

ORIGINAL

Decision No. 48778

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
CITIZENS UTILITIES COMPANY OF CALI-
FORNIA, a corporation, for Authority
to Increase Water Rates for its Water
System Serving Montara, Moss Beach
and Adjacent Territory.

Application No. 33577

In the Matter of the Application of
CITIZENS UTILITIES COMPANY OF CALI-
FORNIA, for Authority to Increase
Water Rates for its Water System
Serving Niles, Decoto and Adjacent
Territory.

Application No. 33578

In the Matter of the Application of
CITIZENS UTILITIES COMPANY OF CALI-
FORNIA, a corporation, for Authority
to Increase Water Rates for its Water
System Serving Guerneville, Rio Nido,
Guerneville Park, Northwood and Monte
Rio and Adjacent Territory.

Application No. 33579

In the Matter of the Application of
CITIZENS UTILITIES COMPANY OF CALI-
FORNIA, a corporation, for Authority
to Increase Water Rates for its Water
System Serving the City of North
Sacramento and Adjacent Territory.

Application No. 33580

In the Matter of the Application of
CITIZENS UTILITIES COMPANY OF CALI-
FORNIA, a corporation, for Authority
to Increase Water Rates for its Water
System Serving the Area known as
Boulder Creek - Ben Lomond - Brookdale,
Santa Cruz County, California.

Application No. 33581

OPINION AND ORDER DENYING PETITIONS FOR REHEARING
AND FOR ORDERS MODIFYING DECISIONS

Citizens Utilities Company of California, a corporation, appli-
cant in the above-entitled proceedings, has filed separate petitions
for rehearing respecting Decisions Nos. 48618 (Application 33581),
48619 (Application 33580), 48620 (Application 33579), 48621 (Appli-

cation 33578) and 48622 (Application 33577). Joined in each of said petitions is a request for modification of the decision concerning which rehearing is prayed. Petitioner does not seek a general rehearing but limits its petitions to a request for a supplemental order modifying each of said decisions as in said petitions specified. Also, petitioner requests oral argument in support of these petitions before the Commission in bank, alleging the subject to be one of surpassing importance.

Because each of said petitions for rehearing raises substantially the same alleged questions of law, we will dispose of them in one decision.

Petitioner requests the Commission, among other things, to issue a supplemental decision in each of the above-entitled proceedings granting it authority to establish increased rates retroactively in each of said proceedings, either at levels higher than the Commission authorized by the decisions herein assailed or, if that be denied, at the levels actually authorized.

In Application No. 33581, petitioner, also, requests an order rescinding and cancelling that part of the decision rendered therein (Decision No. 48618) which reopened the proceeding for further hearing and consolidated it with Case No. 5465, which latter is a general investigatory proceeding issued on the Commission's own motion respecting petitioner's operations in its Boulder Creek - Ben Lomond - Brookdale service area located in Santa Cruz County.

While it is true as a legal proposition that this Commission has authority to establish increased or decreased rates retroactively, within certain limitations where the facts so justify, we hold that these proceedings reflect no facts which would warrant us in affording to petitioner such extraordinary relief. Petitioner's request for retroactive rate relief is denied. Likewise, we deny

petitioner's request for an order rescinding and cancelling that part of Decision No. 48618 (Application No. 33581) which reopened the proceeding involving its Boulder Creek - Ben Lomond - Brookdale service area in Santa Cruz County, there being no facts justifying such request. The record in said proceeding abundantly justified the action which the Commission therein took.

The request for oral argument before the Commission in bank finds no justification, when viewed from the standpoint of the record in these proceedings. Said request is denied.

With these three preliminary matters disposed of, we shall proceed to consider the more fundamental objections of petitioner.

Briefly and substantially, petitioner asserts that the rates established by the decisions, herein assailed, are unjust, unreasonable, insufficient and confiscatory; that the enforcement of said rates would constitute a taking of petitioner's property without just compensation; that the critical and basic findings of the Commission are without evidentiary support in the record and that the Commission failed to make sufficient findings of fact; that the record does not support the findings of the Commission that petitioner's service in some of its service areas is inadequate; and that the rates prescribed will not enable petitioner to earn a fair and reasonable department-wide rate of return. There are other ancillary and subsidiary specifications of error but they, necessarily, are included in these basic objections of petitioner.

The contentions herein made by the petitioner, judged by the record in these proceedings call for a restatement of some of the fundamental principles involving public utilities and their regulation by governmental authority. The burden rested heavily upon petitioner to prove that it was entitled to rate relief and not upon the Com-

mission to prove the contrary.

There is no constitutional right to be a public utility. In operating as a public utility, a corporation is performing a function of the State (Smyth v. Ames, 169 U.S. 466, 544, 42 L. ed. 819, 848) and is exercising an extraordinary privilege and occupies a privileged position. (United Fuel Gas Co. v. Railroad Commission, 278 U.S. 300, 309, 73 L. ed. 390, 396.) In such circumstances, standards of public service must be the guide in fixing the rates which a public utility may charge the public. It is true that a public utility enjoys a constitutional right to the opportunity to earn a reasonable return upon the property which it has lawfully dedicated to the public use but regulation does not guarantee that a public utility will realize net revenues. (Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 590, 86 L. ed. 1037, 1052; Smyth v. Ames, 169 U.S. 466, 544-545, 42 L. ed. 819, 848.)

However, it must be kept in mind that a public utility must meet its obligations imposed by law before it may claim the benefits which flow from the privilege which it exercises. There must be a balancing of consumer and investor interests. (Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603, 88 L. ed. 333, 345.) The utility may not charge the ratepayer more than the service is reasonably worth, in order to realize net revenues. (Smyth v. Ames, 169 U.S. 466, 544-548, 42 L. ed. 819, 848-849.) Value of service, however, is to be regarded as a ceiling and not as a floor. (Produce Terminal Corporation v. Illinois Commerce Commission (Supreme Court of Illinois, March 23, 1953), 112 N.E. (2d) 141, 144. See, also, Market Street Railway Co. v. Railroad Commission, 24 Cal. (2d) 378, 404; Redlands, etc., Water Co. v. Redlands, 121 Cal. 365, 371; San Diego Land & Town Co. v. National City, 174 U.S. 739, 756, 43 L. ed. 1154, 1161; and Market Street Railway Co. v. Railroad Com-

mission, 324 U.S. 548, 563-564, 89 L. ed. 1171, 1182-1183.)

When a corporation asks for and is accorded the privilege of operating as a public utility, it thereby covenants with the State that it will perform its public duty as a utility. One of these duties - a most fundamental one - is that it will furnish reasonable and adequate service to the public at reasonable rates without discrimination. (Pacific Telephone and Telegraph Co. v. Public Utilities Commission, 34 Cal. (2d) 822, 826.) As just compensation for the performance of such public duty, the utility is entitled to an opportunity to earn a reasonable return upon the property which it has lawfully devoted to the public use in the furnishing of such service. In light of these logical, reasonable and equitable rules of law, it may not be contended that the utility can breach this covenant with the State by failing to furnish the public reasonable and adequate service and still demand the same opportunity to earn the same return to which it would have been entitled had it been in the full performance of its public duty. The most elementary principles of law, equity and good morals deny such a contention. No man may breach his contract and, at the same time, insist that the other contracting party perform thereunder.

True, petitioner contends that it has performed its public duty as to all of its service areas but the evidence is clearly to the contrary and we have so found.

In granting increases in Applications Nos. 33577 (Montara, Moss Beach and Adjacent Territory) and 33581 (Boulder Creek - Ben Lomond - Brookdale Area), we were moved, not by the belief that this petitioner was constitutionally entitled to such increases, but by the full expectancy that such modest increases would facilitate the improvement of service furnished by petitioner in these areas. These increases were not matters of constitutional right. They were accorded petitioner in an attempt, partially, to solve the unsatis-

factory conditions as to service long obtaining in these particular areas by affording to petitioner more revenue with which to improve its service for the public benefit. Petitioner's failure to render reasonable and adequate service in these areas has persisted after such failure, repeatedly, has been called to its attention by the Commission with direction to improve such service. In the circumstances existing, the Commission well could have denied petitioner any rate increase at all in these two particular applications, had it proceeded solely upon the basis of petitioner's constitutional rights. It was for the purpose of subserving the rights and interests of the ratepayers of petitioner that these rate increases were granted. In Application No. 33581 (Boulder Creek - Ben Lomond - Brookdale Area) the increase of rates was on an interim basis, the proceeding being reopened and consolidated with a general order of investigation into petitioner's operations in the area instituted on the Commission's own motion. A final decision will be rendered in these consolidated proceedings in due course after further hearing.

We find from the evidence that Citizens Utilities Company (the parent corporation organized under the laws of Delaware) completely dominates and controls Citizens Utilities Company of California (the operating subsidiary of Citizens Utilities Company), petitioner herein, and that each of said corporations is the alter ego of the other. No action of substantial consequence may be taken by petitioner without obtaining the approval and consent of Citizens Utilities Company, its parent. The procedures and devices which the parent corporation has imposed upon petitioner interfere with petitioner in the rendition of service to its customers and we find from the evidence that the domination and control which the parent corporation exercises over petitioner substantially impairs petitioner's ability to discharge its public duty. Here, we have portrayed in bold relief ab-

sentee ownership, management and control at its worst.

Petitioner's contention that the rates prescribed in these five proceedings are confiscatory is not sustained by the record. Nor does the record sustain the contention that the rate bases established by the Commission are unreasonable. We hold that the rates prescribed by the Commission in these proceedings are reasonable and that the rates of return which the rates prescribed will produce are reasonable. The rate bases established by the Commission, we hold to be reasonable. The record in these proceedings will not sustain a contrary holding. The findings of the Commission are fully supported by the evidence and, contrary to petitioner's contention, the findings of the Commission are ample and adequate to support the decision in each of the proceedings herein concerned. The contention of petitioner that the rates prescribed will not enable it to earn a fair and reasonable department-wide rate of return depends for its validity upon premises which we hold to be invalid and unsupported by the evidence. This contention of petitioner, we find to be without merit.

Because of the vigor and apparent earnestness with which petitioner has pressed these petitions for rehearing, we deemed it appropriate to discuss briefly the issues presented by said petitions. However, we find no merit in petitioner's contentions and suggest that the interest of both the petitioner and the public would be better served if petitioner should undertake to discharge its public duty with the same vigor and effort that it expends in seeking rate relief.

For the reasons herein assigned, the petitions for rehearing and modification filed by petitioner in the above-entitled proceedings, and each thereof, are hereby denied.

The Secretary is directed to file a certified copy of this opin-

ion and order in each of the above-entitled proceedings.

Dated, San Francisco, California, this 9th day of June,
1953.

A. J. [Signature]
President

[Signature]

[Signature]
[Signature]

Commissioners