

Decision 89 02 015 FEB 8 1989**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Rural Water Company for general )  
 rate increase for water service of )  
 \$47,100 for 1988 in San Luis Obispo )  
 County. )

FEB 9 1989

Application 88-01-021  
(Filed January 21, 1988)ORDER SETTING ASIDE SUBMISSION

On September 20, 1988, Mr. McGee, a representative of the ratepayers of Rural Water Company filed a petition to set aside submission (petition) in accordance with Rule 84 of the Commission's Rules of Practice and Procedure. The petition alleges that certain materials, namely:

1. A report by R. Finnstrom, entitled "Rural Water Company--Correction of Plant and Depreciation Reserve Records through 1985" dated 3/16/87, and
2. Decision (D.) 83-06-009 in Application 82-12-69. (The documents are attached to the petition as Attachments A and B, respectively.)

have become available after the record was completed. The petition further alleges that the material may reduce staff's estimate of rate base.

On October 14, 1988, we issued D.88-10-029, which was an interim opinion and interim order granting this application to the extent that applicants annual revenues would increase by \$32,230 and its rate of return would increase from 2.44% to 10.5%. In that decision, concerning the petition we stated:

"It would be inappropriate to analyze this new material without giving applicant and our staff time to respond to the allegations contained in the petition. We also do not wish to delay the grant of the increases in rates that we here find to be just and reasonable. We will

authorize the increases in rates, however, in order to protect the petitioner should the allegations contained in the petition to reopen the proceeding be found to be correct we will order that the increased rates will be subject to refund."

On October 20, 1988 the Water Utilities Branch (Branch) filed its protest to the petition to set aside submission. The protest filed by Branch contends that the material obtained by petitioner subsequent to submission does not justify reopening this proceeding because the evidence contained in its workpapers and D.83-06-009 provided the basis for Branch's calculation of Rural's rate base from 1983 through 1985.

Branch contends that:

"The evidence specified by Petitioner does not justify reopening this proceeding. The evidence contained in Branch's workpapers (Petition, Exhibit 3) and in D.83-06-009 provided the basis for Branch's calculation of Rural's rate base from 1983 through 1985. Branch's prepared testimony, and Branch witnesses' direct testimony and testimony on cross-examination by Petitioner included thorough discussions of Branch's method of calculation. Neither the workpapers nor the decision contradict or draw into question any of Branch's testimony or recommendations. It is not the purpose of Rule 84 to provide a loophole by which a submission may be set aside upon the discovery of new evidence, regardless of whether it sheds new light on evidence already received. Because Petitioner fails to specify any new facts which materially affect the record, this petition must be denied."

We have carefully reviewed both the petition and Branch's protest. There is no question that the material contained in the Finnstrom report was used by Branch in arriving at the appropriate rate base for Rural in this proceeding. Furthermore, in its protest, Branch does not deny that it did not provide the Finnstrom report to Mr. McGee when he requested material. Careful review of

the report indicates that it is material to this proceeding and that the petition should be granted to the extent set forth in the order which follows.

IT IS ORDERED that:

1. The submission heretofore entered in the above-entitled proceeding is set aside and the matter reopened for the limited purpose of receiving in evidence the report entitled "Rural Water Company--Correction of Plant and Depreciation Reserve Records through 1985" dated 3/16/87.

2. Public Hearing for the purpose of receiving the material specified in Ordering Paragraph 1 and making its author available for cross-examination will be held at a time and place to be set.

This order is effective today.

Dated FEB 8 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OGHANIAN  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

*Victor Waisor*  
Victor Waisor, Executive Director