IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT,
Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Respondent,

CALIFORNIA-AMERICAN WATER COMPANY,
Real Party In Interest.

Case No. S208838

Commission Decisions
D.11-03-035
& D.13-01-040

ANSWER OF THE RESPONDENT TO PETITION FOR WRIT OF REVIEW

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ANSWER OF RESPONDENT
TO PETITION FOR WRIT OF REVIEW

TO THE HONORABLE CHIEF JUSTICE TANI G. CANTIL-SAKAUYE & ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Respondent the California Public Utilities Commission ("Commission"), respectfully submits its answer ("Answer") in opposition to the amended petition for writ of review ("Petition"), filed by the Monterey Peninsula Water Management District ("District" or "MPWMD"). (See California Rules of Court Rule 8.496) The Commission denies that said writ should be issued.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The District challenges the lawfulness of Commission Decision (D.) 11-03-035 and Rehearing Order D.13-01-040 (together "Decision"),[1] which exercised the Commission's constitutional and exclusive authority to approve the costs and charges that a regulated public utility may seek to recover from its customers. (Cal. Const., art XII, §§ 4, 6.) In particular, the Decision denied an application by California-American Water Company ("Cal-Am") and subsequent proposed settlement agreement by Cal-Am, the District, and the Division of Ratepayer Advocates ("DRA"), requesting recovery of the District's proposed User Fee through Cal-Am's utility bills.[2]

The Commission is a state agency of constitutional origin with broad duties, functions and powers. (Cal. Const., art. XII, §§ 1-6.) It is within the Commission's exclusive jurisdiction to regulate public utilities, and to among other things, set rates and allocate costs, establish rules, hold hearings, award reparations, and establish its own procedures. (Cal. Const., art. XII, §§ 2, 4 & 6; see also *Consumers Lobby Against Monopolies v. Public Utilities Commission* ("*CLAM*") (1979) 25 Cal.3d 891, 905-906.)

Cal-Am is a water corporation whose services are regulated as a public utility by the Commission.

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[1] A copy of D.11-03-035 and D.13-01-040 can be found as Tab 1 and Tab 2, respectively in the District's Petition ("Pet.").

[2] The fact that a matter is the subject of a proposed settlement agreement does not compel Commission approval. To warrant approval, a proposed settlement must be reasonable in light of the whole record, consistent with the law, and in the public interest. (Rule 12.1(d) of the Commission's Rules of Practice and Procedure), Cal. Code of Regs., tit. 20, § 12.1, subd. (d).) Any proposed settlement not satisfying one or more of those criteria must be denied. (Rule 12.4, Cal. Code of Regs., tit. 20, § 12.4.)

The District is a governmental entity created by the Legislature to manage water resources in the Monterey Peninsula area. (Cal. Water Code, Appendix, Chapter 118-1 to 118-901 (Stats. 1977, ch. 527.) ("District Law").)[3]

Cal-Am is the primary water service provider on the Monterey Peninsula. Over the years, it has helped to meet the water supply needs of its Monterey Peninsula customers by diverting water from the Carmel River. In 1995, the State Water Resources Control Board ("SWRCB") determined that Cal-Am has no legal right to that water, and that its actions were adversely affecting public trust resources within the river. (SWRCB Order No. WR 95-10 ("Order 95-10"), dated July 6, 1995, at pp. ii, p. 39 [Conclusion of Law Numbers 2 & 3], & p. 40 [Ordering Paragraph Number 2].)[4] Accordingly, Cal-Am was ordered to cease and desist the water diversions (*Id.* at p. 40 [Ordering Paragraph Number 1].), and remediate river impacts by implementing a Mitigation Program and

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[3] See also *Application of California-American Water Company for Authorization to Increase its Revenues for Water Service in its Monterey District by $24,718,200 or 80.30% in the Year 2009; $6,503,900 or 11.72% in the Year 2010; and $7,598,300 or 12.25% in the Year 2011 Under the Current Rate Design and to Increase its Revenues for Water Service in the Toro Service Area of its Monterey District by $354,324 or 114.97% in the Year 2009; $25,000 or 3.77% in the Year 2010; and $46,500 or 6.76% in the Year 2011 Under the Current Rate Design* [D.09-07-021] (2009) __ Cal.P.U.C.3d __, at p. 117 (slip op.) [The District's purpose is generally to conserve and augment peninsula water supply, control and conserve storm and waste water, and promote the reuse and reclamation of water.] A copy of D.09-07-021 can be located at: http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/104226.PDF

[4] A copy of Order 95-10 can be found on the SWRCB website at: http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/1995/wro95-10.pdf.

Aquifer Storage and Recovery Program ("ASR Program"). (*Id.* at pp. 30-32 [Ordering Paragraph Number 3].)[5]

Cal-Am is legally responsible to implement the two environmental programs. (Order 95-10, at p. 43 [Ordering Paragraph Number 11].) However, the District currently performs most of the program functions and has historically collected its costs to do so via a User Fee that is charged to Cal-Am's customers on its utility bills, received by Cal-Am, and later remitted to the District.

On January 5, 2010, Cal-Am filed an application seeking authorization from the Commission to collect and remit to the District, the District's current estimate of the User Fee costs.[6] Subsequently, on May 18, 2010, Cal-Am, the District, and DRA filed a proposed settlement agreement.[7] Both the application and settlement sought Commission

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[5] See also, SWRCB Order No. WR 2009-0060 ("Order 2009-0060") at pp. 118-120 [Ordering Paragraph Number 3(c)]; and D.09-07-021, *supra,* at pp. 116-118 (slip op.). A copy of Order 2009-0060 can be found on the SWRCB website at: http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2009_0060.pdf.

[6] See In the Matter of the Application of California-American Water Company for an Order Authorizing the Collection and Remittance of the Monterey Peninsula Water Management District User Fee, dated January 5, 2010 ("Cal-Am Application"). A copy of this application can be found at Petitioner's Appendix of Exhibits ("Pet. App."), Volume ("Vol.") 1, Tab 1.

[7] Motion to Approve Settlement Agreement Between the Division of Ratepayer Advocates, the Monterey Peninsula Water Management District and California-American Water Company ("Motion to Approve Settlement Agreement"), filed May 18, 2010. A copy of this motion is located at Pet. App., Vol. 1, Tab 5.

approval of a User Fee set at 8.325% of Cal-Am's total revenues, approximately $3.5 million.[8]

Commission review of the application and settlement was guided in part by the direction given in D.09-07-021.[9] (See also D.11-03-035, at pp. 1-4, 11-17.) In that decision, the Commission had considered and deferred approval of the proposed User Fee due to concerns regarding: the lack of evidence explaining program costs;[10] the District's choice to set the User Fee as a fixed percent of Cal-Am's total revenue (8.325%) rather than using a more traditional cost-based methodology; and the significant increase in proposed costs in comparison to past User Fee levels.[11] Accordingly, in D.09-07-021, the Commission directed the parties to provide further evidence to explain and support the proposed User Fee. Consideration of that information was the basis of this proceeding.[12]

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[8] The 8.325% User Fee would be split as 7.125% for the Mitigation Program and 1.2% for the ASR Program. (D.11-03-035, at pp. 1-3; MPWMD/Dickhaut, at p. 4.) Cal-Am's current test year 2009 operating revenues are approximately $42 million, resulting in the total User Fee charge of approximately $3.5 million. (D.11-03-035, at p. 3; MPWMD/Dickhaut, at p. 6.)

[9] D.09-07-021, *supra*, at pp. 116-123 (slip op.).

[10] D.09-07-021, *supra*, at p. 120 (slip op).

[11] D.09-07-021, *supra*, at p. 119-121 (slip op.) [Also citing concerns regarding the increasing burden to Cal-Am's ratepayers associated with the ongoing water supply limitations on the Monterey Peninsula.]. D.11-03-035 noted that the proposed User Fee costs had increased by roughly 88% over 2006 levels. (D.11-03-035, at p. 3.)

[12] D.09-07-021, *supra*, at pp. 121-123 (slip op.) [Evidence to include: detailed description of the Mitigation and ASR Programs; explanation of Cal-Am and District responsibilities for each program; explanation of individual program projects; demonstration of program cost-effectiveness; and description of reimbursable activities, reimbursement rates, invoicing format, and reporting formats.].

The Commission has consistently expressed support for the User Fee programs, and has never objected to the notion that the District may legitimately collect such a fee as a component of Cal-Am's cost recovery. However, as explained below, the challenged Decision reasonably and lawfully found that even with the direction provided in D.09-07-021, the parties still failed to adequately explain and resolve concerns the Commission had raised regarding issues including, but not limited to: (1) an apparent overlap in program activities and costs between Cal-Am and the District; (2) the significant increase in User Fee costs over past levels; (3) and the choice to set the User Fee as a percent of Cal-Am's revenue, rather than a fixed amount tied to demonstrated program expenditures. (D.09-07-021, *supra,* at pp. 120-121 (slip op.). For that reason, the Decision rejected the proposed settlement and authorized Cal-Am to again supplement its showing and submit either: (1) a joint program proposal based on an updated version of the budget; or (2) an implementation plan for Cal-Am to assume direct responsibility for program measures should the District cease to perform program activities. (D.11-03-035, at pp. 11-17, 22 [Conclusion of Law Numbers 3 & 4]; & p. 23 [Ordering Paragraph Number 2].)[13]

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[13] It should be noted that since D.11-03-035 was issued, the Commission approved some of the Mitigation Program costs associated with the User Fee. (See *In the Matter of the Application of California-American Water Company for an Order Authorizing the Collection and Remittance of the Monterey Peninsula Water Management District User Fee* [D.12-06-020] (2012) __ Cal.P.U.C.3d __, at pp. 1 & 11 (slip op.) [Ordering Paragraph Number 3].) D.12-06-020 approved annual billings from the District to Cal-Am of up to $1.6 million for 2012, $1.76 million for 2013, and $1.94 million for 2014. In addition, on June 27, 2012, the District issued its own local ordinance to collect the User Fee as a component of Cal-Am customer property taxes. (See Ordinance No. 152, Exhibit 4-A, located at:

(footnote continued on next page)

On April 25, 2011, the District filed a timely application for rehearing of D.11-03-035 alleging that the Commission: (1) unlawfully interfered with the District's statutory authority to impose and collect a User Fee; (2) failed to adhere to established procedural requirements; (3) failed to provide adequate findings of fact and conclusions of law on all material issues pursuant to Public Utilities Code section 1705,[14] (4) failed to cite evidence supporting the findings; and (5) failed to adequately weigh the evidence.[15] No responses were filed.

On January 25, 2013, after considering the District's challenges, the Commission issued D.13-01-040, which affirmed D.11-03-035's conclusion to deny recovery and remittance of the proposed User Fee absent further evidentiary support, explanation, and justification.

On February 25, 2013, the District filed its petition with this Court challenging D.11-03-035 and D.13-01-040.

(footnote continued from previous page)

http://www.mpwmd.dst.ca.us/asd/board/boardpacket/2012/20120627/04/item4.htm.)

[14] All subsequent section references are to the Public Utilities Code unless otherwise stated.

[15] The District's application for rehearing of D.11-03-035 is located at Pet. App., Vol. 1, Tab 11.

II. ISSUES PRESENTED

The Petition raises two primary issues:

1. **Was the Commission's action lawful in that it did not assert jurisdiction over the District, nor impermissibly interfere with the District's authority to assess and collect fees, taxes, and charges?**

2. **Did the Commission correctly interpret Public Utilities Code section 451 to derive authority to review the reasonableness of the proposed User Fee?**

The Commission respectfully submits that the answers to each of these questions are in the affirmative. Because the Decision was reasonable and lawful, the Commission's findings were not arbitrary, capricious, or an abuse of discretion.

III. STANDARD OF REVIEW

This Court has jurisdiction to review the Commission decisions at issue pursuant to Public Utilities Code section 1756. Section 1756(a) provides that "any aggrieved party may petition for a writ of review in... the Supreme Court . . . ." (See also Pub. Utilities Code, § 1756, subd. (f), stating "...review of decisions pertaining solely to water corporations shall only be by petition for writ of review in the Supreme Court," except in the case of complaints or enforcement matters.)

