



**ATTORNEYS AT LAW**

50 California Street  
34th Floor  
San Francisco, CA 94111  
T 415.398.3600  
F 415.398.2438

Lori Anne Dolqueist  
D 415.438.7221  
ldolqueist@nossaman.com

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July 13, 2020

Hon. Sophia Park  
Administrative Law Judge  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Re: Comments of California Water Association on Draft Resolution ALJ-381

Dear Administrative Law Judge Park:

I am submitting this letter on behalf of California Water Association ("CWA") and its member water companies regulated by the California Public Utilities Commission ("Commission") on the proposed amendments to the Commission's Rules of Practice and Procedure set forth in Draft Resolution ALJ-381. CWA supports the Commission's efforts to streamline procedures, promote transparency and accessibility, and provide greater clarity through changes to its rules. CWA has participated in discussions of these issues in workshops and at meetings of the Commissioner Committee on Policy & Governance, and appreciates that several of the proposed changes reflect comments and suggestions made by CWA. CWA's comments here focus on the need for the Commission to continue to fulfill its legal obligations as it incorporates public input in its decisionmaking process.

Proposed Rule 1.18 addresses written comments received through the "Public Comment" tab of the online Docket Card for ratesetting and quasi-legislative proceedings on the Commission's website. CWA has previously noted that when the Commission considers public comments in its decisionmaking it must be transparent and must provide parties the opportunity to address and correct potential mischaracterizations and inaccuracies. CWA is pleased to see that the proposed rule takes steps towards transparency regarding consideration of public comments and provides opportunities for parties to address public comments if necessary.

CWA is concerned, however, that the proposed rule does not address the weight to be given to public comments. With respect to proposed Rule 1.18, Draft Resolution ALJ-381 states, "This rule also sets out new requirements to ensure that public input will be accorded **due weight** consistently across all proceedings."<sup>1</sup> Yet the proposed rule itself is silent on this issue.

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<sup>1</sup> Draft Resolution ALJ-381, p. 5.

While recognizing the value of public input, particularly when helping to identify relevant issues, CWA cautions the Commission against placing too much weight on public comments. Public comments, even if well intentioned, may mischaracterize the issues, misconstrue the facts or rely on inaccurate information. These comments are not sworn testimony, are not subject to cross-examination, and cannot be given the weight of evidence.

Clarifying the weight to be given to public comments is necessary to ensure that the Commission is able to support its findings by substantial evidence, as required by the California Public Utilities Code and due process standards. The Commission must keep in mind these legal obligations as it considers public comments in its decisions. CWA therefore suggests that proposed Rule 1.18 be modified by the new subsection (e) as indicated below:

### **1.18. (Rule 1.18) Public Participation in Proceedings**

Any member of the public may submit written comment in any Commission ratesetting or quasi-legislative proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website.

(a) All written public comment submitted in a ratesetting or quasi-legislative proceeding will be entered into the record of that proceeding and reviewed and considered by the Presiding Officer.

(b) Relevant written comment submitted in a ratesetting or quasi-legislative proceeding will be summarized in the body of the final decision issued in that proceeding.

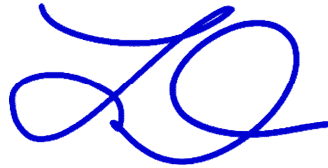
(c) Parties may respond to, and cite to, any public comment submitted in a ratesetting or quasi-legislative proceeding in their submissions to the Commission in that proceeding.

(d) The assigned Commissioner and/or Administrative Law Judge may invite parties to a proceeding to comment on any matter identified in public comment submitted in that ratesetting or quasi-legislative proceeding.

**(e) While there is value in considering public comment in Commission proceedings, nothing in this rule should be interpreted to give evidentiary weight to public comment.**

CWA appreciates the opportunity to participate in the process of revising and updating the Commission's rules. If you have any questions, please feel free to contact me at LDolqueist@nossaman.com or (415) 438-7221.

Sincerely,

A handwritten signature in blue ink, consisting of stylized, overlapping loops and curves, representing the name Lori Anne Dolqueist.

Lori Anne Dolqueist  
Nossaman LLP  
Attorneys for California Water Association