



**FILED**

07-23-10

09:42 AM

**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)

**CHIEF ADMINISTRATIVE LAW JUDGE'S RULING  
DENYING MOTION FOR REASSIGNMENT**

On July 8, 2010, Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company (collectively "Applicants") filed a *Motion for Reassignment of Administrative Law Judge Bushey for Order to Show Cause Phase*. The motion seeks an order removing Administrative Law Judge (ALJ) Bushey as the assigned ALJ from Phase II of the proceeding. Applicants filed the motion pursuant to Rules 9.2 and 9.4 of the

Commission's Rules of Practice and Procedure. The motion is denied for the reasons set forth below.

### **1. Procedural History**

On December 20, 2007, the Applicants filed Application 07-12-026 seeking a determination of the proper ratemaking treatment for Rural Telephone Bank stock redemption proceeds that each Applicant had received as a result of the dissolution of the Rural Telephone Bank. By Resolution ALJ-176-3206 issued on January 10, 2008, the Commission preliminarily categorized the proceeding as ratesetting. On January 11, 2008, the Commission noticed the assignment of ALJ Bushey in its Daily Calendar as the assigned ALJ in the proceeding.

On September 15, 2009, the assigned ALJ mailed her Proposed Decision in Phase I of the proceeding. The Applicants filed comments on the Proposed Decision on October 12, 2009. A First Revised Proposed Decision was published on the Commission's website on December 17, 2009. On June 28, 2010, the Commission issued a decision in the first phase of the proceeding, Decision (D.) 10-06-029. The decision found, among other things, that Applicants received \$31,299,810.13 from Rural Telephone Bank stock dividends and redemption, and that this amount should be credited to ratepayers. The Commission also ordered the Applicants to Show Cause why they should not be subject to penalties for violating a prior Commission decision, D.91-09-042, and Rule 1 of the Commission's Rules of Practice and Procedure. With this issuance of the Show Cause Order in D.10-06-029, the Commission's decision recategorized this proceeding as adjudicatory, as permitted by Rule 7.1(e).

### **2. Rule 9.2 Reassignment on Peremptory Challenge**

Rule 9.2(a) provides, in pertinent part, as follows: "A party to a proceeding preliminarily or finally determined to be adjudicatory may file a

motion, once only, for automatic reassignment of that proceeding to another Administrative Law Judge in accordance with the provisions of this subsection. The motion shall be filed and served on all parties, and on the Chief Administrative Law Judge and the President of the Commission.” Rule 9.2(c) explains that, in order for such a motion to be timely, it must be filed “no later than 10 days after the date of the notice of the assignment . . . .”

In this proceeding, the notice of assignment was issued on January 11, 2008. This 10-day timeframe expired on January 20, 2008. Applicants did not file their motion until July 8, 2010. As a result, their motion is untimely.

Applicants argue that the motion is timely because Applicants filed within 10 days of issuance of the Phase I decision in this proceeding, D.10-06-029. The Phase I decision issued on June 28, 2010. Applicants also refer to the fact that D.10-06-029 recategorized the proceeding from ratesetting to adjudicatory. They suggest that, because the categorization of this proceeding was not “finally determined,” citing to language in Rule 9.2(a), until the Commission issued the decision in Phase I of this proceeding, that the 10-day time period did not start running until the decision’s issuance date.

The Commission’s issuance of a decision in a particular phase of a proceeding does not serve to start the 10-day time period set forth in Rule 9.2(c). Similarly, recategorization of a proceeding does not restart the 10-day timeframe. The start date is clearly indicated in Rule 9.2(c) as calculated from the date of the Commission’s assignment of the case to an ALJ, not from the date of categorization, recategorization or issuance of a decision in one phase of the proceeding.

Moreover, Applicants' reliance on the phrase "finally determined" set forth in Rule 9.2(a) to imply that the 10-day period does not start until the categorization of the case is "finally determined" is misplaced. This phrase does not serve to identify the start date of the 10-day timeframe but instead serves to identify the types of proceeding where a motion for "automatic reassignment" may be permitted.

For these reasons, Applicants' motion pursuant to Rule 9.2 is denied as untimely.

### **3. Rule 9.4 Reassignment for Cause**

Applicants' motion relies on a second basis for an order removing ALJ Bushey from this proceeding. Applicants' second argument is based on Rule 9.4 which provides, in pertinent part, as follows: ". . . a party may move for reassignment in any proceeding in which the assigned Administrative Law Judge: (1) has a financial interest in the subject matter in a proceeding or in a party to the proceeding . . . 2) has bias, prejudice, or interest in the proceeding." The timeframe for filing a Rule 9.4 motion is set forth in subsection (c), which states that such a motion shall be filed "at the earliest practicable opportunity and in any event no later than 10 days after the date the party discovered or should have discovered facts set forth in the declaration filed pursuant to this rule."

Applicants argue that removal of ALJ Bushey for cause is appropriate because she has "bias or prejudice" and, as a result, Applicants will be denied an opportunity for a fair hearing. Applicants support their allegation of "bias or prejudice" by a declaration, dated July 8, 2010, signed under penalty of perjury by Patrick M. Rosvall, attorney for Applicants. Rosvall's declaration cites to a number of statements in D.10-06-029 and to ALJ Bushey's "extensive

involvement in the preparation of the Phase I Decision in which the allegations of misconduct subject to the OSC [Order to Show Cause] were made.” Rosvall’s declaration also cites to statements made in the First Revised Proposed Decision. For the reasons discussed below, Rosvall’s declaration fails to support an order removing ALJ Bushey as the assigned ALJ from this proceeding for “bias or prejudice.”

Regarding Rosvall’s attempt to support a finding of “bias or prejudice” by specific references to statements found in D.10-06-029, such statements are those of the Commission, not of ALJ Bushey. As such, statements found in a final decision of the Commission cannot be used to establish bias or prejudice by the assigned ALJ.

In addition, to the extent ALJ Bushey assisted with the preparation of the decision, the declaration’s description of her “extensive involvement” in the rulemaking portion of this proceeding is vague and insufficient to establish “bias or prejudice” in the adjudicatory phase of the proceeding.

Moreover, to the extent Rosvall relies on statements made in the First Revised Proposed Decision published on December 17, 2009 to establish “bias or prejudice,” his reliance on those facts are untimely under Rule 9.4(c). This Rule requires that motions pursuant to Rule 9.4 be filed “at the earliest practicable opportunity and in any event no later than 10 days after the date the party discovered or should have discovered facts set forth in the declaration . . .” Applicants should have discovered the facts set forth in the declaration pertaining to the First Revised Proposed Decision on or about the date of publication, December 17, 2009, but this motion was not filed until July 8, 2010. Accordingly, to the extent the declaration relies on facts set forth in the December 17, 2009 First Revised Proposed Decision, it is untimely. Due to the

untimely nature of these allegations, the substance does not need to be addressed.

For these reasons, Applicants' motion pursuant to Rule 9.4 is denied for failure to establish "bias or prejudice."

**4. Rule 9.2(a) Service of Motion**

As discussed above, Applicants' motion fails to establish sufficient basis under Rules 9.2 or 9.4 for removal of ALJ Bushey. Importantly, Applicants' motion also fails for neglecting to comply with the service requirement for such motions set forth in Rule 9.2(a). This service requirement, which is equally applicable to Rule 9.2 and Rule 9.4 motions, requires the moving party to serve the motion on the Chief ALJ. Such service is mandatory because the Chief ALJ is directed to prepare the ruling in response to these motions. Applicants' failed to appropriately serve the Chief ALJ. In the absence of service, notice of the pending request has not been made.

**IT IS RULED** that the motion by Applicants is denied.

Dated July 23, 2010, at San Francisco, California.

/s/ KAREN V. CLOPTON  
\_\_\_\_\_  
Karen V. Clopton  
Chief Administrative Law Judge

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a hard copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the hard copy of the filed document is current as of today's date.

Dated July 23, 2010, at San Francisco, California.

/s/ LILLIAN LI  
\_\_\_\_\_  
Lillian Li

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\*\*\*\*\*

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

Last Updated on 22-JUL-2010 by: JVG

A0712026 LIST

\*\*\*\*\* PARTIES \*\*\*\*\*

Patrick M. Rosvall  
COOPER, WHITE & COOPER LLP  
201 CALIFORNIA STREET, 17TH FLOOR  
SAN FRANCISCO CA 94111  
(415) 433-1900  
smalllecs@cwclaw.com  
For: Calaveras Telephone Company, Cal-Ore Telephone  
Co., Ducor Telephone Company, Happy Valley Telephone  
Company, Hornitos Telephone Company, Kerman  
Telephone Company, The Ponderosa Telephone Co., Sierra  
Telephone Company, Inc., The Siskiyou Telephone  
Company, Volcano Telephone Company, Winterhaven  
Telephone Company.

---

Joe Chicoine  
FRONTIER COMMUNICATIONS  
9260 E. STOCKTON BLVD.  
ELK GROVE CA 95624  
(916) 686-3588  
joe.chicoine@frontiercorp.com  
For: Evans Telephone Company

---

Dave Clark  
KERMAN TELEPHONE COMPANY  
811 S MADERA AVE.  
KERMAN CA 93630  
dclark@kermantelephone.com  
For: Forresthill Telephone Company

---

Sarah R. Thomas  
Legal Division  
RM. 5033  
505 VAN NESS AVE  
San Francisco CA 94102 3298  
(415) 703-2310  
srt@cpuc.ca.gov  
For: DRA

\*\*\*\*\* STATE EMPLOYEE \*\*\*\*\*

Natalie Billingsley  
Division of Ratepayer Advocates  
505 VAN NESS AVE, RM. 4209  
San Francisco CA 94102 3298  
(415) 703-1368  
nxb@cpuc.ca.gov  
For: DRA

Maribeth A. Bushey  
Administrative Law Judge Division  
505 VAN NESS AVE, RM. 5018  
San Francisco CA 94102 3298  
(415) 703-3362  
mab@cpuc.ca.gov

Brewster Fong  
Division of Ratepayer Advocates  
RM. 4209  
505 VAN NESS AVE  
San Francisco CA 94102 3298  
(415) 703-2187  
bfs@cpuc.ca.gov  
For: DRA

Christopher Myers  
Division of Ratepayer Advocates  
RM. 4209  
505 VAN NESS AVE  
San Francisco CA 94102 3298  
(415) 703-2908  
cg2@cpuc.ca.gov  
For: DRA

\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*

E. Garth Black  
Attorney At Law  
COOPER, WHITE & COOPER, LLP  
201 CALIFORNIA STREET, 17TH FLOOR  
SAN FRANCISCO CA 94111  
(415) 433-1900  
gblack@cwclaw.com

Mark P. Schreiber  
Attorney At Law  
COOPER, WHITE & COOPER, LLP  
201 CALIFORNIA STREET, 17TH FLOOR  
SAN FRANCISCO CA 94111  
(415) 433-1900  
mschreiber@cwclaw.com

Charlie Born  
FRONTIER COMMUNICATIONS  
PO BOX 340  
ELK GROVE CA 95759  
(916) 686-3570  
charlie.born@ftr.com