

Decision No. 22852

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the Matter of the Investigation)
upon the Commission's own motion into)
the activities and practices of)
SOUTHERN CALIFORNIA EDISON COMPANY,)
LOS ANGELES GAS AND ELECTRIC CORPORATION,)
SOUTHERN COUNTIES GAS COMPANY OF CALIF-) Case No. 2706
ORNIA, and SOUTHERN CALIFORNIA GAS COM-)
PANY, in connection with the expenditure)
of Company funds for political purposes)
and the diverting of time and efforts)
of company employees to the advancement)
of political causes.)
)
)

W. C. Mullendore and B. F. Woodard for
Southern California Edison Company;

Paul Overton, for Los Angeles Gas and
Electric Corporation;

Leroy M. Edwards, for Southern Counties
Gas Company of California;

Thomas J. Reynolds, for Southern Calif-
ornia Gas Company.

BY THE COMMISSION:

O P I N I O N

On June 4, 1929, a municipal election was held
in the City of Los Angeles. On the following day this Com-
mission announced the institution of an investigation on its
own motion into the activities and practices of Southern Calif-
ornia Edison Company, Los Angeles Gas and Electric Corporation,
Southern Counties Gas Company of California, and Southern
California Gas Company in connection with the said election

for the purpose of inquiring into the matter of the expenditure of company funds and the devoting of time and services of company employees to the election. The object of the investigation was (1) to determine whether the expenditures incurred by the respective companies were to be charged to their respective surplus accounts and thus borne by the stockholders or were to be charged to operating expense accounts and borne by the rate payers; and (2) to determine whether the temporary withdrawal of regular company employees from their usual duties had, to any extent, impaired the public utility services being rendered by the companies.

Hearings were held on June 19th and September 17th, 1929, and the matter is now ready for decision.

The various companies appeared in the proceeding and testimony was offered with reference to the activities of the respective corporations in connection with the election in question. The following witnesses appeared and testified for their respective companies: Addison B. Day, Harry L. Masser and Ernest N. Simmons for the Los Angeles Gas and Electric Corporation, C. P. Staal for the Southern California Edison Company, W. E. Robbins for the Southern California Gas Company, and F. S. Wade for the Southern Counties Gas Company of California. Theo. Stein, auditor for the Commission, testified with reference to an investigation which he had made into the expenditures and accounts of the companies and offered in evidence a comprehensive report covering the matter.

The record shows that the following sums were expended by the companies for election purposes: \$200.00 by Southern Counties Gas Company of California; \$1,683.35 by Southern California Gas Company; \$45,608.05 by Southern California Edison Company, and \$40,282.58 by Los Angeles Gas and Electric Corporation. The record further shows that the expenditures of each company were charged to their surplus accounts, and no part thereof charged to operating expenses. It thus appears that no part of the said expenditures will be borne by the rate payers.

The testimony of various witnesses shows that the public utility services rendered by the respective companies were not impaired by the withdrawal of company employees from their regular duties during the election period.

In view of the foregoing facts the proceeding will be dismissed.

ORDER

An investigation on the Commission's own motion having been instituted, public hearings having been held, and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this *10th* day of *September*, 1930.

Leon O'Connell

Thos. J. Quinn

CONCURRING OPINION BY COMMISSIONER DECOTO.

While I concur in the opinion of Commissioners Louttit and Whitsell filed herein, I believe that the minority opinion of Commissioners Seavey and Carr may be misleading, that the conclusions reached are not supported by the facts as disclosed in the record nor the law as laid down in numerous decisions by the courts of California, courts of other states and the Supreme Court of the United States.

The control of the corporate acts of any corporation including public utilities is placed directly in the hands of the board of directors of such corporation, and the duty of the director is that of the highest trust and authority in connection with the affairs of the corporation. Directors occupy a fiduciary relationship to the corporation and its stockholders; it is their duty to promote the interest of the stockholders and the corporation. *L. Y. Nip vs. Alturas, Cal., 29 Cal. App. 158;* *Western Life Insurance Company vs. Lockwood, 173 Cal. 734;* *Winchester vs. Howard, 136 Cal. 432.* 6 California Jurisprudence, page 415, 444.

It is also the duty of the board of directors of any corporation, including a public utility corporation to conserve the assets of the corporation, to take whatever steps are needful to protect the business of the corporation as a whole, to prevent if possible the severance of its property and the unwise taking thereof by a municipality and to expend the funds of the corporation for the benefit of the stockholders. The courts are slow to interfere and will not do so where it is merely a question as to the wisdom of an act within the scope of the directors' legitimate authority, "A board of directors is elected by the stockholders of a corporation for the very purpose of

managing its affairs, and in so doing so long as they act in good faith and strictly intra vires, it is their judgment and not that of its stockholders outside of the board of directors or any court that is to shape the policies or decide upon its corporate acts." *Siegan vs. Electric Vehicle Co.* 140 Fed. 117, 118.

This Commission cannot usurp the duties of the board of directors of any public utility nor assume its task nor circumscribe its judgment nor substitute the judgment of the Commission for the judgment of the board of directors nor interfere with the internal management of the utility. This doctrine has been stated time and again by the courts of this state and others and by the Supreme Court of the United States.

In *Pacific Telephone and Telegraph vs. Eshleman*, 166 Cal. 650, 655, the Supreme Court said: "The devotion to a public use by a person or corporation of property held by them in ownership does not destroy their ownership and does not vest title to the property in the public so as to justify, under the exercise of police power, the taking away of the management and control of the property from its owners without compensation, upon the ground that public convenience would better be served thereby, or that the owners themselves have proven false or derelict in the performance of their public duties."

Again in *The Atchison, Topeka & Santa Fe vs. the Railroad Commission*, 173 Cal. 577, 588, the court said: "The question of whether the railroad company shall extend its lines to points not theretofore reached by it, whether in other words, it shall engage in a new and additional enterprise, is one of policy to be determined by its directors."

The Supreme Court of the United States has time and again tried to impress upon Commissions such as this that a

regulatory commission has no authority or power to interfere with the business management of public utilities.

In Missouri ex rel. Southwestern Bell Telephone Co. vs. Public Service Commission, 262 U.S. 276, 289, it said: "It must never be forgotten that while the state may regulate with a view to enforcing unreasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership."

In *Banton vs. Belt Line Railway Corporation*, 268 U. S. 413, 421, it again said: "Broad as is its power to regulate, the State does not enjoy the freedom of the owner. Appellee's property is held in private ownership, and, subject to reasonable regulation in the public interest, the management and right to control the business policy of the company belongs to its owners."

This Commission has no interest in the expenditure of money by the board of directors of any public utility corporation unless that expenditure of money wrongfully places upon the consumers an unlawful burden. Where the money expended is taken from the surplus of the utility, it cannot in any manner place any burden upon the rate payers of the utility. Where, therefore, as in this case, the expenditure has been charged to surplus, it is removed from the jurisdiction of this Commission and is a matter solely between the board of directors and the stockholders of the utility, and the Commission cannot regulate nor interfere with it in any manner whatsoever.

This Commission has no power or authority to interfere with the activity of employees of public utilities unless such activity causes an impairment of service to the rate payers of the utility. Where the activities of the employees of utilities,

as in this case, does not interfere with the service to the consumers, the direction of the activities of such employees rests entirely in the board of directors of the utility and no regulatory commission is entitled to poke its nose into the business management of such utility.

Having stated the general principles of law governing the matter, I desire to take up in detail the three parts of the opinion of the minority Commissioners.

This minority opinion states: "It will be noted that for a period of eleven days the Los Angeles Gas & Electric Corporation withdrew 33.43% of its employees for 21.55% of the total employed time and the Southern California Edison Company withdrew 23.29% of its employees for 17.67% of the total employed time, thus diverting them to the above described political activities."

These percentages when multiplied do not show any terrifying activity on the part of these corporations, they show when multiplied that only 7.20% of the employees of the Los Angeles Gas & Electric Corporation devoted eleven days to political activities and that only 5.11% of the employees of the Southern California Edison Company devoted eleven days to such activities. This does not constitute a withdrawal of a substantial part of the force for a substantial period. The minority opinion finds that "the record discloses no specific impairment of service for the nonce and the utilities declared there was none." Undoubtedly this activity of a small percentage of the employees of these companies for a short period worked less impairment of service than would be occasioned by the summer vacation period, and the only effect probably was a little additional work thrown upon such employees after their return to their regular duties. Neither does it follow nor does the record show, as stated in the minority opinion, "--- in the face of a withdrawal of a substantial part

"of the regular force for a substantial period of time, it is axiomatic that either impairment of service or additional expenditures to prevent such impairment will accrue, or that the current cost of service is beyond reason." The record does not show the withdrawal of either a substantial part of the regular force or withdrawal of any part of the force for a substantial period. It does show the withdrawal of a small percentage of the force for a short time.

The record does not show the money expended, if any by the Bureau of Power and Light nor the time taken from their regular work and devoted to political activities by its employees. Such information would be of undoubted interest.

There is another part of the opinion of the minority Commissioners which I cannot pass over without comment. It reads: "Neither do we believe on this record an order can be sustained directing the utilities, because of the effect on service to cease and desist from engaging their employees in political activities. It is very evident, however, that there is a danger to the public interest in such activities of utilities."

Every corporation under the laws of California has subject the law of the state and the powers granted to it by its charter the same right to freedom of action as an individual. It is the duty of every individual and every corporation of the state to take a healthy interest in the political affairs of cities, counties and state. It is just as much the duty of corporations and public utilities to see that proper men are elected to public office as it is the duty of the individual citizen. It is also the duty of corporations and public utilities just as much as it is for the individual citizen, to see that the public is thoroughly informed on any issue pending before it and if the

corporation or utility has some special knowledge on the matters pending before the electorate, it certainly is the privilege if not the duty of the board of directors of the corporation or utility to impart such knowledge to the individual voter. Such activity has no potential danger and is a distinct benefit to the community. A reasonable activity on the part of utilities in informing the public of issues before it which affect the public as well as the utility is to be commended rather than be condemned. If, in the judgment of the board of directors of these companies, it was to the best interest of their stockholders to expend some of the funds of the stockholders to convey to the electorate of the City of Los Angeles information to enable it to vote intelligently upon the matters before it and to use a small part of the time of the utility's employees for the same purpose, that is entirely a matter between the board of directors and the stockholders and is not the business of this Commission. In this case there is no finding that the activity of the utilities was ever excessive in expenditure or in the time of employees devoted thereto.

Another proposal of the minority Commissioners seems to me to have no standing either in law or in the record in this case, to wit: "As set forth in the above, it is proper that said companies be required to present to this Commission prior to their engaging in any political activities as hereinafter defined, the names of their employees who will be requested to devote to such political activities all or part of their regular working hours and the approximate period of time for which each employee will be withdrawn from his or her regular working hours and engage in such political activities."

In view of the decisions of the courts herein-
above mentioned, it seems hardly necessary to point out the
fallacy of this part of the order. The matter being entirely
within the jurisdiction of the Board of Directors and entirely
out of the scope of the regulatory power of this Commission,
such an order would be not only futile but unlawful.

There is no particular sanctity to the acts of the
Bureau of Power and Light nor to the acts of municipal govern-
ing bodies. Many of the acts of municipal governing bodies are
unlawful, erroneous and even costly to their electorate, towit,
the St. Francis Dam disaster, the delays and disasters of Hetch
Hetchy construction and the failure of the Lafayette Dam.
Experience has not shown that the members of such boards or
bodies have displayed the same careful judgment displayed by
our major businesses, neither have they attracted to themselves
men of as great ability as have been attracted to the governing
boards of private businesses. Therefore, in many cases it is
to the best interests of the community that a little light be
shed upon such activities from a non-political source.


