

ALJ/MSW/jc

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
revise the schedule for processing
rate case applications by water
utilities.

R.89-03-003
(Filed March 8, 1989)

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O P I N I O N

Summary

This decision adopts a revised rate case plan (RCP) for processing general rate case applications of Class A water utilities (those with more than 10,000 service connections). Key elements of the new RCP, attached as Appendix A, include a provision for the filing of and comments on the proposed decision of the Administrative Law Judge (ALJ), separate time schedules that provide more time for processing applications involving multi-district water utilities, revisions to the process for Water Utilities Branch (Branch) review of the Notice of Intention to file a general rate case application (NOI), additional time for review of and response to Branch's showings prior to the commencement of hearings, and a plan for staggered scheduling of rate case filings designed to balance the Commission's workload and to avoid the need for issuing general rate case decisions at the end of each calendar year.

Under the adopted scheduling plan, each Class A water utility (or each district of a multi-district utility) will be allocated a time for filing its general rate case application once every three years, either in January or in July. The schedule will be reviewed and updated semi annually through Branch-conducted workshops to assure that each utility has a fair opportunity to file a general rate case and to assure that the Commission's workload is balanced over time.

The request of five Class A water utilities to have their adopted rate of return considered and set in annual cost of capital proceedings, instead of in triennial general rate case proceedings, is not adopted at this time.

Background

By Resolution No. M-4705 dated April 24, 1979, the Commission adopted the current Regulatory Lag Plan (RLP) for processing general rate case filings of all water utilities. The RLP was adopted to remedy the major problem of regulatory lag which was then confronting several water utilities. A principal feature of the RLP is a 240-day schedule for processing general rate applications by Class A water utilities. The RLP also sets out procedures and schedules for minor rate increase requests of Class A, B, C, and D water utilities for which advice letter filings are authorized under General Order 96-A.

The RLP does not explicitly state the frequency of rate case applications allowed under the plan, but it has been Commission practice to accept such applications on a three-year cycle. The Commission typically determines the utility's revenue requirement for two future test years for which rates are specified in the general rate case decision, and authorizes a third attrition year for which a utility can request attrition-related rate adjustments through an advice letter. The 1979 letter of the Executive Director which transmitted copies of the RLP to the utilities stated that it was expected that utilities or districts of utilities would not file general rate increase requests more often than once every three years.

Although the RLP was adopted on an experimental basis, it has not been formally reviewed or updated since its adoption in 1979. The Commission initiated this rulemaking proceeding (OIR) to consider modifying the current RLP as it applies to formal rate change applications by Class A water utilities. One of the factors which prompted this review was a 1986 amendment to Section 311 (all references are to the Public Utilities Code) which requires the Commission to issue its decision in certain types of proceedings, including water utility general rate case applications, not sooner

than 30 days following filing and service of the proposed decision of the ALJ.¹ That requirement is not specifically reflected in the current RLP. Other factors prompting the review were the difficulty encountered by parties in meeting the filing dates established in the schedule and the backlog of major proceedings requiring decision at the end of each calendar year.

The OIR solicited comments with recommendations for revising the RLP, and provided for subsequent workshops to be conducted by the assigned ALJ. The OIR was served on all regulated water utilities, and all Class A water utilities were named respondents.

Comments in Response to the OIR

Comments were filed by ten water utilities, including seven Class A utilities, and by Branch. Branch filed its comments early, providing the utilities an opportunity to respond to its recommendations.

A. Branch Comments

Branch proposed several schedule revisions in its comments. One major change was the addition of 30 days to the current 35-day interval set from the time an ALJ's proposed decision is submitted to the office of the Chief ALJ for internal processing to the expected date of a Commission decision. Branch believes the additional time is needed to reflect the requirements of Section 311 and of the Rules of Practice and Procedure which provide for the filing of comments and replies to comments on the ALJ's proposed decision (Rules 77.2 and 77.5). Branch also

¹ The 30-day period may be reduced or waived only in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding.

proposed additional time for several stages of the schedule for proceedings in which more than one district of the utility is involved.² With these and other changes proposed by Branch in its comments, the present 240-day schedule would increase to 260 days for a single-district proceeding, 275 days for a proceeding with two to four districts, 298 days for a proceeding five or six districts, and 308 days for a proceeding with seven or more districts.

In addition to the proposed schedule changes, Branch offered several suggestions for reducing the problems encountered by parties in meeting filing dates. These include the development of an updated standardized workpaper format to ensure completeness of (and facilitate Branch review of) the NOI's, provision for automatic rejection of incomplete NOI's, a requirement that parties announce and explain proposed changes in Commission policy, a requirement that utilities identify and explain how the application and the NOI differ, provision for automatic suspension of the schedule for various failures or delays such as failure to file exhibits and prepared testimony with the application or failure to timely respond to data requests, and limits on updating exhibits and testimony.

Branch acknowledged that the frequency of failure to meet filing dates under the RLP could be reduced by reducing the amount of information required of applicants in rate case filings. However, it opposed such an approach, arguing that the Commission

² Several Class A water utilities provide service in districts which are widely dispersed throughout the state. Rates are established separately for each district, although rate of return and general office issues are considered generically in multi-district rate proceedings. It is common for a single general rate case to involve as many as seven districts. The 17 Class A water utilities regulated by the Commission have a total of approximately 60 separate districts.

and ratepayers are entitled to a complete review of water utilities once every three years.

Branch offered three alternative methods for avoiding the year-end backlog of proceedings, each of which involves controlling the date on which a utility is entitled to file an NOI. Under the first method, the Commission would allocate to each utility (or district of a utility) a specific date once every three years for filing its NOI. The utility (or district) would not be eligible to file a general rate case application for another three years if it did not file on the appointed date. The allocated date would be calculated to avoid conclusion of the proceeding for decision at the end of a calendar year. Under the second method, which is similar to current practice, Branch would informally establish NOI filing dates based on discussions with utilities and the need to avoid year-end decisions. As a third alternative, Branch suggested that a combination of the first two alternatives could be used. For example, the Commission-allocated date could be made applicable only to multi-district utilities.

B. Utility Comments

Comments in response to the OIR and in reply to the Branch comments were filed by Southern California Water Company, California Water Service Company (CWS), California-American Water Company (Cal-Am), San Jose Water Company, Citizens Utilities Company of California and related companies, Park Water Company, and Suburban Water Systems. With a few exceptions, the utilities generally addressed the same or similar topics and were in general agreement on a number of major issues. The more significant utility comments are summarized below:

1. The utilities offered a variety of proposals for addressing the year-end backlog of matters awaiting decision. Water utility rates are set by using calendar-year test periods, and the utilities maintain that it is critical that their rates be adjusted effective on January 1. Some suggested the use of

fiscal-year test periods for at least some utilities to enable staggered filings. Others noted several problems that would be encountered in budgeting and accounting on a fiscal-year basis, and suggested retaining calendar-year test periods but with staggered filings. Several suggested allowing interim rate relief subject to refund or the use of memorandum accounts to ensure that effective rate relief coincides with the beginning of the test period while allowing or accommodating delays in issuance of a final decision.

2. Responding to Branch's alternative proposal to require utilities to file an application on an appointed date or forego the opportunity for a general rate increase for three years, several commenters stated that the penalty for failure to file was unduly harsh and would encourage utilities to file applications unnecessarily, adding to the Commission's workload.
3. NOI's passing clerical review for format and completeness should be accepted upon their tender, without Branch discretion to suspend the schedule while the NOI is reviewed. Under current practice, up to 30 days may pass before the NOI is accepted. One utility cited an example where 75 days passed before its NOI was accepted.

Several utilities suggested that filing formats be standardized to facilitate review of NOI's and to facilitate subsequent preparation of comparison exhibits. A number of commenters stated that Branch's proposal for automatic rejection of NOI's considered to be incomplete would impose an unreasonable burden on utilities, and suggested that at a minimum, an appeals process should be available for rejected NOI's.

4. Some utilities suggested that a generic rate of return proceeding for the Class A water utilities, patterned after the

Commission's plan for energy-utility annual cost of capital proceedings, would reduce the number of issues addressed in general rate cases. This would increase the likelihood of meeting the deadlines in the schedule and/or allow shortening the schedule.

5. Most utilities asserted that the current 240-day schedule provides adequate time for processing general rate case applications, even when the requirements of Section 311 are considered, and that even if the internal elements are adjusted, the overall period should not be lengthened. Several commenters suggested either that more staff be added to Branch or that the level of staff review and analysis be reduced to accommodate the 240-day schedule. One utility suggested that the ALJ Division give greater consideration to water utility proceedings in allocating its resources. Two commenters stated that Branch's proposal to provide more time for multi-district proceedings would cause a disadvantage for those utilities, and argued that more staff should be devoted to multi-district proceedings.
6. After revenue-requirements issues have been determined by the ALJ but prior to filing of the proposed decision, the ALJ should make use of utility personnel and computer resources as well as Commission staff resources to "number crunch" tables and prepare draft rate appendices. Utilities usually have the available resources and the particular knowledge that would allow them to more expeditiously prepare the tables and appendices. One utility commented that the current practice of using Branch personnel to prepare tables and appendices based on advance information about the ALJ's proposed decision gives advocacy staff in Branch an advantage in preparing comments on the ALJ's proposed decision.

7. The current RLP schedule and the new schedules proposed by Branch provide a ten-day interval between the date that Branch's exhibits and prepared testimony are mailed and the commencement of hearings. Several utilities commented that this provides inadequate time for review, discovery, preparation for hearing, rebuttal testimony, and possible stipulation and settlement. Typically, Branch exhibits are mailed on a Friday and hearings start ten days later on a Monday, leaving only five working days and two weekends to respond, assuming special arrangements are made by the utility to obtain Branch exhibits on the mailing date. As a result, opportunities to identify simple errors and to stipulate on minor factual issues are lost and hearing time is lengthened. The utilities suggested that at least ten more days should be added to the interval, without lengthening the overall schedule.
8. The use of stipulations and settlements provides the potential for simplifying proceedings and should be encouraged. Better lines of communication between applicants and Branch should be developed to encourage stipulations of fact, clarify and focus issues, and avoid simple misunderstandings that can lengthen hearing time needlessly. The short period between publication of Branch's showing and commencement of hearings is not conducive to such communications.

Workshops

Representatives of 12 Class A water utilities and of Branch participated in one or more of 4 workshops which were held over the course of a 3-month period in 1989. In addition, representatives of the Financial and Economics Analysis Branch of the Division of Ratepayer Advocates (DRA), which provides rate of return recommendations in general rate cases, addressed the proposal for an annual cost of capital proceeding. The filed

comments were fully discussed, and a series of proposals and counter-proposals responsive to the comments and the issues raised in the workshops were offered by the utilities and by Branch.

During the workshop process, the participating utilities organized industry meetings to develop and refine proposals in which all Class A water utilities were invited to participate. In addition, Branch, in cooperation with utility representatives, commenced a series of meetings to develop updated standardized workpapers that would facilitate the processing of NOI's and help to assure a consistent review by Branch.

At the conclusion of the workshops, participants agreed in principal to a proposal resolving most issues. This consensus proposal is described in the following section. The ALJ directed Branch representatives to prepare a summary of the consensus proposal with the related time schedules, and to provide all workshop participants with a copy. The ALJ informed participants that a proposed report addressing the comments and workshop proposals and recommending resolution of the issues would be served on all parties, with an opportunity provided for comments. The ALJ further advised parties that oral argument did not appear to be necessary and was not planned.

Consensus Proposal

Branch mailed a summary of the workshop consensus proposal, along with revised time schedule summaries, to all workshop participants on November 21, 1989. The mailing did not explicitly request comments on the summary but did request that questions be directed to Branch.

The consensus proposal adopts Branch's suggestion for schedules that allow more time for multi-district proceedings. However, the total number of days for each of the schedules is somewhat less than provided in Branch's initial proposal, with 254 days for a single district proceeding, 264 days for a proceeding with two to four districts, 289 days for a proceeding

five or six districts, and 299 days for a proceeding with seven or more districts. Several revisions involving events within the schedule were also proposed. These include the addition of ten days to the pre-application period to facilitate review of NOI's, provision for Branch to notify the utility of deficiencies in the NOI by Day -20, and the addition of ten days to the time period between issuance of Branch's exhibits and the first day of hearings.

To provide for staggered filings over a three-year rate case cycle, starting in January 1991, each utility or each district of a multi-district utility will be allocated a time for filing its general rate case application once every three years, either in January or in July. Thus, for each three-year cycle, there will be six different filing periods, and approximately one-sixth of all Class A water utilities or districts will be permitted to file at each such period. A sample filing schedule which was prepared for discussion purposes at the workshop is attached as Appendix B.³ The filing schedule will be reviewed and updated semi-annually through Branch-conducted workshops to assure that each utility has a fair opportunity to file a general rate case and to assure that the Commission's workload is balanced over time.

The consensus proposal provides for calendar-year test periods for all utilities. For January filings, the utilities propose that the calendar year of filing will be the first test year, and that rates become effective five days after the effective date of the decision. Branch proposes that the calendar year following the year of filing be the first test year, and that rates become effective on January 1 of the test year. For July filings,

³ The sample schedule in Appendix B does not reflect the intent of the parties that the approved filing schedule be made applicable to filings beginning in January 1991.

the parties agree that the following calendar year will be the first test year, and that the effective date of rates will be five days after the effective date of the Commission decision..

Under the utility proposal for January filings, the plan provides for a decision in the latter part of the first test year. To avoid short-term implementation of rates based on the first test year only, followed by additional rate increases a short time later, the utilities propose that rates implemented in the latter part of the first test year remain in effect until the end of the second test year. These rates would be based on a weighted average of adopted revenue, consumption, and customer estimates for the two test years. An attrition filing would be permitted for the first full calendar year following the second test year as under current practice, and a second attrition filing would be permitted for the following year, with those rates expected to be in effect for a partial year pending the next general rate case. The Branch proposal for January filings retains the current practice of two test years and one attrition year.

For utilities with July filings, the consensus proposal provides for a decision early in the first test year. Rates will be set as under current practice for the first and second test years, and attrition filings will be permitted for both the next full year and the following partial year, pending the next general rate case.

Proposed Report

By ruling dated June 15, 1990 the ALJ issued a proposed report with a recommended RCP. Comments on the proposed report were filed by CWS, Cal-Am, and Branch. Only Branch filed reply comments. We have carefully reviewed the comments and the reply of Branch, and have adopted revisions to the proposed report as appropriate.

Discussion

Most of the issues raised in the initial comments and during the workshops are encompassed within and resolved by the consensus proposal. The material issues to be addressed by this decision are the following:

1. Should the consensus proposal be adopted, and if so, should modifications be made?
2. For January filings, should the year of filing or the following calendar year be the first test year, and should rates become effective five days after the effective date of the decision or on the following January 1?
3. Should utilities provide the ALJ with technical expertise in the preparation of tables and appendices after submission of the proceeding, and should the current practice of relying on technical staff for such expertise be revised?
4. Should the adopted RCP provide for annual cost of capital proceedings for some or all Class A water utilities?

A. Adopted Plan

We have carefully evaluated the consensus proposal and determined that it should be adopted, with the modifications discussed below. The current plan was adopted on an experimental basis more than ten years ago, and it is not surprising that problems have arisen with its administration. The consensus proposal addresses these problems, and it represents the substantial efforts of the workshop participants and the compromises reached by them on most major issues. It represents substantial if not unanimous agreement among all parties on resolution of the issues.

The consensus proposal achieves our objectives of incorporating the requirements of Section 311, addressing the difficulty encountered in meeting filing dates, and reducing the

year-end backlog of proceedings requiring decision, without sacrificing our ability to review the rates and operations of Class A water utilities on a regular basis. It does so by providing for staggered rate case filings and by setting more realistic time schedules that reflect practices and requirements that have evolved since 1979. The proposal for semi-annual workshops conducted by Branch to consider the filing schedule will also provide a forum for informal discussion of proposals to revise and update the RCP.

The mechanism proposed for staggering filings over a three-year cycle will help to balance the Commission's workload over time and is flexible enough to allow updates to accommodate changing circumstances and the needs of individual utilities. The need perceived by utilities for interim rate relief and/or memorandum accounts pending final decision under other proposals is obviated by this mechanism and the revised time schedules, as are the problems that would be associated with fiscal year test years. By adding ten days to both the pre-application period and the period between issuance of Branch's showing and the start of hearings, it provides an opportunity for resolution of problems that have been the source of delays in the past. Similarly, a more defined process for Branch review of NOI's which requires Branch to notify the utility of problems with the NOI will help to avoid such delays. Finally, post-hearing delays are addressed by the plan's provisions for comparison exhibits, early ALJ advice to technical staff on resolution of issues, and additional time for post-briefing stages of the schedule.

We believe certain modifications to the consensus proposal should be made. The adopted RCP modifies or supplements the consensus proposal as follows:

1. The format of the various time schedules is consolidated for ease of reference. Also, an introductory section is added to the plan to describe plan elements that are not specifically related to the events in the time schedules.

2. Class A water utilities are explicitly allowed to file general rate case applications at times other than provided in the staggered filing schedule adopted by Branch. The Commission cannot assure that off-schedule filings will be processed under the time schedules of the RCP, but failure to make any provision for such filings could encourage utilities to make unnecessary filings on the scheduled date, possibly adding to overall Commission workload.
3. NOI and application filings are required to include the applicant's showing (excluding workpapers) as part of the filing. This change simplifies and clarifies the filing requirements with little or no effect on paperwork burden.
4. To ensure that all parties focus on the RCP schedule at an early date, utilities are required to include date-specific RCP schedule proposals with their NOI filings. Subject to approval by the ALJ, the utility may request waiver of the time schedules if it is willing to assume the risk of any resulting delay and if such waiver is not inconsistent with the needs of the filing schedule. In addition, the ALJ, with concurrence of the assigned Commissioner, may modify the application of the RCP schedule to individual proceedings for cause. Examples are the need to accommodate travel schedules when hearings are held in the service territory, suspension of the schedule due to failure to respond to proper data requests, and the need to establish separate phases of some proceedings. These modifications will help to assure that the RCP schedules will be observed while at the same time providing needed flexibility in adapting the schedules to individual proceedings.
5. The NOI review process is expanded and revised to make clear the circumstances under which Branch may reject the tendered NOI or suspend the time schedule after

tender of the NOI for filing, and to provide an appeal mechanism when the utility disagrees with such rejection or suspension. The date of tender is the filing date unless the Deficiency letter provided in the consensus proposal is issued by Branch. If the utility does not agree with the Deficiency letter it may appeal first to the Branch, and if a satisfactory resolution is not reached within five working days, then to the Executive Director. The Deficiency letter shall explain the appeal process. With these modifications, Branch retains discretion in the review of NOI's as under current practice, but utilities are also provided with more effective means to address deficiencies and disagreements over them.

Branch points out that it is currently working with utilities to develop a new format for standardized utility workpapers which will facilitate a "checklist" review of tendered NOI's by Branch. Until this process is completed and the workpaper format is adopted by Branch, Branch does not believe that it can commit to completing its review and instructing the Docket Office whether to accept the NOI within the 20 days allowed by the consensus proposal. Branch recommends that implementation of the new RCP be deferred until the workpaper format is adopted.

We recognize Branch's concern that under the proposed schedule, it may not be able to complete an adequate review of NOI's in all cases until there is more standardization of filings. Rather than deferring implementation of the RCP, we will provide an interim mechanism that allows Branch to extend its review period when necessary. We will provide that Branch may utilize the deficiency letter process to advise the utility that additional time is required to review the NOI, resulting in suspension of the RCP schedule. This mechanism will remain in

effect while the workpaper format is being finalized.

6. The consensus proposal requirement that hearings be set not later than Day 5 is revised to provide more flexibility. Ordinarily, unless the utility is directed to notify its customers of hearings by mail, there is no need to set hearings this early in the schedule. Depending on the number of districts, hearings do not begin until Day 119 at the earliest and as late as Day 144. It is sometimes necessary to hold public participation and/or evidentiary hearings in the utility's service territory, but the need may not be known until later in the schedule, particularly after the informal public meetings have been held (Day 45 to Day 60). Although in some circumstances hearings should be set as early as Day 5, it appears to be reasonable to provide for the setting of hearings as late as Day 75. The adopted plan includes this range, and also provides for the Branch project manager to advise the ALJ if public-participation hearings are recommended either in lieu of or in addition to the informal public meetings.
7. The consensus proposal allows the utility's final update of its showing on Day 30. In its comments on the ALJ's proposed report, CWS proposes that further updates be allowed to reflect unforeseen occurrences which are beyond the utility's control and which have a significant impact on the utility's operations. Branch states it does not oppose such updates provided they are strictly limited as proposed. Branch believes that as a practical matter such updates would be limited to postal rate changes and local tax increases which had been opposed by the utility. The adopted plan incorporates this suggestion.
8. To facilitate an orderly process for discovery, the introductory section of the plan states that parties should respond to

data requests within seven days. Branch may request suspension of the schedule by the ALJ for inadequate response to proper data requests. Parties asserting that data requests are unduly burdensome or otherwise inappropriate will notify the ALJ.

9. CWS suggests inclusion of a requirement that Branch workpapers be made available three working days after mailing of Branch's reports. Branch believes such a requirement is unnecessary, but requests that if one is adopted, the same five-day requirement applicable to our RCP for energy utility cases be used. We believe such a requirement will reinforce our expectation that the data underlying Branch's showing be available to parties early enough to allow adequate time for review prior to hearings. This can only serve to facilitate understanding of the issues by all parties and to help avoid unnecessary litigation. In view of the reproduction problems noted by Branch during the workshops, we will adopt a five-day requirement as we have done for energy proceedings.
10. To facilitate stipulations and settlements in appropriate circumstances and to avoid misunderstandings and other problems that can result in delays, the introductory section includes a statement to encourage informal communications between applicant and Branch at all stages of the proceeding and to encourage the opportunity for discussions and negotiations following issuance of Branch's showing. In making this provision, we agree with Branch's position that formal negotiations directed to settlements prior to finalizing the Branch showing are not proper.
11. To address concerns raised at the workshops about the hearing delays and other problems associated with the presentation of rebuttal testimony, some parties suggested that parties be required to state their intent to offer rebuttal

not later than the first day of hearing.
The suggestion is adopted, with a
provision that the ALJ may limit rebuttal.

12. The consensus proposal's provision for late-submitted comparison exhibits is adopted with a further provision that the ALJ may direct parties to jointly prepare and offer such exhibits. This will help to avoid misunderstandings by the parties as to their respective positions, and to assure that disputed issues are properly framed.

B. January Filings

For utilities which file in January, the RCP schedules provide for issuance of a decision in the latter part of the calendar year, with the exact date dependent on the number of districts, but in any event prior to December. Under the Branch proposal, following the decision there will be a period of weeks or months before the rates become effective the following January 1. The utilities argue that there is no reason to delay rate adjustments once a decision is issued.

Branch's principal objection to the utility proposal is that it requires the year during which the proceeding is initiated and concluded to be a test year. Branch points out that this could allow consideration of recorded data from the early part of the test period. Branch believes that it would be easier for a utility to benefit from shifting or deferring expenses from one year to another if the second year is a test period.

The utilities on the other hand point out that by filing in January, they are unable to incorporate recorded data from the latter part of the previous year in their showings. The utilities believe that by having to estimate data for what has traditionally been a full recorded year, they are placed at higher ratemaking risk. In return for filing in January, they argue that it is appropriate to allow rates to become effective upon issuance of the decision.

While both alternatives have merits, we believe that on balance the Branch proposal is preferable. It is more consistent with the Commission's forecast test year approach to ratemaking. It is not clear that shifting expenses among different years would be a significant problem, but we acknowledge that such a potential may exist. At the same time, we believe there is an alternative solution to the problem of unavailable recorded data which occurs with January filings (one which was suggested at the workshops).

Under the consensus proposal the final update of the utility's showing is allowed on Day 30. For January filings only, we will allow an exception to this requirement for the purpose of incorporating recorded data from the previous year. Although year-end financial data may not be available in January, it must be available early in the year for tax and financial reporting purposes. In its comments on the proposed report, Branch points out that the recorded information must be available to the utility for tax reporting purposes prior to March 15. We will extend the update deadline to March 15.

C. Technical Assistance

Branch opposes the suggestion that utilities could provide the ALJ with technical assistance in the preparation of tables and appendices prior to the filing and service of the proposed decision. Branch believes that this procedure could provide a strong potential for the appearance if not also the fact of a conflict of interest. The consensus proposal does not address or resolve this issue.

