BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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 the Multi-District Water Utilities of: California-American Water Company (U210W), California Water Service Company (U60W), Del Oro Water Company, Inc. (U61W), Golden State Water Company (U133W), and San Gabriel Valley Water Company (U337W).	)	**R.11-11-008** **(Filed November 10, 2011)**

COMMENTS OF THE NATIONAL CONSUMER LAW CENTER AND THE UTILITY REFORM NETWORK

Darlene R. Wong
Staff Attorney
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110-1245
Telephone: 617-542-8010
Fax: 671-542-8028

Christine Mailloux
Staff Attorney
The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94104
(415) 929-8876
cmailloux@turn.org

March 1, 2012

TABLE OF CONTENTS

I. INTRODUCTION……………………………………………………………………….2

II. COMMENTS………………………………………………………………………..3

A. Current Models for Subsidizing Rates and Preventing Rate Shock, Including Low-Income Rates and Rate Support Funds are Necessary to Maintain; But More Is Needed……………………………………………………........................3

1. Low-Income Ratepayers Continue to Require Water Bill Payment Support and Assistance……………………………………………………….3

2. Current Affordability Models for Subsidizing Rates and Preventing Rate Shock …………………………………………………………..........5

a. California Water Service Company(Cal Water)……………….......6

b. California American Water Company (CalAm)…………………...8

c. Golden State Water Company (GSWC)…………………………..…..9

d. Programs in Other States………………………………………..….10

B. Modifications to the Existing1992 Consolidation Guidelines……………………12

C. Characteristics of Water Districts that Should be Included in an Analysis of Whether to Consolidate……………………………………...………………..19

D. High Cost Fund………………………………………………………………….20

1. Advantages and Disadvantages of a High Cost Fund………………...24

2. Requirements and Conditions of a High Cost Fund on Development and Conservation…………………………......................................28

3. Impacts of Increased Consolidation or Establishment of a High Cost Fund…………………………………………………........…...........29

E. California Public Utility Code Section 701.10……………………………………29

F. Additional Impacts……………………………………………………………...…29

III. CONCLUSION……………………………………………………………………32

I. INTRODUCTION

The Public Utilities Commission of the State of California ("Commission") issued its Order Instituting Rulemaking R.11-11-008 ("OIR") in this proceeding on December 18, 2011,[1] with the objective of developing policies and mechanisms to fulfill the Commission's 2010 Water Action Plan goal of "setting rates that balance investment, conservation and affordability for multi-district water utilities."[2] The 2010 Water Action Plan elaborated on this goal:

> The CPUC will ensure that the established rates will provide for recovery of reasonable and prudently incurred costs and a fair and equitable return to shareholders. The CPUC will develop rates and ratemaking mechanisms to further the above goals of affordability, conservation, and investment in necessary infrastructure.

2010 Water Action Plan at 3. In the OIR, the Commission noted that to advance this goal, it would consider policies for subsidizing high cost areas, where charging the full cost of providing water service could result in unaffordable rates or rate shock. OIR at 3. The Commission anticipated that such policies would include some variation of a "High-Cost" fund or consolidation of districts and rates. OIR at 3. Past Commission practice has included regionalization or rate consolidation to spread higher costs across a larger customer base, and single-tariff pricing. OIR at 3-4. In this OIR, the Commission stated that it will consider whether the 1992 consolidation guidelines should be modified,[3] or whether new consolidation guidelines for high-cost areas for multi-district water utilities should be implemented. OIR at 7.

---

1 The effective date of the OIR is November 10, 2011. NCLC and TURN file these opening comments pursuant to the schedule set out in the January 31, 2012 ALJ Ruling.

2 OIR at 1 (citing California Public Utilities Commission December 15, 2005 Water Action Plan at 20-21).

3 The 1992 district-rate consolidation guidelines were developed by the Division of Ratepayer Advocates with Class A water utilities. OIR at 6.

The Commission intends to apply guidelines adopted in this proceeding to all multi-district water utilities. OIR at 8.

The Commission's OIR sets forth a list of eight questions for comment, relevant to its consideration of establishing new guidelines for consolidation of districts or a variation of a High-Cost fund. OIR at 8-9. We address all of these issues below.

II. COMMENTS

A. Current Models for Subsidizing Rates and Preventing Rate Shock, Including Low-Income Rates and Rate Support Funds are Necessary to Maintain; But More Is Needed.

In the OIR, the following question was asked:

> *Question 1 – Identify current mechanisms utilized to subsidize rates and prevent rate shock, such as low income rates and rate support funds. Are these current mechanisms adequate to ratepayer needs in general? Do these current mechanisms achieve an appropriate balance between utility investments, conservation and affordability of rates?*[4]

In response to the above question, NCLC and TURN submit the following comments:

3. Low-Income Ratepayers Continue to Require Water Bill Payment Support and Assistance

In recent years, much has been reported about the need for replacing aging water infrastructure across the nation, and the associated great expense – from tens of billions of dollars to as much as $1 trillion over the next two decades.[5] Meanwhile, Census Bureau data

---

[4] OIR at 8.

[5] *See, e.g.,* American Society of Civil Engineers, Report Card for America's Future: Drinking Water, available at http://www.infrastructurereportcard.org/fact-sheet/drinking-water (infrastructure replacement estimated by U.S. Congressional Budget Office to be from $10 billion and up, over the next 20 years); American Water Works Association, Buried No Longer: Confronting America's Water Infrastructure Challenge, available at: http://www.awwa.org/files/GovtPublicAffairs/GADocuments/BuriedNoLongerCompleteFinal.pdf (estimating cost of restoring and expanding existing water systems to be $1 trillion over next 25 years).

show that between 2000-2006, except for those in the top fifth income bracket, real changes in family income fell for all families.[6] Real wages for low-income families are, on average, the same or lower than they were a decade ago.[7] The majority of low-income families who were in the bottom quintile in 2004 remained in the lowest income bracket, four years later.[8] From 1999 to 2007, prior to the Great Recession, the growth of the nation's low-income population grew most quickly in the suburbs, and outpaced the nation's population growth as a whole by over 7 percent.[9] During the Great Recession, suburban populations have been affected more so than in previous recessions, continuing a trend of "suburbanization of poverty."[10] Children in rural areas of the West are slightly more likely to live in low-income families than not.[11] In California's rural areas, 50 percent of children live in low-income families.[12] With a smaller customer base over which to spread costs, water customers in small rural areas or small systems will likely be

---

[6] Jared Bernstein et al., Pulling Apart: A State-by-State Analysis of Income Trends (Center on Budget and Policy Priorities, April 2008) at 37.

