Decision No. 25142

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

JOHN B. ELLIOT, JOHN F. DOCKWEILER, WILLIAM A. SCHREIDER, A. JUDSON SAMIS, HARRY L. MOLLER, ARTHUR M. ROGERS, GEORGE A. BRIGGS, DR. LAURA M. LOCKE, W. E. SMITH, CAROLINE KELLOGG, P. D. NOEL, F. E. TRASK, THOMAS R. LYNCH, W. W. KAYE, ORRIN W. LORD, MRS. B. F. JAKOBSEN, BERTHA V. FOLER, EDWIN P. RYLAND, H. J. TREMAINE, LOREN B. CURTIS, GEORGE J. SHAFFER, RALPH E. CHADWICK, HARRY H. FERRELL, DAVID WOODHEAD, ARTHUR E. BRIGGS, F. W. ROMAN, E. BURDETTE BACKUS, ANTHONY PRATT, ALLAN M. WILSON, RALPH BENNETT and CHARLES W. DEMPSTER,

Complainants,

vs.

SOUTHERN CALIFORNIA TELEPHONE COMPANY, a corporation,

Defendant.

ORIGINAL

Case No. 3271.

William H. Anderson and Victor E. Wilson, for Complainants and for the Telephone Rate Reduction Association.
Irwin P. Werner, City Attorney, and Frederick Von Schrader, Assistant City Attorney, for the City of Los Angeles.
F. E. Ball and G. L. Metcalf, for Board of Public Utilities of the City of Los Angeles.
J. E. Staley, in propria persona.
Richard C. Waltz, City Attorney, for the City of Beverly Hills.
Oscar Lawler, C. E. Fleager, F. N. Rush and J. W. Hardy, for the Defendant.

SEAVEY, Commissioner:

O P I N I O N

The above entitled complaint was filed with this Commission against the Southern California Telephone Company on June 7, 1932. Hearings were conducted on June 22, July 6, 7 and 8, 1932.

On the last date the matter was submitted subject to being reopened for further hearing in the event the Commission should decide to grant the motion of complainants calling for an inventory of the property of the company. The motion was made on June 22 asking that the company be required to furnish a detailed inventory of all of its property used in furnishing local exchange service, intrastate toll service and interstate toll service. Ruling on this motion was withheld pending showing by the complainants as to its necessity and as to the significance of the allegations in the complaint. Discussion of this showing will be had under the various specific requests for relief made in the complaint:

(a) That the Commission set aside its order putting into effect two-party residence service in lieu of four-party residence service.

Complainants presented no evidence on this plea. As a matter of fact the records before the Commission indicate that this two-party service has been desired by and has proven beneficial to the public in other exchanges.

The order of the Commission (Decision 24711) issued April 19, 1932, authorizing the Southern California Telephone Company to make effective two-party message rate service in the Los Angeles Exchange area and to discontinue on and after January 1, 1933, residence four-party flat rate service, was supplemental to the order of the Commission dated November 7, 1929 (Decision 21767). This decision of the Commission of 1929 was issued in Case 2688, a general investigation on the Commission's own motion into the reasonableness of the rates of the Southern California Telephone Company and others. By the order of 1929, the Commission ordered in effect certain reduced rates, which rates as applied to the business of the year 1929 effected a reduction of approximately $2,300,000.00. The said order, among other things,

found that the residence two-party message rate service would result in an improvement over the four-party service and that the former should be established and that the latter should be eliminated.

Under the Commission's order the Company was directed to commence the installation of the necessary equipment to furnish the residence two-party message rate service, and upon the completion of the equipment installation it should substitute the said two-party service for its four-party flat rate service. Pursuant to the direction contained in the Commission order, the Company thereafter undertook the installation of the necessary equipment and recently completed such installation at a cost of approximately $1,990,000.00. Following the completion of the said installation of equipment the Commission issued its order of April 19, 1932, authorizing the directed change in service.

The experience of the Company thus far in the Los Angeles Exchange shows a decrease in revenue to the Company rather than an increase following the Commission's order of April 19, 1932.

(b) and (e) Appraising the property of the local Los Angeles exchange areas used for exchange and toll services on the basis of reproduction cost new.

It was for the purpose of making this appraisal that the motion for inventory was presented. Complainants presented charts showing the trend of wholesale prices as indicated by the United States Department of Labor, building material price trend as shown by data from the United States Monthly Labor Review, estimated unit costs studies of outside plant as of June, 1932, and a set-up of purported local contractors' prices on certain items. Studies

of additions to plant and depreciation were also introduced. The presentation along these lines was very inadequate and unsatisfactory. There is nothing in the record to justify the Commission in granting the motion which, if granted, would impose upon the company and this Commission and ultimately upon the public a large expense with no indication at present that it would result in benefit to the public. Such inventories and appraisals are costly and usually are of little aid to the Commission in reaching its conclusion. (See Re Los Angeles Gas & Elect. Co., 35 C.R.C. 456; Re San Joaquin Light & Power Corp. Decision No. 23610, dated May 24, 1932.) The motion to require the filing of an inventory is denied.

(c) and (f) Find that the return to the company should not exceed six per cent per annum and fix rates upon that basis.

Complainants presented nothing in substantiation of this plea.

(d) Award reparation to complainants with interest at seven per cent thereon from the dates of such unreasonable rates.

Although it is true that the Commission is vested with jurisdiction to award reparation in certain instances where a utility has charged an unreasonable, excessive or discriminatory amount for its product or service, it may not order the payment of reparation upon the ground of unreasonableness in any instance wherein the rate, fare or charge in question has, by formal finding, been declared by the Commission to be reasonable (Section 71(a) of the Public Utilities Act, Statutes 1931, Chapter 806). Fairly interpreted, it must be said that the order of the Commis-

sion of 1929 formally declared the rates and charges therein fixed to be reasonable.

Wholly apart from the specific limitation found in Section 71(a) of the Public Utilities Act, it is clear that the Commission could not direct the payment of reparations because of constitutional limitations. The United States Supreme Court in Arizona Grocery Company vs. Atchison, Topeka & Santa Fe Railway Company (U. S. Supreme Court Advance Opinions 76 L. ed. 185, decided January 4, 1932) has held that the Interstate Commerce Commission may not lawfully direct the payment of reparations by certain rail carriers where the rates charged were those theretofore prescribed by the Commission. The court ruled

> " Where the Commission has upon complaint, and after hearing, declared what is the maximum reasonable rate to be charged by a carrier, it may not at a later date, and upon the same or additional evidence as to the fact situation existing when its previous order was promulgated, by declaring its own finding as to reasonableness erroneous, subject a carrier which conformed thereto to the payment of reparation measured upon what the Commission now holds it should have decided in the earlier proceeding to be a reasonable rate."

The company, in answer to complainants, reviewed the efforts it had made to reduce expenses and at the same time retain in employment several thousands of persons who, together with their dependents, would otherwise be thrown upon an already heavily burdened community. The company also presented charts showing the downward trend of the number of its stations and of its exchange revenue, together with an estimate of the deficiency in meeting its common stock dividends.

In regard to the company's claim of inadequacy of revenue to meet its usual financial requirements, it should be said that there is nothing inherent in common stock that requires the payment of a fixed dividend. While the Commission is always greatly concerned as to the financial integrity of the utilities under its jurisdiction, it can feel no alarm over the fact that the company may not pay its usual common stock dividends. At a time like the present this utility, as well

as others, will not be financially handicapped if dividends on the common stock are substantially reduced. Expenses of this company, as has been indicated here, can properly be reduced, but the company is placed on notice that this Commission will not countenance the reduction of service below a proper standard in order to preserve common stock dividends on a seven per cent basis.

A review of the record in this case forces the conclusion that the complaint should be dismissed.

O R D E R

Public hearing having been held on the above entitled complaint, the matter having been duly submitted and the Commission being now fully advised,

IT IS HEREBY ORDERED that this complaint be and the same hereby is dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of September, 1932.

Commissioners.