

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Application Liberty  
Utilities (Park Water) Corp. (U314W) for  
an Order Authorizing Liberty Utilities  
(Park Water) Corp. to Purchase the City of  
Perris's Municipal Water Systems.

Application 18-05-011

**OPENING BRIEF OF THE PUBLIC ADVOCATES OFFICE**

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## **SUMMARY OF RECOMMENDATIONS**

As discussed in detail below, the California Public Utilities Commission must deny Liberty's Application in this proceeding and reject Liberty's proposed acquisition of the City of Perris water systems.

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**I. INTRODUCTION**

Pursuant to Rule 13.11 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure, the Public Advocates Office hereby submits its Opening Brief in Application (A.) 18-05-011. This Brief is timely filed pursuant to the August 13, 2019 deadline set forth by the Administrative Law Judge at the July 25, 2019 evidentiary hearings.<sup>1</sup>

The Commission must deny Liberty's proposed acquisition of the Perris water systems. Liberty has failed to meet its burden<sup>2</sup> to show that the acquisition yields tangible benefits to ratepayers.<sup>3</sup> As part of the acquisition, Liberty proposes a 10-year interim rate period in which it would not file any general rate cases (GRCs) for the Perris systems with the Commission. Liberty's interim rate proposal would harm ratepayers by avoiding the thorough review of the utility's operations, management, water quality, customer service, and the many other topics of public concern that are addressed during a

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<sup>1</sup> Evidentiary Hearing Transcript [Hereinafter Evid. Transcript] at p. 172, lines 18-20.

<sup>2</sup> D.06-05-016, Southern California Edison Test Year 2006 General Rate Application, at p. 7 (the burden of demonstrating the relief requested is on the applicant).

<sup>3</sup> D.16-12-014, Decision Adopting Settlement and Approving Application of California American Water Company to Purchase the Meadowbrook Water Company, at p. 12 ("The Commission requires . . . the buyer [utility] to demonstrate that the buyer's acquisition of the public utility yields a tangible benefit to the ratepayers.").

GRC.<sup>4</sup> Moreover, the Commission would have no means of determining whether rates charged to Perris customers are just and reasonable during the 10-year interim period.<sup>5</sup> Liberty's proposed acquisition will also significantly raise rates for Perris customers and cause a substantial rate hike in Year 11 once the proposed 10-year interim rate period expires.

Liberty did not adequately disclose rate impacts to Perris residents prior to the November 7, 2017 special election regarding the sale of the Perris water system. Liberty did not provide a written statement regarding rate impacts 30 days prior to the election as required by Pub. Util. Code § 10061(c)(4) and D.99.10-064, the Commission decision establishing guidelines for the evaluation of acquisitions. Liberty also did not disclose additional charges to fund the for the Public Utilities Commission Reimbursement Fee (Commission Reimbursement Fee) and the California Alternative Rates for Water program (CARW) surcharge that Perris residents will see on their bills.<sup>6</sup>

For these reasons, the Commission must deny the proposed acquisition.

## **II. SUMMARY OF ARGUMENTS**

1. Liberty's proposed exemption from 10 years of GRC reviews is unprecedented, contrary to the Public Utilities Code and the Revised Rate Case Plan, and fails to provide the same level of ratepayer protection and regulatory oversight afforded to Liberty's other customers;

2. Liberty's inconsistent information regarding the needed repairs for two Perris water system tanks calls into question the adequacy of Liberty's ability and commitment to operate the water systems safely, reliably, and efficiently, and exemplifies why GRC review is essential and cannot be suspended for 10 years;

3. Perris customers will likely face a substantial rate hike in Year 11 once the 10-year interim rate period expires. Liberty never informed residents of likely Year 11 rate impacts. Due (in part) to this rate hike, the proposed acquisition does not benefit ratepayers as advertised by Liberty;

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<sup>4</sup> D.07-05-062, Revised Rate Case Plan, at p. 3, 24, and Appendix A at p. A-21 (Minimum Data Requirements, showing some of the areas of concern addressed during a GRC).

<sup>5</sup> Pub. Util. Code § 451.

<sup>6</sup> Pub. Util. Code § 10061(c)(4)(C) (utility must disclose additional costs from the acquisition prior to the election).

4. Liberty did not provide voters with the written notice regarding rate impacts required by Pub. Util. Code § 10061(c)(4) and D.99-10-064 prior to the November 7, 2017 election;

5. Liberty cannot rely on the hodgepodge of City Council Agenda documents posted on the City of Perris website to provide the requisite notice under Pub. Util. Code § 10061(c)(4) and D.99-10-064 as these documents do not contain the required information on rate impacts;

6. Liberty cannot rely on the City Council Agenda documents to provide notice pursuant to Pub. Util. Code § 10061(c)(4) and D.99-10-064 because these documents were never provided directly to Perris voters;

7. In its campaign materials, Liberty wrongly describes the 10-year interim rate period as providing a “cap” on rates when in fact the proposed acquisition’s Asset Purchase Agreement allows for four additional rate adjustments that can occur annually during the 10-year period and are not capped at any particular level;

8. Liberty’s written notice to Perris customers – provided only *after* it filed this Application in May of 2018, and thus, long after the November 7, 2017 election –does not adequately inform residents what they can expect on their bills post-acquisition;

9. Liberty did not disclose additional charges to Perris customers including the Commission Reimbursement Fee and the CARW program surcharge.

### **III. BACKGROUND**

#### **A. FACTUAL BACKGROUND**

The Perris municipal water system serves approximately 3,741 metered customers within the City of Perris (City) and consists of two systems – the North Perris System and the Downtown System.<sup>7</sup> The Eastern Municipal Water District (EMWD), which serves the rest of Perris, initially considered purchasing the North Perris and Downtown water systems.<sup>8</sup> EMWD ultimately opted not to pursue the acquisition after it found

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<sup>7</sup> Exhibit Liberty-01 (Jackson Direct Testimony) at p. 1, lines 22-24.

<sup>8</sup> Exhibit PA-1 (Ma Direct Testimony) at p. 19, lines 9-11 and at Appendix B (EMWD’s Considerations).



maintenance and rehabilitation requirements in the Perris Downtown system would be so extensive that it would need to substantially raise rates.<sup>9</sup>

The City issued a request for proposals to purchase the North Perris and Downtown water and sewer systems in 2015.<sup>10</sup> Two water utilities – Liberty and Suburban Water Company – responded, with the City ultimately selecting Liberty.<sup>11</sup>

Liberty and the City proceeded to negotiate a draft Asset Purchase Agreement (APA) setting forth the terms of the acquisition.<sup>12</sup> Because Liberty is proposing to acquire a municipal utility, a majority of voters must approve the acquisition in a special election.<sup>13</sup> The City placed the issue of whether the acquisition should be approved on the ballot as “Measure H” for a special election held on November 7, 2017.<sup>14</sup> Perris residents voted to approve the acquisition in that election.<sup>15</sup>

Following the election, Liberty and the City finalized the APA and filed this Application on May 9, 2018 seeking the Commission’s approval.

## **B. THE PROPOSED ACQUISITION’S ASSET PURCHASE AGREEMENT**

Liberty’s Application seeks Commission approval of the APA setting forth the terms of the acquisition. The key terms of the APA are: 1) Liberty will purchase the water systems for \$11,500,000; 2) Liberty will establish a 10-year interim rate plan within which rates will be structured as set forth in the APA; 3) Liberty is permitted to raise customer rates each year by 3.3% or EMWD’s rate increase for that year, whichever is higher; and 4) Liberty is permitted to raise rates to account for additional costs

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<sup>9</sup> Exhibit PA-1 at Appendix B (EMWD’s Considerations).

<sup>10</sup> Application at p. 8.

<sup>11</sup> Exhibit PA-1 at p. 7, lines 1-5.

<sup>12</sup> A.18-05-011, Exhibit 1 (Asset Purchase Agreement). Ultimately, the sale of the sewer system was not made part of the proposed acquisition.

<sup>13</sup> Pub. Util. Code § 10061(c)(3).

<sup>14</sup> Exhibit PA-1 at p. 7, lines 7-9.

<sup>15</sup> Exhibit PA-1 at p. 8, lines 1-3.

associated with changes in water supply arrangements, the cost of wholesale water, changes in the law, or damage or destruction of assets.<sup>16</sup>

### C. LEGAL BACKGROUND

The Commission requires the acquiring utility to meet its burden of demonstrating that the acquisition provides tangible ratepayer benefits.<sup>17</sup> The Commission must also ensure that all rates are just and reasonable.<sup>18</sup>

Because this is a proposed acquisition of a municipal water utility, the sale of the water system must first be approved by a majority of voters in a special election.<sup>19</sup> As a critical part of this process, the acquiring utility must provide voters with a written notice at least 30 days before that election. California Pub. Util. Code § 10061(c)(4) provides that:

The municipal corporation, public agency, water corporation, or sewer system corporation proposing to acquire a municipal corporation public utility for furnishing water or sewer service *shall disclose* to the customers of the public water or sewer system to be acquired, *not less than 30 days prior to the date of election for formal approval of the acquisition, a written statement* which includes all of the following:

- (A) A summary of the price and terms of the proposed acquisition.
- (B) A comparison of the applicable water or sewer charges before and after the proposed acquisition.
- (C) The estimated savings to be achieved or additional costs expected to result, or both, from the proposed acquisition. (emphasis added)

The Commission adopted a similar notice requirement in D.99-10-064, which established guidelines for water utility acquisitions:

Notice of a proposed acquisition should be given to all affected customers at the time when any advice letter or application is filed with the Commission. Additionally, the notice should contain a comparison of the rates before the acquisition and for the first year after the acquisition . . .

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<sup>16</sup> A.18-05-011, Exhibit 1 (Asset Purchase Agreement at Section 6.6(e)).

<sup>17</sup> D.16-12-014, Decision Adopting Settlement and Approving Application of California American Water Company to Purchase the Meadowbrook Water Company, at p. 12.

<sup>18</sup> Pub. Util. Code § 451.

<sup>19</sup> Pub. Util. Code § 10061(c)(3).

and identify any cost, including a reasonable return, not fully reflected in the first year's rates. With respect to the acquisition of a water system of a municipality, *similar notice should be given to all affected customers prior to any election.*<sup>20</sup>

The purpose of the statute and Commission directive is clear: voters cannot make an informed choice regarding a pending acquisition of their water system without basic information about the acquisition's rate impacts.

#### IV. DISCUSSION

##### A. **LIBERTY'S ATTEMPT TO EXEMPT ITSELF FROM 10 YEARS OF COMMISSION GENERAL RATE CASE REVIEW IS DANGEROUS AND FAILS TO PROVIDE THE REQUIRED REGULATORY OVERSIGHT TO RATEPAYERS.**

The Public Utilities Code states that the Commission must require Class A water utilities to file a GRC application every three years.<sup>21</sup> The Commission's Revised Rate Case Plan requires Class A water utilities – which includes Liberty – to file a GRC application every three years.<sup>22</sup> Liberty's proposal to exempt Perris from GRC review for the next 10 years fails to comply with the Public Utilities Code and the Revised Rate Case Plan and harms ratepayers.

Liberty's request for a 10-year interim rate period is in sharp contrast to its campaign promise that: "Residents benefit from a state-regulated Class A water provider that is held to the highest standards of performance."<sup>23</sup> It is disingenuous to promise the benefits of Commission oversight while simultaneously seeking a 10-year exemption from regularly scheduled GRCs.

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<sup>20</sup> D.99-10-064 at Appendix D, p. 3 (emphasis added).

<sup>21</sup> Pub. Util. Code § 455.2(c).

<sup>22</sup> D.07-05-062 at Appendix A, p. A-ii.

<sup>23</sup> Exhibit PA-3 (archived web pages from the CityofPerrisMeasureH.org website); *see also* Application at p. 9.

The Public Utilities Code requires that all charges demanded or received by a utility be just and reasonable.<sup>24</sup> Utilities are also required to furnish and maintain adequate, efficient, just, and reasonable services, equipment, and facilities “as are necessary to promote the safety, health, comfort, and convenience of its patrons . . .”<sup>25</sup> Triennial GRC review is the Commission’s mechanism for ensuring these statutory obligations are met.

A GRC allows for close examination of a utility’s rates, expenses, capital budget proposals, water quality, safety, customer service, and adequacy of supply and infrastructure to meet critical fire flow and supply criteria.<sup>26</sup> GRCs also provide the public with an opportunity to gain more information into a utility’s operations and an opportunity to provide input via public participation hearings, by becoming a party to the GRC proceeding, and by providing public comment to the Commission. This long-established review process promotes transparency and protects customers from unsafe and unreliable water service and inequitable practices.

Liberty’s 10-year interim plan excludes its (proposed) Perris service area from this regularly scheduled review, denying Perris ratepayers the same level of consumer protection provided to other Class A water utility ratepayers, including ratepayers in Liberty’s own Central Basin Division.<sup>27</sup>

Under the terms of the APA and separate from any GRC review, Liberty can annually raise rates during the 10-year interim period. This includes raising rates by the higher of 3.3% or EMWD’s rate increases each year, as well as increases from the four-rate adjustment mechanisms.<sup>28</sup> These adjustments would take place outside of the GRC

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<sup>24</sup> Pub. Util. Code § 451.

<sup>25</sup> Pub. Util. Code § 451.

<sup>26</sup> D.07-05-062, Revised Rate Case Plan, at Appendix A at p. A-21 (Minimum Data Requirements, showing some of the areas of concern addressed during a GRC).

<sup>27</sup> Pub. Util. Code § 453(a) (“No public utility shall, as to rates, charges, service, facilities, or in any other respect . . . subject any corporation or person to any prejudice or disadvantage.”).

<sup>28</sup> A.18-05-011, Exhibit 1 (Asset Purchase Agreement at Section 6.6(e)). The four-rate adjustment mechanisms allow for “any rate increases attributable to: A, changes in supply arrangements to serve customers; B, changes in the cost of wholesale water to serve system customers that exceed changes in

framework, hindering the Commission’s ability to ensure just and reasonable rates.<sup>29</sup> For these reasons, the proposed acquisition and the associated interim rate plan would not adequately protect Perris ratepayers.

**1. The Commission’s Determination in Yermo Water Company Acquisition Does Not Support Liberty’s Interim Rate Proposal**

Liberty cites to the acquisition of the former Yermo Water Company (“Yermo”) by Liberty Utilities (Apple Valley Ranchos Water) Corp. (“AVR”) in Resolution W-4998 as support for its interim rate proposal.<sup>30</sup>

However, Resolution W-4998 set interim rates from when the Commission approved AVR’s acquisition of the Yermo system in 2014 only until AVR’s next scheduled GRC, for Test Year 2018.<sup>31</sup> Further, the Commission set interim service charges equal to AVR’s charges in existence at the time Liberty filed its acquisition request.<sup>32</sup> In adopting these interim rates, the Commission took into consideration the funds required to make needed repairs and upgrades.<sup>33</sup>

Resolution W-4998 does not support the Perris 10-year interim rate plan. To the contrary, it affirms the Commission’s expectation that a newly acquired service area and water system will be subject to the next regularly scheduled GRC review and rate-setting. Allowing Liberty to operate outside of the GRC framework for 10 years is inconsistent with Resolution W-4998, the Public Utilities Code, and the Revised Rate Case Plan.<sup>34</sup>

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EMWD customer rates; C, changes in law or; D, damage to or destruction of assets comprising the water systems ordinary wear and tear accepted.” *Id.*

<sup>29</sup> Pub. Util. Code § 451.

<sup>30</sup> Exhibit Liberty-03 (Jackson Rebuttal) at p. 13, beginning on line 26.

<sup>31</sup> Resolution W-4998 at p. 19 (Findings and Conclusions, No. 14), and at p. 23 (Ordering Paragraph 8).

<sup>32</sup> Resolution W-4998 at pp. 7-8.

<sup>33</sup> Resolution W-4998 at p. 8.

<sup>34</sup> Pub. Util. Code § 455.2(c); D.07-05-062, Revised Rate Case Plan, at Appendix A, p. A-ii.

## **2. Liberty’s Conflicting Proposed Tank Budget Information Demonstrates Why a 10-Year Interim Rate Period with No GRC Review Presents a Significant Risk to Customers.**

Liberty presented its preliminary capital budget for the first five years post-acquisition.<sup>35</sup> The budget includes \$50,000 to fund tank security and safety improvements for the Perris Downtown system’s two 50-year old steel tanks.<sup>36</sup>

However, the 2014 Dive/Corr Tank Inspection Reports document more extensive rehabilitation needs for these two tanks than Liberty budgeted for during the first five years.<sup>37</sup> Liberty confirmed in discovery that the City had not performed any of the repairs outlined in the 2014 Dive/Corr Inspection Reports,<sup>38</sup> and also provided a detailed repair and improvement estimate of \$381,000 and \$438,000 for the West and East tanks, respectively.<sup>39</sup> As a result of the Public Advocates Office’s inquiry, Liberty stated that it would perform the West tank work “one to two years after acquiring the system,” and one to two years after that for the East tank.<sup>40</sup>

The total \$819,000 estimate for tank repair and improvements is substantially higher than the \$50,000 that Liberty initially budgeted. It is unclear whether Liberty was aware of the extent of the needed tank maintenance, and whether it would have committed to perform the required repairs and improvements had the Public Advocates Office not investigated and identified the tanks’ poor conditions and rehabilitation needs.

Without the benefit of a GRC review, the Commission and Perris customers would be limited in ensuring that Liberty undertakes the “much needed capital improvements”<sup>41</sup> in a timely and cost-effective manner.

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<sup>35</sup> Exhibit Liberty-02 (Dalton Testimony) at p. 2, lines 11-12 and Attachment Dalton-02.

<sup>36</sup> Exhibit Liberty-02 at Attachment Dalton-02, p. 1 of 5, row T&D Reservoirs; *see also* Exhibit PA-2 (Ma Rebuttal) at p. 18, lines 4-7.

<sup>37</sup> Exhibit PA-2 at pp. 17-20 and Attachment H (Dive/Corr Inspection Reports).

<sup>38</sup> Exhibit PA-2 at p. 19, lines 10-13.

<sup>39</sup> Exhibit PA-1 at p. 19, lines 9-10.

<sup>40</sup> Exhibit PA-1 at p. 19, lines 10-13.

<sup>41</sup> Exhibit Liberty-02 at pp. 1-2, lines 26-1.

**B. THE PROPOSED ACQUISITION HARMS RATEPAYERS BY SUBJECTING THEM TO A SUBSTANTIAL RATE HIKE IN YEAR 11**

Following the 10-year interim rate period in either 2029 or 2030, Liberty would seek to establish rates based on a cost of service study.<sup>42</sup> The Commission cannot approve the proposed acquisition because Year 11 will likely see a substantial rate hike that will present a significant and unreasonable burden to Perris customers.

Liberty's "Yes on Measure H" campaign material and its Application focused on the 10-year interim rate plan. However, Liberty would likely own the water system in perpetuity should the acquisition be approved. It is wrong to dangle unsustainable interim rates in front of prospective customers with no discussion of substantial rate increases 10 years later.

This rate hike would be due in part to the substantial infrastructure repairs to the Perris Downtown system.<sup>43</sup> Year 11 would also be the first year that Perris customers are responsible for paying a share of Liberty's General Office expenses.<sup>44</sup> The likelihood of a Year 11 rate hike is further supported by EMWD's determination not to proceed with acquiring the Perris systems.<sup>45</sup> EMWD found that: "Needed rate increases in the Downtown System would result in rates and charges that were substantially higher than the balance of the EMWD service area, resulting in rate disparity should the area be consolidated into the EMWD service area."<sup>46</sup> Data from Liberty's own Summary of Earnings indicate a potential 21% rate hike in Year 11.<sup>47</sup>

Liberty may seek to consolidate the Perris system with its Central Basin Division.<sup>48</sup> Should the Perris system be consolidated, Perris residents would face even

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<sup>42</sup> A.18-05-011 at p. 2.

<sup>43</sup> Exhibit PA-1 at p. 19; *see also* Section IV.A.2, *supra* (discussing needed tank repairs).

<sup>44</sup> Exhibit PA-1 at Appendix H (adjusting Liberty's estimate to include an allocation for General Office).

<sup>45</sup> Exhibit PA-1 at Appendix B.

<sup>46</sup> Exhibit PA-1 at p. 19, lines 11-13.

<sup>47</sup> Exhibit PA-1 at p. 19, lines 17-19 (citing Liberty's Response to Data Request PPM-1, #1.b)

<sup>48</sup> Exhibit PA-1 at p. 20, lines 4-10 (citing Liberty's Response to Data Request PPM-2, # 2).

higher increases.<sup>49</sup> This is because the monthly bill amount at Central Basin’s 2019 proposed rates is more than twice Perris’s at Liberty proposed rates (for the same 16.85 CCF monthly consumption).<sup>50</sup> Under consolidated tariff, Perris rates would need to increase significantly to close this gap.<sup>51</sup>

Liberty appears to concede that a Year 11 rate hike is a possibility once rates are set based on cost of service.<sup>52</sup> Liberty asserts that it “would propose a plan to mitigate any excessive increases, such as incorporating increases over more than one GRC cycle.”<sup>53</sup> However, it should give the City of Perris and the Perris ratepayers no comfort that Liberty offers to spread excessive increases over multiple GRC cycles. When the unavoidable, large rate hike hits in Year 11 there will be little recourse for the Perris customers. The acquisition will be in their rearview mirror and irreversible.

**C. LIBERTY’S 10-YEAR INTERIM RATE PLAN DOES NOT ENSURE JUST AND REASONABLE RATES OR RATEPAYER BENEFITS.**

Liberty portrays the acquisition as providing a 10-year “cap” on rates.<sup>54</sup> This portrayal is misleading. Section 6.6(e) of the APA allows Liberty to index its rates annually—by 3.3% or EMWD’s increase, whichever is higher. The 3.3% increase is therefore the *minimum* increase that Perris customers would face annually. On average, EMWD has raised its rates by 5.15% per year.<sup>55</sup> The Commission has no oversight over EMWD’s rates and cannot determine whether EMWD’s rates are just and reasonable.

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<sup>49</sup> Exhibit PA-1 at pp. 20-21. Monthly bill at average usage of 16.85 cubic feet, used in Liberty’s August 29, 2018 Customer Notice.

<sup>50</sup> Exhibit PA-1 at p. 21.

<sup>51</sup> Exhibit PA-1 at p. 21.

<sup>52</sup> See Exhibit Liberty-03 at p. 11, lines 3-6.

<sup>53</sup> Exhibit Liberty-03 at p. 11, lines 3-6.

<sup>54</sup> See e.g., Exhibit PA-3 (archived web pages from the CityofPerrisMeasureH.org website).

<sup>55</sup> Exhibit PA-2 at p. 10, lines 8-9 and Appendix D: City’s Response to Data Request PPM-12 (Notice), Attachment to City’s response, Bates Stamped PERRIS-000016.



Blindly allowing Perris customer rates to be increased by the same amount that EMWD increases its rates does not ensure that those rates are just and reasonable.<sup>56</sup>

Section 6.6(e) also includes four rate adjustment mechanisms to reflect:

A) changes in supply arrangements to serve System Customers, B) changes in the cost of wholesale water to serve System Customers that exceed changes in EMWD customer rates, C) changes in Law, or D) damage to or destruction of assets comprising the Water Systems. If any of the rate adjustment mechanisms are triggered there is no set limit to how high rates could be raised.

### **1. Liberty's Rate Adjustment Mechanisms are Ill-Defined and Flawed.**

Limited review of the rate adjustment mechanisms is particularly concerning given the uncertainty regarding their parameters and application. For instance, Liberty states that it would file a purchased water rate offset advice letter filing to increase rates as it does in its Central Basin Division.<sup>57</sup>

However, such offset filings require incremental expense calculations, which in turn require the availability of specific expense quantities embedded in base rates, such as purchased water expense, uncollectible expense, and franchise fees.<sup>58</sup> The authorized rate of return is also a necessary input in the offset filing and is used to determine the appropriateness of the adjustment.<sup>59</sup> These expense and rate of return input values are not available under Liberty's proposed interim rate plan because Liberty's rates would not be based on the cost of service.<sup>60</sup> Thus, contrary to Liberty's assertion, it is not possible for it to rely on "the exact process used to pass through increases in wholesale

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<sup>56</sup> Pub. Util. Code § 451.

<sup>57</sup> Exhibit Liberty-03 at p. 9, lines 11-13.

<sup>58</sup> Evid. Transcript at p. 75, lines 9-12, and at pp.78-79, lines 18-14 (cross examination of Mr. Jackson on information presented in Exhibit PA-6 (Liberty's Advice Letter 285 re. purchased water expense offset, dated June 29, 2018)).

<sup>59</sup> Evid. Transcript at p. 80, lines 5-21 (Jackson).

<sup>60</sup> Application at p. 7, Table 1; Evid. Transcript at p. 75-76, lines 20-3 (Jackson).

water rates from Central Basin Municipal Water District for [the] Central Water Division.”<sup>61</sup>

**D. LIBERTY FAILED TO PROVIDE CUSTOMERS WITH THE REQUIRED WRITTEN NOTICE REGARDING RATE IMPACTS PRIOR TO THE NOVEMBER 7, 2017 ELECTION.**

Liberty entirely failed to provide the written notices required by Pub. Util. Code § 10061(c)(4) and D.99-10-064 prior to the November 7, 2017 election.<sup>62</sup> Customers were never given a comparison of rates pre- and post-acquisition or informed of additional costs that would result from the acquisition prior to voting in the November 7 election.

In contrast, in another acquisition proceeding in which a utility acquired a municipal water system pursuant to the provisions of Pub. Util. Code § 10061 *et. seq.*, “a notice was mailed with each ballot showing that bills under [the utility’s] proposed rates for West Covina would be 8% to 9% lower than at present . . .”<sup>63</sup>

Liberty only provided a three-page notice directly to Perris customers *after* it filed this Application. This notice was mailed on August 29, 2018 long after the November 7, 2017 election (hereinafter referred to as the “August 29, 2018 Notice”).<sup>64</sup> While the August 29, 2018 Notice is substantially flawed – see Section IV.E, *infra* – at the least, it shows that Liberty understands what is meant by a customer notice.<sup>65</sup>

Liberty confirmed in discovery that **“Liberty Utilities did not send any other customer notice to all Perris customers.”**<sup>66</sup>

Liberty asserts that the Pub. Util. Code § 10061(c)(4) notice requirement was met through an assortment of City Council Agenda documents and campaign material urging

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<sup>61</sup> Exhibit Liberty-03 at p. 9, lines 11-13.

<sup>62</sup> D.99-10-064 at Appendix D, p. 3.

<sup>63</sup> Resolution W-4180 (February 3, 2000).

<sup>64</sup> Application at Exhibit 6 (providing the draft notice); Exhibit PA-2 (Appendix B: June 2019 Emails Regarding Customer Notice) (stating that final notice was mailed to residents on August 29, 2018).

<sup>65</sup> D.99-10-064; Pub. Util. Code § 10061(c)(4).

<sup>66</sup> Exhibit PA-2 at Appendix B (emphasis added).

voters to vote “Yes on Measure H.”<sup>67</sup> The City Council Agenda documents and Measure H campaign material – both separately and taken together – do not provide the rate information that Pub. Util. Code 10061(c)(4) and D.99-10-064 require and cannot be relied on to provide voters notice of rate impacts.

**1. The Promotional “Yes on Measure H” Campaign Flyers and Website Do Not Contain Required Information on Rate Impacts or Additional Charges.**

Prior to the November 7, 2017 election, Liberty mailed thousands of promotional “Yes on Measure H” campaign flyers to Perris residents.<sup>68</sup> The flyers state that “[t]he Perris City Council and Mayor support Measure H to help Perris communities and families,” and that the acquisition “Puts a Cap on Water Rates,” “Eliminates Millions in City Debt,” and “Improves Parks for Perris Families.”<sup>69</sup>

Liberty also points to the “Yes on Measure H” website.<sup>70</sup> Liberty did not include any pages from this now defunct website in its Application or assert that this website provided notice per Pub. Util. Code § 10061(c)(4) in its Application. However, the Public Advocates Office presented archived pages from this website during evidentiary hearings,<sup>71</sup> which demonstrate that the website language echoes the promotional campaign language featured on the flyers.<sup>72</sup>

The flyers and “Yes on Measure H” website constitute campaign advertisements – which include mass mailing material and electronic media ads – but not a written notice pursuant to Pub. Util. Code § 10061(c)(4) and D.99.10-064.<sup>73</sup> The flyers and “Yes on Measure H” website seek to induce Perris residents to vote yes on Measure H – they are not meant to provide a written disclosure regarding the acquisition’s impact on rates. The

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<sup>67</sup> Exhibit Liberty-03 at pp. 2-3.

<sup>68</sup> Evid. Transcript at p. 43, lines 1-2 (Jackson).

<sup>69</sup> Exhibit PA-2 at Appendix G.

<sup>70</sup> Exhibit Liberty-03 at p. 2, lines 12-14.

<sup>71</sup> Exhibit PA-3 (CityofPerrisMeasureH.org website pages).

<sup>72</sup> Exhibit PA-3.

<sup>73</sup> Exhibit PA-2 at pp. 6-7, lines 22-3.

flyers and the website do not provide a comparison of rates pre- and post-acquisition, do not state what EMWD's rates are or that EMWD's average rate increase has been 5.15%, do not contain information on additional charges such as the CARW surcharge, and do not disclose the existence of the four rate adjustment categories.<sup>74</sup> For these reasons, the "Yes on Measure H" flyers and website cannot constitute the required notice under Pub. Util. Code § 10061(c)(4) and D.99-10-064.

**2. The City Council Agenda Documents and Asset Purchase Agreement Do Not Feature Required Information on Rate Impacts or Additional Charges.**

Liberty also points to a voluminous set of City Council Agenda documents as providing notice to Perris residents prior to the November 7, 2017 election.<sup>75</sup> Liberty contends that Perris voters could have viewed these documents on the City's website prior to the November 7 election.<sup>76</sup> This is problematic for multiple reasons.

First, Liberty never informed residents that these documents existed or were publicly available. The "Yes on Measure H" flyers directed residents to the "Yes on Measure H" website – not the City of Perris's website where the City Council Agenda documents could be found.<sup>77</sup> While the "Yes on Measure H" website did feature a link to the City's website, the link went to the City's homepage, not the City Council Agenda documents. The City's homepage did not direct residents to the City Council Agenda documents, inform residents that this material was available, or even mention the acquisition at all.<sup>78</sup>

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<sup>74</sup> Exhibit PA-2 at Appendix G, at p. 11.

<sup>75</sup> Exhibit Liberty-03 at pp. 2-3, and Attachment Jackson-02. These documents include the City Council Agenda material from the July 11 and July 27, 2017 City Council meetings, Liberty's initial 2016 response to the City's request for proposals, and the Asset Purchase Agreement.

<sup>76</sup> Exhibit Liberty-03 at p. 2, lines 14-16.

<sup>77</sup> Exhibit PA-2 at Appendix C (copies of the campaign flyers).

<sup>78</sup> Evid. Transcript at p. 66, lines 3-7 (Jackson); Exhibit PA-4 (City of Perris website).

Further, Liberty has not shown that all residents had the capability to access these on-line documents. It is also not tenable to expect that all residents could have gone, or should be required to go, to City Hall in person to view these documents.

Even if residents were able to find these documents, they would have to sift through dozens of pages of material. In sharp contrast to the three-page August 29, 2018 Notice, the City Council Agenda documents consist of 176 pages of material.<sup>79</sup> Much of this material does not relate to the acquisition at all.<sup>80</sup> Liberty acknowledged that many of the City Council Agenda documents were “intended for some other purpose,”<sup>81</sup> rather than providing notice to customers pursuant to Pub. Util. Code § 10061(c)(4) and D.99-10-064.

Finally, the City Council Agenda material relating to the acquisition – the APA and Liberty’s initial response to the City’s request for proposals – does not provide the required Pub. Util. Code § 10061(c)(4) notice information, as explained below.

***i. Section 6.6(e) of the APA Does Not Provide a Rate Comparison or Information on Additional Charges.***

Liberty’s witness asserted that Section 6.6(e) of the APA provides the public with notice of rates they will face as a result of the proposed acquisition.<sup>82</sup> Section 6.6(e) of the APA states:

Each Party shall add, or cause to be added, to regulatory filings and submissions expected to be made to the CPUC for approval of the transactions contemplated by this Agreement, conditions with respect to rates for water services to be charged to System Customers such that the rates shall be adjusted effective on the Closing Date to the rates of Eastern Municipal Water District ("EMWD") then in effect for comparable customer classes, and shall be adjusted each year thereafter for a period often (10) years at the greater of (i) the percentage increase in EMWD rates, or (ii) three and three-tenths percent (3.3%), plus in either case (i) or case (ii) any rate increases attributable to (A) changes in supply

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<sup>79</sup> Exhibit Liberty-03 at Attachment Jackson-02.

<sup>80</sup> Exhibit Liberty-03 at Attachment Jackson-02; Evid. Transcript at p. 23, lines 4-10.

<sup>81</sup> Evid. Transcript at p. 35, lines 23-27 (Jackson); *see also* Evid. Transcript at p. 36, lines 4-9 (Jackson) (“It does not contain information comparing rates, because that is not the purpose of this resolution.”).

<sup>82</sup> Evid. Transcript at p. 47, lines 21-23 (Jackson).

arrangements to serve System Customers, (B) changes in the cost of wholesale water to serve System Customers that exceed changes in EMWD customer rates, (C) changes in Law, or (D) damage to or destruction of assets comprising the Water Systems (ordinary wear and tear excepted). (emphasis in original)

It is unrealistic to expect a member of the public to read this complicated contract provision and glean an understanding of the APA's bill impacts. Section 6.6(e) does not compare Perris rates pre- and post-acquisition and is not remotely similar to the August 29, 2018 Notice. The August 29, 2018 Notice shows the "existing charge" or the charges before the acquisition would increase by 9.09% for North water system customers if the acquisition took place in 2018, and by more than 14% if the acquisition takes place in 2019.<sup>83</sup> Section 6.6(e) also does not disclose the CARW surcharge or the Commission Reimbursement Fee.<sup>84</sup>

Residents would have to sift through dozens of pages of City Council Agenda documents to locate the APA, let alone Section 6.6(e) specifically. As presented in Mr. Jackson's testimony, the APA is not included until page 68 of the City Council Agenda material and Section 6.6(e) is not found for an additional 31 pages after that.<sup>85</sup> The title of the Section 6.6(e) is "Governmental Approvals and Consents." There is nothing indicating to the reader that Section 6.6(e) contains information on rate structure.

***ii. Liberty's Initial Bid Letter Does Not Provide a Rate Comparison and Does Not Show the Rates Eventually Proposed by Liberty.***

The City Council Agenda documents include a letter from Liberty providing its initial responsive bid information to the City.<sup>86</sup> The letter pre-dates the actual Asset

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<sup>83</sup> A.18-05-011, Exhibit 6; *see also* Exhibit PA-2 at p. 11.

<sup>84</sup> Neither does any other document featured in the City Council Agenda material.

<sup>85</sup> Exhibit Liberty-03 at Attachment Jackson-02.

<sup>86</sup> Exhibit Liberty-03 at Attachment Jackson-02, pp. 55 to 75.

Purchase Agreement and thus includes an initial purchase price of \$16 million – not the \$11.5 million eventually negotiated for the water systems.<sup>87</sup>

The letter includes a “Rate Comparison” attachment featuring proposed rates that are materially different from the tariff rates included in the Application. The initial “Rate Comparison” tables reflect a two-tier rate structure with the first tier break at 18 hundred cubic feet (CCF),<sup>88</sup> while the Application proposes a five-tier rate structure with the first tier break at 6.71 CCF.

Moreover, the initial bid’s “Rate Comparison” tables do not include the existing Perris water systems’ rates or associated bill estimates to show the expected impacts due to the acquisition.<sup>89</sup> Liberty only provided rate and bill information per EMWD’s then-effective rates and its then-proposed rates for Years 1 through 10. Further, these “Rate Comparison” tables do not disclose the four annual rate adjustment mechanisms or feature any information on additional charges to be expected from the acquisition, such as the CARW surcharge.

**E. LIBERTY’S AUGUST 29, 2018 NOTICE SENT AFTER THE INITIATION OF THIS PROCEEDING DOES NOT ADEQUATELY INFORM CUSTOMERS OF RATES AND COSTS POST-ACQUISITION**

Liberty mailed a three-page written notice directly to all Perris customers on August 29, 2018. This notice was obviously sent after the November 7, 2017 election and cannot meet the Public Util. Code § 10061(c)(4) requirement to provide a written statement to customers 30 days prior to the election.

The August 29, 2018 Notice does not feature sufficient information to adequately inform Perris residents of the proposed acquisition’s rate impacts, as discussed below.

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<sup>87</sup> Exhibit Liberty-03 at Attachment Jackson-02 at p. 55.

<sup>88</sup> CCF = one hundred cubic feet = 748 gallons of water. See Exhibit Liberty-03 at Attachment Jackson-02 beginning at p. 59.

<sup>89</sup> Exhibit Liberty-03 at Attachment Jackson-02 beginning at p. 59.

**1. The August 29, 2018 Notice Did Not Disclose the CARW Surcharge.**

Liberty promised access to the CARW, its low-income assistance program.<sup>20</sup> However, Liberty did not inform voters of the \$6.39 surcharge per service connection to non-CARW-participating customers and did not disclose this surcharge to customers in the August 29, 2018 Notice. It is misleading to promise access to a low-income assistance program while not disclosing that non-CARW-participating customers will fund the program.

Liberty argues that it is not feasible to forecast the CARW surcharge/surcredit in a customer notice because of potential changes to the CARW program.<sup>21</sup> However, Liberty provided draft tariff sheets for the CARW surcharge/surcredit in discovery, acknowledging its intent to apply the surcharge/surcredit in Perris.<sup>22</sup> Adding this surcharge alone would bring the Year 1 bill increase to 21.57% and 14.54%, for the North Perris and Downtown water systems, respectively, compared to the 9.09% shown in Liberty's August 29, 2018 Notice.<sup>23</sup>

Liberty inaccurately asserts that the Public Advocates Office suggests “utilities be required to provide two customer notices for two separate bill calculations: one for customers who qualify for assistance and one for remaining customers,”<sup>24</sup> and argues that doing so would lead to customer confusion. It is unfortunate that Liberty chose to ignore the simplest solution—disclosing the CARW surcharge/surcredit amounts in the same notice so that customers can be aware of the potential low-income rate assistance program's effect on their bills.

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<sup>20</sup> A.18-05-011 at p. 9; *see also* Exhibit PA-2, Appendix D (p. 088 of 264). (Liberty advertised its “Customer Service Program,” offering a “Low Income Discount [of] \$7.06 monthly” in a presentation to the City).

<sup>21</sup> Exhibit Liberty-03 at p. 5, lines 14-25.

<sup>22</sup> Exhibit PA-5 (Liberty's Draft Tariff Sheets).

<sup>23</sup> Exhibit PA-5 (Liberty's Draft Tariff Sheet titled “Schedule No. CARW”); Exhibit PA-1 at p. 12.

<sup>24</sup> Exhibit Liberty-03 at p. 6, lines 2-5.



**2. The August 29, 2018 Notice Did Not Disclose the Commission Reimbursement Fee.**

The Commission Reimbursement Fee applied to water utility bills is currently set at 1.23%, which would add \$0.69 to the sample monthly bill provided by Liberty. Liberty itself acknowledges that “All bills are subject to the reimbursement fee.”<sup>25</sup> There is no tenable reason why customers should not be informed of this additional charge and why such a charge could not easily be included on a notice to customers and calculated as part of a sample bill. Perris customers cannot be expected to know of a charge specific to Commission-regulated water utilities.

**3. The August 29, 2018 Notice Did Not Disclose All Rate Adjustment Categories Allowing Liberty to Raise Rates Over and Above the Annual Index During the 10-Year Interim Rate Period.**

Liberty’s August 29, 2018 Notice states: “Under the interim rate plan, rates can be adjusted each year to match any increase by EMWD or 3.3%, whichever is greater. Future rates are also subject to changes in the supply mix necessary to reliably serve customers or changes in purchased water rates.” This statement omits two other rate adjustment categories that can result in rate increases above the annual indexing of rates: changes in the law and damages or destruction of assets. There is no logical reason justifying Liberty’s omission. This is yet another instance of Liberty’s incomplete disclosure and lack of transparency.

**4. The August 29, 2018 Notice Underestimates Post-Acquisition Rates**

Liberty’s August 29, 2018 Notice presents rates and bills using the *minimum* 3.3% annual rate increase. Given EMWD’s recent average increase of 5.15% per year, the potential for additional rate adjustments allowed per APA Section 6.6(e), and new charges such as the Commission Reimbursement Fee and CARW surcharge, Liberty’s

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<sup>25</sup> Exhibit PA-1 at p. 11 (citing Liberty’s Response to Data Request PPM-6); *see also* Exhibit PA-1 at Appendix F: Draft Perris Tariff Sheets (Schedule No. PS-1-R and PS-2-NR for residential metered and non-resident metered customers, respectively, include the reimbursement fee).

customer notice significantly understates the rates and bill amounts that customers will likely face post-acquisition.

## V. CONCLUSION

The Commission has held that the applicant “must meet the burden of proving that it is entitled to the relief it is seeking . . . [and] has the burden of affirmatively establishing the reasonableness of all aspects of its application. Intervenors do not have the burden of proving the unreasonableness of [the applicant’s] showing.”<sup>26</sup>

Liberty has failed to meet its burden to demonstrate that its proposed acquisition provides tangible ratepayer benefits.<sup>27</sup> Liberty’s acquisition of the City of Perris water systems will substantially raise rates, including in Year 11 where ratepayers will likely face a substantial rate hike. Further, because rates will be raised without Commission GRC reviews during the first 10 years, there is no way to ensure that rates are just and reasonable pursuant to Pub. Util. Code § 451.

Liberty also failed to demonstrate that it provided a written notice to customers 30 days prior to the November 7, 2017 special election pursuant to Pub. Util. Code § 10061(c)(4) and D.99-10-064. Liberty’s failure to provide the required notice is a fatal flaw in its Application. The Commission cannot find that the acquisition is in the ratepayers’ best interest where voters were not permitted to make an informed decision prior to the election.

The Commission must deny the Application because it contravenes the Public Utilities Code and the Commission’s Revised Rate Case Plan, was not conducted in a transparent manner, does not protect ratepayers, and does not ensure just and reasonable rates.

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<sup>26</sup> D.06-05-016, Southern California Edison Test Year 2006 General Rate Application, at p.7.

<sup>27</sup> D.16-12-014, Decision Adopting Settlement and Approving Application of California American Water Company to Purchase the Meadowbrook Water Company, at p. 12.

Respectfully submitted,

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