

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN
JOSE WATER COMPANY (U-168 W) for
an Order authorizing it to increase rates
charged for water service by \$34,288,100 or
9.76% in 2019, by \$14,231,800 or 3.70% in
2020, and by \$20,581,700 or 5.17% in 2021

Application 18-01-004

**OPENING BRIEF OF THE
PUBLIC ADVOCATES OFFICE**

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I. INTRODUCTION

Pursuant to Rule 13.11 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the June 28, 2018 *Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* (Scoping Memo), and the briefing schedule set by Administrative Law Judge (ALJ) Bemesderfer during evidentiary hearings held on July 9 and 11, 2018, the Public Advocates Office at the Public Utilities Commission, formerly the Office of Ratepayer Advocates, (Cal PA)¹ hereby submits this opening brief on San Jose Water Company's (SJWC) Application (A.) 18-01-004, filed on January 4, 2018. In this general rate case (GRC), SJWC seeks authorization to increase rates charged for water service by \$34,288,100 or 9.76% in 2019, by \$14,231,800 or 3.70% in 2020, and by \$20,581,700 or 5.17% in 2021.

II. PROCEDURAL BACKGROUND

SJWC filed A.18-01-004 on January 4, 2018 for Test Year (TY) 2019. Cal PA timely protested on February 7, 2018. The Assigned Commissioner and Administrative Law Judge issued the Scoping Memo on June 28, 2018, confirming the categorization of this proceeding as ratesetting and setting a procedural schedule. A prehearing conference was held on April 19, 2018, and a public participation hearing was held in San Jose on May 30, 2018. Cal PA served testimony on May 23, 2018 and evidentiary hearings were held on July 9 and 11, 2018. On August 10, 2018, Cal PA and SJWC submitted a joint motion to the Commission, requesting approval of a partial settlement agreement.

This brief addresses the two remaining contested issues:

(1) SJWC's request for a full Water Revenue Adjustment Mechanism (WRAM) with the associated Modified Cost Balancing Account (MCBA) and Sales Reconciliation Mechanism (SRM); and

¹ The Office of Ratepayer Advocates was renamed the Public Advocates Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which was signed by the Governor on June 27, 2018 (Chapter 51, Statutes of 2018).

(2) SJWC's request to transfer the balance in the Hydrogeneration Research, Development, and Demonstration (RD&D) Memorandum Account balance to its utility plant in service account, which would result in ratepayers funding both the costs of this failed project and a shareholder return on the recoverable balance.

For the reasons stated below, the Commission should reject SJWC's requests for a full WRAM and related accounting mechanisms, as well as SJWC's request to recover from ratepayers any costs associated with its Hydrogeneration RD&D Memorandum Account.

III. BURDEN OF PROOF AND EVIDENTIARY STANDARD

A. Burden of Proof

The Commission is charged with the responsibility of ensuring that all charges demanded or received by any public utility for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust and unreasonable charge demanded or received for such product or commodity or service is unlawful.²

According to California law, "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."³ In a 1980 decision, the Commission stated:

Of course, the burden of proof is on the utility applicant to establish the reasonableness of [...] expenses sought to be recovered . . . We expect a substantial affirmative showing by each utility with percipient witnesses in support of all elements of its application.⁴

² California Public Utilities Code Section 451.

³ California Evidence Code Section 500.

⁴ *Re Energy Cost Adjustment Clauses* (1980) 4 CPUC 2d 693, 701; D.92496.

The Commission affirmed that the burden is on the utility to prove the reasonableness of all aspects of its application:

As the applicant, [the utility] must meet the burden of proving that it is entitled to the relief it is seeking in this proceeding. [The utility] has the burden of affirmatively establishing the reasonableness of all aspects of its application. Intervenors do not have the burden of proving the unreasonableness of [the utility's] showing.⁵

Accordingly, SJWC has the burden of proof to show that its requests are just and reasonable, and compliant with applicable law. SJWC has not met its burden of proof in its requests for a full WRAM and related accounting mechanisms, as well as recovery of its Hydrogeneration RD&D Memorandum Account balance.