[7] Jared Bernstein et al., Pulling Apart: A State-by-State Analysis of Income Trends (Center on Budget and Policy Priorities, April 2008) at 2.

[8] John J. Hisnanick and Katherine G. Giefer, Dynamics of Economic Well-Being: Fluctuations in the U.S. Income Distribution, 2004-2007 (U.S. Census Bureau March 2011).

[9] *See* Elizabeth Kneebone and Emily Garr, Responding to the New Geography of Poverty: Metropolitan Trends in the Earned Income Tax Credit (Brokkings Feb. 2011) at 5.

[10] *See* Elizabeth Kneebone and Emily Garr, Responding to the New Geography of Poverty: Metropolitan Trends in the Earned Income Tax Credit (Brookings Feb. 2011) at 9.

[11] *See* National Center for Children in Poverty, Geography of Low-Income Children and Families (Columbia University Mailman School of Public Health, Nov. 2003).Twenty-six percent of children in low-income families live in the West, a 23 percent increase from the last decade. Id.

[12] *See* National Center for Children in Poverty, California: Demographics of Low-Income Children (Mailman School of Public Health, Columbia University last updated Jan. 19, 2011) at 4, available at http://nccp.org/profiles/state_profile.php?state=CA&id=6. In 2008, forty-two percent or 3,956,421 of California's children lived in low-income families. *See* National Center for Children in Poverty, Low-Income Children in the United States: National and State Trend Data, 1998-2008 (Nov. 2009) at 8-9 (including children under 18 years old, but excluding children living independently, with a spouse, in group living quarters, and those 14 and under living with unrelated adults).

impacted the most by the expected rise in water rates, with annual bill increases amounting to hundreds of dollars, assuming both repairs and expansions of water systems are undertaken.[13]

Additionally, as discussed below, while a limited number of customer assistance programs are in place that typically provide a small monthly credit to eligible customers, data from the utilities that show increasing disconnections for nonpayment by low-income customers even though disconnections for nonpayment of residential customers has decreased, demonstrating that more affordability options are needed than what currently exists.[14]

This data demonstrates that low-income consumers in California's rural population will likely continue to experience hardship in paying utility bills, including water bills, and targeting this population for affordability efforts is timely and appropriate. Keeping them connected to something as essential and life-supporting as water service is an important public health and safety goal.

4. Current Affordability Models for Subsidizing Rates and Preventing Rate Shock

In the OIR, the following question was asked:

> *Identify current mechanisms utilized to subsidize rates and prevent rate shock, such as low income rates and rate support funds. Are these current mechanisms adequate to ratepayer needs in general? Do these current mechanisms achieve an appropriate balance between utility investments, conservation and affordability of rates?*

The following discussion addresses current mechanisms for rate affordability in California and throughout the nation. The California discussion is based in large part upon the data responses received from the responding utilities, California Water Service Company (Cal

[13] *See* Blake Ellis, Water Bills Expected to Triple in Some Parts of U.S. (CNNMoney Feb. 27, 2012), available at http://money.cnn.com/2012/02/27/pf/water_bills/index.htm?iid=HP_LN.

[14] *See, e.g.*, GSWC Response to NCLC/TURN Data Request Set I-1(f), (g).

Water), California American Water Company (CalAm) and Golden State Water Company (GSWC).[15] In Data Request Set I-1, NCLC and TURN requested a description, identification, and explanation of all affordability programs offered by each company over the last three years, including but not limited to discounts, choice of billing date, and arrearage forgiveness. As the filing date of these Comments, NCLC and TURN have not received any responses from San Gabriel Valley Water Company. However, San Gabriel Valley Water Company has agreed to promptly deliver its responses and states that it will not object to NCLC and TURN including information based on that discovery in Reply Comments, as we have not received the information to address affordability programs for the company here.[16]

a. California Water Service Company (Cal Water)

California Water Service Company's primary water affordability program is the Low-Income Ratepayer Assistance Program (LIRA).[17] Cal Water's LIRA was implemented on January 1, 2007 and provides a monthly 50% discount, up to $12.00, on service charges for 5/8" meter customers.[18] For eligible non-profit living facilities, agricultural employee housing facilities and migrant farm worker housing centers, LIRA provides a $20.00 monthly discount on service charges.[19] Eligibility for Cal Water's LIRA is the same as it is for California Alternative

---

[15] NCLC and TURN are happy to provide the referenced responses upon request of the Administrative Law Judge or the Commission, or can file the referenced responses as a separate appendix if directed to do so. The service list entry for Del Oro Water may need to be updated, as NCLC and TURN were unable to receive discovery responses from the representative identified on the current entry for service for Del Oro Water. A review of the company's website finds no mention of affordability or low income programs and zero matches for the search box entry, "discount."

[16] We understand, however, that San Gabriel Valley Water Company has a California Alternative Rates for Water (CARW) program, which cuts in half service charges. *Compare* San Gabriel Valley Water Company Tariff Schedule No. LA-CARW *with* Tariff Schedule No. LA-1.

[17] Cal Water Response to NCLC/TURN Data Request Set I-1(a),(b), and(c).

[18] Id.

[19] Id.

Rates for Energy (CARE), and can be based on income below 200% of the federal poverty level or receipt of certain state and federal public benefits. Since 2008, the number of eligible customers enrolled in Cal Water's LIRA has increased. From 2010 to 2011 enrollment increased 19.5%, from 45,063 to 53,852 enrollees.[20] However, Cal Water reports that the overall percentage of customers in LIRA has remained a steady 11-12% from 2009 to 2011,[21] indicating that the increase in enrollment could be due to increase in overall customer base. Notably, however, from 2010 to 2011, LIRA enrollment significantly increased 22% for customers in the MRL district, 24.8% for the SEL district, and 21.15% for the VIS district.[22] At the same time, from 2010 to 2011, disconnections for nonpayment decreased in the SEL district by 190 and decreased by 765 in the VIS district.[23] It was also during this time that the Commission approved an increase in the monthly LIRA maximum discount from $10 to $12.[24] Cal Water does not track the percentage of eligible customers who are enrolled – this number would be helpful to determine whether those who should benefit from LIRA are receiving the benefit.[25] Additionally, LIRA does not appear to address issues of utility investment or conservation.

Other affordability programs offered by Cal Water include the Rate Support Fund (RSF, described in more detail below), the Military Family Relief Program which provides shutoff protection to families of service members called to active duty with , and Choice of Billing Date

---

[20] Cal Water Response to NCLC/TURN Data Request Set I-1(d).

[21] Cal Water Response to NCLC/TURN Data Request Set I-1(e).

[22] *See* Id.

[23] Cal Water Response to NCLC/TURN Data Request Set I-1(g).

