

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Calaveras Telephone Company (U 1004 C) for Rehearing of Resolution T-17184.

Application 09-03-006
(Filed March 2, 2009)

**ORDER MODIFYING RESOLUTION T-17184,
GRANTING LIMITED REHEARING ON THE
DETERMINATION REGARDING THE EMPLOYEE PROFIT SHARING
PLAN, AND DENYING REHEARING OF THE RESOLUTION,
AS MODIFIED, IN ALL OTHER RESPECTS**

I. INTRODUCTION

Resolution T-17184 (or “Resolution”) involves the General Rate Case (“GRC”) filed by Calaveras Telephone Company (“Calaveras”) by Advice Letter No. 303. Calaveras is a rate of return regulated small local exchange carrier, and filed its GRC pursuant to this Commission’s General Order No. 96-B, §5.1 and D.01-05-031. There was no other party but Calaveras to the advice letter proceeding. The Commission’s Communication Division (“CD” or “CD Staff”) participated in the review of Calaveras’ GRC Advice Letter. Thus, the record for this proceeding was developed by Calaveras’ filing of the advice letter and supporting documents and information gathered and used by CD.

A draft of Resolution T-17184 (“Draft Resolution”) was issued for comments, to which Calaveras filed timely comments on November 18, 2008. This draft Resolution was amended twice, before becoming Resolution T-17184.

Calaveras timely filed an application for rehearing of the Resolution. In its rehearing application, Calaveras alleges legal error on the grounds that the benefits to salary ratio adopted in the resolution is arbitrary and not supported by substantial

evidence in the record.¹ (Rehrg. App., pp. 5-13.) Calaveras makes the same argument regarding the failure to adopt an elasticity factor with respect to the basic rate increase. (Rehrg. App., pp. 14-15.) In addition, Calaveras contends that the resolution lacks legally adequate findings. Calaveras further alleges that it was deprived of due process because the CD Staff did not provide them copies of their work papers prior to the issuance of the Resolution. Accordingly, Calaveras contends that the Commission has acted contrary to law and has abused its discretion. Instead of a stay request, Calaveras asks the Commission to establish a memorandum account through the California High Cost Fund-A for recording any revenues not provided by the resolution, and that may be ordered in a rehearing. (Rehrg. App., p. 5.) Calaveras also requests oral argument under Rule 16.3 of the Commission's Rules of Practice and Procedure. (Rehrg. App. 15-16.)

We have reviewed each and every allegation raised by Calaveras. We find that the issue involving the Employee Profit Sharing Plan ("retirement plan") has merit. As to all other issues, no legal error has been demonstrated. However, the Resolution shall be modified for purposes of clarification, as set forth below. Except as to the issue on ratepayer funding of Calaveras' retirement plan, rehearing of Resolution T-17184, as modified, is denied in all other respects. Also, Calaveras' request for oral argument and motion for a memorandum account are denied for the reasons explained below.

¹ On June 16, 2009, Calaveras filed a petition for modification, called "Application of Calaveras Telephone Company for Modification of Resolution T-17184" ("petition for modification"). (See Application (A.) 09-06-017. In this petition, Calaveras raises two issues related to the benefits to salary ratio. Today's decision is not intended to dispose or prejudge the issues raised in Calaveras' petition for modification.

II. DISCUSSION

A. Calaveras' challenge to the calculation of the 38% benefits to salary ratio has no merit.

1. The 38% benefits to salary ratio was reasonably calculated.

The Resolution decided upon the benefits to salary ratio of 38% for ratemaking purposes. Calaveras argues that the 38% ratio was not reasonably calculated, by stating:

[Resolution T-17184] adopted a 38% cap based solely on a statement that once discrete, existing benefits are excluded, and the profit sharing plan is reduced to 10% from 15% per CD Staff's recommendation, that the actual current ratio is 38%. . . . Calaveras does not contest the elimination of three of the specific benefits identified in . . . [Resolution T-17184]. However, CD Staff's (and [Resolution T-17184's] statement that its actual ratio is 38% is erroneous."

(Rehrg. App., p. 6.) Calaveras is correct in describing how the Resolution determined the 38% benefits to salary ratio. However, it is incorrect in alleging that the actual ratio is not 38%.

The benefits to salary ratio was simply calculated using the mathematical operations of addition, subtraction and division of numbers that were drawn from a spreadsheet provided by Calaveras outlining all of its salaries and benefits. This spreadsheet was provided in Calaveras' Response to CD Staff Data Request, dated September 22, 2008 ("Response to Data Request"). It is a two page document that is part of the Record Supplements attached to Calaveras' Rehearing Application, in Supplement #10, which are CD Staff's workpapers ("CD Staff's Workpapers").

The ratio was calculated in the following way. The spreadsheet contains eleven substantive columns listing wages and benefits. One column, titled "2007 Wages (includes \$1,500 bonus)" refers to the salaries. The other ten columns list the various benefits. Our methodology was to first subtract bonuses (\$67,500) from the wages

column total of \$2,624,271, and determined that the total for salaries in the ratio would be \$2,556,771. Then we eliminated the disallowed benefits categories from the benefits total. We eliminated “Reimbursed Medical” in the amount of \$94,255;² we eliminated “4-H Auction Proceeds” (meat contributions to employees) in the amount of \$109,704; and then we finally eliminated 5% of the “Profit Sharing,” in the amount of \$131,214. After that, we divided the allowed benefits total of \$962,341 by the salary total of \$2,624,271, and the result was the 38% benefits to salary ratio. Contrary to Calaveras’ assertion (Rehrg. App., p. 4.), the ratio is not some arbitrary number that CD Staff desired to “back into,” but the result of simply eliminating the specifically disallowed benefit categories from Calaveras’ request.

Furthermore, as explained in the Resolution on pages 10-11, the reasons for disallowing certain benefits are as follows:

- (1) Bonuses were disallowed for every employee “as there is no connection between the bonuses and operational results.” Calaveras confirmed in its September 22 data response that it “awarded employees with a \$1,500 (per employee) bonus which has been accounted for in the attached schedule as Salaries/Wages.”³ Calaveras does not allege legal error here. (Rehrg. App., p. 6, fn. 6.)
- (2) Co-payment and out of pocket medical expenses reimbursed to each employee was disallowed because those costs should be borne by the employees themselves, not ratepayers. Again, Calaveras does not allege legal error here. (Rehrg. App., p. 6, fn. 6.)
- (3) The “4-H Auction Proceeds” is a meat distribution plan that was disallowed “as it does not offer any recognizable benefit to operations of the regulated telecommunications company.”

² Reimbursed medical includes such items such as employee’s copayments and other out-of-pocket expenses. Calaveras did not allege legal error in the removal of this benefit from the calculation.

³ We note that bonuses were listed with wages, and thus, they were subtracted from wages.

Calaveras does not allege legal error here either. (Rehrg. App., p. 6, fn. 6.)

Thus, Calaveras does not challenge the disallowances of these three categories.⁴ Rather, it focuses on the following: (1) the alleged elimination of benefits related to compensable absences, medical insurance and other employee insurance programs, and worker compensation insurance, in calculating the 38% benefits to salary ratio, and (2) the reduction of employer's contribution to its employee's retirement plan ("Profit Sharing Plan") from 15% to 10%.

For the reasons explained below, Calaveras' claim that the Commission unlawfully eliminated other certain benefits has no merit. However, as discussed below, Calaveras' challenge to the 5% reduction in the Employee Profit Sharing Plan has merit.

2. The Commission did not eliminate the benefits related to compensable absences, medical insurance and other employee insurance programs, and worker compensation insurance in calculating the 38% benefits to salary ratio.

Calaveras alleges that in calculating the 38% benefits to salary ratio, Resolution T-17184 improperly eliminated compensable absences (i.e. sick leave and vacation) and medical insurance and other employee insurance programs, and decreased worker compensation insurance. (Rehrg. App., pp.6-7.) This allegation has no merit.

As to "medical insurance and other employee insurance programs," the rehearing application is vague as to what these alleged benefits are. In fact, the Resolution did not remove any funding for medical insurance and other employee insurance benefits (e.g. vision and life insurance) in its calculation of the benefits to

⁴ The Resolution did not disallow any of the other benefits listed in its spreadsheet, which are titled "Benefits (taxes) (Fica, Med, SDI, Futa)," "Medical," "Dental," "Unum Life," "BC Life," "Vision," and "L-T Care." The Resolution approves funding for all these benefits categories.

salary ratio. (See CD Staff's Work Papers.) Thus, Calaveras' argument on this issue makes no sense.

Except for broad assertions that the compensable absences and worker compensation insurance benefits have been eliminated, nothing in the rehearing application points to how the Resolution removes these specific benefits. Nor does Calaveras explain how these benefits were allegedly eliminated. As explained above, the Commission relied on the benefits listed in the Response to Data Request, and made its disallowances of three specific items, none of which are those Calaveras is now alleging were eliminated. Calaveras does not challenge the disallowance of these three items.

Moreover, the Commission's reliance on this response was reasonable because Calaveras understood that this list of benefits would be used to calculate the benefits to salary ratio. As it stated in its Response to the Data Request: "It is our understanding that the purpose of this request is to determine the ratio of employee benefits to wages/salaries." (Calaveras Telephone Company, General Rate Case, Salaries and Benefits, dated October 2, 2008.)⁵ Since compensable absences, medical insurance and worker compensation insurance benefits were not listed in this response (see CD Staff's Work Papers, pp. 1-2.), the particular benefits that Calaveras claims were taken out were not considered in calculating the benefits to salary ratio.

Accordingly, it is not the Commission that excluded the benefits. Rather, it was the company itself that left them out. Therefore, Calaveras' argument that the Resolution unlawfully eliminated these benefits has no merit.

⁵ This part of Calaveras' Response to CD Staff's data request was not included in the Record Supplement attached to Calaveras' application for rehearing, but is part of the record in this proceeding, since it reflects relevant communications between CD Staff and Calaveras.

3. For purposes of clarification, references to a “cap” on benefits should be removed from the language in the Resolution.

Calaveras objects to language in the Resolution that refers to the adoption of a “cap” on benefits. (Rehrg. App., pp. 5-6.) It appears however, that Calaveras has mistakenly applied the reference to the “cap” to the final benefits to salary ratio, rather than to the “cap of 10% on employer’s contribution to the Profit Sharing Plan,” which is the actual language used in the Resolution. (Resolution T-17184, pp. 11 & 17.) That mistake notwithstanding, we will remove the references to a “cap” from the Resolution for the following reasons.

Calaveras argues that the need for or precedent for a cap is not explained or justified, and to its knowledge, no cap on benefits has been applied to any other utilities’ benefits. Calaveras is correct. The use of the word “cap” is unfortunate, since we did not intend to apply a cap on the benefits to salary ratio. Rather, our references to a “cap” in this particular instance were intended to mean that ratepayers should only fund 10%, rather than the 15% contribution by Calaveras to its employees’ retirement package. Thus, the use of the word “cap” had a different meaning to the one Calaveras ascribes to it.

Accordingly, to avoid any confusion, Resolution T-17184 on pages 11 and 17 is modified. We will remove the word “cap” in the manner described in the ordering paragraphs in today’s decision.

4. The Resolution is modified to clarify some of the language used in the Resolution explaining what the rationale was for adopting the 38% benefit to salary ratio.

On page 12 of the Rehearing Application, Calaveras argues that Finding of Fact No. 9, which states that: “[T]he Commission finds CD’s benefit adjustments to be reasonable for ratemaking purposes,” is not supported by substantial evidence in the record, is not supported by findings and is arbitrary and capricious. In light of the above

discussion on CD Staff's methodology in calculating benefits adjustments, this is incorrect.

However, the language used in the Resolution could be misinterpreted as to what the underlying rationale was for determining what reasonable benefit expense levels are, so we will amend the Resolution to clarify our rationale.

We modify the following language on page 17, under "5":

In response to Calaveras' comments, CD has revised its adjustments to more accurately reflect the benefit expense levels of it and other small telephone companies operating in California. Standard industry benefits have been imputed for ratemaking purposes.

What we intended to convey in the Resolution was that it is not standard industry practice among small telephone companies operating in California to offer the following to its employees, especially if they are to be funded by ratepayers: bonuses unrelated to employee performance; employer contributions to out of pocket, non-medical-insurance covered, medical expenses; contributions of meat; and an employer contribution of 15% of salary to employee retirement plans.

Accordingly, for purpose of clarification, Resolution T-17184 shall be modified to replace the above quoted language with the following language:

In response to Calaveras' comments, CD has revised its adjustments. It has removed the following requested benefits that it regards as imprudent and unreasonable for ratemaking purposes: (1) annual bonuses that are unrelated to operational results; (2) employer contributions to employees' out of pocket medical expenses; (3) a meat distribution plan that does not offer any recognizable benefit to the operations of a regulated telecommunications company; and finally (4) CD reduced Calaveras' requested employer contributions to its employees' Profit Sharing Plan by 5%, from a 15% contribution, to a 10% contribution. CD does not find it reasonable that a regulated company should have its ratepayers fund these benefits. It is noted that the bonuses were removed from wages/salaries.

5. Calaveras' argument that the Resolution violates state policy regarding employee benefits has no merit.

Calaveras raises a policy issue, by asserting that it will be impossible for it to provide meaningful medical insurance to its employees if the 38% ratio is adopted. (Rehrg. App., p.13) Specifically, in its application for rehearing, Calaveras argues that the effect of the Resolution's disposition regarding employee benefits would be to "strip a small group of telephone company employees of their medical insurance," thereby constituting an "unfortunate departure from the spirit of employee protection laws and the Commission's stated policy" regarding the well-being of utility employees through the use of prevailing wage laws. (Rehrg. App., p. 14.)

This policy argument has no place in an application for rehearing, which should raise allegations of legal error. (See Pub. Util. Code, §1732, Code of Regs., tit. 20, §16.1, subd. (c), stating: "The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.") Thus, we reject this policy argument on this ground.

B. A limited rehearing is granted to reconsider the determination of the 10% employer's contribution to the Profit Sharing Plan.

Calaveras argues that there are no basic facts identified or discussed in the Resolution that can be derived directly from the record, to support the determination that the ratepayer funding to the Employee Profit Sharing Plan (retirement plan) should be 10%, and not 15%, as Calaveras requests. Upon a review of the record, we believe there is merit to Calaveras' argument.

With regard to retirement benefits, the Resolution states the following:

CD found Calaveras contributes to an Employee Profit Sharing Plan at 15% of salaries and wages with no contribution from employees or shared expenses from shareholders. CD determined not all costs of Employee Profit Sharing should be charged to the rate payers and portions of it

should be the responsibility of either the shareholders or employees or any combination of the two parties. Hence, CD accepted a cap of 10% of salaries and wages for the employer contribution expenses of the employee Profit Sharing Plan for the rate case calculation purposes. The remainder 5%, is the Calaveras business decision how to expense outside of rate making process. CD disallowed \$131,214 for the difference above 10% employer contribution to the employee Profit Sharing Plan. (Resolution T-17184, p.11)

The Resolution does not present a basis for the Resolution's determination on this specific issue, and the record is lacking in support of the 10% contribution that was calculated. Thus, a limited rehearing is granted on this issue. During the limited rehearing, the following questions should be resolved:

1. What is the basis for Calaveras' determination that a 15% ratepayer contribution towards the Employees Profit Sharing Plan (retirement plan) is reasonable? Please provide any documentation to support your response.
2. What factors should the Commission consider in determining a reasonable amount of ratepayer funding to the employee retirement plan? Should the shareholders and/or employees participate in a share of the employer's contribution along with the ratepayers? Why or why not?
3. Should the Commission consider the maximum and minimum ratepayer funding of employer contributions to employee retirement plans offered by other telecommunications companies in California such as Sprint, AT&T, Verizon, Qwest and Ponderosa? Why or why not?
4. If the Commission were to determine, for example, that the average ratepayer funding of employer contributions to employee retirement plans offered by other telecommunications companies is 6%, why would 10% not be a reasonable amount to use for Calaveras?

5. What other sources of information should the Commission consider in determining the appropriate ratepayer funding for Calaveras' contribution to its Employee Profit Sharing Plan.

Responses to these questions should be submitted to CD Staff as a supplement to AL No. 303 ("Supplemental AL"). Responses will be due 30 days from the issuance of today's order disposing of the rehearing application. CD Staff will review the Supplemental AL and prepare a resolution for Commission review and vote. Should it be determined that evidentiary hearings are necessary, CD Staff should make this recommendation in the resolution. Calaveras may also request evidentiary hearings by making such a request in the Supplemental AL. Calaveras should explain why evidentiary hearings are necessary, and what material factual issues are in dispute, warranting evidentiary hearings before an Administrative Law Judge.

This limited rehearing on the employer contributions to the Employee Profit Sharing Plan has an effect on the calculation of the benefit to salary ratio. Pending the outcome of the limited rehearing, the currently adopted benefits to salary ratio of 38% will remain in effect, subject to future adjustment.

C. The Commission did not err in applying a zero "elasticity factor" to the increase in basic residential rates.

The Resolution increases Calaveras' basic residential rates by approximately 25%.⁶ However, Calaveras challenges the Resolution's non-adoption of a demand elasticity factor regarding basic rate increases, which it claims would "reflect any diminution of unit demand that will surely result from such a large basic rate increase." The Resolution did adopt a 5% elasticity factor for other services offered to customers that increased by more than 25%, e.g. calling forwarding, calling waiting and other services. (See Resolution T-17184, p.8.) However, the Resolution found that, as

⁶ Resolution T-17184, p.14.

opposed to increases in these other services, Calaveras could not provide evidence that there would indeed be a diminution in unit demand as a result of basic rate increases. (Resolution T-17184, p. 16.) Calaveras argues that the Commission is not justified in finding that the elasticity factor should be zero, and that this determination is arbitrary and capricious, and therefore, illegal. Thus, Calaveras claims that the revenue estimates for the company under the newly adopted rates are unsupported and unreasonable. (Rehrg. App., p. 15.)

As noted in the Resolution, the Commission stated: “[H]owever, CD Staff does not agree that basic residential service is subject to the same elasticity factors as custom calling and access services. Furthermore, CD Staff has not received any data from Calaveras that demonstrates its conclusion that the rate increase will result in lost access line revenues.” (Resolution T-17184, p. 16.)

There is record evidence that does support the Resolution’s conclusion. In an email discussing elasticity data, dated October 29, 2008, Chad Duval, Calaveras’ accountant, stated:⁷

I have...come to the conclusion that there is at least some elasticity for custom calling features and inside wire maintenance. *We do not yet know what an increase in basic local rates will do to demand*, as this will be the first time in several years that the basic local rate will increase... *[I]t is impossible to determine the impact that a 25% increase in a rate would have on demand because there is no data to analyze for this scenario. . . .* Based on the attached summary, I propose that any custom calling features or inside wire maintenance rate increases of 25% be offset by at least a 5% reduction in demand. [Emphasis added.]

Accordingly, the Commission correctly found that Calaveras had not provided any evidence to support the application of a demand elasticity factor to the increase in basic rates. Calaveras simply failed to meet its burden of proof, and the

⁷ This record evidence is not provided in Record Supplement accompanying the application for rehearing.

record demonstrates that the Resolution's determination on the basic rate increase elasticity factor was reasonable. Accordingly, Calaveras' challenge of the Commission's determination on the elasticity factor has no merit.

D. Calaveras' due process arguments have no merit.

Calaveras raises several lengthy due process issues. Most of the issues have to do with the changing rationale for the 38% benefits to the salary ratio between the Draft Resolution and the revisions to the Draft Resolution, and Resolution T-17184.⁸ Calaveras also raises due process claims regarding the Resolution's determination on the elasticity factor.

Calaveras labels the Draft Resolution and various amendments to the Draft Resolution as First Draft Resolution, Second Draft Resolution and Third Draft Resolution, and calls Resolution T-17184 the Final Resolution. By doing this, Calaveras makes it appear that there were four separate resolutions to which it was entitled notice and the opportunity to be heard under Public Utilities Code section 311(g). Calaveras' due process argument has no merit.

Section 311 (g), states as follows:

Prior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e). For purposes of this subdivision, "decision" also includes resolutions, including resolutions on advice letter filings.

⁸ Calaveras raises a due process argument regarding access to CD Staff's workpapers on the 10% ratepayer funding of the Employee Profit Sharing Plan (retirement plan). With the granting of limited rehearing on the 10% ratepayer funding, this due process issue has been rendered moot.

Nothing in the statute obligates the Commission to give an applicant a thirty day comment period in response to every subsequent amendment to a draft resolution. Furthermore, there is no dispute that Calaveras was provided with the requisite statutory notice of the draft resolution or that Calaveras had the opportunity to comment thereon. There is no statutory authority that mandates that Calaveras was entitled to the same notice and comment period for the subsequent amendments to the Draft Resolution.

Calaveras provided its comments on the benefits to salary ratio, and as the Resolution states in several places, adjustments were made based on Calaveras' Comments. (See Resolution T-17184, pp. 15-18.) As Calaveras itself admits, it provided numerous comments on the "second draft resolution" as well (Rehrg. App., p.3), and it continued to have meetings with CD Staff after that.

With regard to its other major contention regarding the elasticity factor associated with the increase in basic rates, the Resolution did reflect Calaveras' Comments to the Draft Resolution, just not to its liking. (See discussion above.)

Based on the above, the allegations that it was denied due process have no merit. Rehearing on these due process issues is denied.

E. Calaveras' request for oral argument under Rule 16.3 is denied.

In its rehearing application, Calaveras requested oral argument pursuant to Rule 16.3 of the Commission Rules of Practice and Procedure. It argues oral argument is warranted because the resolution adopts an arbitrary and inadequate ratio of employee benefits to salary, which will have a profound effect on hundreds of thousands of utility employees throughout California. It further argues the Commission should hold an oral argument because there is no precedent for the adopted benefits to salary ratio. In addition, Calaveras argues for oral argument because the Resolution allegedly eliminates medical insurance and other employee insurance programs in a time when California is seeking to expand coverage. (Rehrg. App., pp. 15-16.) We disagree that an oral argument is warranted.

The Commission has complete discretion to determine the appropriateness of oral argument in any particular matter. (See Rule 16.3(a) of the Commission’s Rules of Practice and Procedure, Cal. Code of Regs., tit. §20, 16.3, subd. (a).) Rule 16.3 states:

(a) If the applicant for rehearing seeks oral argument, it should request it in the application for rehearing. The request for oral argument should explain how oral argument will materially assist the Commission in resolving the application, and demonstrate that the application raises issues of major significance for the Commission because the challenged order or decision: (1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation; (2) changes or refines existing Commission precedent; (3) presents legal issues of exceptional controversy, complexity, or public importance; and/or (4) raises questions of first impression that are likely to have significant precedential impact.

(Rule 16.3 of the Commission’s Rules of Practice and Procedure, Code of Regs., tit. 20, § 16.3.)

Calaveras, however, did not meet the requirements listed above.

Specifically, Calaveras failed to demonstrate how oral argument will materially assist the Commission in resolving the rehearing application. The basis for Calaveras’ request for oral argument consists of several policy arguments rather than how Resolution T-17184 “presents legal issues of exceptional controversy, complexity, or public importance,” and/or “raises questions of first impression that are likely to have significant precedential impact.” (See generally, Code of Regs., tit. 20, §Rule 16.3, subd. (a)(1) – (a)(4).) Accordingly, there is no basis to conclude oral argument will benefit disposition of the application for rehearing.

F. Calaveras’ motion for a memorandum account is denied.

Instead of a stay request, Calaveras asks the Commission to establish a memorandum account through the California High Cost Fund-A for recording any revenues not provided by the resolution, and that may be ordered in a rehearing.

(Rehrg. App., p. 5.) The motion should be denied as unnecessary. Today's decision grants limited rehearing that provides for an adjustment, should the benefits to salary ratio be changed. Any adjustment would be effective the same day that Resolution T-17184 was issued. (See Pub. Util. Code, §1736.) Thus, a memorandum account is not necessary.

III. CONCLUSION

Based on the above, a limited rehearing of Resolution T-17184 is granted on the issue related to the amount ratepayers should fund Calaveras Telephone Company's employees' retirement plan. As to all other issues, no legal error has been demonstrated. However, the Resolution is modified for purposes of clarification as explained above. Except as to the issue on ratepayer funding of Calaveras' retirement plan, rehearing of Resolution T-17184, as modified, is denied in all other respects. Also, Calaveras' request for oral argument and motion for a memorandum account are denied.

THEREFORE, IT IS ORDERED that:

1. Resolution T-17184 shall be modified as follows:
 - a. On page 11, the three words "a cap of" is removed from the following sentence: "Hence, CD accepted a cap of 10% of salaries and wages for the employer contribution expenses of the employee Profit Sharing Plan for the rate case calculation purposes."
 - b. On page 17, the sentence "CD determined that a cap of 10% on employer's contribution to the Profit Sharing Plan is reasonable" should be amended to read as follows: "CD determined that a 10% employer's contribution to the Profit Sharing Plan is reasonable."
 - c. On Page 17, the third and fourth sentences of the first paragraph under "5. The Commission should not reduce employee benefits" should be deleted and replaced with the following:

"In response to Calaveras' comments, CD has revised its adjustments. It has removed the following requested benefits that it regards as imprudent and

unreasonable for ratemaking purposes: (1) annual bonuses that are unrelated to operational results; (2) employer contributions to employees' out of pocket medical expenses; (3) a meat distribution plan that does not offer any recognizable benefit to the operations of a regulated telecommunications company; and finally (4) CD reduced Calaveras' requested employer contributions to its employees' Profit Sharing Plan by 5%, from a 15% contribution, to a 10% contribution. CD does not find it reasonable that a regulated company should have its ratepayers fund these benefits. It is noted that the bonuses was removed from wages/salaries."

2. A limited rehearing is granted on the issue regarding the Resolution's determination regarding the 10% ratepayer funding of the Employees Profit Sharing Plan.

3. During the limited rehearing, the following questions should be resolved:

- a. What is the basis for Calaveras' determination that a 15% ratepayer contribution towards the Employees Profit Sharing Plan (retirement plan) is reasonable? Please provide any documentation to support your response.
- b. What factors should the Commission consider in determining a reasonable amount of ratepayer funding to the employee retirement plan? Should the shareholders and/or employees participate in a share of the employer's contribution along with the ratepayers? Why or why not?
- c. Should the Commission consider the maximum and minimum ratepayer funding of employer contributions to employee retirement plans offered by other telecommunications companies in California such as Sprint, AT&T, Verizon, Qwest and Ponderosa? Why or why not?

- d. If the Commission were to determine, for example, that the average ratepayer funding of employer contributions to employee retirement plans offered by other telecommunications companies is 6%, why would 10% not be a reasonable amount to use for Calaveras?
- e. What other sources of information should the Commission consider in determining the appropriate ratepayer funding for Calaveras' contribution to its Employee Profit Sharing Plan?

4. Responses to these questions should be submitted by Calaveras to CD Staff as a supplement to AL No. 303 ("Supplemental AL"), which shall be served on all parties and interested parties on the service list for A.09-03-006. Responses will be due 30 days from the issuance of today's order disposing of the rehearing application.

5. CD Staff will review the Supplemental AL and prepare a resolution for Commission review and vote. Should it be determined that evidentiary hearings are necessary, CD Staff should make this recommendation in the resolution. Calaveras may also request evidentiary hearings by making such a request in the Supplemental AL. Calaveras should explain why evidentiary hearings are necessary, and what material factual issues are in dispute, warranting evidentiary hearings before an Administrative Law Judge.

6. Pending the outcome of the limited rehearing, the currently adopted benefits to salary ratio of 38% will remain in effect, subject to future adjustment.

7. Calaveras' request for oral argument under Rule 16.3 of the Commission's Rules of Practice and Procedure is denied.

8. Calaveras' motion for memorandum account is denied.

9. Except for the limited rehearing granted on the issue of ratepayer funding to the Employee Profit Sharing Plan (retirement plan), rehearing of Resolution T-17184, as modified, is hereby denied on all other respects.

10. The Executive Director shall cause to be served today's decision disposing of the rehearing application on all interested parties on the service list for A.09-03-006.

This order is effective today.

Dated October 29, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners