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Date of Issuance
May 7, 2010

Decision 10-05-022 May 6, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Ducor Telephone Company (U 1007 C) for Rehearing of Resolution T-17157.	Application 09-03-002 (Filed March 2, 2009)

ORDER MODIFYING RESOLUTION T-17157, GRANTING LIMITED REHEARING ON THE DETERMINATION REGARDING FIVE CAPITAL EXPENDITURE ITEMS, AND DENYING REHEARING OF THE RESOLUTION, AS MODIFIED, IN ALL OTHER RESPECTS

I. INTRODUCTION

Resolution T-17157 (or "Resolution") involves the General Rate Case ("GRC") filed by Ducor Telephone Company ("Ducor") by Advice Letter Nos. 318 and 318-A. Ducor 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 Ducor to the advice letter proceeding. The Commission's Communication Division ("CD" or "CD Staff") participated in the review of Ducor's GRC Advice Letter. Thus, the record for this proceeding was developed by Ducor's filing of the advice letter and supporting documents and information gathered and used by CD.

A draft of Resolution T-17157 ("Draft Resolution") was issued for comments, to which Ducor filed timely comments on November 18, 2008. This draft Resolution was amended twice, before becoming Resolution T-17157.

Ducor timely filed an application for rehearing of the Resolution. In its rehearing application, Ducor alleges legal error on the grounds that the benefits-to-salary ratio adopted in the resolution is arbitrary and not supported by record evidence.[1] (Rehrg. App., pp. 5-14.) Ducor makes the same argument regarding the failure to adopt an elasticity factor with respect to the basic rate increase. (Rehrg. App., pp. 17-18.) In addition, Ducor contends that the resolution lacks legally adequate findings, particularly with regard to five capital expenditure adjustments. (Rehrg. App., pp. 14-17.) Ducor 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, Ducor contends that the Commission has acted contrary to law and has abused its discretion.

Instead of a stay request, Ducor 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.) Ducor also requests oral argument under Rule 16.3 of the Commission's Rules of Practice and Procedure. (Rehrg. App., p. 18.)

We have reviewed each and every allegation raised by Ducor. We find that the issues involving the five capital expenditure items have 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 capital expenditure issues, rehearing of Resolution T-17157, as modified, is denied in all other respects. Also, Ducor' request for oral argument and for a memorandum account are denied for the reasons explained below.

[1] On July 24, 2009, Ducor filed a petition for modification, called "Application of Ducor Telephone Company for Modification of Resolution T-17157" ("petition for modification"). (See Application (A.) 09-07-022. In this petition, Ducor alleges that the petition and this rehearing application are entirely independent and that the outcomes are not interdependent in any way. (See Application (A.) 09-07-022, p.2.) Today's decision is not intended to dispose or prejudge the issues raised in Ducor's petition for modification.

II. DISCUSSION

A. The adopted benefits-to-salary ratio is reasonable for ratemaking purposes, and is supported by record evidence.

Finding of Fact No. 5 states: "The Commission finds CD's application of a benefit to salary ratio of 42% for ratemaking purposes to be reasonable." In its rehearing application, Ducor challenges the legal sufficiency of this finding. It argues that the finding is a conclusory statement of an ultimate fact without reference to basic facts, which is not supported by evidence in the record. (Rehrg. App., p. 6.) This argument has no merit.

1. Finding of Fact No. 5 is legally sufficient.

Public Utilities Code section 1705 provides:

> The decision shall contain, separately stated, findings of fact and conclusions of law by the [C]omission on all issues material to the order or decision.

As the Court noted in *California Manufacturers Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 251, 258-259:

> Findings are essential to "afford a rational basis for judicial review and assist the reviewing court in ascertaining the principles relied on by the commission and to determine whether it acted arbitrarily, as well as assist parties to know why the case was lost and to prepare for rehearing or review, ..." [Citations omitted.]

We believe that Finding of Fact No. 5 complies with section 1705 because it contains a reasonableness determination regarding the material issue of a benefits-to-salary ratio. However, we note that the problem is not with the finding, but with the lack of a full discussion in the Resolution of how the 42% was derived. Accordingly, as we will discuss in the section below, we will modify the Resolution to add a fuller explanation as to how the benefits-to-salary ratio of 42% was derived and why 42% is reasonable.

