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Mr. Raj Naidu
Water Division, Tariff Unit
California Public Utilities Commission
505 Van Ness Avenue, Room 4005
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Re: California American Water Company Advice Letter No. 853, California Water Service Company Advice Letter No. 1997, Golden State Water Company Advice Letter No. 1409-W, and San Jose Water Company Advice Letter No. 418—Response to the Joint Protest of Southern California Edison Company, Pacific Gas & Electric Company and San Diego Gas & Electric Company, to the Protests of the Division of Ratepayer Advocates, and to the Response from The Utility Reform Network

Dear Mr. Naidu:

We submit this response on behalf of the California American Water Company ("Cal American Water"), Golden State Water Company ("GSWC"), California Water Service Company ("Cal Water") and San Jose Water Company ("SJWC") (collectively the "Water Utilities"), in reply to the Joint Protest submitted by Southern California Edison Company ("SCE"), Pacific Gas & Electric Company ("PG&E") and San Diego Gas & Electric ("SDG&E") (collectively the "Energy Utilities"), dated August 17, 2010, to the protests submitted by the Division of Ratepayer Advocates ("DRA"), dated August 4, 2010 and August 25, 2010, and to the response from The Utility Reform Network ("TURN"), dated August 24, 2010. The Energy Utilities' and DRA's protests and TURN's response were submitted in response to advice letters[1] in which the Water Utilities sought authorization for research, development and demonstration ("RD&D") projects using in-conduit hydroelectric generation technology (the "HTG Projects").

As discussed below, the Energy Utilities, DRA and TURN have misunderstood or misconstrued the proposals in the Water Utilities' advice letters (the "Advice Letters"). Primarily, the Water Utilities do not contend that the HTG Projects qualify as "energy efficiency" projects as such term is used in the Operational Energy Efficiency Program

[1] Cal American Water submitted Advice Letter No. 853 on July 14, 2010; Cal Water submitted Advice Letter No. 1997 on July 16, 2010; GSWC submitted Advice Letter No. 1409-W on July 15, 2010; and SJWC submitted Advice Letter No. 418 on July 16, 2010.

("OEEP") and do not propose that the Energy Utilities use their energy efficiency budgets to fund the HTG Projects. Rather, the Water Utilities merely reference the OEEP in their Advice Letters because the proposed HTG Projects would further similar policy objectives. As such, the Water Utilities' proposal to track the costs associated with the HTG Projects in the Operational Energy Efficiency Memorandum Accounts was simply one suggestion as to how the project costs could be tracked for future recovery from the Water Utilities' customers. The Water Utilities would be equally satisfied if the Commission authorizes them to track the HTG Project costs in any existing memorandum accounts or approves the establishment of new memorandum accounts dedicated to the HTG Projects.

This response proceeds in three Sections. Section I explains that many of the contentions and conclusions expressed in the protests and response should be rejected by the Commission because they are premised upon the misconception that the Water Utilities present the HTG Projects as energy efficiency projects under the OEEP. Section II explains that seeking Commission approval through the advice letter process was proper and thus rebuts the Energy Utilities' and DRA's related arguments. Section III reveals that the DRA is mistaken regarding the facts of the proposed SJWC HTG Project and that DRA's arguments fail because the HTG Project is an entirely different project than the hydro-turbine project that SJWC proposed in its 2009 General Rate Case. The other points raised in the protests are inconsequential[2] or misconstrue statements in the Advice Letters[3] and should therefore be rejected.

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[2] The Energy Utilities attempt to make much of (i) Cal Water's mistake in identifying the tariff under which it would connect the HTG Project to the grid; (ii) the fact that GSWC and Cal American Water did not discuss the applicable tariff for interconnection to the grid; and (iii) the fact that the Water Utilities generally did not discuss interconnection costs (Joint Protest at pg. 4). Cal Water's mistake in citing PG&E's Electric Schedule NEM is easily remedied; indeed, the Energy Utilities proceed to explain that SJWC correctly identified PG&E's Tariff E-SRG, which Cal Water could also use. But, more generally, the issues cited by the Energy Utilities are just part of normal project development that each of the Water Utilities will address as the HTG Projects move forward. The Electric Utilities' characterization of these items as "material errors or omissions" that render the Advice Letters deficient is a significant overstatement.

[3] In an effort to contend that "the relief requested in the advice letters is pending before the Commission in a formal proceeding," the Energy Utilities point to Cal American Water's one-sentence suggestion that an energy tariff for the electric generation from its HTG Project will need to be negotiated (Joint Protest at pgs. 4-5). The Energy Utilities then explain that there is a tariff in place enabling public water and wastewater agencies to sell electricity generated at renewable energy facilities that are 1.5 MW or smaller and that the Commission is considering expanding its applicability. These latter points are true: California Public Utilities Code Section 399.20 mandates that each electrical corporation maintain such a tariff for its public water and wastewater customers, and on August 24, 2010, the Commission issued a proposed decision in Rulemaking 08-08-009 that contemplates expanding the existing tariffs to renewable energy facilities up to 20 MW. However, Cal American Water's single statement is hardly a request to the Commission to develop a tariff for its HTG Project, as the Energy Utilities contend. It appears that the Energy Utilities are misconstruing Cal American Water's error regarding the applicability of the existing tariff in order to create an issue where none exists: SDG&E offers an existing tariff that will apply to Cal American Water's HTG Project, and no further action is required of the Commission in this respect.

I. The Water Utilities Do Not Contend that the HTG Projects are Energy Efficiency Projects under the OEEP and Use of A Memorandum Account to Track the Costs Associated with the HTG Projects is Appropriate.

The primary concern expressed by the Energy Utilities and the DRA appears to be that, as renewable energy generation projects, the HTG Projects do not meet the requirements for OEEP projects and that tracking the costs associated with the HTG Projects through memorandum accounts established under the OEEP is therefore inappropriate (Joint Protest at pgs. 2-4; DRA protest of Aug. 4, 2010 at pg. 4; DRA protest of Aug. 25, 2010 at pgs. 7-8). This argument is misplaced. The Advice Letters do not state that the HTG Projects are OEEP projects. In fact, the Advice Letters explicitly state that "the proposed RD&D program will show whether the HTG [P]rojects have the potential to save *even more energy than OEEP* (*See* Cal American Water letter at pg. 3; GSWC letter at pg. 3; SJWC letter at pg. 3) (emphasis added). As such, the Water Utilities clearly do not include the HTG Projects as OEEP projects, but instead classify them as a distinct type of RD&D projects that may prove even more effective than OEEP projects at achieving one of the goals of the OEEP—saving energy. This characterization is accurate because the technology to be studied in the HTG Projects would permit the Water Utilities to recover otherwise wasted hydraulic energy and convert it into electrical energy, thereby enabling the Water Utilities to reduce their overall energy consumption. This is similar to the OEEP in their shared end result—a reduction in the use of non-renewable resources for energy generation. Therefore, the Water Utilities analogize the HTG Projects to OEEP projects approved by the Commission because of their parallel policy goals and to highlight that the Commission has encouraged research designed to meet such goals, but do not contend that the HTG Projects are energy efficiency projects under the OEEP. To the contrary, the Water Utilities openly and repeatedly state that the HTG Projects are energy generation projects (*see e.g.* Cal Water letter at pgs. 2, 3, 4).

The Water Utilities have no preference as to whether the Commission allows them to track the HTG Project costs in the Operational Energy Efficiency Memorandum Accounts, any other existing memorandum accounts, or by creating new memorandum accounts dedicated to the HTG Projects. The Water Utilities simply ask the Commission to permit them to track the RD&D costs through *some* memorandum account whereby, subject to their prudent administration of the HTG Projects, they can recover such costs. Importantly, the Water Utilities do not propose that the HTG Project costs be recovered from funds associated with the Energy Utilities' energy efficiency budgets. Rather, the Water Utilities' customers would bear the costs of the HTG Projects, except to the extent that the Water Utilities are able to offset such costs through sales of renewable energy generated by the HTG Projects to the Energy Utilities under the tariffs established pursuant to California Public Utilities Code Section 399.20.[4]

Many of the issues raised by the Energy Utilities and the DRA are premised upon their misconception regarding the Water Utilities' proposal and should be rejected by the Commission. Specifically, the Energy Utilities and DRA contend that an advice letter is not the

[4] *See supra*, note 3.

procedurally proper mechanism for these proposals, in large part because they contend that recovering the costs of the HTG Projects through memorandum accounts established under the OEEP would be an improper expansion of the OEEP (Joint Protest at pg. 5; DRA protest of Aug. 25, 2010 at pg. 6). Further, the three Energy Utilities contend that the relief requested in the Advice Letters is unjust, unreasonable and discriminatory because they contend that recovering the costs of the HTG Projects through memorandum accounts established under the OEEP would enable the Water Utilities to improperly use energy efficiency funding to support non-energy efficiency projects for their own benefit (Joint Protest at pg. 5). However, because the Water Utilities are not asking the Commission to classify the HTG Projects as energy efficiency projects or otherwise to include them under the OEEP, allowing the Water Utilities to track the costs associated with the HTG Projects through *some* memorandum account would not in any way constitute an expansion of the OEEP or an improper use of energy efficiency funding. Therefore, the Commission should reject these arguments.[5]

TURN appears to be generally supportive of and seeks a more pragmatic approach to the HTG Projects, and the Water Utilities appreciate many of its comments. Nonetheless, TURN appears to share some similar misconceptions regarding the Water Utilities' proposal. Specifically, TURN contends that "cost-effective design is a key factor in the Commission's review of energy efficiency portfolios" and thus that the Water Utilities must present specific data addressing cost-effectiveness (*see* TURN response at pg. 3). Because the HTG Projects are renewable energy generation projects, not energy efficiency projects, TURN's iteration of OEEP project requirements is inapplicable. Moreover, even if the Water Utilities had contended that the HTG Projects are energy efficiency projects, TURN's proposal would not apply. Despite the Commission's statements regarding cost-effectiveness requirements for an *entire portfolio of ratepayer-funded energy efficiency activities and programs*, it has explicitly concluded that individual programs should not be required to pass required tests of cost-effectiveness in order to be eligible for funding.[6] Further, the HTG Projects are RD&D because they demonstrate new technology, and proponents of RD&D projects need not justify costs or do a cost benefit analysis. In fact, the Commission has dedicated resources to RD&D for technologies that it explicitly found not to be cost effective.[7]

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[5] The Energy Utilities' contention that the Water Utilities' Advice Letters were not served to them nor to the standard service list in Post 2008 Rulemaking 09-11-014 or Embedded Energy Efficiency Pilot Programs A.07-01-026, et al (Joint Protest at pg. 6) is also wrongly premised upon their misconception of the Water Utilities' proposal because the cited proceedings relate to energy efficiency policies and programs. Because the Water Utilities do not contend that the HTG Projects are energy efficiency projects, the Commission should reject this contention as well.

[6] *See Updated Policy Rules for Post-2005 Energy Efficiency and Threshold Issues Related to Evaluation, Measurement and Verification of Energy Efficiency Programs*, Decision 05-04-051 (Apr. 21, 2005) at 22.

[7] *See e.g. Re Procedures and Incentives for Distributed Generation and Distributed Energy Resources*, Decision 06-01-024, 2006 WL 162584 (Cal.P.U.C.) (Jan. 13, 2006) at *20 (approving the California Solar Initiative despite its observation that solar technologies are not yet cost effective and allocating "up to 5% of each year's adopted budget to RD&D that explores solar technologies and other distributed generation technologies that employ or could employ solar for power generation and storage or to offset natural gas usage, as well as market development strategies").

Moreover, TURN contends that the Water Utilities should verify that the HTG Projects "will perform as expected and yield projected benefits" and should explain their conclusion that the HTG Projects are eligible for federal tax credits and [American Recovery and Reinvestment Act of 2009 ("ARRA")] grants, and the time constraints related to these funds" (*see* TURN response at pg. 4). As such, TURN appears to be seeking a guarantee that the HTG Projects will prove successful. A fundamental concept behind RD&D is that new, untested technologies may be implemented on a small scale in order to gauge whether using them on a larger scale would be beneficial. Therefore, TURN's request suggests a miscomprehension of RD&D generally. As to the ARRA funding, Section 1603 of ARRA[8] is clear: It provides a 30% grant for taxpayers that develop renewable energy projects within two different timeframes—properties placed in service during 2009 or 2010, and properties for which construction begins during 2009 or 2010 so long as the property is placed in service by the "credit termination date." The credit termination date for hydropower is January 1, 2014. The estimated construction periods for the HTG Projects range from ten months to eighteen months.[9] Thus, even if there are permitting delays, it is extremely unlikely that the HTG Projects would miss the January 1, 2014 deadline. Therefore, TURN's concern should not hinder the Commission's approval of the Water Utilities' requests with respect to the HTG Projects.

TURN also suggests that the Water Utilities may somehow inappropriately double-dip by recovering costs through a memorandum account mechanism and then by earning revenues from future power sales. Under the Water Utilities' proposal, however, any revenues earned from the sale of electrical generation from the HTG Projects would be credited back to the ratepayers through future rate reductions. As such, the Water Utilities will not receive duplicative sources of funding, and TURN's concern should not hinder the Commission's approval of the HTG Projects.

II. The Water Utilities' Use of the Advice Letter Process is Appropriate.

The Commission should reject the Energy Utilities' and DRA's contention that an advice letter is not the procedurally proper mechanism for the Water Utilities' proposal of the HTG Projects (Joint Protest at pg. 5; DRA protest of Aug. 25, 2010 at pgs. 6-7). The Energy Utilities and DRA argue that the HTG Projects are controversial and raise important policy questions and thus do not conform to the Commission's advice letter process description provided in Section 5.1 of General Order 96 B, which states that the process "provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions." However, any controversy surrounding the HTG Projects has been created by the Energy Utilities, the DRA and TURN through their misconception of the Water Utilities' proposal, as discussed in Section I above. Further, because the Water Utilities do not contend that the HTG Projects are energy efficiency projects under the OEEP, they do not request any expansion of the OEEP that would raise important policy questions.

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[8] *See* H.R. 1: Div. B, Sec. 1603 (The American Recovery and Reinvestment Act of 2009).
[9] *See infra*, note 10.

In reality, the HTG Projects are RD&D projects that can be built quickly[10] and that involve funding levels well within the parameters that the Commission regularly considers in advice letter filings. Specifically: Cal Water proposes a single hydro-turbine installation at the Bear Gulch District Operations Center in the Town of Atherton that it estimates will cost $1,380,300 (*see* Cal Water letter at pg. 5); GSWC proposes a hydro-turbine installation at the Metropolitan Water District ("MTW") in the City of Norwalk that it estimates[11] will cost $333,900 and a hydro-turbine installation at the MTW in the City of Cypress that it estimates will cost $606,900 (*see* GSWC letter at pg. 6); Cal American Water proposes a single hydro-turbine installation at the Beyer Blvd. Station in the San Diego District that it estimates[12] will cost $419,000 (*see* Cal American Water letter at pg. 6); and SJWC proposes two hydro-turbine installations at the Hostetter Road Turnout in east San Jose that it estimates[13] will cost $365,838 and $413,219 (*see* SJWC letter at pg 5). The expected generation from any of these HTG Projects ranges from a few hundred thousand to approximately 1.3 million kWhs per year. As a point of comparison, each of the Energy Utilities regularly use the advice letter process when seeking Commission approval of long-term power purchase agreements, valued at many, many millions of dollars, for the purchase of energy from utility-scale facilities that produce thousands of GWhs of electrical energy generation per year.[14]

Further, the Commission's rules generally suggest that the advice letter process is appropriate here. As a preliminary point, the Commission contemplates that the matters proper for consideration by advice letter span a range, as evidenced by its establishment of the tiered advice letter structure: Water Industry Rule 7.3.1 provides for Tier 1 matters; Water Industry Rule 7.3.2 provides for Tier 2 matters; and Water Industry Rule 7.3.3 provides for Tier 3 matters—which include subjects as complex as establishing new non-tariffed investments, informal General Rate Cases, and memorandum account amortizations. Moreover, General Rule 1.3 states that "[t]he General Rules and Industry Rules should be liberally construed to secure just, speedy, and inexpensive handling of informal matters . . . ." Here, the Water Utilities are between General Rate Cases and require speedy resolution of their proposal in order to meet the ARRA financing deadline and benefit from the Section 1603 30% grant for renewable energy

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[10] The Water Utilities estimate that all but one of the projects can be constructed in ten months, and the other project in eighteen months (*see* Cal American Water letter at pg. 5; SJWC letter at pg. 4; GSWC letter at pg. 6; Cal Water letter at pg. 5).

[11] GSWC's cost estimates are based on receipt of an ARRA Section 1603 Grant that would offset costs by 30%.

[12] Cal American Water's cost estimates are based on receipt of an ARRA Section 1603 Grant that would offset costs by 30%.

[13] SJWC's cost estimates are based on receipt of an ARRA Section 1603 Grant that would offset costs by 30%.

[14] *See e.g.* Advice Letter 2339-E submitted by SCE, seeking approval of seven 20-year power purchase agreements with subsidiaries of BrightSource Energy, Inc. for electrical generation from solar thermal facilities with a combined capacity of 1300 MWs *and expected minimum generation of 3724 GWh/yr*; Advice Letter 3092-E submitted by PG&E, seeking approval of a 20-year power purchase agreement with SOLEL-MSP-1, LLC for electrical generation from a solar thermal facility with a capacity of 554 MW *and expected minimum generation of 1388 GWh/yr*; Advice Letter 2088-E submitted by SDG&E, seeking approval for a 20-year power purchase agreement with Naturener Rim Rock Energy, LLC for electrical generation from a wind facility with a capacity of 300 MW *and expected minimum generation of 1054 GWh/yr.*

projects that begin construction before the close of 2010.[15] There really should be no question that the advice letter process is the appropriate mechanism for seeking approval of the HTG Projects because, as stated, they are relatively small RD&D projects that should not be controversial and do not raise important policy questions.

The Commission should be guided by General Rule 1.3 and liberally construe its advice letter rules to permit consideration of the HTG Projects through the advice letter process. Surely, one of the policies behind General Rule 1.3 is to prevent regulatory hurdles from obstructing projects that have the potential to benefit the public and further the Commission's objectives. The HTG Projects are such projects, and delaying the approval of a mechanism for recovering their associated costs may result in the Water Utilities' inability to meet the ARRA Section 1603 financing deadline. This result would be inconsistent with General Rule 1.3.

III. The DRA is Mistaken with Respect to SJWC's Hostetter Road Turnout HTG Project.

The Commission should reject the contentions set forth by the DRA with respect to SJWC's Hostetter Road Turnout HTG Project because the DRA is incorrect when it professes that SJWC is merely revisiting a hydro-turbine project that the Commission rejected in Decision D.09-11-032.[16] Because DRA has the facts wrong regarding the Hostetter Road Turnout HTG Project, it incorrectly argues that SJWC is attempting to use the advice letter process to circumvent the various requirements and instructions that the Commission included in Decision D.09-11-032. In fact, the HTG Project that SJWC proposes is entirely different than the project proposed in the 2009 General Rate Case ("GRC") application from which D.09-11-032 stems. Specifically:

- The GRC application proposed a conventional project, using centrifugal-pump-as-turbine technology (Cornell Pump Co, Francis-type Turbine), with a fixed cost (although not specifically cited in SJWC's testimony, this existing **older** technology was the basis of the design and cost estimated for *Item G3705 of the proposed 2011 Construction Budget,* which was included in the SJWC's GRC. *See* A.09-01-009, Exhibit 3). The HTG Project is an RD&D project using new positive-displacement-pump-as-turbine technology (Zeropex Co., Difgen Rotating PRV) specifically designed for replacements of pressure-regulator valves ("PRVs") (*see* SJWC letter at pg. 4). This **new** technology was not available at the time of the GRC application submission.

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[15] *See supra* note 8.

[16] Specifically, DRA contends that SJWC's Advice Letter is an attempt by SJWC to circumvent the Commission's rulings in D.09-11-032 and D.10-04-030 by requesting that SJWC's previously proposed Hostetter hydro-turbine generator project be revisited without a joint application with PG&E, without cost-effectiveness data and analysis generated by SJWC's Cox pilot hydro-turbine generator project, and without data demonstrating that the project will benefit SJWC and its ratepayers (DRA protest of Aug. 4, 2010 at pgs. 3-4, DRA protest of Aug. 25, 2010 at pg. 8). The DRA further contends that SJWC's budget exceeds the amount that the Commission authorized SJWC to spend on its OEEP project in the earlier decision (DRA protest of Aug. 4, 2010 at pg. 4).

- The conventional Cornell HTG proposed in the GRC operates efficiently at a single flow rate (7 MGD); whereas the Zeropex HTG proposed in Advice Letter No. 418 operates efficiently over a wide range of flow rates (2 to 10 MGD). This should result in recovery of additional energy.

- The GRC application proposed a single 100 kW hydro-turbine. The HTG Project consists of two hydro-turbines: a 113 kW hydro-turbine generator at the first turnout, and a 37 kW hydro-turbine generator at the second turnout (*see* SJWC letter at pg. 4).

- The GRC application proposed a project that did not qualify for an energy investment tax credit (*see NPV financial analysis included in SJWC's rebuttal testimony*, A.09-01-009, Exhibit 5). The HTG Project hydro-turbines would produce 150 kW, making the project eligible for an ARRA Section 1603 grant equal to 30% of the project cost (*see* SJWC letter at pg. 3).

- The GRC application quoted a project cost of $692,200 for the single 100kW hydro-turbine (*SJWC's GRC. See* A.09-01-009, Exhibit 3). The HTG Project includes the installation of the 113 kW hydro-turbine at the first turnout at a cost of $365,838 and the installation of the 37 kW hydro-turbine at the second turnout at a cost of $413,298 (*see* SJWC letter at pg. 5). As such, the HTG Project would provide 50% more capacity at a modest 12.5% price increase.

- The GRC application proposed a project that involved bypassing the existing PRV and installing the hydro-turbine in the bypass line (basis of design in GRC but not specifically cited in testimony). The Advice Letter No. 418 project involves removing the two existing PRVs and directly replacing them with hydro-turbines (*see* SJWC letter at pg. 4).

- The GRC application proposed a project that would have generated 664,666 kWh/yr (*see NPV financial analysis included in SJWC's rebuttal testimony*, A.09-01-009, Exhibit 5). The combined output from the two hydro-turbines in the HTG Project is estimated at over 1,321,972 kWh/yr (*see* SJWC letter at pg. 4).

- The GRC application proposed a project that would only have distributed water to the Cambrian Zone. The HTG Project would distribute water to the Columbine and Cambrian Zones (*see* SJWC letter at pg 4).

Given each of these significant differences, it is evident that the project that SJWC proposed in the GRC application is entirely distinct from the HTG Project that SJWC currently proposes. Because the DRA's arguments are wrongly premised upon the HTG Project being a mere revisit of the project proposed in the GRC application, the Commission should reject its contentions.

Conclusion

For the reasons discussed herein, the Commission should reject the contentions and conclusions set forth by the Energy Utilities and the DRA in their protests, and by TURN in its response to the Water Utilities' Advice Letters. The Water Utilities state explicitly that the HTG Projects are renewable energy generation projects, not energy efficiency projects, and will be equally satisfied if the Commission authorizes them to track the costs associated with the HTG Projects in any existing memorandum accounts or through the creation of memorandum accounts dedicated to the HTG Projects. As RD&D, the HTG Projects hold potential to further the policy objectives of the Commission and to benefit ratepayers by enabling the Water Utilities to reduce their overall energy consumption and to pass their savings along to their customers through lower rates. Additionally, the societal benefit of these projects is an annual reduction of more than 600 Metric Tons of atmospheric CO_2 in California. The Commission should promptly approve the Water Utilities' request to track the costs associated with the HTG Projects so that the Water Utilities may get the projects underway and thereby benefit from the ARRA Section 1603 funding.

Sincerely,

Joseph M. Karp
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