

ORIGINALDecision No. 56498

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 a general increase)
 in steam rates under Section 454 of)
 the Public Utilities Code.)
 (Steam))

Application No. 39679

In the matter of the application of)
 SAN DIEGO GAS & ELECTRIC COMPANY, a)
 corporation, for a general increase)
 in electric rates under Section 454)
 of the Public Utilities Code.)
 (Electric))

Application No. 39680

In the matter of the application of)
 SAN DIEGO GAS & ELECTRIC COMPANY, a)
 corporation, for a general increase)
 in gas rates under Section 454 of)
 the Public Utilities Code.)
 (Gas))

Application No. 39681

(Appearances are listed in Appendix A)

OPINION AND ORDER DENYING
 MOTION TO DISQUALIFY EXAMINER

At the first day of hearing (March 3, 1958) on the above-entitled matters, counsel for National City made a motion that Examiner Edwards be disqualified as a hearing officer in this proceeding because of bias and prejudice to the rights of the City of National City, a municipal corporation, and the consumers of applicant residing in National City, owing to the fact that as a staff member of the Utilities Division of the Commission's staff several years ago he had testified on gas rate zones.

Counsel referred to the fact that practically similar motions had been made in the previous electric rate case, Application No. 36579 and by Decision No. 53449 the Commission did not disqualify the examiner, stating:

"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."

Counsel questioned the soundness of this ruling and stated that the philosophy behind the opinion raises very serious questions as to the means, rules and procedure under which the Public Utilities Commission of the State of California operates; particularly, whether or not these hearings, such as this, are quasi-judicial as they very often have been thought to be.

Counsel stated that although the City of National City participated in Application No. 36579, the city attorney of National City did not join in the motion which was the subject of the prior ruling. One of his chief reasons for not joining in the earlier motions was the fact that it came rather late in the proceeding, and in his judgment if the motion had been granted there would have been a great deal of lost time, effort and money. This is a new proceeding involving not only electric rates, but also gas and steam heat and it appeared to counsel to be a more appropriate time to make this motion for Commission ruling.

Examiner Edwards was assigned as Examiner in these proceedings by the Commission. In such circumstances, it is his duty to carry out such assignment.

The examiner's function in a proceeding is to assist the presiding commissioner in taking evidence and developing an adequate

record which is ultimately given to the Commission. The responsibility for preparing the final draft of the decision, signing the decision, and the ultimate legal responsibility for the decision rest upon the shoulders of the presiding commissioner and his four fellow commissioners.

The examiner does not make the decision. Only the Commission can do that.

Based upon the evidence and the law, we hereby find that Examiner Edwards is not disqualified to act as an examiner in these proceedings. Accordingly the motion to disqualify will be denied. Therefore,

IT IS ORDERED that the motion by counsel for National City to disqualify Examiner Edwards be and the same is hereby denied.

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

Dated at San Francisco, California, this 8th day of APRIL, 1988.

[Signature]
President
[Signature]
[Signature]
[Signature]

Commissioners

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APPENDIX A

List of Appearances

For Applicant: Chickering and Gregory by Sherman Chickering
and C. Hayden Ames.

Protestants : Robert O. Curran and Gilbert Harelson for City of
National City; John F. O'Laughlin, City of
Imperial Beach.

Interested
Parties : Frederick B. Holoboff and Clarence A. Winder, for
City of San Diego; James Don Keller and
Bernard L. Lewis, for County of San Diego;
Jean L. Vincenz, for Board of Supervisors, County
of San Diego; Manuel L. Kugler, for City of Chula
Vista; Dale Austin, for City of Oceanside;
Donald W. Smith and F. Joseph Doerr, for City of
El Cajon and Chamber of Commerce of El Cajon;
Newlin, Tackabury & Johnston, by George W. Tackabury,
for College Grove Center; Harold Gold, Rauben Lozner
and Clyde F. Carroll, by Clyde F. Carroll, for
Department of Defense and other executive agencies
of the United States; Rollin E. Woodbury,
C. Robert Simpson and Earl R. Sample, for Southern
California Edison Company; Brobeck, Phleger &
Harrison, by Robert N. Lowry, for California
Manufacturers Association; Bert Buzzini, for
California Farm Bureau Federation; Henry E. Walker,
for Perfectaire Manufacturing Company; W. D. MacKay,
Commercial Utility Service, for Challenge Cream and
Butter Association, the U.S. Grant Hotel, Piggly
Wiggly of San Diego, and Chamber of Commerce of
Solano Beach.

Protestants and Interested Parties:

Russell G. Taliaferro, for City of Escondido;
John Coker, for Mountain Empire Electric Cooperative,
Inc.

Commission Staff:

W. R. Roche, R. T. Perry and Theodore Stein.