STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

F I L E D
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May 8, 2012

Agenda ID #11328
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 07-12-026

This is the proposed decision of Administrative Law Judge (ALJ) Maribeth A. Bushey. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Maribeth A. Bushey at mab@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ MARYAM EBKE for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:rs6

Attachment

Decision **PROPOSED DECISION OF ALJ BUSHEY** (Mailed 5/8/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Calaveras Telephone Company (U1004C), Cal-Ore Telephone Co. (U1006C), Ducor Telephone Company (U1007C), Happy Valley Telephone Company (U1010C), Hornitos Telephone Company (U1011C), Kerman Telephone Co. (U1012C), The Ponderosa Telephone Co. (U1014C), Sierra Telephone Company, Inc. (U1016C), The Siskiyou Telephone Company (U1017C), Volcano Telephone Company (U1019C), and Winterhaven Telephone Company (U1021C) for Ratemaking Determination regarding Dissolution of Rural Telephone Bank.	Application 07-12-026 (Filed December 20, 2007)

INTERIM DECISION RESTORING PRIOR STATUS

1. Summary

This decision orders payments made to the California High Cost Fund-A pursuant to Commission Decisions (D.) 10-06-029 and 10-10-036 restored to applicants pending a final Commission decision implementing the Court of Appeals opinions. This decision also directs that the allegations put forward by the Division of Ratepayer Advocates be examined and an evidentiary record prepared to support any further actions by the Commission.

2. Restoring the Status Quo

On July 5, 2011, the Court of Appeal for the State of California, Fifth Appellate District issued three opinions annulling Commission Decisions (D.) 10-06-029 and 10-10-036. The Court of Appeal remanded the proceeding to this Commission for reallocation of the Class B share redemption proceeds in accord with the Court of Appeal's opinions.

Based on the Commission's directives in the annulled decisions, certain applicants transferred funds to High Cost Fund-A. Given that the Commission's decisions have been annulled, the funds transferred should be returned to applicants pending further order of the Commission.

On January 30, 2012, the assigned Administrative Law Judge (ALJ) convened a prehearing conference. Counsel for the applicants and the Commission's Division of Ratepayer Advocates (DRA) entered appearances. After the prehearing conference, the assigned Commissioner issued the scoping memo setting the initial procedural schedule.

On April 3, 2012, counsel for the following applicants filed and served an accounting of the amounts each applicant had paid to High Cost Fund-A:

Applicant	Amount Paid to High Cost Fund-A
Calaveras Telephone Company	$580,780.00
Cal-Ore Telephone Company	$857,001.59
Ducor Telephone Company	$504,222.30
Kerman Telephone Company	$1,153,959.40
The Ponderosa Telephone Company	$5,058,268.05
Sierra Telephone Company, Inc.	$3,204,443.27
The Siskiyou Telephone Company	$5,563,428.10
Volcano Telephone Company	$5,116,934.80
TOTAL	**$22,039,037.51**

Counsel for applicants Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company filed and served a

statement that these applicants had not made any payments to High Cost Fund-A pursuant to the annulled decisions. Consequently, today's decision orders no refund to these applicants.

On April 9, 2012, DRA responded in opposition to applicants' claimed entitlement to a refund of amounts returned to ratepayers via payments to the High Cost Fund-A and instead argued that the applicants receive $0.0 from the Fund. DRA contended that the applicants "engaged in false and misleading conduct by failing to properly disclose to the Commission over $30 million in Rural Telephone Bank (RTB) proceeds and leading the Commission to believe the proceeds were *tens of thousand times smaller*, or $3,037."[1] DRA also challenged whether the applicants had met their burden of proving that "their shareholders bore the risk of holding the RTB stock" because, DRA argued, the applicants had failed to disclose the existence of the stock. Similarly, DRA asserted that the applicants' failure to disclose to this Commission the receipt of stock and dividends from the RTB negated the applicability of the Rule Against Retroactive Ratemaking. DRA concluded that the applicants were not entitled to the return of any ratepayer funds from the High Cost Fund-A.

On April 12, 2012, the applicants seeking refunds replied to DRA's response and argued that the Commission should disregard DRA's response as the Court of Appeals has already ruled on these issues.

3. Discussion

As set forth above, the Court of Appeal annulled Commission Decisions 10-06-029 and 10-10-036 and remanded the proceeding to this Commission for

[1] DRA Response at 2.

reallocation of the Class B share redemption proceeds in accord with the Court of Appeal's opinions. With the Commission's decisions annulled, the funds transferred must be returned to applicants pending further order of the Commission in compliance with the Court of Appeal's opinions.

The record shows, and no party disputes that the following parties paid the indicated amount to High Cost Fund-A in reliance on the now-annulled decisions. We, therefore, order these amounts returned to the specified applicant:

Applicant	**Amount to be Returned from High Cost Fund-A**
Calaveras Telephone Company	$580,780.00
Cal-Ore Telephone Company	$857,001.59
Ducor Telephone Company	$504,222.30
Kerman Telephone Company	$1,153,959.40
The Ponderosa Telephone Company	$5,058,268.05
Sierra Telephone Company, Inc.	$3,204,443.27
The Siskiyou Telephone Company	$5,563,428.10
Volcano Telephone Company	$5,116,934.80
TOTAL	**$22,039,037.51**

With the transfer of these amounts, the applicants will be restored to their respective financial positions prior to the Commission issuing the annulled decisions.