2. The adopted benefits-to-salary ratio is supported by the evidence.

The Resolution determined that the benefits-to-salary ratio should be 42% for ratemaking purposes, based on CD Staff's recommendation. (Resolution T-17157, p. 8.) Ducor proposed a 54% ratio. We address Ducor's concern with the evidentiary basis upon which we determined the ratio by adding the following discussion of the record to the Resolution:

> Our adoption of the 42% benefits-to-salary ratio is based on different sets of data, which are part of the record. The primary data set relied upon by CD in determining a reasonable benefits-to-salary ratio for ratemaking purposes for Ducor was a United States Department of Labor, Bureau of Labor Statistics (BLS) document entitled "Employer Costs for employee compensation – September 2008," dated December 10, 2008. (See http://www.bls.gov/news.release/ecec.nr0.htm.)
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> We regard this data as the best available information to determine the reasonable range of benefits-to-salary ratios available at the time that CD Staff analyzed Ducor's GRC. We considered the BLS data for the latest available data for similarly situated companies by size, location, and operation type, as well as other indicators, such as the range of ratios, whether the companies are private or governmental, whether their workers are full-time or part-time, unionized or non-unionized, or in management, sales or service jobs.
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> Examples of BLS data in the record supporting a 42% ratio are as follows: Table 1 – all civilian workers by major occupational group – 43%; Table 2 - all civilian workers by occupational and industry group – a low of 33% and a high of 51%; Table 5 - non-unionized private industry workers by major occupational group – 38%; Table 6 - trade, transportation and utilities private industry group – 41%; Table 7 - private industry by census region and division and area – western divisions (Pacific) – 42%; Table 8 - private industry by establishment size (1-99 workers) – a range of 35-39%; Table 11 - all full time private industry workers in trade, transportation and utilities – 43%. From this data, we found little to support Ducor's argument that for ratemaking purposes, a 54% benefits-to-salary ratio was reasonable.

> Another set of data we compared Ducor to was the annual report filings and general rate cases of small California water companies ranging from 2,000-10,000 customers. This refers to the Kenwood GRC filing for Test Year 2009, with a 35% ratio; Alco Annual Report for 2007, with a 48% ratio; East Pasadena Annual Report for 2007, with a 24% ratio; Fruitridge Annual Report for 2007, with a 25% ratio; and Penngrove Annual Report for 2007, with a ratio of 32%. The 33% average ratio for these five companies was calculated by adding the ratios of each of the five utilities and then dividing the total by 5.
>
> Like Ducor, these are California utilities of similar size, that are regulated by this Commission, and who have recently filed Annual Reports or GRC's with the Commission. Furthermore, they all provide services regarded as a public necessity, and require a workforce with a similar skill-set to that of small LECs. Our reference to the water companies provides a reasonable point of comparison from which to analyze what a reasonable range for the benefits-to-salary ratio would be for Ducor. We regarded the comparison reasonable as the water company data was recent, available, verifiable, and could provide an example of what companies of this size, location and service provide to their employees in terms of benefits.

With the addition of this discussion to the Resolution, the Resolution describes the evidentiary basis for our adoption of a 42% benefits-to-salary ratio. This discussion sets forth the evidence supporting Finding No. 5, which states: "The Commission finds CD's application of a benefit to salary ratio of 42% for ratemaking purposes to be reasonable." (Resolution T-17235, p. 18 [Finding of Fact No. 5].) Furthermore, with the addition of this discussion, we will add to the Resolution a new finding of fact, which states: "The evidence in the record supports the adoption of a 42% benefits-to-salary ratio."

3. Ducor's arguments regarding the Commission's determination on the benefit-to-salary ratio constitutes an attempt to relitigate the case, rather than identifying any legal error.

In its rehearing application, Ducor criticizes CD's use of BLS data, (Rehrg. App., pp. 6, 8, and 9.), and the comparison made between Ducor and the water utilities (Rehrg. App., pp. 6, 10, and 11.)[2] This criticism is no more than a request for the Commission to reweigh the evidence, and thus, constitutes an attempt to relitigate the issue. Such a request does not constitute an allegation of legal error. (See Pub. Util. Code, §1732, requiring rehearing applicants to set forth grounds on which the decision is unlawful; see also, Commission Rules of Practice and Procedure, Code of Regs., tit. 20, §16.1, subd. (c).)

Further, even if Ducor's arguments were properly raised, they are not persuasive. For example, while criticizing our use of the BLS data, Ducor itself identifies only one statistic in that data set to support its proposed ratio,[3] and discounts all the other evidence that supports the ratio we adopted.