However, granting a writ of review of Commission decisions under section 1756 is discretionary rather than mandatory. (*Pacific Bell Wireless, LLC v. Public Utilities Commission* ("*Pac Bell Wireless*") (2006) 140 Cal.App.4th 718, 729; *Pacific Bell v. Public Utilities Commission* (2000) 79 Cal.App.4th 269, 272.) The plain language of the statute provides that: "*If* the writ issues, it shall be made returnable at a time and place

specified by court order . . . ." (Pub. Util. Code, § 1756, subd. (a) (emphasis added).) Thus, the Supreme Court is "not compelled to issue the writ if the [Commission] did not err . . . ." (*Pacific Bell v. Public Utilities Commission*, *supra*, 79 Cal.App.4th at p. 279; see also, *Southern California Edison Company v. Public Utilities Commission* ("*Edison v. PUC*") (2005) 128 Cal.App.4th 1, 13-14, rehg. den. 2005 Cal.App. Lexis 745 ("[T]he court need not grant a writ if the petitioning party fails to present a convincing argument that the decision should be annulled"].)

The Court's review of the challenged Commission decisions is governed by section 1757. The statute provides that the Court's review shall not extend further than to determine whether any of the following occurred:

(1) The Commission acted without, or in excess of, its powers or jurisdiction.

(2) The Commission has not proceeded in the manner required by law.

(3) The decision of the Commission is not supported by the findings.

(4) The findings in the decision of the Commission are not supported by substantial evidence in light of the whole record.

(5) The order or decision of the Commission was procured by fraud or was an abuse of discretion.

(6) The order or decision of the Commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(Pub. Util. Code, § 1757, subd. (a).)

Under this standard, this Court is to determine whether the Commission acted contrary to a statute, to the state or federal constitution, in excess of its jurisdiction, as a result of fraud, or in abuse of its discretion. In addition, the Court is to determine whether the Commission's decision is supported by findings, and whether those findings are in turn supported by "substantial evidence in light of the whole record."[16]

Court review is subject to the "substantial evidence in light of the whole record" standard: " '[T]he power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence . . . . If such substantial evidence be found, it is of no consequence that the [the decision-maker] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.' " (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 362, p. 412, citing *Bowers v. Bernards* (1984) 150 Cal.App.3d 870.) It is the Commission and not the Court that weighs the evidence. (*Eden Hospital District v. Belshe* ("*Eden Hosp. Dist.*") (1998) 65 Cal.App.4th 908, 915.) Thus, this Court's function is not to hold a trial *de novo*, but to review the entire record to determine whether the Decision's conclusions are reasonable and are supported by evidence. (See Pub. Util. Code, § 1757, subd. (b).)

Where constitutional issues are raised, section 1760 specifies the standard of review. This statutory provision provides: "Notwithstanding sections 1757 and 1757.1, in any proceeding wherein the validity of any order or decision is challenged on the

[16] Factual findings by the Commission "are not open to attack for insufficiency if they are supported by any reasonable construction of the evidence." (*Toward Utility Rate Normalization v. Public Utilities Commission* ("*TURN v. PUC*") (1978) 22 Cal.3d 529, 537-538 (citation omitted).)

ground that it violates any right of petitioner under the United States Constitution or the California Constitution, the Supreme Court or Court of Appeal shall exercise independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final." (Pub. Util. Code, § 1760.)

However, as this Court has explained, section 1760 does not greatly alter the Court's review of Commission decisions: "The provisions of [S]ection 1760 . . . authorizing an independent judgment on the law and the facts in cases in which an order or decision is challenged on constitutional grounds, do not authorize this court to substitute its own judgment as to the weight to be accorded evidence before the Commission." (*Goldin v. Public Utilities Commission* ("*Goldin v. PUC*") (1979) 23 Cal.3d 638, 653; see also, *Pacific Telephone & Telegraph Company v. Public Utilities Commission* ("*Pac. Tel. & Tel.*") (1965) 62 Cal.2d 634, 646.)

In *Greyhound Lines, Inc. v. Public Utilities Commission* ("*Greyhound Lines*") (1968) 68 Cal.2d 406, this Court noted that there is a "strong presumption of validity of the [C]ommission's decisions" and stated that "the [C]ommission's interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language." (*Id.* at pp. 410-411 (citations omitted); see also *Pacific Bell v. Public Utilities Commission, supra,* 79 Cal.App.4th at p. 283 [Courts will not disturb Commission decisions absent a "manifest abuse of discretion or an unreasonable interpretation of the statutes" at issue]; see also, *Southern California Edison Company v. Public Utilities Commission* (2000) 85 Cal.App.4th 1086, 1096.) Further, in

Wise v. Pacific Gas & Electric Company (1999) 77 Cal.App.4th 287, the Court noted that the Commission "is not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers." (*Id.* at p. 300; see also *Southern California Edison Company v. Public Utilities Commission, supra,* 85 Cal.App.4th at p. 1096.)

The Commission's interpretation of the Public Utilities Code, as the agency constitutionally authorized to administer its provisions, should be given great weight. (*Southern California Edison Company v. Peevey* (2003) 31 Cal.4th 781, 796; *Greyhound Lines, supra,* 68 Cal.2d at p. 410; *Southern California Edison Company v. Public Utilities Commission* (2004) 117 Cal.App.4th 1039, 1044.)

In the present case, the Commission proceeded entirely in the manner required by law. Therefore, the Commission respectfully requests that the District's Petition be denied.

IV. ARGUMENT

A. The Commission did not assert jurisdiction over the District or unlawfully interfere with its authority to assess fees, taxes and charges.

As a local government entity, the District has the power to levy fees, taxes, and charges. (Pet., at pp. 15-17, citing e.g., *Paland v. Brooktrails Township Community Services District Bd. of Directors* (2009) 179 Cal.App.4th 1358, 1362, 1365-1366.) The District Law also specifically provides that the District may contract with a public or

private utility to collect its fees, taxes, or charges on utility bills. (District Law, Cal. Water Code, Appendix, Chapter 118-1 to 118-901 (Stats. 1977, ch. 527.).)[17]

The District accurately states that this Commission has consistently found that the District legitimately possesses such authority unless or until there is a contrary determination by the Superior Court. (See D.13-01-040, at p. 5 stating: "[W]e recognize that local taxing authority is properly the domain of the Superior Court.")[18] The Decision challenged here did nothing to alter that conclusion.

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[17] See specifically, District Law, Section 118-326(b) stating:

> Sec. 326. The district shall have the power:
>
> (b) To fix, revise, and collect rates and charges for the services, facilities, or water furnished by it.

See also District Law, Section 118-326(d) stating:

> Sec. 326. The district shall have the power:
>
> (d) To provide that the charges for any of its services or facilities may be collected together with, and not separately from, the charges for other services or facilities rendered by it, or it may contract that all such charges be collected by any other private or public utility, and that such charges be billed upon the same bill and collected as one item.

[18] See e.g., *Packard. v. PG&E Co.* [D.77800] (1970) 71 Cal.P.U.C. 469, 472; *Investigation on the Commission's Own Motion to Establish Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed by Local Government Entities on Public Utilities* [D.89-05-063] (1989) 32 Cal.P.U.C.2d 60, 69 ["This Commission does not dispute the authority or right of any local government entity to impose or levy any form of tax or fee upon utility customers or the utility itself, which that local entity, as a matter of general law or judicial decision, has jurisdiction to impose...."], & pp. 71-72 [Findings of Fact Numbers 9 & 10].) See also D.77800, *supra*, 71 Cal.P.U.C. at p. 472 ["The superior court has the jurisdiction to determine Vallejo's power to enact a utility users tax under the constitution and laws of this state...."]; D.89-05-063, *supra*, 32 Cal.P.U.C.2d at p. 69 ["Any issue relating to such local authority is a matter for the Superior Court, not this Commission."]. The District's authority to collect the User Fee at issue in this proceeding is currently a question before the Superior Court. (See *California-American Water Company v. Monterey Peninsula Water Management District,* Monterey Superior Court, Case No. M113336.)

Nevertheless, the District maintains that by virtue of considering the reasonableness of the User Fee, the Commission effectively expanded its authority to unlawfully assert jurisdiction over the District. That is not correct.

Perhaps the District's claim would have merit had the Commission refuted the District's authority to levy a User Fee at all, or had the Commission attempted to direct or control the District's project activities in implementing the Mitigation Program and/or Aquifer Storage and Recovery Program. As explained below, the Commission's action was much more limited and within its constitutional and statutory powers.

Moreover, had the District chosen to act independently to collect the User Fee directly from Cal-Am's customers, the Commission would have had absolutely no involvement in the matter. But that is not the course the District chose. For example, the District could collect the fee via a local ordinance establishing a mechanism to directly collect the User Fee from Cal-Am's customers. In fact, it attempted to do so via its Ordinance Number 152, dated June 27, 2012. That ordinance proposed collecting the User Fee as a component of property taxes. (See Ordinance No. 152, Exhibit 4-A.)[19]

Such local ordinances, however, are often more controversial and may trigger voter approval requirements under Proposition 218.[20] Thus, the District has preferred to collect its costs via Cal-Am utility bills under the authority of this Commission.[21]

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[19] Ordinance No. 152 can be located at: http://www.mpwmd.dst.ca.us/asd/board/boardpacket/2012/20120627/04/item4.htm). Ordinance No. 152 renamed the User Fee as a "water supply charge."

[20] Proposition 218 primarily acts to limit local government taxation by requiring voter approval to impose, extend, or increase taxes. (See *AB Cellular LA, LLC v. City of*

(footnote continued on next page)

Commission review of the User Fee was permissible because it is squarely within the Commission's jurisdiction to protect the public interest in all matters pertaining to utility regulation.[22] And the cornerstone of Commission jurisdiction is exclusive authority over public utility rates and cost recovery,[23] including a duty to ensure all costs recovered from customers are just, reasonable, and nondiscriminatory.[24]

The District suggests such review was improper because it is the District that "originated" the User Fee, not Cal-Am. However, that argument fails to acknowledge the unique nexus between Cal-Am and the District with respect to the costs and implementation responsibilities associated with the mitigation programs and proposed User Fee. The costs in question are not those which the District incurs for activities taken

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(footnote continued from previous page)

Los Angeles ("*AB Cellular*") (2007) 150 Cal.App.4th 747, 755-756, 760.)

[21] Although the law contemplates a local entity is generally free to choose its own methodology to calculate a fee or tax (*AB Cellular, supra,* 150 Cal.App.4th at pp. 763-764.), the law also indicates that such methodologies may be limited or restricted by other relevant state, federal, or local laws. (*Id.*) Here, seeking Commission approval triggered the application of state law governing Commission actions.

[22] D.77800, *supra,* 71 Cal.P.U.C. at pp. 470-471 ["...the Commission represents the public interest in the field of public utility regulation and is charged with the protection of that interest."]. (See e.g., *United States v. Merchants & Manufacturers Traffic Association* (1916) 242 U.S. 178, 188.)

[23] Cal. Const., art. XII, §§ 1-6. See also *Consumers Lobby Against Monopolies v. Public Utilities Commission* ("*CLAM*") (1979) 25 Cal.3d 891, 905-906.

[24] D.89-05-063, *supra,* 32 Cal.P.U.C.2d at p. 69 ["But the sole authority to determine and regulate the rates and charges of a public utility for services furnished by it rests with this Commission (Cal. Const., art.12, § 6)..."], & pp. 71-72 [Finding of Fact Number 10] ["The Commission does have jurisdiction over the ratemaking treatment of the costs of local taxes and fees imposed on public utilities, as well as over the ratemaking treatment of the costs incurred by public utilities in the administration and collection of utility users taxes which the utility is required to bill and collect."].

on its own behalf, and/or for the public generally to support general local revenue needs. The programs the District implements and the costs to do so are the legal responsibility of Cal-Am. And both the District and Cal-Am undertake certain program activities. Because the District's costs were sought to be recovered on Cal-Am's customer bills, Commission review pursuant to section 451 was both reasonable and lawful.

B. The Commission reasonably and lawfully interpreted Public Utilities Code section 451 to warrant review of the proposed User Fee as a component of Cal-Am customer bills.

The District contends the Commission misapplied section 451 to justify review of the proposed User Fee, because doing so here: (1) exceeded the Commission's authority; (2) ignored the plain language of the statute; (3) conflicted with other relevant laws; and (4) ignored that District Law supersedes section 451. (Pet., at pp. 17-28.) These issues are discussed below.

1. The Commission's construction of section 451 comports with the broad authority vested in the Commission under the California Constitution, and relevant law.