B. Evidentiary Standard

The Commission recently affirmed that the standard for the degree of proof that a utility must meet in a GRC is that of a preponderance of the evidence.⁶ The preponderance of the evidence standard is generally deemed to require that the evidence presented on one side of an issue is more persuasive than that in the opposition.⁷ Preponderance of the evidence usually is defined “in terms of probability of truth, e.g., ‘such evidence as, when weighed with that opposed to it, has more convincing force and greater probability of truth.’”⁸ The preponderance of the evidence standard does not relieve the applicant of the burden of initially producing evidence that is actually

⁵ *Southern California Edison Test Year 2006 General Rate Application* (CPUC D.06-05-016), p. 7.

⁶ *Decision Incorporating a Risk-Based Decision-Making Framework into the Rate Case Plan and Modifying Appendix A of Decision 07-07-004* (CPUC D.14-12-025), p. 53, Conclusion of Law 9.

⁷ California Administrative Hearing Practice 2nd Ed. (CED) Section 7.51.

⁸ *Decision Granting Certificate of Public Convenience & Necessity for Pre-Construction Establishment of Facilities-Based Communication Services* (D.08-12-052), p.19, citing Witkin Calif. Evidence, 4th Edition, Vol. 1, 184.

persuasive, and other parties are not required to offer evidence if the applicant fails its initial burden.

IV. DISCUSSION

A. The Commission Should Reject SJWC’s Request for a Full Water Revenue Adjustment Mechanism.

1. A Full WRAM is Not Necessary for SJWC to Achieve Water Conservation Success.

The Commission should reject SJWC’s request for authorization to adopt a full WRAM² because the mechanism continues to be unnecessary for SJWC to achieve aggressive water conservation. SJWC requested a full decoupling WRAM/MCBA in both its 2015¹⁰ and 2012¹¹ GRCs, and the Commission rejected those requests because SJWC’s then-current level of water conservation success demonstrated that full revenue decoupling was not necessary to promote water conservation and SJWC had not adequately established another basis for the change requested.¹² As this continues to be true, the Commission should again reject SJWC’s request.

SJWC has failed to adequately justify the necessity and reasonableness of its WRAM/MCBA request in this proceeding. SJWC’s primary argument in support of its request for a WRAM/MCBA is that without the mechanism, “SJWC retains the incentive to sell more water,” and that such an incentive runs counter to “conservation as a way of

² SJWC currently has a “Monterey-style” WRAM (M-WRAM, as opposed to a full WRAM). An M-WRAM tracks “. . . the difference between revenue San Jose receives for actual metered sales through the tiered volumetric rate and the revenue San Jose would have received through the uniform, single quantity rates if they had been in effect.” Exhibit Cal PA-1, p. 26.

¹⁰ CPUC D.16-06-004, p. 15, “The Commission does not adopt SJWC’s proposed change in its current Monterey-Style WRAM at this time.”

¹¹ CPUC D.14-08-006, p. 117, “The Commission does not adopt SJWC’s proposed change in its current Monterey-Style WRAM at this time.”

¹² CPUC D.16-06-004, p. 16.

life in California.”¹³ The Commission explicitly rejected this rationale for authorizing a full WRAM in its decision in SJWC’s last GRC decision.¹⁴

However, and regardless of the veracity of SJWC’s claim that it retains an incentive to maximize sales, SJWC’s customers continue to meet significant conservation goals without a full decoupling mechanism. For example, California law calls for a 20 percent per capita reduction in urban water use statewide by 2020 (20x2020).¹⁵ SJWC states that its “2015 Interim Target GPCD [Gallons per Capita per Day],” or the level of consumption it would need in 2015 to be “on track” for complying with the state mandate is 140 GPCD.¹⁶ SJWC reported that its actual GPCD measurement in 2015 was 89 GPCD, 36 percent lower than the targeted reduction level.¹⁷ Thus, SJWC has been able to increase its conservation more effectively than planned.

