

Decision No. 16875

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN CALIFORNIA GAS COMPANY)
for a general increase in gas rates)
under Section 63(a) of the Public)
Utilities Act.)

Application No. 32675

Appearances are set forth
in Appendix I.

INTERIM OPINION AND ORDER

Southern California Gas Company, operating a public utility gas system in portions of southern California, on August 17, 1951 filed the above-entitled application for authority to increase natural gas rates by \$17,600,000 annually. After due notice, public hearings were held on this application at Los Angeles on December 12, 13, 14 and 17 before Commissioner Harold P. Huls and Examiner M. W. Edwards, on which dates applicant's case was presented and certain cross-examination for clarification was undertaken by the parties.

At the hearing on December 17, 1951, the applicant made a motion seeking the immediate grant of an interim rate increase in the annual amount of \$10,008,000, based on 1951 operations, pending the establishment of final rates. This motion was not taken under submission until the completion of full cross-examination upon the company's affirmative presentation. Additional days of public hearings were held in Los Angeles on December 26, 1951, January 30 and 31, and February 1, 14 and 15, 1952. The motion for interim relief was amended, renewed and submitted for decision on February 15, 1952, following oral argument for and against the motion. The hearing in the main proceeding

is set upon the calendar beginning April 3, 1952 for receipt of evidence to be offered by the interested parties.

Company's Position

The company claims that it has experienced three major increases in its operating expenses since October 1, 1950, none of which contributed any additional revenue. They are stated as follows:

1. The average cost of gas, excluding purchases from Pacific Lighting Gas Supply Company, has increased by 2.74 cents per Mcf, or an estimated total of \$3,633,000 for 1951.
2. Wage rates have been increased on the average by 13%, equivalent to \$2,123,000 related to 1951 pay rolls.
3. The effective federal income tax rate has been increased from 38% to 52% and when applied to the 1951 operations an increase of \$4,651,000 would have been necessary to yield applicant a 5.5% return on an estimated rate base of \$270,631,000 for the year 1951.

The date of October 1, 1950, is used as a reference point because that is the date when the existing rate levels were set by Decision No. 44741 of this Commission under Application No. 30299. That decision authorized increases sufficient to bring net revenue for 1950 to an amount equivalent to a 5.49% return level on an undepreciated rate base of \$243,000,000, or a 5.99% return on a depreciated rate base of \$161,982,000.

Applicant claims other increases in costs also are driving the rate of return downward and in the final decision on this matter asks for consideration of such items as the increased cost of gas purchased from its affiliate, Pacific Gas Lighting Supply Company and the need of increased revenues because of increased unit capital costs per new customer connected. For the purpose of this interim decision, however, it is not asking for consideration of these latter items, which have been questioned, and

confined its motion to the three specific items which are definite and can be calculated precisely. The three items totaled \$10,407,000 for the then estimated year 1951.

Applicant's Interim Rate Proposal

In the original motion for interim relief applicant proposed that for the interim period the firm customers' rates be raised by 11% equivalent to \$7,843,000 on \$71,295,000 estimated revenue from firm customers during 1951, and that the interruptible customers' rates be raised by 3.3 cents per Mcf equivalent to \$2,165,000 additional revenue on 65,606,000 Mcf estimated sales for 1951. These proposals total \$10,008,000, or \$399,000 less than the increased costs it claims are noncontroversial in nature.

The proposed 3.3 cents increase in interruptible rates is derived from proposed extension of the escalation provision of the interruptible rates to the current price of \$1.75 per barrel of fuel oil. The present interruptible rates provide for variation in price of gas by one-sixth cent (1/6¢) for each one cent (1¢) that the posted price of fuel oil shall be above \$1.16 per barrel, with an upper limit of \$1.55 per barrel.

In the amended motion for interim relief applicant asked the Commission to exercise its discretion in determining the total amount of additional annual gross revenue to be authorized, including the portions of that total to be assessed against the various classes of customers pending the fixing of final rates.

Cost of Service

For the purpose of determining whether or not the applicant is entitled to a rate increase, the Commission considers, among other things, the relationship of the revenues to the over-all cost of rendering the utility service. Such costs include production, transmission, distribution, customer accounting,

sales promotion, general and depreciation expenses, city, county, state and federal taxes, and interest or return paid for the use of capital necessary to provide plant facilities for the public service.

The Office of Price Stabilization introduced evidence and urged the Commission in considering income taxes as part of the cost of doing business to exclude that portion of increased income taxes which is attributable to increases in tax rates since the start of the Korean War in 1950. Its showing was based primarily upon an analysis of earning trends prior to computation of taxes. This method may be appropriate for an unregulated industry which may enjoy such a large profit margin that increased taxes can be absorbed without destroying the credit rating of the industry. However, regulated utilities render service at cost plus a reasonable return on the property devoted to public service. Every increase in income tax rates lowers the return. Unless by some combination of circumstances the return was substantially above a minimum reasonable level before such tax rate increase, the increase in taxes will render the return inadequate. After paying fixed interest obligations on bonds, the balance remaining for dividends on preferred stock and earnings on common stock is reduced by an income tax increase.

✓ It is the rule established by the Supreme Court of the United States that income taxes, both State and Federal, are

a proper charge to operating expense. (Galveston Electric Company v. City of Galveston - decided in 1922 - 258 U.S. 388, 399, 66 L. ed. 678, 684; Georgia Railway and Power Company v. Railroad Commission - decided in 1923 - 262 U.S. 625, 632-633, 67 L. ed. 1144, 1148.) The tax involved in the two cases cited was the then current Federal Income Tax levied at a rate of 10%. The Court stated unequivocally that income taxes are a proper charge to operating expense and that it is error not to allow such charge. In the circumstances, we are of the opinion that this Commission is bound by the rule laid down by the Supreme Court of the United States concerning the subject in question. The income taxes levied against this applicant will be allowed as a proper charge to its operating expense.

There is no contention that the price control provisions of the Defense Production Act or any other Federal price control applies to rates charged by a public utility. The

Federal law merely makes it mandatory upon a public utility to give notice to the President or his duly authorized agent so as to enable Federal authority to intervene in a rate proceeding before such utility may increase resale rates. Such right to intervene has no application to retail rates and no price control is exercised by Federal authority over any public utility rate - resale or retail. In view of the fact that effective price control has been imposed upon utility rates for many years, by duly constituted regulatory authorities, it is logical that the Federal authority saw no need for subjecting such rates to

additional price control. No possible justification for such additional regulation could find support in either logic or equity.

Functional Cost Analysis

The approximate average cost to serve the various classes and types of customers can be determined by means of a so-called functional analysis of the various items of expense that comprise the total cost of rendering service. These expenses can be segregated and assigned to the various classes on the basis of the class demand, commodity and customer characteristics. Such analyses, while difficult to make and subject to considerable judgment in their making, are of value to the Commission as an aid in deciding the proper rate levels for the various types of service. The applicant has stated it will prepare such a cost study and present it prior to the final determination of the case. For the purpose of this interim order, it is not necessary that this study be available, as the rates being set are of a temporary nature and will be superseded in the final order.

Customer Representation

Customers and their representatives were present at each of the public hearings and several presented statements in opposition to the proposed rate increase. In addition, the Commission received communications protesting the requested increases.

Two witnesses testified that the utility should not be granted a rate increase even if under the law it showed that it was entitled to a rate increase. Such disregard of our state law can be given no weight by this Commission. All communications and statements and testimony by witnesses have been reviewed and have been given careful consideration in making rates which we consider fair to the customers as well as to the investors in the utility under the conditions prevailing during this interim period.

Earnings Results

The Company's showing of its earnings resulting from operations for the years 1950 and 1951, and as estimated for 1952 at present rate levels is as follows:

Results of Operation at Present Rates (Thousands of Dollars)

| Item | Year 1950 | | Year 1951 | | Estimate for 1952 |
|-----------------------|--------------------------|--------------------------|--------------------------|--------------------------|----------------------|
| | Recorded :Exhibit 13: | Adjusted :Exhibit 23: | Recorded :Exhibit 25: | Adjusted :Exhibit 25: | |
| Operating Revenues | \$ 85,728 | \$ 87,832 | \$ 92,923 | \$ 92,993 | \$ 95,659 |
| Operating Expenses | 57,108 | 62,933 | 65,801 | 67,140 | 69,342 |
| Taxes | 12,635 | 12,050 | 12,903 | 12,423 | 12,558 |
| Depreciation | 1,559 | 1,559 | 1,991 | 1,991 | 2,368 |
| Total Expenses | 71,302 | 76,542 | 80,695 | 81,554 | 84,268 |
| Net for Return | 14,426 | 11,290 | 12,228 | 11,439 | 11,391 |
| Rate Base (Undeprec.) | 245,910 | 245,910 | 269,973 | 269,973 | 298,170 |
| Rate of Return | 5.87% | 4.59% | 4.53% | 4.24% | 3.82% |

In the above tabulation the adjusted figures for 1950 and 1951 reflect the higher current levels for wages, tax rates and cost of gas, and average temperature conditions.