Ducor further argues that its consultant, Dr. Heckman, (in his report dated January 15, 2009)[4] analyzed the BLS data, and provided more relevant BLS data in addition to two other studies to support its proposed ratio. The Hekman Report argues that the ratios proposed by CD Staff are not representative of industry, and references data from the BLS, the Tellergee Benchmarking Study, and the Milliman 2008 Northwest

[2] In the Resolution, we referred to a third ratio utilized by the CD in its analysis, that of "other communication carriers involved in General Rate Cases." (Resolution T-17157, pp. 8 and 14.) Since the BLS and water company data discussed in this section constitute sufficient evidentiary support for our findings, we feel it is unnecessary to discuss the merits of this data set.

[3] Rehrg. App., p.9. There, Ducor points to Table 10, where one data point for "utilities" shows a benefits ratio of 60.78%, but provides no analysis of the number, size, location, type of utility, percentage of unionized workers, or whether they are regulated or not. Although this statistic is appealing, when compared to the plethora of other statistics favoring our conclusion, it has little persuasive value. Since Ducor's point is merely a relitigation of the issue, we reject the argument.

[4] Rehrg. App., Record Supplement No. 6 – Report of John S. Hekman, Ph.D, dated January 15, 2009.

Utilities Wage, Salary and Benefits Survey. We did not find this report persuasive, primarily because of its superficial and selective analysis of the data it used to support the ratios Ducor proposed. Moreover, the Report contains internally inconsistent logic, depending on the particular point Dr. Hekman was trying to make. For example, while criticizing CD for considering water utilities in their analysis, the Milliman Survey that he relies upon also utilizes water utility data. Another example is that while none of Ducor's employees are unionized workers, Dr. Hekman relies in part on data from utilities with collective bargaining agreements to support his conclusions. Another problem is that the Report at times does not in fact support the ratio Ducor proposes, because by its own statements, a ratio of 54% is "greater than the average."[5]

We did consider the Telergee Benchmarking Study relied upon by Ducor. Some of our reasons for discounting the reliability of this study as it relates to Ducor, however, were that the study was conducted by accounting firms representing the small LEC's, with data supplied by their industry clients, and not from an independent source. Furthermore, the executive summary of the study states that "the benchmarks in the study were developed using the median as the average." This means that the most efficient and most inefficient companies had little influence on the benchmarks, which we regard as a fundamental flaw in the context of the ratio determinations at issue. One of our tasks in a GRC proceeding is to determine what efficient operating expenses are for regulated utilities, and if the most efficient companies are not considered, the study becomes less reliable. Furthermore, although the Hekman Report cited the Telergee Study as supporting a 59.6% ratio, there is other data of equal value in the Study that could support ratios in the range of 29.5% to 59.6%. Therefore, in addition to its legal infirmities, we reject Ducor's criticism of our use of the BLS data because it is unpersuasive.

With respect to its criticism of the use of the water companies' data, Ducor argues that the Resolution does not contain reference to any facts that suggest there is a relevant comparison between five small water utilities and Ducor. (Rehrg. App., p.10.)

[5] Rehrg. App., Record Supplement No. 6 – Report of John S. Hekman, Ph.D, dated January 15, 2009, at p. 7.

The Resolution did make reference to the size and name of the water companies, the fact that they are regulated by the Commission, and the recent dates of their filings. CD's primary rationale for considering this data was to establish what a reasonable range would be for a benefits-to-salary ratio for a company such as Ducor. Like Ducor, these are California utilities of similar size, that are regulated by this Commission, and who have recently filed GRC's with the Commission. Furthermore, they all provide services regarded as a public necessity, and require a workforce with a similar skill-set to that of small LECs.

Ducor had notice and an opportunity to comment on this rationale, and in fact did so in Dr. Hekman's Report.[6] CD considered his comments on the applicability of using these water companies as a comparison to Ducor for determining a reasonable benefits-to-salary ratio, but was not fully persuaded by his arguments. CD ultimately recommended a ratio 9% greater than the water companies' average ratio. CD's use of the water companies was not because it thought these water companies provided the best comparative data, but because it could provide a reasonable point of comparison from which to analyze what a reasonable range for the benefits-to-salary ratio would be for Ducor. We regarded the comparison reasonable as the water company data was recent, available, verifiable, and could provide an example of what companies of this size, location and service provided to their employees in terms of benefits. Thus, we find no merit to the criticism of our comparison of Ducor's requested benefits-to-salary ratio to the ones adopted for the five small water companies. (Resolution T-17157, p. 8, fn. 5.)

For all the reasons stated above, Ducor's claim that the Resolution's finding regarding the benefits-to-salary ratio is not supported by record evidence is unfounded, and rehearing on this issue is therefore denied.

[6] Rehrg. App., Record Supplement No. 6 – Report of John S. Hekman, Ph.D, dated January 15, 2009, at pp. 10-11.

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

Ducor objects to language in the Resolution that refers to the adoption of a "cap" on benefits. (Rehrg. App., p. 6.) Ducor 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. Ducor is correct. We agree. Our use of the word was inadvertent because we never intended to apply a cap to the benefits-to-salary ratio.

Accordingly, to avoid any confusion, Resolution T-17157 on pages 8 and 14 is modified. We will remove the word "cap" in the manner described in the ordering paragraphs in today's decision.

4. Ducor's argument that the Resolution violates state policy regarding employee benefits has no merit.

Ducor raises a policy issue. It asserts that because the Resolution does not provide adequate revenue for Ducor to come close to maintaining its existing employee benefits, it may be required to cut them. (Rehrg. App., p.12) Specifically, Ducor argues that "it will be impossible for Ducor to provide a meaningful medical insurance plan to its employees," and "the Resolution's cut in employee benefits represents 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.13)

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.") We reject Ducor's argument because it is based upon the incorrect assumption that the Resolution's finding on the benefits-to-salary ratio is not supported by record evidence.

As explained above, there is record evidence that supports the Resolution's finding on the ratio, and therefore it does not constitute legal error.

B. A limited rehearing is granted to reconsider the determination of five capital expenditure items.

Ducor challenges the Resolution's treatment of five capital expenditure items which it alleges are not supported by the record. (Rehrg. App., pp.14-17.) These items are: (1) trenching equipment and vehicles; (2) Rancho Tehama fiber access route project; (3) exchange digital loop carrier; (4) weather station fiber optic project; and (5) furniture for the Kennedy Meadows Exchange. Ducor is correct that there are no basic facts identified or discussed in the Resolution that can be derived from the record. In fact, the record appears to be unclear on all five of these issues, and a limited rehearing is hereby granted on each issue to develop a reliable record upon which we can make a determination.

Also, with respect to these items, there appears to be confusion as to what we approved in the Resolution. For example, with regard to "trenching equipment and vehicles," Ducor argues that the Resolution eliminates trenching equipment in all three exchanges with no explanation. (Rehrg. App., p.16.) That is incorrect. We approved funding for that equipment in full. However, the Resolution is not clear that our intent was to adjust Ducor's request in reference to Account Number 211200 service vehicles, rather than trenching equipment.

As for the Kennedy Meadows Exchange furniture, we approved $3,000, rather than a total disallowance, as Ducor argues. (Rehrg. App., p. 16.) Another example of confusion is Ducor's claim that the Resolution "disallows two fiber projects out of Rancho Tehama and Ducor." (Rehrg. App., p. 17.) These two projects were not disallowed. The two projects had a cost estimate of $500,000 each, and CD reduced that number by $35,000 for each project for a total disallowance of $70,000. We ultimately approved $930,000 instead of the requested $1,000,000 for the two projects. However, upon further review, it appears that the record is unclear regarding the underlying facts upon which we made our decision.

In the manner described in the ordering paragraphs in today's decision, a limited rehearing is therefore granted on each of the five issues to develop a clear record to make determinations on these 5 capital expenditures.

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

The Resolution increases Ducor's basic residential rates by approximately 25%. (Resolution T-17157, p. 5.) However, Ducor 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-17157, pp. 5-6.) However, the Resolution found that, as opposed to increases in these other services, Ducor could not provide evidence that there would indeed be a diminution in unit demand as a result of basic rate increases. Ducor argues that the Commission is not justified in finding that the elasticity factor should be zero, and that this decision is arbitrary and capricious and therefore illegal. Thus, Ducor claims that the revenue estimates for the company under the newly adopted rates are unsupported and unreasonable. (Rehrg. App., p. 18.)

As we stated in the Resolution: "[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 has not received any data from Ducor that demonstrates its conclusion that the rate increase will result in lost access line revenues." (Resolution T-17157, p. 15.)