SJWC has met other conservation goals in addition to hitting its 20x2020 target. For example, SJWC reported meeting its state-mandated requirement to reduce potable urban water consumption by 20 percent from 2013 levels, established under Executive Order B-29-15.¹⁸ ¹⁹ During this time period, SJWC customers actually reduced total potable production by 32 percent from its 2013 baseline.²⁰

¹³ SJWC “Rebuttal Testimony on Revenues and Rate Design, Revenue Decoupling, and Refunds,” p. 4:22-23, p. 5:1-4. (Exhibit SJW-4.)

¹⁴ CPUC D.16-06-004, p. 16.

¹⁵ Cal. Water Code Section 10608.16(a) (2009).

¹⁶ San Jose Water Company, 2015 Urban Water Management Plan at 5-3, Table 5-2.

¹⁷ Exhibit Cal PA-1, p. 27, Attachment 7, SJWC Response to ORA DR EO2-001, Q(4).

¹⁸ Executive Order B-29-15 required a statewide 25 percent reduction in potable urban water use from 2013 levels, through February 2016. The State Water Resources Control Board (SWRCB) assigned urban water suppliers individual conservation standards based on relative per capita usage. Cal. Water Code §865 (c)(1). SWRCB required SJWC to target consumption reductions to 20 percent of 2013 baseline levels. See Final Urban Water Supplier Conservation Tiers, SWRCB website, *available at* https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/docs/supplier_tiers.pdf. SWRCB measured compliance on a cumulative basis, where conservation savings were “added from one month to the next and compared to the amount of water used during the same months in 2013.” Fact Sheet on Emergency Conservation Regulation: Assessing urban water supplier compliance with the mandatory conservation standards, *available at* https://www.waterboards.ca.gov/water_issues/programs

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SJWC has not presented any evidence to support its contention that a full WRAM is needed for conservation.²¹

B. The Effectiveness of WRAM as a Means of Achieving Conservation Has Yet to Be Determined.

Besides the lack of necessity of a full WRAM in SJWC's service territory, the Commission rejected SJWC's request for a full WRAM in its 2016 GRC decision because the Commission had not determined the effectiveness of other CPUC-regulated Class A water utilities' WRAMs. The Commission's prior rationale for rejecting SJWC's request for a full WRAM remains relevant in this GRC: the Commission has yet to determine the effectiveness of WRAM in achieving water conservation either in individual GRC decisions or in Commission-wide rulemakings. Additionally, authorized full WRAMs have often resulted in higher-than-expected WRAM balances; this presents an additional problem with WRAMs that indicates that further WRAMs should not be authorized, particularly when, as described above, they are not necessary to achieve conservation.²² The Commission should again reject SJWC's request.

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/conservation_portal/docs/factsheet/assessing_compliance.pdf

¹⁹ See Water Conservation Reporting – Conservation Reporting, SWRCB website, June 2014 – Nov 2017 Urban Water Supplier Report Data Set, available at https://www.Waterboards.ca.gov/water_issues/programs/conservation_portal/docs/2018jan/uw_supplier_data010918.xlsx.

²⁰ See *id.* SJWC reported producing 32,503.8 MG from June, 2015 through May, 2016, as compared to 47,827 MG of production in the 2013 baseline period, representing a 32 percent reduction in use during the effective time period of the 20 percent emergency conservation standard. Beginning on June 1, 2016, regulations required utilities to achieve new conservation standards based on a three-year projection of demand. Cal. Water Code §864.5(a)(5) and (b). SJWC therefor elected to reduce its conservation standard from 20 percent from 2013 baseline levels to 2 percent. See Summary of Self-Certification Conservation Standards, available at https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/docs/emergencyreg/uw_self-cert_summary.pdf.

²¹ Exhibit Cal PA-1, p. 27-28.

²² Exhibit Cal PA-1, p. 28-29.

The Commission has not determined if there is a definitive causal link between full WRAMs and conservation in the individual GRCs for the CPUC-regulated Class A water utilities with full WRAMs that were listed in SJWC’s last GRC decision.²³ Recent Commission decisions from various GRCs note that while conservation programs likely contribute to decreased consumption, “it is not possible at this time to determine how much of the reduction in water consumption is the result of conservation rates and conservation programs, and how much is due to other factors such as weather or economic conditions.”²⁴ Thus, the Commission has not made a definitive determination as to any causal relationship between full WRAM mechanisms and consumption reductions in individual GRCs.

In Commission-wide proceedings regarding WRAM, the Commission has yet to conduct a full-scale review of the effectiveness of WRAM in inducing conservation. Phase II of Rulemaking (R.)11-11-008, or the “Balanced Rate Rulemaking,” ostensibly “evaluated the effectiveness of the Commission’s water rates, forecasts, charge and recovery mechanisms in achieving the statutory objective of safe, reliable water service at just and reasonable rates, and in promoting water conservation.”²⁵ In Decision (D.)16-12-026, resolving Phase II, the Commission stated that its evaluation was “focused on policies of rate structure, tiered rates as a conservation signal, and sales forecasting mechanisms, as well as accounting mechanisms such as the WRAMs and MCBA [. . .].”²⁶ In the face of admittedly higher under-collections (WRAM balances) than were

²³ CPUC D.16-06-004, at p. 16: “Of the companies that currently have WRAM/MCBA, one has had no review due to scant data, one review resulted in the adoption of another pilot mechanism which requires future review, one review was inconclusive on the important question of excessive under-collections and one awaits a final decision on all questions of the WRAM/MCBA effectiveness.”

²⁴ See, e.g., CPUC D.13-05-011, at 67; CPUC D.15-11-030, at p. 35.

²⁵ CPUC D.16-12-026, Providing Guidance on Water Rate Structure and Tiered Rates, at p.12 [hereinafter CPUC D.16-12-026].

²⁶ *Id.* at p. 12.

expected and the unforeseen lack of balance between over- and under-collections,²⁷ the Commission proposed modifications to address this problem with current WRAMs in D.16-12-026.²⁸

However, while the Commission addressed possible solutions to the notable problem of excessive under-collections in its Commission-wide proceeding, the Commission *still* has yet to conduct a full-scale review of the effectiveness of its WRAM programs *in promoting conservation or of the mechanisms' overall impacts on ratepayers.*²⁹ The Commission's evaluation and action in D.16-12-026 addressed only one aspect of WRAM mechanisms: WRAM balances are excessively higher than those anticipated.³⁰ No other Commission-wide proceeding has addressed the effectiveness of WRAM at promoting water conservation or the effects of WRAM on ratepayers. Further, no Commission proceeding has evaluated the effectiveness of those measures proposed in D.16-12-026 to address the severe issues with WRAM under-collection balances.

²⁷ CPUC D.12-04-048, Addressing Amortization of Water Revenue Adjustment Mechanism Related Accounts and Granting in Part Modification to D. 08-02-036, D.08-08-030, D.08-09-026, and D.09-05-005, at 10-12, 36-37 [hereinafter CPUC D.12-04-048]. The Commission stated that “[it] expected lower levels of under-collections, and a balance of under- and over- collections, similar to our experience over the last 20 years with revenue adjusting mechanisms for California’s electric utilities.” *Id.* at p. 12.

