

**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). )**

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**REPLY COMMENTS OF  
THE NATIONAL CONSUMER LAW CENTER  
ON PROPOSED DECISION OF COMMISSIONER SANDOVAL  
PROVIDING FURTHER GUIDANCE FOLLOWING RELEASE OF STAFF REPORT**

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Darlene R. Wong, Esq.  
Attorney and Consultant  
P.O. Box 412  
Westwood, MA 02090  
(717) 979-4341  
darlenewong@nclc.org

Of Counsel  
National Consumer Law Center  
7 Winthrop Square, 4<sup>th</sup> Floor  
Boston, MA 02110-1245  
(617) 542-8010

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## I. INTRODUCTION

On May 27, 2014, Commissioner Catherine Sandoval issued a Proposed Decision (PD).<sup>1</sup> On June 16, 2014, Comments were filed by Golden State Water Company (GSWC), California Water Service Company (Cal Water), California American Water Company (California American), California Water Association (CWA), the Office of Ratepayer Advocates (ORA) The Utility Reform Network (TURN), and the County of Lake. NCLC does not dispute the recommendations of TURN, the County of Lake and CWA,<sup>2</sup> and only offers a small correction to the comments of ORA.<sup>3</sup> Therefore, NCLC submits these Reply Comments that respond only to GSWC, California American and Cal Water in detail.

## II. REPLY COMMENTS

### A. Multi-District Water Utilities, Including GSWC, Should Be Required to Comply with the Affordability Review and Report in Each Company's Next General Rate Case Application.

GSWC recommends revisions to Ordering Paragraph No. 2 in order to allow a minimum of 90 days between the final decision in this docket and the submission by multi-district water utilities of the district-based rate review and report on high-cost/affordability required by Ordering Paragraph No. 2.<sup>4</sup> GSWC's concern is that its scheduled filing date for its next general

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<sup>1</sup> The PD issues further guidance following the Division of Water and Audits "Report on Balanced Rulemaking" (Staff Report), dated January 30, 2014, and included as Attachment A to the PD. The Staff Report was based upon filed comments and four days of workshops in this proceeding.

<sup>2</sup> NCLC agrees that the Commission should promptly take next steps to address water affordability. *See generally* County of Lake Comments on PD; *see* TURN Comments on PD at 4. A draft OIR in the next 180 days would be helpful (*see* TURN Comments on PD at 4) and the working poor should not be excluded from water assistance (*see* TURN Comments on PD at 4). Although NCLC believes that updating the Consolidation Guidelines need not be the utmost priority at this time because they are not dispositive, the guidelines should remain open for discussion (*see* TURN Comments on PD at 2-3; County of Lake Comments on PD at 6). At the time of this filing, a decision on CWA's Motion for Party Status was still pending. However, NCLC agrees with CWA that the Commission should clearly state that the PD does not imply "an inclination to rely exclusively upon the 1992 guidelines...". (*See* CWA Comments on PD at 5).

<sup>3</sup> *See infra* at 3.

<sup>4</sup> *Compare* GSWC Comments on PD at 4 *with* Proposed Decision at 12-13 (Ordering Paragraphs 1-2).

rate case (GRC) application, July 15, 2014, is 20 days following the Commission's June 26, 2014 Business Meeting at which a final decision in this case can issue.<sup>5</sup> California American seems to raise a similar concern.<sup>6</sup>

If the Commission accepts GSWC's modification or allows for other extension, the Commission should explicitly require GSWC to file its high-cost/affordability report as a later-filed supplement to its July 15, 2014 GRC application and require other utilities to file their reports with their next upcoming GRCs.<sup>7</sup> Without such clarifications, for example, GSWC customers could be waiting for a high-cost/affordability review and report until GSWC's general rate case in 2017. This is because GSWC's 2014 GRC filing would take place before the minimum 90-day period that GSWC recommends as reasonable for preparing the review/report. NCLC believes, however, that GSWC and the other utilities in this proceeding likely have already begun review of high-cost and/or affordability problems as a result of participating in this docket. A large extension of time to prepare the review/report should be unnecessary.<sup>8</sup>

**B. The PD is Consistent with the Commission's Policy to Allow Cross-Subsidization Where Benefits Outweigh the Costs.**

GSWC states that the PD is "contradictory" because the PD supports the 1992 Consolidation Guidelines, which state that no districts should be combined for the express purpose of having one district subsidize another, while the PD also orders respondents to

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<sup>5</sup> GSWC Comments on PD at 3.

<sup>6</sup> See California American Comments on PD at 4 (water utilities should be precluded from any high-cost/affordability assessment in their next GRC, a Tier 3 advice letter filing or a currently open proceeding).

<sup>7</sup> Alternatively, although it may not be preferable to delay the entire GRC filing, the Commission could order a slight modification of GSWC's upcoming GRC filing date to allow for more time to submit the high-cost/affordability report simultaneously with its rate filing.

<sup>8</sup> If an extension is granted, the information and detail provided in the report should justify the extension.

consider just such a consolidation.<sup>9</sup> In actuality, the PD explicitly states that “the Commission has never formally adopted these guidelines” and that it is not the Commission, but the “proponents” of the guidelines who agreed that no districts would be combined for the express purpose of one district subsidizing another.<sup>10</sup> NCLC agrees with GSWC’s statement elsewhere that it is the Commission’s role to determine whether and when cross-subsidization among customers is justified.<sup>11</sup> The view of the PD is consistent with the Commission’s recognition in both the Water Action Plan the OIR that “generally, cross-subsidization may be justified when the benefits, including lower rates for customers in high cost areas, exceed the costs....”<sup>12</sup>

**C. The Commission Should Not be Foreclosed from Adopting a Future Uniform Mechanism for Water Affordability.**

Cal Water and California American believe that a prescriptive approach to addressing water affordability problems is undesirable, and ORA states that a uniformly applied high cost fund should not be set up.<sup>13</sup> However, NCLC submits the record in future dockets could support a uniform affordability mechanism across the utilities, such that low-income and other qualified customers have equal access to affordability solutions, regardless of which company provides their water service.<sup>14</sup>

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<sup>9</sup> See GSWC Comments on PD at 5.

<sup>10</sup> PD at 8.

<sup>11</sup> See GSWC Comments on PD at 5-6.

<sup>12</sup> OIR at 4 (describing the Commission’s statement in the Water Action Plan).

<sup>13</sup> Cal Water Comments on PD at 1; California American Comments on PD at 1-2; ORA Comments on PD at 1. ORA incorrectly notes, however, that the PD concluded that an intercompany high cost fund should not be established; rather, the PD declined to rule on an intercompany issue without the participation of broader industry interests. See PD at 4-6 (scope of PD).

<sup>14</sup> The high-cost/affordability reports required by the PD and accompanying GRC information should enhance available information. Such information can help increase accountability across the industry. See County of Lake Comments on PD at 4-5.

**D. The Commission Should Continue to Allow Parties to Use the 1992 Consolidation Guidelines as an Optional Tool.**

The record does not support the elimination of the 1992 Consolidation Guidelines, as requested by GSWC and California American. Further, the guidelines are not dispositive and may or may not be applied as appropriate.<sup>15</sup>

**E. The Commission Should Reject Attempts to Transform Data-Driven Analysis that Benefits an All-Party Discussion into an Internal Single-Utility Decision.**

Cal Water offers revisions to Ordering Paragraphs 1 and 3 which could undermine the PD's requirement that companies conduct fact-based, high-cost/affordability reviews. Instead, Cal Water would have companies make such reviews subject to the provision: "such that investment, conservation, and affordability could be better balanced."<sup>16</sup> Currently, Ordering Paragraph 1 simply requests an informational assessment from the utilities of the existence of high-cost and/or affordability problems. However, by adding Cal Water's proposed language to Ordering Paragraph 1, each utility could potentially file a high-cost/affordability problem report or propose solutions only if, in the company's own determination, a better balance could be achieved among "investment, conservation, and affordability."<sup>17</sup> Cal Water proposes similar language in its proposed Ordering Paragraph 2, such that the solutions/strategies offered by the utilities must in their estimation "more effectively balance investment conservation and

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<sup>15</sup> Compare GSWC Comments on PD at 6 and California American Comments on PD at 2-4 with D.05-09-004 at 34 (Finding of Fact No. 3). The Commission noted that meeting the 1992 Consolidation Guidelines is one means of making a *prima facie* showing of reasonableness for consolidation, and did not rule out other showings. See D.05-09-004 at 36 (Conclusion of Law No.1) (meeting Consolidation Guidelines can constitute a *prima facie* showing); PD at 8 (Consolidation Guidelines have not been formally adopted by the Commission).

<sup>16</sup> Cal Water Comments on PD at 2.

<sup>17</sup> Keeping customer rates affordable can conflict with company incentives for investment and an attractive shareholder return. Whether and how a utility can balance affordability with investment and conservation is a separate determination by the Commission after the identification by the utilities of where high cost and/or affordability problems exist.

affordability.”<sup>18</sup> NCLC strongly recommends that the Commission reject Cal Water’s revisions. The Commission should preserve the companies’ duty, as set forth in the PD, to prepare data-driven reports and solutions. It is the Commission’s duty to balance competing interests.

Cal Water also seeks to change the PD’s current requirement that the utility present “one or more solutions” to instead require “mitigating strategies.”<sup>19</sup> However, terminology is important. Solutions can be inclusive of mitigating strategies. Possible solutions should not be withheld from the public discussion. The Commission should reject Cal Water’s revisions to Ordering Paragraphs 1, 2, and 3.

### **III. CONCLUSION**

NCLC respectfully requests that its comments above be considered in resolving this case.

Respectfully Submitted,

/s/ Darlene R. Wong  
Darlene R. Wong, Esq.  
Attorney and Consultant  
P.O. Box 412  
Westwood, MA 02090  
(717) 979-4341  
darlenewong@nclc.org

Of Counsel  
National Consumer Law Center  
7 Winthrop Square, 4<sup>th</sup> Floor  
Boston, MA 02110  
(617) 542-8010

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<sup>18</sup> Cal Water Comments on PD at 3.

<sup>19</sup> Cal Water Comments on PD at 2-3.