There is evidence in the record that does support our conclusion. In an email discussing elasticity data, dated October 29, 2008, Chad Duval, Ducor's accountant, stated in part:

> 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, we correctly found that Ducor had not provided any evidence to support the application of a demand elasticity factor to the increase in basic rates. Ducor simply failed to meet its burden of proof, and the record demonstrates that the Resolution's determination on the basic rate increase elasticity factor was reasonable. Accordingly, Ducor's challenge of our determination on the elasticity factor is denied.

D. Ducor's due process arguments have no merit.

Ducor raises several lengthy due process issues. Most of the issues have to do with the changing rationale for the 42% benefits-to-salary ratio between the Draft Resolution and the revisions to the Draft Resolution, and Resolution T-17157. Ducor also raises due process claims regarding the Resolution's determination on the elasticity factor.

Ducor 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-17157 the Final Resolution. By doing this, Ducor 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). Ducor's 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.

Nothing in the statute obligates this Commission to give an applicant a thirty day comment period in response to every subsequent amendment to the draft resolution. Furthermore, there is no dispute that Ducor was provided with the requisite statutory notice of the draft resolution or that Ducor had the opportunity to comment thereon. Ducor provided its comments, both formal and informal, and as the Resolution states in several places, adjustments were made based on Ducor’s Comments. There is in fact a specified section in the Resolution on pages 13-17 that discusses Ducor’s Comments. As Ducor 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 and Commissioners’ advisors after that.

All of Ducor’s arguments on the changing rationale supporting the ultimate ratio determination are unpersuasive. First, as to the benefits-to-salary ratio issue, Ducor was provided the requisite statutory opportunity to comment, and changes were made in response to those comments in Resolution T-17157. As can be seen in its Rehearing Application, as well as Dr. Hekman’s Report, Ducor had notice and did in fact provide comments on all the data that CD considered in coming to its conclusions.

With regard to its other major contention regarding the elasticity factor associated with the increase in basic rates, our final determination did reflect Ducor’s Comments to the Draft Resolution, just not to its liking. (See discussion above.) The allegations that it was denied due process therefore have no merit. Thus, rehearing on these due process issues is denied.

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

In its rehearing application, Ducor 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, Ducor 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. 18.)

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.)

Ducor, however, did not meet the requirements listed above. Specifically, Ducor failed to demonstrate how oral argument will materially assist the Commission in resolving the rehearing application. The basis for Ducor' request for oral argument consists of several policy arguments, and not how Resolution T-17157 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, §16.3, subd. (a)(1) – (a)(4).) Accordingly, there is no basis to conclude oral argument will benefit disposition of the application for rehearing and the request is denied.

F. Ducor's request for a memorandum account is denied.

Instead of a stay request, Ducor 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 request is unnecessary. Today's decision grants limited rehearing that could potentially provide for some adjustments. Any adjustment would be effective the same day that Resolution T-17157 was issued. (See Pub. Util. Code, §1736.) Thus, Ducor's memorandum account request is denied.

III. CONCLUSION

Based on the above, a limited rehearing of Resolution T-17157 is granted on the five capital expenditure items discussed above. 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 capital expenditure items, rehearing of Resolution T-17157, as modified, is denied in all other respects. Also, Ducor's request for oral argument and for a memorandum account are denied.

THEREFORE, IT IS ORDERED that:

1. Resolution T-17157 is hereby modified to fully explain how the benefits-to-salary ratio of 42% was derived and why 42% was reasonable in light of the whole record. On pages 8 and 14, the third and fourth full paragraphs of each of these pages are deleted and should now read as follows:

"The Resolution's adoption of the 42% benefits-to-salary ratio was based on different sets of data, which are part of the record. The primary data set relied upon by CD in determining a reasonable benefits-to-salary ratio for ratemaking purposes for Ducor was a United States Department of Labor, Bureau of Labor Statistics (BLS) document entitled "Employer Costs for employee compensation – September 2008," dated December 10, 2008. (See http://www.bls.gov/news.release/ecec.nr0.htm.) We regard this data as the best available information to determine the reasonable range of benefits-to-salary ratios available at the time that CD Staff analyzed Ducor's GRC. We considered the BLS data for the latest available data for similarly situated companies by size, location, and operation type, as well as other indicators, such as the range of ratios, whether the companies are private or governmental, whether their workers are full-time or part-time, unionized or non-unionized, or in management, sales or service jobs.

Examples of BLS data in the record supporting a 42% ratio are as follows: Table 1 – all civilian workers by major occupational group – 43%; Table 2 - all civilian workers by occupational and industry group – a low of 33% and a high of 51%; Table 5 - non-unionized private industry workers by major occupational group – 38%; Table 6 - trade, transportation and utilities private industry group – 41%; Table 7 - private industry by census region and division and area – western divisions (Pacific) – 42%; Table 8 - private industry by establishment size (1-99 workers) – a range of 35-39%; Table 11 - all full time private industry workers in trade, transportation and utilities – 43%. From this data, we found little to support Ducor's argument that for ratemaking purposes, a 54% benefits-to-salary ratio was reasonable.

The second set of data we compared Ducor to was the annual report filings and general rate cases of small California water companies ranging from 2,000-10,000 customers. This refers to the Kenwood GRC filing for Test Year 2009, with a 35% ratio; Alco Annual Report for 2007, with a 48% ratio; East Pasadena Annual Report for 2007, with a 24% ratio; Fruitridge Annual Report for 2007, with a 25% ratio; and Penngrove Annual Report for

> 2007, with a ratio of 32%. The 33% average ratio for these five companies was calculated by adding the ratios of each of the five utilities and then dividing the total by 5.
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> Like Ducor, these are California utilities of similar size, that are regulated by this Commission, and who have recently filed Annual Reports or GRC's with the Commission. Furthermore, they all provide services regarded as a public necessity, and require a workforce with a similar skill-set to that of small LECs. Our reference to the water companies provides a reasonable point of comparison from which to analyze what a reasonable range for the benefits-to-salary ratio would be for Ducor. We regarded the comparison reasonable as the water company data was recent, available, verifiable, and could provide an example of what companies of this size, location and service provided to their employees in terms of benefits."

2. Resolution T-17157 is further modified to add Finding of Fact No. 15, which should read as follows: "The evidence in the record supports the adoption of a 42% benefits-to-salary ratio."

3**.** On pages 8 and 14, immediately following the above amended paragraphs, we remove any reference to the word "cap," and the text should read as follows:

> The BLS ratio supports CD's proposed rate of 42%. CD concludes that its proposed 2009 regulated benefits to salaries/wages ratio of 42% for Ducor is appropriate and adequate.

4. A limited rehearing is granted to develop a record for the following five capital expenditure items. Ducor should provide responses to the following information in the manner described below:

a. <u>Account 211200 service vehicles:</u>

Ducor should provide detailed information regarding the need for and cost estimates for all vehicles requested under this account. In addition, Ducor should provide information and a rationale supporting its request in this GRC for $30,715 in excess of its budget for vehicle purchases in 2007.

b. Two Redundant Fiber Projects out of Rancho Tehama and Ducor:

Ducor should provide information detailing its cost estimates and the need for these two fiber projects.

c. Two digital loop carrier projects in the Ducor Exchange:

Ducor should provide information to substantiate its cost estimates and the need for these two projects.

d. Fiber optic project to a weather station in the Ducor Exchange:

Ducor should provide information substantiating the need for and cost estimates for this project. In addition, Ducor should provide information regarding the number of current customers being served by this cable facility and the number of future customers Ducor anticipates will need to use it. Ducor should also provide information regarding what alternatives are available to Ducor that could provide a similar service to its customers besides the proposed project. Finally, Ducor should provide a maintenance history for this cable facility.

e. Furniture for the Kennedy Meadows Exchange:

Ducor should provide all information substantiating its $6,000 request for this furniture, as well as other data and explanations that indicate what alternatives Ducor considered in making its request, and why they were rejected.

5. The information requested in Ordering Paragraph 4.a. through 4.e. shall be submitted by Ducor to CD Staff as a supplement to AL Nos. 318 and 318-A ("Supplemental AL"). Ducor shall file this Supplemental AL within 30 days of the issuance of this decision. Staff will review the Supplemental AL, and may propound further data requests requesting more information as CD deems necessary. CD shall prepare a draft resolution for Commission consideration. Should it be determined that evidentiary hearings are necessary, CD Staff shall make this recommendation in the resolution. Ducor may also request evidentiary hearings by making such a request in the Supplemental AL. In that event, Ducor should explain why evidentiary hearings are

necessary, and what material factual issues are in dispute that would warrant evidentiary hearings before an Administrative Law Judge.

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

7. Ducor's request for a memorandum account is denied.

8. Except for the limited rehearing granted on the five capital expenditure items, rehearing of Resolution T-17157, as modified, is hereby denied in all other respects.

9. 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.09-03-002.

This order is effective today.

Dated May 6, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners