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ORIGINAL

Decision No. 58850

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, a corporation, Complainant, vs. RICHFIELD OIL CORPORATION, a corporation, et al., Defendants.	Case No. 6225
SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, a corporation, Complainant, vs. SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, et al., Defendants.	Case No. 6245
Investigation on the Commission's own Motion into the Operations and Practices of SOUTHERN CALIFORNIA EDISON COMPANY and RICHFIELD OIL CORPORATION.	Case No. 6267
In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, under Section 1001 of Public Utilities Code, for certificate of public convenience and necessity re construction, maintenance and operation of certain Fuel Gas Facilities.	Application No. 39250

(Appearances and witnesses are listed in Appendix A.)

INTERIM OPINION

Nature of Proceedings

These several matters deal with the efforts of Southern California Edison Company, hereinafter called Edison, to obtain an

additional supply of gas for steam-electric plant use at a reasonable cost; its contract with Richfield Oil Company, hereinafter called Richfield, to buy gas delivered at Edison's Mandalay steam plant; and the efforts of Southern Counties Gas Company of California, hereinafter called Southern Counties Gas, to stop such sale of gas in its service area unless a certificate of public convenience and necessity is obtained by Richfield.

The principal issues are:

1. Is Richfield, in respect to its gas operations, a gas corporation under the Public Utilities Code?
2. Is Richfield, in respect to its gas operations, a public utility gas corporation subject to the jurisdiction of this Commission?
3. Is Richfield acting as the agent for or the alter ego of Edison?
4. Should Richfield be restrained from constructing its pipeline to serve Edison's Mandalay steam plant?
5. Should Richfield be restrained from exercising its special use permit from the U. S. Forest Service to construct, operate and maintain a pipeline through which it proposes to deliver gas to Edison for use at its Mandalay steam plant?

This opinion will be developed under the following main sections:

I. Public Hearing.

II. Operations and Practices of Edison as a Consumer of Gas.

III. Operations and Tariffs of Southern Counties Gas.

IV. Operations and Practices of Richfield as a Producer and Supplier of Gas.

- A. Proposed Sales of Gas by Richfield to Edison.
- B. Economic Impact on Southern Counties Gas of Proposed Sale of Gas by Richfield to Edison.
- C. Possible Alternate Use of Richfield's Pipeline.
- D. Sales of Gas by Richfield to Pacific Lighting Gas Supply Company.

E. Sales of Gas by Richfield to Pacific Gas and Electric Company.

F. Richfield's Dedication of Gas Reserves to the Public.

G. Richfield's Refusal to Sell Gas to Others.

V. Constitutional and Statutory Provisions Pertaining to Public Utility Gas Corporations.

VI. Right of Foreign Corporation to Urge that It Cannot Operate as a Public Utility in California.

VII. Positions of Certain Intervenors and Interested Parties.

VIII. Findings and Conclusions.

I. Public Hearing.

On May 8, 1959, the Commission issued its order setting aside submission of the order to show cause in Case No. 6225 and reopening this matter for further hearing thereon and on the merits of the complaint and also issued its order instituting investigation into the operations and practices of Southern California Edison Company and Richfield Oil Corporation, Case No. 6267. Case No. 6267 was consolidated for hearing with Application No. 39250 and Cases Nos. 6225 and 6245. Evidence in these matters was received at public hearings in Los Angeles and San Francisco, held before Commissioner Matthew J. Dooley and/or Examiners Wilson E. Cline and/or Manley W. Edwards on May 18-22, 25, 26 and 28, 1959. Concurrent briefs were filed and oral argument was held in San Francisco before the Commission en banc on June 1, 1959. At the close of the oral argument the parties were given the opportunity to file concurrent supplemental opening briefs within five days and concurrent supplemental closing briefs within five days after the filing of the supplemental opening briefs. All briefs filed in this proceeding on or before June 15, 1959, even though late, are hereby made a part of the record in these proceedings. Cases Nos. 6225 and 6245 and that part of Case No. 6267 pertaining to Cases Nos. 6225

and 6245 were taken under submission upon the filing of the last closing supplemental brief on June 15, 1959. Application No. 39250 and that portion of Case No. 6267 pertaining thereto were continued to a date to be set.

II. Operations and Practices of Edison as a Consumer of Gas.

In summary a vice president of Edison testified substantially as follows:

> Three factors have been primarily responsible for Edison's efforts to obtain additional gas fuel supplies. The first two factors discussed were: (1) the explosive population growth in the territory served by Edison; and (2) the shift of Edison's generation plant since the middle 1940s from what was then a predominantly hydro system to what is now predominantly a steam system. In 1941 less than 3 per cent of the kilowatt-hours were produced at steam plants, and more than 94 per cent were produced in hydro plants. In 1957, steam-plant production was 75 per cent of the total, and in 1958, an above average water year, 65 per cent came from steam plants and 35 per cent from hydro sources.
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> The third factor which has influenced Edison's fuel procurement activities is the air pollution control activities of the communities which Edison serves.
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> While a gas supply subject to interruption and fadeout was workable in the past because of the ready availability of alternate fuels, the use of interruptible gas presently is unsatisfactory and it has become necessary for Edison to develop and procure a reliable and adequate gas supply. He pointed out that Edison itself has no interruptible electric service schedules, and so its need for energy supplies demand a high degree of continuity.
>
> A gas distribution system designed to serve firm customers is inherently a low load factor system. By serving off-peak gas on an interruptible basis the load factor can be raised considerably and the unit cost reduced. Since a system designed to supply base load steam-plant requirements primarily could be operated at high load factors, an independent gas supply for electric generation might prove more economical from the standpoint of the electric system customers.
>
> Edison is concerned over the fact that it is now necessary for Edison to rely heavily upon a

competitor in the field of fuel distribution for its own supply of fuel, especially in view of the fact that Southern Counties Gas' own cost-of-service analyses show that the relative earnings levels in the competitive areas are subnormal and may be subsidized by earnings on gas sold to Edison.[1]

Gas sold by the gas companies is bought by them from a pipeline company which in turn buys it from a field producer. This involves four parties and three transactions and makes scheduling of gas supplies difficult.

Any opportunity to obtain additional gas for California ought to be vigorously pursued. The real competition is between the need for gas in California as opposed to the need for gas in other areas of the United States.

For some time Edison has been engaged in attempts to improve its supply of gas for fuel.

In the Fall of 1955, Edison applied to the gas companies for a change in gas service. After several conferences the gas companies submitted a proposal to refile Schedule G-55. The proposed

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1 Exhibit No. 6267-22 which is the Cost-of-Service Study for Estimated Test Year Ending July 31, 1960, Adjusted, also introduced into evidence in Application No. 40958 by the applicant Southern Counties Gas, contains the following tabulation and comment in regard thereto:

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Item	System	Firm Service: General Service	Firm Service: Gas Engine	Firm Service: Industrial	Interruptible: Industrial	Interruptible: Steam Plants	Wholesale
Rates of Return with San Diego Max. Demand 155 MMcf/Day at:							
Present Rates	4.63%	3.99%	5.12%	9.57%	14.19%	15.15%	3.51%
Proposed Rates	5.84	4.75	6.84	11.34	18.93	18.43	7.48
Rates of Return with San Diego Max. Demand 175 MMcf/Day at:							
Present Rates	4.71%	4.09%	5.36%	9.72%	14.20%	15.15%	3.47%
Proposed Rates	5.92	4.85	7.09	11.49	18.95	18.43	7.30

"The class rates of return follow the pattern of past years quite closely. In this respect, the retail firm classification provides something less than the average rate of earnings, while interruptible industrial and steam plants yield rates of return substantially higher than the average for the system."

changes would provide for service to steam-electric plants on a new schedule which provided that about 25 per cent of the customer's potential would be served as an A-block priority.

At about the same time Edison inquired of various gas suppliers, including El Paso Natural Gas Company and Richfield Oil Corporation regarding their willingness to furnish part of Edison's future fuel requirements.

In January 1956, Pacific Lighting Gas Supply Company indicated it would not handle Edison gas by exchange. On February 7, 1956, Edison filed with this Commission Case No. 5724 asking for an equitable allocation of gas supplies and Case No. 5725 asking for exchange service.

In October of 1956, Edison entered into an agreement to purchase gas from El Paso Natural Gas Company. This agreement is still pending before the Federal Power Commission and this Commission.

About this time the gas companies were negotiating for 300 million cubic feet per day of Louisiana Gulf Coast gas of which Edison offered to make a firm commitment to take 150 million cubic feet per day. However, as the gas companies were unable to obtain a satisfactory commitment for the balance of the quantity, the gas was sold to competing bidders for delivery to other markets.

The witness for Edison continued with his discussion of Edison's efforts to obtain gas:

"In October 1956, the gas companies filed a proposed revision of the interruptible steam plant schedule, Application No. 38527, and in November an application for authority to carry out the terms of the El Paso exchange agreement, Application No. 38575.

"In November 1956, Pacific Lighting Gas Supply Company offered to exchange Edison's Richfield gas for Richfield under conditions which were unacceptable to Edison. Under the proposal the exchange would have been performed for Richfield, and that was inconsistent with the position taken by Edison in its complaint against the gas company, Case No. 5725, and was unacceptable.

"In April 1957, the Commission authorized Schedule G-54, but deferred its final decision on the agreement for the purchase of gas from El Paso Natural Gas Company, which was also before the Federal Power Commission for approval.

"In April, the Commission also instituted an investigation on its own motion into the gas supply and service conditions in California and the gas tariff provisions, with particular reference to the use of gas by industrial and steam electric plant customers.

"In May 1957, El Paso Natural Gas Company filed its application for Federal Power Commission approval of the El Paso agreement, and hearings in that proceeding, Docket No. G-12580, commenced about mid-year. In that connection, on Tuesday, May 12, 1959, Federal Power Commission Examiner Binder issued a decision in Docket No. G-12580 determining that El Paso Natural Gas Company should be permitted to build the facilities in order to carry out the terms of the El Paso contract and his decision was based in part upon his determination that because of air pollution in the Los Angeles area the use of natural gas for steam-electric generation should not be considered as an inferior use."

Edison's further negotiations for Richfield gas and the contracts which have resulted therefrom are discussed in Section IV of this opinion.

III. Operations and Tariffs of Southern Counties Gas.

Southern Counties Gas, together with its affiliate, Southern California Gas Company, distribute gas in portions of 14 counties in Southern California. Each of these companies furnishes interruptible gas service to public utility steam-electric plants under Schedule G-54. The present effective average rate under this schedule is approximately 35 cents per Mcf. Each company also furnishes firm service to large industrial users. Southern Counties provides this on its Schedule G-40. In Application No. 40288 these two companies collectively applied to the Commission for approval of a proposed semifirm Schedule G-57 to be offered to steam-electric and other customers. It is noted that this matter is still being heard by the Commission and no schedule for semifirm service currently has been authorized. The provisions of Schedule

G-40, Firm Industrial Service, are not open to steam-electric service without specific authorization due to certain volume restrictions imposed by the tariffs.

The Schedule G-54, Interruptible Service, provides that a portion of the sales receive first curtailment if curtailment of interruptible services becomes necessary, while up to 25 per cent is designated in a curtailment priority block with higher priority comparable to other interruptible large users. The proposed semifirm service schedule would have certain curtailment provisions but such curtailment would be after all other interruptible services. No curtailment is, of course, provided for firm services.

Southern Counties Gas has operated as a public utility gas corporation in Ventura County for several years under a county franchise and under a certificate of public convenience and necessity to exercise such franchise issued by this Commission. Since the Mandalay steam plant is located within the service area certificated by this Commission to Southern Counties Gas, it has the legal right and the duty to serve the Mandalay steam plant, and has offered interruptible service to Edison under regularly filed Schedule No. G-54.

Southern Counties Gas and its affiliate have a sizable gas transmission pipeline located relatively close to the Mandalay

steam station. This line is an important tie between the interconnected network system of the Pacific Lighting Gas Supply Company, the Southern California Gas Company and Southern Counties Gas and the Goleta underground storage reservoir. Richfield's gas can be brought down from the San Joaquin Valley over existing facilities and be made available by displacement to the Mandalay steam plant by means of a relatively short connection without the necessity of Richfield's building the 56-mile line in question.

By constructing a connection 5-2/10 miles in length between Southern Counties Gas pipelines which are already in Ventura County and the Mandalay steam plant, gas service could be supplied to this steam plant up to 246 million cubic feet per day, the estimated demand requirement based on the operation of four generating units in the year 1967. However, on peak winter days when requirements of the firm gas customers are high, deliveries of gas would not be made to the Mandalay steam plant.

The cost to Southern Counties Gas for the added facilities to serve the initial load at the Mandalay steam plant would be $630,000. This amount may be compared with the amount of $5 million which Richfield is spending in the construction of the 56-mile pipeline to serve Edison.

The record shows that Edison is currently, and has been in the past, obtaining gas directly from other producers and

suppliers other than Richfield without effective complaint from the local certificated gas utility and without restraint by the Public Utilities Commission. Examples are: The sales by General Petroleum Corporation from its Torrance refinery to Edison's Redondo Beach steam plant; the purchases from the Hillman Estates for use at Edison's Alamitos steam plant; and the purchases from Wilmington Gasoline Company for use at Edison's Long Beach steam plant. The fact that the Commission has not taken jurisdiction over such rates in the past is not a legitimate reason for disregarding the current Richfield situation now the subject of a vigorous complaint by a regulated utility.

This Commission is rightly concerned with this proposed sale of a large block of gas directly by a producer to a consumer in the service territory of a regulated gas utility, which to a large extent will be delivered through duplicate facilities with a possible resultant over-all higher cost to the consumer. Furthermore, such a direct sale, which by-passes the locally certificated utility, takes away from the domestic, commercial and industrial customer a firm gas supply that otherwise would aid in meeting the abnormal peak heating

loads on the cold days when Edison ordinarily could burn fuel oil under its boilers. It is the duty of this Commission to make such further inquiry as will enable it to determine whether public convenience and necessity require this Commission to exercise its power to prevent the use of duplicate gas transmission facilities and the direct sale of such a large block of gas or whether public convenience and necessity require the use of such facilities and justify the authorization of such a direct sale of gas by a producer to a consumer.

