

Decision No. 28150

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

EXCHANGE SECURITIES CORPORATION, a
Corporation,

Complainant,

vs.

SAN DIEGO CONSOLIDATED GAS & ELECTRIC
COMPANY, a Corporation,

Defendant.

Case No. 3916.

ORIGINAL

Chas. C. Crouch, for the Complainant.

Chickering & Gregory, by W. C. Fox, for the
Defendant.

CARR, Commissioner:

O P I N I O N

By complaint filed on October 16, 1934 the complainant, as assignee of 18 real estate subdivision gas and electric extension contracts which had been entered into between the Pantages-Mills-Shreve & Co. and San Diego Consolidated Gas & Electric Company between November 24, 1925 and January 8, 1929, seeks

(a) to recover the alleged differences between the estimated and the actual costs of the extensions and

(b) an order of the Commission extending the 7-year period specified in the contracts for the making of refunds consequent upon attachment of consumers.

The defendant admits variations between the estimated and actual costs of extensions; alleges the contracts were made in full

accord with its filed and effective rules and regulations; pleads that the causes of action are barred by Sec. 357 of the Code of Civil Procedure; denies the jurisdiction of the Commission upon the ground that the contracts do not involve a public utility relationship, and alleges that the contracts in question were but part of a larger number of similar contracts between the same parties. The equity of the Commission extending the terms of the contracts is drawn in question.

A public hearing was had on June 4 and 5, 1935, briefs have been filed and the case is now ready for decision.

The filed and effective rules and regulations of the utility which governed the making of the extensions involved vary as between gas and electric extensions.⁽¹⁾

While the complaint is grounded upon 18 specific contracts, counsel for the complainant stipulated that all of the contracts between the defendant utility and the Pantages-Mills-Shreve & Co. might be considered and the rights and obligations of the parties determined accordingly. Data as to all of these contracts, 48 in number, are summarized in defendant's brief as follows, the interest item referred to being that of interest during construction, and included in the figures of cost without interest is a 7½ percent Byllesby Engineering fee (See San Diego v. San Diego Consolidated Gas & Elect. Co., 39 C.R.C. 279):

(1) The rules respecting gas extensions, so far as here material, requires that the applicant "deposit with the Company an amount equal to the estimated cost of such excess portion of the extension." The corresponding rule governing electric extensions is that "Extensions into real estate subdivisions will be made provided the entire cost of the extension is advanced to the Company." Each rule provides refunds consequent upon attachment of consumers and services.

Electric

<u>Number</u>	<u>Cost Without Interest</u>	<u>Interest</u>	<u>Total Cost</u>	<u>Deposit</u>
E-7-1*	1,559.88	34.69	1,594.57	535.44
E-7-2*	1,600.30	16.02	1,616.32	669.82
E-7-3	8,885.52	146.81	9,032.33	9,675.28
E-7-4	687.44	7.46	694.90	782.12
5	330.40	8.87	839.27	844.70
6	303.54	3.35	306.89	203.00
7	268.96	2.77	271.73	137.00
8	280.30	3.07	283.37	269.00
9	459.24	4.39	463.63	205.44
10	375.99	4.19	380.18	449.59
11	216.66	2.34	219.00	152.71
12	140.91	1.07	141.98	158.50
13	784.57	10.02	794.59	1,304.80
14	199.65	2.15	201.80	110.34
15	1,155.62	15.33	1,170.95	1,120.97
16	126.14	1.40	127.54	69.58
17	288.41	1.88	290.29	105.05
18	644.63	6.89	651.52	486.94
E-10-1	271.99	3.09	275.08	269.73
2	151.10	2.15	153.25	81.08
3*	157.23	1.65	158.88	58.00
4	298.53	2.33	300.86	183.79
Sub-Total	19,687.01	281.92	19,968.93	17,652.88

Gas

<u>Number</u>	<u>Cost Without Interest</u>	<u>Interest</u>	<u>Total Cost</u>	<u>Deposit</u>
G-7-1*	1,226.94	17.43	1,244.37	571.20
2*	1,273.36	11.69	1,285.05	.739.62
3	9,760.55	172.07	9,932.62	11,180.80
4	581.11	6.67	587.78	434.28
5	2,634.42	38.78	2,673.20	2,938.80
6	----	----	----	298.29
7	214.74	2.82	217.56	163.69
8	386.50	5.40	391.90	236.65
9	1,152.12	13.35	1,165.47	1,151.18
10	2,733.67	44.48	2,778.15	2,797.25
11	694.62	8.05	702.67	558.95
12	684.65	7.93	692.58	699.97
13	2,291.42	26.60	2,318.02	2,796.04
14	467.63	5.41	473.04	376.30
15	3,999.52	52.37	4,051.89	3,918.34
16	5,650.32	82.89	5,733.21	6,187.86
17	194.39	2.25	196.64	285.36
18	1,951.40	22.64	1,974.04	2,001.60
19	3,441.30	39.90	3,481.20	4,136.79
20	541.25	8.99	550.24	668.18
G-10-1	978.15	11.71	989.86	380.10
2				303.95
3	206.63	1.99	208.62	59.85
4	255.12	2.47	257.59	148.18
5	4,415.35	73.01	4,488.36	5,371.01
6	406.01	4.20	410.21	392.35
Sub-Total	46,141.17	665.10	46,804.27	48,796.59

Grand Total 65,828.18 945.02 66,773.20 66,649.47
 Less adjusted ... 1,006.60
 65,642.87

* Amount of deposit refunded.

The conclusions which follow from the facts thus portrayed and as developed in the record may be stated briefly as follows:

Reparations.

The Public Utilities Act vests the Commission with certain powers to find and to award reparations. Its authority and the limitations thereon may be found in Sec. 71 of the Act. When a utility has charged for service an unreasonable or excessive amount in violation of the provisions of the Act reparations may be awarded. So far as the issue of reparations here is concerned, the only questions are as to whether the utility charged for the extensions in excess of the charges authorized by its filed rules and regulations or in excess of reasonable amounts. As to electric extensions, the evidence shows that the deposits under the electric extension contracts were slightly less than the actual cost of the extensions, with both the interest during construction and the 7½ percent Byllesby Engineering fee items entirely eliminated. Under the record it is by no means clear that the Byllesby charge could be eliminated in toto. It is true that complainant claims that certain other items should be deducted. Giving the facts of record a construction most favorable to the complainant, it cannot be concluded that the deposits under the electric contracts exceeded the actual cost of the extensions.

A somewhat different situation obtains in respect to the gas extensions. As to such extensions, however, the rule and regulation refers explicitly to "estimated cost." Whether under appropriate circumstances the Commission could review estimates of cost containing questionable or improper items need not be gone into here, for the statute under which the Commission acts sets up at least one insuperable bar to the granting to this complainant

of any relief by way of reparations. Section 71 of the Act, both prior to and since its amendment in 1931, provides "that no assignment of a reparation claim shall be recognized by the commission except assignments by operation of law as in cases of death, insanity, bankruptcy, receivership or order of court." No claim is here made that the assignments to the complainant were by operation of law.

Furthermore, the Public Utilities Act in Section 71 sets up specific time limitations for the filing of complaints for reparations of either two or three years from the time the cause of action accrued. The causes of action here accrued upon the making of the extensions and these the record satisfactorily discloses were made much more than three years prior to the filing of the instant complaint. That failure of the defendant to specifically plead the limitation set up in Section 71 of the Act might constitute a waiver need not be pursued, as the fact that the action is brought by an assignee is conclusive against the award of any reparations.

Modification of Contract.

Assuming the jurisdiction of the Commission to extend the terms of the contract, ⁽²⁾ the reasons advanced for the exercise of such jurisdiction are not impelling. Nearly all utilities in this State have extension rules similar to those here involved and during the period of feverish real estate extension prior to the depression made many extensions. If the period for making

(2) Each of the contracts required the following provision:

"This contract shall at all times be subject to such changes or modifications by the Railroad Commission of California, as said Commission may from time to time direct in the exercise of its jurisdiction. The Customer agrees to abide by and comply with the rules and regulations of the Company, the receipt of a copy of which rules and regulations is hereby acknowledged by the Customer."

refunds were extended here it would lead almost inevitably to similar holdings as to such extension contracts of all the utilities of the State, as no special circumstances were shown here to place these contracts in a class by themselves. The Commission is not prepared to launch upon the policy of extending the terms of all of these contracts, assuming that it has jurisdiction so to do.

I recommend the following form of order:

O R D E R

A public hearing having been had in the above entitled case,

IT IS HEREBY ORDERED that the relief hereby sought by the complainant be denied and the case be 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.

August
~~JULY~~, 1935. Dated at San Francisco, California, this 5th day of

Leon A. Whittell
M. J. Linn
M. B. Harris
Walter J. ...
Frank R. ...
Commissioners.