In addition to the above estimate for 1952, the applicant prepared a study based on a so-called "test year" intended to represent the average of a period of two years after the time the Commission renders its decision in this matter. For the test

year the applicant used 1951 average year revenues and expenses adjusted for customer growth to the December 31, 1951 level, and used a December 31, 1951 rate base augmented by an allowance for non-revenue producing plant in the amount of \$12,000,000 to give weight to the fact that new plant is currently being added to the system at unit costs higher than system average unit costs and to certain nonrevenue producing investments in lands, buildings and transmission facilities. The rate of return shown for the test year was 3.84%.

The bulk of the cross-examination was concerned with the estimates, theories and assumptions used in the test year. In view of the many questions raised the company prepared an estimate for the full year 1952, as summarized above, which showed practically the same rate of return as for the test year on a normal basis. For the purpose of this interim order, we shall not be concerned with the test year, but shall predicate our findings on the 1951 results adjusted to current conditions and average temperatures. Furthermore, the declining trend in rate of return of 0.35% between the year 1950 and 1951, after such adjustments, will be considered.

Adjustments to Revenue

Sales fluctuate so widely with temperature that normalization is necessary. The company used an average general and commercial unit sales volume of 76.5 Mcf in adjusting to normal temperature conditions. In 1951 the recorded unit consumption was 76.954 Mcf per average meter for this class of business. On a constant 10-year base, 65-degree method, an average annual consumption of 77.1 Mcf was computed; on a 20-year base, 65-degree method, 76.1 Mcf; on a smooth curve with variable 10-year base, 65-degree method, 77.5 Mcf; and, on the Commission

staff's method, as computed by the company, constant 10-year base, 75 degrees, 77.4 Mcf. Applicant claimed that during the past two years the unit sales after temperature adjustment have shown a declining unit trend and, therefore, did not feel justified in following the upward trend shown by the smooth curve which indicated 77.5 Mcf. It did not use the staff's method which showed 77.4 Mcf, which we consider as reasonable in this case. Accordingly, an increase in sales of 0.9 Mcf per meter will be assumed for this class. After making adjustments for lesser interruptible sales resulting from the increased general sales an over-all revenue increase of \$259,000 will be shown due to normalization for temperature, assuming an incremental price differential of 23.7 cents per Mcf.

Adjustments to Expenses

Applicant's estimate of adjusted expenses for 1951 of \$67,140,000 contains \$37,778,000 for cost of natural gas purchased from all sources at current day price levels, compared with an actual payment of \$36,918,494 as shown by Exhibit No. 25, Section 8. The adjusted gas price contains an increase of \$801,000 because of the price increase in gas obtained from the Pacific Lighting Gas Supply Company above the price found reasonable in Decision No. 44741 of this Commission. Until such time as the reasonableness of the current price level for Pacific Lighting Gas Supply gas shall be determined, we will base our analysis on the former price and decrease the adjusted expenses by \$801,000.

The other items of expense cover such components as operation and maintenance of the transmission and distribution plant, customers' accounting and collecting, sales promotion and administrative and general expenses. The amounts contained in

the total figure of \$67,140,000 reflect adjustments to current wage levels. For the purpose of this interim order, no further adjustment of these other expense items appears necessary.

Depreciation expense has been computed on a 4% sinking fund remaining life basis in accordance with the understandings reached in connection with the 1950 Commission Decision No. 44741. We see no reason for adjustment of the annuity from the level of \$1,991,000 for 1951 as computed by the company.

Certain taxes will require adjustment due to the changes in revenues and expenses. The adjusted taxes will be shown in the revised earnings summary.