Applicants request interest at the 90-day commercial paper rate on these amounts held by the Commission in High Cost Fund-A. The Commission has previously used the 90-day commercial paper rate for amounts returned from

the Fund. [2] Therefore, we will order interest added to each amount to be returned and the interest shall be calculated using the 90-day commercial paper rate.

4. Next Steps in this Proceeding

4.1. Compliance with Court of Appeal's Opinions

To comply with the Court opinions, the Commission must examine the existing evidentiary record, determine whether additional evidence is necessary to fully implement the Court's analysis, and apply the law as set forth in the Court opinions. The Commission must prepare the factual record necessary to enable it to issue a decision complying with the Court of Appeal's opinions. In doing so, the Commission will act strictly in accordance with the Court of Appeal's opinions and will only take such actions as are essential to comply with and give effect to the opinions, and reflect the findings and conclusions necessary to accurately implement the Court of Appeal's opinions.[3]

The assigned Commissioner should promptly identify any such factual issues and issue a scoping memo setting an expeditious schedule to assemble the needed facts. The ratemaking determinations made by the Court of Appeal must be fully and efficiently implemented by this Commission. The Commission must also address in its decision all other issues that were not altered by the Court of Appeal opinions but which are necessary to resolving the ratemaking issues in this proceeding.

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[2] *See,* e.g., Ponderosa Telephone Company, Inc., Resolution T-17297 (December 1, 2011).

[3] *See* Pub. Util. Code § 1705.

4.2. Examination of DRA's Allegations

DRA alleges that the applicants received income and assets from the RTB and failed to disclose such receipts to this Commission for required ratemaking review.[4] As set forth above, this Commission may not revisit the ratemaking determinations made by the Court of Appeal, and we caution the assigned Commissioner to carefully set a procedural schedule faithfully implementing the Court of Appeal's ratemaking determinations.

The Commission's jurisdiction over applicants, however, is not limited to ratemaking. The assigned Commissioner should examine DRA's allegations by assembling such facts as may be necessary to evaluate the entire history of each applicant's administration of income and assets received from the RTB for compliance with the Commission's regulations and California law, to see if they have been violated, and if so, whether the Commission should impose any penalties.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

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[4] All applicants are subject to cost-of-service ratemaking and the applicants requesting refunds from the High Cost Fund-A receive substantial publicly-funded subsidies from that Fund.

Findings of Fact

1. Commission Decisions 10-06-029 and 10-10-036 were annulled in their entirety by Court of Appeal for the State of California, Fifth Appellate District opinions issued on July 5, 2011.

2. The Commission must implement the Court of Appeal's opinions without equivocation on each and every issue addressed by the Court of Appeal.

3. Certain applicants have presented an accounting of the amount each paid to the High Cost Fund-A in reliance on the now-annulled Commission decisions.

4. No party disputes the accountings.

5. Applicants Happy Valley Telephone Company, Hornitos Telephone Company and Winterhaven Telephone Company state that each paid no amount to the High Cost Fund-A in reliance on the now-annulled decisions.

Conclusions of Law

1. Pending a final Commission decision implementing the Court of Appeal's opinions, the financial status of applicants with regard to the funds at issue in this proceeding should be restored to the status quo prior to the now-annulled Commission decisions, together with interest at the 90-day commercial paper rate.

2. The following amounts should be returned to the specified applicant:

Applicant	Amount to Returned from High Cost Fund-A
Calaveras Telephone Company	$580,780.00
Cal-Ore Telephone Company	$857,001.59
Ducor Telephone Company	$504,222.30
Kerman Telephone Company	$1,153,959.40
The Ponderosa Telephone Company	$5,058,268.05
Sierra Telephone Company, Inc.	$3,204,443.27

The Siskiyou Telephone Company	$5,563,428.10
Volcano Telephone Company	$5,116,934.80
TOTAL	**$22,039,037.51**

3. Interest should be added to each amount listed in Conclusion of Law 2 based on the 90-day commercial paper rate during the time the amounts were held by the Fund.

4. The assigned Commissioner should set an expedited procedural schedule to assemble the facts necessary to issue a Commission decision accurately implementing the Court of Appeal opinions.

5. The assigned Commissioner should examine the applicants' management of income and assets from the RTB for compliance with Commission regulations and California law.

O R D E R

Therefore **IT IS ORDERED** that:

1. The Commission's Fiscal Office shall prepare checks in the following amounts, plus interest calculated as set forth in Ordering Paragraph 2, drawn on the California High Cost Fund-A account, and cause such checks to be delivered to the headquarters address of each listed recipient:

Applicant	**Amount to be Returned from High Cost Fund-A**
Calaveras Telephone Company	$580,780.00
Cal-Ore Telephone Company	$857,001.59
Ducor Telephone Company	$504,222.30
Kerman Telephone Company	$1,153,959.40
The Ponderosa Telephone Company	$5,058,268.05
Sierra Telephone Company, Inc.	$3,204,443.27
The Siskiyou Telephone Company	$5,563,428.10

Volcano Telephone Company	$5,116,934.80
TOTAL	**$22,039,037.51**

2. Interest shall be added to each amount listed in Ordering Paragraph 1 calculated based on 90-day commercial paper rate during the time the amounts were held by the Fund.

3. The assigned Commissioner shall adopt an expedited procedural schedule for implementing the Court of Appeal opinions directing the ratemaking treatment of the Rural Telephone Bank stock redemption proceeds.

4. The assigned Commissioner shall examine each applicant's compliance with Commission regulations and California law with regard to income and assets from the Rural Telephone Bank.

5. The proceeding shall remain open.

This order is effective today.

Dated _____, at San Francisco, California.