

Decision No. 55933**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
THE PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, a corporation, for authority  
to increase certain intrastate rates  
and charges applicable to telephone  
service furnished within the State of  
California.

Application No. 39309

CALIFORNIA WATER & TELEPHONE COMPANY,  
a corporation,  
Complainant,

vs.

Case No. 5974

THE PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, a corporation,  
Defendant.

THE PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, a corporation,  
Complainant,

vs.

Case No. 5983

GENERAL TELEPHONE COMPANY OF  
CALIFORNIA, a corporation,  
CALIFORNIA WATER & TELEPHONE COMPANY,  
a corporation, and SUNLAND-TUJUNGA  
TELEPHONE COMPANY, a corporation,  
Defendants.

OPINION AND ORDER DENYING REHEARING

The City of Los Angeles and Roger Arnebergh, as a subscriber of The Pacific Telephone and Telegraph Company, have filed their joint petition for rehearing respecting Decision No. 55936, rendered herein on December 10, 1957.

In fairness to the record herein, we are constrained to point out that Mr. Arnebergh is the City Attorney of Los Angeles and, as

such, is participating in these proceedings on behalf of the City of Los Angeles through one of his assistants and participated in the matter of the motion for interim rate relief, hereafter referred to.

Said petition for rehearing, allegedly, is premised upon the following grounds:

"(1) This Commission was and is without jurisdiction, power or authority to grant or authorize increases in subscribers' telephone rates as provided by Decision No. 55936, or to grant or authorize any other increases in subscribers' telephone rates, without completing a full hearing and investigation of the affairs and operations of the telephone companies involved.

"(2) It has not been made to appear to the Commission that The Pacific Telephone and Telegraph Company ("Pacific") is in a precarious financial condition, or that any emergency requires that its revenues or earnings be increased by an interim order before the completion of a full hearing and investigation into Pacific's affairs. On the contrary, Exhibit 31, Chapter 4, Table B, shows that as of December 31, 1956, the company had an unappropriated earned surplus of \$87,387,322.40. The record further shows that present earnings under existing rates are more than adequate to meet all expenses, including payment of dividends to stockholders at current rates, and, in addition, add substantially to such surpluses.

"(3) Similarly, it has not been made to appear to the Commission that General Telephone Company of California ("General"), California Water & Telephone Company ("California"), or Sunland-Tujunga Telephone Company ("Sunland"), is in a precarious financial condition or that any other emergency requires that its revenues or earnings be increased by an interim order, without the completion of a full hearing and investigation by the Commission of its affairs.

"Consequently, this Commission was and is without jurisdiction, power or authority to make the findings or orders with respect to those telephone corporations which are provided by its Decision No. 55936, by interim order.

"(4) Until the Commission has held a full hearing, and after such hearing has found that the rates charged are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the Commission is without jurisdiction, power, or authority to determine and fix, by order, the just, reasonable, or sufficient rate, and such hearing must include:

"(a) a full and complete presentation of evidence by the company or companies applying for such increase, which evidence, if not controverted, disproved, or discredited, would require an increase in rates;

"(b) a full opportunity to the public, representatives of municipalities and other interested parties to

cross-examine applicant's witnesses;

"(c) an opportunity for the presentation of testimony and other evidence by the public, by representatives of municipalities, and other interested parties. Further, established practice has set the precedent of having a presentation made by the Commission's own staff, and it would be an abuse of discretion for the Commission to grant an increase in rates without first providing for a presentation of evidence by such staff, which is supported and paid for by the public for such purpose, among others.

"(5) The Commission is without jurisdiction, power or authority to make the findings or orders provided by its Decision No. 55936, by interim order.

"(6) The increases in rates to telephone subscribers authorized by Decision No. 55936 are applicable solely in the Los Angeles extended area. There was received in evidence in this consolidated proceeding Exhibit No. 63. Attached hereto, marked Exhibit "A", and by such reference made a part hereof, is a copy of Table 2 of such Exhibit 63. From evidence offered to the Commission by Pacific before the rendition of such decision on December 10, 1957, it appeared that in the first six months of 1957:

"(a) under present rates Pacific earned no less than 5.92% from its total intrastate operations;

"(b) although Pacific seeks rate increases to increase its total intrastate revenues by nearly \$40,000,000 in order that its earnings therefrom will be at the rate of 6.91%, its earnings from its exchange operations within the Los Angeles extended area under present rates now exceed this rate of 6.91%.