Adjustment to Rate Base

The rate base is comprised of capital invested in plant, plus working capital items consisting of materials and supplies and working cash capital, less customers' advances for construction, intangible plant other than franchises, unused production plant, land used for auto parking for construction, construction work in progress on which interest is charged, and the depreciation reserve for automobiles, tools and construction equipment. The applicant did not deduct for contributions in aid of construction because a corresponding amount is included at zero interest rate in the determination of the cost of the money. In our opinion, the contributions in aid of construction should be deducted from the rate base in the amount of \$3,225,000. The representative of the City of Los Angeles also suggested a deduction of \$1,600,000 for the acquisition adjustment account. A deduction for acquisition adjustment is proper since provision was made out of the depreciation reserve for the write-off of this item

when the amount should be determined, as set forth in the depreciation agreement appended to Decision No. 44741. However, the amount so provided was \$3,200,000 and that amount will be deducted for the purposes of this interim decision.

It is our opinion that a depreciated rate base should be used in testing the reasonableness of the rate of return being earned. This will require a further deduction of \$61,461,000 for the depreciation reserve as of January 1, 1951. Consistent with the use of a depreciated rate base, the interest on the reserve will be included as a component of the annual depreciation expense allowance. This interest factor at 4% is equivalent to \$2,458,000.

Revised Rate of Return

The revised rate of return may be computed from the company's adjusted 1951 figures as follows:

Revised Rate of Return for 1951 (Thousands of Dollars)

| Item | 1951 | | | Revised: |
|---------------------------|-----------|--------------------------|--|----------|
| | Recorded: | Adjusted: By Company: | Additional: Commission: Adjustments: | |
| Operating Revenue | 92,923 | 92,993 | 259 | 93,252 |
| Operating Expenses | 65,801 | 67,140 | (801) | 66,339 |
| Taxes | 12,903 | 12,423 | 572 | 12,995 |
| Depreciation-Annuity | 1,991 | 1,991 | -- | 1,991 |
| Depreciation-Interest | 2,458 | 2,458 | -- | 2,458 |
| Total Expenses | 83,153 | 84,012 | (229) | 83,783 |
| Net for Return | 9,770 | 8,981 | 488 | 9,469 |
| Rate Base (Undepreciated) | 269,973 | 269,973 | (6,425) | 263,548 |
| Depreciation Reserve | 61,461 | 61,461 | -- | 61,461 |
| Depreciated Rate Base | 208,512 | 208,512 | (6,425) | 202,087 |
| Rate of Return | 4.68% | 4.31% | | 4.68% |

(Red Figure)

The company did not advocate the use of a depreciated rate base for determining its earning position and supplied figures for this method of computation only upon the request of the Commission's staff. The return of 4.31% on a depreciated base is 0.07% greater than shown by using an undepreciated base for the company's adjusted average year 1951 figures. The revised return figure is 0.37% greater than on the company's adjusted basis and is the same as the recorded results before adjustment on a depreciated rate base.

Interim Position of Company

During the interim period pending final decision on this matter, applicant plans to issue securities in order to raise \$37,270,000 of capital to finance plant additions in 1952 estimated at \$33,700,000 and to repay certain borrowings from the Pacific Lighting Corporation. It plans to offer \$30,000,000 of bonds on March 24, 1952 and may sell junior securities later in the year. It claims that one of the most serious aspects of the 1952 financial outlook is the anticipated decline in the margin of earnings available for bond interest coverage to 2.4 times which would be the lowest in the history of the company. It must enter the bond market in competition with other natural gas companies which it maintains are covering their interest from four to five times.

The representative of the City of Los Angeles opposed the granting of an interim increase primarily on the basis that actual 1951 operations after correction for credit on prior year's gas purchases resulted in sufficient net revenue to pay regular interest on the bonds, preferred stock dividends and 9.6% dividend on the par value of the common stock and still leave some accumulation for surplus. He also pointed out that, if the

1951 pro forma results be adjusted to eliminate the increase in price of gas purchased from Pacific Lighting Gas Supply Company and to reflect a normalized gas usage of 77 Mcf per customer instead of 76.5 Mcf assumed by applicant, the earnings would be adequate to cover all fixed charges, preferred and common dividends, and leave something for surplus. His conclusion was that no emergency exists at this time which would justify interim relief.

Rate-fixing is prospective and the fixing of rates requires a reasonable consideration of the immediate future. Final disposition of this proceeding will require considerable time and could not be accomplished within the next few months. The declining trend in rate of return impels us to recognize this situation. Relating to the immediate future the present indicated decline in rate of return of this applicant, after adjustment to current prices and normal conditions, we find that an emergency condition exists, which justifies the granting now of interim relief.

Interim Rate of Return

As pointed out by protestants our action must be based entirely on the company's showing and the cross-examination thereof. There may be other adjustments when the presentations by the staff and the interested parties are placed in the record. Under such condition it does not appear proper to restore the earnings during the interim period to the level of the 5.99% rate of return on a depreciated rate base found reasonable in 1950 by Decision No. 44741 for this utility. Such finding included an allowance for imminent

✓ increases in Federal Income Tax. Therefore, for the interim period
✓ a rate of return of 5.45% on a depreciated base is justified. (What
✓ the final rate of return should be will be determined upon the
complete record in the final disposition of the application.)

Because of the declining trend in rate of return, a rate of return of 5.80%, based on the 1951 adjusted operating results related to a depreciated rate base, should restore the earning power to 5.45% in the interim period. For the purpose of this interim proceeding, we adopt a depreciated rate base figure of \$202,087,000 for 1951 and find a net revenue figure of \$11,720,000 to be fair and reasonable. After allowing for the effect of income taxes we find that an annual increase in gross revenue of \$4,890,000 on the basis of the 1951 level of business, or a 5.26% over-all increase, is justified.

Distribution of Increase

The problem of how to distribute the increase among the various classes and types of customers is one that elicited considerable argument. The representative of the California Manufacturers Association opposed the early proposal of the company to spread 11% to the firm service customers and increase the interruptible rates by 3.3 cents per Mcf because it would result in an unequal and higher percentage increase to the industrial class of service. The company withdrew the early request and left the matter of distribution of the increase to the discretion of the Commission.

The association contends that the most practical and perhaps the fairest way is to apply the same percentage increase to all customers. The representative of the California Farm Bureau Federation, while opposed to an interim increase, took the position that if one is necessary it should be based on a surcharge applied to present rates and the spread as between classes should not be changed.

Counsel for the City of Los Angeles suggests that if the company needs additional revenue pending completion of the proceedings the escalation ceiling on interruptible rates be lifted. This argument is predicated on the theory that interruptible customers are not dependent on gas service and will buy gas only so long as it is more economical than other fuel. He suggests that rates for this class of service be based on competitive prices of other types of fuel.

A customer's representative was opposed to the position taken by the City of Los Angeles and agreed to the position taken by the Manufacturers Association. This representative favored an equal spread from a percentage standpoint if an interim increase is found necessary.

For the final general service rates in this case the applicant proposes that seasonal rates be established with higher unit rates applicable during the winter season than during the summer season. The purpose of such rates is to throw more of the cost burden against the customer who uses gas for space heating at low load factors compared to the year around usage for cooking and water heating at high load factors. Such proposal will not be decided at this time.

Conclusion

After reviewing all of the evidence of record and the arguments in this matter and giving full weight to the declining trend in rate of return during the time required to complete this proceeding, it is our conclusion that an interim increase in the amount of \$4,890,000 is necessary and that an order should be issued increasing the rates to all classes except wholesale, exchange and miscellaneous sales.

Exhibit No. 8 shows that the cost of gas purchased by the company from California producers, exclusive of Pacific Lighting Gas Supply Company, has increased from 14.42 cents per Mcf for the first nine months of 1950 to 16.67 cents when consideration is given to field prices as of December 31, 1951, and the cost of Texas gas from 13.86 cents to 16.72 cents during this same period. In this interim period it is our opinion that these increased commodity costs should be reflected approximately by a uniform increase in base rates of 2.0 cents per Mcf in all tariffs, except in the initial charge for the general service customers which should be increased by 10 cents per meter per month, in order to yield applicant an increase of \$4,890,000 based on 1951 actual sales levels.

The following table shows the increases by classes:

| Item | :1951 Actual: | | Interim | | |
|--------------------------|---------------|-------------------|------------------|--------------|----------------|
| | :Revenue | :Revenue Increase | :Annual Revenue: | Increase in: | |
| | :Exhibit 25: | :Amount | : Ratio | : per Mcf | :Cents per Mcf |
| | (thousands) | (thousands) | | | |
| General & Commercial | \$65,269 | \$3,228 | 4.95% | \$ 0.736 | 3.5¢ |
| Gas Engine | 971 | 77 | 7.89 | 0.270 | 2.0 |
| Firm Industrial | 5,482 | 276 | 5.04 | 0.412 | 2.0 |
| Regular Interruptible | 15,010 | 1,222 | 8.14 | 0.262 | 2.0 |
| Steam Plant | 947 | 87 | 9.18 | 0.235 | 2.0 |
| L.P.G. Sales | 174 | -- | -- | 1.389+ | -- |
| Wholesale | 3,786 | -- | -- | 0.214+ | -- |
| Exchange & Miscellaneous | 1,334 | -- | -- | -- | -- |
| Total | 92,973 | 4,890 | 5.26 | 0.502 | 2.5 |

+ No change.