The District asserts that section 451 applies only to require utility charges to be just and reasonable, but that it does not encompass charges associated with government entities such as the District. Thus, the District contends that by reviewing the User Fee, the Commission created an unlawful exemption to the principle that Commission authority extends only to public utilities. (Pet., at pp. 18-22, citing e.g., *Santa Clara*

Valley Transportation Authority v. Public Utilities Commission ("*Santa Clara*") (2004) 124 Cal.App.4th 346, 356.)[25]

Section 451 states in relevant part:

> *All charges demanded or received by any public utility*...for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable....

(Pub. Util. Code, § 451 (emphasis added).)

There was no dispute that the User Fee would be collected as a charge "demanded and received" by Cal-Am on its customer bills. That is true regardless of the fact that the District originates the fee, and that Cal-Am would eventually remit the fee to the District. In addition, as already noted the program costs represent activities that are Cal-Am's legal responsibility. And both the District and Cal-Am perform certain program activities that must be evaluated to ensure there is no duplication of efforts and costs.

The District maintains that the Commission is entitled to no deference in interpreting its authority under the statute, because its construction of section 451 here

[25] *Santa Clara* offers no guidance here. That case involved the limited question of Commission jurisdiction over a rail district's light rail crossings under Public Utilities Code sections 1201 & 1202, as opposed to its authority under section 99152. (*Santa Clara, supra,* 124 Cal.App.4th at p. 355.) The Court found no jurisdiction under sections 1201 & 1202 because they did not apply to transit districts. However, the Commission did have safety jurisdiction over the district's light rail crossings under section 99152. (*Id.* at p. 365.) This matter did not involve any similar comparison of Commission jurisdiction pursuant to different Public Utilities Code sections.

bore no reasonable relationship to the purpose of the statute. (Pet., at pp. 20-21, citing e.g., *Pac Bell Wireless, supra,* 140 Cal.App.4th at pp. 729.)[26] That is incorrect.

The Commission interprets and implements section 451 in the context of its exclusive authority over utility rates and costs pursuant to Article XII, Section 6 of the California Constitution. (Cal. Const., art XII, § 6.)[27] When determining the lawfulness of the Commission's actions in the exercise of such authority, the California Supreme Court has found that the Commission's actions will generally be upheld if they are cognate and germane to utility regulation. For example, in *CLAM, supra,* 25 Cal.3d 891, the Supreme Court explained:

> The Commission is a state agency of constitutional origin with far-reaching duties, functions and powers. (Cal. Const., art XII, §§ 1-6.) The constitution confers broad authority on the commission to regulate utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures. (Id., §§ 2, 4, 6.) The Commission's powers however, are not restricted to those expressly mentioned in the Constitution: "The Legislature has plenary power, unlimited by other provisions of this constitution but consistent with this article, to confer

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[26] *Pac Bell Wireless* does not establish any Commission wrongdoing here. In that case a wireless phone company argued that the Commission acted in excess of its jurisdiction by, among other things, imposing penalties for a violation of section 451 and other statutes. (*Pac Bell Wireless*, supra, 140 Cal.App.4th at pp. 724-726.) The Court upheld the Commission's order, finding that the Commission's interpretation and application of the statutes was reasonable. (*Id.* at pp. 746-747.)

[27] Cal. Const., art. XII, § 6 provides:

> The commission may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction.

> additional authority and jurisdiction upon the commission...." (Cal. Const., art XII, § 5.)
>
> Pursuant to this grant of power, the Legislature enacted Public Utilities Code section 701, conferring on the commission expansive authority to "do all things, whether specifically designated in [the Public Utilities Act] or addition thereto, which are necessary and convenient" in the supervision and regulation of every public utility in California. *The Commission's authority has been liberally construed.* (citation omitted) *Additional powers and jurisdiction that the Commission exercises, however, must be cognate and germane to the regulation of public utilities* ....." (citation omitted).

(*CLAM, supra,* 25 Cal.3d at pp. 905- 906 (emphasis added).)[28]

Here, review of the User Fee was reasonably related to, and cognate and germane to, the Commission's obligation under section 451 to ensure that charges "demanded and received" by Cal-Am in its customer bills are just and reasonable.

In addition, the Commission's inherent and broad authority to act will be upheld *unless the Legislature places a specific statutory limit on its power.* In *Edison v. Peevey, supra,* the Court stated:

> ...we have described PUC as 'a state agency of constitutional origin with far-reaching duties, functions, and powers,' whose 'power to fix rates [and] establish rules' has been 'liberally construed.' (citations omitted) If PUC lacked substantive authority to propose and enter into the rate settlement agreement at issue here, it was not for lack of inherent authority, but because this rate agreement was barred by some

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[28] See also *PG&E Corporation v. Public Utilities Commission* ("*PG&E v. PUC*") (2004) 118 Cal.App.4th 1174, 1198-1199; *Southern California Edison Company v. Peevey* ("*Edison v. Peevey*") (2003) 31 Cal.4th 781, 792; *San Diego Gas & Electric Company v. Superior Court* ("*SDG&E v. Superior Court*") (1996) 13 Cal.4th 893, 915.

> specific statutory limit on PUC's power to set rates. (citation omitted)

(*Edison v. Peevey, supra,* 31 Cal.4th at p. 792.)

Subsequently, in *PG&E v. PUC, supra,* the Court affirmed:

> In *Southern California Edison Co. v. Peevey, supra,* 31 Cal.4th at page 792, the Supreme Court acknowledged that when the PUC has inherent authority to act, such authority is only limited when barred by some specific statutory limit on PUC's power.

(*PG&E v. PUC, supra,* 118 Cal.App.4th at pp. 1199-2000.)

The District identifies no statutory prohibition in either the Public Utilities Act, the District Law, or elsewhere, which limits Commission review of charges such as the User Fee when they are to be collected as a component of public utility cost recovery. Thus, the Commission's review of the User Fee was a reasonable and lawful exercise of its authority under section 451.

2. The plain language of section 451 is clear, and supports Commission review of the proposed User Fee.

The District contends that application of section 451 to allow review the User Fee ran afoul of the plain language of the statute. (Pet., at pp. 21-23, citing e.g., *People v. Canty* (2004) 32 Cal.4th 1266, 1276-1277 [To determine the meaning of a statute, one must first look to the plain language of the statute, giving words their ordinary of "plain meaning."].)[29]

[29] See also *Lungren v. Deukmajian* (1988) 45 Cal.3d 727, 735.

