Decision 10-05-052 May 20, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Ponderosa Telephone Company (U 1014 C) for Rehearing of Resolution T-17132.	Application 09-03-008 (Filed March 5, 2009)

ORDER MODIFYING RESOLUTION T-17132, GRANTING LIMITED REHEARING ON THE DETERMINATION REGARDING EXECUTIVE COMPENSATION, AND DENYING REHEARING OF THE RESOLUTION, AS MODIFIED, IN ALL OTHER RESPECTS

I. INTRODUCTION

Resolution T-17132 (or "Resolution") involves the General Rate Case ("GRC") filed by Ponderosa Telephone Company ("Ponderosa") by Advice Letter Nos. 374 and 374-A. Ponderosa 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 Ponderosa to the advice letter proceeding. The Commission's Communication Division ("CD" or "CD Staff") participated in the review of Ponderosa's GRC Advice Letter. Thus, the record for this proceeding was developed by Ponderosa's filing of the advice letter and supporting documents and information gathered and used by CD.

A draft of Resolution T-17132 ("Draft Resolution") was issued for comments, to which Ponderosa filed timely comments on December 4, 2008. This draft Resolution was amended twice, before becoming Resolution T-17132.

Ponderosa timely filed an application for rehearing of the Resolution. In its rehearing application, Ponderosa alleges legal error on the grounds that the resolution is arbitrary, not supported by record evidence, and does not contain adequate findings with

respect to four issues: the resolution's adoption of a 42% benefits-to-salary ratio (Rehrg. App., pp. 6-16); the elimination of wages and benefits for two executive positions (Rehrg. App., pp. 19-21); the resolution's access line loss estimate (Rehrg. App., pp. 21-22); and the failure to adopt an elasticity factor with respect to the basic rate increase (Rehrg. App., pp. 22-23). Ponderosa further alleges that it was deprived of due process because CD Staff did not provide them copies of their work papers prior to the issuance of the Resolution. Accordingly, Ponderosa contends that the Commission has acted contrary to law and has abused its discretion.

Instead of a stay request, Ponderosa 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.) Ponderosa also requests oral argument under Rule 16.3 of the Commission's Rules of Practice and Procedure. (Rehrg. App., p. 23.)

We have reviewed each and every allegation raised by Ponderosa. We find that the issue regarding executive compensation 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 executive compensation issue, rehearing of Resolution T-17132, as modified, is denied in all other respects. Also, Ponderosa's requests for oral argument and for a memorandum account are denied for the reasons explained below.

II. DISCUSSION

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

Finding No. 11 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, Ponderosa 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 No. 11 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 No. 11 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-17132, pp. 11-12.) Ponderosa proposed a 54% ratio. We address Ponderosa'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 Ponderosa 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 Ponderosa'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 Ponderosa's argument that for ratemaking purposes, a 54% benefits-to-salary ratio was reasonable.

Another set of data we compared Ponderosa 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 Ponderosa, 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 Ponderosa. 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 fully describes the evidentiary basis for our adoption of a 42% benefits-to-salary ratio. This discussion sets forth the evidence supporting Finding No. 11, which states: "The Commission finds CD's application of a benefit to salary ratio of 42% for ratemaking purposes to be reasonable." (Resolution T-17132, p. 24 [Finding No. 11].) 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. Ponderosa'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, Ponderosa criticizes CD's use of BLS data, (Rehrg. App., pp. 7, 8, and 11), and the comparison made between Ponderosa and the water utilities (Rehrg. App., pp. 10-13.)[1] This criticism is no more than a request for the

[1] 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-17132, pp. 11 and 18.) 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.

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 Ponderosa's arguments were properly raised, they are not persuasive. For example, while criticizing our use of the BLS data, Ponderosa itself identifies only one statistic in that data set to support its proposed ratio,[2] and discounts all the other evidence that supports the ratio we adopted.

Ponderosa further argues that its consultant, Dr. Heckman, (in his report dated January 15, 2009)[3] 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 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 Ponderosa 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 Ponderosa's employees are unionized workers, Dr. Hekman relies in part on data from utilities with collective bargaining agreements to support his conclusions. Another

[2] Rehrg. App., p.14. There, Ponderosa 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 Ponderosa's point is merely a relitigation of the issue, we reject the argument.

