

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking into the  
Review of the California High Cost Fund  
A Program.

Rulemaking 11-11-007  
(Filed November 10, 2011)

**REPLY COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES  
ON THE INDEPENDENT SMALL LECS' COMMENTS ON  
THE PROPOSED GENERAL RATE CASE PLAN  
OF COMMISSIONER SANDOVAL**

**I. INTRODUCTION**

On January 9, 2015, in response to the request by Commissioner Sandoval in her Second Amended Scoping Memo issued on December 9, 2014, the parties submitted comments on a proposed General Rate Case (GRC) Plan attached to the Second Amended Scoping Memo. The Office of Ratepayer Advocates (ORA) submits these reply comments to the opening comments submitted by the Independent Small LECs (Small LECs).<sup>1</sup>

**II. IT IS LAWFUL TO HAVE A GRC PLAN THAT DEFERS FILING  
OF SOME SMALL LECS' GRCS UNTIL 2016 AND 2017**

The adoption of a comprehensive GRC Plan is essential for balancing the workload of the Commission and the staff assigned to analyze and provide recommendations consistent with the public interest. The Assigned Commissioner's GRC plan and ORA's GRC plan both properly balance the workload against the interests of the regulated utilities by deferring filing of certain Small LECs' GRCS until 2016 and 2017.

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<sup>1</sup> ORA does not reply to every issue in the Small LECs' opening comments; however, silence on any issue does not indicate assent.

The Small LECs' argue that it would be "unlawful" for the Commission to require a telephone company to "delay rate relief" by delaying the filing date for a GRC.<sup>2</sup> However, the Commission has repeatedly rejected this argument in the Kerman Telephone Company's GRC, A.11-12-001, holding that it is lawful to deny interim rate relief unless there is a financial emergency, during the delay in the Kerman GRC.<sup>3</sup>

### **III. A "DEFICIENCY REVIEW" IS A COMMON PART OF TYPICAL GRC PLANS IN OTHER REGULATED INDUSTRIES, AND IS NECESSARY TO THE TIMELY PROCESSING OF GRC APPLICATIONS HERE**

The Small LECs misunderstand ORA's proposal with regards to the submitting of proposed GRC Applications. The Small LECs claim that the process would be "subjective" and susceptible to "gaming" by ORA.<sup>4</sup> They further claim that the proposal "adds 60 days" to the timeline. However, this reflects a misunderstanding of ORA's proposed process.

ORA's proposal is basically identical to the process adopted by the Commission for water utilities.<sup>5</sup> ORA's proposal is that the Small LECs' GRCs would be processed in 460 days, or about 15 months. By comparison, the timeline for water GRCs varies between 11 and 18 months depending upon the number of ratemaking districts. Furthermore, ORA's proposed timeline includes the 60 days necessary for conducting a deficiency review prior to the Small LEC filing a final application – it does not add any additional time.

The 460-day timeline begins when the utility provides the Commission with a "Proposed Application" which would be used to determine whether the application meets the basic minimum requirements. The review conducted in the water and energy areas, and applicable here, is to determine whether the "Proposed Application" provides the

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<sup>2</sup> Small LECs' Opening Comments on the proposed GRC plans, p. 12.

<sup>3</sup> See D.13-10-051, and D.14-02-044.

<sup>4</sup> Small LECs' Opening Comments, p. 13.

<sup>5</sup> D.07-05-062, Appendix A.

minimum information required by the Commission. Whether the minimum information requirements have been provided is established by an objective determination of whether the application complies with the “Minimum Data Requirements” (MDRs) described in ORA’s proposed GRC plan.<sup>6</sup> A “Proposed Application” is deemed complete if all the MDRs have been submitted. Concerns that the process would be “subjective” are unfounded.<sup>7</sup> The process would involve simply ensuring that the MDRs are met. Perhaps the Small LECs’ concern that ORA might “game” the system is due to their unfamiliarity with GRC applications in the water or energy areas. In fact, a deficiency review is a normal part of the ratemaking process.

The Small LECs’ concern that the deficiency review “adds 60 days” ignores the fact that the entire GRC process (including the deficiency review) in ORA’s proposal takes about 15 months to complete. The Small LECs cite to several GRCs that were decided in a slightly shorter time frame than both ORA’s and the Assigned Commissioner’s GRC plans.<sup>8</sup> However, those cases were handled via the informal advice letter process and decided by Commission resolutions, not final decisions, and did not involve the filing of testimony or evidentiary hearings. Under ORA’s proposal the advice letter process is still an option for the Small LECs if they choose to exercise it.

#### **IV. ORA’S PROPOSED MDRS ARE THE MINIMUM AMOUNT OF INFORMATION NECESSARY TO EVALUATE GRCS**

The Small LECs’ argument that the MDRs “go far beyond the minimum” information necessary to evaluate GRCs, and “impose unreasonable burdens” for “no apparent benefit,” is pure hyperbole.<sup>9</sup> The questions are not unreasonable and the benefits are obvious. Both ORA and the Commission need certain types of information

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<sup>6</sup> This is exactly the same as in water GRCs. See D.07-05-062, p. 23: “For purposes of issuance of a deficiency letter, a proposed application will be deemed complete if all MDRs are submitted.”

<sup>7</sup> Any concern regarding subjectively enforcing MDRs could be addressed through the appeal process that ORA has proposed which similarly exists in the deficiency review process for water utilities.

<sup>8</sup> Small LECs’ Opening Comments, p. 12.

<sup>9</sup> Small LECs’ Opening Comments, p. 14.

that are basic to all ratemaking, such as financial statements, tax returns, infrastructure plans, affiliate transaction data, etc. It is far more efficient to require production of this information at the beginning, rather than waiting for ORA to propound data requests and for the applicant to answer them.

The Small LECs do not make a convincing argument that ORA's proposed MDRs are unreasonable or burdensome. In fact, the Small LECs list only four potentially objectionable items.<sup>10</sup> For those four items, the Small LECs' concerns are unfounded. For example, the Small LECs claim that providing Annual System Average Interruption Duration (outage data) is not required for the any of the Small LECs. However, General Order 133-C requires the Small LECs to include outage information in annual reports submitted to the Director of the Communications Division. Small LECs also provide outage reporting data to the FCC.<sup>11</sup> Certainly is it reasonable to expect the Small LECs to maintain data on the number and duration of outages and for the Commission to consider such data when evaluating requests in general rate cases. Next, the Small LECs claim that questions about the "type, length, [or] installation date" of their telephone lines, or for maps of their facilities that can be converted into PDF format, are unreasonable because they do not maintain such data, which ORA does not find to be

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<sup>10</sup> Small LECs' Opening Comments, p. 15.

<sup>11</sup> See FCC Outage Requirements (47 C.F.R. Part 4 - reporting of network outages):

<http://www.ecfr.gov/cgi-bin/text-idx?SID=7b4648e98a241bd6e8572767c33ae89c&node=pt47.1.4&rgn=div5>

[https://apps.fcc.gov/edocs\\_public/attachmatch/DA-12-2027A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-12-2027A1.pdf)

credible.<sup>12</sup>

Finally, the Small LECs find the request to provide “Five years of actual and proposed test year revenue requirements (separately identifying all elements comprising total revenue requirements)” to be ambiguous.<sup>13</sup> This question mirrors a similar question for water utilities; however, if it is ambiguous it can be clarified.<sup>14</sup> In any event, if one question is ambiguous that does not prove that all of the MDRs are burdensome.

As the Commission noted in its adoption of a rate case plan for water utilities, the use of Minimum Data Requirements (MDRs) is intended to “streamline the formal discovery process during a GRC or a cost of capital proceeding.”<sup>15</sup> The Commission and its staff of analysts, attorneys, and judges should have all of the information necessary to evaluate the Small LECs’ data within the statutorily determined timeframe for a GRC.

## V. CONCLUSION

In order to better ensure the Commission’s ability to meet the statutory requirements pertaining to the timely and thorough resolution of the Small LECs’ GRC applications, ORA recommends the Commission adopt a comprehensive GRC Plan which includes MDRs and a process to verify their inclusion in the Small LECs’ GRC applications.

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<sup>12</sup> ORA staff viewed maps of Kerman’s facilities at ORA’s December 22, 2014 site inspection, and therefore believe that such maps exist. If it is true that some of the Small LECs do not know the location of their facilities and do not maintain outage data, this should be a cause for concern. The Small LECs provide maps to the Communications Division in connection with the CPUC’s Broadband Availability Map initiative. In addition, D.12-02-015 requires CASF applicants to provide broadband maps, and Ponderosa, Calaveras, Foresthill, and Pinnacles, are among the Small LECs that have participated in that program.

<sup>13</sup> Small LECs’ Opening Comments, p. 15.

<sup>14</sup> Providing actual revenue data is required for each Class A Water Utility in its GRC. See D.07-05-062, Appendix A, pages 21-22. If clarified, the question asks for five years of actual revenue, expense, and return data, and also one (or more) year of proposed test year revenue requirements. ORA does not find the question overly ambiguous such that it cannot be answered.

<sup>15</sup> D.07-05-062, p. 21.

Respectfully submitted,

/s/ TRAVIS T. FOSS

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