Utilities Code Section 2111 by aiding and abetting Casmite since 1994 in its operation of a water utility without a CPCN, as required of Casmite by Public Utilities Code Section 1001.

9. Both Casmite's and Unocal's conduct warrants the imposition of sanctions that could be imposed on a daily basis for the continuous ten-year period that the water system operated without a CPCN.

10. As an alternative sanction to a direct monetary assessment, Casmite's rate of return should be adjusted downward to (a) mitigate rate shock during a transitional period, and (b) provide only the lower threshold of what constitutes a reasonable rate of return. Additionally, Casmite should be denied the full addition of the water main replacement project (installed in 2004 at the cost of \$70,000) to the utility's rate base. Only one-half of that cost (\$35,000) should be authorized for inclusion in the rate base.

11. For violation of Public Utilities Code Section 2111, a penalty of \$1.8 million should be assessed against Unocal, calculated at \$500 per day for the ten-year period it aided and abetted Casmite in the operation of a water utility without a CPCN. The imposition of a specific monetary sanction against Unocal should be stayed on the condition that Unocal unconditionally foregoes any and all claims, preceding the effective date of this decision, for the reimbursement of loans or advances to Casmite.

CEQA

12. The issuance of a CPCN to Casmite is exempt from CEQA because the approval is not a governmental activity that will result in a direct or reasonably foreseeable indirect physical change in the environment.

Ratesetting

13. Casmite's operation without a CPCN and avoiding rate review at least since 1994 warrants a reduction of the rate of return range authorized for Class D water companies in D.92-03-093.

14. A 9.7% rate of return under the circumstances of this case should be authorized as a constitutionally acceptable, reasonable, and just rate of return for Casmite. To adequately sanction Casmite for its impermissible operation without a CPCN, mitigate rate shock, and reduce adverse community impacts, this rate of return should be phased in over a four-year period.

15. The rate increase for the first year (test year 2004) should be calculated to cover expenses only (0%). The rate of return for the second year should be 3.26%. The rate of return for the third year should be 6.52%. The rate of return for the fourth year should be 9.7%.

16. Casmite's proposed rate design, modified as necessary by the determinations made in this decision, satisfies our criteria for water utility rate design.

17. The specific ratesetting calculations set forth in Appendices A and B should be adopted by the Commission.

O R D E R

IT IS ORDERED that:

1. The Casmite Corporation (Casmite) is granted a Certificate of Public Convenience and Necessity for operation of a water utility within the service area known as the Casmalia subdivision, Santa Barbara County, as generally described by that map titled "Vicinity Map w/1996 Thomas Bros. Map, Casmite Fresh Water System, Casmalia, California," dated November 6, 2003, and set forth in Exhibit D to Casmite's Application in this proceeding (Dec. 22, 2003). Casmite shall fulfill its obligation to serve, as set forth the Public Utilities Code and prior decisions and orders of the Commission.

2. Casmite's rate of return shall be phased-in, in the manner described in this decision, as a sanction imposed under this decision.

3. As an additional sanction, the addition of one-half of the water main replacement project (\$35,000) to Casmite's rate base is disallowed.

4. Official notice is taken, pursuant to California Evidence Code Section 452(h), of Unocal's Quarterly Report for Quarter Ending Sept. 30, 2004, Form 10-Q, filed with the U.S. Securities and Exchange Commission, Common File No. 1-8483 (filed Nov. 5, 2004).

5. For violation of Public Utilities Code Section 2111, a penalty of \$1.8 million is assessed against Unocal, calculated at \$500 per day for the ten-year period it aided and abetted Casmite in the operation of a water utility without a CPCN. The imposition of a monetary sanction against Unocal for the violation of Section 2111, is suspended on the condition that Unocal submit to the Executive Director (copy to the Director of the Water Division), within 60 days of the effective date of this decision, an unconditional release of any and all claims against Casmite for any loans or advances made before the effective date of this decision. If the unconditional release is timely submitted, the imposition of the \$1.8 million penalty will be permanently rescinded.

6. The summary of earnings and rates for test year 2004 are authorized in conformance with this decision and as set forth in Appendices A and B. Casmite is authorized to file in accordance with General Order (GO) 96-A (or its successor), and to make effective on no less than five days' advance notice, a tariff containing the test year 2004 increase as provided in this decision. The revised rates shall apply to service rendered on or after the tariff's effective date.

7. Subject to pro forma tests after the 2004 increases are effective, Casmite also is authorized to file in accordance with GO 96-A (or its successor), and to

make effective on not less than five days' advance notice, a tariff setting forth rates for year 2005 (Appendix B), calculated in conformance with this decision. The revised rates shall apply to service rendered on or after the tariff's effective date.

8. Advice letters for revised rate increases for years 2006 and 2007 (Appendix B), resulting from the annual increases in the rate of return authorized in this decision, may be filed in accordance with GO 96-A (or its successor) no earlier than November 1st of the preceding year. The filing will include appropriate work papers. The increase will be the amount authorized herein, or a proportionate lesser increase if Casmite's rate of return on rate base, adjusted to reflect the rates then in effect, normal ratemaking adjustments, and pro forma test results, for the twelve months prior to the advice letter filing, exceeds the rate authorized by this decision. The Commission's Water Division will review the advice letter for conformity with this decision.

9. Casmite shall file an application for ratemaking no later than 18 months prior to the end of the fourth year of ratesetting made under this decision.

10. This proceeding remains open to ensure compliance with the Commission's orders.

This order is effective today.

Dated November 18, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH

Commissioners

Commissioner Bohn recused himself from this agenda item and was not part of the quorum in its consideration.

ATTACHMENT A

LIST OF APPERANCES

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C.03-09-001, A.03-12-024 ALJ/JET/tcg

(END OF ATTACHMENT A)