Commissioner.

DISSENTING OPINION

We dissent.

It seems to us that the majority, and particularly Mr. Commissioner Deoto, by an unnecessarily narrow and legalistic approach, avoid meeting adequately a condition, the natural tendency of which is to detract from that measure of supervision and control over the accounting, rates and service of public utilities that the system of regulation was intended to effectuate.

While it may be that utilities have the legal right to engage in extensive and costly political activities, utilizing for this purpose their regular operative force, this right is subject to at least two qualifications, to-wit:

(1) The full cost of such activities must be charged against and borne by corporate surplus, to the end that none is reflected in the current costs of operation, and

(2) Any utilization of the regular operating force must be such as not to impair or detract from the standards and character of service to which the public is justly entitled.

To see that utilities are kept within their legal rights in this respect is clearly the duty of this Commission and within its jurisdiction.

As to Southern Counties Gas Company of California and Southern California Gas Company, their expenditures and activities were nominal. The former withdrew none of its regular employes from their duties and the number withdrawn by the latter was insignificant. Were this all that was developed

in the investigation, this proceeding might well be dismissed under the maxim de minimis non curat lex. However, an entirely different situation developed in respect to the other two companies - one which presents a sharp challenge to the effectiveness of the system of regulation to properly cope with it. The following four statements taken from the report of Mr. Stein, an auditor for the Commission, graphically reflect the extent of the activities of Southern California Edison Company and Los Angeles Gas and Electric Corporation.

STATEMENT A

LOS ANGELES GAS AND ELECTRIC CORPORATION

STATEMENT OF PAYROLL EXPENSE IN CONNECTION WITH MUNICIPAL ELECTION HELD JUNE 4, 1929, SHOWING PER CENT OF EMPLOYEE HOURS SPENT ON CAMPAIGN WORK FROM MAY 25, 1929, TO JUNE 4, 1929 INCLUSIVE, TO TOTAL EMPLOYEE HOURS NECESSARY FOR COMPANY ROUTINE WORK DURING SAME PERIOD, ALSO PER CENT OF AVERAGE EMPLOYEES USED FOR CAMPAIGN WORK TO AVERAGE TOTAL EMPLOYEES IN SERVICE BY DEPARTMENTS.

DEPARTMENT	1 Payroll Expense	2 Employee hours com- pany rou- tine work 5/25 to 6/4	3 Employee hours cam- paign work 5/25 to 6/4	4 Average total em- ployees in ser- vice May & June	5 Average employees used for campaign work 5/25 to 6/4	6 Percent to total hours	7 Percent to total employees
Gas production department	\$2,341.57	8,642.	\$,116.00	149	64	36.06	42.95
Electric production department	917.47	11,642.	1,367.50	199	50	11.85	25.13
Gas distribution department	5,687.92	45,008.	8,733.00	776	158	19.40	20.36
Electric distribution department	7,887.17	44,370.	11,854.00	765	319	26.72	41.70
General office department	1,968.52	9,744.	2,834.00	168	64	29.60	39.10
Commercial department	3,698.65	38,338.	4,836.25	661	242	12.61	36.61
Engineering department office	443.77	4,582.	583.50	79	18	12.30	22.78
Engineering department mech.	5,547.29	12,818.	5,174.00	221	101	40.37	45.70
Stores department	557.96	4,698.	562.00	81	27	11.98	33.33
Transportation department	101.97	2,262.	132.00	39	6	5.84	15.38
TOTAL	\$27,092.19	182,004.	\$9,222.25	3138	1049	21.55	33.43

STATEMENT B

LOS ANGELES GAS AND ELECTRIC CORPORATION

Statement of Payroll and Miscellaneous Expense in connection with Municipal Election held June 4, 1929.

PAYROLL:

Gas production department	\$2,341.57	
Electric production department	917.47	
Stores department	557.96	
Transportation department	101.97	
Commercial department	3,698.55	
General office department	1,968.52	
Engineering office department	443.77	
Engineering Mech. dept.	3,547.29	
Gas distribution department	5,627.92	
Electric distribution department.	7,887.17	
		<u>\$27,092.19</u>
Auto mileage expense.		2,482.84
Meals		3,265.83
Telephone, carfare, etc		426.47
Newspaper advertising in account with Herbert L. Cornish		3,470.20
Stationery and supplies		124.77
Printing in account with Herbert L. Cornish		2,268.59
Circular letters (9,200)		73.89
Election slips for precincts (200,000)		117.75
Windshield stickers (2000) red dot center		24.75
Celluloid buttons, red dot centers (3000)		45.60
Refund from Southern California Edison Company account proportion of printing bill		76.66*
Banners in account with Herbert L. Cornish		172.50
Radio broadcasting in account with Herbert L. Cornish		380.00
Precincting names		343.25
Proportion of garage expense account repairs, etc., to cars		69.31
Telephone calls		1.30
		<u>\$ 40,282.58</u>

*Red Figure

SOUTHERN CALIFORNIA EDISON COMPANY

STATEMENT OF PAYROLL EXPENSE IN CONNECTION WITH MUNICIPAL ELECTION HELD JUNE 4, 1929, SHOWING BY PER CENT OF EMPLOYEE HOURS SPENT ON CAMPAIGN WORK FROM MAY 25, 1929, TO JUNE 4, 1929, INCLUSIVE TO TOTAL EMPLOYEE HOURS NECESSARY FOR COMPANY ROUTINE WORK DURING SAME PERIOD, ALSO PER CENT OF AVERAGE EMPLOYEES USED FOR CAMPAIGN WORK TO AVERAGE TOTAL EMPLOYEES IN SERVICE BY DEPARTMENTS

DEPARTMENT OR DISTRICT *	1	2	3	4	5	Total	Average
	Payroll expense	Employee hours Co. routine work 5/25 to 6/4	Employee hours campaign work 5/25 to 6/4	Average total employees in service May & June	Average employees used for campaign work 5/25 to 6/4		
Montebello District	\$ 231.05	3712	290.50	64	7	231.05	7
San Fernando Valley District	687.06	3770	920.75	65	14	687.06	14
Vernon District	385.90	5568	580.00	98	11	385.90	11
Redondo Beach District	223.90	3364	356.50	58	9	223.90	9
Santa Monica District	1,472.20	5278	2,008.00	91	37	1,472.20	37
Pasadena District	1,050.90	5162	1,443.00	69	23	1,050.90	23
Inglewood District	496.40	3538	662.00	61	10	496.40	10
Alhambra District	505.35	4298	690.00	74	12	505.35	12
Compton District	811.95	4466	1,023.00	77	16	811.95	16
Long Beach District	588.65	7540	710.00	130	17	588.65	17
Monrovia District	60.05	2262	78.75	39	9	60.05	9
Tower Line Const. Department	134.10	3480	233.50	60	4	134.10	4
Building Const. Department	807.91	8526	1,190.50	147	17	807.91	17
Electric construction department	1,332.98	14152	2,133.50	244	39	1,332.98	39
Shop and test Dept., Shop Division	540.76	13224	664.50	228	62	540.76	62
Engineering design Department	4,761.91	7714	4,055.00	133	86	4,761.91	86
Civil Engineering Department	2,104.25	5394	2,136.00	93	59	2,104.25	59
Main garage department	170.78	7366	239.00	127	5	170.78	5
Transmission Dept. (Div. 142)	5.84	2030	8.50	35	1	5.84	1
Stenographers	74.98	-	172.00	-	17	74.98	17
TOTAL	\$ 16,446.92	110838	19,585.00	1911	445	16,446.92	17.88

*The Districts shown above represent a part of the electric distribution system. The composite percentage for this department shows 17.88 per cent for campaign work and 19.55 per cent for employees.

STATEMENT D

SOUTHERN CALIFORNIA EDISON COMPANY

Statement of Payroll and Miscellaneous Expenses in
connection with Municipal Election held
June 4, 1929.

Flat sum payroll account general office employees		\$10,000.00
<u>Regular Payroll:</u>		
Electric distribution system	\$6,513.41	
Tower line construction dept.	134.10	
Building construction dept.	807.91	
Electric construction dept.	1,332.98	
Shop and test dept. of shop div.	540.76	
Engineering design dept.	4,761.91	
Civil engineering dept.	2,104.25	
Main garage	170.72	
Transmission dept.	5.24	
Stenographers	74.98	
	<hr/>	16,446.92
Payroll-extra help (Stenographers & election workers)		1,063.45
Auto mileage expense (Personal cars)	5,284.18	
Meals	2,802.16	
Telephone, carfare, cigars, candy, etc.	563.89	
	<hr/>	8,650.14
Auto mileage expense (Company cars)		185.40
Newspaper advertising in account with Herbert L. Cornish	3,470.20	
Special advertising (New age)	192.00	
	<hr/>	3,662.20
Stationery	157.52	
Printing in account with Herbert L. Cornish	2,268.59	
Special letters printed (35,000)	165.00	
Printed enclosures (251,000)	238.70	
Printed report cards (180,500)	195.00	
Proportion of printing bill in account with L.A.G. & E.L. Co.	76.66	
	<hr/>	3,151.47
Stamped envelopes		1,147.39
Rent of room space Fay Building		137.50
Banners in account with Herbert L. Cornish		172.50
Radio broadcasting in account with Herbert L. Cornish		320.00
Precincting names	486.00	
Outside services	90.00	
	<hr/>	576.00
Rent of typewriter tables, phone equipment, etc.		35.08
		<hr/>
TOTAL ADJUSTED		\$ 45,608.05
Company's statement filed August 1, 1929	\$ 45,869.58	
Correction for auto mileage and expense	28.33*	
Correction for stamped envelopes returned	233.20*	
	<hr/>	
Statement corrected		<u>\$ 45,608.05</u>

*Red figure

It will be noted that for a period of eleven days Los Angeles Gas and Electric Corporation withdrew 33.43% of its employes for 21.55% of the total employed time, and the Southern California Edison Company withdrew 23.29% of its employes for 17.67% of the total employed time. In some departments a surprisingly large percentage of operative employes were assigned to political work. Thus, with Los Angeles Gas & Electric Corporation, approximately 43% of the employes in the gas production department were withdrawn from their regular duties, and in the engineering department of the Company more than 45%. Over 20% were taken from the gas distribution work. With Southern California Edison Company approximately 64% of the employes in the engineering department were taken from their customary operative duties, while in some of its various districts as high as 40% of the employes were withdrawn.

While these utilities claimed their service was not interfered with in any respect by these withdrawals, it is rather difficult to see how the devotion of such a large percentage of a large number of operative employes for an appreciable length of time to the tense and exciting work of a political campaign could have failed to have had some detrimental effect on service. This particular proceeding was instituted on the day of the election in connection with which the political activities in question were had. It was thus possible to see that the cost incurred was properly borne by the surpluses. A definite finding as to whether or not service was impaired does not seem particularly important now. A situation was developed having a natural tendency to cause an impairment of service. The important thing is to take appropriate measures to guard against service being impaired in the future by a repetition of such activities.

It may be that a close supervision of the operations and conduct of the utilities during the course of future political campaigns, if they occur, may effectively prevent an impairment of service as well as insure all of the cost being appropriately charged and borne, to which end we think these utilities should be required to furnish this Commission prior to their engaging in any political activities the names of their regular employes who will be required to devote to such activities all or part of their regular working hours and the approximate period of time for which each employe will be withdrawn from regular working hours. In addition to this a general order along this line affecting all utilities should be promulgated.

Should this plan or device not prove effective to keep utilities in their political activities within proper bounds, it may become necessary, as the only means of accomplishing this end, to forbid by general order the withdrawal of any operative employes from their regular duties to engage in political work.

C. C. Seaver

M. A. Lee
Commissioners.