The District argues the plain language of section 451 states only a broad requirement that utility charges be just and reasonable, i.e., charges demanded and received by the utility "for itself." However, the plain language of the statute actually states that "all charges" demanded or received by a utility must be just and reasonable. The language includes no limitations or exceptions regarding the type of charges that fall within the just and reasonable requirement.[30]

The District also argues that section 451 makes no reference to the Commission, and that review of charges such as the User Fee would be permissible only if the statute explicitly provided for such review.[31] However, there is no requirement that a statute enumerate all actions that may be allowed or prohibited, or all actions the Commission may take in exercising its authority under a statute. For example, in *Pac Bell Wireless, supra,* 140 Cal.App.4th at pp. 741-742 the Court stated: "[W]e agree that section 451 is not void for vagueness on its face" (citing *Carey v. Pacific Gas and Electric Company* (1999) 85 Cal.P.U.C.2d 682, 689 ["it would be virtually impossible to draft Section 451

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[30] The District suggests the Legislature could not possibly have intended to subject charges by government entities to such scrutiny. (Pet., at p. 23.) However, the District offers no legislative history which supports that conclusion. Thus, while the District may disagree with the result in this case, that is not grounds for legal error. (*Southern California Edison Company v. Public Utilities Commission* (2005) 128 Cal.App.4th 1, 8 ["The fact that Edison does not like the Commission's findings and conclusions simply does not provide grounds for reversal."].

[31] The District also suggests Cal-Am's collection of the User Fee for the District is a purely ministerial function. (Pet. at p. 22.) Even if that were true, the District does not establish why that is relevant or dispositive. More important, however, is that the User Fee is not analogous to fees such as franchise fees which a utility may collect on its bills behalf of a local government entity. (See Part C below) The User Fee is a charge for activities that are dynamic, and implementation involves certain discretionary decisions and actions by both Cal-Am and the District.

to specifically set forth every conceivable service, instrumentality and facility which might be defined as 'reasonable' and necessary in the promotion of public safety. That the terms are incapable of precise definition given the variety of circumstances likewise does not make Section 451 void for vagueness...."].).

Review of the User Fee was also reasonable and consistent with case law which states:

> It is a fundamental principle of utility regulation that the burden rests heavily on a utility to prove it is entitled to the specific ratemaking treatment it seeks, and not upon the Commission, its staff, or any interested party to prove the contrary.

(*Re Southern California Edison Company* [D.83-05-036] (1979) 2 Cal.P.U.C.2d 89, 98-99.)[32]

Here, approval of the User Fee was sought by Cal-Am. Thus, while the Commission has never suggested that recovery of the User Fee is improper or unlawful, the requested cost approval carried a burden to establish its reasonableness. The Commission did no more than require the parties to meet that burden by submitting adequate explanation and evidence to meet that burden. (See e.g., D.09-07-021, *supra,*

[32] See also, *Railroad Commission v. Pacific Gas and Electric Company* (1938) 302 U.S. 388, 401; *Southern Pacific Company v. Public Utilities Commission* (1953) 41 Cal.2d 354, 362.

119-123 (slip op.).[33] The parties did submit evidence they believed would do so.[34] The Commission disagreed. (See e.g., D.11-03-035, at pp. 9-17, located at Pet., Tab. 1.) But that does not render the review itself as unlawful.

Finally, the District contends that review was improper in light of the last sentence in section 451, which provides: "All *rules* made by a public utility affecting or pertaining to *its charges* or service to the public shall be just and reasonable." (Pet., at p. 22.)

The District argues the word "charges" as used in that sentence means charges the utility collects for itself. Thus, since words should generally be interpreted uniformly throughout a statute, the just and reasonableness requirement also applies only to charges Cal-Am collects "for itself."

It is generally true that the words in a statute should be interpreted uniformly. However, the words of a statute must also be read in context. (*Latkins v. Watkins*

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[33] See specifically, D.09-07-021, *supra*, at pp. 119-123 (slip op.) [Evidence and information such as: description of programs; explanation of program roles and activities as between Cal-Am and the District; choice of percentage revenue assessment; explanation to justify the significant proposed User Fee cost increase; discussion of ASR program costs and activities; description of reimbursable activities; demonstration of cost-effectiveness including why proposed implementation is most cost-effective; description of reimbursable activities; rates at which services are reimbursed; invoicing format; categorization of services; reporting format; ownership of work product; term of the agreement; and other possible cost-effective methods for Cal-Am to meet its responsibilities for the Mitigation and ASR Programs.].

[34] Evidence submitted in support of the User Fee consisted of: MPWMD/Christensen; MPWMD/Urquhart; MPWMD/Prasad; MPWMD/Oliver; MPWMD/Hampson; MPWMD/Fuerst; Cal-Am/Stephenson; Cal-Am/Kilpatrick; Cal-Am/Schubert; and MPWMD/Dickhaut. (See also D.11-03-035, at p. 11 ["The record consists of Cal-Am's application with supporting testimony."], & p. 23 [Ordering Paragraph Number 23].)

Associated Industries (1993) 6 Cal.4th 644, 658-659 ["The meaning of a statute may not be determined from a single word or sentence; words must be construed in context...."].)

Section 451 contains various requirements. The issue here pertains to the requirement that "all charges demanded or received" be reasonable. The issue the District refers to pertains to rules the utility makes relating to "its charges." The word charges is used and modified somewhat differently in connection with the two requirements. That does not mean the Commission erred.

3. Nothing in the Public Utilities Act or the California Constitution conflicts with the Commission's application of section 451 in this matter.

The District contends the Commission's construction of section 451 conflicts with the Public Utilities Act, and the California Constitution. (Pet., at pp. 24-25, see e.g., *Walnut Creek Manor v. Fair Employment & Housing Commission* (1991) 54 Cal.3d 245, 268 ["Statutes must be read in context, keeping in mind the statutory purpose, and statutes or statutory sections pertaining to the same subject must be harmonized, both internally and with each other, to the extent possible".].)

The District cites no specific provision or provisions of the Public Utilities Act which it believes gives rise to any conflict. Nor does it explain the nature of the alleged conflict or inconsistency. Thus, its first allegation should be rejected.[35]

[35] If the District means only that the Commission's application of section 451 conflicts with that statute itself, that claim is incorrect for the reasons explained throughout this Answer.

