

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

**Order Instituting Rulemaking on the Commission's)
Own Motion into Addressing The Commission's) R.11-11-008
Water Action Plan Objective of Setting Rates that)
Balance Investment, Conservation, and) (Filed November 10, 2011)
Affordability For the Multi-District Water Utilities)
of: California-American Water Company (U210W),)
California Water Service Company (U60W), Del)
Oro Water Company, Inc. (U61W), Golden State)
Water Company (U133W), and San Gabriel)
Valley Water Company (U337W).**

**THE NATIONAL CONSUMER LAW CENTER'S REPLY COMMENTS
ON THE ALTERNATE PROPOSED DECISION**

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I. INTRODUCTION

On September 1, 2014, the National Consumer Law Center (NCLC), the Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN) and California Water Service Company (Cal Water) submitted comments on the Alternative Proposed Decision (APD) of Commissioner Michael R. Peevey to the Proposed Decision (PD) of Commissioner Catherine J.K. Sandoval.¹ In accordance with Rule 14.3,² the National Consumer Law Center responds to the comments of California Water Service Company (Cal Water). Cal Water requests that the Commission adopt the APD and incorporate “those changes reflected in the Revised PD that are not related to the consolidation discussion.”³ NCLC submits that the Commission should reject the arguments of Cal Water to adopt the APD because the APD’s overly broad standard for consolidations is unsound. The consolidation guidance set forth in the Revised PD, that Cal Water would reject, more accurately reflects the record and will result in more careful, considered, and just outcomes.⁴

II. REPLY COMMENTS

¹ Comments were submitted by the National Consumer Law Center (NCLC), California Water Service Company (Cal Water), the Office of Ratepayer Advocates (ORA), and The Utility Reform Network (TURN).

² 20 CCR § 14.4.

³ Comments of California Water Service Company on Alternate Proposed Decision of President Peevey (Cal Water Comments on APD) at 2.

⁴ NCLC had no knowledge of the Revised PD until it reviewed Cal Water’s Comments on the APD. However, NCLC was able to obtain a copy of the Revised PD. Despite the fact that the Revised PD is not part of the record, NCLC is compelled to submit a response that discusses the Revised PD in order to have fair opportunity to respond to the substance of Cal Water’s comments. NCLC’s earlier filed comments in favor of the Commission adopting the PD over the APD should be considered to apply as arguments in favor of the Commission adopting the Revised PD over the APD as well. *See* The National Consumer Law Center’s Comments on the Alternate Proposed Decision (Sept. 2, 2014) (NCLC Comments on APD).

Cal Water lists a variety of factors that it states support the Commission’s adoption of the APD. Cal Water believes that the APD, by shifting the focus from the four criteria of the Consolidation Guidelines to the “broader issues of balancing investment, conservation and affordability,” will encourage parties to be more aggressive in making consolidation proposals.⁵ Cal Water states that the APD is correct in observing that each of the four, more specific criteria of the Consolidation Guidelines “can be used to argue against consolidation of any sort...”, and states that fully developing a consolidation proposal is “resource-intensive.”⁶ Cal Water requests that the Commission “incorporate into the Alternate PD those changes reflected in the Revised PD that are not related to the consolidation discussion.”⁷

NCLC interprets Cal Water’s argument to mean that the APD’s less resource-intensive standard for establishing the reasonableness of a proposed consolidation is more likely to result in consolidations, and is preferable to the more stringent criteria of the Consolidation Guidelines and additional considerations set forth in the Revised PD.⁸

The Revised PD states:

Proponents of a consolidation proposal are free to argue that consolidation is in the public interest, in light of proximity, rate comparability, water supply and operation, and other factors that affect the public interest. Other public interest factors may include, but are not limited to, balancing investment, conservation, water quality and affordability, and whether any subsidies resulting from consolidation would be short, medium, or long-term.⁹

⁵ Cal Water Comments on APD at 2.

⁶ Cal Water Comments on APD at 2.

⁷ Cal Water Comments on APD at 2.

⁸ The APD’s broad standard is only that consolidation proposals must show a balance of investment, conservation and affordability. *See* APD at 9, 12 (Finding of Fact No. 5). The Revised PD retains the optional Consolidation Guidelines and adds other factors to the standard for showing the reasonableness of a consolidation proposal. *See* Revised PD at 8.

⁹ Revised PD at 8.

To the extent that Cal Water suggests that the APD’s broader focus on “balancing investment, conservation, and affordability” would be a less resource-intensive inquiry than the more specific focus of the Revised PD, NCLC has several concerns. First, NCLC fears that the APD’s vague, open standard will result in consolidation proposals that may be ill considered, less focused, and possibly more discriminatory, having been produced with less investment of time and consideration.¹⁰ NCLC also fears that the APD’s broad standard for consolidation will result in these less thoughtful proposals receiving less scrutiny before approval. Without more specific guidance, it is seemingly over-easy to argue that most situations, including goldplating, represent some “balance of investment, conservation and affordability.”¹¹

While it is within the Commission’s discretion to indicate a bias toward a particular ratemaking tool (*i.e.*, consolidation proposals), it should be unacceptable for the Commission to indicate a bias toward a particular outcome (*i.e.*, consolidation) before the parties have had any opportunity to argue whether a consolidation should occur on the merits.¹² One of the reasons the APD gives for the elimination of the Consolidation Guidelines is that they “can be used by the parties to argue against consolidation request[s]...”¹³ While the APD goes on to explain that

¹⁰ NCLC Comments on APD at 10 (APD’s broad standard is open to uneven application) & 11-12 (APD’s broad standard sets too low a bar for consolidation to the detriment of low-income customers); TURN Comments on APD at 2 (the “free-for-all” approach of the APD to consolidation “sends a clear message that low income and other vulnerable customers in both low and high cost serving areas are left without protection of their specific interests”).

¹¹ See NCLC Comments on APD at 10 (goldplating could be considered a “balance of investment, conservation and affordability”); TURN Comments on APD at 1-2.

¹² See TURN Comments on APD at 2 (APD is biased toward consolidation); ORA Comments on APD at 4 (APD’s language implies any proposed consolidation can meet its standard for consolidation); NCLC Comments on APD at 5 (any fair standard of proof should result in more than one outcome).

¹³ APD at 8.

the guidelines thwart consolidation “in cases where consolidation makes the most sense; e.g. areas that have high water rates, areas that have vulnerable water supplies, etc.”¹⁴ the APD applies a standard that inappropriately favors future consolidation proposals.¹⁵

The APD concludes that the Consolidation Guidelines are overly restrictive, but the APD goes too far in the opposite direction and is overly permissive. The APD’s general, non-specific standard of proof for consolidation fails to provide parties with enough guidance to achieve the “balance” it seeks.¹⁶ For example, the APD fails to provide consideration for low-income customers under the broadly stated “affordability” element. Under the APD’s standard, it is possible that consolidating a low-density, low-income area together with a higher income, higher density, high-cost area could result in low-income ratepayers paying for the high costs of the higher income area (or being terminated from service), because the majority of ratepayers will find consolidated rates affordable. However, such unreasonable consolidation cost burden on low-income customers is less likely under the Consolidation Guidelines that set forth Rate Comparability (whether present and future rates of districts differ no more than 25%) as a consideration. Under the Revised PD that retains the guidelines as an optional tool, the difference in district rates would be analyzed before consolidation.¹⁷ In contrast, the APD would eliminate the Rate Comparability analysis.

Between the APD and the Revised PD, the approach taken by the Revised PD is more reasonable. Unlike the APD, the Revised PD establishes sufficiently detailed guidance to be

¹⁴ APD at 8.

¹⁵ See *infra* at n. 12 and accompanying text.

¹⁶ See NCLC Comments on APD at 10-12.

¹⁷ The Revised PD would also allow public interest factors, such as unfair subsidies, to be examined. Revised PD at 8.

meaningful, and additionally allows the parties to look at factors beyond the detailed guidance that it offers.¹⁸

III. CONCLUSION

NCLC respectfully requests that Commission reject the arguments of Cal Water. The Commission should adopt the Revised PD together with the changes recommended in NCLC's Comments on the APD, and NCLC's Reply Comments on the PD.¹⁹

Respectfully Submitted,

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¹⁸ In addition to re-confirming the relevance of the Consolidation Guidelines as a discretionary tool and the ability of the parties to look beyond the guidelines, the Revised PD states:

We conclude that the parties to the 1992 consolidation guidelines may determine to rely upon them or to cease to use them going forward. The Commission retains discretion and authority over consolidation requests to determine on a case-by-case basis whether the proposed consolidation is in the public interest, with or without adherence to the 1992 consolidation guidelines.

Revised PD at 17 (Finding of Fact No. 5). NCLC submits that the Commission should be clear that if one party in a contested proceeding “cease[s] to use” the guidelines, this should not prevent the opposing party, or any other party, from using the guidelines to make an argument for or against consolidation.

¹⁹ NCLC recommended the use of the “and/or” construction rather than the “or” construction in Ordering Paragraphs Nos. 1 & 2 of the PD. *See* NCLC Comments on APD at 12-13. *See also* PD at 12-13 (review should assess whether high-cost “and/or” affordability problems exist in the districts). NCLC's recommended changes to the APD would be also apply to Ordering Paragraph Nos. 1 & 2 of the Revised PD. *See id.*