With reference to L.P.G. Sales (Liquefied Petroleum Gas) no increase is shown because this business has been replaced entirely by natural gas service. The company did not seek any rate increases in the wholesale and exchange service rates. These are primarily for sales to the Pacific Gas and Electric Company under a contract basis wherein the rate is

predicated upon the cost of gas purchased at the California State line plus 5 or 6 cents per Mcf depending upon the point of delivery to Pacific Gas and Electric Company.

INTERIM ORDER

Southern California Gas Company having applied to this Commission for an order authorizing certain increases in rates and charges, and for a grant of interim relief pending final determination of the proceeding, public hearings having been held and argument having been heard on the motion for interim increases, and it appearing to this Commission that certain increases are warranted on an interim basis

IT IS HEREBY FOUND AS A FACT that the increases in rates and charges authorized herein are justified, and that present rates in so far as they differ from those herein prescribed for the future are unjust and unreasonable, therefore;

IT IS ORDERED as follows:

1. Applicant is authorized and directed to file in quadruplicate with this Commission, after the effective date of this order, in conformity with General Order No. 96, existing schedules revised as follows, and after not less than three (3) days' notice to the Commission and to the public, to make said rates effective for service rendered on and after April 10, 1952:
 - a. Schedules Nos. G-1, G-2, G-3, G-4, G-5, G-6, G-7 and G-8 with the initial charge increased by 10 cents per month for Schedules "M" and "S" and the winter months under Schedule "H", and the base commodity charges increased by 0.20 cents per 100 cubic feet per month, exclusive of the 200 cubic feet included in the initial charge, with commodity charges for lower or higher heating values proportionately changed in accordance with Rule and Regulation No. 2(i).
 - b. Schedules Nos. G-20, G-22, G-23, G-40, G-42, G-45, G-46, G-50, G-51, G-52 and G-53 with all commodity rates increased by 2.0 cents per Mcf with no change in the level of minimum charges.

- 2. Applicant is authorized to continue in effect without change existing contracts and rates covering wholesale, and exchange and miscellaneous services.
- 3. Applicant is authorized and directed to change any and all service contracts, as may be necessary, in such manner as to effect equivalent percentage increases in the general and commercial, gas engine, firm industrial and interruptible service classes to that specified for the filed tariffs.

IT IS FURTHER ORDERED that Application No. 32675 is continued to permit the holding of such further hearing and receipt of such additional evidence as may be deemed appropriate before final determination of said application is made.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this ^{17th} ~~18th~~ day of March, 1952.

A. T. Indrman President.
Justus F. Casmer
Harold F. Huls

 _____ Commissioners.

APPENDIX I

LIST OF APPEARANCES

For Applicant: T. J. Reynolds, Harry P. Letton, Jr. and Milford Springer.

Protestants: Housewives Committee for Lower Prices, by Rosalie Shenefield; Eastside Conference Against the High Cost of Living, by Miriam R. Becker; Grand Lodge Negro Masons of California, by Wm. L. Wood; California Legislative Conference, by Paul Major; North Los Angeles Consumers Committee, by Mrs. Ann Watkins.

Interested Parties: City of Los Angeles, by T. M. Chubb, Robert Russell, Ray Chesebro and Roger Arnebergh; Cities of Alhambra, Beverly Hills, Burbank, El Segundo, Gardena, Glendale, Inglewood, Manhattan Beach, Montebello, Monterey Park, Pasadena, San Fernando, San Marino and South Pasadena, by Clarence A. Winder and Roger Arnebergh; California Farm Bureau Federation, by J. J. Deuel and Edson Abel; California Manufacturers Association, by Brobeck, Phleger & Harrison and George D. Rives; Southern California Edison Company, by Bruce Renwick and Rollin E. Woodbury; The Department of Water and Power, City of Los Angeles, by John E. Girard; Challenge Cream and Butter Association, by W. D. Mackay; City of Huntington Park, by Christopher Griffin; Director of Installations, Headquarters 4th Air Force, by John D. McLaughlin; Lincoln Heights Coordinating Council, Interested Citizens of Lincoln Heights and Highland Park, and Citizens Traffic & Utilities Committee, by William Hogan; Eleventh Naval District, by H. L. Minister; Office of Price Stabilization, by John Harmon, Phillip Krause and Emil Broz.