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

problem is that the Report at times does not in fact support the ratio Ponderosa proposes, because by its own statements, a ratio of 54% is "greater than the average."[4]

We did consider the Telergee Benchmarking Study relied upon by Ponderosa. Some of our reasons for discounting the reliability of this study as it relates to Ponderosa, 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, we reject Ponderosa'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, Ponderosa argues that the Resolution does not contain reference to any facts that suggest there is a relevant comparison between five small water utilities and Ponderosa. (Rehrg. App., p.13.) 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. (Resolution T-17132, pp. 11-12.) 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 Ponderosa. Like Ponderosa, 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.

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

Ponderosa had notice and an opportunity to comment on this rationale, and in fact did so in Dr. Hekman's Report.[5] CD considered his comments on the applicability of using these water companies as a comparison to Ponderosa 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 Ponderosa. 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 Ponderosa's requested benefits-to-salary ratio to the ones adopted for the five small water companies. (Resolution T-17132, p. 12, fn. 7.)

For all the reasons stated above, Ponderosa'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.

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

Ponderosa objects to language in the Resolution that refers to the adoption of a "cap" on benefits. (Rehrg. App., p. 6.) Ponderosa 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. Ponderosa 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.

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

Accordingly, to avoid any confusion, Resolution T-17132 on pages 9, 12 and 18 is modified. We will remove the word "cap" in the manner described in the Ordering Paragraphs in today's decision.

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

Ponderosa raises a policy issue. It asserts that because the Resolution does not provide adequate revenue for Ponderosa to come close to maintaining its existing employee benefits, it may be required to cut them. (Rehrg. App., p.17) Specifically, Ponderosa argues that "it will be impossible for Ponderosa 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.18)

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 Ponderosa'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 on wages and benefits for two executive positions.

Ponderosa challenges the Resolution's decision to eliminate the wages and benefits for two executive positions: Ponderosa's President and Vice-President. The rationale stated in the Resolution for disallowing $364,725 in payroll was that "there are duplications of tasks among the executive and upper management positions." (Resolution

T-17132, p. 11) However, an examination of the record reveals some ambiguity regarding this basis. Accordingly, as set forth in the Ordering Paragraph of today's decision, we will grant a limited rehearing to revisit this issue and to allow both Ponderosa and CD Staff to develop a clearer record upon which we can make a determination.

C. The adopted access line loss estimate is reasonable and supported by record evidence.

Ponderosa challenges the Resolution's access line loss estimate. (Rehrg. App., p. 21) It argues that CD Staff incorrectly used "Form M" data instead of the advice letter (AL) data Ponderosa provided to CD; there was no explanation for CD's use of 5 years of data instead of the 3 years of data it proposed; and there are no findings on the Resolution's access line estimate. It further argues that the process CD applied in coming to its conclusion yielded a result not supported by the record.

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).) Ponderosa's argument is unpersuasive, as there is ample record evidence to support the Resolution's estimate, and good reason to not apply the figures Ponderosa argues should have been used to establish the estimate.

In Ponderosa's Comments on the Draft Resolution, it argued that CD's use of Form M access line data (which is data found in Ponderosa's Annual Report submitted to the Securities and Exchange Commission (SEC)) was inconsistent with the data Ponderosa provided in its Advice Letter filing. The record however, shows that after a series of meetings and data request responses, Ponderosa failed to make clear to CD Staff what the distinction was between the different data, why its AL data was preferable to Form M data, or why it could not provide five years of consistent data for its Advice

Letter 374-A. Given the unreliability of Ponderosa's AL access line data, CD turned to the only accurate data available (in terms of its consistency). This data was Ponderosa's SCE Annual Report filings. CD used five years of that data to establish its access line loss estimate. As we stated in the Resolution, "CD does not accept Ponderosa's access line count as provided in its filing, as there are discrepancies in access lines as reported in its 2007 annual report and the actual 2007 access line counts submitted to CD in AL No.374 A on June 20, 2008." There is record evidence of five years of Form M data that we regard as more reliable than the inconsistent Advice Letter numbers submitted by Ponderosa. Ponderosa's argument that the process used to calculate the final access line loss estimate constitutes legal error is incorrect. Therefore, rehearing on this issue is denied.

With regard to Ponderosa's argument that there were no findings on the Resolution's access line estimate, Ponderosa is correct. As set forth in the Ordering Paragraphs below, we will accordingly modify the Resolution to add a new finding on this issue, which is based on the record.

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

The Resolution increases Ponderosa's basic residential rates by approximately 25%. (Resolution T-17132, p. 5.) However, Ponderosa 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-17132, p. 5.) However, the Resolution found that, as opposed to increases in these other services, Ponderosa could not provide evidence that there would indeed be a diminution in unit demand as a result of basic rate increases. Ponderosa 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, Ponderosa claims that the revenue estimates for the company under the newly adopted rates are unsupported and unreasonable. (Rehrg. App., p. 22.)

