



110 W. Taylor Street  
San Jose, CA 95110-2131

October 12, 2022

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Advice Letter No. 581

To Whom It May Concern:

San Jose Water Company (U-168-W) (SJWC) hereby submits Advice Letter (AL) 581 for the California Public Utilities Commission’s (Commission) review and approval.

Purpose

With this advice letter, SJWC requests the Commission’s approval to amortize the Balancing and Memorandum Account as authorized by Decision No. (D.) 22-10-005 (**Attachment A**) approved on October 6, 2022. D.22-10-005 authorizes the recovery of \$6,674,556 for specified balancing accounts and \$11,449,403 for specified memorandum accounts via surcharges on customers’ bills.

This advice letter is designated as a Tier I Advice Letter and is submitted as authorized by Ordering Paragraph No. 6 of D.22-10-005, which states that:

*“San Jose Water Company is hereby authorized to file a Tier I Advice Letter to recover the balancing account balances and memorandum account balances, including the limited element of the Catastrophic Events Memorandum Account balance via customer surcharge in manner specified in Section F of the Amended Settlement Agreement.”*

Rather than implementing two surcharges to recover the balancing and memorandum accounts, SJWC proposes to combine the under-collection in this advice letter with the over-collection in the Water Conservation Memorandum Account (WCMA) and Water Conservation Expense Memorandum Account (WCEMA) as follows:

Type of Account	Balance (Over-Collection)/Under-Collection	
WCMA	\$ (20,477,956)	Over-Collection
WCEMA	\$ 553,071	Under-Collection
D.22-10-005 Balancing Account	\$ 6,674,556	Under-Collection
D.22-10-005 Memorandum Account	\$ 11,499,403	Under-Collection
Total	\$ (1,750,926)	Over-Collection

The combined balances results in an over collection of \$1,750,926 which SJWC proposed to refund via a one-time sur-credit. This approach eliminates the need for the memorandum and balancing accounts surcharges to appear on bills which minimizes customer confusion. It also allows SJWC to continue to send a strong conservation message that would otherwise be blunted if the WCMA over-collection was amortized separately. Please refer to AL 582 for details of the sur-credit.

### Effective Date

SJWC requests an effective date that coincides with the approval of AL 582.

### Protests and Responses

Anyone may respond to or protest this advice letter. A response does not oppose the filing but presents information that may prove useful to the Commission in evaluating the advice letter. A protest objects to the advice letter in whole or in part and must set forth the specific grounds on which it is based. These grounds may include the following:

- (1) The utility did not properly serve or give notice of the advice letter;
- (2) The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;
- (3) The analysis, calculations, or data in the advice letter contain material error or omissions;
- (4) The relief requested in the advice letter is pending before the Commission in a formal proceeding;
- (5) The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; or
- (6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory (provided that such a protest may not be made where it would require relitigating a prior order of the Commission).

A response or protest must be made in writing or by electronic mail and must be received by the Water Division within 20 days of the date this advice letter is filed. The address for mailing or delivering a protest is:

Tariff Unit, Water Division, 3<sup>rd</sup> floor  
California Public Utilities Commission,  
505 Van Ness Avenue  
San Francisco, CA 94102  
water\_division@cpuc.ca.gov

On the same date the response or protest is submitted to the Water Division, the respondent or protestant shall send a copy of the protest by mail to us, addressed to:

Regulatory Affairs  
San Jose Water Company  
110 West Taylor Street  
San Jose, CA 95110  
Fax 408.279.7934  
regulatoryaffairs@sjwater.com.

The advice letter process does not provide for any responses, protests or comments, except for the utility's reply, after the 20-day comment period. Public notice is not required.

In compliance with Paragraph 4.3 of GO 96-B, a copy of this advice letter has been mailed to all interested and affected parties as detailed in **Attachment B**.

SJWC currently has Advice Letter 580 pending before the Commission.

This filing will not cause the withdrawal of service, nor conflict with other schedules or rules.

Very truly yours,

/S/ JOHN TANG  
JOHN TANG  
Vice President of Regulatory Affairs

Enclosure

**SAN JOSE WATER COMPANY**

**ADVICE LETTER NO. 581**

**ATTACHMENT A**

Decision 22-10-005 October 6, 2022

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

In the Matter of the Application of San Jose Water Company (U168W) for an Order authorizing it to increase rates charged for water service by \$51,585,000 or 13.35% in 2022, by \$16,932,000 or 3.88% in 2023, and by \$19,195,000 or 4.24% in 2024.

Application 21-01-003

**DECISION APPROVING AMENDED SETTLEMENT AGREEMENT  
AND RESOLVING GENERAL RATE CASE OF  
SAN JOSE WATER COMPANY FOR  
YEARS 2022 THROUGH 2024**

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**Appendix 1** - Amended Settlement Agreement

**Appendix 2** - Summary of Earnings and Adopted Quantities

**DECISION APPROVING AMENDED SETTLEMENT AGREEMENT  
AND RESOLVING GENERAL RATE CASE OF  
SAN JOSE WATER COMPANY FOR  
YEARS 2022 THROUGH 2024**

**Summary**

Pursuant to Commission Rule 12.1,<sup>1</sup> we hereby adopt the Amended Settlement Agreement (ASA) between San Jose Water Company (SJWC) and the Public Advocates Office (Settling Parties), incorporated as Appendix 1 to this decision. We direct SJWC to implement the provisions of the ASA in accordance with the terms of this decision.

Based on the resolution of issues in the ASA, we adopt general rate increases for SJWC to produce revenue requirement increases of \$25,074,000 or 6.03% for Test Year 2022, \$12,955,000 or 2.94% for Escalation Year 2023, and \$16,102,000 or 3.56% for Attrition Year 2024. We also adopt the rate design proposed in the ASA as the basis for collecting the approved increased revenue requirements. We likewise adopt all other provisions of the ASA including those relating to recovery of balancing account and memorandum account balances.

This proceeding is closed.

**1. Background**

San Jose Water Company (SJWC) is a Class A water utility engaged in the business of supplying and distributing water for domestic and industrial purposes in portions of the City of San Jose and City of Cupertino, in the Cities of Campbell, Los Gatos, Monte Sereno, and Saratoga, and in unincorporated territory in Santa Clara County. On January 4, 2021, SJWC filed Application (A.) 21-01-003 for authority to increase rates for retail water service by

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<sup>1</sup> All references to Rules are to the Commission's Rules of Practice and Procedure, unless otherwise stated.



\$51,585,000 or 13.35% in 2022, by \$16,932,000 or 3.88% in 2023, and by \$19,195,000 or 4.24% in 2024 (Application). SJWC provided its Report on the Results of Operations, prepared direct testimony and supporting workpapers, minimum data requirements, and responses to supplemental data requests, all as required by the Revised Rate Case Plan for Class A Water Utilities (Rate Case Plan).<sup>2</sup>

The Public Advocates Office (Cal Advocates) filed a protest to the Application on February 10, 2021. SJWC replied to the protest on February 22, 2021. A prehearing conference (PHC) was held on March 5, 2021. Water Rate Advocates for Transparency, Equity, and Sustainability (WRATES) requested and was granted party status during the PHC. WRATES filed a protest to the Application on March 12, 2021. SJWC replied to WRATES' protest on March 22, 2021.

On April 5, 2021, the assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) was issued.

On May 4, 2021, SJWC filed A.21-05-004 to revise its adopted cost of capital and to reflect that adopted cost of capital in its rates covering periods from January 1, 2022 through December 31, 2024.<sup>3</sup>

A public participation hearing was held on May 13, 2021, remotely by video and telephone conference. Speakers at the hearing included residential customers, representatives from the Silicon Valley Leadership Group, and elected officials, including Bryan Mekechuk, acting Mayor of the City of Monte Sereno. Topics of these public comments included SJWC's proposed rate

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<sup>2</sup> See *Revised Rate Case Plan for Class A Water Utilities*, Decision (D.) 07-05-062.

<sup>3</sup> See A.21-05-004.

increase, service charges, SJWC's rate of return, subsidized rates for low-income residential customers, and SJWC billing practices.

Cal Advocates and WRATES served testimony on May 25, 2021, and June 1, 2021, respectively. Cal Advocates challenged many aspects of SJWC's revenue and expense estimates and project proposals for the Test Year (TY) and general rate case (GRC) cycle, but also accepted many of SJWC's estimates and proposals as reasonable. WRATES presented its own critique and proposals on select issues. SJWC served rebuttal testimony responding to WRATES and Cal Advocates on June 9 and 15, 2021, respectively.

Over the course of this proceeding, the parties engaged in settlement negotiations through mediation under the Commission's Alternative Dispute Resolution (ADR) program. On June 29, 2021, SJWC sent formal notice of a settlement conference on July 7, 2021, in compliance with Rule 12.1(b). All parties participated in the noticed settlement conference. Multiple additional settlement conferences were held. SJWC and Cal Advocates (Settling Parties) reached agreement and executed a Settlement Agreement on January 13, 2022 (Settlement Agreement). WRATES did not join in the Settlement Agreement.

On August 17, 2021, all parties participated in a series of virtual mediation sessions with Commission's mediators as part of the ADR program, where each party met separately with the mediators to seek to resolve all contested matters.

On October 1, 2021, WRATES served supplemental prepared testimony. SJWC served supplemental rebuttal testimony on October 18, 2021. As directed by the Administrative Law Judge (ALJ), all parties served the service list and uploaded to the Commission's website a complete set of their final exhibits on November 12, 2021.

Evidentiary hearings (EH) were held on December 7, 2021, through December 10, 2021, and on December 13, 2021, and December 20, 2021. During the EH, the ALJ ruled on admission of exhibits offered into evidence, and disallowed the Testimony of Bryan Mekechuk and the attached exhibits and Testimony of William Sherman, both served on November 12, 2021. The ALJ granted admission of the Testimony of Bryan Mekechuk, served on October 1, 2021, and the Testimony of William Sherman, served on June 1, 2021.

On January 13, 2022, the Settling Parties filed a Joint Motion for Approval of Settlement Agreement. On the same day, the ALJ issued a ruling directing the Settling Parties to clarify the proposed rate design and to submit a table of the proposed rates under the Settlement Agreement, including a table outlining (1) the proposed three rate tiers, (2) the type of customers for each tier and (3) the proposed charges in each tier.

On January 14, 2022, all parties filed Opening Briefs.

On January 18, 2022, the Settling Parties jointly filed a Response to the ALJ Ruling Clarifying the Proposed Rate Design. On January 27, 2022, the Settling Parties informed the ALJ of two errors discovered in the Comparison Exhibit included with the Settlement Agreement. On February 4, 2022, the Settling Parties filed an Amended Joint Motion for Approval of Amended Settlement Agreement (ASA)<sup>4</sup> attached thereto with the signature of the representative for Cal Advocates redacted.

On February 14, 2022, all parties filed Reply Briefs. The proceeding was submitted upon the filing of Reply Briefs.

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<sup>4</sup> A copy of the ASA is attached as Appendix 1 to this Decision.

On February 16, 2022, the proceeding was reassigned to Commissioner Darcie L. Houck.

On February 22, 2022, WRATES filed a Response to the Amended Joint Motion expressing opposition to the ASA.

On February 28, 2022, in response to the ALJ inquiry, Cal Advocates explained that the conversion of the ASA to archivable Portable Document Format (PDF/A) caused the redaction of signature of the representative for Cal Advocates.<sup>5</sup>

On March 8, 2022, WRATES filed Comments Contesting the Amended Joint Motion. On March 22, 2022, the Settling Parties filed Reply Comments to WRATES Response to Amended Joint Motion and WRATES Comments Contesting ASA (Joint Reply Comments). The Settling Parties attached the ASA with the signatures of their representatives visible.

On May 13, 2022, in response to the ALJ ruling, WRATES uploaded the properly formatted admitted exhibits to the Commission's Supporting Documents Platform using the Electronic Filing System.

On May 20, 2022, the proceeding was reassigned from ALJ Daphne Lee to ALJ Thomas R. Pulsifer. By D.22-06-035, dated June 23, 2022, the statutory deadline for concluding this proceeding was extended from July 4, 2022 to December 31, 2022.

On October 3, 2022, Assistant Chief ALJ Kimberly H. Kim was co-assigned to this proceeding.

On October 3, 2022, WRATES filed a motion peremptorily challenging the co-assignment of Assistant Chief ALJ Kimberly H. Kim to this proceeding,

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<sup>5</sup> Joint Reply Comments, Attachment D.

pursuant to Rule 9.2 of the Commission's Rules of Practice and Procedure. Since the first and timely filed motion to peremptorily challenge an assigned judge by a party must be automatically granted, the Acting Chief ALJ issued a ruling granting WRATES' motion, on October 4, 2022. By the same ruling, this proceeding was reassigned to ALJ Robert W. Haga, as the new co-assigned ALJ to this proceeding.

## **2. Issues Before the Commission**

### **2.1. Issues Identified in the Scoping Memo**

The assigned Commissioner's Scoping Memo identified the following issues to be addressed in this proceeding:

- A) Whether SJWC's request to increase rates for water service by \$51,585,000 or 13.35% in 2022, by \$16,932,000 or 3.88% in 2023, and by \$19,195,000 or 4.24% in 2024 is necessary, just and reasonable;
- B) Whether all requests by SJWC are necessary to offer safe and reliable service, in particular:
  - 1) SJWC's proposed revenue increases for Test and Escalation Years, including SJWC's methodologies for projecting its number of customers, dollar amount of sales, and revenue;
  - 2) SJWC's proposed rate design change, seeking to recover 50% of its revenue requirement through service charges and increasing its baseline tier 1 consumption to 6 ccf;
  - 3) SJWC's proposed ratebase;
  - 4) SJWC's proposed expenses, including but not limited to taxes, operations and maintenance, and administrative and general expenses;
  - 5) SJWC's calculation of the ratepayer portion of revenue from non-tariffed products and services;
  - 6) SJWC's projected depreciation expenses and the underlying assumptions for plant retirements; SJWCs proposed plant improvements, including an

examination of previously funded projects, and contingency and overhead values;

- 7) SJWC's special requests for recovery of current balances in memorandum and balancing accounts, including its Monterey-style WRAM (M-WRAM), Intervenor Compensation Memorandum Account, Ground Water Regulation Legal Expense Memorandum Account; School Lead Testing Memorandum Account; 2018 Cost of Capital Memorandum Account; Catastrophic Event Memorandum Account; and Per- and polyfluoroalkyl substances (PFAS) Memorandum Account;
  - 8) SJWC's special request to establish an Asbestos-Related Memorandum Account; and
  - 9) SJWC's water quality, including actions taken or proposed to improve the overall safety and reliability of the service provided; and
- C) Whether the rate increase impacts environmental and social justice (ESJ) communities and to what extent will SJWC's requested rate increase and other requests achieve the nine goals of the Commission's ESJ Action Plan.

## **2.2. Significance of the ASA**

In view of the pending motion for adoption of the ASA, the issues in this proceeding will be addressed in the context of the ASA. The ASA modifies SJWC's original requests and would resolve all contested issues between Cal Advocates and SJWC in this proceeding, and addresses all issues in the Scoping Memo, summarized above. The ASA organizes the presentation of the issues addressed by the following categories, as summarized in Section 3 of the ASA, namely:

- A. Water Consumption and Operating Revenues;
- B. Ad Valorem Taxes;
- C. Rate Design;

- D. Expenses (including purchased water and power and employee count);
- E. Utility Plant (including plant depreciation and retirement and capital budget expenditures);
- F. Memorandum and Balancing Accounts;
- G. Other Ratemaking Issues (non-tariffed products and services and working cash adjustments); and
- H. Impacts of settlement provisions on environmental and social justice communities in the SJWC service territory.

WRATES participated with SJWC and Cal Advocates in the settlement process, but did not join in the ASA. Therefore, the ASA is not an all-party settlement. To determine whether to adopt the ASA as basis for resolving this proceeding we therefore consider whether any of the objections of WRATES, in opposition to the ASA, have merit.

### **2.3. Timing of Rate Change Implementation**

This decision authorizes rate changes to be implemented in annual intervals over the years 2022 through 2024. Although this decision is issued after the start of the 2022 TY, the adopted rate changes are to apply beginning January 1, 2022.

In recognition of the shortfall in collection of the authorized TY 2022 revenue requirement since the beginning of the 2022 calendar year, SJWC filed a motion on October 29, 2021, for authorization to file a Tier 1 Advice Letter to set interim rates effective January 1, 2022. The interim rates were to be set at the levels of then-effective rates and to establish a memorandum account to track the difference between the interim and final rates adopted by the Commission in this proceeding. No party protested SJWC's motion.

On December 17, 2021, the ALJ granted this motion, finding that SJWC met the criteria for interim rate relief set forth in Public Utilities (Pub. Util.) Code

§ 455.2<sup>6</sup> and D.07-05-062. The interim rates took effect on January 1, 2022, and were made subject to refund and adjustment upward or downward back to the effective date of January 1, 2022, consistent with final rates adopted in this decision. We affirm the ALJ ruling and authorize SJWC to amortize the balance accumulated in this memorandum account to date through a surcharge as directed in the ordering paragraphs herein.

#### **2.4. Burden of Proof**

As the Applicant in this proceeding, SJWC carries the burden of proof to show by a preponderance of evidence that the requests for rate changes and other relief in this proceeding are just and reasonable.<sup>7</sup> A preponderance of the evidence is achieved when weighed with that opposed to it, has more convincing force and greater probability of truth.

SJWC must make its evidentiary showing in conformance with the Rate Case Plan (RCP) for Class A water utilities prescribed in Decision (D.) 04-06-018 and D.07-05-062. Pursuant to the RCP, SJWC is authorized to request general rate changes covering the three-year period, 2022 (Test Year), 2023 (Escalation Year) and 2024 (Attrition Year). SJWC has complied with the RCP, as well as with all other requirements established by the Commission for this GRC.

Once SJWC and Cal Advocates entered into the ASA and filed their Amended Joint Motion (for approval and adoption of the ASA), they jointly took on the burden of demonstrating the reasonableness of the ASA. WRATES does

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<sup>6</sup> Unless otherwise specified, all subsequent section references are to the Pub. Util. Code.

<sup>7</sup> As required by the Rate Case Plan for Class A Water Utilities: "A utility's application for a rate increase must identify, explain, and justify the proposed increase." (D.04-06-018, Appendix at 5.) The application must be supported by testimony, with supporting analysis and documentation, describing the components of the proposed increase. All significant changes from the last adopted and recorded amounts must be explained, and all forecasted amounts must include an explanation of the forecasting method.



not have the burden of proving the unreasonableness of SJWC's proposals or of the ASA. To the extent WRATES makes its own independent claims or proposals, however, it bears the burden to support the merits of those separate claims or proposals with evidence and logical argument.

**3. Standard for Review of the ASA Agreement**

As a starting point to consider whether the ASA warrants adoption for purposes of resolving the issues in this proceeding, we set forth below the governing policies and standard of review.

As previously noted, "[t]here is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation."<sup>8</sup> This long-standing policy supports many worthwhile goals, including reducing litigation time and expense, conserving Commission resources, and allowing parties to reduce the risk of unacceptable litigation result.

Although we favor the resolution of disputes through settlement, we also have specific rules regarding approval of settlements. Commission Rule 12.1(a) is the primary authority for review of proposed settlements, whether they are contested or not. With respect to any settlement agreement, pursuant to Rule 12.1 of the Rules of Practice and Procedure, we will only approve settlements that are reasonable in light of the whole record, consistent with the law, and in the public interest.

Rule 12.1 (a) requires parties to propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding by written motion. Rule 12.1(b) requires Settling Parties to convene

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<sup>8</sup> Pacific Gas & Electric Company GRC, D.88-12-083.

at least one conference with notice and an opportunity to participate provided to all parties for the purpose of discussing settlement in the proceeding.

The Amended Joint Motion must present a statement of factual and legal considerations adequate to advise the Commission of the terms of the settlement, including grounds on which adoption is urged. A proposed settlement under a Rate Case Plan shall also include a comparison exhibit indicating the impact of the settlement in relation to the utility's application, in relation to the issues staff contested, or would have contested, in hearing.

WRATES is the only party to contest the ASA. In reviewing the overall merits of the ASA, we also must evaluate the merits of WRATES' objections to the ASA, as discussed below.

**4. The ASA Meets Requirements for Commission Approval and Warrants Approval and Adoption**

As discussed below, we find that the ASA meets the requirements for approval under Commission Rule 12. The ASA resolves all contested issues in this proceeding between Cal Advocates and SJWC. The remaining party, WRATES, participated in the settlement process, but did not ultimately join in the ASA. Therefore, the ASA is not an all-party settlement. WRATES presented a list of objections to the ASA in its comments, filed March 7, 2022, and in its comments on the Proposed Decision, filed September 13, 2022.

Based on review of WRATES' arguments, and Settling Parties' Reply Comments dated March 22, 2022, we find no merit in WRATES' list of objections to the ASA, as addressed below.

We find that the Settling Parties have satisfied all requirements for approval of the ASA set forth in Rule 12. As required by Rule 12.1(a), the Settling Parties submitted a comparison exhibit as Attachment A to the ASA.

The comparison exhibit provides a comparative summary of the original positions of the Settling Parties on each issue, the difference between SJWC's position (as reflected in its 45-day update) and Cal Advocates' position, and the agreed-upon resolution in the ASA with reference to relevant record evidence for each issue.<sup>9</sup>

The ASA also meets Rule 12.1(b) requirements which calls for the Settling Parties to convene at least one conference with notice and provide all parties an opportunity to participate in the conference for the purpose of discussing settlements in the proceeding. Notice of the date, time and place shall be served to all parties at least seven (7) days in advance of the conference.<sup>10</sup>

Multiple settlement conferences were held in this proceeding by the parties. On June 29, 2021, SJWC sent formal notice of a settlement conference scheduled for July 7, 2021, in compliance with Rule 12.1(b). All parties participated in the noticed settlement conference. On August 17, 2021, all parties also participated in the all-party virtual joint mediation session with Commission's mediators. Multiple additional settlement conferences were held.

Cal Advocates conducted comprehensive discovery with respect to the issues raised by the Application, to which SJWC provided prompt responses. These materials, in conjunction with the showing presented in SJWC's Application, provided the basis for substantive negotiation of issues of concern to the Settling Parties. The Settling Parties met and discussed the contested issues in good faith, negotiated in defense of their respective positions, and considered proposals to resolve the issues. This process led to a series of

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<sup>9</sup> Attachment A to the ASA can be found in Appendix 1 of this Decision.

<sup>10</sup> See Rule 12.1(b).

compromises and agreements on the terms of the ASA. Accordingly, the Settling Parties, after holding multiple conferences involving all parties, met the requirements of Rule 12.1(b).

Based on review of WRATES' arguments, and Settling Parties' Reply Comments dated March 22, 2022, we find no merit in WRATES' objections to adoption of the ASA. Having considered WRATES' objections, as discussed below in Section 4.4 of this decision, we find that the ASA satisfies Rule 12.1(d) which requires that to warrant approval, a proposed settlement must be reasonable in light of the whole record, consistent with law, and in the public interest.

#### **4.1. Reasonable in Light of the Record**

Upon review, we find the proposed ASA terms reasonable in light of the whole record including parties' prepared testimony and exhibits admitted into the record and the transcript of evidentiary hearings conducted.

The Settling Parties considered the record regarding: 1) the need for revenue increases, 2) rate design changes, 3) proposed ratebase and proposed expenses, 4) the ratepayer portion of revenue from non-tariffed products and services, 5) projected depreciation expenses and underlying assumptions for plant retirements, 6) special requests for recovery of balances in memorandum and balancing accounts, 7) a request to establish an Asbestos-Related Memorandum Account, and 8) effects on water quality to improve the overall safety and reliability of the service provided.

The ASA identifies each settled issue, provides a statement of the positions of SJWC and Cal Advocates, thoroughly describes their differences, explains how each issue was resolved, and lists corresponding and supporting references to testimony, evidence, and exhibits addressing each issue.

The record for this proceeding also includes testimony and exhibits of WRATES. Since WRATES did not join in the ASA, we independently review the claims and arguments presented by WRATES in testimony and exhibits. Our review of WRATES' showing, as discussed below in Section 4.4, does not change our finding that the ASA is reasonable in light of the whole record.

#### **4.2. Consistent with Applicable Rules and Laws**

Water utility rates adopted for SJWC must be set to provide safe and reliable customer service at just and reasonable rates, as required by Pub. Util. Code § 451. The water service rate levels proposed in the ASA satisfies this legal requirement. There is no statutory provision or prior Commission decision that would be contravened or compromised by adoption of the ASA. The issues resolved in the ASA are within the scope of the proceeding and produce rates within a range of reasonableness. Accordingly, we find the ASA to be consistent with applicable law.

#### **4.3. Public Interest Standard**

The Commission has explained that a settlement which “commands broad support among participants fairly reflective of the affected interests” and “does not contain terms which contravene statutory provisions or prior Commission decisions” well serves the public interest.<sup>11</sup>

Here, we find that the Settling Parties represent the affected interests. The primary public interest affected by this proceeding is the delivery of safe and reliable water service at reasonable rates. SJWC provides water service to customers in its California service territory. Cal Advocates is statutorily mandated to represent all ratepayers in California, including SJWC's ratepayers.

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<sup>11</sup> San Diego Gas & Electric GRC, D.92-12-019.

The Settling Parties reached a reasonable compromise on each of the issues in contention. Settlement negotiations were accomplished at arms' length over several days and with no collusion. The resulting settlement advances the public interest because it fairly balances the Applicant's interest in seeking a fair opportunity to earn a reasonable return against the interests of consumers (as represented by Cal Advocates) for reasonable affordable rates and safe, reliable water service.

#### **4.4. WRATES' Objections Lack Valid Support**

##### **4.4.1. Signature Requirements under Rule 12.1(a).**

WRATES claims that the ASA does not meet the requirements for signatures as specified in Rule 12.1(a) because the signature of Cal Advocates' representative was redacted.<sup>12</sup> Settlements need not be joined by all parties but must be signed by the applicant.<sup>13</sup> The Settling Parties filed the Amended Joint Motion for Approval of ASA with the signature for Cal Advocates representative redacted (although the signature of the SJWC representative was visible). In this regard, WRATES argues that the redacted signature provides prima facie evidence that the entire document, specific portions or unidentifiable portions have been altered, omitted or corrupted intentionally or due to technical factors. Since the chain of possession passed from more than five individuals as an electronic file, WRATES argues that explanation of where the corruption occurred is impossible to determine without a forensic investigation of the electronic history.

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<sup>12</sup> WRATES Response to the Joint Motion, at 4. *See also*, WRATES Comments Contesting ASA, at 6. *See also*, WRATES Comments on the Proposed Decision at 4.

<sup>13</sup> Rule 12.1(a).

The Settling Parties explained the signature issue was due to a technical glitch when SJWC converted the document from PDF to PDF/A format and corrected the error by filing PDF/A version of the ASA with both signatures visible with the March 22, 2022 Reply Comments.<sup>14</sup> The Declaration of Chris Ungson, Deputy Director for Water and Communications of the Public Advocates Office at the California Public Utilities Commission (Declaration), stated that he signed the ASA on February 3, 2022.<sup>15</sup> We find that WRATES' argument is misplaced in basing its objections on the chain of possession. The chain of possession applies as a factor in assessing the weight of evidence in the record. The ASA, however, is not an independent evidence, but is an evidence supported by the underlying motions by parties who are also signatories to that agreement. Although the signature block for the representative of Cal Advocates was redacted in the version filed with the original Joint Motion, the Applicant's signature, as required under Rule 12.1(a), was clearly visible. The February 4, 2022 Amended Joint Motion contained an attached ASA that had no signatures visible; however, the Settling Parties further supplemented the Amended Joint Motion with the Declaration and a copy of the ASA with all signatures clearly visible.

In Comments on the Proposed Decision, WRATES continues to raise its prior objections regarding ASA signature requirements and argues that adoption

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<sup>14</sup> See Amended Joint Motion. SJWC Opening Comments on the Proposed Decision at 1-2; Cal Advocates Reply Comments on the Proposed Decision at 5. Contrary to WRATES' Opening Comments on the Proposed Decision, these statements explaining the technical glitch are not "ex parte" discussions. WRATES Opening Comments on the Proposed Decision at 7. "Ex parte" discussions are, among other requirements, by definition non-procedural communications. Rule 8.1(b)(1). Discussions regarding a technical malfunction that mistakenly redacted a signature are procedural discussions. See Rule 8.1 (e)(2).

<sup>15</sup> Reply Comments, Attachment B.

of the ASA would constitute legal error because the redaction of the signature evidences a failure to comply with California regulations concerning Public Key Cryptography and digital signatures under Title 2, section 22003 of the California Code of Regulations (CCR)<sup>16</sup> WRATES argues that the redaction shows that the signature did not remain “under the sole control of the person using it” in violation of 2 CCR section 22003 (a)(5).<sup>17</sup>

Cal Advocates disputes WRATES’ contention, arguing that Deputy Director Ungson’s signature was an electronic signature, but not a digital signature under the law, and so the referenced provision is inapplicable.<sup>18</sup> An electronic signature is “an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record[,]”<sup>19</sup> and a digital signature is one type of electronic signatures.<sup>20</sup> Specifically, a digital signature is “an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.”<sup>21</sup> Cal Advocates also cites to additional distinctions between a digital signature and the broader category of electronic signatures.<sup>22</sup>

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<sup>16</sup> WRATES’ Opening Comments on the Proposed Decision at 7. WRATES cites to “Gov 22003 (5)” for requirements pertaining to digital signatures; we agree with Cal Advocates that WRATES likely intended to reference Title 2 of the Cal. Code Regulations. §22003. See Cal Advocates’ Reply Comments on the Proposed Decision at 5.

<sup>17</sup> WRATES’ Opening Comments on the Proposed Decision at 7.

<sup>18</sup> Cal Advocates’ Reply Comments on the Proposed Decision at 4-5.

<sup>19</sup> *Id.* at 4, citing Civ. Code, § 1633.2(h).

<sup>20</sup> *Id.* at 4, citing Gov. Code, § 16.5(d).

<sup>21</sup> *Id.* at 4, citing Gov. Code, § 16.5(d).

<sup>22</sup> *Id.* at 4-5, citing 2 Cal. Transactions Forms--Bus. Transactions § 8:4 (An electronic signature would be the minimal mark needed for a signature to satisfy the requirements of the statute of

*Footnote continued on next page.*



We agree with Cal Advocates that Director Ungson's signature was not a digital signature under the terms of the law, but rather was an electronic signature.<sup>23</sup> Title 2, Division 17 of the California Code of Regulations, pertaining to digital signatures, implements California Government Code section 16.5, which authorizes public entities to use digital signatures. Notably, this provision does not mandate public entities to use digital signatures only. No applicable law or Commission rule required the ASA signatories to use of digital signatures in consummating the settlement document at issue here. Thus, we

Based on the foregoing, we find that the ASA met the signature requirement under Rule 12.1(a), and WRATES' objections to the contrary lack merit.

**4.4.2. Resolution L-614 has No Relevance to the ASA**

WRATES references Commission Resolution L-614 as another basis for its objection to the ASA. Resolution L-614 addressed whether SJWC met the requirements for confidential treatment of documents under General Order (GO) 66-D. That resolution authorized the disclosure of SJWC financial statements for the years ending December 31, 2018, 2019 and 2020. WRATES argues that this resolution forms a basis for the Commission to reject the ASA.

We find no merit in WRATES' argument on this issue. The ALJ has ruled in this proceeding that Resolution L-614 is "irrelevant and not probative to the

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frauds, while a digital signature requires something more: "[f]or example, someone's initials at the end of an E-mail would constitute an electronic signature. In contrast, a digital signature provides a means of authenticating both the content and creator of an electronic document through use of public key encryption.").

<sup>23</sup> Cal Advocates' Reply Comments on the Proposed Decision at 4-5.

admissibility” of the financial statements.<sup>24</sup> Resolution L-614 addressed whether SJWD met the requirements for confidential treatment of documents under GO 66-D. That issue is not relevant to this proceeding.

WRATES’ requests to have these documents entered into the record were not denied because of their confidential status but because WRATES failed to comply with the procedural requirements established for this proceeding, failed to make the showing required by the ALJ, and failed to establish a foundation for the exhibits.<sup>25</sup> The fact that the Commission authorized the disclosure of these financial statements has no bearing on whether the ASA has merit or meets the criteria for Commission adoption. WRATES’ repetition of these arguments in its Opening Comments on the Proposed Decision<sup>26</sup> are accorded no weight.

#### **4.4.3. Cal Advocates Role Relative to Financial Statement Confidentiality**

WRATES argues that the ASA is defective because Cal Advocates allegedly failed to act with due diligence by not joining in WRATES’ motion challenging SJWC’s claims of financial statement confidentiality. WRATES’ motion in this context arose out of its discovery disputes with SJWC.

Contrary to WRATES claims, we find that Cal Advocates had no obligation to join WRATES in its motion challenging SJWC’s claims of confidentiality of its financial statements. Cal Advocates thus did not exhibit a lack of due diligence in that regard. Cal Advocates was not involved in WRATES’ discovery disputes. Cal Advocates has no obligation to join other

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<sup>24</sup> ALJ Ruling dated March 3, 2022.

<sup>25</sup> ALJ Ruling Denying Motions, dated March 3, 2022, at 1-3.

<sup>26</sup> WRATES’ Opening Comments on the Proposed Decision at 8-10.

intervenors in motions arising out of their discovery disputes with utility companies.

#### **4.4.4. Cal Advocates Opening Brief Presentation**

We find no merit in WRATES' argument that the ASA should be rejected because Cal Advocates, in its opening brief, presented no discussion of its original positions with references to testimony. Once Cal Advocates joined with SJWC in the ASA, Cal Advocates had an obligation to use its "best efforts to obtain Commission approval of the Settlement Agreement."<sup>27</sup> Because the ASA represents a compromise of the Settling Parties positions, the ASA does not align with all original positions in Cal Advocates' testimony. Accordingly, Cal Advocates acted in accordance with its responsibilities in its opening brief presentation, in noting that the ASA resolved all of its contested issues, rather than arguing its pre-settlement positions.

#### **4.4.5. References to WRATES' Testimony/Exhibits**

We find no merit in WRATES' argument that the ASA should be rejected because it does not provide references to WRATES testimony or exhibits. Since WRATES is not a party to the ASA, there is no reason for the ASA to cite to WRATES' testimony or exhibits. The Commission independently weighs and evaluates the merits of WRATES' testimony and exhibits, along with other record evidence, in determining the overall merits of the ASA.

### **5. Adopted Revenue Requirements and Rate Design**

Based on our adoption of the ASA, as discussed above, we find the adopted revenue requirements and resulting rate increases proposed therein

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<sup>27</sup> Joint Motion, Attachment 1, at 2; Amended Joint Motion, Attachment 1, at 2.

reasonable. The ASA encompasses all elements of SJWC's revenue requirements, including capital projects necessary to maintain and improve reliability,<sup>28</sup> costs to operate its system and provide services to customers,<sup>29</sup> expenses for compliance and enhancement of water quality,<sup>30</sup> payroll costs,<sup>31</sup> and implementation of programs to improve safety and resilience.<sup>32</sup> As a foundation for entering into the settlement provisions, Cal Advocates reviewed SJWC testimony and supporting materials regarding water quality, Division of Drinking Water sanitary survey reports, and databases of the State Water Resources Control Board. Based on this review, Cal Advocates confirmed that SJWC meets applicable state and federal water quality standards and GO 103-A.<sup>33</sup> We also

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<sup>28</sup> Exhibit SJW-2, *Capital Budget Projection Justifications*, Testimony of Jake Walsh (SJW-2). See also, Exhibit SJW-4, *Rebuttal of San Jose Water Company to the Public Advocates Office Report and Recommendations on IT and Recorded Plant*, Testimony of Eduardo Ibanez Brambila (SJW-4) and SJW-9, *Rebuttal of San Jose Water Company to the Public Advocates Office Report and Recommendations on Utility Plant Report, Generator Report, Pumps & Motor Report, and IT and Recorded Plant Report*, Testimony of Jake Walsh (SJW-9).

<sup>29</sup> Exhibits SJW-1, *San Jose Water Company Report on the Result of Operations, Operation and Maintenance Expenses*, Testimony of John Tang, Chapter 8 (SJW-1:8) and *Administrative and General Expenses*, Testimony of John Tang, Chapter 9 (SJW-1:9); SJW-6, *Rebuttal of San Jose Water company to the Public Advocates Office Report and Recommendations on Operations and Maintenance Expenses*; SJW-7.

<sup>30</sup> Exhibit SJW-1, *San Jose Water Company Report on the Result of Operations, Water Quality*, Testimony of Francois Rodigari, Chapter 16 (SJW-1:16).

<sup>31</sup> Exhibit SJW-1, *San Jose Water Company Report on the Result of Operations, Payroll, Personnel Additions and Employee Benefits*, Testimony of Stephanie Orozco, Chapter 5 (SJW-1:5), and *Executive Compensation*, Testimony of James Lynch, Chapter 21 (SJW-1:21).

<sup>32</sup> Exhibits SJW-1, *San Jose Water Company Report on the Result of Operations, Wildfire Risk Reduction Plan*, Testimony of Steven Auten, Chapter 19 (SJW-1:19); *Safety and Security*, Testimony of Curt Rayer, Chapter 20 (SJW-1:20) and SJW-10, *Rebuttal of San Jose Water Company to the Public Advocates Office Report and Recommendations on Utility Plant and Wildland Fire*, Testimony of Steven Auten (SJW-10 Auten).

<sup>33</sup> PAO 106, at 70-71.

find that SJWC has taken appropriate measures to ensure that its water system operations are safe.

SJWC also explicitly outlines in testimony the measures it has taken to protect water system assets, customer information, and distribution system integrity.<sup>34</sup>

We also considered opposing claims of WRATES that: (1) the ASA-proposed rate design does not sufficiently encourage conservation; (2) SJWC should remove certain facilities from utility plant; (3) SJWC has not correctly allocated costs to its parent company, SJW Group; (4) SJWC has not demonstrated the necessity of its proposed capital improvement projects; (5) SJWC should not be allowed to recover costs tracked in its Catastrophic Event Memorandum Account; and (6) SJWC has failed to address the Commission's ESJ Action Plan goals. As discussed below, we find no merit in any of these claims.

Based on thereon, we adopt revenue requirement increases of \$25,074,000 or 6.03% for TY 2022, \$12,955,000 or 2.94% for Escalation Year 2023, and \$16,102,000 or 3.56% for Attrition Year 2024.<sup>35</sup> The following table summarizes and compares the total revenue requirement increase, in dollars and percentages,

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<sup>34</sup> SJW-1, Chapter 20.

<sup>35</sup> Amended Joint Motion at 5.

for 2022, 2023, and 2024, (a) as requested in the Application, (b) proposed by Cal Advocates in testimony, and (c) as agreed to by the Settling Parties in the ASA.<sup>36</sup>

<b>Calendar Year</b>	<b>Increase Requested by SJWC (In Dollars and Percentages)</b>	<b>Increase Proposed by Cal Advocates (In Dollars and Percentages)</b>	<b>Increase Agreed to in ASA (In Dollars and Percentages)</b>
2022	\$ 51,585,000 / 13.35%	\$16,592,000 / 4.06%	\$25,074,000 / 6.03%
2023	\$16,932,000 / 3.88%	\$12,787,000 / 3.00%	\$12,955,000 / 2.94%
2024	\$19,195,000 / 4.24%	\$13,761,000 / 3.14%	\$16,102,000 / 3.56%

We accordingly adopt the Summary of Earnings and supporting cost and quantity elements, consistent with the ASA, as set forth in Appendix 2 of this decision.

Escalation-year rate increases were calculated using currently known inflation factors provided by Commission staff and applied as directed in the RCP. The escalation-year filings for Escalation Years 2023 and 2024. The escalation year rate change advice letter filings will be governed by actual inflation factors recorded at the times of filing.

The adopted revenue requirements represent the funds necessary for SJWC to provide safe and reliable customer service at just and reasonable rates, as required by Pub. Util. Code § 451. The adopted increases (1) balance the need for system improvements with what customers pay for service, (2) ensure that its water system is sufficiently designed, operated, and financed to provide safe and reliable service to all customers, and (3) address emerging trends and threats, including wildfire and climate change, and build and operate a more resilient system.

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<sup>36</sup> ASA at 4.

## 5.1. Rate Design Issues

We adopt the rate design set forth in Attachment B of the ASA. We find no merit in WRATES' rate design proposals that conflict with the ASA. The adopted rate design, as set forth in the ASA:

- (a) utilizes tier breaks of 0-6, 7-12, and over 12 units;
- (b) recovers 45% of revenue through fixed service charges and 55% through volumetric quantity charges;
- (c) sets the uniform rate at the Tier 2 rate, sets the Tier 1 rate at 0.67 of the Tier 2 rate, and sets the Tier 3 rate to achieve Monterey-Style WRAM neutrality;
- (d) charges all other customers at the Tier 2 rate;
- (e) sets the Raw Water Quantity Rate set at 0.2296 less than uniform rate; and
- (f) sets the Recycle pipe water rate at 0.4706 lower than uniform rate.<sup>37</sup>

Forecasts of customer counts and sales form the basis to develop estimated operating revenues applying the rate design in the ASA. SJWC also has revenue from funds provided by contributors through the gross-up on contributions in aid of construction. Combined, these items provide the forecasted total operating revenue at proposed rates per the ASA, as necessary for SJWC to provide safe and reliable water service to its customers.

Settling Parties agreed to Cal Advocates' residential customer count and SJWC's non-residential or Business customer count for each of the years 2022 through 2024 as shown in the tables in Attachment A to the ASA. The Parties agreed to utilize SJWC's meter size allocation for each customer class.<sup>38</sup>

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<sup>37</sup> ASA at 10.

<sup>38</sup> See Exhibits SJW-1 and SJW C-1, *San Jose Water Company Report on the Result of Operations, San Jose Water Sales Forecast for 2020 General Rate Case*, Testimony of David Mitchell (SJW-1/SJW Footnote continued on next page).

The Settling Parties proposed that recovery of revenue be implemented through an allocation of 45% from fixed service charges and 55% from volumetric quantity charges. The increase in fixed service charges is balanced with a decrease of volumetric rates compared to current volumetric rates.

The volumetric quantity charge on residential customers with 5/8 x 3/4-inch, 3/4-inch, 1-inch, 1 1/2-inch or 2-inch meters as set forth in the ASA for the years 2022 through 2024 is summarized below:<sup>39</sup>

**RESIDENTIAL CUSTOMERS WITH  
5/8 x 3/4-INCH, 3/4-INCH, 1-INCH, 1 1/2-INCH or 2-INCH METERS**

Tier	SJWC Current Rates			SJWC Proposed Rates per Application			ASA Proposed Rates		
	Rate Structure	Rate Differential	Rate	Rate Structure	Rate Differential	Rate	Rate Structure	Rate Differential	Rate
1	0-3 ccf <sup>40</sup>	0.6667 of Tier 2 Rate	\$3.7563	0-6 ccf	0.8 of Tier 2 Rate	\$3.7575	0-6 ccf	0.67 of Tier 2 Rate	\$3.4845
2	3-18 ccf	Uniform rate	\$5.4453	6-18 ccf	Uniform rate	\$4.6969	6-12 ccf	Uniform rate	\$5.2008
3	over 18 ccf	1.3333 of Tier 2 Rate	\$7.1338	over 18 ccf	1.67 of Tier 2 Rate	\$7.8832	over 12 ccf	1.5966 of Tier 2 Rate	\$8.3036

Residential customers with meters greater than 2-inch and non-residential customers continue to be subject to a single quantity rate at Tier 2 Rates regardless of usage.

Although the increased fixed service charge rate appears large, for the typical low-income customer enrolled in the customer assistance program using 11 centum cubic feet (ccf) per month, the Settling Parties anticipate a rate impact

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C-1: 6), pp. 6-2 to 6-6; Exhibit PAO-105, *Report and Recommendations on Payroll, Administrative & General Expenses, and Rate Design, Testimony of Ting-Pong Yuen* (PAO-105), at 14-15 and Exhibit SJW-7, *Rebuttal of San Jose Water Company to the Public Advocates Office Report and Recommendations on Payroll, Administrative & General Expenses and Rate Design* (SJW-7), at 13-16.

<sup>39</sup> See Attachment B to the ASA (in Appendix 1 hereto).

<sup>40</sup> A ccf represents one hundred cubic feet of water.



(increase) of \$2.34 per month, compared to customers using 11 ccf per month not enrolled in the customer assistance program, who will see a rate impact of \$2.76 per month.<sup>41</sup>

The ASA-proposed rate design complies with D.16-12-026 requirements for water utilities to continue past practices of rate recovery through fixed charges to reduce reliance on quantity charges and, consequently, decrease in amounts recovered from Water Revenue Adjustment Mechanism (WRAM) or surcharges.<sup>42</sup> In D.16-12-026, Classes A and B water investor-owned utilities (IOUs) were ordered to provide one or more proposals in the GRC to adjust customer tiers including consideration of higher tiered rates for outlier consumers or a superuser charge.<sup>43</sup>

Such proposals shall provide analysis and information to make a showing that the proposals balance promoting conservation, particularly by outliers, protecting ratepayers from rate shock, recovering authorized revenue to sustain the system and operations, and ensure fairness between ratepayers.<sup>44</sup>

The Settling Parties agreed to Tier 1 breakpoint, but Cal Advocates expressed concern regarding the Tier 1 ratio of the Tier 2 rate.<sup>45</sup> The Settling Parties also agreed that the amount of revenue recovered from the fixed charge should be increased, but Cal Advocates recommended a different percentage.<sup>46</sup> The Settling Parties ultimately agreed to a rate design that maintains the Tier 1

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<sup>41</sup> ASA at 17.

<sup>42</sup> D.16-12-026, p. 55.

<sup>43</sup> *Id.* at 7-8.

<sup>44</sup> *Ibid.*

<sup>45</sup> Exhibit PAO-105 at 49.

<sup>46</sup> *Id.* at 21.

up to 6 ccf breakpoint, which increases the amount of revenue recovered from the fixed charge and adjusts the tiered rates to achieve revenue neutrality for SJWC's Monterey WRAM.<sup>47</sup> This neutrality is necessary because Monterey WRAM balances lead to large recoveries in subsequent periods and intergenerational inequities.<sup>48</sup>

WRATES disputes the ASA with respect to the proposed volumetric proportion of rates and argues that a 30%/70% fixed-cost-to-volumetric-charge ratio will maximize price signals to residential customers to promote conservation, while preventing the utility from undervaluing the true cost of water.

We are not persuaded to adopt WRATES' proposed ratio of 30%/70% fixed-versus-volumetric rates. The Commission has previously found that the 30%/70% fixed/volumetric recovery ratio is not necessary to promote conservation and has serious drawbacks. As stated in D.16-12-026, "We are committed to incentivizing conservation, but find the 30/70 rate recovery mechanism not critical to that objective."<sup>49</sup> We also stated: "Increases in service charges to recover more rates through fixed costs should not diminish the conservation incentive provided through increasing rate tiers for quantity usage."<sup>50</sup> A rate design that only provides for recovery of 30% of revenue

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<sup>47</sup> ASA at 7.

<sup>48</sup> Evidentiary Hearing Transcript, Volume 4, at 374-375.

<sup>49</sup> D.16-12-026, Order Instituting Rulemaking on the Commission's Own Motion into Addressing the Commission's Water Action Plan Objective of Setting Rates that Balance Investment, Conservation, and Affordability for Class A and Class B Water Utilities, Decision Providing Guidance on Water Rate Structure and Tiered Rates, at 55-56.

<sup>50</sup> D.16-12-026, at 80, Finding of Fact 4.

through fixed service charges “leads to economic inefficiencies.”<sup>51</sup> Therefore, we decline to adopt a 30%/70% ratio, as proposed by WRATES.

The 45%/55% fixed-versus-volumetric ratio proposed and applied in the ASA encourages water conservation by providing a rate below the current rate for Tiers 1 and 2 for residential customers with lower water usage and higher Tier 3 rate for residential customers with higher usage. The rate increase to the Tier 3 users encourages conservation, while the rates for Tier 1 and Tier 2 customers provide a reasonable opportunity to earn the authorized rate of return.

The increase of Tier 1 also encourages conservation of water and rewards those families using less than 6 ccf with lower rates. The proposed operating revenue increase also allows SJWC to continue offering safe and reliable water service, while lowering rates for customers using less than 18 ccf per month.

Under the ASA, the residential customers with meters greater than 2-inch and non-residential customers will enjoy the lower Tier 2 rate as a uniform rate. The proposed rates protect ratepayers from rate shock with lower Tier 1 and 2 rates while increasing rates for outlier customers or superusers. The volumetric rates under the adopted rate design reflect a reduction of \$0.2718-\$1.9608 per centum cubic feet (ccf) for usage up to 6 ccf and a reduction of \$0.2445 per ccf for usage of 6 to 12 ccf. For usage above 12 ccf, the rate is increased by \$1.1698.

We decline to adopt WRATES rate design proposal which includes four tiers and a Tier 1 breakpoint of 3 ccf. WRATES did not justify this proposed rate design nor provide any analysis of the proposed tier levels or calculation of proposed revenue at WRATES’ proposed tiers and rates. The Commission has

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<sup>51</sup> *Id.*, at 55.

previously indicated that the Tier 1 breakpoint cannot be lower than 6 ccf.<sup>52</sup> WRATES' proposed rate design would penalize customers who conserve water but, due to the number of individuals in their household, are at their baseline usage.<sup>53</sup> WRATES' four-tiered rate design adds complexity with no demonstrated benefits. Therefore, we do not adopt WRATES' proposed four-tiered rate design.

## **5.2. SJW Group Parent Company Issues**

The ASA-proposed 2022 TY expenses incorporate a credit for expenses transferred to construction costs or other accounts, and to SJWC's parent company, SJW Group.<sup>54</sup> Because SJW Group does not have employees, SJWC employees perform functions required by SJW Group, and SJW Group reimburses SJWC for expenses incurred on behalf of SJW Group. The credit reduces the TY A&G expense allowance, reflecting this reimbursement.

WRATES argues that this credit is understated and should be increased from \$2,056,800 to \$4,056,800 to account for costs incurred by SJWC on behalf of SJW Group not included in the amounts in SJWC's application. WRATES alleged that SJWC is paying its employees to provide services to SJW Group without compensation. WRATES argued that SJW Group corporate expenses should not be included in SJWC rates.

WRATES claims that SJWC has generated significant cash that was transferred to SJW Group, and that SJW Group is arbitraging interest rates between SJW Group and SJWC to its advantage. SJWC does not maintain

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<sup>52</sup> D.20-08-047, at 77.

<sup>53</sup> SJW-13, at 2.

<sup>54</sup> SJW-1, Chapter 9.

significant cash balances and uses the cash generated from operations primarily to fund capital additions.<sup>55</sup>

We find no evidence of an SJW Group arbitrage benefit as a result of the SJWC and SJW Group short-term intercompany borrowing arrangement. At the evidentiary hearing, SJWC Chief Financial Officer James Lynch explained the process for allocation of costs between SJWC, SJW Group, and other operating affiliates.<sup>56</sup> This allocation process is designed to ensure that SJWC customers are not paying for work done on behalf of SJW Group or other affiliates.

SJW Group has no stand-alone operations. Its activities are for the primary benefit of the operating utilities (including SJWC) and their respective customers.<sup>57</sup> SJWC allocates the time that its employees spend on SJW Group activities. This allocation methodology includes annual time studies and the compensation (at market rates) of the employees providing the services to SJW Group (or other affiliates).<sup>58</sup> These costs are allocated out of SJWC to SJW Group or an affiliate.<sup>59</sup>

The Commission rules governing affiliate transactions address allocation of costs for shared corporate support, pricing of goods and services between the regulated utility and affiliates, and measures to ensure the financial health of the regulated utility. The rules provide for appropriate regulatory oversight by the Commission. The Commission has authority to impose monetary penalties for failure to comply with the affiliate transaction rules.

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<sup>55</sup> SJW-13, at 7.

<sup>56</sup> Confidential RT 277:9-28 (Lynch/SJWC).

<sup>57</sup> SJW-13, at 9.

<sup>58</sup> SJW-13, at 10; *see* CONFIDENTIAL RT 854:6-18 (Lynch, SJWC).

<sup>59</sup> WR C-282, WR C-283, WR C-284, WR C-290, WR C-291.

Under these rules, officers and employees of SJWC, SJW Group, and affiliated companies must make themselves available to appear and testify in Commission proceedings involving SJWC. They must provide the Commission and its staff with access to their books and records to allow the Commission to examine costs at issue or to review transactions between SJWC and affiliates.

Pursuant to these rules, SJWC developed its affiliate transaction compliance plan, which includes mechanisms and procedures to ensure compliance with the rules, as well as corporate officer verification that SJWC is not utilizing the parent company or any of its affiliates not covered by the rules as a conduit to circumvent any of rules. The rules also provide for independent audits for affiliate transactions at shareholder expense under certain circumstances.

The Commission's affiliate transaction rules also require SJWC to submit an annual report to the Commission's Water Division and Cal Advocates that includes a summary of all transactions between SJWC and its affiliate companies for the previous calendar year.

The record in this proceeding includes supporting documents as part of these reports, which detail SJWC expenses allocated and transferred to SJW Group. Given these requirements, SJWC has no incentive to understate expenses transferred to SJW Group.

In summary, we find nothing to identify defects or irregularities in SJWC's cost allocation process relating to the SJW Group, as claimed by WRATES. Accordingly, we decline to adopt WRATES's proposed adjustment to expenses transferred to SJWC's parent company.

### **5.3. Rate Base and Capital Budgeting Issues**

As a basis for the rate base recommended in the ASA, the Settling Parties reached a negotiated agreement on the respective capital components that are included in rate base. WRATES recommends that the TY rate base proposed in the ASA be reduced by \$42,664,400 to remove certain capital projects.<sup>60</sup> We address WRATES' arguments in this regard below.

#### **5.3.1. Used and Useful Assets**

WRATES proposes a rate base reduction of \$24,902,357 to exclude a series of wells, tanks, and reservoirs. WRATES references Cal Advocates' testimony submitted prior to the ASA which claimed that these assets were not used and useful in providing utility service. On that basis, WRATES argues that these facilities provide no ratepayer benefit and should be excluded from rate base.

SJWC agreed in the ASA to remove and retire Three Mile Well #1, Cambrian Reservoir #2, Fleming Reservoir #4 and Fleming Tank #3. SJWC also agreed to remove Vickery Reservoir #1 from rate base and hold it for future use. SJWC will move these assets to "USOA Account #100-4: Utility Plant Held for Future Use" for this GRC cycle. With respect to the remaining reservoirs and tanks at issue, SJWC argues that their inclusion in rate base is justified, as reflected in the ASA.

We conclude that the inclusion in rate base of the facilities, as identified in the ASA, provides a reasonable outcome. These reservoirs and tanks benefit customers by providing operational reliability and operational flexibility, particularly due to drought conditions and potential limited source water availability. SJWC periodically fills and drains them for operational purposes,

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<sup>60</sup> WRATES Opening Brief, at 12.

including distribution water quality management, changes in pressure zone demands, to provide additional storage due to unplanned outages or maintenance, and for routine inspection and cleaning of complementary reservoirs.

Keeping these wells, tanks and reservoirs in rate base is consistent with Commission precedent. The Commission has previously found that a facility that is not being used currently to provide water service still provides benefits to customers as a used and useful asset if it remains available as a source of supply during emergency situations.<sup>61</sup>

### **5.3.2. Rate Base Assets Requested in Prior Rate Cases**

WRATES recommends a rate base reduction to reflect removal of certain capital projects requested for inclusion in prior rate case applications that were not completed on their original schedule. WRATES claims that SJWC has included nine previously funded projects and unnecessary projects in its 2022 TY Rate Base that are of no value to ratepayers.<sup>62</sup>

We decline to adopt WRATES' recommendation to reduce rate base based on a disallowance of these capital projects. In SJWC's prior GRCs referenced by WRATES, the Commission approved settlements for overall capital budgets, but not specific capital projects. Although specific projects may be proposed to demonstrate the reasonableness of a utility's estimated capital investments, the utility retains discretion to shift funds budgeted for one capital project to a different project as changing conditions may warrant. The utility has an

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<sup>61</sup> D.12-06-040, at 13-17.

<sup>62</sup> PAO 106. at 2; Chapter 1.



obligation to exercise its expert judgment and management. The Commission does not micromanage every utility action.

SJWC was not obligated to complete all capital projects merely because they were proposed in a prior GRC. The fact that construction on certain previously proposed projects remain unfinished does not necessarily make the projects unreasonable. The GRC process requires capital improvements to be forecasted years in advance. The timing and costs of forecasted capital projects may be affected by changes in the scope of work, unforeseen site conditions, permitting, and other factors.<sup>63</sup>

Although SJWC completed less than 100% of the capital projects proposed in its previous GRC (A.18-01-004) its total proposed budget for that rate case period was 20% more than the adopted budget. In this instance, we conclude that SJWC has justified the continuing need for the projects contested by WRATES. SJWC has explained the reasons for the delays experienced in each of the projects contested by WRATES which were due to factors beyond the control of SJWC.<sup>64</sup> Based on this evidence presented, we conclude that the projects included in rate base are reasonably expected to become operational for the 2022 TY, and WRATES' objections lack merit.

We likewise find no merit in WRATES' objections to SJWC's estimate of cost savings of \$12.3 million relating to the Saratoga Water Treatment Plant project.<sup>65</sup> WRATES characterizes SJWC's savings estimate as unverified and

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<sup>63</sup> SJW-9, at 6.

<sup>64</sup> See SJWC Reply Brief, at 16-21 which presents a project-by-project status summary of each of the facilities contested by WRATES, with citations to supporting testimony for each project.

<sup>65</sup> In this proceeding, SJWC is seeking only to advance the design and permitting of the new treatment facility that will replace the existing Saratoga Treatment Plant, while construction would take place in the next GRC cycle. (See SJW-2, at 433.)

untested. WRATES claims that Saratoga Creek is a discontinuous, unreliable water source, citing page 35 of the Saratoga Treatment Facilities Plan Final Report.

We find no valid basis for WRATES' dispute regarding SJWC's estimate of cost savings from the Saratoga project. WRATES' citation provided to support its position merely presents an overview of the source water quality and regulatory requirements. SJWC's customer savings analysis is based on historic production and analysis comparing the Saratoga Filtration Plant production and available streamflow to determine missed flows and the increases in production that could be attained with an upgraded facility that can operate more reliably. SJWC based its projected purchased water and groundwater extraction costs through 2070 on the best available information from its wholesale water supplier, Valley Water. Additional detail of the customer savings calculation is included in the Saratoga Treatment Facilities Plan Final Report.

### **5.3.3. Pipeline Replacement Budget Issues**

We find reasonable the ASA proposal for a capital improvement budget which calls for pipeline replacement at a rate of approximately 1% per year.<sup>66</sup> We find that a 1% annual pipeline replacement rate would, in the long term, stabilize and keep the number of SJWC pipeline leaks to a manageable level, thus decreasing the probability of adverse environmental impacts.

WRATES argues that SJWC should be required to revise and update its Pipeline Asset Management Program but provides no specific recommendation as to revisions and/or updates. WRATES argues that SJWC's failure to replace pipelines at the 1% annual rate over the last few years demonstrates that this

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<sup>66</sup> SJW-2, at 10-15. (See also Exhibit G, Appendix 2, Pipeline Asset Management Program.)

level of pipeline replacement is not necessary. WRATES also argues that SJWC is not using the correct methodology to determine which pipelines to replace.

We find that SJWC has conducted a robust analysis of risk for each of its pipelines as the baseline for its pipeline capital improvement and asset management program. WRATES did not provide evidence countering SJWC's analysis.

SJWC developed and used survivor curve and failure rate curves to estimate system-wide average pipeline age and expected number of future leaks. This analysis demonstrates that the failure to replace pipelines at the 1% level will lead to a significant increase in leaks. SJWC has shared this analysis at American Water Works Association events and with industry peers, where it has been received favorably.

SJWC identifies risk levels through system-wide evaluations of: (1) probability of failure and (2) consequence of failure. The probability of failure evaluation quantifies each pipeline's likelihood to leak based on the pipeline's characteristics, environment and historic leak data. The consequence of failure evaluation considers societal impacts of pipeline failure, including environmental, financial, and social/community impacts. The probability of failure score multiplied by the consequence of failure score produces the business risk exposure score which helps determine replacement priorities and maintenance strategies.

SJWC also developed priority replacement zones to put the most emphasis on pipelines with a high probably of failure taking into account the consequence of failure. This improves its ability to complete projects at a reasonable cost and decrease overall system risk.

SJWC's annual pipeline replacement rate has been less than 1% over the last few years, due to various factors including budget constraints. Nonetheless, WRATES offered no evidence to contradict a finding that SJWC can reliably operate the distribution system and increase customer health and safety risks associated with water contamination, water service outages, and flooding.

We find that a 1% pipeline replacement rate, as reflected in the ASA, is appropriate to enable SJWC to continue to provide safe and reliable service to customers. SJWC's method of prioritizing pipeline replacements considers risks, costs, and benefits to customers. Contrary to WRATES' recommendations, we find that no revisions nor updates to SJWC's Pipeline Asset Management Program are needed.

**6. Balancing Account and Memorandum Account Undercollection Recovery**

SJWC requested recovery of undercollections accrued in its balancing accounts and memorandum accounts from January 1, 2017 through September 30, 2020, via a customer surcharge. Cal Advocates alleged that SJWC's calculations of the balancing account undercollections included errors. Settling Parties reached agreement that SJWC should be allowed to recover a balance of \$6,674,556 for specified balancing accounts and \$11,499,403 for specified memorandum accounts via a surcharge on customers' bills. Settling Parties also agree as a condition of settlement that SJWC will close out certain specified memorandum and balancing accounts.

WRATES argues that SJWC should be denied recovery of costs tracked in the Catastrophic Events Memorandum Account (CEMA) relating to COVID-19. WRATES cites D.21-07-029, which addressed tracking and recovery of unpaid customer bills related to COVID-19. D. 21-07-029 imposes a prohibition on

applying for recovery of unpaid bills associated with the COVID-19 pandemic tracked in the CEMA. WRATES argues that inclusion of uncollectable accounts in arrears is defined in Attachment A of D.21-07-029 but that recovery of accounts in arrears during COVID-19 pandemic has not been adequately incorporated or defined by SJWC. On this basis, WRATES opposes recovery of the CEMA undercollection.

We find no basis to deny recovery of CEMA undercollections as requested in the ASA. SJWC does not seek to recover through CEMA the cost of unpaid bills related to COVID-19. The only costs tracked in CEMA related to flooding in 2017 and public safety power shutoffs in 2019. Cal Advocates reviewed these costs and verified that they were correctly tracked in the CEMA.

Accordingly, we find no basis for WRATES' objections to CEMA cost recovery as requested in the ASA. We find the overall resolution of balancing account and memorandum account issues set forth in the ASA to be reasonable.

## **7. The ASA Supports Commission Goals Under the ESJ Action Plan**

In February 2019, the Commission adopted the Environmental and Social Justice (ESJ) Action Plan to serve as a roadmap for implementing the Commission's vision to advance equity in its programs and policies for ESJ or disadvantaged communities.<sup>67</sup> The Scoping Memo, issued April 5, 2021, identifies related issues in this proceeding: what are the rate increase impacts on ESJ communities and to what extent SJWC-requested rate increase and other requests achieve the nine goals of the Commission's ESJ Action Plan.

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<sup>67</sup> *Environmental and Social Justice Action Plan*, Version 1.0, February 21, 2019 (ESJ Action Plan), at 6-8.

ESJ communities are commonly identified as residents of predominantly communities of color or low-income, subject to a disproportionate impact from one or more environmental hazards, and likely to experience disparate implementation of environmental regulations and socio-economic investments in their communities. ESJ communities also include, but are not limited to, disadvantaged communities, all Tribal lands, low-income households, and low-income census tracts.<sup>68</sup>

WRATES argues that SJWC has submitted no exhibit, provided no testimony nor entered into evidence an explanation of how its request for a revenue increase for TY 2022 will affect ESJ communities.

SJWC responds that it provided numerous examples of how its requested rate increase and other requests, as modified by the ASA, will help the Commission further the Commission's ESJ goals. In particular, SJWC argues that the ASA will help the Commission increase investment in clean energy resources, improve access to high-quality water service, increase climate resiliency, enhance outreach to ESJ communities, and promote economic and workforce development opportunities.

We conclude that SJWC has made the showing required by the Commission's Rate Case Plan regarding the requested revenue requirement and rate base changes, as well as the Commission's rules regarding notice of the impact of the proposed increase on different classes of customers. Neither the Scoping Memo nor the ESJ Action Plan require a more detailed showing as to the impact of the proposed rate increase on ESJ communities beyond what has been incorporated into the ASA, Section IV thereof.

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<sup>68</sup> ESJ Action Plan at 9-10.

Some of SJWC's customers fit within the definition of ESJ communities. Any rate increase adopted as part of this proceeding will impact all customers, including those who are part of ESJ communities. The rate changes adopted pursuant to the ASA do not directly benefit the ESJ communities that SJWC serves. A portion of the funds from the increased rates, however, will be applied towards various programs to improve local air quality, public health, and water quality service, and to increase climate resiliency through water conservation and wildfire mitigation.<sup>69</sup> We review below in further detail how the provisions of the ASA address ESJ goals.

#### **7.1. Terms of the ASA Includes Investment to Improve Air Quality**

In its Application, SJWC proposed a new sustainability function with dedicated staff to implement an environmental management system that 1) demonstrates compliance with all environmental regulations and permits; 2) improves SJWC's environmental performance; 3) is the steward of its watershed lands to promote water conservation and efficient use of water resources toward enhanced protection of its natural resources; 4) minimizes greenhouse gases (GHG) while maximizing the competitive and financial advantage through improved efficiencies and reduced costs; and 5) enhances SJW Group's suppliers' environmental performance.

The Settling Parties agreed to allocate \$200,000 towards SJWC's Sustainability Environmental Management System, intended to conduct a GHG inventory to be used for planning, developing and setting reduction of GHG.<sup>70</sup> SJWC plans to become certified by the Santa Clara County Green Business

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<sup>69</sup> SJWC Opening Brief at 26-32.

<sup>70</sup> ASA at 17.

Certification Program and develop priorities and targets to reduce its GHG through energy reductions, green energy generation, and an accelerated electrification of its light vehicles fleet.<sup>71</sup> This will result in reduction in GHG within the ESJ communities served by SJWC and improve the air quality to those communities served by SJWC.

## **7.2. ASA Proposed Rate Increases Will Enhance Public Health and Safety in ESJ Communities**

We find that the increase in rates proposed in the ASA will also help fund public health and safety programs that will be beneficial to ESJ communities served by SJWC. For example, SJWC has been working with the Health Trust and the County of Santa Clara to fluoridate a portion of its water system. SJWC will then take responsibility for future costs and replacement of the fluoridation system. The initial fluoridation system will be constructed at SJWC's McLaughlin Station,<sup>72</sup> which serves the lower socioeconomic community, and ensures the residents, particularly younger children, will benefit most from the fluoridated water.<sup>73</sup>

The increased rates support SJWC's capital investment to reduce its inventory of partial lead service laterals and services lines constructed of an unknown material. SJWC proposed to reduce the inventory of approximately ten percent of the partial lead service laterals and service lines constructed of an unknown material per year over the next ten years through planned main replacement projects and individual inspections and replacements for complete

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<sup>71</sup> Exhibit SJW-1, Chapter 16, *Water Quality*, Prepared by Francois Rodigari (SJW-1, Chapter 16), at 16-10 - 16-11.

<sup>72</sup> SJW-1, Chapter 16, at 16-9 - 16-10.

<sup>73</sup> Evidentiary Hearing Transcript, Volume 5, at 555.



elimination by 2030.<sup>74</sup> SJWC's proposed infrastructure investment will avoid lead exposure to vulnerable populations, including the ESJ communities served by SJWC.

The increased rates proposed in the ASA further invest in safety protection for ESJ communities served by SJWC through developing and maintaining security-related practices and procedures to address potential terrorist attacks and the purposeful damage or destruction of facilities and infrastructure that may affect water service.

The security-related practices include completing a master security review and assessment, establishing standard designs for all security infrastructure, assessing supply, storage, pumping and building facilities on an ongoing basis and integrating improved security measurements with other facility improvements, and investing in capital and operating expenditures for cybersecurity improvements.<sup>75</sup> SJWC also engages and coordinates with multiple agencies in the South Bay Area on utility infrastructure security, emergency response and operational resiliency.<sup>76</sup>

To address safety in response to the COVID-19 pandemic, SJWC developed a formal COVID-19 risk assessment process to develop, implement and update COVID-19 standard operation guidance to protect employees and the public while continuing to provide safe and reliable water service to customers.<sup>77</sup>

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<sup>74</sup> SJW-2 at 20-21.

<sup>75</sup> SJW-1, Chapter 20, *SAFETY and SECURITY, Prepared by Curt Rayer* (SJW-1, Chapter 20), at 20-4 - 20-6.

<sup>76</sup> *Id.* at 20-7.

<sup>77</sup> *Id.* at 20-13 - 20-17.

### **7.3. The Rate Increase Will be Invested Towards Improving Water Quality for the ESJ Communities Served by SJWC**

The rate increases proposed in the ASA will further help fund improving water quality through expenditure in capital projects, asset retirement, well blowoffs, water storage tanks, installation of acoustic leak detection sensors, replacement of an aging tank, and installation of disinfectant residual management systems.<sup>78</sup> This investment will ensure that the ESJ communities served by SJWC will have improved access to high-quality water.

### **7.4. The ASA Terms Will Increase Climate Resiliency in ESJ Communities**

Through the rate design encouraging conservation and the investment of \$500,000 towards SJWC's Wildfire Mitigation Plan, the terms under the ASA will increase climate resiliency in the SJWC service area, including the ESJ communities served by SJWC. As discussed previously, the proposed rate design encourages conservation through reduced water use. The Wildfire Mitigation Plan will reduce wildland fuel hazard to reduce the impact of water sourcing, production, and delivery to customers, including customers in the ESJ communities.<sup>79</sup>

## **8. Cost of Capital Reflected in Rates**

The Commission adopts the Settling Parties' recommendation to apply the currently authorized rate of return of 7.64% in calculating the TY 2022 revenue requirements. This currently authorized rate of return is reflected in the calculation of return on rate base for revenue requirement purposes. A separate cost of capital proceeding for SJWC, A.21-05-004, was opened in 2021 and

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<sup>78</sup> SJW-2 at 48-190.

<sup>79</sup> ASA at 17-18.

consolidated with A.21-05-001, A.21-05-002 and A.21-05-003. A proposed decision in A.21-05-004 is anticipated in the Fall of 2022, which will adopt cost of capital amounts for the period 2022-2024. Therefore, until a decision in A.21-05-004 is issued, SJWC’s currently adopted cost of capital, as approved in D.18-03-035, is summarized below:

<b>Cost of Capital Element</b>	<b>Capital Structure %</b>	<b>Cost Factor %</b>	<b>Weighted Cost of Capital %</b>
Debt	46.72%	6.20%	2.90%
Common Equity	53.28%	8.90%	4.74%
Total	100%		7.64%

Once the Commission issues a final decision in A.21-05-004, SJWC shall implement appropriate rate changes to reflect the new authorized cost of capital and resulting revenue requirement and any other appropriate supporting changes consistent with the directives in that decision.

**9. Conclusion**

Upon review, the Commission finds that the ASA complies with Rule 12.1. The ASA is reasonable in light of the whole record, consistent with the law, and in the public interest. We find that the objections to the ASA posed by WRATES lack merit. Accordingly, we adopt the ASA, and direct SJWC to file a Tier 1 Advice Letter to implement the rate increases for TY 2022 as set forth the ASA, together with the other applicable provisions set forth in the ASA in accordance with the ordering paragraphs of this decision.

**10. Comments on Proposed Decision**

The proposed decision of ALJ Thomas R. Pulsifer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of

Practice and Procedure. Timely comments were filed by WRATES and SJWC, and timely reply comments were filed by Cal Advocates and by SJWC.

SJWC's Opening Comment to the Proposed Decision presented a few recommended minor revisions to the Proposed Decision; we find them reasonable and adopt and incorporate them in this decision, including the updated Appendix 2 to this decision.

WRATES' Opening Comment to the Proposed Decision focused largely on WRATES' continuing objections to ASA based on claim of signature requirement violation. That argument is thoroughly addressed, revisited and dismissed in Section 4.4.1. of this decision, with our finding that the ASA met the signature requirement under Rule 12.1(a).

WRATES' Opening Comment to the Proposed Decision also raised an argument that the ASA was not timely filed. This argument is premised on WRATES' above signature requirement argument which we dismissed in Section 4.4.1. and above. In short, WRATES argues that because the Settling Parties did not file the ASA with both signatures visible until March 22, 2022, later than 30 days following the close of evidentiary hearings, the settlement was untimely and should be rejected.<sup>80</sup>

Here, the original settlement agreement was timely filed on January 13, 2022, in compliance with Rule 12.1(a), i.e., less than 30 days prior to the close of evidentiary hearings, which concluded on December 20, 2021.<sup>81</sup> Settling Parties discovered two errors in the ASA comparison exhibit and were instructed by the ALJ to file the ASA. As noted by Cal Advocates, consistent

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<sup>80</sup> WRATES' Opening Comments on the Proposed Decision at 4-5.

<sup>81</sup> SJWC Reply Comments on the Proposed Decision at 2.

with Rule 1.12 and the ALJ's direction, Settling Parties filed the ASA and a Joint Motion for its approval on February 4, 2022, with an additional copy with both signatures visible on March 22, 2022.<sup>82</sup>

As further noted by Cal Advocates and SJWC, Rule 1.12 allows for amendments and corrections to pleadings.<sup>83</sup> Settling Parties' amendments or corrections to a timely-filed settlement agreement do not render the settlement untimely. We also agree with the Settling Parties that WRATES was not prejudiced by this amendment, as WRATES was allowed an additional 30 days to review the document before filing comments on the ASA. Contrary to WRATES' assertion, WRATES was not "deprived [] from reviewing the document."<sup>84</sup>

WRATES alleges again in Comments on the Proposed Decision that the multiple versions of the settlement agreement that have been submitted are "corrupted, among the versions observable in redacted signatures and equally important different word counts, character counts confirming that the changed signature indicates changes to the details of the agreement."<sup>85</sup> WRATES did not dedicate any portion of its comments to explaining why it cannot identify specific changes between documents, let alone provide the varying totals of words or characters across documents that suggest such changes to WRATES. WRATES has had a signed ASA in its possession since March 20, 2022. WRATES has also had a redlined copy of the ASA that illustrates the changes between the

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<sup>82</sup> Cal Advocates Reply Comments on the Proposed Decision at 3-4.

<sup>83</sup> Cal Advocates' Reply Comments on the Proposed Decision at 3.

<sup>84</sup> SJWC Comments on Proposed Decision at 2; Cal Advocates Reply Comments on the Proposed Decision at 3.

<sup>85</sup> WRATES' Opening Comments on the Proposed Decision at 8.

original settlement agreement and the ASA. We are not persuaded by WRATES' allegations regarding document corruption.

In sum, we affirm our finding that WRATES' argument regarding the validity of signatures lacks merit; and we likewise find WRATES' untimeliness argument regarding the ASA unpersuasive.

Finally, we make several small copy edits to the decision for the purpose of clarity. Where we make no change in response to comments, we have considered but found no merit and reject the proposed change.

#### **11. Assignment of Proceeding**

Darcie L. Houck is the assigned Commissioner and Thomas R. Pulsifer and Robert W. Haga are the co-assigned ALJs in this proceeding.

#### **Findings of Fact**

1. SJWC and Cal Advocates (Settling Parties) executed a Settlement Agreement on January 13, 2022, which represents a comprehensive resolution of issues in dispute in this proceeding between those two parties, but which excludes WRATES who opposed the Settlement Agreement.

2. On February 4, 2022, the Settling Parties filed an ASA that corrected for two errors found in the original version of the Settlement Agreement

3. The ASA is the product of good faith, arms' length negotiation and compromise of positions of SJWC and Cal Advocates.

4. The forecasts of SJWC's revenues, expenses, and rate base for TY 2022 and for Escalation Years 2023 and 2024, as set forth in the ASA, form a reasonable basis for adopting revenue requirements and water utility rate levels at issue in this proceeding consistent with the Summary of Earnings and supporting cost and quantity elements set forth in Appendix 2 attached to this decision.

5. SJWC's request to increase rates for water service for TY 2022 and Escalation Years 2023 and 2024, as modified by the ASA, is warranted to continue to provide safe and reliable customer service.
6. SJWC's proposed revenue increases for the 2022 TY and 2023/2024 Escalation Years, including methodologies for projecting its number of customers, dollar amount of sales, and revenue, as modified by the ASA, are reasonable and necessary to offer safe and reliable service.
7. SJWC's proposed rate design changes, as modified by the ASA, are reasonable by increasing the percentage of revenue requirement recovered through service charges and increasing baseline tier 1 consumption to 6 ccf.
8. SJWC's proposed rate base, as modified by the ASA, is reasonable and necessary to offer safe and reliable service.
9. SJWC's proposed expenses as modified by the ASA, including but not limited to taxes, operations and maintenance, and administrative and general expenses, are reasonable and necessary to offer safe and reliable service.
10. SJWC's calculation of the ratepayer portion of revenue from non-tariffed products and services, as modified by the ASA, is reasonable and necessary to offer safe and reliable service.
11. SJWC's projected depreciation expenses and proposed plant improvements, as modified by the ASA, are reasonable and necessary to offer safe and reliable service.
12. SJWC's requests for recovery of current balances in memorandum and balancing accounts, as modified by the ASA, are reasonable and necessary to offer safe and reliable service.
13. SJWC's water quality meets all applicable state and federal drinking water standards and the requirements of GO 103-A.

14. SJWC's actions taken or proposed (consistent with the ASA) to improve the overall safety and reliability of service, are reasonable and necessary to offer safe and reliable service.

15. SJWC has made the showing required by the Commission's RCP regarding the requested revenue requirement and rate base changes, as well as the Commission's rules regarding notice of the impact of the proposed increase on different classes of customers including the impact of the proposed rate increase on ESJ communities

16. SJWC's requested rate increase and other requests, as modified by the ASA, reasonably addresses how the Commission's goals regarding environmental and social justice communities are affected thereby.

17. WRATES has not provided persuasive evidentiary support for its claims that:

- (a) the ASA-proposed allocation of fixed-versus-volumetric customer charges does not sufficiently encourage conservation of water usage;
- (b) certain ASA-proposed facilities should be excluded from rate base;
- (c) SJWC has not correctly allocated costs to its parent company, SJW Group;
- (d) certain ASA-proposed capital projects are not used and useful;
- (e) recovery of CEMA costs should be disallowed, and
- (f) the ESJ Program impacts have not been adequately addressed.

18. The 45%/55% fixed-versus-volumetric ratio applied in the ASA encourages water conservation by providing a lower rate than the current rate



for Tiers 1 and 2 for residential customers with lower water usage and higher Tier 3 rate for residential customers with higher usage.

19. The rate increase allocated in the ASA to the Tier 3 users encourages conservation in water usage, while the rates for Tier 1 and Tier 2 customers provide a reasonable opportunity for SJWC to earn the authorized rate of return.

20. There is no evidence in the record to identify defects in the SJWC cost allocation process to credit administrative and general expenses for costs incurred by SJWC on behalf of its parent company, SJW Group, as reflected in TY 2022 revenue requirements as proposed in the ASA.

21. SJWC has justified that the capital projects contested by WRATES are reasonably expected to be completed and in service during the 2022 TY period, thereby offering benefits to customers.

22. The fact that construction on certain proposed SJWC capital projects previously forecasted for completion in prior rate case cycles were delayed in their completion does not inherently make the projects unreasonable.

23. Because the GRC process requires water utilities to project capital improvements years in advance, the timing and costs of SJWC's forecasted capital projects may be affected by circumstances that could not be reasonably foreseen when the forecasts were initially made.

24. Based on its analysis of average pipeline age and failure rate, SJWC has justified that a capital improvement budget based on a 1% pipeline replacement rate is reasonable for purposes of providing safe and reliable water service, as reflected in the TY 2022 rate base.

25. The rate increases adopted herein will provide funding for investment in water quality and reliability infrastructure that will favorably benefit ESJ communities served by SJWC.

26. SJWC does not seek to recover any cost of COVID-19 unpaid bills in this proceeding, as claimed by WRATES.

27. The only costs tracked in the CEMA sought for recovery in this proceeding relate to flooding in 2017 and Power Safety Shutoff Procedures in 2019.

28. Cal Advocates independently reviewed and verified that the related costs were correctly tracked in the CEMA.

29. It is reasonable to reflect the currently adopted cost of capital for purposes of the 2022 TY revenue requirements adopted in this decision, subject to provision for revising rates once the Commission adopts an updated cost of capital for SJWC in A.21-05-004.

### **Conclusions of Law**

1. SJWC, the applicant in this proceeding, carries the burden of proof to show by a preponderance of evidence that its requests for rate changes and other relief are just and reasonable.

2. Since the final position of SJWC for requested rate increases and other relief was modified by the ASA, the focus of the Commission's review in this proceeding is on the merits of the ASA.

3. With respect to any settlement agreement submitted for approval, pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure, settlements must be found reasonable in light of the whole record, consistent with the law, and in the public interest.

4. The ASA meets the criteria for approval of settlements as set forth in Rule 12.1.

5. The Motion for Adoption of the ASA between the Settling Parties filed in this proceeding should be granted.

6. The ASA should be approved for use as the basis for the adopted SJWC revenue requirements, retail rate changes, and other relief to be implemented for TY 2022 and Escalation Years 2023 and 2024.

7. The ASA resolves all disputed issues scoped in this proceeding and between the Settling Parties.

8. Since WRATES did not join the Settling Parties, the ASA is not an all-party settlement and does not resolve WRATES' disputes.

9. Based on review of WRATES' positions in this proceeding, WRATES has not identified any procedural or substantive basis to warrant Commission rejection of the ASA, or to adopt WRATES' proposed measures in conflict with the ASA.

10. The redaction of the Cal Advocates representative's signature on the amended motion for approval of the ASA does not invalidate the ASA.

11. The fact that the Commission authorized disclosure of SJWC financial statements in Resolution L-614 has no bearing on whether the ASA has merit or meets the criteria for Commission adoption.

12. Consistent with its statutory duties to represent ratepayers' interests, Cal Advocates had no obligation to join WRATES in its motion to challenge SJWC's claims of confidentiality of its financial statements.

13. Consistent with its contractual obligations to support the ASA in its opening brief, Cal Advocates had no obligation to continue to argue its pre-settlement litigation positions in its opening brief in this proceeding.

14. Since WRATES is not a party to the ASA, there is no reason for the ASA to cite to WRATES' testimony or exhibits.

15. SJWC's currently authorized cost of capital should be used for computing revenue requirements authorized in this decision consistent with the ASA.

16. The retail rates for SJWC should be updated once its authorized cost of capital is adopted by Commission decision in A.21-05-004.

17. Application 21-01-003 should be closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Motion for Adoption of the Amended Settlement Agreement between San Jose Water Company and the Public Advocates Office dated January 13, 2021, is granted; and the Amended Settlement Agreement (Appendix 1 hereto) is adopted and approved as the basis for the revenue requirements, rate design, and other relief granted in this proceeding.

2. San Jose Water Company is authorized to collect, through rates and authorized ratemaking accounting mechanisms, increased base revenue requirements of \$25,074,000 (or 6.03%) for Test Year 2022, \$12,955,000 (or 2.94%) for Escalation Year 2023, and \$16,102,000 (or 3.56%) for Escalation Year 2024, consistent with the Amended Settlement Agreement, (in Appendix 1, and as detailed in the supporting tables in Attachment A thereto) and as detailed in the Summary of Earnings and supporting costs and quantity elements set forth in Appendix 2 of this decision.

3. Within 20 days from the effective date of this Decision, San Jose Water Company shall file a Tier 1 Advice Letter to make effective, as of January 1, 2022, the 2022 Test Year revenue requirements with revised tariff sheets to reflect the rate changes adopted herein consistent with the Amended Settlement Agreement, (in Appendix 1, as detailed in Section C and Attachment B thereto).

4. The revised water utility rates for customers of San Jose Water Company adopted herein pursuant to the Amended Settlement Agreement shall have an effective date of January 1, 2022, consistent with the provisions prescribed by

ruling in this proceeding, dated December 17, 2021, for establishment of a memorandum account to track the difference between interim and final rates adopted in this decision.

5. San Jose Water Company is authorized to update its adopted revenue requirement for Escalation Year 2023 and Escalation Year 2024 as proposed in the Amended Settlement Agreement by filing a Tier 1 Advice Letter with the Commission's Water Division on a timely basis consistent with the Rate Case Plan in Decision 07-05-062 for implementation of the applicable rate changes to become effective on January 1, 2023, and January 1, 2024, respectively.

6. San Jose Water Company is hereby authorized to file a Tier 1 Advice Letter to recover the balancing account balances and memorandum account balances, including the limited elements of the Catastrophic Events Memorandum Account balance via customer surcharges in the manner specified in Section F of the Amended Settlement Agreement.

7. San Jose Water Company is directed to close out the balancing accounts and memorandum accounts as specified in Section F of the Amended Settlement Agreement and to file a Tier 1 Advice Letter to remove the accounts from its preliminary statements.

8. San Jose Water Company is directed to file a Tier 1 Advice Letter to include the Intervenor Compensation Balancing Account in its preliminary statements as specified in Section F of the Amended Settlement Agreement. This may be combined with the Tier 1 Advice Letter closing out the balancing accounts and memorandum accounts as specified in Section F of the Amended Settlement Agreement as adopted herein and removing them from the preliminary statements.

9. Within 20 days of the implementation of the Test Year (TY) 2022 revenue requirements adopted herein, San Jose Water Company is directed to file a Tier 1 Advice Letter to include a surcharge as necessary to amortize by December 31, 2024, the balance in the memorandum account which tracks the difference between revenues collected from interim rates in effect as of January 1, 2022, and revenues that would result from recovery of the adopted TY 2022 revenue requirement.

10. Once a decision in Application 21-05-004 is issued adopting an updated cost of capital, San Jose Water Company shall implement appropriate rate changes to reflect that newly authorized cost of capital and resulting revenue requirement consistent with the directives of that decision.

11. The Commission affirms all rulings issued by the Administrative Law Judge in this proceeding.

12. Any pending motions in this proceeding not otherwise expressly addressed in this decision are denied.

13. Application 21-01-003 is closed.

This order is effective today.

Dated October 6, 2022, at San Francisco, California.

ALICE REYNOLDS  
President  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
DARCIE L. HOUCK  
JOHN REYNOLDS  
Commissioners

**SAN JOSE WATER COMPANY**

**ADVICE LETTER NO. 581**

**ATTACHMENT B**

## SAN JOSE WATER COMPANY (U-168-W)

### ADVICE LETTER 581 SERVICE LIST

Big Redwood Park Water	waldoburford@gmail.com;
Brush & Old Well Mutual Water Company	BOWMWC@brushroad.com;
Cal Water	cwsrates@calwater.com;
City of Campbell	publicworks@cityofcampbell.com;
City of Cupertino City Attorney	cityattorney@cupertino.org;
City of Cupertino Director of Public Works	rogerl@cupertino.org;
City of Milpitas	<a href="mailto:tndah@ci.milpitas.ca.gov">tndah@ci.milpitas.ca.gov</a> ;
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City of Monte Sereno	steve@cityofmontesereno.org;
City of Monte Sereno	bmekechuk@cityofmontesereno.org;
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County of Santa Clara	county.counsel@cco.sccgov.org;
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