We recognize that in some circumstances utilities may be able to prepare the tables and appendices more expeditiously, but we share Branch's concern about even the appearance of a conflict. Unlike Branch, the utility has a direct financial interest in the outcome of the rate case, and such an appearance may be created as a result.

Moreover, we believe that in most cases the time advantage that might be gained by using utility resources would not be of great significance. The past experience of individual utilities notwithstanding, it has been our typical experience that our technical staff provides the needed support with reasonable efficiency, and that the delays that have occurred are usually related to scheduling problems that will be ameliorated with adoption of the consensus proposal. We believe that the proposal's explicit provision for having the ALJ advise the technical staff of the proposed resolution of issues at the earliest possible stage of the schedule, combined with its provision for more time to complete the work, will be sufficient to ensure the timely completion of tables and appendices with the use of the Commission's resources. If other problems affecting individual utilities recur and cause delays in the future, it appears that that they will more appropriately be addressed on a managerial level. For these reasons we will not adopt the utility proposal.

The assertion that our practice of relying on Branch for technical assistance results in a disadvantage for utilities and other parties because Branch alone receives advance information about the proposed decision may be based on a misunderstanding about how the process works. The ALJ provides Branch technical experts only with summary information about the proposed resolution of issues that impact the calculation of revenue requirements and rates. The underlying rationale for the ALJ's proposed resolution of these issues is not provided, and indeed the language of the rationale has not necessarily been drafted at the time that instructions for tables and appendices are given. Under these circumstances, it does not appear to us that any significant procedural advantage would be gained by Branch. Nevertheless, we recognize that some parties may perceive that an unfair advantage does exist. At the same time, we recognize the importance of an

unfettered, confidential advisory process to the overall decision process.

It is apparent that the conflict between a totally level playing field and a confidential advisory process arises where the same staff members are assigned to both an advocacy and an advisory role. We will resolve this conflict in favor of disclosure of communications from the ALJ to advisory staff when that staff member also participates in the proceeding in an advocacy capacity. On balance, we believe that the need for avoiding any appearance of an unfair procedural advantage outweighs the need to keep the advisory function confidential. The adopted plan provides that for those proceedings in which Branch advises that it has insufficient resources to adequately separate advocacy and advisory functions, the ALJ's instructions to Branch shall be transmitted by a ruling, which is served on all parties, rather than by internal memorandum. We anticipate that as resources allow, Branch will attempt to keep the functions separate, obviating the need for such disclosure.

D. Annual Cost of Capital Proceeding

Currently, the Commission considers each utility's cost of capital and authorizes its rate of return in the triennial general rate cases. Because multi-district utilities file general rate cases for a portion of their districts on a regular basis, their rates of return may be set more frequently, and in many cases annually, depending on the number of districts. For multi-district utilities, it has been the Commission's practice to consider the rate of return authorized in the utility's most recent general rate case when approving step-rate filings for the second test year and attrition rate filings for the third year of the rate case cycle.

As noted, some utilities suggested a generic cost of capital proceeding in their filed comments. During the workshops, five Class A utilities (Cal-Am, CWS, San Jose Water Company, Southern California Water Company, and Suburban Water Systems) offered a more specific proposal that the Commission establish an

annual cost of capital proceeding that would be applicable only to them. The general rate cases of those five utilities would no longer address cost of capital issues (which include capital structures, returns on equity and overall rates of return). Each of the five utilities would file a cost of capital application on April 2 of each year, and the step-rate filings of those utilities would be adjusted to incorporate their authorized rates of return. Rates of return would be set separately for each of the five utilities. The proposal is patterned after the Commission's plan for energy-utility annual cost of capital proceedings.

The five utilities believe this approach would reduce the time needed for processing their general rate cases, arguing that cost of capital is usually the most controversial issue of those cases. They also assert that addressing generic cost of capital issues in a consolidated proceeding would result in more efficient use of Commission resources.

During the workshops, eight Class A utilities (Azusa Water Company, Del Este Water Company, Dominguez Water Company, Great Oaks Water Company, Park Water Company, San Gabriel Valley Water Company, Santa Clarita Water Company, and Valencia Water Company) advised of their opposition to any plan for a generic cost of capital proceeding applicable to all utilities. These utilities believe such a plan would require more time in the case of single-district water companies, in effect tripling the amount of time required to address their rate of return over a three-year period. They also maintain that such a proceeding would not provide an adequate forum for smaller utilities to address their capital structures and risks, base on the concern that the proceedings would be dominated by the showings of the larger utilities.

DRA representatives participating in the workshops opposed the proposals for an annual cost of capital proceeding. DRA believes that the procedure would merely result in a shift in its workload with no overall savings.

We are not persuaded that an annual cost of capital proceeding is necessary or appropriate at this time as a means of improving the RCP. If there are significant net workload savings to be obtained from such a proceeding (and as explained below we are not convinced there are), then it would seem to be appropriate to make such a proceeding to all Class A utilities, or at least all multi-district utilities, to achieve the maximum benefits of any such savings. Yet, we are not prepared to impose the requirements of such a proceeding on all of the utilities, particularly in view of the expressed opposition of approximately half of all Class A utilities and the uncertainty of such benefits.

It is clear that removal of cost of capital issues from any given general case would provide workload savings for that case. It is also clear that requiring new proceedings to be filed by some or all Class A utilities, even if those proceedings are consolidated, will require additional workload. Whether a net savings or merely a shift of workload would result depends in large part on whether cost of capital issues can be considered generically. We note that under the proposal of the five utilities separate rates of return will be set for each of them. If parties are going to litigate risk factor and capital-structure issues separately for each utility, the potential for generic consideration of issues is reduced accordingly.

We conclude that the potential for significant workload savings to be obtained from generic consideration of cost of capital issues has not been demonstrated. Accordingly, we will adopt Branch's recommendation to implement the updated RCP and to evaluate its effectiveness in achieving our objectives in opening the OIR before we give further consideration to establishing an annual cost of capital proceeding on the basis of potential workload savings.