Other Appearances: C. G. Ferguson, Freyman Coleman and Boris H. Lakusta for the Commission's staff; Robert Loucks in propria persona.

DISSENTING OPINION

Convinced as I am that the action taken in this proceeding by the majority of my colleagues in granting interim rate relief to the utility is clearly contrary to law and unsupported by the evidence, I am compelled to dissent from such action.

Before adverting to the specific facts and issues herein concerned, I desire to set out certain fundamental principles:

1. The Public Utilities Commission of the State of California is a creature of the law and, if its action is to be lawful, the same must find justification in the law.

2. The Commission is an agency of State government and a trustee for the public and its duty is to safeguard the interest of the public.

3. No trustee, either public or private, has the authority to deal generously with anyone at the expense or to the prejudice of his trust. No rule of law is better established than this one.

4. The authority of the Commission is limited to the regulation and supervision of public utilities and concerns of management are no part of its function.

5. Regulation does not guarantee to a utility that it will earn net revenues and it would be unlawful for this Commission to undertake such guaranty.

6. The rates of a public utility established by authority of law are presumed to be both lawful and reasonable and the burden is upon the utility to show by clear and convincing evidence that it is entitled to increase such rates. This rule applies with special emphasis to the instant situation where the utility is asking for an interim rate increase based solely upon its own showing and before the showings by the Commission staff and protesting and interested parties have been made.

7. All uncertainties existing must be resolved against the person upon whom rests the burden of proof and the burden of proof in this proceeding must be borne by the utility.

8. The granting of interim rate relief is a matter of grace where the record reflects only the showing of the utility. It is not a matter of right.

9. Proof that there exists a present emergency is a lawful condition precedent to the granting of an interim rate increase.

Judged by the foregoing elementary principles of rate-fixing, I assert that the utility has not carried successfully the burden of proving that it is entitled to an interim increase of rates. While not conceding that this utility, when all the evidence is in, will show that it is entitled to some rate relief, nevertheless, if such should be the case, it is entirely immaterial here. We are not here concerned with the conventional reasonable rate of return as we will be at the close of this proceeding. What we are here concerned with - and all the law permits us to be concerned with - is whether or not the evidence of the utility, judged by the foregoing enumerated principles of law, shows clearly and convincingly that there now exists an emergency resulting from the financial position of the utility. In other words, does the evidence show that this utility is now in a precarious or other serious financial position which must be relieved now. That is the issue and not whether the utility is now earning or will earn a reasonable return.

The majority opinion attempts to find an emergency, but I submit that such finding, on its face, shows that it is inadequate in law. Stripped to its essentials, such finding states that an emergency exists because of something which will happen at some future date based upon the fact that the Commission will be unable to complete this proceeding soon enough to give rate relief to the utility, to which, the majority believes, it will be entitled eventually after the running of the orderly course of this rate proceeding. Palpably, this finding is wholly wanting in the requirement that a present existing emergency must be found as a condition precedent to the granting of an interim increase of rates.

The emergency must not be a speculative one. It must be based upon existing conditions beyond the control of the utility. Obviously, the utility is not entitled to rely upon an emergency of its own creation or toleration for the purpose of securing an interim increase of rates.

If all a utility should be required to show is a rate of return less than a reasonable one as a condition precedent to being awarded an interim rate increase, every utility, after it had put in its showing in support of rate relief, would move for an interim rate increase and, under such a rule, would be entitled to it in the great majority of cases. A utility is no more entitled to be protected against the hazard and rigor of time and the orderly - although sometimes lengthy - processes of justice than is any other litigant. Time is always an element of the orderly processes of justice. This is an ingredient of due process of law to which the ratepayer is as much entitled as is the utility.

Even though the majority decision contained a lawful finding of an emergency (which it does not), such finding would be of no avail because the majority decision shows on its face abundant facts that belie such a finding and, even were this not true, the evidence is wholly at variance with and would not support such a finding of an emergency condition. In other words, the utility has failed to present evidence upon which the finding of a present existing emergency lawfully could be based.

