

DR 98-128

CENTRAL WATER COMPANY, INC.

RATE CASE

Order Denying Central Water Company's Motion For Rehearing

O R D E R N O. 23,386

January 7, 2000

I. BACKGROUND

Central Water Company (Central) petitioned the Commission in September, 1998 for an increase in revenues of \$84,681, which represented a total increase of 32.15% over existing rates. In October, 1998, Central filed a petition and supporting testimony for temporary rates. On October 27, 1998, the Commission issued Order No. 23,045, scheduling a prehearing conference in the case, noting that the original filing raised issues regarding consumption trends, operation and maintenance expenses, management contracts, etc. The prehearing conference was held on November 13, 1998. A hearing on Central's request for temporary rates was held on January 21, 1999. The Commission granted Central's request for temporary rates in Order No. 23,151 (February 22, 1999). The temporary rate increase was set at 18.99% over the then-existing rates.

Hearings on the permanent rate case were held on August 18 and 19, 1999. Staff prefiled the testimony of

Messrs. Richard B. Deres, Mark A. Naylor and Douglas W. Brogan on behalf of the Commission Staff. Central prefiled the testimony of Mr. Stephen P. St. Cyr and Mr. Raymond Seeley on behalf of Central. Both Staff and Central had an opportunity to cross-examine the witnesses. There was, however, agreement on the appropriate calculation of the Company's revenue requirement regarding all issues, other than certain rate affordability and company management issues.

After the hearings, the Parties and Staff filed memoranda with the Commission regarding the issues of affordability and management. Staff contended that no increase in Petitioner's rates above the pre-temporary rate level was warranted because of the lack of adequate management services provided by Central's affiliate, Integrated Water Systems, Inc. (Integrated), to the Company. Staff maintained that the focus in the proceeding should be on the unreasonable management costs provided by Integrated, and the Company's failure to comply with Commission rules and regulations which, among other things, resulted in a high level of rates, inefficiencies and poor management. Staff also asserted that the Company's rates, the highest in the state, would be unaffordable and unreasonable if the requested increase were granted.

Central argued that Staff's recommendation to deny the Company's request for a permanent increase in rates was based upon "erroneous assumptions or implications of mismanagement," and that the level of rates resulted solely from necessary capital improvements made during the five years since the Company purchased the system from Locke Lake Water Company, Inc. *Re Locke Lake Water Company, Inc. 78 NH PUC 295 (1993)*. Central maintained that the "affordability" standard expressed by Messrs. Brogan and Naylor would violate traditional ratemaking standards and would be an unconstitutional taking of the Company's property; and that the Company's financial condition is a result, in part, of a series of disallowances beginning with the Company's 1994 rate case.

On October 25, 1999 the Commission granted Central a permanent rate increase of 12.2%, which equated to an increase in revenues of \$30,780 over pre-temporary rate levels. The effective date for the rates was set as December 1, 1999. See Order No. 23,326, dated October 25, 1999. The Commission noted that a major cost contributing to the high rates was the existence of two management salaries for a small water utility; other problems with management and operations were also cited. To reflect management shortcomings the return on

equity was reduced to the low end of the discounted cash flow analysis. Also, the management salary level was reduced to a level found reasonable by the Commission.

II. PROCEDURAL HISTORY

On November 19, 1999, just 25 days after the issuance of Order No. 23,326, and prior to the filing of a Motion for Rehearing or Appeal, Central filed a motion with the New Hampshire Supreme Court requesting suspension of the order pursuant to RSA 541:18. The Court ordered the State to file a reply by November 24, 1999. After receiving a timely filed response, the Court, on December 2, 1999, denied Central's motion.

On November 24, 1999, Central submitted one copy of its Motion for Rehearing with the Commission. The remaining eight copies were filed on November 29, 1999. Staff filed its objection to the motion on December 6, 1999. On December 9, 1999 Central filed a request for waiver with respect to the prior late filing of the requisite copies of its Motion for Rehearing. Central also filed, on December 13, 1999, a Response to Staff's Objection to the Motion for Rehearing.

III. POSITION OF THE PARTIES

A. Central Water Company

Central asks this Commission to reconsider Order No.

23,326, pursuant to RSA 541:3, alleging that the Commission's decision and order were unlawful, unreasonable and not supported by the evidence. Central asserts that it was not provided proper notice, in violation of its due process rights under both the New Hampshire and United States Constitutions, with regard to certain issues that could impact rates. The Company further alleges that the issues of quality of service, management competence of its affiliate and record-keeping issues are not germane to ratemaking and should be taken up in another proceeding.

The Company also contends that the evidence does not support a finding of mismanagement which would justify a reduction in the return on equity (ROE). Furthermore, the Company claims that it is a denial of equal protection when the Commission is penalizing the Company through rate reductions for alleged failures to properly adhere to the Commission's rules where the record demonstrates that the failures are "widespread among small water companies." Central's Motion, at p. 4.

B. Staff

Staff contends that the Company failed to submit sufficient grounds for a rehearing, making the request substantively deficient as well. Staff claims there was

proper notice specifically pointing out that in a full rate case issues regarding "affiliate transactions, return on equity, compliance with commission rules and regulations, quality of service and company management are part and parcel of what this Commission ordinarily examines in determining the proper rates for all utilities." Staff Response, p. 7. Staff further maintains that the record contains enough evidence to support a finding of mismanagement.

Staff also objects to Central's motion contending first that the filing is procedurally deficient in that Central failed to follow statutory and regulatory authority.

IV. COMMISSION ANALYSIS

We have considered all the arguments in Central's Motion for rehearing and those asserted in Staff's objection. As we believe Staff's objection contains more persuasive arguments on the matters of procedure and substance than are raised or implicated by the Motion, we discern no basis for rehearing. While we believe there may have been procedural flaws in the filing of the motion, we do not reject the motion for this reason. See *e.g. Granite State Electric*, 77 NH PUC 130, 133 (1992) (noting that we have elected in this instance to exercise our discretion not to allow a procedural deficiency to stand as a barrier to a proper substantive

result).

A. Notice - Procedural Due Process

After a review of the Order of Notice and consideration of the matters presented in the case we believe Central was given proper notice. Due process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *City of Claremont v. Truell*, 126 N.H. 30, 35 (1985). A primary consideration of due process is fundamental fairness. *Id.*, at 36.

In this case the Company was apprised of the nature of the case. Central initiated the proceeding by its petition for a rate increase. In determining proper rates in a full rate case, prudence reviews and management decisions are legitimate areas of inquiry and adjudication. *See Gas Service, Inc.*, 70 NH PUC 676, 680 (1985) (noting that step adjustment contrasts sharply with a rate case review where the prudence of management judgments must be an issue subject to Commission scrutiny). *See also, Appeal of Public Service of New Hampshire*, 122 NH 1062, 1073 (1982) (noting imprudent costs may not be recovered in the rate-making process). Central and its affiliate have been involved in previous rate case

proceedings and issues of these types have been addressed before. See *e.g.*, DR 96-399 at 82 NH PUC 350 (1997); DR 94-094 at 81 NH PUC 166 (1996); DR 93-164 at 79 NH PUC 27 (1994). Moreover, Central and its affiliate have been before this Commission in numerous merger and acquisition, and financing cases. In view of the foregoing, Central's suggestion that there was insufficient notice concerning the parameters of its full rate case is without merit.

B. Sufficiency of Evidence

We agree with Staff that there was sufficient evidence in the record to support our findings of poor management, and poor quality of service. The testimony by Messrs. Brogan and Naylor sufficiently outline the concerns that we raised in Order No. 23,326 and need no repetition here.

C. Equal Protection

The equal protection clause of the fourteenth amendment requires that all persons within a jurisdiction be treated even-handedly. *Kerouac v. Town of Hollis*, 139 N.H. 554, 561 (1995). All water companies regulated by this Commission are treated equally with respect to the requirements regarding reporting. Central's allegation that it is being penalized through a reduction in rates, where

other utilities are not, is without merit. There has been no disparate treatment. The Commission has taken action with regard to inadequate reporting in the case of other water companies, see e.g. *Great Bay Water Company, Inc.*, 83 NH PUC 575 (1998); *Southern New Hampshire Water Company*, 76 NH PUC 521 (1991); *LOV Water Company*, Order No. 23-371, December 21, 1999; and will continue to do so where required. However, even if it is assumed that similarly situated persons are being treated differently, we do not believe the distinction violates equal protection principles. No suspect class, fundamental interest or interest entitled to heightened scrutiny is involved; thus, we examine whether there is a rational relationship between the regulatory interest and the different treatment. See e.g., *Carson v. Maurer*, 120 N.H. 925 (1980). In this case the Company has sought a rate increase, and examining the impact of poor reporting on the Company's request for higher rates reflects a reasonable difference in treatment from a similar company that is not seeking an increase in rates.

Given our plenary authority to set rates, we find that the order was proper, legal and reasonable and that Central has failed to submit any new or sufficient evidence that would lead us to reexamine the case.

Based upon the foregoing, it is hereby

ORDERED, that Central Water Company's Motion for Rehearing is DENIED.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary