

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

Order Instituting Rulemaking to Establish a  
Framework and Processes for Assessing the  
Affordability of Utility Service.

Rulemaking 18-07-006  
(Issued July 12, 2018)

**REPLY COMMENTS OF  
CALIFORNIA WATER ASSOCIATION  
ON STAFF PROPOSAL**

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**I. INTRODUCTION**

Pursuant to the August 20, 2019 *Administrative Law Judge’s Ruling Inviting Comments on Staff Proposal* (“Ruling”), California Water Association (“CWA”) hereby submits these reply comments on the “Staff Proposal on Essential Service and Affordability Metrics” (“Staff Proposal”). Multiple parties, including CWA, filed opening comments on the Staff Proposal, addressing the definitions and quantifications of essential service, the proposed metrics to measure affordability of utility service, and way in which the California Public Utilities Commission (“Commission”) should utilize affordability assessments. As CWA discussed in its opening comments, the Staff Proposal’s thoughtful and measured approach to the complex issues associated with assessing affordability is a good start. As discussed in more detail below, the Commission must take an equally thoughtful approach to implementation in order to develop a well-reasoned and comprehensive framework for assessing affordability of utility service.

It is important to recognize, however, that the rates for services provided by all Commission-regulated utilities named as respondents in this proceeding are required by law to

be “just and reasonable.”<sup>1</sup> The statutory standard of “just and reasonable” rates is routinely cited in Commission rates-setting decisions. Indeed, rates that are not “just and reasonable” are unlawful.<sup>2</sup> Affordability has always been one among several elements that the Commission has needed to consider in determining the rates it has authorized for a particular water utility are “just and reasonable.” The present rulemaking’s focus on affordability may affect determinations about rate design and investment choices, but must not do so to the exclusion of other factors relevant to the Commission’s statutory obligation to set rates that will enable every public utility to “furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”<sup>3</sup>

With respect to water “affordability,” Public Utilities Code (PU Code) section 739.8, which was the state’s first “Human Right to Water” law, has guided Commission policy on affordability of water service from Commission-regulated water companies for the last twenty-five years. That statute provides:

- a) Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost.
- b) The commission shall consider and may implement programs to provide rate relief for low-income ratepayers.
- c) The commission shall consider and may implement programs to assist low-income ratepayers in order to provide appropriate incentives and capabilities to achieve water conservation goals.
- d) In establishing the feasibility of rate relief and conservation incentives for low-income ratepayers, the commission may take into account variations in water needs caused by geography, climate and the ability of communities to support these programs.

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<sup>1</sup> Public Utilities Code Section 451 provides, in pertinent part: “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.”

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

The more recent adoption of a second “Human Right to Water” law – Water Code section 106.3(a)[3]<sup>4</sup> - may have brought greater attention to the issue of water “affordability,” but, in reality, there is no substantive difference between Commission policy under PU Code section 739.8 and the state’s policy declared under Water Code section 106.3(a). Any reasonable reading of these two statutes would lead to the conclusion that it has been the Commission’s policy and practice – indeed its statutory responsibility – to ensure the “Human Right to Water” since at least 1993. One result of this regulation is that all Commission-regulated Class A water companies have low-income programs approved by the Commission in furtherance of the Commission’s policies and the statutory requirements.

## II. UTILIZATION

### A. The Commission Should Hold Workshops on Affordability Assessment Implementation.

In its opening comments, CWA (along many other parties) noted the obvious time and effort that went into developing the Staff Proposal with respect to affordability metrics.<sup>5</sup> The Staff Proposal correctly recognizes, however, that it is “just the starting point” in developing a framework for the Commission to best assess affordability of utility service.<sup>6</sup> Indeed, the discussion of utilization and implementation of affordability assessments in the Staff Proposal is limited to a few paragraphs.<sup>7</sup> Although Staff states that they will “continue to develop plans for the Commission to implement and utilize this affordability framework,” no timeline or process

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<sup>4</sup> The text of Water Code section 106.3(a) provides: “It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”

<sup>5</sup> CWA Comments, p. 1.

<sup>6</sup> Staff Proposal, p. 34.

<sup>7</sup> *Id.*, pp. 25, 34.

for this task is included.<sup>8</sup> Similarly, while the discussion of the proposed definitions and metrics at the recent workshop was substantive and extensive, the discussion of utilization and implementation was considerably less robust.

In the absence of a Staff proposal for implementation, the recommendations in the comments vary widely. The parties' suggestions range from urging the Commission to refrain from conducting affordability assessments in proceedings until it has assessed several years of annual affordability data<sup>9</sup> to recommending that the Commission apply an affordability assessment to the first advice letter filed after its decision in this proceeding.<sup>10</sup> Similarly, some parties recommend that the Commission assess affordability on a cumulative basis in annual reports,<sup>11</sup> while others recommend that affordability assessments be used in every matter, both informal and formal, that could affect customer rates.<sup>12</sup>

Given the lack of consensus on implementation and utilization issues, CWA supports the recommendations for further workshops made by several parties in opening comments. For example, Pacific Gas and Electric Company ("PG&E") notes that it is premature for the Commission to determine which types of proceedings warrant affordability assessments and recommends that the Commission hold a workshop to address "identification of proceedings, tracking of the affordability analyses, and reporting of the affordability analyses moving forward."<sup>13</sup> The Small LECs similarly urge the Commission to hold additional workshops,

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<sup>8</sup> *Id.*, p. 34.

<sup>9</sup> Southern California Edison ("SCE") Comments, p. 5.

<sup>10</sup> Public Advocates Office Comments, p. 26.

<sup>11</sup> San Diego Gas & Electric Company and Southern California Gas Company ("SDG&E and SoCalGas") Comments, p. 10.

<sup>12</sup> Center for Accessible Technology ("CforAT") Comments, p. 6.

<sup>13</sup> PG&E Comments, p. 12.

noting the lack of “concrete proposals on implementation.”<sup>14</sup> The issue of how the metrics should be utilized to assess affordability of utility service is just as complex as the development of the metrics themselves and should not be given short shrift by the Commission. Once the metrics have been established, targeted workshops on implementation will allow the Commission and the parties to more fully determine the best ways to utilize the affordability assessments framework to further the Commission’s policy goals.

**B. The Commission Should Fully Consider Issues Related to Utilization of Affordability Assessments.**

Although CWA believes these workshops are justified, if the Commission decides to proceed without them it should still exercise caution in utilization of affordability assessments. As CWA and others pointed out in opening comments, there are still many questions regarding the accuracy, accessibility and reliability of the data and calculations for the affordability metrics.<sup>15</sup> Indeed, the Staff Proposal noted that the Commission “must develop a sustainable and cost-effective approach to maintaining the data sources and tools necessary to compute affordability metrics on an ongoing basis.”<sup>16</sup> CWA recommends that the Commission gather data and test the metrics over time before considering whether to use them in individual proceedings. This will allow the Commission to consider how and why the results of affordability assessments may change over time.

The Commission must also evaluate the potential burden on Commission staff, utilities and interested parties. In its opening comments, PacifiCorp discusses the potential burden of

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<sup>14</sup> Small LECs Comments, p. 9.

<sup>15</sup> CWA Comments, pp. 4-6.

<sup>16</sup> Staff Proposal, p. 34.

developing affordability metrics for small multijurisdictional utilities.<sup>17</sup> The Small LECs similarly asked that the Commission consider their “small size and limited staff and resources” with respect to implementation of affordability metrics.<sup>18</sup> CWA has similar concerns, particularly with respect to its small water company members, who may not have the resources to take on additional tasks associated with the Commission’s affordability framework. Until the Commission has addressed these issues, it cannot rely upon the proposed metrics to assess affordability of rate requests.

**C. The Commission Should Take a Measured Approach to Utilization of Affordability Metrics.**

In particular, the Commission should reject the Public Advocate Office’s recommendation to require affordability assessments in the upcoming general rate cases for Suburban Water Systems and Golden State Water Company, both of which are scheduled to be filed in 2020.<sup>19</sup> Given the multitude of concerns raised by CWA and other parties with respect to affordability assessments, including them in individual water utility proceedings in 2020 would be an obvious mistake. Since the purpose of these metrics is still being developed, including these untested metrics and methodologies in upcoming water utility general rate cases will lead to unintended consequences, not the least of which is customer confusion, misguided cost allocation, potentially dangerous reductions in needed investment, and corruption of the cost-of-service regulatory doctrine, which has served this Commission and others in the 49 states very well for decades. As AT&T cautioned in its opening comments, “Unless the purpose is clearly identified before analysis is done, the analysis risks becoming work that leads to no real

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<sup>17</sup> PacifiCorp Comments, pp. 4-5.

<sup>18</sup> Small LECs Comments, p. 6.

<sup>19</sup> Public Advocates Office Comments, p. 26.

wisdom or possibly actionable conclusions.”<sup>20</sup> Use of the brand-new, untested affordability metrics in 2020 general rate cases will likely create customer confusion and lead to “pressure to reduce necessary safety spending, as well as shifting costs from one set of customer groups to another.”<sup>21</sup>

Public Advocates Office’s recommendation to test out the affordability metrics “the next time a Class A water utility files an advice letter with implications for customers’ bills”<sup>22</sup> is similarly hasty and ill considered. As CWA discussed in its opening comments, advice letters are generally for items and matters that the Commission has already approved, which makes affordability assessments a poor use of the resources of the Commission and interested parties. Public Advocates Office and other parties that recommend swift and broad implementation of affordability assessments offer little explanation of the benefits to be derived, particularly while the affordability metrics are still being refined. In addition to the potentially significant administrative burdens, it is likely that the information derived from such assessments would be of limited value. In its comments, SCE cautioned, “The Commission should not require utilities to provide a detailed, cumulative affordability assessment with every request for [a] rate increase because that would overwhelm the Commission and stakeholders with affordability information that is only slightly changed from assessment to assessment.”<sup>23</sup>

The Commission should reject the recommendations for widespread and immediate implementation of affordability metrics in favor of a more measured approach. Several parties noted in their comments that additional time to collect data, conduct research, and test and refine

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<sup>20</sup> AT&T Comments, p. 3.

<sup>21</sup> PG&E Comments, p. 10.

<sup>22</sup> Public Advocates Office Comments, p. 26.

<sup>23</sup> SCE Comments, p. 4.



the affordability metrics is necessary before they can provide meaningful insight.<sup>24</sup> Indeed, The Utility Reform Network (“TURN”) observed, “the affordability metrics only become useful/meaningful after a time series has been developed, which if updated annually, would take many years before one could even determine whether a trend is forming and/or attempt to analyze what factors are affecting the affordability metrics.”<sup>25</sup> CWA therefore supports the recommendation of several parties to begin by tracking affordability on an annual basis,<sup>26</sup> perhaps in conjunction with an annual report<sup>27</sup> or workshop.<sup>28</sup>

### **III. DEFINITIONS AND METRICS**

The Staff proposal provided definitions of affordability and essential service for all regulated industries. For water, Staff defined essential service as “service sufficient for essential indoor usage, as required for human consumption, cooking, and sanitary purposes.”<sup>29</sup> Staff proposed to use three metrics to measure affordability: (1) Affordability Ratio, (2) Hours at Minimum Wage, and (3) Ability-to-Pay Index.<sup>30</sup> While CWA generally agrees with the definition of essential service and the use of the three metrics, it recommends certain refinements and clarifications.

#### **A. Essential Service**

In its opening comments, CWA raised concerns regarding the measurement of essential water service recommended in the Staff Proposal. Staff recommended that 50 gallons per capita

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<sup>24</sup> PG&E Comments, p. 11; SCE Comments, p. 5.

<sup>25</sup> TURN Comments, p. 10.

<sup>26</sup> Southwest Gas Comments, p. 4; PG&E Comments, p. 10; Greenlining Comments, p. 6

<sup>27</sup> SCE Comments, p. 4.

<sup>28</sup> SDG&E and SoCalGas Comments, pp. 10-11.

<sup>29</sup> Staff Proposal, p. 5.

<sup>30</sup> *Id.*, p. 15.

per day (gpcd) be considered essential indoor water usage, which is the water that is “required for human consumption, cooking and sanitary purposes.”<sup>31</sup> As CWA discussed in its opening comments, however, the amount of water the Commission should consider “essential” should vary across different parts of California to take into account median customer usage, seasonality, geography, climate, and demographics, among other factors.<sup>32</sup> SCE raised similar concerns in its comments, particularly with respect to its Class C water utility providing service on Catalina Island.<sup>33</sup> SCE correctly explained, “Establishing a single value for essential water and applying it across the approximately 100 Commission-regulated water utilities could result in inconsistent and counterproductive outcomes.”<sup>34</sup>

Public Advocates Office also critiqued Staff’s recommended use of 50 gpcd as the essential standard for water service for failing to capture variations in circumstances.<sup>35</sup> For example, Public Advocates Office mentioned that using 50 gpcd as the essential service standard would overestimate use in areas with a high percentage of new or high-efficiency homes, and would underestimate use in areas with older or less-efficient homes.<sup>36</sup> Public Advocates Office therefore recommends that the Commission determine essential service by calculating the annualized average of median monthly water use for single-family residences during winter months.<sup>37</sup>

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<sup>31</sup> Staff Proposal, p. 12.

<sup>32</sup> CWA Comments, pp. 2-3.

<sup>33</sup> SCE Comments, p. 8.

<sup>34</sup> *Id.*

<sup>35</sup> Public Advocates Office Comments, pp. 12-16.

<sup>36</sup> *Id.*, p. 14.

<sup>37</sup> *Id.*, p. 16

While CWA appreciates that Public Advocates Office’s proposed method would allow for variations in essential service by company or by district, it is wary of imposing a standard methodology to be applied to all Commission-regulated water utilities in California, given the significant variation in circumstances. The analysis of water usage included in the Public Advocates Office comments is not comprehensive and is not sufficient enough to develop a definitive methodology for determining essential water service. Essential water service should be based on the actual conditions facing water companies and their customers. CWA therefore recommends that the Commission retain the flexibility to consider different methodologies in order to best capture the specific factors that affect water usage in each district or company as it moves forward in assessing the affordability of water service.

**B. Low-Income Support Programs Should Be Included in Affordability Assessments**

In the opening comments, several parties noted the need for the Commission to consider low-income customer data and support programs when assessing affordability.<sup>38</sup> In particular, the energy utilities recommended that the Commission include rates that reflect the California Alternate Rates for Energy (“CARE”) and Family Electric Rate Assistance (“FERA”) programs in the calculation of the Affordability Ratio.<sup>39</sup> As the energy utilities explained, including these discounts in the metric will provide more accurate representation of affordability.

Each of the Class A water companies also has an individual Commission-authorized program providing assistance to low-income customers. These programs were developed to fit each utility’s service area, customer mix and associated demographics. To the extent that the

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<sup>38</sup> Public Advocates Office Comments, p. 17; UCAN Comments, p. 8; SCE Comments, p. 6; Southwest Gas Comments, p. 2; SDG&E and SoCalGas Comments, pp. 7-8; PG&E Comments, pp. 7-8.

<sup>39</sup> SCE Comments, p. 6; Southwest Gas Comments, p. 2; SDG&E and SoCalGas Comments, pp. 7-8; PG&E Comments, pp. 7-8

affordability metrics are limited to standard rates, they will fail to capture the water utility programs that help mitigate the impacts of water bills for qualifying low-income customers. CWA therefore recommends that the calculation of the affordability metrics, particularly the Affordability Ratio, reflect the discounts provided through the water utility low-income support programs.

### **C. No Need for Additional Affordability Metrics at This Time**

As CWA stated in its opening comments, it generally supports the Staff Proposal to use three complementary affordability metrics, which depict the components of affordability both independently and in relation to one another.<sup>40</sup> Several parties recommended that the Commission adopt additional metrics, such as measurements of disconnections or arrearages.<sup>41</sup> As discussed above, however, it is still unclear whether and the how the metrics proposed by Staff will assist the Commission in assessing the affordability of utility service, and what refinements and modifications will be needed. CWA recommends that the Commission focus on the three metrics proposed by Staff and refrain from adding additional metrics unless and until it is determined that they are needed to ensure the accuracy of affordability assessments.

## **IV. CONCLUSION**

The Staff Proposal is an important first step in determining how to define and measure the affordability of utility rates. CWA urges the Commission to expend the same level of effort in determining how best to utilize and implement affordability assessments in order to develop a well-reasoned and comprehensive framework for assessing affordability of utility service.

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<sup>40</sup> CWA Comments, p. 3.

<sup>41</sup> CalCCA, pp. 3-4; UCAN Comments, p. 4.

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