We recognize the point made by some workshop participants that there may be another basis for establishing an annual cost of

capital proceeding in that it would provide a more focused forum for addressing the financial and business risks of Class A water utilities. Without addressing the validity of this contention, or whether recurring annual proceedings would be necessary for such a purpose, we note that the basis is outside of the scope of the OIR, which is limited to consideration of improvements to the RCP. The OIR is not intended to address substantive changes in our ratemaking policies. We further note that on June 7, 1990 Branch mailed notification of plans for an order instituting investigation into related issues. It appears that such an OII will provide an appropriate forum for consideration of water utility risks.

Findings of Fact

1. Resolution No. X-4705 dated April 24, 1979 adopted the current water utility RLP on an experimental basis. The RLP has not been updated since its adoption.

2. This OIR was opened to consider modifying the current RLP as it applies to Class A water utilities.

3. The OIR was served on all water utilities, and all Class A water utilities were named respondents.

4. Comments in response to the OIR were filed by seven Class A water utilities and by Branch.

5. Representatives of twelve Class A water utilities and of Branch and DRA participated in the workshops which were held in response to the directive in the OIR.

6. The workshop process resulted in a consensus proposal for scheduled rate filings and revised time schedules which resolves most issues and reflects substantial if not unanimous agreement among the participants.

7. The consensus proposal achieves our objectives of incorporating the requirements of § 311, addressing the difficulty encountered in meeting filing dates, and reducing the year-end backlog of proceedings requiring decision, without sacrificing our

ability to review the rates and operations of Class A water utilities on a regular basis.

8. Modifications to the consensus proposal which are discussed in the opinion are necessary to fully reflect the agreements reached in workshop discussions, to ensure internal consistency of the RCP, and to reflect practical considerations of administering the RCP.

9. Branch's proposal that the year following the year of filing be designated the first test year is consistent with the Commission's forecast test year approach to ratemaking.

10. In the majority of cases, it is not necessary to rely on utilities for technical assistance in the preparation of tables and appendices in order to provide for timely issuance of the ALJ's proposed decision under the adopted RCP; and, in any event, such a practice would create the appearance of a conflict of interest and is therefore undesirable.

11. Our practice of relying on Branch for technical assistance does not give Branch a significant procedural advantage in the preparation of comments on the ALJ's proposed decision, but in proceedings where the same personnel are assigned to both advocacy and advisory roles, the appearance of an unfair advantage may be created if such personnel are given advance information about a proposed decision that is not given to the other parties.

12. Whether transferring cost of capital issues from general cases to separate proceedings will provide net workload savings for utilities and the Commission merely a shift of workload depends in large part on whether cost of capital issues can be considered generically.

13. Under the proposal of the five utilities, separate rates of return will be set for each of them, and the potential for generic consideration of issues is reduced accordingly.

14. The potential for significant net workload savings benefits of generic consideration of cost of capital issues has not been demonstrated.

Conclusions of Law

1. The consensus proposal developed through the workshop process should be adopted with modifications.

2. Utilities filing in January should be allowed to submit updates to their showings to incorporate recorded data from the previous year.

3. The proposal that utilities provide technical support in the preparation of proposed decisions after the proceeding is submitted should not be adopted.

4. In proceedings for which Branch resources are not sufficient to allow assignment of advisory and advocacy functions to different staff members, the ALJ's instructions to Branch for preparation of appendices and tables should be served on all parties.

5. An annual cost of capital proceeding for Class A water utilities should not be established at this time.

6. The RCP set forth in Appendix A should be adopted, and should be made applicable to Class A water utility general rate case applications filed beginning in January 1991.

O R D E R

IT IS ORDERED that:

1. The Rate Case Plan for processing general rate case applications of Class A water utilities set forth in Appendix A is adopted and shall be applied to applications filed beginning in January 1991.

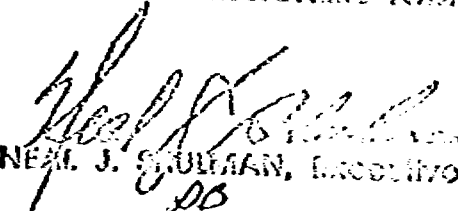
2. The Regulatory Lag Plan applicable to general rate case filings by Class A water utilities which is set forth in Resolution No. M-4705 dated April 24, 1979 is cancelled, and in all other respects Resolution No. M-4705 remains in effect.

This order is effective today.

Dated AUG 8 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SULLIVAN, Executive Director

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Rate Case Plan for Class A Water Utility
General Rate Applications

Adopted by Decision _____ Dated AUG 8 1990 in R.89-03-003

(Supersedes Resolution No. M-4705 as it applies to general rate case filings of Class A Water Utilities effective January 1991)

I. Introduction

The following rate case plan (RCP) for processing general rate cases of all Class A water utilities is intended to promote timely processing of such cases, to enable the balancing of the workload of the Commission and its staff over time, and to enable a comprehensive Commission review of the rates and operations of all Class A water utilities by providing for the acceptance of general rate cases filings on a three-year cycle.

Each utility or each district of a multi-district utility will be allocated a time for filing its general rate case application once every three years, either in January or in July. The filing schedule will be determined by the Water Utilities Branch (Branch) in cooperation with all Class A utilities. The filing schedule will be reviewed and updated semi-annually through Branch-conducted workshops to assure that each utility has a fair opportunity to file a general rate case under the RCP and to assure that the Commission's workload is balanced over time.

Class A water utilities may file general rate case applications at times other than those provided in the filing schedule determined by Branch, but such applications will not be processed under the time schedules of the RCP unless authorized by Branch. Individual elements of the time schedules may be observed for such applications as appropriate.

The effective date of rates for January filings will be the following January. The effective date of rates for July filings will be five days after the effective date of the Commission decision. For utilities with January filings, the

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calendar year following the year of filing is the first test year, and an attrition filing is permitted for the first full calendar year following the second test year. For utilities with July filings, the calendar year following the year of filing is the first test year, and attrition filings are permitted for both the full calendar year following the second test year and for the following partial year, pending the next general rate case.

Subject to approval by the Administrative Law Judge (ALJ), the utility may request waiver of the time schedules if it is willing to assume the risk of any resulting delay and if such waiver is not inconsistent with the needs of the filing schedule. In addition, the ALJ may modify the time schedule for cause. Examples are the need to accommodate travel schedules when hearings are held in the service territory, suspension of the schedule due to failure to respond to proper data requests, and the need to establish separate phases of some proceedings.

To facilitate an orderly discovery process, parties shall respond to data requests within seven days. Branch may request suspension of the schedule by the ALJ for inadequate response to proper data requests. Parties unable to informally resolve assertions that data requests are unduly burdensome or otherwise inappropriate will notify the ALJ.

Informal communications between applicant and Branch are encouraged at all stages of the proceeding, including the Notice of Intention (NOI) review period, in order to facilitate understanding by the parties of their respective positions, to avoid or resolve discovery disputes, and to avoid unnecessary litigation. Following issuance of Branch's showing, parties are encouraged to initiate discussions to clarify their respective positions and identify opportunities for stipulations and settlements where appropriate.

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Page 3Rate Case Plan for Class A Water Utility
General Rate ApplicationsII. Schedule Summary

Item No.	Event	Day Schedule Number of Districts			
		1	2-4	5-6	7-plus
1.	NOI filed	-40	-40	-40	-40
2.	Deficiency letter	-20	-20	-20	-20
3.	Commissioner & ALJ assigned	-10	-10	-10	-10
4.	Public meeting date set	-5	-5	-5	-5
5.	Application filed	0	0	0	0
6.	Hearing dates set	5-75	5-75	5-75	5-75
7.	Update of utility showing	30	30	30	30
8.	Public meeting(s)	45-60	45-60	45-60	45-60
9.	Branch submits exhibits	99	104	114	124
10.	Hearings start	119	124	134	144
11.	Hearings end	124	129	139	149
12.	Briefs filed	144	149	164	174
13.	ALJ memo to Branch	164	171	189	199
14.	Draft decision to Chief ALJ	173	182	205	215
15.	ALJ's proposed decision filed	184	194	219	229
16.	Comments on proposed decision	204	214	239	249
17.	Replies to comments	209	219	244	254
18.	Commission meeting	214+	224+	249+	259+

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Rate Case Plan for Class A Water Utility
General Rate Applications

III. Detailed Schedule

1. NOI Filed

Day -40 (All Applications)

An original and six copies of a NOI shall be tendered by applicant for filing with the Docket Office. The NOI shall contain a brief statement of the amount and percent of increases sought and the reasons for the proposed increases. Documentation constituting the utility's proposed showing in support of the results of operation and rate of return, including draft prepared testimony and draft exhibits with complete explanations and summaries, shall be annexed to the NOI. The NOI shall include the utility's proposed schedule for the case, which shall reflect the RCP and include specific dates that account for Saturdays, Sundays, and holidays.

For proceedings involving a single-district utility or a single district of a multi-district utility, an additional four copies of the complete NOI plus four sets of applicant's standard workpapers shall be delivered to the Commission's Branch. For proceedings involving two or more districts of a multi-district utility, an additional six copies of the complete NOI plus five sets of applicant's standard workpapers shall be delivered to Branch. In addition, one copy of the complete NOI plus one set of applicant's standard workpapers shall be delivered to the Commission's Legal Division. All documents filed with the Commission, and applicant's workpapers, shall be furnished by applicant to interested parties on written request.

The NOI shall state that the test period(s) adopted by applicant is acceptable to Branch. The required supporting material shall contain a results of operations study for the test period(s) based upon the adjustments adopted by the Commission in

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applicant's last general rate case and in subsequent policy decisions of the Commission. Policy change proposals on issues already decided by the Commission shall be identified and the reasons therefor shall be clearly stated.

The NOI shall not be accepted for filing, if, within 20 days after the NOI is tendered, Branch advises the Docket Office that all of the above requirements have not been met. The date the NOI is tendered for filing shall be the filing date unless Branch advises the utility otherwise by a deficiency letter and the deficiencies remain uncorrected (see below).

2. Deficiency Letter

Day -20 (All Applications)

Not later than 20 days after the NOI is tendered for filing, Branch shall advise the utility in writing of any unresolved deficiencies in the tendered NOI which may result in rejection of the tendered NOI or suspension of the RCP schedule pending correction. Unless a deficiency letter is submitted to the utility on or before this date, the NOI will be accepted for filing as of the date tendered. Utilities will have ten days to correct the deficiencies identified or be subject to rejection of the NOI or suspension of the RCP schedule.

Until such time as a standardized workpaper format is adopted by Branch, it may, by issuing a deficiency letter, provide for deferred acceptance of the NOI and suspension of the time schedule pending completion of its review, even if no deficiencies are identified at the time of the letter.

If the utility does not agree with the deficiency letter, it may appeal first to the Branch, and if a satisfactory resolution is not reached within five working days, then to the Executive Director. The Deficiency letter shall explain the appeal process.

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3. Commissioner and ALJ Assigned

Day -10 (All Applications)

The Commissioner and the ALJ shall be assigned.

4. Public Meeting Date Set

Day -5 (All Applications)

The Branch project manager, in consultation with applicant, shall set the day, time, and place of the informal public meeting(s) to be chaired by the Branch project manager. The project manager shall advise the applicant and the ALJ of the day, time, and place set for the meeting(s). If in lieu of the public meeting(s) the project manager recommends that formal public participation hearings be held, the ALJ shall be so advised.

5. Application Filed

Day 0 (All Applications)

The application may be filed on or after the 40th day after the date the NOI is filed. The application shall be filed in conformance with the Commission's Rules of Practice and Procedure. Applicant shall include notice of the scheduled public meeting(s) with its notice of filing its application pursuant to Public Utilities Code § 454. This notice shall include the address of applicant's office in each of its service areas where copies of the application may be inspected. The application filing date is considered Day 0 for determining all subsequent elements of the RCP schedule.

The application shall include all exhibits, prepared testimony, and other evidence constituting applicant's showing, and shall also include a comparison exhibit showing any differences between the NOI and the showing submitted with the application and explaining the differences.

One copy of the application shall be submitted to the assigned ALJ. For applications involving single-district utilities or single districts of a multi-district utility, an additional four

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copies of the application shall be delivered to Branch. For applications involving two or more districts of a multi-district utility, an additional six copies of the application shall be delivered to the Commission's Branch. In addition, one copy of the application shall be delivered to the Legal Division. The application shall be furnished by applicant to interested parties on written request.

6. Hearing Dates Set

Day 5 to 75 (All Applications)

The ALJ, with concurrence with the assigned Commissioner, shall set the day, time, and place for evidentiary hearings and advise the parties of the setting. The applicant shall provide notice of the hearings in accordance with Rule 52 of the Rules of Practice and Procedure and any supplemental procedures adopted by Branch and/or directed by the ALJ pertaining to notice of hearings. Hearing dates will be reserved to assure availability of a court reporter.

7. Final Update of Utility Showing

Day 30 (All Applications)

An update of applicant's showing is permitted on or before this date. The update shall be limited to new information which was not available when the application was filed. With the following exceptions, no updating of applicant's showing shall be permitted after Day 30:

- a. For January filings only, the applicant may submit an additional update not later than March 15 for the limited purpose of incorporating recorded data from the previous year which was not available at the time of filing.
- b. The ALJ may allow an additional update to reflect the effect of unforeseen occurrences which are beyond the utility's control and which have a significant impact on the utility's operations.

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8. Public Meeting(s)

Day 45 to 60 (All Applications)

Public meetings chaired by the Branch project manager or counsel may be held during this period. A representative from the utility shall be present at the meetings to answer questions regarding the utility's operations and its proposals. Within five days after the public meetings the Branch project manager shall advise the ALJ if formal public participation hearings are recommended.

9. Branch Submits Exhibits

Day 99 - 1 District

Day 104 - 2-4 Districts

Day 114 - 5-6 Districts

Day 124 - 7 or More Districts

Branch shall serve the exhibits and prepared testimony constituting its showing on applicant and on all parties requesting them. Two sets shall be submitted to the ALJ. Branch workpapers shall be available within five days after service of its exhibits and testimony.

10. Hearings Start

Day 119 - 1 District

Day 124 - 2-4 Districts

Day 134 - 5-6 Districts

Day 144 - 7 or More Districts

Evidentiary hearings commence. Applicant and any other party shall identify the subject matter and sponsoring witness of any rebuttal showing it intends to offer unless different provision has been made by the ALJ. The ALJ may limit the scope of rebuttal.

The post-hearing stage of the RCP schedule is based on the availability of daily transcripts which shall be ordered by applicants. Non-availability of transcripts may be cause for extending the schedule.

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11. Hearings End

Day 124 - 1 District

Day 129 - 2-4 Districts

Day 139 - 5-6 Districts

Day 149 - 7 or More Districts

Hearings shall be completed. The Commissioner and/or the ALJ may require the applicant and/or Branch to jointly offer a late-submitted comparison exhibit identifying differences between Branch and the applicant, the dollar and percentage effect of the differences, and the reasons for them. The Commissioner and/or the ALJ may request other late-submitted exhibits from Branch, the applicant or any other party.

12. Briefs Filed

Day 144 - 1 District

Day 149 - 2-4 Districts

Day 164 - 5-6 Districts

Day 174 - 7 or More Districts

Concurrent briefs may be filed by parties. The Commissioner and/or the ALJ may direct and outline specific issues to be briefed; briefing of additional issues is optional.

13. ALJ Memo to Branch Re Appendices

Day 164 - 1 District

Day 171 - 2-4 Districts

Day 189 - 5-6 Districts

Day 199 - 7 or More Districts

The ALJ will provide Branch with the information on the proposed resolution of issues which is necessary to prepare appendixes and tables for the proposed decision.

For those proceedings in which Branch advises the parties that it cannot separately assign advocacy and advisory functions, the ALJ's instructions to Branch shall be transmitted by a ruling served on all parties rather than by internal memorandum.

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14. Draft Decision to ALJ Division

Day 173 - 1 District

Day 182 - 2-4 Districts

Day 205 - 5-6 Districts

Day 215 - 7 or More Districts

The draft decision shall be forwarded to the Chief ALJ's office.

15. ALJ's Proposed Decision Filed

Day 184 - 1 District

Day 194 - 2-4 Districts

Day 219 - 5-6 Districts

Day 229 - 7 or More Districts

The ALJ's proposed decision shall be filed and served on all parties.

16. Comments on Proposed Decision

Day 204 - 1 District

Day 214 - 2-4 Districts

Day 239 - 5-6 Districts

Day 249 - 7 or More Districts

Comments on the ALJ's proposed decision are filed and served on all parties. (Rule 77.2)

17. Replies to Comments

Day 209 - 1 District

Day 219 - 2-4 Districts

Day 244 - 5-6 Districts

Day 254 - 7 or More Districts

Replies to comments on the ALJ's proposed decision are to be filed and served on all parties five days after the comments are served. (Rule 77.5)

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18. Commission Decision

Day 214 - 1 District

Day 224 - 2-4 Districts

Day 249 - 5-6 Districts

Day 259 - 7 or More Districts

In accordance with § 311(d), the matter will be placed on the agenda for the first regularly scheduled meeting of the Commission occurring 30 or more days after the date the proposed decision of the ALJ is filed.

(END OF APPENDIX A)

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APPENDIX B

WATER UTILITY GENERAL RATE CASE FILING SCHEDULE

Filing Date	Team Size	#Dist.	Utility	Filing Date	Team Size	#Dist.	Utility
July 1990	1/2	S	Dominguez	January 1991	1	M	So. Cal
	1/2	S	Suburban		1/2	S	San Jose
	1	M(7)	CWS		1	M(4)	Cal-Am. (Monterey, etc.)
	1	M(4)	Citizens (Sacramento, etc.)		1/2	S	Park (Santa Paula)
					1/2	S	Del Este
July 1991	1/2	S	San Gabriel				
	1/2	S	Suburban	January 1992	1	M	So. Cal.
	1	M(7)	CWS		1/2	S	Santa Clarita
	1/2	M(3)	Citizens		1/2	M(2)	Cal-Am. (Village-Coronado)
	1/2	S	Great Oaks		1/2	S	Park (Apple Valley)
July 1992	1/2	S	San Gabriel	January 1993	1	M	So. Cal.
	1/2	S	Suburban		1/2	S	Cal-Am. (Monterey)
	1	M(7)	CWS		1/2	S	Azusa
					1/2	S	Valencia

Water utilities which propose changes to this schedule should contact Sazedur Rahman of the Commission Staff at (415) 557-1903.

(END OF APPENDIX B)