

Decision No. 51449

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
SAN DIEGO GAS & ELECTRIC COMPANY, a )  
corporation, for an order of the )  
Public Utilities Commission of the )  
State of California authorizing it )  
to increase the rates charged by it )  
for electricity. )

Application No. 36579

FIRST SUPPLEMENTAL OPINION AND ORDER

At the hearing on June 1, 1956 in the above-entitled matter several motions were made and it is the function of this first supplemental opinion and order to rule on these motions.

Decision No. 51687, dated July 18, 1955, left for supplemental decision the question of whether or not there should be more than two zones in the plan for zoning of domestic and general service electric rates in San Diego Gas & Electric Company's territory. Also it left eight other items for final determination as follows: premise rule, voltage discounts, fuel clauses, convert Schedule P-2 to general service schedule, elimination of minimum charges, 3-phase low voltage service on general service schedule, incidental farm service and comparison of 1955 recorded revenues and expenses with estimates. The public hearing on these eight items was completed on February 2, 1956, only the zoning matter hearings being not completed at this time.

Motion on Supplemental Matters Other Than Zoning

As an aid to completing the record on the zoning problem, counsel for applicant made a motion that decision on these supplemental matters, other than zoning, be issued prior to the next hearing dates, with the effective date of the order suspended until

the zoning matter is completed. The Commission has considered this motion and is of the opinion that the record is sufficiently complete so that a decision can be rendered on these eight supplemental matters. However, these matters involve technical and time-consuming computations and it will be necessary to delay the next hearing date now scheduled for August 1, 1956 in San Diego in order to allow time for the Commission to render a second supplemental opinion and order herein covering these eight items.

To this extent applicant's motion is granted; however, the Commission desires that these rate revisions be in full force and effect before the next set of hearings and, accordingly, is temporarily removing this matter from the calendar and will reschedule the zoning hearing after the second supplemental order becomes effective. The portion of applicant's motion to suspend the effective date of the order until the zoning matter is completed, is denied.

#### Motions Regarding Zoning Studies

Counsel for the City of La Mesa made three motions with reference to zoning. The first motion was to strike from the record the portions of Exhibit No. 62 and the testimony pertaining to zoning of incorporated areas, and to limit the issues to the matter of zoning within the unincorporated areas. The second motion was to strike from the record the staff's report and recommendation and testimony with respect to the incorporated areas. The third motion was to strike from the record the staff's entire report, Exhibit No. 16-A, on the basis that there was no instruction to the staff to prepare any reports. Several cities and chambers of commerce joined in these motions. Counsel for the County of San Diego opposed these motions. These motions were submitted for Commission determination.

In the original decision herein (54 Cal PUC 285), after discussing the applicant's original 4-zone plan, its amended plan to

continue with 2 zones, its willingness to undertake a thorough zoning study, the staff's original 3-zone plan and the 4-zone plan suggested by a customer's representative, we stated:

"These recommendations appear to have merit and warrant further consideration. However, temporarily, the 2-zone system will be continued pending completion of further zoning study."

Also on this page (54 Cal PUC 285) we commented:

"In the Commission's opinion San Diego County is growing so fast that further zoning study is warranted."

These motions shed light on the opposition of the incorporated cities to rezoning, but do not eliminate the need for further hearing. Exhibits Nos. 62 and 16-A contain information which in the Commission's opinion should be in the record. Accordingly, the three motions by counsel for the City of La Mesa are denied.

#### Motions to Disqualify Examiner

A motion was made by counsel for the City of Oceanside that the Examiner disqualify himself upon the ground of bias as implied in law because as a staff member of the Utilities Division of the Commission's staff several years ago he had testified on gas rate zones. Counsel also made a second motion that the Examiner declare a mistrial or mishearing. The cities of La Mesa and El Cajon joined in these motions. A customer representative opposed any disqualification on the basis that over many years of his experience the Examiner's conduct of these cases has reasonably reflected the stated opinions of the Commission, and if the Examiner did have any preference or prejudice he failed to see where in any manner they affected the decisions of the Commission.

The Examiner would have no authority to disqualify himself. There is no provision in the Public Utilities Act relating to the disqualification of a Commissioner or an Examiner. Therefore these motions have no basis in law. Furthermore, said motions are without

factual merit for the reason that the expression of an opinion or the rendition of a decision in a prior case by a judicial officer does not disqualify him to hear a subsequent case involving the same issue. If this were not true, a litigant could always challenge a judge on the ground that he had decided, in a prior case, an issue adversely to the litigant's position. Litigants are not thus free to pick and choose among adjudicating officials. Furthermore, the Commission makes the decision, not the Examiner. For the foregoing reasons, said motions to disqualify and the motions for mistrial are denied.

IT IS HEREBY ORDERED that the public hearing scheduled for August 1, 1956 in San Diego be temporarily removed from the calendar.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 16th day of July, 1956.

[Signature]  
President  
[Signature]  
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Commissioners