

Decision 83 02 075 FEB 16 1985

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CALIFORNIA WATER SERVICE COMPANY, a corporation, for an Order authorizing it to increase rates charged for water service in the San Carlos District.

Application 82-03-95
(Filed February 24, 1982)

In the Matter of the Application of CALIFORNIA WATER SERVICE COMPANY, a corporation, for an Order authorizing it to increase rates charged for water service in the Livermore District.

Application 82-03-96
(Filed February 24, 1982)

In the Matter of the Application of CALIFORNIA WATER SERVICE COMPANY, a corporation, for an Order authorizing it to increase rates charged for water service in the Los Altos-Suburban District.

Application 82-03-97
(Filed February 28, 1982)

In the Matter of the Application of CALIFORNIA WATER SERVICE COMPANY, a corporation, for an Order authorizing it to increase rates charged for water service in the Palos Verdes District.

Application 82-03-98
(Filed February 28, 1982)

In the Matter of the Application of CALIFORNIA WATER SERVICE COMPANY, for a general rate increase of \$177,700 in '83, \$37,300 in '84, & \$24,800 in '85, Willows District.

NOI 73-W
(Filed May 28, 1982)

O P I N I O N

Congressman-Elect Douglas H. Bosco, Nicholas R. Tibbits, and Rob Innes (petitioners) seek an order setting aside the submission of California Water Service Company's (CWS) Applications (A.) 82-03-95 (San Carlos District), A.82-03-96 (Livermore District), A.82-03-97 (Los Altos-Suburban District), A.82-03-98 (Palos Verdes District), and Notice of Intent (NOI) 73-W (Willows District) and reopening the proceedings for the taking of additional evidence (Rule 84, Rules of Practice and Procedure). Petitioners contend that published financial data available to December 7, 1982 should be considered in setting the rate of return in these five CWS districts and that such data suggest a return on equity of 10 to 12.4% rather than the 14.5% we found reasonable for CWS in Decision (D.) 82-11-058 on November 17, 1982 in CWS's East Los Angeles A.82-03-94.

Petitioners correctly note that the record on rate of return and other issues involved in the applications was closed on August 12, 1982. They are also aware that we took official notice of our most recent water company decisions in deciding A.82-03-94 on November 17, 1982. We applied that decision in all four applications, as they were heard upon a consolidated record, and applied it as well to NOI 73-W, Willows District, in Resolution W-3070, December 15, 1982.

Petitioners were not parties to the hearings on the applications and have no standing in them. Their petition is timely filed in NOI 73-W, Willows District, however, and we issued Resolution W-3070 on an interim basis with rates subject to refund in order to consider the petition and the response by CWS while the rights of the utility and its customers are preserved. The petition was filed on December 13, 1982 and the response was filed on December 14, 1982.

We have reviewed the parties' contentions and conclude that due process considerations are persuasive that petitioners be accorded the opportunity to participate in a full evidentiary hearing on the issue of rate of return for CWS's Willows District only.

As the Willows District NOI did not mature into an application, the only formal record of proceedings for it was the public witness hearing held in Willows on December 7, 1982. This was the first opportunity for Willows District ratepayers to enter an appearance and present prepared statements or sworn testimony. As petitioners availed themselves of this opportunity and, importantly, gave sworn statements of a substantial nature on financial matters affecting rate of return, it is reasonable that we not foreclose their right to participate fully in the Willows District case. Their participation, however, cannot extend to the several applications in which they entered no appearance (Rule 84, supra).

CWS's brief states that its next rate filings will relate to its Bakersfield, Chico, Stockton, Visalia, Salinas, San Mateo, King City, and Selma Districts, will be made early in 1983, and may be heard in mid-summer. The evidence and testimony in these rate filings will be for a 1984 test year. Such testimony and evidence would not be applicable to Willows District Resolution W-3070, December 15, 1982, which was for a 1983 test year. If petitioners intervene, however, they will have the opportunity for a full and in-depth examination of CWS's financial condition as affected by events which occurred between August 1982 and December 15, 1982. Included in such opportunity will be that of presenting evidence, cross-examining other witnesses, and otherwise taking part in the public hearings.

Additionally, we agree with CWS that the financial evidence to be presented in the 1983 proceedings will be comparable to a reopened hearing as, in that event, CWS, staff, and indeed, petitioners would be able to update their showings, limited to a 1983 test year.

We will accordingly deny the petition to reopen without prejudice to petitioners' right to intervene in the forthcoming 1983 applications to be filed by CWS. And, in order to fully preserve the rights of the Willows District ratepayers to any benefits they may derive from petitioners' presentation, we will not disturb the interim character of Resolution W-3070. Rates set by that resolution should continue to be subject to refund to the extent that the rate of return found reasonable for the Willows District in the pending 1983 applications is lower than the rate of return adopted in Resolution W-3070. ✓

CWS should send copies of its 1983 applications to petitioners at the time of filing. ✓

Findings of Fact

1. Petitioners have filed a timely petition to set aside the submission of NOI 73-W, Willows District, and to reopen the record for the taking of additional evidence on the issue of rate of return.

2. Petitioners offer to prove that the rates of return found reasonable by the Commission in Resolution W-3070 are, in fact, unreasonable in that they are excessive.

3. Petitioners have no standing to petition to reopen A.82-03-95, A.82-03-96, A.82-03-97, and A.82-03-98 in that they are not parties to those proceedings.

4. The 1983 hearings for the several CWS districts then scheduled for rate review present the most convenient forum for petitioners to participate in a full hearing on rate of return.

Conclusions of Law

1. The Petition to Reopen the Record in A.82-03-95, A.82-03-96, A.82-03-97, and A.82-03-98 and the request to issue interim decisions with rates subject to refund should be denied.

- 2. The Petition to Reopen the Record in NOI 73-W should be denied.
- 3. The interim decision with rates subject to refund in NOI 73-W should be continued. ✓

O R D E R

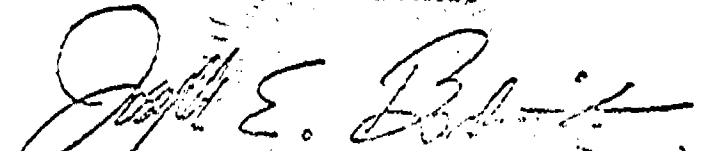
IT IS ORDERED that:

- 1. The Petition to Reopen the Record in A.82-03-95, A.82-03-96, A.82-03-97, and A.82-03-98 and the request to issue interim decisions with rates subject to refund are denied.
- 2. The Petition to Reopen the Record in NOI 73-W is denied.
- 3. Continuance of the interim decision with rates subject to refund in NOI 73-W is granted, and rates established in Resolution W-3070 are subject to refund to the extent that the rate of return found reasonable for the Willows District in the pending 1983 applications is less than the rate of return found reasonable in Resolution W-3070.
- 4. Testimony and evidence regarding rate of return for the Willows District is limited to CWS 1983 test year.
- 5. CWS shall send copies of its 1983 applications to petitioners at the time of filing.

This order becomes effective 30 days from today.

Dated FEB 16 1983, at San Francisco, California.

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


 Joseph E. Bodovitz, Executive Director

LEONARD M. GRIMES, JR.
 President
 VICTOR CALVO
 PRISCILLA C. GREW
 DONALD VIAL
 Commissioners

O P I N I O N

SS
Congressman-Elect Douglas H. Bosco, Nicholas R. Tibbits, and Rob Innes (petitioners) seek an order setting aside the submission of California Water Service Company's (CWS) Applications (A.) 82-03-95 (San Carlos District), A.82-03-96 (Livermore District), A.82-03-97 (Los Altos-Suburban District), A.82-03-98 (Palos Verdes District), and Notice of Intent (NOI) 73-W (Willows District) and reopening the proceedings for the taking of additional evidence (Rule 84, Rules of Practice and Procedure). Petitioners contend that published financial data available to December 7, 1982 should be considered in setting ^{the} rate of return in these five CWS districts and that such data suggest a return on equity of 10 to 12.4% rather than the 14.5% we found reasonable for CWS in Decision (D.) 82-11-058 on November 17, 1982 in CWS's East Los Angeles A.82-03-94.

Petitioners correctly note that the record on rate of return and other issues involved in the applications was closed on August 12, 1982. They are also aware that we took official notice of our most recent water company decisions in deciding A.82-03-94 on November 17, 1982. We applied that decision in all four applications, as they were heard upon a consolidated record, and applied it as well to NOI 73-W, Willows District, in Resolution W-3070, December 15, 1982.

Petitioners were not parties to the hearings on the applications and have no standing in them. Their petition is timely filed in NOI 73-W, Willows District, however, and we issued Resolution W-3070 on an interim basis with rates subject to refund in order to consider the petition and the response by CWS while the rights of the utility and its customers are preserved. The petition was filed on December 13, 1982 and the response was filed on December 14, 1982.

We have reviewed the parties' contentions and conclude that due process considerations are persuasive that petitioners be accorded the opportunity to participate in a full evidentiary hearing on the issue of rate of return for CWS's Willows District only.

SS As the Willows District NOI did not mature into an application, the only formal record of proceedings for it was the public ^{with} hearing held in Willows on December 7, 1982. This was the first opportunity for Willows District ratepayers to enter an appearance and present ^{substantiated statements or sworn testimony} evidence. As petitioners availed themselves of this opportunity and, importantly, gave ^{sworn statements} evidence of a substantial nature on financial matters affecting rate of return, SS it is reasonable that we not foreclose their right to participate ^{fully} in the Willows District case. Their participation, however, cannot extend to the several applications in which they entered no appearance (Rule 84, supra).

CWS's brief states that its next rate filings will relate to its Bakersfield, Chico, Stockton, Visalia, Salinas, San Mateo, King City, and Selma Districts, will be made early in 1983, and may be heard in mid-summer. If petitioners intervene, they will have the opportunity for a full and in-depth examination of CWS's financial condition as affected by events which have occurred subsequent to August 1982. Included in such opportunity will be that of presenting evidence, cross-examining other witnesses, and otherwise taking part in the public hearings.

Additionally, we agree with CWS that the financial evidence to be presented in the 1983 proceedings will be comparable to a reopened hearing as, in that event, CWS, staff, and, indeed, petitioners would no doubt wish to update their showings to reflect more recent data.

We have reviewed the parties' contentions and conclude that due process considerations are persuasive that petitioners be accorded the opportunity to participate in a full evidentiary hearing on the issue of rate of return for CWS's Willows District only.

As the Willows District NOI did not mature into an application, the only formal record of proceedings for it was the public witness hearing held in Willows on December 7, 1982. This was the first opportunity for Willows District ratepayers to enter an appearance and present prepared statements or sworn testimony. As petitioners availed themselves of this opportunity and, importantly, gave sworn statements of a substantial nature on financial matters affecting rate of return, it is reasonable that we not foreclose their right to participate fully in the Willows District case. Their participation, however, cannot extend to the several applications in which they entered no appearance (Rule 84, supra).

CWS's brief states that its next rate filings will relate to its Bakersfield, Chico, Stockton, Visalia, Salinas, San Mateo, King City, and Selma Districts, will be made early in 1983, and may be heard in mid-summer. The evidence and testimony in these rate filings will be for a 1984 test year. Such testimony and evidence would not be applicable to Willows District Resolution W-3070, December 15, 1982, which was for a 198³ test year. If petitioners intervene, however, they will have the opportunity for a full and in-depth examination of CWS's financial condition as affected by events which occurred between August 1982 and December 15, 1982. Included in such opportunity will be that of presenting evidence, cross-examining other witnesses, and otherwise taking part in the public hearings.

Additionally, we agree with CWS that the financial evidence to be presented in the 1983 proceedings will be comparable to a reopened hearing as, in that event, CWS, staff, and indeed, petitioners would be able to update their showings, limited to a 1983 test year.

We will accordingly deny the petition to reopen without prejudice to petitioners' right to intervene in the forthcoming 1983 applications to be filed by CWS. And, in order to fully preserve the rights of the Willows District ratepayers to any benefits they may derive from petitioners' presentation, we will not disturb the interim character of Resolution W-3070. Rates set by that resolution should ^{continue to} be subject to refund to the extent that the rate of return found reasonable for CWS ^{in the pending 1983 applications} is lower than the rate of return adopted in Resolution W-3070.

CWS should send copies of its 1983 applications to petitioners at the time of filing.

Findings of Fact

1. Petitioners have filed a timely petition to set aside the submission of NOI 73-W, Willows District, and to reopen the record for the taking of additional evidence on the issue of rate of return.

2. Petitioners offer to prove that the rates of return found reasonable by the Commission in Resolution W-3070 are, in fact, unreasonable in that they are excessive.

3. Petitioners have no standing to petition to reopen A.82-03-95, A.82-03-96, A.82-03-97, and A.82-03-98 in that they are not parties to those proceedings.

4. The 1983 hearings for the several CWS districts then scheduled for rate review present the most convenient forum for petitioners to participate in a full hearing on rate of return.

Conclusions of Law

1. The Petition to Reopen the Record in A.82-03-95, A.82-03-96, A.82-03-97, and A.82-03-98 and the request to issue interim decisions with rates subject to refund should be denied.

2. The Petition to Reopen the Record in NOI 73-W should be denied.

SS SS 3. ~~The request to issue an~~ ^{the} interim decision with rates subject to refund in NOI 73-W should be ~~granted.~~ ^{continued;}

O R D E R

IT IS ORDERED that:

1. The Petition to Reopen the Record in A.82-03-95, A.82-03-96, A.82-03-97, and A.82-03-98 and the request to issue interim decisions with rates subject to refund are denied.

2. The Petition to Reopen the Record in NOI 73-W is denied.

SS 3. ~~The request to issue an~~ ^{Continuance of the} interim decision with rates subject to refund in NOI 73-W is granted, and rates established in Resolution W-3070 are subject to refund to the extent that the rate of return found reasonable for CWS in its next group of applications is less than the rate of return found reasonable in Resolution W-2070.

4. CWS shall send copies of its 1983 applications to petitioners at the time of filing.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.