"(c) Based on Pacific's actual operations during the first six months of 1957 its additional revenues solely from the increased rates authorized in the Los Angeles extended area would enable it to increase its earnings from total intrastate operations to 6.33%, by increases in its earnings from its exchange operations in the Los Angeles extended area from a minimum of 7.01% to at least 8.23%.

"The imposition upon the telephone subscribers in the Los Angeles extended area of such an unwarranted and unjustified burden is unreasonable, inequitable, discriminatory and unfair and on such account the Commission was and is without jurisdiction, power or authority to make the orders provided by Decision No. 55936, and such decision is unlawful."

The foregoing enumerated grounds are rationalized by petitioners in the succeeding pages of their petition and are restated in divers and sundry ways but the burden of the petition is that due process of law was denied petitioners, lawful notice of the proposed

interim increase of rates was not given, that the telephone companies involved were not entitled to a rate increase in the Los Angeles area and that the Commission was without jurisdiction to grant the interim rate increase without a full and complete showing by not only the telephone companies but, also, the Staff of the Commission and the protesting and interested parties.

The record in these proceedings and the law constitute a complete refutation of petitioners' unsupported allegations. ✓

Rate relief may be granted to a public utility ex parte or after public hearing upon such notice as the Commission may prescribe. (Section 1707, Public Utilities Code; Clemmons v. Railroad Commission, 173 Cal. 254, 258.)

Furthermore, the Commission represents the public interest in the field of public utility regulation and is charged with the protection of that interest. (United States v. Merchants and Manufacturers Assn., 242 U.S. 178, 188, 61 L. ed. 233, 239; Hanlon v. Eshleman, 169 Cal. 200, 202-203; Sale v. Railroad Commission, 15 Cal. (2d) 612, 617-618.) The fact that a disappointed party makes unfounded charges in a petition for rehearing respecting Commission action is no proof that the Commission has failed to lawfully discharge its public trust. ✓

It is elementary law that a regulatory body may grant interim rate relief pending the final decision in the proceeding.

The repeated assertion by petitioners in their petition for rehearing that a full hearing was not accorded the parties on the motion by the telephone companies for interim relief is incorrect and the record irrefutably so shows. Hearings on the two complaints were held on September 19, 20, and 26, 1957. On the latter day (September 26, 1957) evidence was adduced relative to the multi-message unit traffic interchanged between the four companies in the Los Angeles extended area. On the third

day of hearing in the application proceeding (September 27, 1957) the complaint matters were consolidated with the application proceeding. On that date the four telephone utilities made a motion for interim relief, and hearings thereon were held on September 27, October 3, 4, and 10, 1957. Petitioner City of Los Angeles appeared at all of the above hearings.

After the telephone companies had presented their evidence in support of such motion and the protesting and interested parties including the City of Los Angeles, had cross-examined the witnesses for the telephone companies, the presiding officer inquired of these parties if they had any evidence to offer in connection with the motion for interim relief and they answered in the negative. No suggestion or request was made by any of these parties for a continuance to enable said parties to present evidence. Also, the motion for interim rate relief was argued by the parties, including the City of Los Angeles and other protesting and interested parties. In these circumstances, the repeated insinuation of petitioners that the interested parties were denied an opportunity to be heard and that a full hearing was not had on the motion for interim relief is disingenuous, to say the very least.


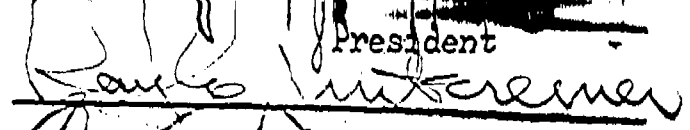

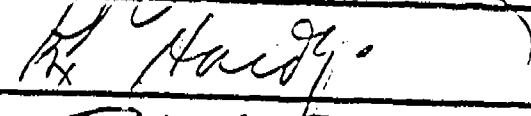

After careful consideration of petitioners' numerous objections, we fail to find any of them meritorious.

The petition for rehearing having been filed in time to suspend the order until the granting or denial of rehearing, it is necessary to amend the order to provide that the revised tariff schedules shall become effective for service furnished on and after a date later than that specified in the decision. Therefore, IT IS ORDERED that ordering paragraphs 1, 2, and 3 of Decision No. 55936 are hereby amended by substituting for the words "January 6,

1958" the words "January 20, 1958."

IT IS FURTHER ORDERED that the petition for rehearing filed herein be and the same is hereby denied.

Dated at San Francisco, California, this 7th day of January, 1958.

  
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President  
  
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Commissioners