

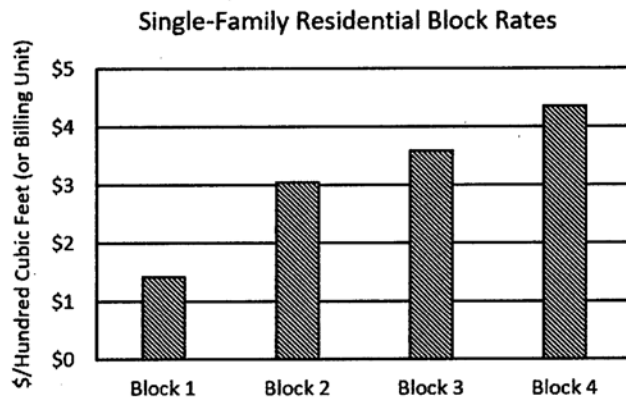
CITY OF PASADENA
MAY 13 10 40 AM 2019

Comments of Ken Kules on the IMPLEMENTATION OF WATER RATE ADJUSTMENTS (May 13, 2019 City Council Agenda Item 15: APPROVE RECOMMENDED ADJUSTMENTS TO THE WATER RATES)

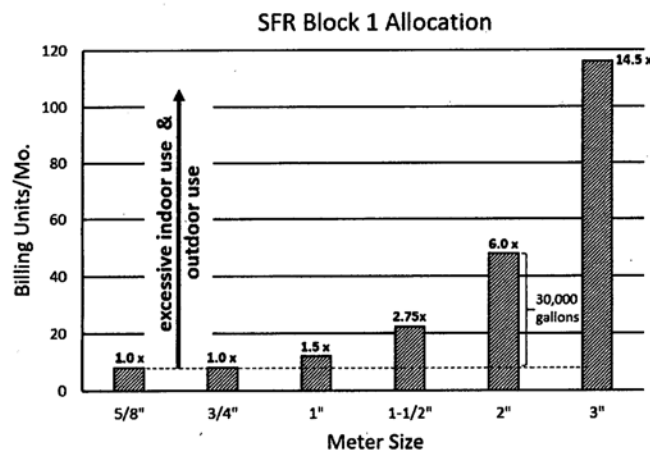
I address the following topics in my comments:

- The Issue: Single-Family Residential Commodity Charge Block Size inequity
- PWP has not a demonstrated that they have adhered to standard industry practices in their use of water meter size to set block allocation rates for the commodity charge
- The administrative record regarding the Commodity Charge does not demonstrate that PWP has conformed to the California Constitution requirements created by Proposition 218
- Relevance of the 2017 water rate proposal to this proceeding.
- I urge the City Council to address the HJTA settlement terms under this proceeding without increasing the Commodity Charge

The Issue: Single-Family Residential (SFR) Commodity Charge Block Size Inequity. The Rate Proposal would use the existing Commodity Charge “block” pricing schedule in which unit cost of water (\$/billing unit or \$/hundred cubic feet) increases as a customer’s use increases:



This graphic show the monthly allocation for access to the cheapest Block 1 water for SFRs:



Eight billing units per month “is generally considered a sufficient amount of water for a residential family of four’s indoor use” (Pasadena 2009 Comprehensive Water Conservation Plan, p.11) and is the monthly block 1 allocation for SFR customers that have 5/8” and 3/4” meters. In contrast, SFR customers with larger meters currently have increasingly larger allocations in block 1 although their reasonable indoor use should be the

same. In the case of parcels with 2" meters, the block 1 allocation is 6 times larger than for the small meters and the extra allocation is enough to re-fill a swimming pool each month at the cheapest unit cost for water. In *Durant v. City of Beverly Hills* (see <https://law.justia.com/cases/california/court-of-appeal/2d/39/133.html>), the Court said that (emphasis added):

Discrimination to be objectionable must draw an unfair line or strike an unfair balance between those in like circumstances having equal rights and privileges. "The fundamental theory of rate making for public utilities is that there shall be but one rate for a particular service, and a charge made to one patron or consumer different from that made to another, for the same service under like circumstances, constitutes undue discrimination and renders the charge improper."

The number of SFR meters in Pasadena are shown in the following table:

Number of Accounts by Customer Class and Meter Size

Meter Size	Residential Single Family	Residential Multi-Family	Commercial and Industrial	City Accounts	Total	% of Total
5/8"	526	53	118	2	699	1.8%
3/4"	18,603	1,398	1,196	18	21,215	54.4%
1"	10,277	1,103	965	109	12,454	31.9%
1 1/2"	1,275	506	474	32	2,287	5.9%
2"	372	542	799	76	1,789	4.6%
3"	4	83	145	20	252	0.6%
4"	0	49	143	12	204	0.5%
6"	0	22	58	9	89	0.2%
8"	0	0	20	2	22	0.1%
10"	0	0	3	1	4	0.0%
Total	31,057	3,756	3,921	281	39,015	100.0%

Source: Water Cost of Service Review and Rate Design Analysis-Update (Pasadena Water & Power, 8-25-2015)

It shows 38% of Pasadena's SFR customers have an economic advantage over the 62% of customers with smallest meters under the current rate structure. It is also worth noting that perpetuating this practice is a **social justice issue** in that the equity imbalance is biased against a customer class - those with smaller meters/homes - that faces greater challenges in paying utility bills. It also **does not send a strong conservation "signal"** to customers with larger parcels.

PWP has not a demonstrated that they have adhered to standard industry practices in their use of water meter size to set block allocation rates for the commodity charge.

In order to understand how the inequity described above came about, it is instructive to examine the history of the current Commodity Charge rate structure. The current allocation of water in four blocks using meter size as the basis for varying allocation volumes for single-family residences was approved by the City Council in a water rate proceeding in 2009 (a 5-block structure was approved in 2009 and block 5 was eliminated on July 12, 2010 without changing blocks 1-4). The April 13, 2009 and June 8, 2009, City Council Agenda Reports and a June 22, 2009 City Manager's memorandum to the City Council are the principal PWP reports that addressed the rate structure changes. With regard to block allocation determinations, Attachment 1 to the April 13, 2009 (Water-Conservation Based Rate Structure Report or "WCBSR") explains PWP's related rationale (see http://ww2.cityofpasadena.net/councilagendas/2009%20agendas/Apr_13_09/5D2%20ATTACHMENT%201.pdf).

Two changes to the rate structure in 2009 that affected block sizing in the WCBSR were

- Expansion of the then-existing block structure to include 2 additional blocks (for a total of 5 blocks) with associated changes to block sizing.

- Redefining “customer groups by residential, multi-family and commercial/institutional based on consumption characteristics **instead of by meter size only.**” (emphasis added)

The American Water Works Association (AWWA) publishes generally accepted methodologies in a series of water supply practices manuals (see <https://www.awwa.org/Publications/Standards>). The AWWA Manual M1 – “Principles of Water Rates, Fees, and Charges” - says that (emphasis added):

Distributing Costs to Customer Classes

- *...the cost of providing service can reasonably be determined for groups or classes of customers that have similar water-use characteristics...*
- *...the residential customer class, placing summer lawn irrigation loads on the system, typically has a much higher peak-demand requirement, relative to the average demand, than does a large manufacturing facility, which may require water on a relatively uniform basis throughout the year. These differences in demand patterns can create differences in the cost to serve those customers.*
- *As a basis for distributing component costs to customer classes, the units of service attributable to the respective classes must be established for the test year. To do so, the utility must determine or estimate the total quantity of water to be used by each class in the test year and the peak rates of use by the class.*

Increasing Block Rates

- *Increasing block rates should usually be designed by customer classes (i.e., groups with similar usage patterns).*
- *Block sizes should correspond to the utility’s individual bill distribution and customers’ usage patterns.*
- *Customer classes that do not demonstrate uniform demand patterns might be adversely impacted by an increasing block structure.*
- *A utility can also implement an increasing block structure by meter size if it can demonstrate a consistent relationship or homogeneous usage pattern by meter size. For example, the first block for a 5/8-in. meter might be 7 thousand gallons while increasing to 12 thousand gallons for a 1-in. meter. As previously noted, this rate structure is best applied to customer classes that demonstrate a significant peaking pattern and might not be appropriate for industrial or commercial customers that use water at relatively consistent levels throughout the year.*

Glossary

- *customer classification – The grouping of customers into homogeneous groups or classes.*

Red Oak Consulting was hired by PWP in 2007 to prepare a cost-of-service analysis and rate design studies in support of the 2009 rate proceeding. Red Oak issued their report in July 2008 and - consistent with AWWA Manual M1 recommendations - recommended that (emphasis added):

...PWP identify customer classes based on similar consumption patterns before engaging in a more-aggressive conservation rate structure, or making adjustments to its commodity charge block widths. Any adjustments to block widths could generate intra-class inequity that would be difficult to identify without customer class information.

PWP should consider establishing customer classes as a means for reducing inequity within meter sizes. By grouping customers that consume water in similar patterns together, PWP can eliminate some of the inequity that arises when service costs are allocated based on peaking factors, which tend to vary by customer class in addition to meter size. For example, storage costs which are incurred to provide peak-month demand should not be allocated evenly between single family residences that are the source of peak-month demand, and commercial properties that use water at a constant rate throughout the year; these two classes may share the same meter size but consume water in

different patterns. Once service costs are allocated among classes and/or meter sizes, PWP can develop block rates and widths based each unique group's consumption pattern.

PWP appeared to address Red Oak Consulting's concerns in Attachment 1 to the WCBRSR:

PWP proposes to redefine customer groups by residential, multi-family and commercial/institutional based on consumption characteristics instead of by meter size only. This will reduce and/or eliminate some of the inequity that arises when service costs which vary by customer class and meter size are allocated strictly based on meter size. It will also allow PWP to create separate classifications for single family residences and commercial properties that share the same meter size but consume water in different patterns.

Modified Conservation Rate Block Allocation per Month

Customer Group Served	Meter Size	Block 1 (BU)	Block 2 (BU)	Block 3 (BU)	Block 4 (BU)	Block 5 (BU)
Residential – Small SF	5/8", 3/4"	0 – 8	9 – 24	25 – 34	35 – 46	47>
Residential – Medium SF / Small MF	1"	0 – 12	13 – 40	41 – 60	61 – 90	91>
Small Commercial / Institutional						
Residential – Large SF / Small MF	1 1/2"	0 – 22	23 – 86	87 – 132	133 – 188	189>
Small Commercial / Institutional						
Residential – Large Estate/Small MF	2"	0 – 48	49 – 188	189 – 290	291 – 405	406>
Medium Commercial / Institutional						
Residential – Medium MF	3"	0 – 116	117 – 500	501 – 860	861 – 1,300	1,301>
Medium Commercial / Institutional						
Residential – Large MF	4"	0 – 225	226 – 1,000	1,001 – 1,800	1,801 – 3,000	3,001>
Medium Commercial / Institutional						
Residential – Large MF	6"	0 – 500	501 – 5,600	5,601 – 8,800	8,801 – 12,000	12,001>
Large Commercial / Institutional						
Large Commercial / Institutional / Industrial	8"	0 – 500	501 – 5,600	5,601 – 10,000	10,001 – 14,000	14,001>
Large Commercial / Institutional / Industrial						
Large Commercial / Institutional / Industrial	10" – 12"	0 – 500	501 – 24,000	24,001 – 32,000	32,001 – 37,000	37,001>

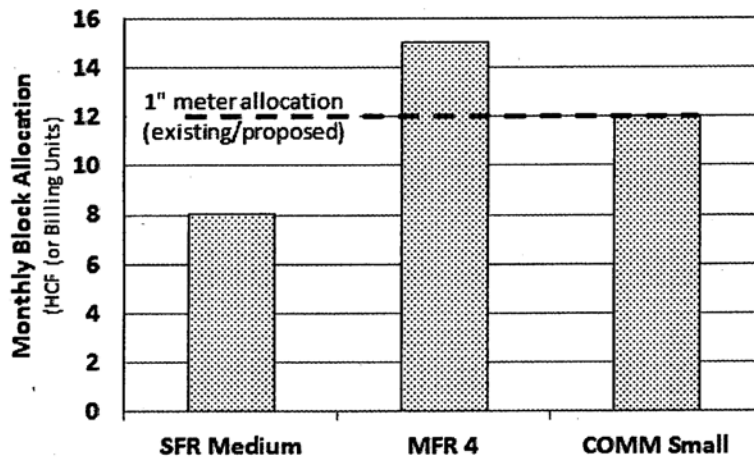
Notes: SF- Single Family; MF – Multi-Family

Note: According to the table on "Number of Accounts by Customer Class and Meter Size" referenced above on p. 2 of these comments, there are both Multi-Family Residential and Commercial/Industrial customers that have 5/8" and 3/4" meters.

Describing "Customer Group Served" creates a "cosmetic" appearance that there is a strong correlation between customer type and consumption characteristics for each class, but PWP created classes based on meter size only (contrary to the claim in the WCBRSR described above). In fact, the 5/8", 3/4", 1", 1-1/2", 2", 3", 4", and 6" classes do not demonstrate a homogeneous usage pattern and are not properly-defined classes as prescribed by AWWA Manual M1.

This can be understood by considering the example in which a medium SFR customer (e.g., 3 bedrooms on a parcel that is 20,000 square feet); a small multi-family residence (MFR 4) customer (e.g., a four-unit apartment building); and a small commercial (COMM Small) customer (e.g., a bookstore with employee bathroom facilities) all have a 1" meter. Under the current rate structure, these customers would be in a common "class" and receive the same block allocation of 12 BU/month. The SFR and MFR will have summer

peaking consumption patterns due to outdoor demands whereas the commercial demands would be fairly uniform month-to-month. The MFR would have a higher indoor demand than the SFR and water use at the commercial facility would be almost entirely indoor. SFR outdoor peak demands in the summer would far exceed summer peak demands for MFR customers. A single allocation of block 1 water to the “members” of the 1” class that have different usage pattern would be fraught with compromise as demonstrated in the following graphic that shows PWP’s 2017 assessment of block 1 needs for each customer type relative to the existing/proposed allocation for 1” meters:



Source Data: Website reference from PWP “Notice Of Public Hearing To Receive Public Comment Regarding The Water Rate Structure Redesign And Water Rate Adjustments; Hearing Date and Time: September 25, 2017” (www.PWPweb.com/WaterRates). Note that the web site has since been updated to reflect the current rate proceeding and the information from the 2017 web site is included here as Attachment 1.

With regard to AWWA Manual M1 guidance regarding use of meter size to define class/block structure, it is clear that PWP’s proposal fails the homogeneity test. PWP also ignored AWWA advice regarding ignoring Red Oaks Consulting’s recommendations regarding customer class design (emphasis added):

*Municipal officials can ready themselves for rate-related disputes by preparing a cost-of-service study and obtaining legal review prior to implementing rate design or rate changes. **Even if such a study will not be used at all or as the sole basis for rate setting, deviations from the cost-of-service study should be carefully analyzed, documented, and justified in terms of acceptable community objectives.***

PWP did not adhere to AWWA guidelines and did not carefully analyze and document in the administrative record that the 2009 rate proceeding resolved the inequity that arises when service costs are allocated based on meter size.

The administrative record regarding the Commodity Charge does not demonstrate that PWP has conformed to the California Constitution requirements created by Proposition 218. Proposition 218 is described by AWWA publication “Water Rates, Fees, and the Legal Environment - Second Edition” (AWWA 2010) as follows (emphasis added):

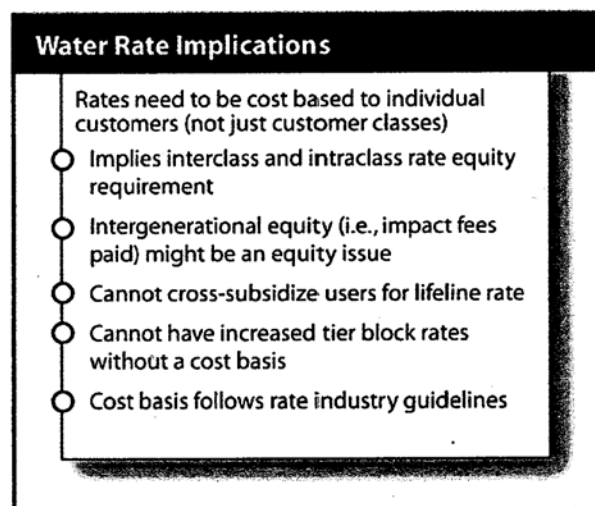
*Proposition 218 (also known as the “Right to Vote on Taxes Act”) was enacted in 1996 in response to local governments using property-related fees, including utility fees, to circumvent Proposition 13 and subsequently use proceeds from these fees to pay for unrelated government costs. Proposition 218 aimed to protect taxpayers by establishing procedural requirements for imposing changes in property-related fees and charges. **It also placed the substantive requirement that property-related fees not exceed the reasonable, and proportional, cost of providing the service in question (Hildebrand et al.,***

Jour. AWWA, 2009). Proposition 218's effect was that user charges, as codified in California Constitution Article XIII D, now require a nexus between cost of service and the rate charged to the parcel. Note the word used is parcel; i.e., an individual customer and not a customer class. Clearly, this means that user charges may not result in intraclass rate inequities and that utilities must avoid adopting rates that exhibit intraclass rate inequity.

AWWA 2010 defines "intraclass rate equity" referred to by Red Oaks Consulting as follows:

...intraclass rate equity refers to different customers belonging to the same class of users. Typically, these are described as a large residential user versus a small residential user where a larger user uses relatively more water than a smaller user.

AWWA 2010 summarizes the implications of Prop 218 on water rates as follows:



The Deputy City Attorney, in comments at the March 11, 2019 City Council meeting, defended PWP's water allocation under its existing water rate structure (emphasis added):

*Good evening - Lisa Hosey with the City Attorney's office. Um (cough) excuse me - I just want to point out that Prop 218 - um - does not require allocation to cheaper wa-... allocation - Prop 218 - **the City has discretion under prop 218 to allocate cheaper water to different meter sizes as it sees fit** and I know that - uh - fixed charges were one of the concerns that Mr. Kules had. Propo... - Proposition 218 does not require that water charges must be proportional to parcel size and that there may be other methods that an individual prefers - that doesn't render the City's method as proposed today - that doesn't render - render it unconstitutional under Prop 218. **There can be a range of rate structures that are proportional to the cost of service and that's all that - uh - Prop 218 requires.** So, in summary, Prop 218 does not dictate any particular rate structure. Instead, **a public agency has discretion to choose any reasonable methodology in determining customer classes in allocating costs among those classes as the City has done here.***

The Appeals Court said in its decision in Capistrano Taxpayers Association v City of San Juan Capistrano case (San Juan case) with regard to water utility discretion under Prop 218 that (emphasis added):

*In voluminous briefing by City Water and its amici allies, two somewhat overlapping **core thoughts** emerge: First, **they contend that** when it comes to water, local agencies do not have to or should not*

have to - calculate the cost of water service at various incremental levels of usage because the task is simply too complex and thus not required by our Constitution. The second core thought is that even if agencies are required to calculate the actual costs of water service at various tiered levels of usage, such a calculation is necessarily, as City Water's briefing contends, a legislative or quasi-legislative, discretionary matter, largely insulated from judicial review. We cannot agree with either assertion.

We recognize that Palmdale was primarily focused on inequality between classes of users, as distinct from classes of water rate tiers. But, just as in Palmdale where the district never attempted to justify the inequality "in the cost of providing water" to its various classes of customers at each tiered level (Palmdale, supra, 198 Cal.App.4th at p. 937), so City Water has never attempted to justify its price points as based on costs of service for those tiers. Rather, City Water merely used what it thought was its legislative, discretionary power to attribute percentages of total costs to the various tiers. While an interesting conversation might be had about whether this was reasonable or wise, we can find no room for arguing its constitutionality. It does not comply with the mandate of the voters as we understand it.

Our courts have made it clear they interpret the Constitution to allow tiered pricing; but the voters have made it clear they want it done in a particular way.

As the Silicon Valley court observed, Proposition 218 effected a paradigm shift. Proposition 218 was passed by the voters in order to curtail discretionary models of local agency fee determination. (See Silicon Valley, supra, 44 Cal.4th at p. 446 ["As further evidence that the voters sought to curtail local agency discretion in raising funds...."].) Allocation of water rates might indeed have been a purely discretionary, legislative task when Brydon was decided, but not after passage of Proposition 218.

It should be noted that there was no dispute in the San Juan case regarding allocation for blocks but the issue was regarding the unit cost charged at each tier of usage (customer cost = unit cost x allocation volume).

It's correct to say that it's not up to the customer to determine how PWP develops its rates. The decision in the San Juan case said, however, that **the burden is on the water utility to demonstrate that its rates are consistent with Prop 218:**

The trial court found City Water had failed to carry its burden of proof under subdivision (b)(5) of showing its 2010 tiered water fees were proportional to the cost of service attributable to each customer's parcel as required by subdivision (b)(3).

Finally, the Deputy City Attorney brushes aside the criticism that the PWP rates do not meet Prop 218 requirements by declaring that they used a "reasonable methodology in determining customer classes in allocating costs among those classes." The administrative record does not support that conclusion.

It's hard to imagine that the courts would find that PWP's proportional allocation approach complies with Prop 218 if it 1) is not supported by a complete administrative record; 2) does not conform to industry standards; and 3) is not equitable.

Relevance of the 2017 water rate proposal to this proceeding. Pasadena initiated a water rate proceeding in 2015 and concluded it in 2017 by continuing the Prop 218 public hearing process indefinitely. This is an excerpt from that proceeding that acknowledges the inequities that I've described above:

<p>Water Block Allocations</p>	<p>Currently PWP has water block allocations based on customer meter size rather than customer type. This results in the allocation of the least cost water in PWP's largest customer grouping (Single Family Residential "SFR") to vary considerably. Among options under consideration for SFR customers are block allocations based on a daily amount of water per person and in consideration of the expected availability of this least cost water.</p>
---------------------------------------	--

Source: Water Cost of Service Review and Rate Design Analysis-Update (Municipal Services Committee Agenda Report, 8-25-2015)

With regard to how the re-structured rate proposal in 2017 was developed to work within the limitations of the current billing system:

5. Develop understandable, manageable rates that can be implemented with the existing billing system

The current billing system has limitations that must be considered when developing a change to the rate structure. The number of customer classes and groups is limited. Under this design proposal, water rates would go from ten classifications (meter connection size) to three classes that have a total of 16 groups. This will be near the total capacity of the current system which does not allow each individual account to have property specific allocations.

Source: Water Rate Redesign Update (Municipal Services Committee Agenda Report, 3-28-2017)

The March 11, 2019 City Council Agenda Report for the current proceeding says that "It is not feasible to proceed with the [2017] rate structuring at this time because the necessary time to implement and stabilize the complex changes to the water rates would delay the Customer Information System replacement project by 6-12 months." **This claim cannot be reconciled with the fact that in 2017, the City Council's first public hearing was agendized for September 25, 2017 with the expectation that the proposed rates would be implemented as soon as November 1, 2017 - only five weeks later.**

I urge the City Council to address the HJTA settlement terms under this proceeding without increasing the Commodity Charge.

I support the settlement of the Howard Jarvis Taxpayers Assn . v City of Pasadena litigation as proposed.

Revision of the Customer Information System is three years away (assuming City Council approvals and barring further delay) and there would need to be a subsequent time-consuming water rate proceeding to alter the Commodity Charge rate structure. That suggests that a new rate structure would not be approved for at least 4-5 years and possibly longer. **Continued use of the existing Commodity Charge rate structure will knowingly violate the California Constitution's water rate setting mandates for 4 years or more.** I vote "No" on the current proposal to increase the Commodity Charge.

Ken Kules
 3235 Lombardy Road
 Pasadena, CA
 APN 5377-013-015

ATTACHMENT 1: Screen capture from www.PWPweb.com/WaterRates (9/21/2017)

BLOCK ALLOCATION (in Units of One Hundred Cubic Feet): Single Family Residential

Meter	Block 1	Block 2	Block 3	Block 4
SFR Small	0-8	9-15	16-19	20+
SFR Medium	0-8	9-20	20-34	35+
SFR Large	0-8	9-30	31-130	131+

BLOCK ALLOCATION (in Units of One Hundred Cubic Feet): Multi-Family Residential

Meter	Block 1	Block 2	Block 3	Block 4
MFR 2-3	0-8	9-25	26-38	39+
MFR 4-5	0-15	16-39	40-68	69+
MFR 6-10	0-24	25-60	61-120	121+
MFR 11-20	0-45	46-95	96-220	226+
MFR 21-50	0-105	106-202	203-525	526+
MFR 51-80	0-195	196-338	339-975	976+
MFR 81-100	0-270	271-405	406-1,350	1,351+
MFR 101-135	0-354	355-602	603-1,770	1,771+
MFR > 135	0-600	601-1,020	1,021-3,000	3,001+

BLOCK ALLOCATION (in Units of One Hundred Cubic Feet): Commercial

Meter	Block 1	Block 2	Block 3	Block 4
COMM Small	0-12	13-40	41-60	61+
COMM Med	0-48	49-188	189-290	291+
COMM Large	0-225	226-1,000	1,001-1,800	1,801+
COMM XL	0-500	501-18,000	18,001-24,000	24,001+

Jomsky, Mark

From: Greg <johngreg@aol.com>
Sent: Thursday, May 09, 2019 6:30 PM
To: Ken Kules
Cc: Jomsky, Mark; Tornek, Terry; Hampton, Tyron; McAustin, Margaret; Kennedy, John; Masuda, Gene; Gordo, Victor; Madison, Steve; Wilson, Andy; Mermell, Steve; Bawa, Gurcharan; Thomas, Shari
Subject: Re: IMPLEMENTATION OF WATER RATE ADJUSTMENTS

CAUTION: This email was delivered from the Internet. Do not click links or open attachments unless you know the content is safe.

Congratulations Ken,
Well written and very professional.
Fairness is the main point.
We've waited so very long for the Pasadena Water and Power department to do the constitutionally right thing.
Maybe it's time to request HJTA for support!
Greg Haines
Altadena Resident

Sent from Greg's iPhone

On May 9, 2019, at 5:45 PM, Ken Kules <kules.ken@gmail.com> wrote:

Please enter my attached comment into the administrative record for the City Council's May 13, 2019 Agenda Item 15: APPROVE RECOMMENDED ADJUSTMENTS TO THE WATER RATES.

<Ken Kules' comments 5-13-2019.pdf>

Jomsky, Mark

From: Gene Ruane <generuane@gmail.com>
Sent: Saturday, May 11, 2019 2:19 PM
To: 'Ken Kules'; Jomsky, Mark
Cc: Tornek, Terry; Hampton, Tyron; McAustin, Margaret; Kennedy, John; Masuda, Gene; Gordo, Victor; Madison, Steve; Wilson, Andy; Mermell, Steve; Bawa, Gurcharan; Thomas, Shari
Subject: RE: IMPLEMENTATION OF WATER RATE ADJUSTMENTS

CAUTION: This email was delivered from the Internet. Do not click links or open attachments unless you know the content is safe.

Attention Mayor and Council

I have read Mr. Kules' statements attached to his May 9, 2019 e mail to you and fully support his position. Please add my support for his position into the record at your May 13th meeting, as I will be traveling away from Pasadena and not able to attend the meeting. As I noted in my earlier March 11, 2019 correspondence to you, my home is one of the homes that has the ¾ " meter . So, I am adversely affected by the continuation of the "single family residence meter sizing inequity" which Mr. Kules convincingly documents.

Eugene B. Ruane
1882 Las Lunas St.
Pasadena, CA 91107

From: Ken Kules [mailto:kules.ken@gmail.com]
Sent: Thursday, May 09, 2019 5:45 PM
To: Mark Jomsky
Cc: Mayor Terry Tornek; Tyron Hampton; McAustin, Margaret; John Kennedy; Masuda, Gene; Victor M. Gordo; Steve Madison; Andy Wilson; Steve Mermell; Gurcharan Bawa; Shari Thomas
Subject: IMPLEMENTATION OF WATER RATE ADJUSTMENTS

Please enter my attached comment into the administrative record for the City Council's May 13, 2019 Agenda Item 15: APPROVE RECOMMENDED ADJUSTMENTS TO THE WATER RATES.