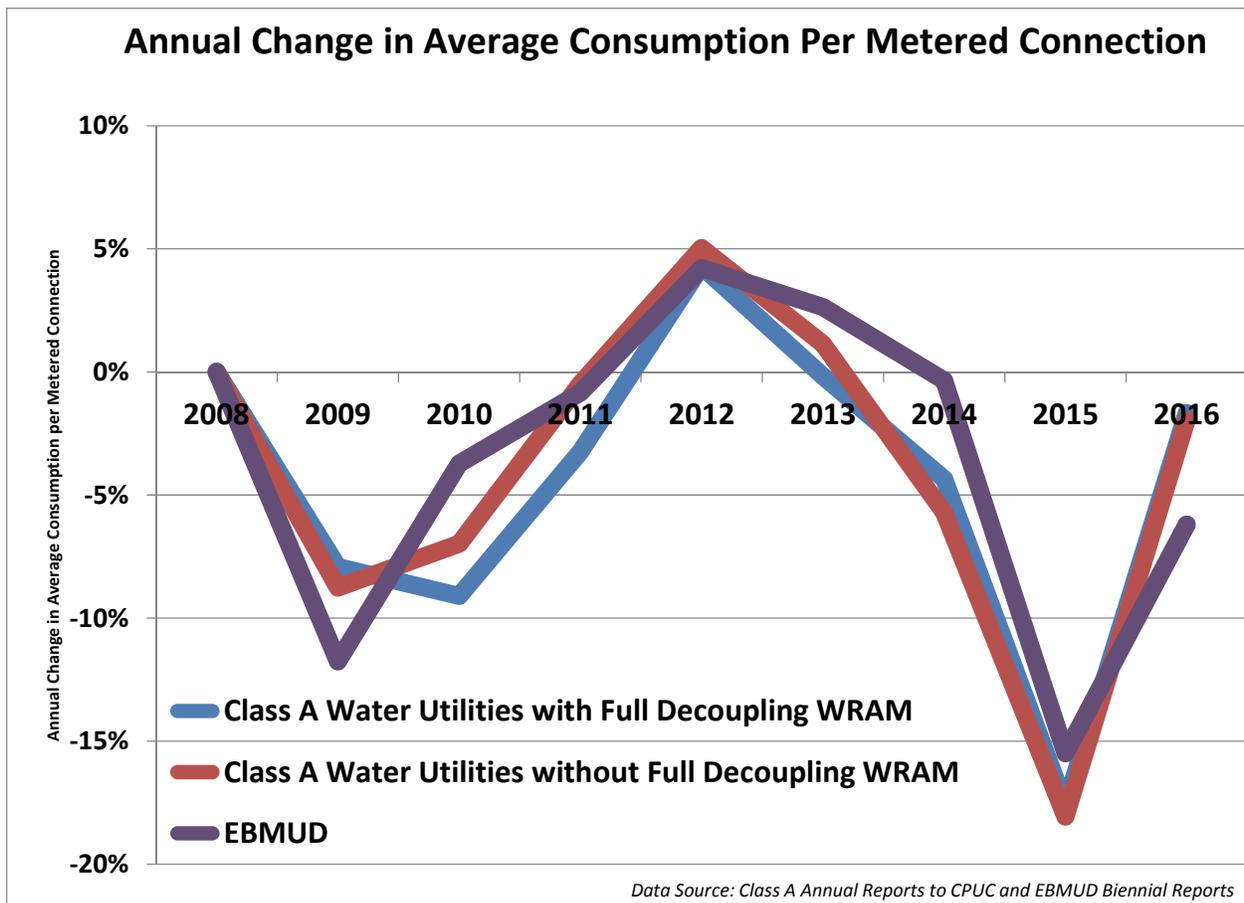
²⁸ For example, the Commission recommended that utilities with WRAMs consider requesting authority to implement a sales reconciliation mechanism or to proposed new forecasting methodologies in order to decrease WRAM balances. *See, e.g.*, CPUC D.16-12-026, p. 36.

²⁹ CPUC D.12-04-048 addressed amortization procedures of WRAM and related accounts for Apple Valley Ranchos Water Company, California Water Service Company, Golden States Water Company and Park Water Company, and required that a more vigorous review of the WRAM/MCBA mechanisms be conducted in each applicant’s pending or next GRC proceeding. CPUC D.12-04-048, p. 38. However, the Commission has also stated that “consideration of changes to the WRAM should occur in an industry-wide proceeding rather than adopted for a single utility.” CPUC D.15-11-030, p. 20.

³⁰ SJWC itself testifies that “[D.]16-12-026 clarifies that the arguments regarding WRAM surcharges have nothing to do with the soundness of the mechanism, but rather the inaccuracy of the sales forecast adopted in a water utility’s GRC.” Exhibit SJW-5, Opening Testimony of Palle Jensen, SJWC Exhibit E, Ch. 19, p. 8.

The Commission has not found a specific causal relationship between full WRAMs and water conservation. Similarly, SJWC fails to submit any data substantiating the effectiveness of WRAM in promoting water conservation. In fact, customer’s water usage data suggests that, since 2008, when the Commission began implementing full WRAMs, Class A water utilities without full WRAMs and similarly-sized public water agencies (EBMUD) have had strikingly similar water conservation trends to those Class A water utilities with full WRAMs, as illustrated in the graph below.

Comparison of Conservation Trends, Utilities with Full WRAMs vs. Utilities without Full WRAMs³¹



³¹ Exhibit Cal PA-1, p.31.

Not only has there been no demonstration that full WRAMs lead to increased water conservation, there are additional questions regarding their impact on ratepayers. This is alarming because of the Commission’s finding that “[m]any customers have expressed difficulty in understanding the WRAM/MCBA mechanism and its interaction with rates and revenue recovery, decreasing its effectiveness and increasing administrative burdens.”³² In sum, in a 2009 earnings call with investors, SJWC’s own former CEO articulates many of these still-outstanding questions concerning WRAM that the Commission should address before authorizing a full WRAM mechanism for SJWC:

Do they really create more water supplies at a lower cost? Are they inherently fair and unbiased? Are they transparent and equitable? Do they spawn or create desirable management behavior? Are they efficient economic mechanisms? [. . .] In my view, it has not been unequivocally determined that decoupling customer usage and utility revenue from usage and providing protection for supply costs accomplishes those goals without creating economic disincentives.³³

C. The Commission Should Reject SJWC’s Request for a Sales Reconciliation Mechanism (SRM).

An SRM allows a water utility to adjust its annual sales forecast between rate cases, under certain conditions, when actual sales diverge from those adopted.³⁴ In D.16-12-026, the Commission’s Decision Providing Guidance on Water Rate Structure

³² CPUC D.16-12-026, p. 80.

³³ Transcript provided by Seeking Alpha, Remarks made by Richard Roth during “SJW Corp. Q1 2009 Earnings Call,” available at <https://seekingalpha.com/article/136211-sjw-corp-q1-2009-earnings-call-transcript?page=2>. See also Exhibit Cal PA-1, p. 32, Report on Revenues and Rate Design, in which SJWC’s M-WRAM is shown to remove the incentive for SJWC to accurately project consumption per tier or to create a rate design that would fully recover revenues from its tiered rates.

³⁴ Specifically, SJWC here proposes that a 5 percent divergence between annual actual and annual proposed sales for the past year would trigger the SRM; once the SRM is triggered, SJWC would then adjust the estimated annual sales forecast during the remainder of the GRC cycle by 50 percent of the difference between the preceding year’s actual sales and the GRC-adopted forecast. Such changes would be incorporated in rates through the annual escalation year filings. See Exhibit SJW-5, Opening Testimony of Palle Jensen, SJWC Exhibit E, Ch. 19, p. 14.

and Tiered Rates, the Commission found that “[t]he application of SRM to modify forecasts in escalation years may be reasonable for some utilities, and Class A and B water utilities may propose an SRM in the GRC if necessary to achieve conservation, sustainability, and equity incentives in light of other rate design proposals.”³⁵ The Commission further ruled that utilities’ proposals “shall provide analysis and information to make a showing that the proposals are well-calculated to meet this Decision’s objectives, and shall be evaluated for their consistency with the principles adopted in this Decision.”³⁶ The Commission also determined that its “principle reason for authorizing SRM requests was to address increasing [WRAM] balances.”³⁷ This is because an SRM could limit the revenue disparity that is tracked by the WRAM by changing rates more often to reflect updated sales projections, (as opposed to applying surcharges and surcredits after the fact, when a disparity between adopted and actual sales will contribute to the WRAM balance at the end of the year).³⁸

The Commission should reject SJWC’s request because: 1) SJWC does not currently have a full WRAM (and should not be authorized to implement a full WRAM as it is not necessary (see section 1, above)); 2) SJWC failed to substantiate its request with analysis showing the request is well-calculated to meet Commission objectives; and 3) authorization of an SRM would exacerbate issues related to piecemeal rate-increases that are not comprehensively reviewed.

SJWC has requested an SRM in this GRC, arguing that an SRM would be in the public interest “as it would limit revenue disparity that is tracked by the WRAM by changing rates, as opposed to applying surcharges and surcredits after the fact, when a

³⁵ CPUC D.16-12-026, p. 82.

³⁶ *Id.*, at pp. 32-33.

³⁷ Res. W-5153, p. 5.

³⁸ *See e.g.*, CPUC D.14-08-011, Granting Joint Motion to Adopt the Proposed Settlement Agreement Authorizing California Water Service Company’s General Rate Increases for 2014, 2015, and 2016, pp. 19-20.

disparity between adopted and actual sales will contribute to the WRAM balance at the end of the year.”³⁹ SJWC further argues that an SRM will provide timely cost information to consumers, and so, “in conjunction with the implementation of the WRAM[...] the Commission should also authorize the implementation of a[n] SRM mechanism for SJWC.”⁴⁰

However, on May 23, 2017, the Commission’s Water Division rejected SJWC Advice Letter (AL) 501, which made a similar request for an SRM.⁴¹ The Commission affirmed Water Division’s rejection of SJWC’s request less than one month after SJWC filed its application in this proceeding.⁴² The Commission stated that because SJWC does not have a full WRAM, “the primary reason for the SRM does not exist.”⁴³ The Commission should similarly reject SJWC’s request for an SRM in this GRC, as the Commission’s prior justification for rejecting SJWC AL 501 remains relevant and controlling.

Furthermore, even if the Commission approves SJWC’s request for a full WRAM, it should not approve SJWC’s request for an SRM because SJWC has failed to substantiate its request. While D.16-12-026, cited above, held that an SRM may be a reasonable mechanism for some utilities to reduce high WRAM balances, it also directed utilities to “provide analysis and information to make a showing that the proposals are

³⁹ Exhibit SJW-5, Opening Testimony of Palle Jensen, SJWC Exhibit E, Ch. 19, p. 14, citing D.14-08-011.

⁴⁰ *Id.*

⁴¹ Exhibit Cal PA-1, Attachment 8, Letter from Rami Kahlon, Director of Water Division, to Ann Lindahl, Regulatory Affairs, SJWC, May 3, 2017, re: Disposition of Advice Letter No. 501.

⁴² The Commission affirmed the Water Division’s rejection of SJWC’s request at its Jan. 11, 2018 voting meeting. *See* Res. W-5153. Water Division had initially relied on the end of the drought as rationale for rejecting SJWC’s request for an SRM (*see* Exhibit Cal PA-1, Attachment 8, Letter from Rami Kahlon, Director of Water Division, to Ann Lindahl, Regulatory Affairs, SJWC, May 3, 2017, re: Disposition of Advice Letter No. 501; *see also* Res. W-5153, rejecting Water Division’s May 3, 2017 rationale for rejecting SJWC’s AL 501, affirming rejection on other grounds).

⁴³ Res. W-5135, p. 6.

well-calculated to provide more timely cost information to customers to inform the Commission's deliberation about the appropriate mechanism to address this issue [of high WRAM balances] and achieve the policy goals articulated [in D.16-12-026].” However, SJWC provides no such analysis or information.

Finally, the Commission should reject SJWC's request for an SRM because the Commission should work to increase transparency rather than allowing numerous ratemaking mechanisms that result in unnoticed rate increases to occur outside of GRCs, such as the SRM. As described in Cal PA's report on SJWC's memorandum and balancing accounts, such accounts remove incentives for SJWC to propose accurate forecasts in its GRC applications.⁴⁴ For example, despite evidence supporting forecasts of increasing rates for purchased water expenses, SJWC's proposal does not forecast increased purchased water costs, and thus the rates SJWC requested are unlikely to cover those likely cost increases. Because SJWC's balancing account allows SJWC to pass through those costs to consumers, SJWC's customers would likely be required to pay surcharges in the future to cover those costs. This allows SJWC to present a seemingly-low expense increase request in this GRC, essentially under-forecasting costs that will necessitate surcharges later. Thus, the Commission and ratepayers are shielded from seeing the full-expected rate and surcharge increases over the three-year rate case period. Authorizing additional mechanisms that allow rate case issues to be dealt with in a piecemeal fashion prevents full transparency and comprehensive ratemaking review, which should occur when all necessary factors can be analyzed together. The Commission should therefore reject the request for a mechanism to adjust SJWC's sales forecast independently of all other factors necessary for comprehensive ratemaking.

In conclusion, the Commission should reject SJWC's requests for a full WRAM and for an associated SRM. SJWC customers continue to achieve water conservation success without a full WRAM and the Commission has yet to determine a direct causal

⁴⁴ Exhibit Cal PA-1, pp. 32-35.

relationship between a utility's use of a full WRAM and water conservation.

Fundamental questions about the effectiveness and fairness of full WRAM mechanisms persist. Thus, the Commission should again reject SJWC's request for a full WRAM.

Because SJWC does not currently have and should not be authorized to implement a full WRAM, the primary rationale for an SRM does not exist. Further, in this proceeding, SJWC provides no justification for implementation of an SRM absent adoption of a WRAM. Finally, concerns with the level of transparency inherent in SJWC's rate increases would be exacerbated by implementation of an SRM. Consequently, the Commission should once again reject SJWC's request to implement an SRM.

D. The Commission Should Reject SJWC's Request to Transfer the Hydrogeneration Research, Development and Demonstration Memorandum Account Balance.

SJWC's application requests Commission authorization to transfer into utility plant in service \$1,243,362 in costs recorded in the Hydrogeneration Research, Development, and Demonstration Memorandum Account. SJWC's request would result in ratepayers funding both the costs of this failed project and a shareholder return on the balance transferred. As a result of the company abandoning this project,⁴⁵ the Commission should deny SJWC's request to recover any costs associated with the project and should order SJWC to zero the account balance and close the account.

The Commission should deny SJWC's request to include the failed project's costs in utility plant in service because no portion of the project ever provided utility service nor resulted in any used and useful assets.⁴⁶ SJWC's own consultants "issued a report saying that this project was not feasible."⁴⁷ It would be unreasonable and therefore

⁴⁵ Evidentiary Hearing Transcript (EH) Vol 3, p. 209, line 6.

⁴⁶ Exhibit Cal PA-4, p. 33 line 21.

⁴⁷ Evidentiary Hearing Transcript (EH) Vol 3, p. 209, lines 6-10.

unlawful to include the cost of this failed project in customer rates while providing SJWC shareholders with a return on the same failed project as requested in the application.⁴⁸

The Commission should also deny SJWC's eleventh-hour attempt to modify its application request in order to forego prospective shareholder returns and recover *only* the existing balance of project costs in rates over the three year rate case period.⁴⁹ In addition to being presented for the first time in rebuttal testimony, SJWC's modified request completely ignores the fact that the existing balance already includes returns that were allowed to accumulate on project costs as they were incurred.⁵⁰

Since all of the project costs included in this account were afforded a "return of and return on" assets constructed, it would be completely unreasonable for any portion of the tracked costs to be recovered from ratepayers now that the project has proven infeasible and no useful assets have been produced. A shareholder return is provided to compensate for risk. If SJWC was never at risk of recovering the costs of a failed project, there would be no basis for the Commission to have allowed returns to accumulate on project costs in the first place. The Commission must uphold the fundamental financial and ratemaking concepts that risk accompanies return. If the Commission now allows SJWC to recover any portion of the costs of this failed and abandoned project, then there was never any risk associated with pursuing the project and there never would have been a legal basis for allowing a return to accumulate in the account.

The Commission should order SJWC to zero the account balance associated with the failed project and close the account immediately.

⁴⁸ California Public Utilities Code Section 451: *All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.*

⁴⁹ See Exhibit SJW-02, p. 45, lines 15-18.

⁵⁰ See Commission Resolution W-4854.

V. CONCLUSION

For the reasons stated above, the Commission should adopt Cal PA's recommendations in this proceeding.

Respectfully submitted,

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