[24] *See* D.10-12-017 (Section 7.8) (order effective Dec. 2, 2010).

[25] Cal Water Response to NCLC/TURN Data Request Set I-1(e).

which allows requesting customers to choose their billing date.[26] While all of these programs are important to maintain to allow customers greater flexibility and therefore ability to pay, only the RSF appears to address utility investment. None of these programs appear to address conservation.

b. California-American Water Company (CalAm)

CalAm notes that in the last three years, it has had two affordability programs. First, CalAm has a Low Income Ratepayer Assistance Program (LIRA, or H20 Help to Others), which provides a subsidy to eligible residential customers based on their gross yearly income.[27] The monthly subsidy is a 50% discount off service charges per eligible customer. As a percentage discount, the resulting dollar amount of discount differs among the different tariff areas and districts, *e.g.,* $5.00 (Sacramento), $5.50 (Coronado), $6.50 (Los Angeles), $8.50 (Larkfield and Village), and depending on the number in the household, $8, $12, or $16 (Monterey).[28] Cal Am states that 24.8% of customer households are eligible for LIRA, and the program has a participation rate of 4.8%.[29] Previously, CalAm had a direct installation pilot program in its Los Angeles and Sacramento districts as part of the 2010 Conservation Program.[30] Through the direct installation pilot, CalAm provided residential audits by WaterWise Consulting, rebates,

---

[26] Cal Water Response to NCLC/TURN Data Request Set I-1(a), (b), and (c), I-5 (LIRA customer notice).

[27] CalAm Response to NCLC/TURN Data Request Set I-1(b),(c).

[28] CalAm Response to NCLC/TURN Data Request Set I-4 (effective tariff).

[29] CalAm Response to NCLC/TURN Data Request Set I-1(d),€(referencing Seaneen M. Wilson, Assessment of Water Utility Low-Income Assistance Programs (CPUC Division of Water and Audits Oct. 2007).

[30] CalAm Response to NCLC/TURN Data Request Set I-1(a).

conservation devices, installation of high efficiency toilets for certain customers.[31] CalAm's LIRA addresses affordability of rates, and due to the varying levels of credits may represent differing utility investment in each district, but CalAm's LIRA does not appear to address conservation. The direct install program, which did address conservation, is no longer operational. CalAm does not appear to offer any customer funding assistance toward costs associated with utility infrastructure investment.

c. Golden State Water Company (GSWC)

Over the past three years, GSWC has offered its customers three different affordability programs – the California Alternative Revenue for Water (CARW), Toilet Direct Program, and Low-Income Direct Install Project, targeted to the same customer group of CARW customers. Unfortunately, only one, the CARW, is currently active.

Under CARW (a LIRA program),[32] eligible customers receive a monthly credit of $8.[33] Eligibility is based on income, the same guidelines as are used for California's energy assistance program, CARE.[34] The number of eligible customers enrolling has steadily increased each year, from 2008 onward.[35]

The Toilet Direct Program was a pilot that ran from 2009 to 2011, which sought to reach CARW customers in "hard-to-reach service areas", where distribution of high efficiency toilets (HETs) were not available. Later, the program targeted the top ten percent of high users.[36]

---

31 Id. *See also* CalAm's Water Conservation Program 2010 Annual Summary Report.

32 GSWC Response to NCLC/TURN Data Request Set I-5.

33 GSWC Tariff Revised Cal. P.U.C. Sheet No.6107-W.

34 GSWC Response to NCLC/TURN Data Request Set I-1(b).

35 GSWC Response to NCLC/TURN Data Request Set I-1(D),(e).

36 GSWC Reponses to NCLC/TURN Data Request Set I-1.

The Low-Income Direct Install Project was implemented under a grant from Central Basin MWD, USBR, and MWDSC, for "self-selected" CARW customers to receive installation of two HETs or ultra-HETs after a water use survey. Additionally, participating customers received installation of high efficiency showerheads and low-flow bathroom aerators, to achieve conservation savings estimated at 50% or more of usage.[37]

The CARW, like the other LIRA programs, is a necessary program that both addresses affordability and utility investment, but does not address conservation. The Toilet Direct Program and Low-Income Direct Install Program appear to be attempts to balance the increased costs of utility investment in hard to serve areas with more affordable rates through conservation programs; however, these programs are no longer running.

d. Programs in Other States

Outside of California, there are a few water affordability programs of note that are designed with some aspect of low income rates and rate support funds. Programs in Washington, Pennsylvania, and Oregon are discussed below.

In Washington, the city of Vancouver waives the minimum sewer flow rate for income-eligible customers who are 62 and older, for one year.[38] The low-income rate in this case is essentially no rate, for eligible customers.

In Pennsylvania, Aqua Pennsylvania's Helping Hand program has included an arrearage forgiveness component which is applied to customers who are at or below 200% of the federal poverty level, are 30 or more days in arrears with at least $110 in arrears, and have made a 10%

---

[37] GSWC Response to NCLC/TURN Data Request Set I-1.

[38] City of Vancouver, At Your Service: Low Income Senior Waiver to Minimum Sewer Flow Rate, available at http://www.cityofvancouver.us/atservice.asp?serviceID=67286 (last visited Mar.1, 2012).

good faith payment of the customer's balance (and paid a reconnection fee, if applicable).[39] Subsequent customer payments are fixed, at an amount representing approximately one month of average use, plus an additional $25 that is applied to the arrearage. The program's forgiveness component is funded by customer contributions.[40] Customers also receive a water conservation kit including low-flow shower heads, aerators, and leak detection tablets. This program addresses affordability and conservation, but does not directly address assistance related to infrastructure investment.

In Oregon, the city of Albany has a Low-Income Assistance Program that applies credits to the bills of income-eligible seniors and the disabled. The credit is funded through a customer surcharge fund of $0.35 per every 100 cubic feet.[41] Additionally, the City of Salem's Water and Sewer Low Income Assistance Program, established to complement relief programs from local social service agencies,[42] is funded by customer donations. Donations are one-time or recurring, and are collected during the billing cycle. Eligibility is based upon the federal government's income criteria for HUD housing. From its inception through 2009, the program, which received no administrative funding, distributed $104,000 to help 1,000 families. However, the program has been suspended due to the need for assistance exceeding existing funds. Such assistance programs, dependent entirely on customer contributions, may be unsustainable. In

---

39 *See* https://www.aquaamerica.com/Pennsylvania/Pages/HelpingHand.aspx (last visited Mar. 1, 2012).

40 Aqua PA Response to OCA-XVII-13 in Pa. P.U.C. v. Aqua Pennsylvania, Docket No .R-00072711.

41 *See* City of Albany, Resolution No. 5451, "Exhibit A," January 2008.

42 *See* Press Release from City of Salem, Water and Sewer Low Income Donation Program (July 7, 2005), available at http://www.cityofsalem.net/DEPARTMENTS/PUBLICWORKS/OPERATIONS/CUSTOMERSERVICES/Pages/LowIncomeDonationProgram.aspx (last visited Mar. 1, 2012).

contrast, a more sustainable model may be Eugene Water & Electric Board's (EWEB's) bill relief of up to $200 in bill credits to income-eligible water and electric customers. Eligibility is based upon income that is at or below 60% of Oregon's median income.[43] EWEB has dispensed $1.5 million in bill relief. The bill relief program is funded by approximately 1% of its retail electric revenues.[44]

B. Modifications to the Existing 1992 Consolidation Guidelines

While low-income programs discussed above may help mitigate the high rates for water charged in some district, the OIR acknowledges that more may need to be done. The Commission traditionally sets water utility revenue requirements and rates on a district-by-district basis. OIR at p. 4 However, as far back as 1983 the Commission has considered various proposals for consolidation of districts.[45] Generally, stakeholders make these proposals to mitigate the adverse impact of significant rate increases in a particular district or to develop affordable rates in the face of high costs for water. These proposals require a complex analysis of numerous issues and bring with them a risk of significant harm to certain ratepayer groups if not implemented properly. As a result, the Division of Ratepayer Advocates and the water utilities developed a set of policy guidelines to be considered when reviewing proposals for district consolidation. OIR at 6. These guidelines have been reviewed, interpreted and applied to several consolidation proposals over the past twenty years.

---

43 *See* Eugene Water & Electric Board, Customer Care Programs, http://www.eweb.org/assistance(Customer Care Programs).

44 *See* Eugene Water & Electric Board, Customer Care Programs, http://www.eweb.org/assistance(last visited Mar. 1, 2011)(Limited income assistance).

45 *See*, D.00-06-075 at p. 15 citing to, *In re: Southern California Water Company* (1983) 12 CPUC2d 69.

As part of this OIR, the Commission requests comments and proposals to modify its policies and precedent on consolidation, including potential changes to the 1992 guidelines.

Specifically, the OIR poses the following question :

Question 2 – Should the Commission modify the existing 1992 consolidation guidelines, as described in D.05-09-004? If so, what specific modifications are warranted and what are the justifications for those modifications?

At the outset, we note that while consolidation can refer to many different things, in the context of answering this question, NCLC and TURN understand "consolidation" to mean the consolidation of districts, including both operations within those districts and rates charged to the customers of each district. OIR at p. 3.NCLC and TURN interpret the 1992 consolidation guidelines described in D.05-09-004 as referring to consolidation of all of the districts across a single water utility, also known as "single-tariff pricing" or the guidelines can refer to more limited rate consolidation that includes only certain districts within a single utility's jurisdictional serving area.

Due to the fact that the term, "consolidation," even in the narrow context of water regulation, can mean several things, it is critical that parties use their terms consistently.[46] For example, consolidation has been used to refer to informal agreements between systems to provide a service or share resources, formal service contracts with another system, multiple independently operated systems partnering to form a new entity with a specific project purpose, or acquisition of a system by another entity such that management is combined or merged.[47] The

[46] United States Environmental Protection Agency, Restructuring and Consolidation of Small Drinking Water Systems, (A Compendium of State Authorities, Statutes and Regulation), October 2007 at p.iii.

[47] *See* Paige S. Manning, et al., Consolidation Issues: Pros, Cons, Options and Perceptions (Mississippi State University Extension) at 6-8, available at: http://www.*msucares.com/water/pubs/consolidation_issues.pdf*.

Commission could, of course, look at each of these scenarios as possible methods of consolidation to address affordability in high cost areas. However, for the purpose of these comments, NCLC and TURN focus their comments on consolidation of all districts in a single utility or some subset of districts within a utility. The Commission also refers to this as "single tariff pricing."

Single tariff pricing has been viewed as a solution to spreading rates over a larger customer base to help customers in high cost, sparsely populated districts obtain more affordable water service and avoid rate shock.[48] Affordability of water to small communities can be the concern that tips the scales in favor of the cost averaging of single tariff pricing, where standalone district rates, based upon cost of service to the individual district, can result in rates that are "well beyond the zone of 'just and reasonable.'"[49] Janice A. Beecher testified before this Commission on the advantages of single-tariff pricing:

> "The primary advantages of single tariff pricing are that it can lower administrative and regulatory costs, enhance capital deployment, improve rate and revenue stability, and ensure affordability for customers of very small or extremely small water systems. Customer affordability can enhance the financial viability of the utility as a whole, which in turn can improve the utility's credit worthiness to lenders and reduce capital financing costs. A leading argument for single tariff pricing made by multi-system water utilities is that each individual system eventually will require infusions of capital for improvements; only the timing varies. Equalizing rates smoothes the effect of cost spikes during periods of rising investment needs."[50]

---

[48] D.00-06-075 at 16 (describing Southern California Water Company's intent behind its application to restructure the water rates of eight districts into a region-wide rate).

[49] *See* D.00-06-075 at 24, quoting Pennichuck Water Works, Inc., (1998; New Hampshire PUC Order NO. 22,883).

[50] D.00-06-075 (June 22, 2000) (quoting testimony of Janice A. Beecher) at 10-11.

Opponents of single tariff pricing have noted that it can create subsidies to smaller districts that are improper, sends distorted price signals to consumers, and serves primarily to increase a company's revenue collection.[51] Region-wide rates may encourage rates to increase because district costs may be masked.[52]

The Commission has not considered the 1992 consolidation guidelines as dispositive, but has relied on the guidelines as an integral part of its evaluation of many rate consolidation proposals.[53] Meeting the guidelines establishes a *prima facie* case for reasonableness of consolidation.[54] The guidelines include four main criteria for consideration of district consolidation: (1) whether districts are within close proximity (i.e., within 10 miles); (2) whether present and future rates of the districts are relatively close, differing no more than 25%; (3) whether sources of supply are similar; and (4) whether the districts should be operated in a similar manner. Lastly, while it was not specifically laid out as a fifth criterion, the Commission noted that DRA and the Class A water companies had "agreed that no districts would be combined for the express purpose of having one district subsidize another."[55]

The Commission has a very high bar for approving consolidation proposals. As part of this critical analysis, the Commission relies on the guidelines. As late as 2008, the Commission found them "reasonable and useful" especially when viewed in conjunction with the Water

---

[51] D.00-06-075 (June 22, 2000).

[52] However, calculation of district costs on an individual basis can help avoid "rate creep." *See* D.00-06-075 at 23. Additionally, the Commission has determined that single tariff pricing is an acceptable regulatory tool in the context of cost of service ratemaking. Id. at 35 (Conclusion of Law No. 4).

[53] D.05-09-004 at 34 (Finding of Fact No. 3).

[54] D.05-09-004 at 36 (Conclusion of Law No. 1).

[55] Docket No. D.05-09-004 at 7-8.

Action plan.[56] When applying the guidelines, the Commission has agreed that "consolidation of non-adjacent districts can only be consolidated in exceptional cases" and "high rates, in and of themselves, do not necessarily require intervention."[57] However, with this OIR, the Commission is requesting input on possible changes to the guidelines to, presumably, make consolidation more likely in areas where affordability is a significant concern and may impact investment and conservation efforts.

NCLC and TURN agree with Commission precedent that district consolidation should not be undertaken lightly. The water industry operations and infrastructure technology have remained similar enough in recent history that the guidelines remain relevant and appropriate. The focus on proximity, rate comparability, water supply and operations are still valid and critical considerations. NCLC and TURN also point out that the 2010 Water Action Plan does not require an increased emphasis on consolidation or a change to the guidelines to facilitate consolidation. In fact, in the 2010 Water Action Plan the Commission eliminated the explicit reference to "consolidation of districts or rates" from the 2005 Water Action Plan as an option for balancing affordability, conservation, and investment.[58] If anything, this de-emphasis on rate consolidation in the 2010 Water Action Plan suggests that the Commission should not focus its efforts on consolidation in this docket, nor should it substantially revise the guidelines to facilitate increased consolidation.

However, rate and district consolidation should remain one of the many tools the Commission has in its regulatory tool kit to address market failures, including unacceptably high

---

[56] D.08-05-018 at 33-34.

[57] D.08-05-018 at p. 33, 34.

[58] *Compare* the recommendations in the 2005 and 2010 Water Action Plans under the heading of "Set Rates that Balance Investment, Conservation and Affordability" at page 20 of 2005 Water Action Plan with pages 31-33 of 2010 Water Action Plan.

rates in certain parts of the state. Although the industry has not gone through the same significant technological transformations as other regulated industries such as energy and telecommunications, several aspects of water policy and industry practices have changed since 1992 that might warrant a different *weighting* of each individual guideline without requiring major changes. For example, the high priority placed on conservation measures by this Commission in recent years or the impact of drought may dictate that the Commission needs to broaden its interpretation of the "proximity" or "water supply" guidelines because conservation measures in certain districts have required a significant change in water supply practices or would make proximity a less important consideration than hydrologic similarities. Further, the increased cost of wholesale water may also impact the comparison of districts on the basis of rate comparability and water supply similarities. Even changes in communications and computer technology and the increasing influence of national parent company and company-wide enterprise computer operations should make the Commission weigh "operational" factors differently.

If, however, the Commission finds that merely adjusting the application of the current 1992 guidelines is not sufficient to allow it to analyze consolidation proposals and achieve a balance between affordability, conservation and investment, then some slight modifications to the guidelines may be warranted. For example, when the Commission reviewed CalAm's proposal to consolidate its Felton and Monterey districts, the Commission looked at the guidelines and found that the proposal only satisfied one of the four criteria.[59] However, the Commission did further analysis by looking at six additional factors. These factors include: (1) rate and revenue requirement impacts; (2) operational efficiencies (as opposed to the current

[59] D.05-09-004 at p. 13.

Guideline stating that the current operations of the two districts are similar, this new criteria would weigh the efficiencies gained through consolidation, if any); (3) service impacts; (4) regulatory impacts; (5) possibility of public ownership; (6) customer preference and (7) the presence of other alternatives to achieve the desire balance.[60] In subsequent Commission decisions, it has also looked at some of these additional criteria such as customer preference, and rate and revenue requirement impacts.[61]

NCLC and TURN urge the Commission to add these additional criteria to the guidelines. The original guidelines provide a framework to compare the districts at issue in a consolidation proposal for compatibility. These additional criteria allow the Commission to analyze ratepayer benefits and potential harms of the consolidated entity. For example, the 1992 guidelines would have the Commission merely compare the rates of the districts to ensure that no district has rates that are more than 25% higher than the other districts. The additional criteria used in the Monterey/Felton case also analyze the rates and revenue requirement for the new consolidated entity. The new criteria also include broader considerations than pure economics, such as public preference to consolidation and potential alternatives to consolidation, including public purchase of the district. These additional criteria make the analysis more flexible and allow the Commission to find potential benefits to a consolidation proposal that under the 1992 guidelines may have been rejected.

Notably, both the 1992 guidelines and the additional criteria are consistent with higher-level principles of consolidation discussed by experts in this area.[62] This consistency is a

---

[60] D.05-09-004 at pp. 13-29.

[61] D.08-05-018, p. 36-37; p. 39-40.

[62] *See* Paige S. Manning, et al., Consolidation Issues: Pros, Cons, Options and Perceptions (Mississippi State University Extension) at 10-13. Available at

validation of the Commission's current processes; however, a more academic view of consolidation includes additional economic and political considerations that the Commission should attempt to incorporate where district consolidation is an attempt to address affordability problems. The resulting characteristics of the consolidation should be economic efficiency, distribution of costs in a fair and reasonable manner, and improvements in customer support. The economic and political considerations include the following: (1) condition of the infrastructure; (2) whether each district in question (and its customers) can support the costs of necessary improvements; (3) whether the districts under consideration have fair rates and terms of service prior to consolidation as separate entities and whether the consolidated entity would also have fair rates and terms; (4) whether consolidation will enhance the possibility of securing state and federal grants for improvements; (5) what impact will new debt for improvements have on customers; (6) whether consolidation will result in reduction of expenses that counteract new debt; (7) do resources include technically capable staff who can operate a consolidated system and; (8) how will customers react and be impacted. Many of the current guidelines and proposed additional criteria discussed above relate to or include these additional considerations, but some of these would be new for the Commission, such as the emphasis on attracting capital and facilitating debt to finance improvements.

The above discussion demonstrates how complex the analysis for potential consolidation can be. NCLC and TURN urge the Commission to maintain the current guidelines but supplement that analysis with the above additional criteria and considerations to ensure that the resulting merger of districts is in the ratepayers' best interest.

---

http://*msucares.com/**water**/pubs/consolidation_issues.pdf; See also,* United States Environmental Protection Agency, Restructuring and Consolidation of Small Drinking Water Systems, (A Compendium of State Authorities, Statutes and Regulation), October 2007 at p.ii (discussing the potential benefits of consolidation).

C. Characteristics of Water Districts that Should be Included in an Analysis of Whether to Consolidate

As a follow-on to Question 2 regarding the 1992 guidelines, the OIR also asks:

> *Question 3 – To the extent a new district consolidation mechanism is necessary, identify and discuss significant characteristics of water districts that should be included in an analysis of whether consolidation is appropriate. Examples of significant characteristics include: infrastructure, geography, topography, hydrology, climate, water quality, nature of water supply, rate differences and average water usage.*

As discussed above, at this time, NCLC and TURN do not find that a new consolidation mechanism is necessary. Instead, application of several additional criteria and an updated analysis and application of the original guidelines may be necessary to take into account changing circumstances in the industry and would prove more appropriate than making major changes to the current guidelines.

Under both an updated interpretation of the guidelines and NCLC and TURN's additional criteria, the Commission will need to factor in several of the "significant characteristics" listed in Question 3. For example, "proximity" should include an analysis of the differences in the physical characteristics of each district including topography, hydrology, climate and even water quality, and consider how any differences in those characteristics may impact cost of service to each district. The water supply guideline already includes a review of "nature" of the water supply, the variability in the price paid for purchased water, and the amount of reliance on that purchased water. At this time NCLC and TURN do not have additional characteristics to add to this list, but reserve the right to comment on characteristics proposed by other parties' opening comments.

D. High Cost Fund

The idea of a high cost fund, while not prevalent in the water industry, is not new. Over a decade ago, the Commission noted the idea of "a state-wide fund collected from all water customers to provide lifeline rates to customers in high-rate districts".[63] Telecommunications services historically have been supported by the federal Universal Service program, which includes a High Cost Fund, designed to allow carriers to recover some of the costs of serving area with above average costs of service. While federal Universal Service also includes three other funding mechanisms, the high cost fund has represented the greatest investment of universal service funds. In 2008, the federal telecommunications high cost fund represented 63% of universal service payments, or almost $4.5 billion.[64] Universal Service programs have contributed to an achievement of a steady penetration rate for household telephone subscribership of about 96%.[65]

California also has two state-specific high cost funds for telecommunications services. The Legislature mandated both of these funds and directed the Commission to "develop, implement, and maintain a suitable, competitively neutral, and broad-based program to establish a fair and equitable local rate support structure aided by universal service rate support to telephone corporations serving areas where the cost of providing service exceeds rates charged by providers, as determined by the commission."[66] The Commission administers these

---

[63] D.00-06-075 (June 22, 2000) at 14 (idea of high cost fund mentioned in an application case for rate consolidation).

[64] *See* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf at Chart 19.1 and Table 19.2.

[65] *See* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306752A1.pdf at Table 3 (penetration rates).

[66] Public Utilities Code Section 739.3(c). Section 739.3 (c) creates what the Commission terms the California High Cost Fund-B to provide money to large telecommunications providers that serve both high cost and urban areas. Subsection (a) creates a California High Cost Fund-A that provides subsidy to small local exchange carriers serving almost exclusively rural areas.

programs, and most wireline local exchange carriers serving high cost areas are eligible for subsidy from the funds. The Commission uses these funds, along with rate averaging for basic telecommunications service, to attempt to keep rates affordable for customers living in high cost areas where it may cost thousands of dollars to serve a single residence due to lack of economies of scale.

The policies and administration of these high cost funds have not been without controversy at both the federal and state level. While the analogy between these telecommunications high cost funds and any contemplated high cost fund for water may not be perfect[67], there are valuable lessons for the Commission from the criticisms of these telecommunications high cost funds. A long-standing issue for high cost funding policy is the debate of appropriateness of implicit and explicit subsidy.[68] Indeed, much of the Commission's analysis of previous water district consolidation proposals has been critical of these proposals because it would involve implicit subsidy from the low cost to high cost areas thus resulting in potentially unfair cross-subsidy.[69] The same debate exists in the telecommunications industry. While the Commission relied almost exclusively on implicit subsidy methodologies such as rate averaging and "single tariff pricing" to support high cost areas in the past, one motivation for creating the two high cost funds in California in 1996 was a new policy emphasis on explicit subsidy support methodologies. These high cost funds were implemented in 1996 as a result of a Legislative directive to ensure, "Any subsidy that may be required to ensure that universal service remains a viable reality must have a clearly stated purpose and scope, include a broad

---

67 Indeed, in D.08-05-018 at p.35, the Commission refused to consider CalAm's arguments urging an favorable analogy between the telecommunications and energy subsidy programs.

68 See, discussion in D.96-10-066 and D.97-09-020.

69 *See,* for example, D.00-06-075.

based and competitively neutral funding mechanism, and be imposed in a manner that clearly identifies the source of the subsidy."[70] Although the Commission kept its geographic rate averaging policy in place in 1996, in 2006 it also eliminated that implicit mechanism to keep high cost areas affordable . Now, the Commission has come almost full circle as it moves toward deregulation of telecommunications. In the move to competitive markets, it has begun to dismantle the CHCF-B program and revise the CHCF-A program.[71] This emphasis on explicit subsidy mechanism is one criterion the Commission can use to loosely model its high cost fund policy for water on telecommunication industry practices. The use of explicit subsidy is consistent with Public Utilities Code Section 739.8 (c), which allows the Commission to create programs for low income customers that provide incentives for conservation, because participants will see the explicit subsidy and the true cost of their water consumption broken down. It is also consistent with Public Utilities Code Section 701.10 by not masking the true cost of water.

Other significant criticisms of the Commission's high cost funds include the lack of specific criteria for use of the funds, lack of data collection and failure of regulatory oversight once the carriers receive the funds.[72] Critics argue that the Commission did not know whether the money received from the fund went to support operations in high cost areas or the service of regulated services, as opposed to support for non-tariffed products and services, thereby making it difficult to calculate the consumer benefits from the program.[73] As early as 2006, the Division

[70] D.96-10-066 at p. 3, citing to AB3643.

[71] *See*, Order Instituting Rulemaking, R.09-06-019 and R.11-11-007.

[72] See, Order Instituting Rulemaking, R.96-06-028 and D.07-09-020 at p. 24-27 (summarizing arguments that the CHCF-B had not direct effect on reducing retail rates) and p. 119-121 (discussing problems with program administration).

[73] *Id*.

of Ratepayer Advocates recommended eliminating the program all together in light of the uncertain consumer benefits and the operational concerns, and TURN urged significant changes to the programs.[74].

Despite the problems identified with high cost programs, however, high cost funds can be effective in their ultimate purpose, as demonstrated by the federal telecommunications High Cost fund. Additionally, NCLC and TURN describe modifications to current high cost programs below, based on lessons learned, that may address some of the problems discussed.

1. Advantages and Disadvantages of a High Cost Fund

In the OIR, the following question was asked:

> *Question 4 – What advantages and disadvantages, if any, would result from implanting a "High-Cost" fund? How could such a "high-Cost" fund operate?*

In response to the above question, NCLC and TURN submit the following comments:

The California legislature requires that healthful water supply be available at affordable cost.[75] The immediate appeal of a high cost fund, applied to water, is similar to its application to telecommunications in that it can help make an essential utility service affordable in areas that are costlier to serve. While similar investment and expenditures for infrastructure and facilities

---

[74] The Federal Communications Commission and interested stakeholders including consumer advocacy groups like the National Association of State Utility Consumer Advocates are currently embroiled in a years-long process to significantly revise the federal universal service funding mechanism to address, among many concerns, those relating to accountability and data collection. *See*, *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96- 45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10- 208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011.

[75] *See* Cal. Pub. Util. Code § 701.10.

may be needed to serve a populous metropolitan area compared to a sparsely populated, rural area, the smaller customer base upon which to spread costs in less densely populated rural area may make utility service prohibitively expensive there. Additionally, implementing a high cost fund may help alleviate the complaints of inequities that arise under single tariff pricing, when one district largely subsidizes the costs of service of smaller, high cost districts.

The Cal Water Rate Support Fund (RSF), mentioned above in response to Question No. 1 as one of Cal Water's affordability programs, was established for all Cal Water customers in the Antelope Valley, Kern River Valley and Redwood Valley districts, and can be viewed as a type of existing high cost fund. The RSF is funded through a surcharge of $0.010 per 100 cubic feet for all metered customers and a flat rate surcharge for flat rate customers throughout Cal Water's territory.[76] Similar to telecommunications' universal service fund which has both a high cost component and low-income discount component, the RSF provides support for both high cost areas as well as support for a low-income discount.[77] However, there are differences in that the Cal Water RSF is a high cost fund that has been implemented on a company-wide, opposed to wider regional, state, or national implementation, and the RSF applies to entire geographic areas (districts) instead of to particular low-income customers. In addition, the criteria used in the RSF to determine which districts will be eligible to receive support is much broader than the cost of service analysis included in the telecommunications high cost funds.

---

[76] Private fire protection service customers are excluded from the RSF surcharge. *See* California Water Service Company Tariff ScheduleNo. RSF, Revised Cal. P.U.C. Sheet No. 8595-W (surcharge applies throughout Cal Water's territory). *But see* California Water Service Company Response to NCLC/TURN Data Request Set I-1(a), (b), and (c) (funding is provided by all customers in districts other than Antelope Valley, Kern River Valley and Redwood Valley districts.

[77] It appears that a portion of RSF is allocated to Cal Water's LIRA program. *See* California Water Service Company Tariff ScheduleNo. RSF, Revised Cal. P.U.C. Sheet No. 8595-W; California Water Service Company Response to NCLC/TURN Data Request Set I-1(a), (b), and (c).

A high cost fund implemented from this proceeding could be a modified version of the RSF. The most obvious modification would be to widen scope of its application to encompass customers of all Commission-regulated multi-district water utilities. There are a couple ways to do this, with variations in whether the fund is utility- or Commission-administered, and whether the fund emphasizes direct or indirect customer assistance with infrastructure and operational costs in high cost areas. In any of these cases, a reasonable surcharge may be in the range of the amount currently being charged to Cal Water metered and flat rate customers for Cal Water's RSF contributions.

One example of a utility-administered approach is to directly follow the Cal Water RSF model. The Commission could order each individual water utility to implement a company-wide high cost fund. This approach may allow each utility to knowledgably target the funds within its own service territory. However, as stated elsewhere in these comments, ratepayer funding that is utility-managed and directed must be paired with accountability measures and Commission review for reasonableness. This includes tracking of fund expenditures to show a relationship to infrastructure projects in high cost areas and justification for why certain areas have been targeted to receive funding while others are not. Reasonableness and accountability measures may also include holding the funds in an interest-bearing account, with interest dedicated to the benefit and use of the company's customers.

Another possibility is a variation of the Cal Water RSF model, such that the high cost fund scope is enlarged to an industry-wide fund that is administered by the Commission (or other third party unaffiliated with the utility). All customers in all districts of all multi-district companies would contribute to a single, central fund. A Commission-administered fund has the advantage of potentially more even-handed allocation of funding across utilities, creating opportunities for smaller utilities to access a larger funding pool in any one instance. Customers of large utilities could also benefit from an equally large distribution of high cost assistance.

However, while the Commission praised Cal Water's RSF as making "rates more affordable for all Cal Water customers in highest-cost areas, provi[ding] additional support for low-income customers, and does both at minimal cost to its other ratepayers,"[78] the Commission voiced concern that RSF would apply to all customers in the three districts, including customers who are able to afford their water bills.[79] A further modification of the RSF could be to targeted the high cost fund to eligible customers who apply. Eligibility standards, if adopted, should be adopted based on income and number of household members, recognizing that households with more members consume more water. An example of this is the scale of income and household size that is sometimes used by states to determine the Low Income Home Energy Assistance Program (LIHEAP) benefit.[80] The benefit level could be a percentage discount off a household's water bill. Alternatively, to encourage conservation, the benefit level could be a dollar amount that takes into consideration the average consumption for the average household of similar income and size. The result of a dollar discount should be that larger households with more members receive a higher benefit level than smaller households with fewer members. While low-income customers will likely have less elasticity of water demand and may lack opportunity to conserve beyond their current efforts to limit their water bills, some low-income and non-low-income customers could benefit alike from conservation education. Enrollment of eligible

---

[78] D.06-08-011 (Aug. 24, 2006) at 13.

[79] D.06-08-011 at 12.

[80] *See* http://www.csd.ca.gov/Programs/EnergyIncomeGuidelines.aspx (California's LIHEAP income eligibility guidelines).

households should be paired with conservation training for the customer,[81] and because affordability is enhanced whenever discretionary income becomes more available, customers should be made aware of energy and telephone discounts and assistance programs at the same time.[82] Additionally, leak detection, pipe inspection, and minor repairs and efficiency measures in the home could be performed by utility personnel or trained representatives of community action agencies, to ensure that a problem of affordability is not inadvertently caused by waste.[83] Minor repairs could include fixing leaks. Efficiency measures could include installing low-flow showerheads and faucet aerators.[84]

2. Requirements and Conditions of a High Cost Fund on Development and Conservation

In the OIR, the Commission asked:

> *Question 5 – What requirements and conditions, if any, should be included in any new district consolidation mechanism or "High-Cost" fund?*

Regarding requirements and conditions for a High-Cost fund, please see response to Question 4. Regarding requirements and conditions for any new district consolidation mechanism, please see response to Questions 2 and 3.

