



RWH/ek4 10/11/2016

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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), Foresthill Telephone Company (U1009C), Kerman Telephone Co. (U1012C), Pinnacles Telephone Co. (U1013C), The Ponderosa Telephone Co. (U1014C), Sierra Telephone Company, Inc. (U1016C), The Siskiyou Telephone Company (U1017C), Volcano Telephone Company (U1019C) (“INDEPENDENT SMALL LECS”) for a Determination of Applicants’ Cost of Capital for Ratemaking Purposes.

Application 15-09-005
(Filed September 1, 2015)

ADMINISTRATIVE LAW JUDGE’S RULING GRANTING MOTION FOR OFFICIAL NOTICE PURSUANT TO RULE 13.9

On June 24, 2016, the Applicants in this proceeding submitted a request that the Commission take official notice of an “open letter” dated May 10, 2016 from the Assistant Administrator of the Rural Utilities Service (RUS) of the Department of Agriculture of the United States to all telecommunications loan applicants and borrowers (RUS Letter). The RUS Letter was attached to the request and is also available at <http://www.rd.usda.gov/files/Openletter-AAT.pdf>. Applicants sought to have the Commission consider the RUS letter in connection with its pending determination of the cost of capital in this proceeding.

The Applicants request is being treated as a Motion submitted pursuant to Rule 11.1. I have considered the request, and as set forth by the Applicants, Rule 13.9 allows the Commission to take official notice of matters that may be

judicially noticed by the courts of the State of California. The RUS Letter was issued after evidentiary hearings were concluded but before the schedule in this proceeding called for the case to be submitted. ORA did not file a response to the request within the 15 day period called for in Rule 11.1(e).

Rule 13.9 of our Rules of Practice and Procedure states that the Commission may take official notice "of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq." Applicants state that judicial notice is appropriate under California Evidence Code Section 452(c) for: "Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Evidence Code Section 453 requires judicial notice "of any matter specified in Section 452, if a party requests it and (a) gives the adverse party notice of the request and (b) furnishes the court with sufficient information to take judicial notice of the matter." Applicants argue that the RUS Letter is an official pronouncement of the RUS and within the scope of Section 452(c) and directly relevant to the cost of capital consideration in this proceeding.

However, I do not consider the RUS Letter to be an "official act of the legislative, executive, and judicial departments of the United States" that falls within how that is defined under California Evidence Code § 452(c). There is no action taken by RUS in the letter. The RUS Letter offers guidance and instructions to "Telecommunications Loan Applicants and Borrowers," but that is not an official act of the RUS. The subject matter of the letter was not noticed for comment, nor was it published in the Federal Register. At best this can be considered a request and notice to applicants that additional information may be required if it is not included in future loan applications. As such, it does not constitute an official act of an executive department of the United States.

While the RUS Letter may fail to be considered under the official notice requirements of California Evidence Code § 452(c), it may be considered under the similar provisions of California Evidence Code § 452(h): “Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” It is not disputable that the RUS Letter was issued by the Assistant Administrator of the Telecommunications Program at the Rural Utilities Service of the U.S. Department of Agriculture on May 10, 2016. It has been made widely available and contains guidance to new loan applicants regarding the March 30, 2016 FCC universal service order. The content and source of the letter are capable of immediate and accurate determination. In short, it meets the qualifications to be officially noticed pursuant to California Evidence Code § 452(h).

Pursuant to California Evidence Code § 453, Applicants provided ORA sufficient notice of the request, such that ORA was able to prepare to meet the request; and furnished the Commission with sufficient information to enable it to take judicial notice of the matter.

Accordingly, the RUS Letter meets the requirements of the California Evidence Code as the type of matter that may be officially noticed under our Rules of Practice and Procedure, and I hereby take official notice of the RUS Letter, mark it as exhibit Applicants-18, and accept the motion to move it into the record for this proceeding.

I deferred submitting the notice of submission in this case, given the timing of the Applicants Motion. As the Applicants Motion has now been resolved, this case will be submitted a week from today, October 18, 2016.

IT IS RULED that the Motion for Official Notice of the May 10, 2016 Letter from the Assistant Administrator of the Rural Utilities Service of the Department of Agriculture of the United States to all telecommunications loan applicants and borrowers is GRANTED.

Dated October 11, 2016, at San Francisco, California.

 /s/ ROBERT W. HAGA
Robert W. Haga
Administrative Law Judge