With respect to the California Constitution, the District points to Article XII, Section 3, which provides:

> Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers, are public utilities subject to control by the Legislature. The Legislature may prescribe that additional classes or private corporations or other persons are public utilities.

(Cal. Const., art XII, § 3.)

The District reasons that review of the User Fee conflicted with the constitutional principle that Commission jurisdiction extends to only public utilities. (Pet., at p. 24, citing e.g., *County of Inyo v. Public Utilities Commission* ("*County of Inyo*") (1980) 26 Cal.3d 154, 164.)[36]

Section 3 merely enumerates the types of private corporations and persons that are defined as public utilities. The Commission did not attempt to define the District as a public utility or treat it as a regulated entity. Rather, the Commission's actions

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[36] The District also cites *Santa Clara, supra,* 124 Cal.App.4th at p. 356, to support its argument. That case involved the limited question of Commission jurisdiction over a rail district's light rail crossings under Public Utilities Code sections 1201 & 1202, as opposed to section 99152. (*Santa Clara, supra,* 124 Cal.App.4th at p. 355.) The Court found that sections 1201 & 1202 did not apply to transit districts. Thus, while the Commission did have safety jurisdiction over the district's light rail crossings under section 99152, it did not have jurisdiction over them under sections 1201 & 1202. (*Id.* at p. 365.) *Santa Clara* offers no guidance here because this matter did not involve any similar comparison of Commission jurisdiction pursuant to different Public Utilities Code sections.

reasonably and lawfully focused on its jurisdiction to review costs sought to be recovered by Cal-Am from its ratepayers. Thus, it was the method of recovering the proposed charges that warranted lawful review as cognate and germane to utility regulation, and reasonably related to the purpose of section 451.

County of Inyo is also not analogous to the facts of this proceeding. That case involved a complaint by the County against a local municipal utility ("muni"). The complaint asked the Commission to regulate the water rates the muni charged to the County and its residents. The Commission concluded it did *not* have jurisdiction over muni, because it was not in the class of entities identified by statute as subject to regulation. (*County of Inyo*, *supra*, 26 Cal.3d at p. 156.) The Court affirmed the Commission's order, finding that the Commission's jurisdiction under Section 3 does not include municipal utilities. (*Id,* at p. 165.)[37]

The facts here are distinguishable. In *County of Inyo,* the charges in question were those the muni independently and directly sought from residents under the City charter. It did not seek recovery in charges to be recovered by a Commission regulated water utility. Had the District chosen to recover its charges in the same manner, Commission review would not have been triggered. But it did not. By seeking recovery via the regulated entity the charges fell squarely within the Commission's purview.

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[37] The Court also noted that the definition of a public utility under Public Utilities Code section 216 did not apply because the muni was just a middleman for purposes of the water distribution of water, and only the "originating" entity is a public utility subject to regulation. (*County of Inyo, supra,* 26 Cal.3d at p. 166.)

4. Nothing in the District Law repeals or supersedes the Commission's authority under the Public Utilities Code.

The District states it is the rule that a specific provision of a statute controls a general provision. Accordingly, it reasons that because the more recent District Law specifically allows it to collect charges on a utility's bill, it "effectively repeals any limitation on Petitioner's authority that might arise out [of] the broadly-stated, century-old Section 451. . . ."[38] (Pet., at pp. 26-27, citing *Santa Clara, supra,* 124 Cal.App.4th at p. 360; and *People ex rel. Public Utilities Commission v. City of Fresno* ("*City of Fresno*") (1967) 254 Cal.App.2d 76, 84.)

The District's argument should be rejected because it already acknowledged there is no conflict between the Public Utilities Act and the District Law. (See Application for Rehearing of D.11-03-035, at p. 175 ["MPWMD does not believe any conflict exists between the MPWMD Enabling Act and Section 451."]. Its reliance on *Santa Clara* and *County of Inyo* is also flawed.

In *Santa Clara,* the Court went only so far as to state that a later enacted, and more specific provisions of *related* statutes may supersede or modify an earlier provision. (*Santa Clara.* supra, 124 Cal.App.4th at pp. 360-361.) For example, in *Santa Clara* the Court reviewed the interplay between section 1201 and 1202, both of which are related provisions governing railroad crossings under the Public Utilities Act.

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[38] The District reiterates its claim that nothing in section 451 explicitly provides for review of charges such as the User Fee, and that there is a conflict between section 451 and other provisions of the Public Utilities Act. These arguments have been discussed and refuted elsewhere in this Answer, thus they will not be repeated here.

By contrast, this matter involves two separate, distinct, and *unrelated* statutory schemes, i.e., the District Law and the Public Utilities Act. *Santa Clara* does not address any perceived conflicts arising between such separate statutory schemes.

City of Fresno involved a City's condemnation of utility property. The utility argued condemnation could not proceed absent Commission approval of the City's action. The Court disagreed, holding the City had independent statutory authority to condemn property within its boundaries. (*City of Fresno. supra*, 254 Cal.App.2d at pp. 80-81.)

City of Fresno might be relevant had the Commission decided upon the issue of the District's authority to impose a User Fee. It did not. As already discussed, for purposes of this proceeding the Commission assumed the District has such authority. The issue here was merely whether the proposed costs were reasonable for purposes of including them as a component of Cal-Am's utility bills. That is a different question.

Further, the District ignores that the District Law specifically states: "[T]he provisions of this chapter do not supersede, but are supplemental to and compliment other applicable provisions of law." (District Law Section 118-284.) Thus, there is no merit to the District's claim that the District Law acts to repeal the Commission's lawful authority under section 451.

C. Commission review of the proposed User Fee was reasonable, lawful, and consistent with the Commission's authority over the ratemaking treatment of local entity fees and taxes.

The District contends the Commission's interpretation of 451 is absurd and should be rejected because it would result in practical and jurisdictional confusion. (Pet., at pp. 28-29, citing *MacCarther v. Pacific Telesis Group* (2010) 48 Cal.4th 104, 110 [For the proposition that statutory constructions which defy common sense or lead to absurd results should be avoided.].)

To support its argument, the District argues that no Commission decision explains how a government entity such as itself is to seek review so that it may collect its tax or fee through utility bills. (Pet., at p. 28-29.)

This is a perplexing contention in light of the fact that D.09-07-021 specifically identifies the concerns the Commission had regarding the proposed User Fee. (D.09-07-021, *supra*, at pp. 120-121 (slip op.) [Concerns that: (1) setting the User Fee as a percent of Cal-Am's total revenue, rather than a fixed amount tied to actual demonstrated program costs could result in a substantial and possibly unwarranted increase in the total collected as Cal-Am's rates increase; and (2) apparent expenditures by Cal-Am and the District for the same activities may result in duplicative fees and efforts that are not cost-effective; and (3) the District offered no explanation for the requested Aquifer Storage and Recovery Program costs.].).

Decision 09-07-021 also provided clear direction regarding what supplemental information and explanation would be required to secure Commission approval of the

fee. (D.09-07-021, *supra,* at pp. 122-123 [Information such as: (1) additional detail describing the programs and associated project activities to be implemented; (2) an explanation of responsibility for the programs and particular projects as between Cal-Am and the District; and (3) information to show how and/or why the proposed costs are cost-effective.].

Many of the same concerns and requirements were reiterated in the Decision challenged here. (See e.g., D.11-03-035, at pp. 1-4, 10-16.) Thus, there is no legitimate claim that the District was not aware of what was needed to obtain cost recovery of the User Fee through the Cal-Am customer's bills.

The District also argues that neither the Public Utilities Code nor the Commission's Rules of Practice and Procedure apply to or set requirements for government entity fees and taxes.

That may be true. But the code and rules do contain specific requirements for the review of many costs and activities that are legitimately within the Commission's authority. And no legal authority establishes that lack of such a specific statute or rule renders Commission action unlawful.[39]

Contrary to the District's suggestion, it is not unusual for the Commission to consider local entity users' fees, franchise fees, or other such fees and taxes when collection is requested on public utility bills. Generally, such fees and taxes represent

[39] One exception may be local franchise fees and taxes which are contemplated under Public Utilities Code section 6001 et seq..

costs incurred by the local entity, and collected for that entity by the utility, for the local entities' expenditures on schools, roads, and various municipal services. (See e.g., *Investigation on the Commission's Own Motion to Establish Guidelines for the Equitable Treatment of Revenue-Producing Mechanisms Imposed by Local Government Entities on Public Utilities* [D.89-05-063] (1989) 32 Cal.P.U.C.2d 60-70.)[40] Such fees may also represent a local entities' charge to the utility for the use of land or commodities, etc., the utility requires to produce its product. (*Id.* at pp. 64, 69-70.)

In some instances local fees are simply considered a "pass through" or "pass along" charges. (*Id.* at p. 64.) In other instances, the Commission has adopted certain procedures and requirements regarding the collection of these costs. (*Id.* at pp. 69-71.) That is because the Commission has reasoned that while it has no jurisdiction to determine the authority of a local taxing entity to impose such charges, it does have jurisdiction over the ratemaking treatment of the costs of local fees and taxes imposed on public utilities. (*Id.* at pp. 71-72 [Finding of Fact Numbers 9 & 10].)

Nothing in the challenged Decision departed from these established principles. And nothing in the District Law requires the Commission to simply "pass through" the District's costs on utility bills without any scrutiny whatsoever. In a case such as this, such a requirement would be a particular disservice to Cal-Am's ratepayers because the User Fee is not comparable to the typical users' fee or franchise fee. That is, it is not

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[40] See also *Advantage Energy, LLC, Complainant v. San Diego Gas & Electric Company, Defendant* [D.02-01-049] (2002) __ Cal.P/U.C.3d __, 2002 Cal. PUC LEXIS 43.

strictly a commodity fee on Cal-Am, nor is it associated with the District's costs to provide independent services to the public. Rather, the User Fee represents what it costs the District to implement programs that are Cal-Am's responsibility. And there is a cross-over in certain program activities actually performed, and costs requested, by each entity. Thus, this particular type of fee is rather unique and warrants Commission review of the reasonableness and ratemaking treatment afforded to the costs.

D. The California Supreme Court is the lawful and proper forum for Commission decisions pertaining to water corporations.

The District acknowledges that section 1756(f) requires Supreme Court review of all matters pertaining to water corporations (except in the case of complaints and enforcement actions). However, the District suggests that application of section 1756(f) is only a matter of "form." Thus, should the Court grant writ, an alternative would be for the Court to transfer the matter to the State Appellate Court, Sixth District, which encompasses Monterey County. (Pet., at pp. 30-31, relying on Rule 8.500(b)(4) of the California Rules of Court.)

Rule 8.500(b)(4) does not support the District's transfer request. That rule applies to Supreme Court review of Court of Appeal decisions. This matter involves review of a Commission decision, which is governed solely by section 1756(f). Accordingly, while the Commission respectfully requests that the Court deny writ, any determination otherwise requires Supreme Court review by law. Any efforts by parties to circumvent Supreme Court review should be rejected.

V. CONCLUSION

For the reasons stated above, the Commission submits that its Decision was both reasonable and lawful. Because the District has failed to show any basis for the Court to grant its petition for writ of review, the Commission respectfully requests that the Petition be denied.

Dated: April 2, 2013

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing Respondent's Answer is 8,674 words in length. In completing this word count, I relied on the "word count" function of the Microsoft Word program.

Dated: April 2, 2013

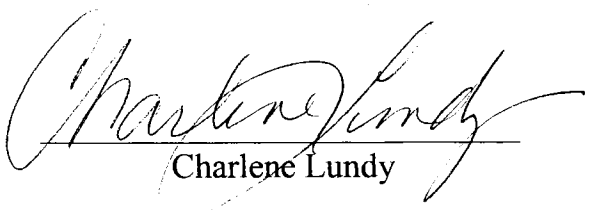
Pamela Nataloni

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I am a citizen of the United States, over the age of 18 years, with business address at 505 Van Ness Avenue, San Francisco, California and am neither a party to nor interested in **Case No. S208838, *Monterey Peninsula Water Management District v. Public Utilities Commission of the State of California*,** before the Supreme Court of the State of California.

On April 2, 2013 San Francisco, California, I caused to be deposited in overnight mail copies of **ANSWER OF THE RESPONDENT TO PETITION FOR WRIT OF REVIEW** in **Case No. S208838** on all parties listed on the attached service list.

Each copy was enclosed in a sealed envelope and all postage thereon fully prepaid. I certify under penalty of perjury that the foregoing is true and correct.



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