AC

Decision No. 60047

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion concerning the proper treatment, for rate-making purposes, to be accorded accelerated amortization and accelerated depreciation.	Case No. 6148

ORDER DENYING REHEARING

Southern California Edison Company having petitioned for a rehearing of Decision No. 59926, the Commission having considered such petition and each of its allegations, and being of the opinion that no good cause has been shown for the granting thereof, IT IS ORDERED that rehearing is hereby denied.

Dated at San Francisco, California, this 3rd day of May, 1960.

Everett C. McKeage
President
Peter E. Mitchell
Theodore H. Jenner

Commissioners

I dissent
Matthew J. Dooley
I dissent.
C. Lyn Fox

I dissent from the order of the Commission this day entered, denying petition for rehearing of Southern California Edison Company.

I predicate this dissent upon the ground that the Opinion and Order in Case No. 6148 (the investigation on the Commission's own motion concerning the proper treatment for rate-making purposes, to be accorded accelerated amortization and accelerated depreciation) is uncertain, ambiguous, and contrary to the long established and sanctioned principles of rate-making.

The process of rate-making is necessarily prospective in its operation. Its very essence is the prognostication of future events, viz., expenses and revenues. Future costs are predicted which must be covered by revenues derived from rates to be established. This estimation process, utilized by this Commission for well-nigh a half century, has developed into a fairly recognizable science. Building upon facts and records of past operations of utilities, men experienced in the science of rate-making are able to arrive at reasonably accurate estimates of the future operations, in reliance upon which, management and regulatory Commissions alike, are accustomed to making decisions involving millions of dollars.

There are two techniques which are commonly employed in estimating costs for the future. One method is to take actual cost for a past period and to assume that the cost relationships there found will prevail for some time in the future. The other is to make a direct estimate for a future period.

Irrespective of which method of prediction of cost is employed, the prime objective is the same, and that is to make a reasonably proper determination as to the cost of rendering service in the future, and the revenues to be derived from such service. The techniques of adjustment and estimation are the primary tools for this purpose, but they must be applied in a manner which will give results related to prospective operations. Various rules of thumb have developed which facilitate the handling of the multifarious details necessarily involved in the estimation process, but they must be tested by the prospect of success in providing a reasonable guide for rates which can only have prospective operation.

In short, the basic process involved in rate-making is prospective in character. The past is used as a guide only. The question always is, what rates shall be provided for the future. Retroactive rate-making has been disavowed by the Courts, as well as by the regulatory Commissions.

The Commission ordered

> "* * * for the purpose of ratefixing, the Commission will not allow a public utility to charge to its operating expense for income taxes, any amount in excess of the amount of income taxes <u>lawfully assessed by the taxing authority</u> and <u>paid by</u> the public utility." (Underscoring added.)

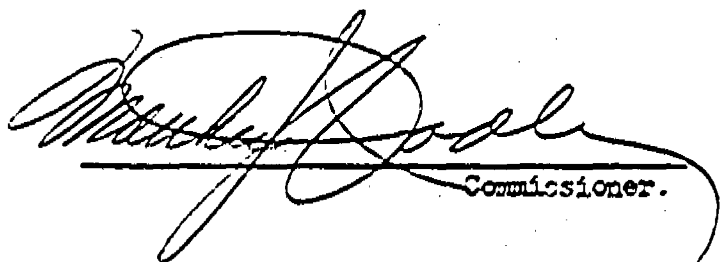
The foregoing quoted language clearly states in so many words that only "income taxes lawfully assessed by the taxing authority and paid by the public utility" will be allowed as an operating expense. Taxes lawfully assessed by the taxing authority and paid by the public utility are related to the retrospective operations of the utility for a past fiscal year. The language does not appear to be susceptible of application to a prospective year or a test year. Thus, the traditional methods of rate-making could not be applied to the determination of taxes as an expense that may be estimated for the test year. Thus, the principles of rate-making developed and sanctioned for over a half century of rate-making practice applied to California utilities, is completely disregarded.

Moreover, there is implicit in the quoted language the intent to determine the taxes lawfully assessed and paid by the utilities on a retrospective or retroactive basis. Thus, we would be confronted in any rate proceeding with calculating costs and expenses of operation on a prospective or estimated basis other than income taxes, which could not be considered as an expense for such purposes but could only be determined when and as the taxes for such prospective year were <u>lawfully assessed and paid</u>. This, necessarily, would arise only after the lapse of the prospective year period. Should the Commission apply such a policy in the future, and it is difficult to see how it could evade doing so, it would mean that in fixing rates for the future, the Commission would not allow as expense the income tax which would be applicable to the level of earnings estimated for the

future or for the test year, but would only allow taxes theretofore "lawfully assessed and paid" which would necessarily relate to an earlier period. Under any such order so applied, it would be well-nigh impossible, in any proceeding involving an increase in rates, for a California utility ever to earn the rate of return which the Commission then determined to be fair, just and reasonable, because of the inability to relate the income tax rate applied in the proceedings to a higher level of earnings. Moreover, it would be impossible to compute earnings on an average year basis, in order to determine whether or not the utility would earn the rate of return found reasonable.

It is the clear responsibility of this Commission to state in its order specifically whether a utility, at its option, may adopt straight-line depreciation, or accelerated depreciation, and if the latter, then the necessary consequences that would flow therefrom. The Commission should be decisive in its order. It should not straddle the issue and leave the utilities and the consumers in a position of not knowing precisely what policy the Commission has established in this very complex matter.

The instant case was instituted for the purpose of endeavoring to reach a policy decision. The case having been concluded, it is now mandatory for the Commission to state clearly and unequivocally what its policy is. In my opinion, the order of the Commission in this case should be amended so as to state clearly, beyond peradventure of doubt, that pursuant to the provisions of Section 167 of the Internal Revenue Code a utility is given the sole option to determine whether or not it shall adopt liberalized depreciation.



Commissioner.