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 Ponderosa that demonstrates its conclusion that the rate increase will result in lost access line revenues." (Resolution T-17132, p. 19.)

There is evidence in the record that does support our conclusion. In an email discussing elasticity data, dated October 29, 2008, Chad Duval, Ponderosa'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 Ponderosa had not provided any evidence to support the application of a demand elasticity factor to the increase in basic rates. Ponderosa 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, Ponderosa's challenge of our determination on the elasticity factor is denied.

E. Ponderosa's due process arguments have no merit.

Ponderosa 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-17132. Ponderosa also raises due process claims regarding the Resolution's determination on the elasticity factor.

Ponderosa 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-17132 the Final Resolution. By doing this, Ponderosa 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). Ponderosa'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 Ponderosa was provided with the requisite statutory notice of the draft resolution or that Ponderosa had the opportunity to comment thereon. Ponderosa provided its comments, both formal and informal, and as the Resolution states in several places, adjustments were made based on Ponderosa's Comments. There is in fact a specified section in the Resolution on pages 17-22 that discusses Ponderosa's Comments. As Ponderosa 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 Ponderosa's arguments on the changing rationale supporting the ultimate ratio determination are unpersuasive. First, as to the benefits-to-salary ratio issue, Ponderosa was provided the requisite statutory opportunity to comment, and

changes were made in response to those comments in Resolution T-17132. As can be seen in its Rehearing Application, as well as Dr. Hekman's Report, Ponderosa 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 contentions regarding the elasticity factor associated with the increase in basic rates, and the access line loss data, our final determination did reflect Ponderosa'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.

F. Ponderosa's request for oral argument under Rule 16.3 is denied.

In its rehearing application, Ponderosa 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, Ponderosa 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. 23.)

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.)

Ponderosa, however, did not meet the requirements listed above. Specifically, Ponderosa failed to demonstrate how oral argument will materially assist the Commission in resolving the rehearing application. The basis for Ponderosa' request for oral argument consists of several policy arguments, and not how Resolution T-17132 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.

G. Ponderosa's request for a memorandum account is denied.

Instead of a stay request, Ponderosa 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-17132 was issued. (See Pub. Util. Code, §1736.) Thus, Ponderosa's memorandum account request is denied.

III. CONCLUSION

Based on the above, a limited rehearing of Resolution T-17132 is granted on the executive compensation issue. 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 executive compensation issue, rehearing of Resolution T-17132, as modified, is denied in all other respects. Also, Ponderosa's request for oral argument and for a memorandum account are denied.

THEREFORE, IT IS ORDERED that:

1. Resolution T-17132 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. The last paragraph on page 11 and the first full paragraph on page 12 should be eliminated, as should the second and third full paragraphs on page 18, and they are hereby replaced 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 Ponderosa 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 Ponderosa'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 Ponderosa's argument that for ratemaking purposes, a 54% benefits-to-salary ratio was reasonable.
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> The second set of data we compared Ponderosa 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 Ponderosa, 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 Ponderosa. 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-17132 is further modified to add Finding No. 14, which should read as follows: "The evidence in the record supports the adoption of a 42% benefits-to-salary ratio."

3. The second sentence of the first full paragraph on page 12, and the second sentence of the third full paragraph on page 18, are modified to remove any reference to the word "cap," and the text for this sentence on both pages is modified to 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 Ponderosa is appropriate and adequate.

On page 9, in the last full paragraph, "(d) capped benefits at 42% of salaries and wages" should be replaced by "(d) benefits at 42% of salaries and wages."

4. Resolution T-17132 is modified to add Finding of Fact No. 15, which states: "Based on the evidence, it is reasonable to adopt an access line loss of <0.95%>."

5. A limited rehearing is granted to develop a clearer record to determine the salaries and wages for Ponderosa's President and Vice-President. Within 30 days from the issuance of this Decision, Ponderosa is hereby ordered to resubmit to CD Staff, as a supplement to AL Nos. 374 and 374-A ("Supplemental AL"), all information it deems appropriate to substantiate this request. 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. Ponderosa may also request evidentiary hearings by making such a request in the Supplemental AL. In that event, Ponderosa 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. Ponderosa's request for oral argument under Rule 16.3 of the Commission's Rules of Practice and Procedure is denied.

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

8. 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.09-03-008.

9. Except for the limited rehearing granted on the executive compensation issue, rehearing of Resolution T-17132, as modified, is hereby denied in all other respects.

This order is effective today.

Dated May 20, 2010, at San Francisco, California.

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