If Richfield is permitted to construct gas pipelines to serve Edison directly without a determination by this Commission that public convenience and necessity require such pipeline and sale of gas, what will prevent other producers from constructing gas pipelines of their own to serve other large industrial consumers directly? The regulatory principles which are applied in this interim decision and which will be applied in the final disposition of these proceedings will vitally affect the economic well being of the entire State of California.

IV. Operations and Practices of Richfield as a Producer and Supplier of Gas.

A. Proposed Sales of Gas by Richfield to Edison Company.

On September 14, 1956, Edison Securities Company, a wholly owned subsidiary of Edison, entered into an agreement with Richfield providing that Richfield would supply not less than 400 billion cubic feet of natural gas to Edison from Richfield's properties in California over a period of 20 years for use by Edison in generating electricity.

Edison Securities Company proposed to construct a pipeline in Southern California through which it would deliver the gas received from Richfield to Edison. Construction of the pipeline was scheduled for the Summer of 1957. On July 2, 1957, Pacific Lighting Gas and its two affiliates, Southern Counties Gas and Southern California Gas, filed a complaint, Case No. 5952, with this Commission alleging that Edison, through the Edison Securities Company, was engaged in building the pipeline and claiming that the construction of such pipeline would be unlawful unless authorized by a certificate of public convenience and necessity issued by this Commission.

On July 19, 1957, Edison filed Application No. 39250 herein, requesting such authorization as might be required for it to construct and operate the pipeline. A hearing was held on this application on July 29, 1957, during which Presiding Commissioner Dooley proposed that the parties attempt to reach an agreement which might make unnecessary the proposed pipeline construction. Negotiations were carried on by Edison, Southern Counties Gas, Southern California Gas, Pacific Lighting Gas Supply Company and Richfield for several months thereafter, but these parties were

unable to reach a mutually acceptable agreement. Subsequently Richfield offered to consider constructing a pipeline from North Coles Levee to Cuyama and delivering gas to Edison at its Mandalay station in Ventura County in lieu of the September 1956 agreement. The negotiations respecting this offer resulted in the agreement between Edison and Richfield dated January 28, 1959.

This agreement of January 28, 1959 provides for the delivery and sale by Richfield to Edison of 500 billion cubic feet of natural gas over a period of 25 years. All of the natural gas is to be used by Edison for fuel purposes in its electric generating stations, and it is to be delivered through a 20-inch pipeline to be constructed, owned, and operated by Richfield. The daily rates of delivery of natural gas are to be in accordance with the following schedule:

Period	Daily Rates for the Period
First 5 years	Not less than 28,000 nor more than 48,000 Mcf.
Second 5 years	Not less than 40,000 nor more than 80,000 Mcf.
Balance of the term	Not less than 40,000 nor more than 100,000 Mcf.

Edison agrees to pay Richfield a commodity charge for each 1,000 cubic feet of natural gas at the highest of the following prices:

1. The average price, adjusted to the California pressure base, charged for out-of-state natural gas delivered at all points along the borders, or if delivered within the State of California, at the equivalent border price, and sold to gas utilities for distribution in said State, excluding those importing less than an average of 150,000 Mcf per day per calendar year, or

2. The highest price paid by Edison or Edison Securities Company to any supplier furnishing more than one million cubic feet of natural gas in any day, whether of intrastate or out-of-state

origin, including all transportation costs from the point of purchase of its point of consumption, whether paid to others or incurred by Edison or Edison Securities Company, reduced by 4 cents per Mcf.

In addition to the commodity charge, Edison agrees to pay Richfield the cost of maintaining and operating the Mandalay and San Joaquin pipeline systems, called facility costs. Tentative facility costs of 4 cents per Mcf of gas are to be used in connection with the monthly billing.

Under the out-of-state suppliers tariffs which became effective August 1, 1959, and assuming regulatory approval of and deliveries under the Edison-El Paso agreement (F.P.C. Docket G-12580), the price to Edison of Richfield gas delivered to Mandalay will be approximately 39.3 cents per Mcf. Further, under Decision No. 57419 this Commission approved construction to receive gas from a new out-of-state supplier whose proposed sale is pending before the Federal Power Commission. If this sale is approved at its proposed price, the price of Richfield's sale to Edison could escalate to a substantially higher price.

Article Sixth of the agreement provides for optional sales of additional gas by Richfield to Edison.

Article Tenth provides for the exchange upon Richfield's request of up to a maximum of 15 million cubic feet of natural gas per day in the event Edison has available a source of natural gas and the necessary facilities.

Article Eleventh provides that neither party shall be liable under the agreement by reason of the failure of Richfield to deliver or Edison to receive natural gas as the result of injunction, legal restraint or any action, proceeding, order, rule, or regulation of any regulatory body.

Article Second provides that if the Mandalay System, which is the 20-inch pipeline to be constructed from a junction with

the San Joaquin-Cuyama System near U. S. Highway No. 399 to Edison's Mandalay steam station, Ventura County, California, is not completed and placed in operation on or before January 1, 1960, and if no alternate means of transporting the gas to Edison has been mutually agreed to, either party shall be free to terminate the agreement.

Article Thirteenth provides that in the event either party is prevented from delivering or receiving the natural gas under the agreement for any reason beyond its reasonable control and such condition exists for a period of six consecutive months, then either party shall be free to cancel and terminate the agreement. Further, if any regulatory body enters a legally binding order under which the purchaser is prevented from paying the prices and facility costs provided in the agreement, Richfield may terminate the agreement.

In the event of the cancellation or termination of the agreement pursuant to Article Second or Article Thirteenth, Edison, or at Richfield's option Edison Securities Company, shall pay all unrecovered costs and expenses in connection with the construction of the Mandalay System, and upon the payment of said costs, expenses and liabilities, Richfield shall convey the Mandalay System to Edison or Edison Securities.

The agreement between Richfield and Edison Securities Company, dated September 14, 1956, is cancelled.

On February 20, 1959, Southern Counties Gas filed its complaint herein, Case No. 6225, requesting that Richfield be ordered to show cause why it should not be ordered to cease and desist from constructing the proposed pipeline until it should have received a certificate of public convenience and necessity from this Commission.

On March 26, 1959, Southern Counties Gas filed its complaint against Edison, Case No. 6245. The prayer of this complaint

requested that the Commission issue an order directing Edison to show cause why it should not be ordered to cease and desist from proceeding with the arrangement it had made with Richfield whereby the latter would deliver gas to Edison at its Mandalay steam-electric generating station, unless and until either Edison or Richfield had obtained a certificate of public convenience and necessity from this Commission authorizing the construction of a gas pipeline system to serve the Mandalay station.

When Southern Counties Gas learned that Richfield was proceeding with the construction of the pipeline, it filed an injunction complaint against Richfield, Edison and Edison Securities in the Los Angeles Superior Court, Action No. 719697, seeking to restrain them from proceeding with the construction of the pipeline until Case No. 6225 could be heard and decided by this Commission. The Superior Court sustained demurrers and dismissed the action without leave to amend, stating in its memorandum to counsel, dated April 21, 1959,

> "... the Commission has assumed jurisdiction and the matter is at issue before it and the Commission now has plenary power in the matter, including the power to order Richfield to cease and desist from constructing the pipeline."

On April 23, 1959, the Southern Counties Gas filed its petition with this Commission in Case No. 6225 for an interim order requiring Richfield to cease and desist construction work under Section 1006 of the Public Utilities Code.

On April 27, 1959, Richfield agreed to pay its pipeline contractor an additional $248,000 to speed the completion of the Mandalay pipeline by two weeks through the use of an additional crew of men and additional equipment.

Oral argument was held on April 28 and 29, 1959, before the Commission en banc on the order to show cause which had been

issued by the Commission in Case No. 6225. On May 8, 1959, the Commission issued two orders as a result of the oral argument: (1) the Commission ordered that the submission of the order to show cause be set aside in Case No. 6225 and that the matter be reopened for further hearings thereon and on the merits; and (2) the Commission instituted Case No. 6267 and ordered that an investigation on the Commission's own motion be instituted into the operations and practices of Southern California Edison Company and Richfield Oil Corporation, thereby named respondents, to inquire into and determine whether respondent Richfield is acting as the agent for or is the alter ego of respondent Edison in the construction of natural gas transmission facilities to respondent Edison's Mandalay generating station; to determine whether respondent Richfield is now or will become a public utility; and to issue such order or orders as may be appropriate in the exercise of the Commission's jurisdiction.

The record shows that there are no officers or directors of Richfield who are officers or directors either of Edison or Edison Securities Company and that Richfield owns no stock in either Edison or Edison Securities Company and that neither of these companies own any stock in Richfield. Allegedly in an effort to make unmistakably clear that no agency or alter ego relationship exists between Richfield and Edison, a new contract was prepared and executed on May 15, 1959. This agreement provides:

Richfield agrees to sell and deliver and Edison agrees to purchase a total quantity of 500 billion cubic feet of natural gas produced by Richfield in the Cuyama and San Joaquin Valleys, to be delivered by Richfield to Edison at Edison's Mandalay station through a pipeline now being constructed by Richfield and to be owned, operated, controlled and paid for exclusively by Richfield.

All of the natural gas delivered under the agreement shall be used by Edison for fuel and for no other purpose in Edison's Mandalay station.

Article II provides that the term of agreement is for a period of 25 years commencing with the date Richfield first delivers natural gas to Edison under the agreement or until 500 billion cubic feet of natural gas is delivered by Richfield to Edison, whichever first occurs. In the event the pipeline is not completed and placed in operation by Richfield on or before January 1, 1964, either party may terminate the agreement by giving 30 days' written notice of termination to the other.

Article IV provides for rates of delivery of gas as follows:

Period	Daily Rates for the Period
First 5 years	Not less than 20,000 nor more than 40,000 Mcf.
Second 5 years	Not less than 40,000 nor more than 80,000 Mcf.
Balance of the term	Not less than 40,000 nor more than 100,000 Mcf.

At the time of the first delivery under the agreement and before May 1st of each year thereafter, Richfield shall specify the average daily rate within the above ranges to apply during the ensuing year.

Article V provides that Edison shall pay Richfield for each 1,000 cubic feet of natural gas delivered and sold under the agreement at the highest of the following prices:

(1) The average price, including demand and commodity charges and adjusted to the California pressure base, charged for out-of-state natural gas delivered at all points along the borders, or if delivered within the State of California, at the equivalent border price, and sold to Gas Utilities for distribution in said state (excluding those importing less than an average of 150,000 Mcf per day per calendar year), in either event plus 4 cents per Mcf, or

(2) The highest price paid by Edison, or Edison Securities Company, to any supplier furnishing more than one million cubic feet of natural gas in any day (whether of intra or out-of-state origin), including all transportation costs from the point of purchase to its point of consumption (whether paid to others or incurred by Edison or Edison Securities Company).

These are essentially the same price provisions as in the earlier contract.

Article IX is a force majeure provision which in part reads:

"Neither party shall be liable hereunder by reason of the failure of Richfield to deliver or Edison to receive natural gas as the result of injunction, legal restraint or any action, proceeding, order, rule or regulation of any regulatory body, ..."

Article X pertaining to involuntary suspension of deliveries provides:

"If, after said pipeline is completed and placed in operation, either party hereto is prevented from delivering, selling, receiving or purchasing said natural gas for any reason beyond its reasonable control, including but not by way of limitation, laws, rules, regulations, orders, injunctions or restraints, or the force majeure provisions of Article IX, or from paying the price specified in Article V, and such condition exists for a period of six consecutive months, Richfield may cancel and terminate this agreement by giving a thirty (30) day written notice to Edison."

Article XI provides for the cancellation of all previous agreements and that this agreement supersedes the cancelled agreements.

Article XII containing various miscellaneous provisions in part provides:

"In the event the factors used in the formulae in Article V involve rates charged subject to any refunds ordered by any regulatory body having jurisdiction, appropriate credits to reflect any such refunds shall be made."

In the construction of its pipeline from North Coles Levee and Cuyama Valley to Edison's Mandalay Steam Station, it was necessary for Richfield to obtain a Special Use Permit from the Forest Service of the United States Department of Agriculture in order to lay its pipeline across the Los Padres National Forest. The permit was accepted by Richfield on April 10, 1959, and was issued by the Forest Service on April 14, 1959. Richfield later will be required to obtain a permanent right of way from the United States Department of the Interior.

Condition 18 of the Special Use Permit of the Forest Service reads as follows:

> "18. The applicant agrees to operate the pipeline during the period of this permit as a common carrier to the extent required as to rights-of-way by the provisions of the Mineral Leasing Act, and, within 30 days after the request of the Secretary of the Interior, or his delegate, as to rights-of-way, to file rate schedule and tariff for the transportation of oil or gas, as the case may be, as such common carrier with any regulatory agency having jurisdiction over such transportation, as the Secretary or his delegate may prescribe."

The provisions of the Mineral Leasing Act referred to in the above condition are set forth in 30 U.S.C. Sec. 185. The applicable portions of Sec. 185 read as follows:

> "Rights-of-way through the public lands, including the forest reserves of the United States, may be granted by the Secretary of the Interior for pipeline purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in Section 181 of this title, to the extent of the ground occupied by the said pipeline and twenty-five feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by the Secretary of

> the Interior and upon the express condition that such pipelines shall be constructed, operated, and maintained as common carriers and shall accept, convey, transport, or purchase without discrimination, oil or natural gas produced from Government lands in the vicinity of the pipeline in such proportionate amounts as the Secretary of the Interior may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine to be reasonable: Provided, that the common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality: ... Failure to comply with the provisions of this section or the regulations and conditions prescribed by the Secretary of the Interior shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located in an appropriate proceeding."

The briefs of the parties hereto fully discuss the possible interpretations which may be given to the quoted Condition 18 in the special use permit and Section 185 of the Mineral Leasing Act and the effect the acceptance of the special use permit by Richfield has on its status as a public utility. The Commission finds and concludes that the acceptance of the special use permit by Richfield constitutes compelling evidence of dedication of its facilities to a public use.

B. Economic Impact on Southern Counties Gas of Proposed Sale of Gas by Richfield to Edison.

Southern Counties Gas introduced Exhibits Nos. 6267-12, -12A, -12B and -12C to show the economic impact on its operations resulting from the loss of sales to Edison's Mandalay station. Based on Richfield delivery rates ranging from 20 to 100 MMcf per day, Exhibits 6267-12A and -12B show that the loss in gross annual revenue resulting from the loss of sales to the Mandalay station would range from $2,474,700 to $12,373,500. Exhibit 6267-12A which is based on

the assumption that the Southern Counties Gas would cut back on its purchases of the less expensive El Paso Natural Gas Company gas because of the flexibility of the contract between Southern Counties Gas and El Paso shows that the added gross annual revenue required from other classes of service to compensate for the loss of sales to Mandalay station would range from $803,600 to $3,471,700. Exhibit No. 6267-12B is based on the assumption that Southern Counties Gas would cut back on its most expensive gas purchases. This exhibit shows that the ultimate burden upon the other classes of service of Southern Counties Gas Company would range from $690,300 to $3,241,400 annual increase in gross revenue requirements.

In order to refute the above estimates, Richfield and Edison referred to Exhibit No. 6267-22 which is a Cost-of-Service Study of Southern Counties Gas Company for the Estimated Test Year Ending July 31, 1960, Adjusted, which was prepared by a consulting engineer and introduced into evidence by Southern Counties Gas in connection with its Application No. 40958 before this Commission. A Southern Counties Gas witness testified that an analysis of this exhibit shows that for the test year Southern Counties Gas would be $130,000 better off by not serving the Edison Mandalay station during the test year. According to Table 1 of Exhibit No. 6267-22, however, the Mandalay correction resulted in an increase in the return for the test year of $59,000. Exhibit No. 6267-22 cannot be relied upon to determine the economic impact of the loss of the Mandalay sales, because (1) the basic conditions and allocation ratios change from year to year with relative growth of classes of gas loads; and (2) a test year ending July 31, 1960, is not indicative of the economic impact over

the life of a 25-year contract which provides for sales ranging from 20 MMcf during the first years to 100 MMcf during the later years.

Richfield's exhibits pertaining to economic impact are subject to the infirmity of being based on a mixing of allocated costs and system average costs.

We conclude from the evidence that the loss of the Edison Mandalay Steam Station to Richfield will have an adverse effect upon Southern Counties Gas Company's gross revenue, the average cost of its utility gas supply, and its net earnings, and that the resulting economic impact upon the other classes of service of Southern Counties Gas will be substantial.

C. Possible Alternate Use of Richfield's Pipeline.

The testimony of a vice president of Richfield shows that if Richfield, for any reason, be prevented from selling gas to Edison it will still complete the pipeline for use in transporting its oil to its Watson refinery.

The vice president and general manager of Alex Robertson Company, contractor for the construction of the Richfield pipeline through which Edison is proposed to be served, testified that it would cost about $290,000 to stop work on the pipeline, put the job in a safe condition and move the men and equipment off the job, and then at some later time, such as 60 to 90 days later, to reemploy and reassemble the crews, move the equipment back onto the job and start the work again.

This witness testified that it would cost about $200,000 to leave the job permanently and not return. These costs would be offset, however, by the move-off costs which would necessarily be incurred on the normal termination of the job.

The Richfield pipeline was 55 per cent complete on May 22, 1959, and the contract completion date is July 15, 1959. A witness for Richfield testified that its pipeline would be completed by June 15, 1959. Another witness testified that the extra costs to be incurred from stopping work on the pipeline would decrease as the work neared completion.

D. Sales of Gas by Richfield to Pacific Lighting Gas Supply Company.

On April 1, 1955, Richfield entered into an agreement with Pacific Lighting Gas Supply Company, hereinafter called Pacific Lighting Gas, running for a term of five years. The agreement provides for the delivery of (1) basic gas; (2) emergency gas; and (3) exchange gas, as defined in the agreement by Richfield to Pacific Lighting Gas.

"Basic gas" refers to gas produced by Richfield from wells which Richfield owns or in which it owns a leasehold interest in the following oil fields: Rincon, Ojai, Timber Canyon, Castiac Hills, East Los Angeles, North Belridge, Midway Sunset, Lost Hills and Tejon Ranch. If Richfield discovers a new oil or gas field, or subsequently acquires an interest in any producing field in the geographical areas within the State of California wherein Pacific Lighting is certificated to operate as a public utility, Richfield may add such field to the fields producing basic gas. If Richfield connects any of the fields producing basic gas to its own pipeline facilities, Richfield may withdraw such field from the fields producing basic gas.

"Emergency gas" is that gas which during the winter period Richfield is obligated to deliver to Pacific Lighting Gas at Pacific Lighting Gas' request from the North and South Coles Levee, Paloma,

Wheeler Ridge, South Cuyama and Russell Ranch Fields. The agreement provides that Pacific Lighting Gas' right to purchase emergency gas shall be nonexclusive.

"Exchange gas" is the gas which Pacific Lighting Gas or its nominee delivers to Richfield. The quantity of such gas is to be equivalent to certain quantities of basic gas theretofore delivered by Richfield to Pacific Lighting Gas, and the delivery of such exchange gas is to be by substitution.

All basic gas not needed for producing operations or injection in the basic gas fields may be delivered by Richfield to Pacific Lighting Gas. Pacific Lighting Gas agrees that it will accept delivery of the first 5 billion cubic feet of said basic gas during any 12-month period ending October 31 for exchange. Pacific Lighting Gas is not obligated to accept in excess of 25 million cubic feet in any single 24-hour period.

The following additional conditions apply to Pacific Lighting Gas' obligation to effect exchange of basic gas:

1. Pacific Lighting Gas' obligation to perform is limited to the excess capacity of its existing pipelines.

2. During the winter period Pacific Lighting Gas may curtail the delivery of exchange gas to Richfield when Pacific Lighting Gas requires basic gas for other purposes. The amount of the exchange delivery so curtailed shall be returned by Pacific Lighting Gas to Richfield prior to the beginning of the next succeeding winter period.

3. Pacific Lighting Gas shall deliver exchange gas to Richfield only through existing connections along the pipeline systems of Pacific Lighting Gas and its affiliates.

4. Pacific Lighting Gas does not undertake to deliver to Richfield at any point where exchange of gas is effected, any of the identical gas delivered to Pacific Lighting Gas by Richfield.

Richfield agrees to pay Pacific Lighting Gas 4 cents per thousand cubic feet for exchange gas received by Richfield and used by it in its refinery operations or in its gas injection and repressuring operations and a fee of 7 cents per thousand cubic feet for exchange gas received by Richfield and used by it in any of its operations other than refinery operations. On each monthly written statement rendered by Pacific Lighting Gas to Richfield, Pacific Lighting Gas specifies the quantity of emergency gas which Pacific Lighting Gas may accumulate in its election to purchase. Regardless of whether the emergency gas is purchased the foregoing fees are reduced by an amount specified in the agreement.

Under Section V of the contract Richfield may, from time to time, offer to sell basic gas to Pacific Lighting Gas in lieu of delivering said gas to Pacific Lighting Gas for exchange gas and Pacific Lighting Gas may elect to purchase such basic gas at certain stated prices. Richfield may also, from time to time, offer gas from emergency gas fields to Pacific Lighting Gas at times when emergency gas is not requested by Pacific Lighting Gas for delivery as emergency gas. Pacific Lighting Gas agrees to accept the emergency gas so offered and to purchase the same at basic gas prices or to deliver an equivalent amount of gas to Richfield by substitution. There is no evidence in the record that any sales of basic gas or emergency gas have been made pursuant to the provisions stated in this section of the agreement.

According to the record, under the above referred to agreement Pacific Lighting Gas has the right to purchase from Richfield during the succeeding winter only an amount of emergency gas equal to the amount of exchange gas delivered by Pacific Lighting Gas to

Richfield during the preceding year. Any unused portion of the right to purchase emergency gas may not be carried over to a later winter. This right to purchase emergency gas has been exercised by Pacific Lighting Gas during the winters 1955-56 and 1957-58.

When asked whether Richfield would be willing to renegotiate a contract with Pacific Lighting Gas similar to the one above described which expires in 1960, a vice president of Richfield testified:

> "A. I don't think we can negotiate an extension of this contract here, but certainly we are still in (the) business of selling gas and we are still holding our facilities and reserves in readiness to serve the utility companies if they need it for their firm customers."

Pacific Lighting Gas buys gas and resells it to gas distributing companies but does not offer service or deliver gas to consumers itself.

E. Sales of Gas by Richfield to Pacific Gas and Electric Company.

The record shows Richfield has made two small sales of gas in the Sacramento Valley to the Pacific Gas and Electric Company, and that there are no restrictions as to the use of that gas by the Pacific Gas and Electric Company. No copies of contracts with the Pacific Gas and Electric Company were introduced into evidence. A vice president of Richfield, however, testified:

> "A. We have in negotiation, in fact it is very closely in shape to execute, a contract with the Pacific Gas and Electric Company to furnish them peaking service similar to the service we have offered Pacific Lighting Corporation /Pacific Lighting Gas Supply Company_7."

F. Richfield's Dedication of Gas Reserves to the Public.

A vice president of Richfield testified regarding the general policy of Richfield respecting the sale of gas as follows:

"I think numerous people in the gas company are well aware of our policy, but perhaps everyone here is not.

"Number one, the first call on our gas is and always will be pressure maintenance in our oil fields. It varies in different fields and in different pools, but for every three to six thousand M cubic feet of gas which we inject in our oil fields, we recover an additional barrel of oil which would not otherwise be recovered. Simple arithmetic will show you that gas is worth for injection purposes, worth to us somewhere between fifty cents and a dollar a barrel--a dollar a thousand cubic feet.

"We submit that that is the highest use that gas can be devoted to and it is more important to the State of California that we realize the maximum recovery from our reserves than it is to sell gas for any other purpose. It makes more income for the State, it makes more jobs, it makes more taxes, it makes more everything that helps California, than anything else that we could do with our gas.

"Number two, we have for many years refrained from making any long-term contracts for the sale of gas on a day-to-day basis.

"However, we did not concurrently refrain from selling emergency gas or contracting to sell emergency gas. We felt that the company should not and could not refuse to make its facilities and its reserves available to the utility companies if the gas were required for the firm customers of the utility companies.

"We maintained that policy in the face of an extremely unsatisfactory price for such peaking service. We gave it to them at virtually border price.

"Recently we have added very substantially to our reserves, I say, in the last year or two, we have finally reached a point where we are willing to sell a limited amount of gas on a day-to-day basis.

"The Edison Company approached us and offered a better price than either of the large purchasing utilities were willing to offer. So we took it.

"Bear in mind, now, that the commitment to Edison is for 500 million M cubic feet over 25 years. At that rate of depletion, 75 years would be required to deplete our present reserves.

"We want to sell it faster than that. We think that the second highest use for our gas in California is to meet the peak requirements of the utility companies and we are still in business, we are still prepared to render that sort of service.

"....

"I think I stated that /Richfield's intention not to sell gas to any industrial firm other than Edison_/ pretty clearly in outlining our policy with respect to the sale of gas. Our commitment to Edison encompasses all the gas that we wish to sell at this time, except for peaking purposes.

"Now, you realize that gas for peaking purposes normally does not involve large volumes but it does involve very high rates, so we feel that we can maintain an exception of peaking gas from the general statement that we have sold all the gas to Edison Company that we wish to sell at this moment."

In outlining the onerous conditions, so far as Richfield is concerned, in the proposed contract of January 22, 1958, which is in the form of a letter to Southern California and Southern Counties Gas Companies from the Southern California Edison Company and Edison Securities Company, the vice president of Richfield testified:

"Well, this excess gas provision I objected to violently but perhaps, all things considered, we might finally have accepted it so I won't go into it. It provided that if we delivered over 400 billion cubic feet that the gas company had the right to buy some portion of that gas and if we delivered over 800 billion cubic feet they have the option to purchase additional quantity of that gas.

"Now, I let that go in, into the final draft but was advised by someone else the last day before we considered signing it that that might constitute a dedication of our reserves at that point to the Pacific Lighting Corporation which, as I stated earlier, we have never done and do not propose to do except for peaking purposes."

G. Richfield's Refusal to Sell Gas to Others.

The record shows that Richfield has refused to sell gas to others than Pacific Lighting Gas, Pacific Gas and Electric Company, and Edison. The following testimony of one of Richfield's vice presidents appears in the transcript:

> "Q. Yes, now do you have any other negotiations pending for the sale of gas to any other persons, firm or corporation?
>
> "A. No, the only dealings we have in negotiation or which we would consider at this point or which we have executed are the Edison deal, the proposed Pacific Gas and Electric Company deal and the deal with Pacific Lighting which is presently in effect.
>
> "Q. Which is current?
>
> "A. We have no other plans.
>
> "Q. And do you have any policy as to whether you would or would not entertain negotiations for any other sale of gas?
>
> "A. At this time we would not. In fact as I testified this morning, we have refused half a dozen industrial users."

V. Constitutional and Statutory Provisions Pertaining to Public Utility Gas Corporations.

The following sections of the California Constitution and of the California Public Utilities Code pertain to the operations and practices of public utility gas corporations and will be considered by this Commission in determining the issues involved in these proceedings:

A. Constitutional Provision:

> "Article XII.
> Sec. 23. Every private corporation, owning, operating, managing, or controlling any ... pipe line, plant, or equipment, or any part

of such ... pipe line, plant or equipment within this State, for the transportation or conveyance of ... freight of any kind, ... or for the production, generation, transmission, delivery or furnishing of heat, light, water or power ..., either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the Legislature, and every class of private corporations, ... hereafter declared by the Legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution. ..."

B. Statutory Provisions:

"207. 'Public or any portion thereof' means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the State, for which the service is performed or to which the commodity is delivered."

"216.(a) 'Public utility' includes every ... gas corporation, ... where the service is performed for or the commodity delivered to the public or any portion thereof.

" (b) Whenever any ... gas corporation ... performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such ... gas corporation ... is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

"(c) When any person or corporation performs any service or delivers any commodity to any person, private corporation, municipality or other political subdivision of the State, which in turn either directly or indirectly, mediately or immediately, performs such service or delivers such commodity to or for the public or some portion thereof, such person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

"221. 'Gas plant' includes all real estate, fixtures, and personal property, owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

"222. 'Gas corporation' includes every corporation or person owning, controlling, operating, or managing any gas plant for compensation within this State, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

"704. Except as otherwise provided in this section, no foreign corporation, other than those which by compliance with the laws of this State are entitled to transact a public utility business within this State, shall henceforth transact within this State any public utility business, nor shall any foreign corporation which is at present lawfully transacting business within this State henceforth transact within this State any public utility business of a character different from that which it is at present authorized by its charter or articles of incorporation to transact. No license, permit, or franchise to own, control, operate, or manage any public utility business or any part or incident thereof shall be henceforth granted or transferred, directly or indirectly, to any foreign corporation which is not at present lawfully transacting within this State a public utility business of like character.

"Foreign corporations engaging in commerce with foreign nations or commerce among the several states may transact within this State such commerce and intrastate commerce of a like character; provided, however, that no such foreign corporation shall be permitted to engage in intrastate commerce within this State until it shall have first complied with the laws of this State respecting foreign corporations....

"767. Whenever the commission, after a hearing had upon its own motion or upon complaint of a public utility affected, finds that public convenience and necessity require the use by one public utility of all or any part of the ... pipes, or other equipment, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such property or equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation therefor, the commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use is directed, the public utility to whom the use is permitted shall be liable to the owner or other users for such damage as may result therefrom to the property of the owner or other users thereof, and the commission may ascertain and direct the payment, prior to such use, of fair and just compensation for damage suffered, if any.

"1001. No ... gas corporation ... shall begin the construction of a ... line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

"This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its street railroad, or line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If any public utility, in constructing or extending its line, plant, or system, interferes or is about to interfere with the operation of the line, plant, or system of any other public utility, already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable.

"1002. No public utility of a class specified in Section 1001 shall henceforth exercise any right or privilege under any franchise or permit hereafter

granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege. This section shall not validate any right or privilege now invalid or hereafter becoming invalid under any law of this State.

"1006. When a complaint has been filed with the commission alleging that a public utility of the class specified in Section 1001 is engaged or is about to engage in construction work without having secured from the commission a certificate of public convenience and necessity as required by this article, the commission may, with or without notice, make its order requiring the public utility complained of to cease and desist from such construction until the commission makes and files its decision on the complaint or until the further order of the commission."

VI. Right of Foreign Corporation to Urge that It Cannot Operate as a Public Utility in California.

As stated in the opening post-oral argument brief of Southern Counties Gas Company, notwithstanding the provisions of Section 704 of the Public Utilities Code, a foreign corporation which operates as a public utility in this State becomes subject to the regulatory jurisdiction of this Commission. This Commission can direct it to cease and desist its operations as a public utility, Albert Bros. Milling Co., 31 CRC 851, 852 (1928). The Commission can direct it to file its rates, Babcock v. Don Lugo Corp., 45 CRC 699, 701 (1945). A foreign corporation cannot avail itself of such corporate incapacity, as such objection lies alone with the people of the State of California, Webster Mfg. Co. v. Byrnes, 207 Cal. 630, 640 (1929).

VII. Positions of Certain Intervenors and Interested Parties.

The City of Los Angeles took the position that the Commission should exercise statutory control over the transportation, distribution and pricing of natural gas in California, wherever it has jurisdiction, and expressed the views that grants of jurisdiction to the Commission in this area should be liberally construed; that where a gas corporation is certificated within a marketing area, another should not be permitted to enter unless a clear showing is made that adequate service otherwise would not and could not be obtained; and that national policy may limit or restrain direct deliveries of natural gas for steam boiler fuel.

Unless sound principles are maintained in the certification process the City of Los Angeles visualizes that the following things would happen:

(a) Duplicating gas facilities would be constructed, some of them for nonregulated industrial purchasers, and high load factor advantages would be lost. Many of these would not only impair the efficient use of the streets and highways, adversely affect property values and waste land uses, but it would inevitably multiply the costs which finally must be paid by both gas and electric customers and by the economy otherwise.

(b) There might be unwarranted increases in the cost of gas, to the utlimate detriment not only of firm gas customers, but all other gas customers and, finally, of electric power customers.

(c) Basically, the existing facilities for the transportation, storage and distribution of natural gas largely have been developed for the firm customers. Were it not for the investments the firm customers have made, it would be doubtful that gas steam boiler and similar uses would be enjoying the facilities which presently are available to them.

(d) It would be most unfair if the interests of the firm customers were now to be thwarted by the diversion of natural gas to unregulated channels.

The San Diego Gas & Electric Company took the position that invasion of a certificated territory will result in a detriment to the consuming public; that increased costs have been demonstrated in the evidence which will result from the duplication of these facilities; that the Commission should maintain the integrity of the Southern Counties Gas Company's certificate of public convenience and necessity in the area where the Mandalay station is located; that to provide the consuming public which is often powerless to take its business elsewhere, with satisfactory service at reasonable prices entails regulation and elimination of duplication and wasteful competition; that this proposal will not only increase the cost of gas for the consuming gas public, but it will increase the cost for the electric customers because Edison is paying a high premium of three to four cents per Mcf for an entire year just for the privilege of getting uninterruptible gas which saves interruption just a few days a year; and that it is questionable if a large electric utility should compete with a gas utility to bring gas in from the field to meet the air pollution problem when it best can be done on an integrated gas program.

Counsel for the San Diego Gas & Electric Company stated that counsel for the City of San Diego is in general accord with the position above stated.

The California Farm Bureau Federation was anxious to see that the customers of the electric company receive service at as low a cost as possible but where a customer requires fuel service within an area, it stated, sound regulatory practice requires that the customer take service from the certificated supplier. It stated the opinion that future problems will be minimized if the direct approach

of exercising control and jurisdiction over the proffered service by Richfield is adopted; that a flanking approach, that is, exercising control only of Edison's purchase arrangements and agreement will involve this Commission in interminable hearings on every and all purchase contracts and eventually usurp the prerogatives of utility management; and that the Commission has the necessary authority and power to effect such a solution to this problem.

VIII. Findings and Conclusions.

All pending motions that evidence be stricken from the record are hereby denied.

Upon careful consideration of the entire record in these proceedings, the Commission finds and concludes as follows:

1. Richfield Oil Corporation, in respect to its gas operations, is a gas corporation which owns, controls, operates, and manages a gas plant for compensation within this State.

2. Richfield Oil Corporation, in respect to its gas operations, is a public utility gas corporation subject to the jurisdiction of this Commission (1) which has dedicated gas reserves in this State over and above the requirements of gas for its own use and gas facilities in this State to the public and (2) which has performed and is performing service and has delivered and is delivering gas to private corporations which in turn either directly or indirectly, mediately or immediately, perform such service and deliver such gas to the public.

3. Richfield Oil Corporation is not acting as the agent for and is not the alter ego of Southern California Edison Company in the construction of natural gas transmission facilities to the Mandalay generation station of Southern California Edison Company.

4. Richfield Oil Corporation as a public utility gas corporation has begun the construction of a gas pipeline extending into territory not contiguous to nor within territory already served by it without first having obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction.

5. Richfield Oil Corporation has obtained a Special Use Permit from the Forest Service of the United States Department of Agriculture, Exhibit No. 1, Case No. 6225, for the purpose of installing, operating and maintaining approximately 21 miles of 20-inch gas transmission pipeline and appurtenances thereto which pipeline is proposed to be used in connection with the sale and delivery of gas by the Richfield Oil Corporation to Southern California Edison Company for use as fuel at its Mandalay Steam-Electric Generating Plant. Richfield Oil Corporation has not applied for nor received from this Commission a certificate of public convenience and necessity authorizing it to exercise the rights and privileges under said permit as required by Public Utilities Code Section 1002.

6. Southern Counties Gas Company has on file with this Commission an interruptible Schedule G-54 for gas service to the public utility steam-electric plants and a firm industrial Schedule G-40 for gas service to large industrial customers but no schedule that is reasonably designed for semifirm gas service to public utility steam-electric plants.

7. Southern Counties Gas Company has the facilities and is willing to construct the necessary additional facilities to serve the Mandalay plant of Southern California Edison Company on an interruptible basis under Schedule G-54, but no showing has been made that

Southern Counties Gas Company has the facilities or is willing to provide the facilities reasonably necessary to serve such plant on a semifirm basis.

8. In view of (1) the possible alternate use to transport oil of the pipeline which is being constructed by Richfield Oil Corporation at this time to serve the Mandalay steam plant of Southern California Edison Company; (2) the fact that the contract completion date of said pipeline is July 15, 1959, and that there is evidence in the record that the work on the pipeline was to be completed June 15, 1959; and (3) the absence of any evidence that Southern Counties Gas Company of California is willing and able reasonably to serve the Mandalay steam plant of Southern California Edison Company on a semifirm basis as appropriately may be required by Southern California Edison Company, (a) the Commission will not at this time issue an interim order directing the Richfield Oil Corporation to cease and desist from the construction, maintenance and operation of said pipeline, (b) the Commission will not at this time issue an interim order directing Richfield Oil Corporation to cease and desist from exercising the rights and privileges under the Special Use Permit from the Forest Service of the United States Department of Agriculture, and (c) the Commission will not at this time issue an interim order directing Southern California Edison Company to cease and desist from proceeding with the arrangement with Richfield Oil Corporation whereby Richfield Oil Corporation proposes to deliver gas to Southern California Edison Company at its Mandalay Steam-Electric Generating Station.

9. Richfield Oil Corporation should be required to file with this Commission copies of complete tariff schedules applicable to its public utility gas sales and service.

10. In view of the fact that the contract between Richfield Oil Corporation and Southern California Edison Company contains escalator clauses and in view of the fact that the Commission under the law regularly authorizes only such rates and charges as are based on prudently incurred costs, both Richfield Oil Corporation and Southern California Edison Company should be prepared to substantiate as just and reasonable the prices for gas which Richfield Oil Corporation proposes to charge Southern California Edison Company.

The Commission is hereby directing all parties' attention to the fact that this Commission has opposed automatic escalator provisions and has required utilities under its jurisdiction to predicate rates on prudently incurred costs. The use of escalator devices gives cause for grave concern. Such devices in the United States bring about concerted price changes all of which are without reference to actual costs.

This Commission has opposed price increases based upon contract provisions alone without supporting costs before the Federal Power Commission. This Commission, as well, has the duty to safeguard consumer interests from such arbitrary, artificially predicated rate increases within California.

11. In the event Richfield Oil Corporation delivers and sells gas to Southern California Edison Company prior to obtaining authorization from this Commission, (1) Richfield Oil Corporation should be required to maintain records showing the charges for and volume of such sales and file monthly reports containing such information with this Commission and (2) Southern California Edison Company likewise should be required to maintain records showing the

amounts paid for and volume received through its purchases of gas from Richfield Oil Corporation and file monthly reports containing such information with this Commission.

All parties hereto are hereby placed on notice that (1) Richfield Oil Corporation will be required to refund to Southern California Edison Company any portion of the charges for such gas as may be found by this Commission not to be just and reasonable, and (2) Southern California Edison Company will be required to exclude from its costs for purposes of justifying the reasonableness of its own rates any portion of the charges for such gas as may be found by this Commission not to be just and reasonable.

12. The Commission should institute an order of investigation for the purpose of determining whether Southern Counties Gas Company of California and Southern California Gas Company should be directed to file a tariff schedule offering semifirm gas service at just and reasonable rates to large steam-electric generating plant customers for boiler fuel use.

13. The Commission should institute an order of investigation for the purpose of determining (1) whether it should issue to Richfield Oil Corporation: (a) a certificate of public convenience and necessity to operate and maintain the gas pipeline and facilities necessary to serve gas to Southern California Edison Company at its Mandalay steam plant for boiler fuel use, and (b) a certificate of public convenience and necessity to exercise the rights and privileges under the Special Use Permit from the Forest Service of the United States Department of Agriculture; and (2) whether public convenience and necessity require: (a) the use by Richfield Oil Corporation of any part of the gas pipelines and other gas facilities of Pacific

Lighting Gas Supply Company, Southern California Gas Company and/or Southern Counties Gas Company of California, and (b) the use by Pacific Lighting Gas Supply Company, Southern California Gas Company, and/or Southern Counties Gas Company of California of any part of the gas pipelines and other gas facilities of Richfield Oil Corporation.

14. The two Commission investigations referred to in paragraphs 12 and 13 above and Application No. 40288 of Southern California Gas Company and Southern Counties Gas Company of California should be consolidated for hearing or further hearing, as the case may be, with Case No. 6225, Case No. 6245 Case No. 6267 and Application No. 39250.

15. Nothing in this decision should be construed as foreclosing further negotiations among Southern California Edison Company, Richfield Oil Corporation and the Pacific Lighting Group of gas companies (Pacific Lighting Gas Supply Company, Southern California Gas Company and Southern Counties Gas Company of California) to develop mutually satisfactory arrangements for providing gas to Southern California Edison Company for use as boiler fuel in its steam-generating plants. It is unquestionably in the public interest to have gas and other fuel supply arrangements which will adequately meet the requirements of the gas and electric customers in the most economical manner possible.

INTERIM ORDER

The above matters having been filed, public hearing having been held thereon, and the Commission being fully advised in the premises,

IT IS ORDERED that:

1. Within six months after the effective date of this order, Richfield Oil Corporation, in conformance with General Order No. 96, shall file with this Commission four copies of complete tariff schedules applicable to its public utility gas sales and service. Said tariff rates may be suspended for the period specified by law until such time as upon reasonable notice this Commission may enter upon a hearing concerning the lawfulness of said tariff rates as filed to determine whether or not charges thereunder are just and reasonable.

2. In the event Richfield Oil Corporation delivers and sells gas to Southern California Edison Company prior to obtaining authorization from this Commission, (1) Richfield Oil Corporation shall maintain records showing the charges for and volume of such sales and on or before the last day of the succeeding calendar month shall file with this Commission a report showing such information with respect to such sales during the preceding calendar month, and (2) Southern California Edison Company shall maintain records showing the amounts paid for and volumes received through its purchases of gas from Richfield Oil Corporation and on or before the last day of the succeeding calendar month shall file with this Commission a report showing such information with respect to such purchases during the preceding calendar month.

Such records are to be maintained in order to enable this Commission subsequently to determine (1) the amount of refunds, if any, which Richfield Oil Corporation will be required to make to Southern California Edison Company and (2) the amount of costs, if any, to be excluded in arriving at prudent costs to be used in

determing the reasonableness of Southern California Edison Company's own rates for electric service.

3. Concurrently with the issuance of this interim decision, the Commission is instituting investigations in accordance with the findings and conclusions stated in paragraphs numbered 12 and 13 under the heading "VIII. Findings and Conclusions." in the interim opinion hereof. Said Commission Investigations, Case No. 6329 and Case No. 6330, are hereby consolidated for hearing with Cases Nos. 6225, 6245, and 6267 and Applications Nos. 39250 and 40288.

Such consolidated hearing shall be held before Commissioner Dooley and Examiners Cline and Edwards, or such other hearing officers as may hereafter be designated, at 10 o'clock a.m. on ~~Thursday~~ Friday, the ~~24th~~ 25th day of September, 1959 in the Commission courtroom, Mirror Building, 145 South Spring Street, Los Angeles, California.

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

The Secretary is directed to cause certified copies of this order promptly to be served upon Richfield Oil Corporation, Southern California Edison Company, Pacific Lighting Gas Supply Company, Southern California Gas Company, and Southern Counties Gas Company of California and to cause copies to be mailed promptly to the other parties in each of the proceedings herein and to the other parties in Application No. 40288.

Dated at San Francisco, California, this 4th day of August, 1959.

Everett A. Craig
President

Matthew Dooley

C. Lynn Fox

Commissioners

I dissent and will write a dissenting opinion later

Theodore H. Jenner
Commissioner

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

LIST OF APPEARANCES

Reginald L. Vaughan, William P. Gray, Joseph R. Rensch, Prentiss Moore, Milford Springer and Robert M. Olson, Jr., for Southern Counties Gas Company of California, complainant in Case Nos. 6225 and 6245; intervenor in Case No. 6267; and protestant in Application No. 39250.

Rollin E. Woodbury, C. Robert Simpson, and Bruce Renwick by Rollin E. Woodbury and C. Robert Simpson, and Harry W. Sturges, Jr., by Rollin E. Woodbury, for Southern California Edison Company, defendant in Case No. 6245; respondent in Case No. 6267; applicant in Application No. 39250; and interested party in Case No. 6225.

Ball, Hunt & Hart by Joseph A. Ball and Clark Heggeness, for Richfield Oil Corporation, defendant in Case No. 6225; respondent in Case No. 6267; and interested party in Case No. 6245 and Application No. 39250.

Reginald L. Vaughan, Oscar C. Sattinger and J. R. Elliott, for Pacific Lighting Gas Supply Company, interested party in Case Nos. 6225, 6245 and 6267, and protestant in Application No. 39250.

Reginald L. Vaughan, Herman F. Selvin, T. J. Reynolds, L. T. Rice and H. P. Letton, Jr., for Southern California Gas Company, interested party in Case Nos. 6225, 6245 and 6267; and protestant in Application No. 39250.

Chickering and Gregory by Sherman Chickering and C. Hayden Ames, and H. G. Dillin, for San Diego Gas and Electric Company, intervenor in Case Nos. 6225, 6245 and 6267; and protestant in Application No. 39250.

Brobeck, Phleger & Harrison by George D. Rives and Gordon E. Davis, for California Manufacturers Association, intervenor in Case Nos. 6225, 6245 and 6267; and interested party in Application No. 39250.

Roger Arnebergh, City Attorney, and Alan G. Campbell, Assistant City Attorney, by Alan G. Campbell, and T. M. Chubb, General Manager and Chief Engineer, Department of Public Utilities and Transportation, by Alan G. Campbell and M. Kroman, for the City of Los Angeles, interested party in Case Nos. 6225, 6245 and 6267; and protestant in Application No. 39250.

Henry E. Jordan, Chief Engineer-Secretary, Bureau of Franchises & Public Utilities, and Wahlfred Jacobsen, City Attorney, by Leslie E. Still, Deputy City Attorney, for the City of Long Beach; J. F. DuPaul, City Attorney, by Frederick B. Holoboff, Deputy City Attorney, for City of San Diego; William L. Knecht, Bert Buzzini and J. J. Deuel by Bert Buzzini, for California Farm Bureau Federation, interested parties in Case Nos. 6225, 6245 and 6267 and Application No. 39250.

LIST OF APPEARANCES--Contd.

W. D. MacKay, for Challenge Cream and Butter Association: W. W. Miller, Willis T. Johnson and Donald J. Carman, for California Electric Power Company, interested parties in Case No. 6225 and Application No. 39250.

Philip T. Shacknove and W. H. Daum, Jr., for Brentwood Civic League, protestant in Application No. 39250.

Norman T. Elliott, Joseph T. Enright and Waldo A. Gillette, for Monolith Portland Cement Company; John H. Lauten, Assistant City Attorney, for the City of Glendale; Wendell R. Thompson, Assistant City Attorney, and T. M. Goodrich, General Manager of Light and Power Department, for the City of Pasadena; Lynn L. McArthur, for the City of Burbank, Donald T. Ford, Overton Lyman & Prince and John A. Erickson, for Southwestern Portland Cement Company; E. J. Spielman, for Upper Mandeville Canyon Propertyowners Association; F. T. Searls and John C. Morrissey by John C. Morrissey, for Pacific Gas and Electric Company, interested parties in Application No. 39250.

Franklin G. Campbell, H. J. McCarthy and M. J. Kimball, for the Commission staff.

LIST OF WITNESSES

Marion L. Arnold, Manager of Natural Gas Operations of the Richfield Oil Corporation.

James F. Davenport, President of Edison Securities Company and Executive Vice President of Southern California Edison Company.

Cecil L. Dunn, Manager of the Rate Department of Southern Counties Gas Company of California.

W. Warren Gamel, Assistant Chief Accountant for the Production Department of Richfield Oil Corporation.

Robert C. Gentry, Oil and Gas Coordinator, Standard Oil Company of California.

Wallace E. Giles, Certified Public Accountant, Price Waterhouse & Company.

D. E. Kelbey, Vice President and General Manager of Alex Robertson Company.

M. W. Kilbre, Manager of the Gas Department, General Petroleum Corporation.

LIST OF WITNESSES--Contd.

James A. Millen, Vice President of Southern Counties Gas Company of California.

Robert P. O'Brien, Vice President of Southern California Edison Company.

Mervyn W. Phelan, Attorney for the Richfield Oil Corporation.

William H. Seamen, Supervisor of Petroleum Operations, Southern California Edison Company.

Frank N. Seitz, Vice President of Southern Counties Gas Company of California.

Raymond W. Todd, Vice President and Executive Engineer of Pacific Lighting Gas Supply Company.

William J. Travers, Vice President of Richfield Oil Corporation.

K. C. Vaughan, Employee of Union Oil Company.

Jacob N. Wasserman, Attorney at Law, Washington, D. C.

Emmet E. Wolter, Manager of Department of Land Matters, Western Division, Signal Oil and Gas Company.

T. S. Zajac, Manager of the Gas Department, Shell Oil Company.

NB

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, a corporation, Complainant, vs. RICHFIELD OIL CORPORATION, a corporation, et al., Defendants.	Case No. 6225
SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, a corporation, Complainant, vs. SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, et al., Defendants.	Case No. 6245
Investigation on the Commission's own Motion into the Operations and Practices of SOUTHERN CALIFORNIA EDISON COMPANY and RICHFIELD OIL CORPORATION.	Case No. 6267
In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, under Section 1001 of Public Utilities Code, for certificate of public convenience and necessity re construction, maintenance and operation of certain Fuel Gas Facilities.	Application No. 39250

DISSENTING OPINION

I dissent from the major findings, conclusions, and ordering paragraphs of the majority opinion and interim order which find,

or which are predicated upon a finding, that Richfield Oil Corporation, in respect to its gas operations, is a public utility gas corporation subject to the jurisdiction of this Commission.

I specifically dissent from the following findings and conclusions of the majority opinion:

1. Those set forth in the final paragraph of Subdivision A of Section IV thereof, wherein the Commission finds and concludes that the acceptance of the special use permit by Richfield Oil Corporation "constitutes compelling evidence of dedication of its facilities to a public use."

2. Those set forth in paragraph 2 of Section VIII thereof, but only to the extent that the Commission therein finds and concludes that "Richfield Oil Corporation, in respect to its gas operations, is a public utility gas corporation subject to the jurisdiction of this Commission (1) which has dedicated gas reserves in this State over and above the requirements of gas for its own use and gas facilities in this State to the public and (2) which has performed and is performing service and has delivered and is delivering gas to private corporations which in turn either directly or indirectly, mediately or immediately, perform such service and deliver such gas to the public, ..."

3. Those set forth in paragraph 4 of Section VIII thereof, wherein the Commission finds and concludes that "Richfield Oil Corporation as a public utility gas corporation has begun the construction of a gas pipeline extending into territory not contiguous nor within territory already served by it without first having obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction."

4. Those set forth in the final sentence of paragraph 5 of Section VIII thereof, but only to the extent that such findings and conclusions are predicated upon a previous finding and conclusion, or imply, that Richfield Oil Corporation has heretofore acquired such status as would preclude its right to exercise the rights and privileges conferred upon it by the special use permit obtained by it from the Forest Service of the United States Department of Agriculture, unless Richfield Oil Corporation first applied for and received from this Commission a certificate of public convenience and necessity pursuant to the provisions of Section 1002 of the Public Utilities Code.

5. Those set forth in paragraph 8 of Section VIII thereof, but only to the extent that such findings and conclusions are predicated upon a previous finding and conclusion, or imply, that Richfield Oil Corporation, with respect to its gas operations, has heretofore become a public utility gas corporation, or that this Commission, as a consequence of Richfield Oil Corporation's present status with respect to its gas operations, may lawfully issue an order or interim order (a) directing Richfield Oil Corporation to cease and desist from the construction, maintenance, and operation of the pipeline which is being constructed by it to serve the Mandalay steam plant of Southern California Edison Company, or (b) directing Richfield Oil Corporation to cease and desist from exercising the rights and privileges under the special use permit from the Forest Service of the United States Department of Agriculture, or (c) directing the Southern California Edison Company to cease and desist from proceeding with the arrangement with Richfield Oil Corporation whereby Richfield Oil Corporation proposes to deliver gas to Southern California Edison Company at its Mandalay Steam-Electric Generating Station.

6. Those set forth in paragraph 9 of Section VIII thereof, wherein the Commission finds and concludes that "Richfield Oil Corporation should be required to file with this Commission copies of its complete tariff schedules applicable to its public utility gas sales and service."

7. Those set forth in paragraph 10 of Section VIII thereof, but only to the extent that the Commission therein finds and concludes that "... Richfield Oil Corporation ... should be prepared to substantiate as just and reasonable the prices for gas which Richfield Oil Corporation proposes to charge Southern California Edison Company ...".

8. Those set forth in paragraph 11 of Section VIII thereof, but only to the extent (a) that the Commission therein finds and concludes that "In the event Richfield Oil Corporation delivers and sells gas to Southern California Edison Company prior to obtaining authorization from this Commission, ... Richfield Oil Corporation should be required to maintain records showing the charges for and volume of such sales and file monthly reports containing such information with this Commission ...", and (b) to the extent that in the second paragraph of said finding and conclusion number "11", all parties are placed on notice that Richfield Oil Corporation will be required to refund to Southern California Edison Company any portion of the charges for the gas sold by Richfield Oil Corporation to Southern California Edison Company as may be found by this Commission not to be just and reasonable.

9. Those set forth in paragraph 13 of Section VIII thereof, wherein the Commission finds and concludes that the Commission "should institute an order of investigation for the purpose of

determining (1) whether it should issue to Richfield Oil Corporation: (a) a certificate of public convenience and necessity to operate and maintain the gas pipeline and facilities necessary to serve gas to Southern California Edison Company at its Mandalay steam plant for boiler fuel use, and (b) a certificate of public convenience and necessity to exercise the rights and privileges under the Special Use Permit from the Forest Service of the United States Department of Agriculture; and (2) whether public convenience and necessity require: (a) the use by Richfield Oil Corporation of any part of the gas pipelines and other gas facilities of Pacific Lighting Gas Supply Company, Southern California Gas Company and/or Southern Counties Gas Company of California, and (b) the use by Pacific Lighting Gas Supply Company, Southern California Gas Company, and/or Southern Counties Gas Company of California of any part of the gas pipelines and other gas facilities of Richfield Oil Corporation."

10. Those set forth in paragraph 14 of Section VIII thereof, but only to the extent that the Commission therein finds and concludes that the Commission investigation referred to in paragraph 13 of said Section VIII "should be consolidated for hearing or further hearing, as the case may be, with Case No. 6225, Case No. 6245, Case No. 6267 and Application No. 39250.

With respect to the interim order, I specifically dissent from the following ordering paragraphs:

1. Paragraph 1 wherein Richfield Oil Corporation is ordered, within six months after the effective date of the order, to file with the Commission four copies of its complete tariff schedules applicable to its public utility gas sales and service, in conformance with the Commission's General Order No. 96.

2. Paragraph 2, but only to the extent that (a) in the event Richfield Oil Corporation delivers and sells gas to Southern California Edison Company prior to obtaining authorization from this Commission, Richfield Oil Corporation is ordered to maintain records showing the charges for and volume of such sales, and, on or before the last day of the succeeding calendar month, to file with the Commission a report showing such information with respect to such sales during the preceding calendar month, and (b) to the extent that the second paragraph of said Paragraph 2 is predicated upon a previous finding and conclusion, or implies, that Richfield Oil Corporation has heretofore acquired such status as would bring it under the regulatory jurisdiction and authority of this Commission to the extent that the Commission may lawfully order Richfield Oil Corporation to make refunds to Southern California Edison Company pursuant to any sales of gas by Richfield Oil Corporation to said Southern California Edison Company made without authorization of this Commission, to the extent that the Commission may determine such refunds to be due and payable.

3. Paragraph 3, but only to the extent that (a) the Commission is instituting an investigation in accordance with the findings and conclusions stated in paragraph 13 of Section VIII of the majority opinion, and (b) Commission Investigation, Case No. 6330, is consolidated for hearing with Cases Nos. 6225, 6245, and 6267, and Applications Nos. 39250 and 40288.

NATURE OF PROCEEDINGS AND ISSUES INVOLVED

The majority opinion, at pages 1 to 29 thereof, contains a correct and adequate summary of the proceedings, the principal issues thereunder, and the testimony of record on which the majority

based its findings and conclusions. It is therefore unnecessary that these matters be repeated herein except to the extent that may be required to clarify the reasons for this dissent.

Only two of the majority's findings and conclusions require extended comment; for these two constitute the basis on which all the others from which I dissent are predicated; and if these two are shown to be in error, the others must necessarily fall of their own weight. The two are as follows:

1. "That the acceptance of the special use permit by Richfield constitutes compelling evidence of dedication of its facilities to a public use"

   (Maj. opin., p. 21).

2. "That Richfield Oil Corporation, in respect to its gas operations, is a public utility gas corporation subject to the jurisdiction of this Commission (1) which has dedicated gas reserves in this State over and above the requirements of gas for its own use and gas facilities in this State to the public and (2) which has performed and is performing service and has delivered and is delivering gas to private corporations which in turn either directly or indirectly, mediately or immediately, perform such service and deliver such gas to the public."

These major findings and conclusions will be considered separately below.

I. Effect of Acceptance of Special Use Permit

The complaint in Case No. 6225, filed on February 20, 1959, alleged that Richfield Oil Corporation had commenced the construction of a pipeline system for the transmission of gas from the area of the oil and gas fields located at North Coles Levee and Cuyama Valley, in central California, to the Mandalay steam electric generating station of Southern California Edison Company. Said Mandalay station, now under construction, is located at a point in Ventura County, California, approximately 4 miles westerly from the City of Oxnard, California, and lies within the area in which complainant, Southern Counties Gas Company, renders service as a public utility gas corporation.

Defendant Richfield proposes to transmit natural gas which it will produce at North Coles Levee and Cuyama Valley to said Mandalay station, at which point Richfield will deliver, furnish, and sell such gas, for compensation, to Edison. The gas will be used by the latter in said station as boiler fuel to generate electricity for light, heat, or power for sale to and use by the general public.

Complainant, in the above case, requested that an order be issued by the Commission directing defendant Richfield to show cause why it should not be required to obtain from this Commission a certificate of public convenience and necessity prior to the construction, or further construction, of said pipeline, and that an order be issued directing Richfield to show cause why it should not be ordered to cease and desist the construction of said pipeline system unless and until it shall have obtained from this Commission a certificate of public convenience and necessity

authorizing such construction. Defendant Richfield denied that it is a public utility within the jurisdiction of this Commission.

The record covering the subsequent proceedings arising out of this complaint, as well as other matters consolidated therewith, shows that in the construction of said pipeline, it was necessary for Richfield to obtain a Special Use Permit from the Forest Service of the United States Department of Agriculture in order to lay its pipeline across the Los Padres National Forest. The permit was accepted by Richfield on April 10, 1959, and was issued by the Forest Service on April 14, 1959. Richfield later will be required to obtain a permanent right of way from the United States Department of the Interior.

In return for rights of way through Los Padres National Forest Richfield agreed, as provided by paragraph 18 of the permit, to operate the pipeline as a common carrier to the extent required as to rights of way by the provisions of the Mineral Leasing Act, and within 30 days after the request of the Secretary of the Interior as to rights of way, to file rate schedules and tariffs for the transportation of oil or gas, as such common carrier, with any regulatory agency having jurisdiction over such transportation, as the secretary may prescribe.

Complainant argued that Richfield has dedicated its service to the public as a common carrier under the terms of the Mineral Leasing Act; that a common carrier under that act is synonymous with "gas corporation" under Section 222 of the Public Utilities Code. Inherent in this argument, of course, is the assumption that Richfield has acquired a public utility status as defined in Section 216 of the Public Utilities Code, in that it is

performing a service or delivering a commodity to the public or any portion thereof.

Section 207 defines the words "'Public or any portion thereof'" contained in Section 216 to mean "the public generally or any limited portion of the public, including a person, private corporation ... for which the service is performed or to which the commodity is delivered." (Emphasis added.)

If the language of Section 207 is accepted literally, the delivery of gas to Edison by Richfield would, when such service is performed, be public utility service under Section 207. In such case, the provisions of Section 1001, requiring a certificate as a public utility gas corporation before constructing a line would be applicable. However, it is clear from a review of the past decisions of this Commission and of the courts of the State that the language of Section 207 is not to be accepted literally.

The Commission has heretofore construed Section 207 to mean the public generally or any limited portion of the public which can either be served from the facilities of the utility or which might have some requirement for the services of the utility. In the Commission's files are tariff offerings by utilities which may in fact serve only one customer, but the offering is not to one customer alone but to any who may have need for the service. The record shows that Richfield intends to serve only Edison at Mandalay.

It is a well established rule of law that a regulatory commission cannot reach out to regulate, as a public utility, an enterprise which has not dedicated its property to the public service, as the Constitutions of this State and of the United States

guarantee freedom from regulation as a public utility in the absence of such dedication (Frost Trucking Co. v. Railroad Commission, (1926) 271 U.S. 583, 64 L.Ed.239). Our State Supreme Court has refused to ascribe public utility status to any business in the absence of an unequivocal intent to dedicate its property to the public, united with some act of dedication.

Associated Pipeline Co. v. Railroad Comm. (1917), 176 Cal. 518.

Allen v. Railroad Comm. (1918), 179 Cal. 69.

Van Hoosear v. Railroad Comm. (1920), 184 Cal. 553.

Story v. Richardson (1921), 186 Cal. 162.

Klatt v. Railroad Comm. (1923), 192 Cal. 689.

Richardson v. Railroad Comm. (1923), 191 Cal. 716.

Cudahy Packing Co. v. Johnson (1939), 12 Cal. 2d 583.

Ocean Park Amusement Co. v. Santa Monica (1940), 40 Cal. App. 2d 76.

Samuelson v. Public Utilities Comm. (1950) 36 Cal. 2d 722.

Souza v. Public Utilities Comm. (1951), 37 Cal. 2d 539.

Cal. Water & Tel. Co. v. Public Utilities Comm. (1959), 51 Cal. 2d 480.

In Associated Pipe Line Co. v. Railroad Commission (176 Cal. 518), the Supreme Court of California annulled an order of the Commission which sought to regulate a pipeline company as a public utility. The court said (p. 523):

> "Indeed, such legislation if attempted would have been futile, since under the fourteenth amendment of the federal constitution no state shall deprive any person of property without due process of law, and to take or devote private property to public use without compensation is such deprivation. The record discloses no action on the part of either petititoner which constitutes an irrevocable dedication of its property to a public use, ..." (Emphasis added)

This principle was clearly stated in Allen v. Railroad Commission (supra), in which the court said:

> "Our constitution and our statutory definitions above quoted therefore must be construed as applying only to such properties as have in fact been devoted to a public use, and not as an effort to impress with a public use properties which have not been devoted thereto. For if the latter be the true construction of our constitution and statues, then manifestly in their operation they are void wherever they unjustly interfere with private property or private contractual rights by force of article I, section 10, and the fourteenth amendment of the constitution of the United States."

In Producers' Transportation Co. v. R. R. Com. of California, 251 U.S. 228, 64 L.Ed. 239, the United States Supreme Court, in declaring the constitutional limits of the powers of the California Public Utilities Commission, stated:

> "It is, of course, true that if the pipeline was constructed solely to carry oil for particular producers under strictly private contracts, and never was devoted by its owner to public use, that is, to carrying for the public, the state could not, by mere legislative fiat or by any regulating order of a commission, convert it into a public utility or make its owner a common carrier; for that would be taking private property for public use without just compensation, which no state can do consistently with the due process of law clause of the 14th Amendment." (citing cases.)

The intent to dedicate is a question of fact, and each case must be decided on its individual facts.

San Leandro v. Railroad Comm. (1920) 183 Cal. 229.

Mound Water Co. v. Southern Calif. Edison (1921), 184 Cal. 602.

Stratton v. Railroad Comm. (1921), 186 Cal. 119.

McCullogh v. Railroad Comm. (1922), 190 Cal. 13.

Klatt v. Railroad Comm. (1923), 192 Cal. 689.

Richardson v. Railroad Comm. (1923), 191 Cal. 716.

Southern Calif. Edison v. Railroad Comm. (1924), 194 Cal. 757.

Trask v. Moore (1944), 24 Cal. (2d) 373.

The Supreme Court of California has clearly stated that the following features are essential elements of public utility status:

1. An unequivocal dedication of property to the public.

   (See cases cited supra.)

2. An irrevocable dedication of property to the public.

   This means that a public utility cannot withdraw at will from its obligation to serve the public. In Van Hoosear v. Railroad Comm. (1920), 184 Cal. 553, the Court, in holding that a public utility cannot discontinue operations without the consent of the Commission, stated:

   > "... If it were a public utility business, as the Commission found, it would remain so, no matter how the number of consumers dwindled, even if it dwindled to none at all, and being a public utility business, authority to discontinue it could be had only from the Commission, and could not be conferred by the consumers."

3. An absolute duty to give service to the public generally, without discrimination.

   Associated Pipe Line Co. v. Railroad Comm., 176 Cal. 518.

   Story v. Richardson, 186 Cal. 162.

   Service to restricted shippers has been held to be unsufficient to class a company as a California public utility common carrier.

Samuelson v. Public Utilities Comm., 36 Cal. (2d) 722.

Souza v. Public Utilities Comm., 37 Cal. (2d) 539.

In these cases the Supreme Court rejected a test of "substantial restrictiveness" adopted by the Commission and held that the same standard applies to public utility common carriers; i. e., an irrevocable dedication of property to the public as a class.

4. The right of every member of the public to demand service as a legal right.

Story v. Richardson, 186 Cal. 162.

Ocean Park, etc., Corp. v. Santa Monica, 40 Cal. App. (2d) 76.

From this principle, it follows that a public utility is automatically liable for a refusal to render service to a member of the public, upon demand.

Pleasants v. North Beach & Mission Railway Co., 34 Cal. 586.

Tarbel v. Centra Pacific Railway, 34 Cal. 616.

A careful study of the record in this proceeding fails to reveal any evidence of an irrevocable dedication by Richfield of its property to the public, nor of an unequivocal intention by Richfield to make such a dedication. The evidence has merely established the facts admitted by the pleadings and admitted at the hearing on April 28, 1959; viz, that Richfield has contracted to supply Edison's Mandalay Station with specified amounts of natural gas and is constructing a pipeline with its own money to carry out its contract.

Section 18 of Richfield's right of way permit provides:

> "18. The applicant agrees to operate the pipe line during the period of this permit as a common carrier to the extent required as to rights-of-way by the provisions of the Mineral Leasing Act, and, within 30 days after the request of the Secretary of the Interior, or his delegate, as to rights-of-way, to file rate schedule and tariff for the transportation of oil or gas, as the case may be, as such common carrier with any regulatory agency having jurisdiction over such transportation, as the Secretary or his delegate may prescribe." (Emphasis added.)

The provisions of the Mineral Leasing Act referred to in the above condition are set forth in 30 U.S.C. Sec. 185. The applicable portions of Sec. 185 are quoted on pages 20 and 21 of the majority opinion.

Complainant urged that the stipulation entered into with the Department of the Interior constitutes Richfield a public utility common carrier subject to regulation by the Commission. Entirely apart from the dubious constitutionality of the provisions of the Mineral Leasing Act, which, by Congressional fiat, would transform one into a common carrier regardless of the nature of his operations, the question at issue is whether Richfield, by signing the stipulation, became a public utility gas corporation within the meaning of the Public Utilities Code, as heretofore interpreted by this Commission and the Supreme Court.

The case of Associated Pipe Line Company v. Public Utilities Commission, 176 Cal 518, is directly in point. The facts in that case disclosed that Associated constructed a pipeline, the cost of construction being equally divided between Associated and Kern Oil & Trading Company, a subsidiary of Southern Pacific. Each company was entitled to one half of the carrying capacity of the lines. Kern transported its oil and delivered it to Southern Pacific

for the sole use of the latter. Associated produced about 22 per cent of the entire production of oil in the State. It used its one half interest in the pipeline to transport the oil it produced or purchased and transported for delivery to itself at the termini of the pipelines, where it was sold to consumers or reshipped to other points for sale to consumers. The Court stated (p.525):

> "We are unable to perceive anything in the facts established which does not compel the conclusion that petitioners were engaged in a purely private business of transporting oil through these pipe-lines."

On page 529 we find:

> "Under the Public Utilities Act the Railroad Commission, as an instrumentality of the state, is authorized to supervise and regulate every public utility in the state, with power to fix tolls and charges exacted for the service performed; but it has no power to declare what shall constitute a public utility. But this, argues respondent, is a function of the legislature. Not so. The legislature possesses no such power. It cannot by its edict make that a public utility which in fact is not, and take private property for public use by its fiat that the property is being devoted to a public use. If under the broad language used in Section 23, Article XII, of the constitution, that 'every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall ... be subject to ... control and regulation of the Railroad Commission, the legislature can by its mere fiat, without notice or opportunity be heard, and in the absence of any provision for compensating the owner thereof for damage, subject petitioner's pipe-lines to the demands of the public because the private use thereof tends to create a monopoly or enables the owner thereof to secure a monopoly, it can with equal propriety declare a grocer or dry-goods store employing more than a specified number of clerks to be a public utility; or, without such or any qualifications, declare that all pipe-lines used in transporting oil shall be common carriers of oil. Indeed, as to corporations, this is precisely what it has attempted to do by section 2 of the act, which provides that every corporation owning a pipe-line, through and by means

> of which it transports oil, is declared to be a common carrier and subject to the provisions of the Public Utilities Act; the only limitation thereon being, as provided in section 5, that it shall not apply where the nature and extent of the business is such that the public needs no use in the same. That such provisions constitute a taking of private property by the state for public use, without due process of law, which is prohibited by the fourteenth amendment to the federal constitution, must be conceded."

If the legislature of this State possesses no such power, it cannot be said that Congress can confer upon this Commission jurisdiction which the legislature of this State has not conferred, since Article 23 of the Constitution of California confers jurisdiction over public utilities upon this Commission subject to such control and regulation as may be provided by the Legislature.

In the Associated Pipe Line case quoted above, the Court, on page 526, stated:

> "The fact that 'the business is such that the public needs the use in the same, and that the conduct of the same is a matter of consequence,' as found by the commission, is immaterial to the question."

Richfield's stipulation is to act as a common carrier only "to the extent required ... by ... the Mineral Leasing Act." In this connection, it should be observed that the term "common carrier" has no universal meaning and that mere words cannot make a company a public utility. As used in the California Public Utilities Code, the term "common carrier" does not embrace common carriers of natural gas; but a public utility common carrier of natural gas is a public utility gas corporation, within the meaning of Sections 222 of the Code, which defines "gas corporation", and Section 216, which describes the classes of corporations possessing public utility status.

Let us now proceed to determine whether Richfield's obligations under the stipulation are such that in signing such stipulation and proceeding to construct the pipeline, Richfield has acquired public utility status pursuant to the principles set forth in the

cases cited above. To this end, it will suffice to apply any of t the following tests, based on the principles already discussed:

1. Has Richfield evidenced an unequivocal intent to dedicate its property to a public use?

Any potential obligation of Richfield under the stipulation has not matured and may never mature. Richfield has never carried goods for hire through the proposed pipeline and has never, up to the present time, been requested to do so by the Secretary of the Interior.

In this connection, it must be borne in mind that under the provisions of the Mineral Leasing Act (30 U.S.C., Sec. 185) Richfield is obligated to

> "... accept, convey, transport, or purchase without discrimination, oil or natural gas produced from Government lands in the vicinity of the pipeline in such proportionate amounts as the Secretary of the Interior may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine to be reasonable: ..." (Emphasis added)

The Secretary of the Interior may never request Richfield to accept or transport gas under the terms of the stipulation, and may never hold a hearing for such purpose. In Chapman v. El Paso Natural Gas Co., 204 F. 2d 46, the court said:

> "As for Section 28, in the absence of more specific language by Congress, we regard the condition that pipelines be constructed, operated and maintained as 'common carriers' to embrace the common law meaning of the term."

The entire capacity of Richfield's pipeline may be required to serve Edison's Mandalay Station under the contract, and for this reason alone it cannot be known now that the Secretary of the Interior may ever order carriage for others.

Because of the foregoing considerations, it will be seen that the events and conditions which might cause Richfield to be requested to perform common carrier service may never occur.

Regulation can only be based on present, not future, status; and events and conditions which may never occur do not make a company a public utility now.

In Cal. Water & Tel. Co. v. Public Util. Com. 51 Cal.2d 480, 499, the court held that a company was not a public utility as to new territory where there were conditions precedent to its dedication; and this Commission, in a recent decision (Dec. No. 54438, Case No. 5754, 55 P.U.C. 387) held that potential future activity does not bring about a utility status now.

That the mere signing of the stipulation is far from evidence of an unequivocal intent to dedicate property to a public use is supported by Chapman v. El Paso Natural Gas Co., 204 F.2d 46, in which the court pointed out that the common carrier stipulation is vague and that adequacy of compliance is a matter for court decision if the question should ever arise. In this connection, the court said (p.51):

> "As further support to that view, the statute does not purport to express adequate standards for guidance of the Secretary in the complex problems attendant upon such intimate regulation of corporate affairs as the financing, construction, and employment of facilities as is attempted in the contested stipulation. Had Congress desired the Secretary to enter upon such comprehensive supervision of those to whom rights-of-way were granted, we believe it would have expressed its desire more clearly and in more detail. Instead, Congress required that a condition be incorporated in any rights-of-way granted, and provided for court decision of any question which might arise as to the adequacy of compliance. It is significant, also, that for thirty-one years the Secretary of the Interior has made no such extensive effort at regulation, thus leaving at least a question that he did not consider the authority to exist."

2. Has Richfield made an irrevocable dedication to its property to a public use?

Since the irrevocability of a dedication to public use is an essential element of public utility status, as stated by the court in the cases cited above, the alleged dedication resulting from the stipulation must be tested in the light of this principle.

In Chapman v. El Paso Natural Gas Co., supra, the court held that forfeiture is the only consequence of a failure to perform the common carrier stipulation. In this connection, the court said:

> "... Ample protection of the public interest exists, and adequate enforcement of the condition is possible, under the provision for forfeiture of the grant by the United States District Court, in an appropriate proceeding, for failure to comply with the provisions of the section or with the appropriate regulations and conditions established by the Secretary ..."

In Pollard v. Bailey (1874), 87 U.S. 520, the Supreme Court said (p.527):

> "The liability and the remedy were created by the same statute. This being so the remedy provided is exclusive of all others. A general liability created by statute without a remedy may be enforced by an appropriate common-law action. But where the provision for the liability is coupled with a provision for a special remedy, that remedy, and that alone, must be employed."

See Also:

Switchmen's Union v. Board (1943), 320 U.S. 297, 301.

United States v. Klein (8 Cir., 1946), 153 F.2d 55, 59.

Hassel v. United States (3 Cir., 1929), 34 F.2d 34, 36.

From the foregoing considerations, it is evident that Richfield may withdraw from its obligation under the stipulation at any time, at its election.

3. Does Richfield, pursuant to the stipulation, have an absolute duty to give service to the public generally, without discrimination?

Since such a duty is an essential element of public utility status, the effect of the stipulation in this respect serves as a crucial test of the validity of the majority's finding as to dedication.

A review of Section 185 of the Mineral Leasing Act, quoted above, leaves no doubt that Richfield has no present unqualified obligation to carry gas or oil for the public without discrimination. Any obligation to carry gas or oil for anyone will mature only upon order of the Secretary of the Interior after a hearing.

Chapman v. El Paso Natural Gas Co., 204 F. 2d 46.

McClellan v. Montana - Dakota Utilities, 104 F. Supp. 46.

Mondakota v. Montana - Dakota Utilities, 103 F. Supp. 666 (Appeal dismissed, 194 F. 2d 705).

In Chapman v. El Paso Natural Gas Co., supra, the court said:

> "... The language in Section 28 clearly gives the Secretary authority to provide regulations and conditions as to survey, location, application and use, but we read that to pertain to the physical aspects of the rights-of-way and not to the operation of the pipeline. Without more than the requirement that a condition be imposed that pipelines be 'constructed, operated and maintained as common carriers', we do not regard the statute as conferring upon the Secretary authority to exercise so vast and so detailed a power as the promulgation of specific regulations and conditions for operation of the pipeline as a common carrier, as attempted in the proposed stipulations of March 22nd and May 29th, 1951."

4. Does every member of the public, as a result of the stipulation, have a legal right to demand carrier service of Richfield?

As clearly stated in the cases cited above, an essential characteristic of public utility status is the right of every member of the public to demand service as a legal right. As a

corollary to this principle, a public utility, and only a public utility, is automatically liable to a member of the public for refusal to render service to him, upon demand.

It is apparent that Richfield has no unqualified obligation to carry oil or gas for others until ordered to do so by the Secretary of the Interior and that the United States Government has the sole remedy in the event of any refusal to carry within the terms of the Mineral Leasing Act.

From the foregoing consideration of the effects of the stipulation, in the light of the principles enunciated in the decisions of the Supreme Court of this State and of the United States with respect to the essential elements of public utility status, there can be no doubt that Richfield's potential obligations under its stipulation are substantially different from those which would result from public utility status, and that Richfield, in agreeing to the terms of the permit and in proceeding to construct the pipeline, has performed no act which evidences an unequivocal intent to dedicate such pipeline and related facilities to a public use.

Exemption of Public Utilities from Sec. 185 of Mineral Leasing Act

Although the authorities cited above fully support the conclusion that Richfield, in agreeing to the provisions of Section 18 of the permit, did not thereby dedicate its facilities to a public use, the 1953 amendment to Section 185 of the Mineral Leasing Act, which exempted from the common carrier provisions thereof companies subject to regulation under the Natural Gas Act or to regulation by any state or municipal regulatory agency, furnishes additional evidence that the majority erred in its finding.

If a private company engaged solely in intrastate operations acquires public utility status by accepting the stipulation, it necessarily follows that it would ipso facto be subject to regulation by a state public utilities commission. Thus the federal statute which made it a locally regulated public utility common carrier would exempt it from the obligation required under the same statute. This would defeat not only the purpose of the Mineral Leasing Act, but also of the 1953 amendment.

If the majority is correct in its interpretation of the Mineral Leasing Act, Congress must have intended that only public utilities could obtain rights of way; for if the acceptance of the stipulation is the event which makes the permittee a public utility common carrier, then only public utilities could obtain a right of way and be permitted to operate pipelines across public lands. That this is not the intention of Congress was demonstrated by the 1953 amendment, which exempted public utilities from the common carrier provisions of Section 185.

The cardinal rule of statutory construction is that a statute must be read and considered as a whole, in order that the true legislative intention may be determined (ex tota materia emergat resolutio). All of its parts must be construed together and harmonized, so far as possible, without doing violence to the language or to the spirit and purpose of the act, in order that the statute may stand in its entirety.

In re Bandmann, 51 Cal. 2d 388, 393.

People v. Moroney, 24 Cal. 2d 638, 642, 643.

People v. Tawney, 168 A.C.A. 678, 690.

To construe the Congressional intent in enacting Section 185 of the Mineral Leasing Act in accordance with this principle, the statutory employment of the term "common carrier" must be harmonized with the provision exempting from the "common carrier" provisions of Section 185 public utilities subject to federal, state or local regulation. It is a generally accepted principle that in adopting legislation, the Legislature is presumed to have had knowledge of existing domestic judicial decisions and to have enacted and amended statutes in the light of such decisions as have a direct bearing on them (Buckley v. Chadwick (1955), 45 Cal. 2d 183 and cases cited therein).

If Congress must be presumed to have knowledge of the judicial decisions of the State and Federal courts relating to dedication of property to a public use and to the essential elements of public utility status, the conclusion is inescapable that the 1953 amendment was enacted in the light of this knowledge, and that Congress, in employing the term "common carrier" in Section 185, did not mean a public utility common carrier. Any other interpretation not only fails to harmonize all parts of Section 185, but leads to the conclusion that Congress engaged in a meaningless act in enacting the 1953 amendment.

II. Finding of Dedication of Richfield's Gas Reserves and Facilities

Although considerable attention has been given above to the majority's finding with respect to a dedication of Richfield's pipeline facilities, the second major finding of the majority, with respect to a dedication of Richfield's gas reserves and gas facilities in this State, is by far the more far-reaching, not only in its impact on Richfield Oil Company, but on the entire oil and

gas industry. Furthermore, the effect of this finding on the future policies adopted by members of the oil and gas industry with respect to the disposition of gas produced in excess of their own needs will undoubtedly have continuing repercussions of deepest consequence to the interests of all consumers of gas in this State.

The major finding referred to above was "that Richfield Oil Corporation, in respect to its gas operations, is a public utility gas corporation subject to the jurisdiction of this Commission (1) which has dedicated gas reserves in this State over and above the requirements of gas for its own use and gas facilities in this State to the public and (2) which has performed and is performing service and has delivered and is delivering gas to private corporations which in turn either directly or indirectly, mediately or immediately, perform such service and deliver such gas to the public."

In considering the above finding for the purpose of testing its validity, two major points involved therein require separate consideration:

1. Has Richfield dedicated gas reserves over and above the requirements of gas for its own use and gas facilities in this State to the public?

2. Did Richfield become a public utility gas corporation as a direct result of its sales of gas to Pacific Lighting Gas Corporation and/or to Pacific Gas and Electric Company?

Dedication of Gas Reserves and
Gas Facilities by Richfield

Before considering the specific question of whether Richfield has, in fact, performed any act which evidences an unequivocal intent to dedicate any gas reserves or gas facilities to a public use, attention must be called to a serious defect in the finding quoted above.

It will be observed that by the specific language of the majority opinion, the Commission finds that Richfield Oil Corporation "in respect to its gas operations, is a public utility gas corporation subject to the jurisdiction of this Commission", and that it "... has dedicated gas reserves ... and gas facilities in this State to the public ..." (Emphasis added)

The finding does not specify which gas operations are thereby clothed with public utility status, and Richfield therefore cannot know whether it is subject to regulation as to all of its gas operations, or whether some of them will continue to be non-utility operations. To answer this question, it is necessary to know which gas reserves and which gas facilities have been found to be dedicated to a public use. However, here too the finding is ambiguous. Does the Commission mean that all gas reserves of Richfield in this State over and above the requirements for its own use and all its gas facilities in this State have been so dedicated? Or does it mean certain (unspecified) gas reserves and gas facilities?

The Commission is aware that Richfield Oil Corporation is a major oil and gas corporation which produces oil and/or gas from several producing fields in this State, and that like other similar corporations within the industry, in the normal course of the business for which it is organized, it is engaged in a continuing program of exploration and development to discover and bring into oil and/or gas production new fields and new or deeper sands in existing fields. Because of the indefiniteness of the finding, Richfield, without

further clarifying order of the Commission, will be unable to ascertain the extent of its status and obligations as a public utility gas corporation.

If an act evidencing an unequivocal intention to dedicate property to a public use is a condition precedent to public utility status (cases cited supra), the Commission must have found, in the record of this proceeding evidence of an unequivocal intent on which it based its findings. If such were the case, the record would have been clear and unequivocal as to the specific gas reserves and gas plant which were involved in the finding; and the finding should have been as clear and unequivocal as the intent upon which it was based.

From a study of the evidence described in the majority opinion, the conclusion is inescapable that the only evidence on which the majority could have based the finding now under consideration was the following:

(1) Evidence based on signing the stipulation relating to the pipeline. (This evidence, however, relates only to gas plant, not to gas reserves).

(2) Certain testimony by a vice-president of Richfield Oil Company with respect to sales of gas by Richfield and with respect to Richfield's general policy concerning the sale of its gas.

(3) Evidence relating to the sale of gas by Richfield to Pacific Lighting Gas Supply Company and/or Pacific Gas and Electric Company, insofar as sales of gas to either of these two companies might be found to constitute Richfield a public utility gas corporation pursuant to Section 216 of the Public Utilities Code.

The evidence referred to under (1) above, has been fully discussed herein; and, in my opinion, the conclusion is inescapable that Richfield could not, and did not, acquire public utility status as a result of agreeing to the provisions of the Special Use Permit or in commencing construction of the pipeline.

Testimony of Richfield's Vice President

A vice-president of Richfield testified with respect to the general policy of Richfield concerning the sale of its gas. Certain of his testimony, given under cross-examination (Tr. Vol. VI, p. 884-886), is quoted in the majority opinion (Maj. Op., p. 28).

A careful study of this testimony shows no other intent on the part of Richfield than to dispose of its gas, in excess of its own needs, under contracts which it proposes to negotiate from time to time as the need arises. In stating that the highest use for Richfield's gas is for pressure maintenance in its oil fields and that the second highest use is to meet the peak requirements of the utility companies, this witness was merely stating Richfield's policy as to the priority requirements with respect to its gas reserves. In stating that Richfield is still prepared to meet the peak requirements of the utility companies, he was obviously expressing a policy of Richfield Oil Corporation regarding the disposition of its gas production in excess of Richfield's own needs. It will be seen that there is nothing in this testimony which evidences an unequivocal intent to dedicate Richfield's gas reserves or gas facilities to a public use.

When asked in redirect examination whether Richfield would be willing to renegotiate a contract with Pacific Lighting Gas Supply Company similar to the one in effect (Maj. Op., p. 27), this witness testified:

> "A. I don't think we can negotiate an extension of this contract here, but certainly we are still in (the) business of selling gas and we are still holding our facilities and reserves in readiness to serve the utility companies if they need it for their firm customers."
>
> (Tr., Vol. VI, p. 977)

The above testimony, quoted in the majority opinion, rather than evidencing an unequivocal intent to dedicate, is further evidence of Richfield's policy to negotiate contracts for the sale of its excess gas under terms satisfactory to Richfield.

The majority opinion, on page 27, quoted the following testimony of the same vice-president of Richfield under redirect examination:

> "A. We have in negotiation, in fact it is approximately very closely in shape to execute, a contract with the Pacific Gas and Electric to furnish them peaking service similar to the service we have offered Pacific Lighting Corporation /Pacific Lighting Gas Supply Company/."
>
> (Tr. Vol. VI, p. 978)

It is readily apparent that the comments already made with respect to other testimony of this witness are equally applicable here, and that there is nothing in this particular statement to evidence an unequivocal intent to dedicate Richfield's gas reserves or facilities to the public.

The only instance of this vice-president's testimony in which he used the term "dedication" (Maj. Op., p. 29) occurred in cross-examination, where, in response to a question put by counsel for complainant, he outlined the onerous conditions, so far as Richfield is concerned, in the proposed contract of January 22, 1958. In his testimony, the witness made the following statement:

> "Now, I let that go in, into the final draft but was advised by someone else the last day before we considered signing it that that might constitute a dedication of our reserves at that point to the Pacific Lighting Corporation which, as I stated earlier, we have never done and do not propose to do except for peaking purposes." (Emphasis added.)
>
> (Tr. Vol. VI, p. 900-901)

It will be observed that in the above testimony, the witness spoke of "dedication...to Pacific Lighting Corporation". In the sense that the term "dedication", as used by the courts, means that type of dedication which results in public utility status, there is, of course, no such thing as "dedication to...the Pacific Lighting Corporation", nor, for that matter, to any limited segment of the public. The dedication must be to the public generally (Associated Pipe Line Co. v. Railroad Comm., 176 Cal. 518; Story v. Richardson, 186 Cal. 162).

It is evident from the testimony quoted above that the vice-president of Richfield used the expression "dedication of our gas reserves...to the Pacific Lighting Corporation" as synonymous with the expression, "the committing of our gas reserves under contract...to the Pacific Lighting Corporation". The last clause of the testimony quoted above bears out this interpretation, wherein the witness concludes "...which, as I stated earlier, we have never done and do not propose to do except for peaking purposes". There is, of course, no such thing as a dedication to a public use "for peaking purposes". A dedication, to confer public utility status, must be unequivocal. However, it is not to be presumed that the majority based its finding of dedication on this unusual choice of terminology by Richfield's vice-president. (Ancupia verborum sunt judice indigna).

The only other quotation from the testimony of the vice-president of Richfield which was quoted in the majority opinion (Maj. Op., p. 30) is found in Volume VI, page 979 of the transcript.

This testimony further corroborates the determination by Richfield, as clearly expressed by this witness, to conduct its gas operations as an unregulated corporation and to maintain full control over the disposition of its gas reserves in this State.

All of the testimony of Richfield's vice-president which was quoted in the majority opinion has been considered above in order to show whether or not there is any statement in such testimony which would support a finding of an unequivocal intent by Richfield to dedicate any of its gas reserves or gas facilities in this State to a public use. Since it has been shown that such a finding could not properly be based on that testimony, it only remains to consider whether Richfield became a public utility gas corporation because of its sales of gas to Pacific Lighting Gas Supply Company and/or Pacific Gas and Electric Company.

Sales of Gas to Pacific Lighting Gas Supply Co. and/or Pacific Gas and Electric Co.

The record shows that on April 1, 1955, Richfield entered into an agreement with Pacific Lighting Gas Supply Company, running for a term of five years. The provisions of this contract are adequately summarized on pages 26 and 27 of the majority opinion. The agreement provides for the delivery of (1) basic gas; (2) emergency gas; and (3) exchange gas, as defined in the agreement. The record shows that Richfield has sold and delivered gas to Pacific Lighting Gas Supply Company, from time to time, under certain provisions of the agreement and that no sales have been made under certain other provisions thereof.

The record further shows (Tr. Vol. I, p. 121) that Richfield has made two small sales of gas in the Sacramento Valley to Pacific Gas and Electric Company and that there are no restrictions

on the use of that gas by the vendee. No copies of contracts relating to these two sales were introduced into evidence, and there is no evidence of record as to the use to which Pacific Gas and Electric Company puts this gas.

Section 216 of the Public Utilities Code, insofar as it relates to gas corporations, provides as follows:

> "216.(a) 'Public utility' includes every ...gas corporation..., where the service is performed for or the commodity delivered to the public or any portion thereof.
>
> "(b) Whenever any...gas corporation ...performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such...gas corporation... is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.
>
> "(c) When any person or corporation performs any service or delivers any commodity to any person, private corporation, municipality or other political subdivision of the State, which in turn either directly or indirectly, mediately or immediately, performs such service or delivers such commodity to or for the public or some portion thereof, such person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part."

If the language of Section 216(c) is read literally, and if we assume that Pacific Gas and Electric Company delivers Richfield's gas to the public, the "two small sales" of gas in the Sacramento Valley to Pacific Gas and Electric Company would give the Commission regulatory power over all of Richfield's gas production and gas reserves in those particular gas fields. The two small sales would not, however, give the Commission regulatory power over all of Richfield's gas reserves or gas plant in this State.

Pacific Lighting Gas Supply Company is one step removed from a company which sells gas to consumers.

However, the Supreme Court of California and this Commission have not interpreted Section 216(c) literally, but have declared that the Legislature intended only to refer to public utility companies which have dedicated their property to the public, and that Section 216(c) and related sections of the Public Utilities Code would be unconstitutional if applied to persons or companies which have not dedicated their property to the public.

Allen v. Railroad Commission, 179 Cal. 68

Story v. Richardson, 186 Cal. 162

Richardson v. Railroad Commission, 191 Cal. 716

Moorpark Farmers Water Company, 28 C.R.C. 545

Investigation of Story, 21 C.R.C. 20

That an owner of a commodity supplying a few customers under private contracts does not thereby dedicate his property to the public and become a public utility was clearly brought out in Richardson v. Railroad Commission, supra. In that case the court said:

> "...we utterly fail to find any substantial evidence that this petitioner ever made or intended to make such a dedication of the surplus water from the wells upon his tract of land to public uses so as to entitle either the little circle of his immediate neighbors using the same, or the public generally to demand as a matter of legal right that his said supply and service of surplus water should be conducted and continued as a public utility subject to regulation as to its service and rates by the Railroad Commission. There is no case to which our attention has been called which goes so far as to hold that the mere fact that a private individual or corporation furnishes the surplus portion of a limited water supply to a small circle of consumers, each especially requesting and individually receiving the use and benefit of the same, and each paying an agreed sum for each particular period of such use, has been held to

> be a public utility by reason of these facts alone and in the absence of any other facts showing an express or implied dedication of the property to the public use..."

It has been brought out in numerous decisions that private contracts, such as Richfield's, do not constitute a dedication of property to the public use. In Allen v. Railroad Commission, supra, the court referred to its earlier decision in Thayer v. Calif. Development Co., et al., 164 Cal. 117, that the seller of a commodity to consumers is not, per se, a public utility. The reasoning of the court is that dedication occurs only where the owner of the commodity offers it for sale to anyone who is willing to purchase it, and not where sales are made to particular persons through contracts of purchase and sale.

On the basis of these decisions and the long and consistent judicial and administrative interpretation of Section 216 of the Public Utilities Code and of its antecedents in the Public Utilities Act, it should be clear that Richfield did not dedicate its gas reserves or gas plant and did not become a public utility gas corporation as to its gas operations in California as a result of its sales to Pacific Lighting Gas Supply Company or to Pacific Gas and Electric Company.

Consequences of Majority Opinion

This proceeding arose out of the efforts of Southern Counties Gas Company to prevent the loss of potential sales of gas to Southern California Edison at its Mandalay steam generating plant now under construction, as a result of the proposed sale of gas directly by Richfield to Edison.

I share the apprehension, not only of complainant, Southern Counties Gas Company, but also that expressed by witnesses

and counsel for the City of Los Angeles, the San Diego Gas & Electric Company, and the California Farm Bureau Federation, concerning the adverse effect on the public interest which will result if this invasion by an unregulated oil and gas company into the certificated territory of a public utility gas corporation becomes the forerunner of a series of similar invasions by other gas producers, both majors and independents. However, if these producers of gas are acting within their legal rights under existing law, the remedy lies, not with this Commission, which has regulatory authority only over public utilities, but with the California Legislature in which reposes the police power of the State.

It must be borne in mind that there are many problems for which regulatory law has not provided a solution, and that the desire to take remedial action cannot be a substitute for lawful authority to take such action. The problem presented by this proceeding is clearly in this category; for it has been shown by the foregoing review of the evidence and decisions of the courts and this Commission that the record in this proceeding does not support the major findings and conclusions of the majority opinion.

It should be observed that regulation of Richfield, as to its gas operations, as a result of the majority opinion, involves, among other things, the following:

1. To engage in public utility gas operations in any degree, Richfield must obtain a certificate of public convenience and necessity from this Commission to do so.

2. The Commission may tell Richfield to what extent it may engage in such business, where it may do so, and whom it may or may not serve.

3. The Commission may tell Richfield when it may expand its gas operations and into what territory it may expand.

4. The Commission may abrogate any contract relating to rates or service, with respect to Richfield's gas business at the time Richfield first comes under regulation as to its gas operations. The Commission may also find to be invalid and void any such contract made by Richfield after it is subjected to regulation, and may modify or abrogate any such contract which it may have approved previously.

5. The Commission may control the issuance of securities by Richfield and may control the disposition or transfer of any of its property devoted, in whole or in part, to its gas operations.

6. The Commission may require Richfield to purchase new gas plant or to establish new gas facilities.

7. The Commission will hereafter set the rates which Richfield may charge for its gas or gas service; and Richfield may not charge any other rate, and may not increase or decrease such rates except in compliance with the provisions of the Public Utilities Code of California.

8. Richfield may not discontinue any of its gas operations or gas service to the public without approval of this Commission.

In view of the onerous burdens imposed upon Richfield by the finding of public utility status, it is only reasonable to expect that all other members of the oil and gas industry will take all steps necessary to prevent any action on their part which could, by any remote chance, result in a similar finding of public utility status with respect to their gas reserves, facilities, or operations. The result to be expected is that natural gas produced in California will not, hereafter, be made available or sold to California public utility gas companies for distribution to and use by the general public as long as the majority opinion in this proceeding shall stand.

* * *

For the reasons stated above, it is my opinion that there is no evidence in the record to support a finding that Richfield Oil Company has dedicated any of its gas reserves or gas facilities in this State to a public use or that it is a public utility gas corporation; that the Commission has extended its jurisdiction over Richfield to prohibit activities which are clearly outside the scope of the Commission's authority; that the majority's major findings, conclusions, and interim order, to the extent that I have hereinabove indicated my dissent thereto, are unjustified and not in accordance with law; that the said findings, conclusions, and interim order constitute a taking of Richfield's property without due process of law and for public use without just compensation in violation of Richfield's rights under the fifth and fourteenth amendments to the Constitution of the United States and Article I, Sections 13 and 14 of the Constitution of the State of California, and that they impair the validity of Richfield's existing contracts in violation of Richfield's rights under Article I, Section 10, of the Constitution of the United States and Article I, Section 16, of the Constitution of the State of California.

Dated at San Francisco, California, this 3rd day of September, 1959.

Theodore H. Jenner

THEODORE H. JENNER
Commissioner