In the bench-mark decision of this Commission (Pacific Telephone and Telegraph Company case, Decision No. 42530, 48 Cal. P.U.C. 487) on the subject of interim rate relief, it was held that it is necessary to find an emergency as a condition precedent to the granting of such relief. Said the Commission at page 488:

"* * * We conclude that this Commission has ample power and authority to grant an interim rate increase in this proceeding, provided that the record thus far developed discloses a state of facts warranting such relief. Therefore, the sole question before the Commission on this motion for an interim rate increase is whether or not the record discloses an emergency condition that warrants the granting to this utility of immediate relief."

The finding of an emergency was as follows:

"* * * We find from the evidence in this proceeding that the earnings of applicant are such that it now finds itself in a serious financial position, which constitutes an emergency that must be relieved." (Page 489.) (Emphasis supplied.)

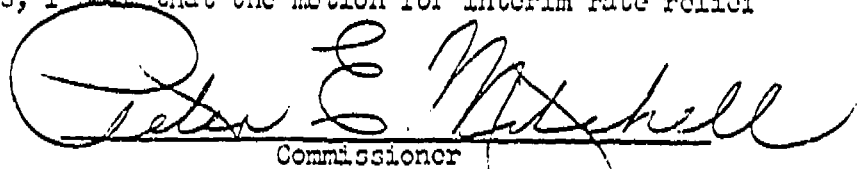
In that case, the utility had just gone through a series of rate proceedings before the Commission which began in 1947 and ended by final decision rendered April 6, 1948. The application of that utility out of which grew the interim decision in question was filed November 29, 1948, and the interim decision was rendered February 23, 1949. At the time the motion for interim relief was being considered, the Commission and its staff, in the prior rate proceedings, had made a thorough and complete examination of the company's records and operating results and were well advised as to the factual situation. The staff of the Commission, in that case, made a limited showing in connection with the utility's motion for interim rate relief. There was no such speculation in that case as there is in this proceeding. Also, the common stock of the utility, in that case, had fallen in price very substantially and the utility, in the recent past, had failed to pay the customary dividends on such stock. In his argument in support of the utility's motion for interim relief in that case, its counsel stated that, if the relief requested by such motion was not forthcoming very promptly, the utility faced a condition of bankruptcy or insolvency. The showing by the utility in that case revealed a return of 4 percent and the Commission staff's showing reflected a return of 4.24 percent. Furthermore, the recorded operating results showed a steady decline of rate of return notwithstanding the fact that the utility had recently been granted substantial rate increases. Thus, it was shown that the utility was in a present existing serious financial position, which constituted an emergency requiring immediate relief. No such showing as was present in the Pacific Telephone and Telegraph Company case is present in the instant proceeding.

It will be noted that the actual recorded operating results of this utility, as shown on page 7 of the majority decision, are substantially greater than the adjusted figures and it will be further noted that these "adjusted" operating results are characterized by the majority decision at page 9 as estimates. When the utility adjusts and estimates the rate of return falls below the recorded results. Furthermore, these operating results, both recorded and adjusted, consist

of figures presented by the utility, stated and rationalized most favorably to its position, and it is upon these figures that the Commission made its decision after allowing for certain adjustments as shown on page 11 of the majority decision. These figures neither have been verified as to their integrity (whether they coincide with the books of account of the utility) or tested as to their reasonableness and at this stage of the proceeding it could not very well be otherwise. It is true that the witnesses of the utility were cross-examined but such cross-examination would not reach the matters immediately heretofore referred to. In such circumstances, a regulatory body must heavily discount such evidence. Again, we must bear in mind that all deficiencies, uncertainties and inferences must be resolved against the utility at this stage of the proceeding where, as here, its showing alone is in evidence and the staff of the Commission and protesting and interested parties have not had an opportunity to make their counter showings.

Finally, we see that the majority decision, at page 11 thereof, reflects a rate of return for this utility for the year 1951, as adjusted by the utility and revised by said decision, of 4.68 percent on a depreciated rate base, bearing ever in mind that the adjustments by the utility represent estimates as heretofore pointed out and explained. Is a utility, which earned in 1951 a 4.68 percent return, after giving full effect for increased taxes and wages and other operating expenses existing as of the present date, in a present existing serious financial position under the rules applicable to the matter of an interim rate increase? Obviously not. Before this Commission would be justified in granting an interim rate increase, it is my opinion that the record must be such that the failure to find a present existing emergency warranting the granting of such relief would be nothing more or less than an arbitrary or capricious act, wholly at variance with the evidence.

For the foregoing reasons, I held that the motion for interim rate relief should be denied.


Commissioner