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APR 23 1998

Decision 98-04-049 April 23, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the financial and operational risks of Commission regulated water utilities, and whether current ratemaking procedures and policies require revision.	I.90-11-033 (Filed November 20, 1990; Petition for Modification Filed November 18, 1997)
And Related Matter.	I.89-03-005

ORIGINAL

OPINION

1. Summary

The California Water Association, referred to hereafter as Petitioner, filed a petition to modify a 1992 Commission decision. The petition does not comply with requirements of Rule 47 of the Commission's Rules of Practice and Procedure, is not supported by affidavit or declaration, and does not explain the five-year delay in requesting relief. The petition is denied. This proceeding is closed.

2. Background

The petition for modification seeks two changes in Decision (D.) 92-03-093, 43 CPUC2d 568, which was issued on March 31, 1992. The decision was an interim one in a 1990 Order Instituting Investigation addressing the risks and increased costs facing the state's approximately 200 smaller privately owned water utilities. The decision focused on Class C utilities, serving between 500 and 2,000 connections, and Class D utilities, serving fewer than 500 connections.

Following eight days of hearing, testimony by 21 witnesses, and examination of surveys conducted both by the California Water Association and the Commission's staff, D.92-03-093 adopted numerous changes to assist these smaller utilities. Among other things, it authorized simplified rate-making procedures tied to the Consumer Price Index, memorandum account tracking of unexpected repair costs, and recovery of

more than 50% of fixed costs through service charges. The decision also increased ranges of reasonableness for return on equity for these utilities (13.9% to 14.4% for Class D utilities and 11.6% to 12.1% for Class C utilities).

In its petition for modification, Petitioner seeks the following changes to the decision:

> "Petitioner requests that Decision No. 92-03-093 be modified to allow Class C or Class D water utilities the CPI-U increase in a test year due to the rate lag time in approval of new rates. These rates in reality do not become effective until near the end of the test year."
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> "Petitioner also requests that Decision No. 92-03-093 be modified to allow Class C or Class D water utilities to file retroactively for two (2) years for a CPI-U increase as long as they have not made their authorized rate of return in either of the two years."

The petition represents that these changes are supported by members of the staff of the Commission's Water Division, but the petition attaches no affidavit or declaration attesting to that support, nor does the petition submit any other exhibits or evidence related to the requested modifications.

There have been no responses for or against the petition for modification. Petitioner asks that the Commission grant its request on an ex parte basis without hearing.

3. Procedural Requirements

Petitioner has erroneously filed its pleading under a former Rule 43 dealing with petitions for modification. Effective in September 1997, the rule governing petitions for modification is Rule 47.[1] Rule 47 states, in part:

> "A petition for modification must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed (Rule 73). Allegations of new or

[1] The Commission's Rules of Practice and Procedure are available from the Commission's Docket Office. They also are set forth in full in the Commission's website at www.cpuc.ca.gov.

changed facts must be supported by an appropriate declaration or affidavit." (Rule 47(b).)

Petitioner has complied with none of these requirements in its petition, setting forth only the conclusory statements recited above.

Rule 47 also provides:

"Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition." (Rule 47(d).)

The decision in question was effective 30 days from issuance, or April 30, 1992. Petitioner has not explained why its petition could not have been filed within one year of April 30, 1992, nor has it made any attempt to justify the late submission.

4. Discussion

Rules of court have the force of law and are binding on the court and on parties; if a rule is to be effective, it must be generally enforced with its infraction excused only in exceptional circumstances.[2]

Petitioner has appeared often in Commission proceedings, and it is or should be familiar with the Rules of Practice and Procedure. Even were we to waive compliance with Rule 47, we would be reluctant to act on modifications to a decision without support for the changes in the form of declarations, affidavits, exhibits or other record evidence. Additionally, we would require Petitioner to explain why changes are necessary five years after the decision has taken effect.

Because Petitioner has not complied with the requirements of Rule 47, and because Petitioner has failed to present evidence in support of its requested changes, the petition for modification should be and is denied.

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[2] In re Juan C. (1993, 2nd Dist) 20 CA4th 748. See, generally, 16 Cal Jur 4th § 164.

Moreover, as a procedural matter, parties are encouraged to file a new application for proposed changes of this nature, rather than reopening an eight-year-old proceeding through a petition to modify. Because we now must operate under timeliness set forth in Senate Bill 960 (Leonard, ch. 96-0856), the Commission seeks to discourage unnecessary opening of proceedings that have long since been closed.

Finding of Fact

Petitioner has not complied with the requirements of Rule 47 in filing this petition for modification.

Conclusion of Law

The petition for modification should be dismissed, and this proceeding should be closed.

ORDER

IT IS ORDERED that the Petition for Modification of Decision 92-03-093 filed on November 18, 1997, by the California Water Association is denied.

This proceeding is closed.

This order is effective today.

Dated April 23, 1998, at Sacramento, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners