BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Joint Application of Liberty Utilities Co., Liberty WWH, Inc., Western Water Holdings, LLC, Park Water Company (U 314 W), and Apple Valley Ranchos Water Company (U-346-W) for Authority for Liberty Utilities Co. to Acquire and Control Park Water Company and Apple Valley Ranchos Water Company.	Application 14-11-013 (Filed November 24, 2014)

REPLY COMMENTS BY LIBERTY UTILITIES CO., LIBERTY WWH, INC., WESTERN WATER HOLDINGS, LLC, PARK WATER COMPANY (U 314 W) AND APPLE VALLEY RANCHOS WATER COMPANY (U-346-W) IN SUPPORT OF SETTLING PARTIES' JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Joint Application of Liberty Utilities Co., Liberty WWH, Inc., Western Water Holdings, LLC, Park Water Company (U 314 W), and Apple Valley Ranchos Water Company (U-346-W) for Authority for Liberty Utilities Co. to Acquire and Control Park Water Company and Apple Valley Ranchos Water Company.	Application 14-11-013 (Filed November 24, 2014)

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Pursuant to Rule 12.2 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure ("Rules"), Liberty Utilities Co. ("Liberty Utilities"), Liberty WWH, Inc., Western Water Holdings, LLC, Park Water Company (U 314 W) ("Park Water"), and Apple Valley Ranchos Water Company (U-346-W) ("AVR") (collectively, the "Joint Applicants") hereby respectfully file these reply comments to the *Town of Apple Valley's Comments on the Joint Motion of the Office of Ratepayer Advocates, Liberty Utilities Co., Liberty WWH, Inc., Western Water Holdings, LLC, Park Water Company (U 314 W) and Apple Valley Ranchos Water Company (U-346-W) for Approval of Settlement Agreement* ("Town's Comments"). The Joint Applicants and the Office of Ratepayer Advocates (collectively, the "Settling Parties") executed the Settlement Agreement in this proceeding on May 29, 2015. On that same date, the Settling Parties submitted the *Joint Motion of the Office of Ratepayer Advocates, Liberty Utilities Co., Liberty WWH, Inc., Western Water Holdings, LLC, Park Water*

Company (U 314), and Apple Valley Ranchos Water Company (U-346-W) For Approval of Settlement Agreement which is the subject of the Town's Comments.

Most significantly, the Town does not request that the Commission reject the Settlement Agreement. Instead, the Town requests only that the Commission: (i) "closely evaluate the reasonableness of the Settlement Agreement"; and (ii) "impose reasonable and enforceable conditions on the parties."[1] Commission practice and precedent, as well as the terms of the Settlement Agreement, already provide the relief the Town's Comments now request. Thus, the Commission should proceed to approve the Settlement Agreement as agreed to by the Settling Parties and without any need to consider developing special procedures or modifying the Settlement Agreement.

As will be described below, in all events, the Commission may appropriately decline to entertain the Town's Comments on the basis that they: (i) fail to comply with the requirements of Rule 12.2; and (ii) raise issues irrelevant to the Commission's Rule 12.1(d) determination whether the proposed settlement "is reasonable in light of the whole record, consistent with law, and in the public interest." In any event, the Town has failed to justify its suggestions to impose two additional conditions on the Settlement Agreement. Accordingly, the Commission should proceed to timely approve the Settlement Agreement in the form agreed to by the Settling Parties.

I. THE TOWN DOES NOT ASK THE COMMISSION TO REJECT THE SETTLEMENT

The Town does not offer any position on the merits of the Settlement Agreement, claiming that the Town "has been unable to evaluate the merits of the Joint Application or the

[1] Town's Comments, at 3.

terms of the Settlement Agreement."[2] In its Comments, the Town focuses entirely on rationalizing its inability to "support or endorse the Settlement Agreement."[3]

Accordingly the Town does not offer the Commission any basis to reject the Settlement Agreement; at most the Town's Comments warrant the Commission considering whether to include the two conditions referenced in the Town's Comments. However, as will be explained further below, the Commission need not include these additional conditions.

II. THE TOWN FAILS TO SATISFY THE REQUIREMENTS OF RULE 12.2

Rule 12.2 allows parties to "file comments contesting all or part of the settlement . . . ." However, Rule 12.2 explicitly requires that "[c]omments [on a proposed settlement] must specify the portions of the settlement that the party opposes, the legal basis of its opposition, and the factual issues that it contests." The Commission has accordingly consistently declined to consider comments that fail to identify the portions of the settlement the commenting party opposes, fail to identify the legal basis for its opposition, and/or fail to identify any contested factual issues.[4]

The Town fails to comply with any requirement of Rule 12.2. Its Comments do not "specify": (i) "the portions of the settlement" that the Town opposes; (ii) any "legal basis" for its opposition; or (iii) any "factual issues that it contests." Accordingly, it would be appropriate for the Commission to dismiss the Town's Comments for the failure to meet the requirements of Rule 12.2.

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[2] Town's Comments, at 2.
[3] Town's Comments, at 2.
[4] *See* Decision 13-05-011, mimeo at 47-48 (finding that the Town of Apple Valley and others failed to comply with the requirements of Rule 12.2 in contesting a proposed settlement); *see also* Decision 14-01-038, mimeo at 3-4; Decision 12-09-019, mimeo at 23.

III. THE ALLEGATIONS THE TOWN ADVANCES REGARDING DISCOVERY AND THE MISSOULA CONDEMNATION PROCEEDING DO NOT RAISE ANY ISSUE RELATED TO THE COMMISSION'S RULE 12.1(d) ASSESSMENT OF THE SETTLEMENT AGREEMENT

The Town's Comments repeat the Town's earlier references to:

1) the responses Joint Applicants provided to the multiple discovery requests the Town propounded;[5] and

2) the City of Missoula's eminent domain proceedings against Mountain Water Company.[6]

The Commission may appropriately disregard these allegations[7] in discharging its Rule 12.1(d) responsibilities to determine if "the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." The Town fails to explain why discovery issues and a legal proceeding in another jurisdiction present legal or factual issues relevant to the Commission's Rule 12.1(d) determination. The Town's Comments also should be disregarded for two fundamental reasons.

First, Rule 12.2 makes clear that issues regarding discovery disputes, unrelated to the terms of the settlement, are not appropriate for comments on a settlement agreement. Moreover, the Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling ("Scoping Memo") directed the parties to resolve any discovery issues pursuant to Rule 11.3.[8] Furthermore, the Scoping Memo established June 22 as the cut off for discovery, which further

[5] *See* Status Update of the Town of Apple Valley, filed June 24, 2015, at 1-2.
[6] *See* Protest of Town of Apple Valley, at 2-3 and 4-5. While Liberty Utilities intends to acquire Park Water, AVR, and Mountain Water Company, no aspect of the Joint Application or the Settlement Agreement makes any request relating to Mountain Water Company and the Commission is not being asked to make any decision regarding Mountain Water Company.
[7] Given the irrelevance of these allegations to the Rule 12.1(d) issues relating to the merits of the Settlement Agreement, Joint Applicants will refrain from providing substantive responses to the Town's characterizations.
[8] Scoping Memo, at 5. Rule 11.3 sets forth procedures for a party claiming inadequate responses to its discovery requests to file a motion to compel discovery. The Town filed no such motion. Moreover, neither Rule 11.3 nor Rule 12.2 authorizes a party to allege inadequacy of discovery responses in comments on a settlement agreement.

renders any issue relating to discovery moot.[9] Accordingly, the discovery issues the Town advances have no relevance to the Commission's Rule 12.1(d) determination regarding the Settlement Agreement.

Second, the Montana condemnation proceeding is completely irrelevant to the Commission's determination regarding the Settlement Agreement. Again the Town's Comments fail to explain, as Rule 12.2 requires, why these proceedings provide any legal or factual basis for the Commission to decline to approve or modify the Settlement Agreement. The ultimate result of the Montana eminent domain proceeding — which has years to go before any final possible resolution, and which may or may not result in a change of ownership — does not currently have, and will not have, any impact on or relevance to the Commission's Rule 12.1(d) determination of whether the Settlement Agreement is reasonable, consistent with law, and in the public interest. The outcome of the Montana eminent domain proceeding does not depend on who owns the stock of Western Water Holdings, LLC, and, by the same token, Commission approval of the Settlement Agreement and the proposed acquisition by Liberty Utilities is not contingent on the outcome of the Montana proceedings.

Accordingly, the Commission should ignore both of the irrelevant issues raised by the Town and proceed to assess the Settlement Agreement on its merits and in accordance with Rule 12.1(d).

IV. THE COMMISSION NEED NOT CONSIDER AND SHOULD DECLINE TO ADOPT THE ADDITIONAL CONDITIONS THE TOWN SEEKS TO IMPOSE ON THE SETTLEMENT AGREEMENT

Notwithstanding the Town's failure to assert any reason for the Commission to reject the Settlement Agreement and the Town's corresponding inability to identify any legal or factual issues that the Commission must resolve in order to approve the Settlement Agreement, the

[9] Scoping Memo, at 4.

Town urges the Commission to impose the following additional conditions on the Settlement Agreement:

1. "a regulatory requirement that imposes a process discovering compliance with the [regulatory] commitments [in the Settlement Agreement] and administrative remedies for non-compliance";[10] and

2. "access to such officers and employees of [Park Water and AVR's] jurisdictionally foreign, upstream owners as the Commission, itself, may determine to be necessary, consistent with establish principles of due process and fundamental fairness"[11] ("CalPeco Condition").

The Commission may appropriately decline on both procedural and substantive grounds to consider the Town's request to impose these two conditions on the Settlement Agreement. As a way of background, the Town participated in the Rule 12.1(b) settlement conference held May 27 in this proceeding.[12] Joint Applicants accepted and incorporated in the Settlement Agreement revisions based on the topics discussed during that settlement conference.[13]

In all events, both of the supposedly additional conditions the Town proposes for the first time in its Comments are unnecessary. To start, the proposal that the Commission establish special, but unspecified, procedures to monitor and enforce compliance with the Settlement Agreement is simply redundant and without precedent. The terms of the Settlement Agreement will become a part of the Commission's decision approving Liberty Utilities' requested acquisition of Park Water and AVR. In addition, Park Water and AVR, like all Class A water

[10] Town's Comments, at 2.
[11] Town's Comments, at 3. The Commission imposed the CalPeco Condition in Decision 10-10-017 as part of its approval of the transfer of control of the California electric distribution facilities owned by Sierra Pacific Power Company to California Pacific Electric Company, LLC ("CalPeco"). As of the time of the acquisition, CalPeco was the name of the new California-only electric distribution company. In Advice Letter No. 28-E submitted on July 15, 2013, CalPeco provided notice of its formal change in name to Liberty Utilities (CalPeco Electric) LLC. Liberty Utilities Co. is the immediate parent company of Liberty Utilities (CalPeco Electric) LLC.
[12] In accordance with Rule 12.1(b), on May 19, the Settling Parties provided notice of a settlement conference, which was held on May 27.
[13] *See* Joint Motion for Approval of Settlement Agreement, at 3.

utilities, file reports with the Commission annually on affiliate transactions, and such transactions are reviewed by Commission staff in general rate cases filed every three years. Accordingly, any failure by any Joint Applicant to comply with any regulatory commitment or other Commission requirement set forth in the decision will represent a violation of a Commission decision and the Commission has the full authority to enforce compliance with its decisions.[14]

Indeed, in both the acquisition of CalPeco and in the acquisition of Park Water and AVR by their current owners, the Commission approved the acquisitions based in part on the acquiring entity making nearly the identical regulatory commitments. The Commission did not find any need (and history has demonstrated the absence of any such need) to impose special procedures to monitor and enforce compliance with the terms of the orders approving these acquisitions.[15]

The Town fails to state any reason why the Commission's comprehensive statutory powers to monitor and enforce its orders will be insufficient to address and resolve any possible issues that may arise with respect to the compliance by the Joint Applicants with the Commission's order approving the Settlement Agreement.[16]

The CalPeco Condition is also unnecessary and would be duplicative. The objectives of and purposes for the CalPeco Condition are already incorporated into the Settlement Agreement. Foremost, Number 14 of the Regulatory Commitments provides that "[w]ith respect to any charge or allocation from an affiliate for which Park Water or AVR [shall seek] rate recovery,

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[14] *See* Public Utilities Code sections 2100 *et seq*.
[15] *See* Decision 10-10-017, Appendix 3; Decision 11-12-007, Appendix A to Attachment A.
[16] *See* Public Utilities Code sections 1702, 1707; *see also* Article 4 of the Commission's Rules (outlining the procedure for third-parties or the Commission to initiate a Complaint proceeding against a utility) and Article 5 (outlining the procedure for the Commission to initiate an Investigation of a utility). The Commission may further disregard the proposal on the basis that the Town has failed to propose a specific condition to address the concern its raises and thus there is no specific condition for the Commission to consider approving.

the documents necessary to support and substantiate the charge shall be available to the Commission."[17] Even further, Section 3.24 of the Settlement Agreement affirms that the Affiliate Transaction Rules the Commission has established for Water Utilities apply to both Park Water and AVR and will continue to apply to both Park Water and AVR after the acquisition of ownership and control by Liberty Utilities.

Affiliate Transaction Rule VIII.A negates any possible need for the additional provision the Town proposes:

> The officers and employees of the utility and its affiliated companies shall be available to appear and testify in any proceeding before the Commission involving the utility. If, in the proper exercise of the Commission staff's duties, the utility cannot supply appropriate personnel to address the staff's reasonable concerns, then the appropriate staff of the relevant utility affiliated companies including, if necessary, its parent company, shall be made available to the Commission staff.[18]

Thus, there is no need for the Commission to consider adding a further, duplicative condition.

V. CONCLUSION

The Town of Apple Valley does not request that the Commission reject the Settlement Agreement and the Town does not identify any portion of the Settlement Agreement the Town opposes. The Town also does not identify any disputed legal or factual issue or request any further proceedings. Thus, the Commission should approve the Settlement Agreement in its

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[17] Joint Application, Exhibit I, Regulatory Commitment 14, at 3.
[18] Decision 10-10-019, Appendix A, mimeo at A-9 (emphasis added).

entirety and there is no need for the Commission to consider or approve the additional conditions suggested by the Town. Accordingly, the Commission should timely proceed and approve the Settlement Agreement.

Respectfully submitted,

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