

- **Board of Directors**  
**Legal, Claims and Personnel Committee**

April 13, 2004 Board Meeting

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8-4

## **Subject**

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Authorize agreement with the City of Los Angeles Department of Water and Power for credit as a result of billing error on deliveries through Service Connection LA-35

## **Description**

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### Background

Metropolitan has provided raw water service to the City of Los Angeles Department of Water and Power (LADWP) at Service Connection LA-35, located off the Foothill Feeder near the Jensen filtration plant, since 1985. In April 1993, Metropolitan hired Accusonic Technologies to manufacture and to assist with the installation and calibration of an ultrasonic meter at LA-35. Just prior to installation, Accusonic Technologies calibrated the meter based on the inside diameter of the pipeline. However, the inside diameter of the pipeline was changed during installation with the addition of cement lining. The meter was not recalibrated based on the new inside diameter.

In November 2002, LADWP expressed to Metropolitan its concern regarding the potential overregistering of flow at LA-35 [based on a significant rise in internal unaccounted for water in LADWP's system in recent years]. After a series of communications with Metropolitan, LADWP hired Accusonic Technologies in July 2003 to install an updated meter supplied by Metropolitan and to verify the accuracy of the existing meter. Accusonic Technologies concluded that since the meter was installed in 1993, it had been overregistering flow by 2.4 percent. That is, Metropolitan had been billing LADWP for 2.4 percent more water than had been delivered since the first Accusonic meter was installed.

On April 1, 2003, LADWP sent a letter to Metropolitan's Chief Executive Officer regarding the overregistering of flow on Service Connection LA-35. In this letter, LADWP detailed its method for determining the volume of water attributed to this overregistering of flow at LA-35 and placed a claim for a refund on the amount of overbilled water.

Metropolitan staff and LADWP have agreed on the amount of water that was overbilled. Further, Metropolitan staff and LADWP have agreed on the cost of the water. Staff calculates that 35,318.9 acre-feet were overbilled-billed before the new meter was calibrated and installed. This translates to \$11,150,418 of overbillings for the entire time period.

### Administrative Code Provisions Regarding Meter Errors

§ 4506. *Metering of Water* in Metropolitan's Administrative Code reads in part:

Any member public agency may have any meter through which water is served from the District's facilities to any area within such member public agency tested by the District at any time. Any member public agency affected shall have the right to be represented by a qualified observer at and during any such tests. In the event that any such test shall disclose an error exceeding 2 percent, an adjustment shall be made in charges made to the affected member public agency, covering the known or estimated period of duration of such error, but in no event exceeding six months, and the expenses of such test shall be borne by the District; otherwise, such expense shall be borne by the member public agency requesting such test.

This section of the Administrative Code is designed to protect Metropolitan and the member agencies from billing errors that result because of meter malfunctions (that is, a meter is reading fast or slow over time.) The time limitation is imposed because such events may take place over many months and it is difficult to assess when the meter started to read improperly.

§ 4507. *Billing and Payment for Water Deliveries* also discusses billing and meter errors. In particular, § 4507 (m) defines a mistake or error in a member agency's billing to include "...mistakes or errors in metering or recording deliveries to member agencies...." This section of the code authorizes the Chief Executive Officer to initiate corrections after a mistake or error is discovered in a Metropolitan sales record. Metropolitan's CEO is authorized to correct errors by issuing a credit or charge for the under or overbilling. This section further limits the time period that such corrections are to apply to three years prior to the date the error is discovered.

This section of the code applies to credits and charges associated with errors discovered by a member agency in its own certifications, meter errors that were discovered by the member agency, and meter and certification errors found by Metropolitan. The Administrative Code also specifically excludes the payment (or charging) of interest on such retroactive adjustments (Admin. Code § 4507(m)). But, the Administrative Code also permits adjustments for longer periods of time if there is an agreement between the member agency and Metropolitan.

#### Corrective Actions

It is clear that the meter at LA-35 was incorrectly calibrated at the time of installation and that Metropolitan was responsible for installing the meter correctly. It is also agreed that, consistent with the Administrative Code, the error margin of 2.4 percent is significant enough to warrant an adjustment to the bills sent to LADWP and an adjustment in Metropolitan's records. LADWP has requested adjustment for the entire time period, including interest from 1993. This case is different than that contemplated in the Administrative Code for two reasons. First, the meter error was due to a calibration error at the time of installation, not due to a faulty meter or failing meter. As such, the time period for which the error existed is known. Second, the magnitude of the error is also known. Therefore, Metropolitan has several options available:

1. Provide an adjustment for the period three years prior to the date of discovery. This would amount to a credit of \$7,847,309 to LADWP. While this option applies to most cases, the facts associated with LA-35 argue for a more different solution, since the period for which the error occurred is known, Metropolitan was responsible for the installation of the meter, and the reason for the error was associated with the initial installation of the Accusonic meter, rather than a failure of the meter over time.
2. Provide an adjustment for the entire period, with interest calculated at LADWP's borrowing cost. This would be a credit of \$13,835,354. This option reflects LADWP's initial request.
3. Provide an adjustment for the entire period, with interest at the 90-day Treasury Bill rate from the time period that LADWP initially notified Metropolitan of the error. This option recognizes the full-time period of the error, and provides for interest to compensate LADWP for the cost of funds from the time Metropolitan was notified. This compromise proposal is based on the fact that Metropolitan acknowledges the meter error occurred for the entire period and it would not be fair to charge ratepayers more than they should be billed. It also holds those ratepayers harmless by paying interest for the time period it required to ascertain the magnitude of the error and determine the appropriate credit. This option would result in a credit of \$11,407,292, of which \$256,874 is interest.
4. Provide an adjustment for the entire period. This is a credit of \$11,150,418. This option reflects the full impact of the error, and is consistent with Metropolitan's past practice regarding adjustments without interest.

#### Similar Meters in Metropolitan's System

Including Service Connection LA-35, Metropolitan currently has a total of seven member agency service connection meters manufactured by Accusonic Technologies. Of the six other meters, one has been inspected and re-measured with no discrepancies found. The other five meters will be inspected and re-measured as part of Metropolitan's ongoing maintenance schedule.

## Policy

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Metropolitan Water District Administrative Code § 4507 (m): Discovery of Mistakes or Errors

### California Environmental Quality Act (CEQA)

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CEQA determination for Options #2, #3, and #4:

The proposed actions are not defined as a project under CEQA because they involve the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed actions in question may have a significant effect on the environment, the proposed actions are not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed actions are not subject to the provisions of CEQA pursuant to Sections 15378(b)(4) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #1:

None required

### Board Options/Fiscal Impacts

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#### Option #1

Do not authorize the CEO to enter into an agreement with LADWP to refund the overbillings for LA-35 back to April 1993. Overbillings from November 1999 through July 2003 would be refunded under Administrative Code § 4507 (m), without interest.

**Fiscal Impact:** \$7,847,309

#### Option #2

Adopt the CEQA determination and authorize the CEO to enter into an agreement, in form approved by the General Counsel, with LADWP to refund the overbillings for LA-35 back to April 1993, with interest.

**Fiscal Impact:** \$13,835,354

#### Option #3

Adopt the CEQA determination and authorize the CEO to enter into an agreement, in form approved by the General Counsel, with LADWP to refund the 2.4 percent overbillings for LA-35 from April 1993 through July 2003, with interest of \$256,874 for the period of November 2002 through July 2003.

**Fiscal Impact:** \$11,407,292

#### Option #4

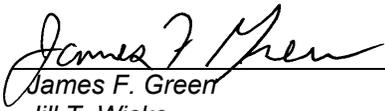
Adopt the CEQA determination and authorize the CEO to enter into an agreement, in form approved by the General Counsel, with LADWP to refund the 2.4 percent overbillings for LA-35 from April 1993 through July 2003.

**Fiscal Impact:** \$11,150,418

**Staff Recommendation**

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Option #4

		3/29/2004
	James F. Green	Date
for	Jill T. Wicke	
	Manager, Water System Operations	
		3/29/2004
	Ronald R. Gastelum	Date
	Chief Executive Officer	

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