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Ponderosa Telephone Co. v. California Public Utilities Commission

Court of Appeal, Fifth District, California - June 18, 2019 - Cal.Rptr.3d - 2019 WL 2715513 - 19 Cal. Daily Op. Serv. 6362 - 2019 Daily Journal D.A.R. 6076

Rural telephone utilities brought petition for writ of review of decision of state Public Utilities Commission (PUC), Nos. 16-12-034 and 17-12-029, establishing utilities' cost of capital, as used as component in ratemaking.

The Court of Appeal holds that:

- Cost of capital determination was not so unreasonably low as to be confiscatory;
- PUC's decision not to include special risk premium for purported effect of small company size, in calculating cost of equity, was not arbitrary, capricious, or unsupported by substantial evidence;
- PUC's decision not to include industry-specific risk premium, in calculating cost of equity, was reasonable; and
- PUC's decision not to include regulatory risk premium, in calculating cost of equity, was reasonable.

Decision of Public Utilities Commission (PUC) to not include a special risk premium for purported effect of small company size, in calculating cost of equity and thus cost of capital for purposes of ratemaking for rural telephone utilities, was not arbitrary, capricious or unsupported by substantial evidence; PUC carefully weighed and considered all of the evidence, which included evidence questioning the small size effect and evidence arguably showing that cost of equity could be fairly and reasonably ascertained without addition of special risk premium.

Cost of capital determination for rural telephone utilities by Public Utilities Commission (PUC), using a cost of equity of 10.8 percent, was not so unreasonably low as to be confiscatory; resulting determination was nonarbitrary and within range of reasonableness.

Decision of Public Utilities Commission (PUC) not to include an industry-specific risk premium, in calculating cost of equity and thus cost of capital for purposes of ratemaking for rural telephone utilities, was reasonable; PUC found evidence as to premium speculative and unconvincing, since utilities failed to show how risks faced by proxy group corresponded to utilities' own risks.

Decision of Public Utilities Commission (PUC) not to include a regulatory risk premium, in calculating cost of equity and thus cost of capital for purposes of ratemaking for rural telephone utilities, was reasonable; utilities did not demonstrate that state administrative committee program funding and interim rate relief, as asserted by Office of Ratepayer Advocates (ORA), would not address the identified regulatory risks.