---

[81] CalAm has described a pilot conservation program in its Los Angeles that incorporates some of these suggestions, including conservation education and installation of efficiency measures. CalAm Annual Water Conservation Program: 2010 Annual Report.

[82] *See* The Results Center, Philadelphia Water Department, Conservation Assistance Program Profile #109 (Lessons Learned/Transferability section), available at http://ecomotion.us/results/pdfs/109.pdf (through utility's contract with independent, education-oriented, community-based organizations, the same field crew can efficiently deliver gas, electric, and water assistance programs at the same time, potentially during a single visit to the customer's home).

[83] *See* The Results Center, Philadelphia Water Department, Conservation Assistance Program Profile #109 (Lessons Learned/Transferability section), available at http://ecomotion.us/results/pdfs/109.pdf.

[84] Id. Installing low-flow showerheads, efficient toilets, and low-flow bathroom aerators was also undertaken by GSWC in pilot program in 2011. *See* GSWC Response to NCLC/TURN Data Request Set I-1.

3. Impacts of Increased Consolidation or Establishment of a High Cost Fund

In the OIR, the Commission asked:

> *Question 6 – What impacts would increase consolidation of water utility districts or the establishment of a "High-Cost" fund have on: (A) land development in the districts and (B) ongoing water and energy conservation efforts, including those mandated by Federal and State laws* such as the Water Conservation Act of 2009? Is it possible to effectively mitigate these impacts?

At this time, NCLC and TURN do not possess information to answer what impact increased consolidation would have on land development in the districts and ongoing water and energy conservation efforts. To the extent that these issues are addressed in other parties' comments, we will seek to address them in Reply Comments.

i. California Public Utility Code Section 701.10

In the OIR, the Commission asked for comment on the legal basis for High Cost fund or for increasing consolidation:

> *Question 7 – What impact, if any, would Public Utilities Code Section 701.10 or other statutory requirements have on the ability of multi-district water utilities to establish a "High-Cost" fund or to increase consolidation?*

In response to the above question, NCLC and TURN submit that California Public Utilities Code Section 701.10 sets forth an important policy statement by the Legislature. The statute reads,

> 701.10. The policy of the State of California is that rates and charges established by the commission for water service provided by water corporations shall do all of the following:
>
> (a) Provide revenues and earnings sufficient to afford the utility an opportunity to earn a reasonable return on its used and useful investment, to attract capital for investment on reasonable terms and to ensure the financial integrity of the utility.

> (b) Minimize the long-term cost of reliable water service to water customers.
>
> (c) Provide appropriate incentives to water utilities and customers for conservation of water resources.
>
> (d) Provide for equity between present and future users of water service.
>
> (e) Promote the long-term stabilization of rates in order to avoid steep increases in rates.
>
> (f) Be based on the cost of providing the water service including, to the extent consistent with the above policies, appropriate coverage of fixed costs with fixed revenues.

This statement by the Legislature directs the Commission to ensure its adopted rates for water service adhere to those listed conditions. Therefore, to the extent a high cost fund mechanism or a district consolidation policy impacts rates, which they do, the Commission must take these criteria into consideration. However, the Commission cannot directly interpret or implement these criteria since it does not plan to set specific rates for any particular utility in this docket. Instead, it must make sure that any affordability policies or programs adopted in this docket do not interfere or conflict with this statute.

As long as the Commission takes the directives in this statute into account when looking at options in this docket, it is possible to create policies consistent with Section 701.10. For example, Section 701.10(f) states that rates should "be based on the cost of providing water service." A high cost fund mechanism, that provides a surcredit to customers of a certain high-cost districts in the state, will be basing the subsidy payout on the overall cost of providing water to the various districts within a single utility. While the consistency of subsection (f) in the context of rate consolidation is not as clear, because the costs of providing water to a single, high cost district may be masked by the rate averaging among multiple "consolidated" districts, this seeming conflict is not insurmountable. Indeed, the decision on whether or not to consolidate will look at the costs of providing water service to each district and the impact of a consolidation proposal on the rates. There are numerous examples where both options – high cost fund or rate consolidation- would be consistent with the policies set forth in Section 701.10.

A second example is the requirement to design the mechanism to satisfy Section 701.10(c) such that a high cost fund or rate consolidation would not interfere with the Commission's conservation policy. Both of these mechanisms have been criticized in the past by the Commission of possibly sending the wrong signals to ratepayers when trying to make water affordable. There is a risk of making water "too cheap" for certain ratepayer groups. However, through customer education and appropriately set rate designs these mechanisms, especially the high cost fund, the Commission can strike the proper balance between affordability and conservation.

Each of the requirements in Section 701.10 can be incorporated into the Commission's effort to ensure affordability in high cost areas and create an appropriate balance between affordability, investment and conservation. Indeed, the statute requires the Commission to create rates that balance these three policy goals by setting goals that are similar. Opportunities for consolidation may be more limited under this statute due to cost sharing and the potential for unfair cross subsidy, but the Commission should conduct a fact-specific analysis to ensure either high cost mechanism complies with the statute.

ii. Additional Impacts

In the OIR, the Commission asked for comment on additional impacts beyond the above discussion:

Question 8 – Identify any additional impacts that would result from increased consolidation of water utility districts or the establishment of a "High-Cost" fund.

In response NCLC and TURN note that, at this time, we do not have further comment on impacts that would result from a High Cost fund. We await the opportunity to review initial Comments submitted by the water utilities in order, and will submit Reply Comments, accordingly.

III. CONCLUSION

NCLC and TURN respectfully request that the Commission consider the Comments above, in resolving the water affordability issues in this proceeding. We request that going forward, Commission Staff develop a detailed proposal in light of this proceeding within a reasonable amount of time,[85] and adopt a schedule that includes workshops, comments, and a final Commission decision on Staff's proposal.

/

/

/

/

/

/

/

/

/

---

[85] For example, two months from the issuance of an Order in this proceeding, perhaps timed in advance of the currently scheduled May 21, 2012 prehearing conference, could be a fair amount of time for Staff to develop a detailed proposal. This would also allow parties to discuss a schedule of comments and workshops based around Staff's proposal.

Further opportunity for investigation and comment will help lead to a final decision that ensures that consolidation and/or high cost fund mechanisms are established to adequately address affordability issues for water service to customers in California's high cost areas.

Respectfully Submitted,

/S/

Darlene R. Wong
Staff Attorney
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110-1245
(617) 542-8010

/S/

Christine Mailloux
Staff Attorney The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94104
(415) 929-8876
cmailloux@turn.org

DATED: March 1, 2012, in Boston, Massachusetts
and San Francisco, California