

Decision No. 50428**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of PACIFIC LIGHTING GAS SUPPLY COMPANY
for a General Increase in Gas Rates
under Section 454 of the Public
Utilities Code.

Application No. 41277
Second Amendment

For Applicant

O. C. Sattinger, J. R. Elliott, and
R. D. Twomey.

For Interested Parties

Milford Springer and Robert M. Olson, for Southern
Counties Gas Company of California; T. J. Reynolds
and H. P. Letton, for Southern California Gas
Company; Chickering and Gregory, by Sherman Chickering
and C. Hayden Ames and Frank Porath and H. C. Dillin,
for San Diego Gas & Electric Company; Rollin E.
Woodbury, Harry W. Sturges and J. F. Nail, for
Southern California Edison Company; T. M. Chubb,
Jack O. Sanders and Robert W. Russell for Department
of Public Utilities and Transportation, City of Los
Angeles; Manuel Kroman, for City of Los Angeles;
O'Melveny and Myers, by Lauren M. Wright, for
Riverside Cement Company, Division of American Cement
Corporation; Brobeck, Phleger and Harrison, by
Robert M. Lowry and William W. Eyers, for California
Manufacturers Association; William L. Knecht, for
California Farm Bureau Federation; Henry E. Jordan,
for City of Long Beach; Enright, Elliott and Betz,
by Norman Elliott and Joseph T. Enright and Waldo A.
Gillette for Monolith Portland Cement Company;
W. D. McKay, for Challenge Cream and Butter Asso-
ciation; Henry F. Lippett II, for Southern California
Gas Company and Southern Counties Gas Company of
California; Harold Gold, Reuben Lozner and Stuart
Foutz, for Department of Defense and Other Executive
Agencies of the United States Government; Leslie E.
Still and Walfred Jacobson, for City of Long Beach.

For Commission Staff

Frank G. Campbell, Richard Perry, and
Richard R. Entwistle.

O P I N I O N

Nature of Proceeding

Pacific Lighting Gas Supply Company, a California corporation engaged in the business of purchasing, compressing, transporting, storing, exchanging and selling natural gas for resale to Southern California Gas Company and Southern Counties Gas Company of California, filed the original application herein on July 2, 1959, requesting authority to increase rates to yield additional annual gross revenues of \$3,859,000. By amendments on September 25, 1959 and January 15, 1960, applicant filed for further increases, the September, 1959 request totaling an additional \$827,000 and the January 1960 amendment totaling an additional \$12,346,000. The first amendment gave effect to certain adjustments to rate base and expenses brought about by events which had occurred subsequent to the filing of the original application. The second amendment gave effect to the costs related to the construction and operation of the Needles to Newberry pipeline and the additional out-of-state gas supplies to be furnished to applicant by Transwestern Pipeline Company commencing during 1960.

By an interim order, dated December 21, 1959, the Commission authorized applicant to increase rates in the over-all amount of approximately \$3,570,000, effective January 12, 1960. Thus, the total rate increase request of applicant in this proceeding is \$17,032,000, of which \$3,570,000 has become effective, leaving \$13,462,000 of applicant's request still pending.

Public Hearing

After due notice, public hearings were held in Los Angeles on this application on August 19, 1959, and on October 7, 8, and 9, 1959 before Commissioner Peter E. Mitchell and/or Examiner William L. Cole and on March 2, 1960 and May 4 and 5, 1960 before Commissioner Peter E. Mitchell and Examiner William W. Dunlop. Thus, a total of

seven days of public hearings have been held on this application, 41 exhibits have been filed and testimony presented by 12 witnesses.^{1/}

The matter was submitted for decision at the conclusion of the hearing on May 5, 1960 subject to the filing of concurrent briefs. Such briefs have been filed. Thereafter, by order of the Commission, submission was set aside for the receipt as an exhibit of a statement filed by applicant upon request relating to recent Federal income tax refunds. The matter now is ready for decision.

Applicant's Position

Applicant refers to its most recent rate case, Application No. 40079, and states that by Decision No. 57598, dated November 10, 1958, it was granted an increase in its rates for the sale of gas, to produce a rate of return of 6.5 percent on a depreciated rate base, such new rates being effective January 1, 1959. For the year 1958 applicant represents that it realized a rate of return of 6.25 percent and for the year 1959 estimates the return to be 6.20 percent; but for the estimated year 1960, and considering the costs occasioned by the construction and operation of the Needles to Newberry pipeline and the receipt of additional gas supplies from Transwestern, applicant forecasts operations at a loss even at the interim rate levels.

The Needles to Newberry pipeline alone, is estimated by applicant to add \$17,053,000, or approximately 27 percent to its depreciated rate base for 1960. Other major items listed by applicant as contributing to its need for rate relief include (1) an increase in the cost of natural gas which it purchases from various producers, (2) an increase in the cost of money, (3) an increase in taxes, and (4) an increase in wages.

^{1/} Hearings on March 2, and May 4 and 5, 1960 were held on a consolidated record with Application No. 41861.

Earning Position

The rates of return estimated by applicant and by the Commission staff for test year 1960 under various conditions of operation are as follows:

Summary of Earnings
Year 1960 Estimated

	Rate of Return	
	<u>Applicant</u>	<u>CPUC Staff</u>
Pre Interim Rates- Excluding Effect of 1st and 2nd Amendments	4.28%	5.21%
Interim Rates - 1st Amendment	Not Shown	6.50
Interim Rates - 2nd Amendment	Loss	Loss
Applicants' Proposed Rates - 2nd Amendment	6.99	7.46

The following tabulation will serve to summarize the results shown in exhibits introduced by applicant and by the Commission staff to reflect applicant's earning position for the estimated test year 1960 under the rates which applicant seeks to make effective by its second amendment.

SUMMARY OF EARNINGS - ESTIMATED TEST YEAR 1960
AT APPLICANT'S PROPOSED RATES

	<u>Applicant</u> <u>EX. 26&31</u>	<u>CPUC Staff</u> <u>EX. 38</u>	<u>Adopted</u> <u>Results</u>
Operating Revenues:			
Gas Sales Revenue	\$83,173,000	\$83,173,000	\$83,173,000
Miscellaneous Revenue	1,409,000	1,409,000	1,409,000
Total Operating Revenue	<u>84,582,000</u>	<u>84,582,000</u>	<u>84,582,000</u>
Operating Expenses:			
Cost of Gas	64,498,000	64,498,000	64,498,000
Transmission Expenses	3,904,000	3,863,000	3,874,000
Administrative & General Expenses	1,580,000	1,219,000	1,402,000
Depreciation Expense	1,905,000	1,907,000	1,907,000
Amortization Expense (Goleta)	108,000	108,000	108,000
Taxes			
Other Than Income	2,248,000	2,234,000	2,248,000
Income	4,982,000	5,085,000	4,964,000
Total Operating Exp.	<u>79,225,000</u>	<u>78,914,000</u>	<u>79,001,000</u>
Net Revenue	5,357,000	5,668,000	5,581,000
Rate Base (Depreciated)	76,647,000	76,007,000	76,007,000
Rate of Return	6.99%	7.46%	7.34%

Also shown in the above tabulation are the adopted operating results which the Commission finds appropriate to use in testing the validity of applicant's rate increase request.

Revenues

The revenue estimates of the applicant and of the staff are the same. Both estimates reflect commodity sales of 175,273 million cubic feet (M cf) and applicant's proposed rates in the second amendment which provide a demand charge of \$1.52 per Mcf of maximum contract demand per month and a commodity charge of 32¢ per Mcf. Such rates assume full deliveries from Transwestern averaging 300 M cf per day and a maximum contract demand of 1,485 M cf per day. We adopt, for purposes of this decision, an amount of \$84,582,000 for revenues for the estimated test year 1960 at applicant's proposed rates in the second amendment.

Cost of Gas

The staff's cost of gas estimate is the same as the applicant's estimate. It consists of the cost of 65,948 M² cf of gas purchased from California producers at an average price of 28.14 cents per Mcf and 109,500 M² cf of gas purchased from Transwestern Pipeline Company at a price of 42.25 cents per Mcf for a full year, adjusted to reflect gas received as free fuel and allowances, gas withdrawn from underground storage, gas injected into underground storage for later withdrawal, and gas utilized by applicant in its operations.

With respect to the price for Transwestern gas, the record reveals that the Federal Power Commission (FPC) has not made a final determination as to the 42.25 cents per Mcf rate and that Transwestern actually has submitted for filing with the FPC a rate of 43 cents per Mcf. For purposes of this proceeding we will adopt the 42.25 cents per Mcf rate for Transwestern gas used by both the applicant and the staff. Should the FPC ultimately fix a rate lower than 42.25 cents per Mcf applicant will be required to reduce its rates accordingly, and to make appropriate refunds.

We adopt, as reasonable, an amount of \$64,498,000 for cost of gas for test year 1960. However, our action herein should not be construed as a finding of reasonableness for rate fixing purposes of the pricing provisions contained in applicant's gas purchase contracts, except for the year 1960. The burden of proof of reasonableness of the cost of gas rests upon applicant and is a continuing responsibility.

Transmission Expenses

The staff's estimate of transmission expenses are \$41,000 or one percent below applicant's estimate. This difference results primarily from the staff's lower estimate of the cost of odorant. The staff reflected the use of a new and cheaper type of odorant.

Like applicant, the staff did not reflect the full year effect of wage increases awarded April 1, 1960. We adopt, as reasonable, the staff's estimate augmented by \$11,000 to reflect the full year effect of the April 1, 1960 wage increase, or an amount of \$3,874,000, for transmission expenses.

Administrative and General Expenses

Estimates of administrative and general expenses presented by the staff are \$361,000 or 23 percent below applicant's estimates. Some \$273,000 of this difference results from the staff's adjustment of administrative and general expenses transfer credit to reflect the capitalization of the allocated overhead to the Needles-Newberry project and revised construction program. Approximately \$20,000 of the difference results from the adjustment to reflect average year expenses and for miscellaneous items, \$23,000 for excess insurance and injury and damage accruals based on the trend of experienced charges to the reserves for these items, \$3,000 for dues and donations in accordance with past Commission policy, and \$42,000 for lower rents reflecting more recent information as to applicant's plans.

With respect to administrative and general expense transfer credit, applicant estimated \$152,000 for this item in the test year 1960 compared with the staff's estimate of \$425,000. Based upon the recorded transfer credits of \$244,490 for 1957, \$191,222 for 1958 and \$136,923 for 1959 as shown in Exhibit No. 38 and including the staff's estimate of \$425,000 for 1960, the 4-year average transfer credit approximates \$250,000. This record reveals that applicant has a number of construction projects in contemplation over the next several years but none of the magnitude of the Needles-Newberry project. A transfer credit of \$250,000 we find to be reasonable for test year 1960.

Of the remaining difference of \$88,000 between the estimates of the applicant and the staff, applicant in its closing brief conceded that its estimate should be reduced by \$27,000. We have carefully reviewed the remaining differences and find the staff's estimates to be reasonable and in harmony with past Commission policy, except with respect to the April 1960 wage increases.

The full year effect of wage increases awarded April 1, 1960 were not reflected either in applicant's or the staff's estimates. The annualization of such wages, which we find to be appropriate for rate-fixing purposes, would increase administrative and general expenses by \$8,000 for test year 1960.

We adopt, as reasonable the staff's estimates augmented by \$183,000 to reflect the smaller but more appropriate transfer credit and the wage increases, or an amount of \$1,402,000 for administrative and general expenses for the test year 1960 under applicant's proposed rates contained in its second amendment.

Depreciation Expense

The staff's depreciation expense estimate is \$2,000 more than applicant's. This difference results from a small difference in the respective estimates of plant in service. The Commission will adopt the staff estimate of \$1,907,000 as reasonable for test year 1960.

Amortization Expense

An amount of \$108,000 has been estimated by both the staff and the applicant to reflect amortization of gas loss at La Goleta storage. This amount represents about one-fifth of the total loss of \$538,000 to be amortized over the years 1960 to 1964, inclusive. We adopt this estimate as reasonable for test year 1960.

Taxes-Other Than Income

Estimates of taxes, other than income, presented by the staff are \$14,000 below applicant's estimates. We adopt the applicant's estimate of \$2,248,000 as reasonable for the test year 1960. However, in adopting the amount estimated by the applicant as reasonable we are not accepting the applicant's methods of trending ad valorem taxes.

Income Taxes

Applicant has calculated and paid its income taxes on a straight-line depreciation basis in all years, but filed a claim for income tax refund for the years 1954 and 1955 based upon liberalized depreciation for those two years. The record shows that applicant recently received a tax refund based on liberalized depreciation for years 1954 and 1955 in the total amount of \$73,169.86 of which \$14,380.38 represents interest and the balance, or \$58,789.48, represents the net amount of all tax items. The record further shows that applicant does not intend to claim liberalized depreciation in the future.

In conformity with Decision No. 59926, dated April 12, 1960, specifying the proper treatment of liberalized tax depreciation for rate-making purposes, the Federal income taxes herein are computed on an "as paid" basis in our adopted results. Deducted therefrom are the annual charges on the net amount of all tax items refunded, amounting to approximately \$3,000, and interest calculated on the average tax refund, including refund of interest less income tax thereon, (herein considered to be the deferred income tax reserve) at the fair rate of return on the rate base adopted herein, amounting to about \$4,000.

After giving weight to the variation in the expenses being adopted herein, we compute and adopt an income tax amount of \$4,964,000.

for the purposes of this decision for the test year 1960 at applicant's proposed rates. Such computation reflects a 5.5 percent State income tax rate and a 52 percent Federal income tax rate.

Rate Base

The components of the weighted average depreciated rate base for test year 1960 as developed by the applicant and by the staff are compared below:

WEIGHTED AVERAGE DEPRECIATED RATE BASE
Test Year 1960 Estimated

<u>Item</u>	<u>Applicant</u>	<u>Staff</u>	<u>Adopted Rate Base</u>
Gas Plant:			
Plant-Beginning of Year:			
Plant in Primary Accounts	\$83,909,000	\$83,052,000	
Non-Interest Bearing Const.			
Work in Progress	270,000	260,000	
Subtotal	84,179,000	83,312,000	
Weighted Average Net Additions:			
Plant in Primary Accounts	267,000	603,000	
Non-Interest Bearing Const.			
Work in Progress	(5,000)	5,000	
Subtotal	262,000	608,000	
Total Wtd. Avg. Gas Plant	84,441,000	83,920,000	\$83,920,000
Deduction for Depre. & Amortz.	12,527,000	12,188,000	12,188,000
Wtd. Avg. Net Gas Plant	71,914,000	71,732,000	71,732,000
Wtd. Avg. Mat. and Supplies	815,000	657,000	657,000
Working Cash Allowance	300,000	-	-
Current Asset Gas in Storage	3,618,000	3,618,000	3,618,000
Wtd. Avg. Depreciated Rate Base	76,647,000	76,007,000	76,007,000

(Red Figure)

The staff's estimate of weighted average gas plant is \$521,000 lower than applicant's estimate. This difference results primarily from the staff's adjustment of \$430,000 to reflect retirement as of December 31, 1959 of the Brea compressor station which the evidence shows has not been operated since April, 1958, is partially dismantled, and has no anticipated further operation. The staff also excluded \$17,000 of nonoperative Tejon Ranch property, and made an adjustment of \$74,000 to reflect recorded plant at the end of

1959 and a revised up-to-date estimate of applicant's 1960 proposed additions and betterments. Weighted average gas plant of \$83,920,000, as estimated by the staff, appears reasonable and is adopted.

The staff's weighted average deduction for depreciation estimated for 1960 is \$339,000 less than estimated by applicant. This difference is due to the staff's use of recorded reserve amounts as of the end of 1959, the staff's adjustment for the retirement of the Brea compressor station and the staff's use of a revised up-to-date estimate of applicant's proposed construction for 1960. We adopt as reasonable the staff's estimate of \$12,188,000 for this item.

Weighted average materials and supplies estimated by the staff are \$158,000 lower than applicant's estimate resulting from the staff's exclusion of \$100,000 representing a portion of the footage of 10, 12, 15 and 16-inch pipe judged by the staff to be in excess of reasonable requirements and a reduction of \$58,000 for certain large diameter welding fittings which were transferred from materials and supplies and included by the staff in construction work in progress in connection with the Needles-Newberry pipeline. Applicant in its closing brief states that the staff's estimate of materials and supplies is not unreasonable and that it takes no exception thereto. We adopt as reasonable the staff's estimate of \$657,000 for this item.

Applicant has included in its rate base an allowance of \$300,000 for working cash which it claims is the minimum amount of cash required for operations. The staff states that working cash is included in rate base in order that investors may be compensated for monies which they have supplied over and above the investment in tangible and intangible property in order to enable the utility to operate economically and efficiently; that the working cash allowance is a judgment amount based upon an analysis of certain balance sheet accounts and upon a study of relative lags in the collection of

revenues and the payments of expenses; and that the short collection time for revenues from its customers and the accrual of monies for income taxes is sufficient so that for this applicant the investors do not need to supply any additional money for working cash. ✓

The present applicant serves only two affiliated customers who are prompt in their payments to this applicant. In our opinion, the evidence in no way discloses that applicant's investors have provided monies for the operation of the business for which they are not otherwise compensated. We find from the evidence, therefore, that an additional allowance for working cash is not justified and no amount therefor will be included as a component of rate base to be adopted herein.

We will adopt as reasonable a rate base for 1960 of \$76,007,000 as shown in the above tabulation.

Rate of Return

Applicant seeks a rate of return of 7.0 percent on its depreciated rate base to meet its alleged costs of doing business and to provide an opportunity for earning what applicant considers to be a proper and reasonable net income.

In support of a 7 percent rate of return applicant computed a 6.82 percent average rate of return it claims was allowed 23 natural gas distributing utilities by some 13 regulatory bodies in the United States during the period September 1957 to April 1959 as shown in Exhibit 3.^{2/} Applicant represents that its business is subject to greater potential risks than the usual gas distributing utility.

The City of Los Angeles in Exhibit 14 showed that the median rate of return of the 23 utilities used by applicant was 6.52 percent and that 10 of the utilities had rates of return of 6.50 percent or less while only 6 cases exceeded 6.75 percent. Moreover, the witness for Los Angeles pointed to a number of differences between applicant

^{2/} The testimony shows this figure would be 6.89 percent if brought up to date.

and the 23 utilities shown in Exhibit 3, which he considered significant as to relative risks of operation. Applicant has little short-term debt and no long-term debt. Applicant makes all of its gas sales at wholesale to its two affiliated distributing companies, which together comprise the largest gas distribution system in the country. The proportion of applicant's revenues derived from fixed charges is greater now than obtained in earlier years of its operations.

In its closing brief the California Farm Bureau Federation saw no reason to disturb the 6.5 percent rate of return last found by the Commission to be fair and reasonable for this applicant in Decision No. 57598 dated November 10, 1958. The City of Los Angeles expressed the view that a fair rate of return for the applicant at this time is within a narrow range of the 6.5 percent last allowed. The Department of Defense and Other Executive Agencies of the United States Government took the position in its closing brief that a 6.5 percent rate of return for this applicant is at the upper limit of the range of reasonableness.

The Commission has carefully considered the showing of applicant to the effect that a rate of return higher than the 6.5 percent previously found reasonable for this operation is inadequate under existing circumstances. We do not find such showing to be convincing. In our opinion a rate of return of 6.5 percent will be adequate for this applicant for the test year 1960 under all of the circumstances set forth in the record herein. To earn a rate of return of 6.5 percent on a rate base of \$76,007,000 an over-all increase in gross revenues of approximately \$12,026,000 above the interim rate levels will be required based upon the test year 1960.

Rate Spread

Applicant requests in its second amendment a monthly demand charge per Mcf of maximum daily delivery rate of \$1.52 and a commodity charge of 32 cents per Mcf of monthly delivery, in addition to

the monthly demand charge. This compares with the interim commodity charge of 33.4 cents per Mcf and the additional monthly charges of \$579,000 for Southern California Gas Company and \$353,500 for Southern Counties Gas Company of California.

The California Manufacturers Association took the position that the sole criteria in fixing applicant's rates should be cost to serve. Based on its cost studies (Exhibits 39 and 40) the Association represents that for test year 1960 assuming a 7 percent rate of return the average annual fixed costs per Mcf of peak day demand is \$21.32 and the average variable costs per Mcf sold is 29.69 cents.

Consideration has been given to the positions of the various parties respecting the spread of rates. In Decision No. 57419 the Commission recognized that the Transwestern pipeline could not be economically operated without volumes upward of 300,000 Mcf per day. On the assumption that the deliveries from Transwestern will be at the rate of 300,000 Mcf per day, we find that a monthly demand charge of \$1.48 per Mcf of maximum daily delivery rate and a commodity charge of 31.6 cents per Mcf of monthly delivery, in addition to the monthly demand charge, are reasonable and will produce approximately the authorized increase in revenue. In the event that Transwestern fails to deliver the full 300,000 Mcf per day, our Decision No. 57419 provides that the resulting higher unit costs of gas delivered will not burden the rates of regular gas users. Therefore, in the rates authorized a step down of rates commensurate with delivery levels is provided.

The following tabulation will serve to summarize the results adopted after reduction to a 6.5 percent rate of return basis and which we find reasonable for the test year 1960 at the rates herein-after authorized:

	<u>Authorized Rates</u> <u>Adopted Results</u>
Operating Revenues	\$83,170,000 ✓
Operating Expenses, Depreciation and Taxes	<u>78,230,000</u> ✓
Net Revenue	4,940,000 ✓
Rate Base (Depreciated)	76,007,000
Rate of Return	6.5%

Findings and Conclusions

In the considered judgment of the Commission, the increases in rates to be authorized herein will provide such additional gross revenues as should enable applicant to meet its expenses of operation and afford it the opportunity to earn a fair and just return on its depreciated rate base hereinbefore found reasonable.

It is our finding and conclusion, after considering all factors pertinent to this proceeding, that an order should be issued authorizing increased rates above the interim level in the over-all amount of approximately \$12,026,000 in the manner hereinbefore outlined effective upon the date of commencement of deliveries of gas to applicant by Transwestern Pipeline Company. Accordingly, we find that the increases in rates and charges authorized herein are justified and that the existing rates, in so far as they differ therefrom, are for the future unjust and unreasonable.

ORDER

The Pacific Lighting Gas Supply Company having applied to this Commission for an order authorizing increases in rates and charges for gas service, public hearing having been held, the matter having been submitted and being ready for decision; therefore,

IT IS ORDERED that applicant is authorized to file in quadruplicate with this Commission, after the effective date of this order, in conformity with the Commission's General Order No. 96,

revised tariff schedules as set forth in Appendix A hereof and on not less than five days' notice to the Commission and to the public, to make said rates effective upon the date of commencement of deliveries of gas to applicant by Transwestern Pipeline Company.

IT IS FURTHER ORDERED that applicant shall advise this Commission in writing of the date of commencement of deliveries of gas to applicant by Transwestern Pipeline Company, within five days of such commencement.

IT IS FURTHER ORDERED that if the Federal Power Commission ultimately fixes a rate for Transwestern gas lower than 42.25 cents per Mcf at 100 percent load factor applicant shall promptly advise this Commission in writing and reduce its rates to its customers accordingly. Should Transwestern be ordered by the Federal Power Commission to make any refunds to which applicant is entitled; applicant shall promptly advise this Commission in writing and make corresponding refunds to its customers after approval of this Commission.

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

Dated at San Francisco, California, this 21st day of July, 1960.

Theodore J. Jenner
President

Everett C. McKee Commissioner
necessarily absent, did not participate in the disposition of this proceeding.

I concur in the foregoing decision but do not assent to the national preference treatment. Cash and encourage that treatment. Mackay J. Baker 20th.

APPENDIX A

The presently effective tariffs are changed as set forth in this appendix.

1. Withdraw and cancel Schedules Nos. G-60 and G-61
2. File Schedule G-62 (Exhibit No. 30) revised as follows:

a. On sheet 1 of 3:

- (1) Add at end second paragraph following:

Maximum Daily Delivery Rates

Southern Counties Gas Company of California - - - - 572 M²CF
 Southern California Gas Company - - - - - 913 M²CF

- (2) Change \$1.52 to \$1.48

- (3) Change 32¢ to 31.6¢

b. On sheet 2 of 3:

- (1) Revise paragraph (a) to read as follows:

(a) During the construction-completion period commencing with the effective date hereof and ending with the date on which deliveries to seller from Transwestern Pipeline Company reach, or are first tendered in the amount of 300,000 Mcf. per day, a reduction will be accorded buyers and the applicable rate to buyers shall be in proportion to the following scale of rates:

<u>Transwestern Deliveries Tendered at Rate M²CF/D*</u>	<u>Maximum Daily Delivery Rate M²CF/D</u>	<u>Demand Charge Per MCF</u>	<u>Commodity Charge Per MCF</u>
300	1485	\$1.48	31.6¢
275	1485	1.45	31.3
250	1485	1.41	31.2 ✓
225	1485	1.38	30.8
200	1485	1.34	30.6

* For delivery amounts tendered at other rates per day a rate interpolated from the above amounts will apply.

- (2) Add new paragraph (b) as follows:

(b) Pursuant to subparagraph (b) of the order in Decision 57419, each year on the anniversary after the date when the Transwestern Pipeline Company first tenders gas at a rate of 300 M²CF per day, seller shall refund to buyer such amounts as may be necessary to reduce the effective rate in accordance with the scale set forth in the preceding paragraph, if during the preceding 12 months the average daily deliveries of gas taken from Transwestern Pipeline Company falls below the rate of 300 M²CF per day, providing that this paragraph shall not be applicable if said reduced purchases from Transwestern arise by reason of buyers request to reduce said purchases and not by reason of Transwestern's inability to supply gas at the rate of 300 M²CF per day.

- (3) Change lettering of succeeding paragraphs to preserve sequence.

I concur in Part and Dissent in Part:

I concur in the major findings and order of the majority but dissent as to (1) the disallowance of working cash in the rate base and (2) the treatment of applicant's income tax allowance.

Any objective appraisal of these proceedings must concede that "working cash" is an integral part of applicant's operations, in fact, is as integral a part of the operation as the physical plant devoted to the public service. No soundly managed corporation, be it a public utility or otherwise, would attempt to operate without working cash in the bank. The staff's position, in essence, which is supported by the majority in this instance, is that the ratepayers have put up the money used by applicant in its "working cash" account and therefore said ratepayers have a vested interest in said working cash, to the extent that it should be excluded from the rate base. This staff assumption, apparently, is predicated on the erroneous contention that the ratepayer retains a proprietary interest in money paid to the utility until such money is disbursed in dividends to stockholders, disbursed to creditors or placed in an earned surplus. Any objective appraisal of the public utility business must agree that the ratepayer pays for a service, a commodity, or a commodity and service rendered or sold to him; that in payment of his money he acknowledges value received. When a purchaser pays over money for value received, be it merchandise or service, he relinquishes title to such money and therefore forfeits any interest or control therein or thereof. Money in the "working cash" account belongs

to the corporation and its stockholders and is an integral part of the over-all operation which includes the physical plant, and therefore should be allowed in the rate base.


As to the deductions made from the Federal income tax allowance in this decision, it is obvious that the majority again has violated its own Decision No. 59926 wherein the Commission enunciated a policy of allowing Federal income taxes on an "as paid basis". The record in this proceeding shows that while applicant adhered to the straight-line depreciation basis in all years, it claimed an income tax refund for the years 1954 and 1955 based upon liberalized depreciation for those two years. The record shows also that applicant has received a tax refund based on this claim for the years 1954 and 1955 in the amount of \$73,169.86 of which \$14,380.38 represents interest and the balance, or \$58,789.48, represents the net amount of tax items. According to majority "reasoning", applicant, by obtaining this tax refund, recaptured money belonging to the ratepayer. This is an erroneous assumption. Applicant's recorded earnings for the two years in question were considerableⁿ less than the 6% rate of return *U.B.* authorized it for those two years. The recorded rate of return earned in 1954 was 3.17% and in 1955 it was 5.64%. Thus the ratepayer, during these two years, was getting service and commodity for considerably less than the Commission itself, based on the authorized rate of return, considered that he should have paid.

The exact manner in which the majority computed the Federal income tax allowance granted applicant is set forth in the majority decision as follows:

"In conformity with Decision No. 59926, dated April 12, 1960, specifying the proper treatment of liberalized tax depreciation for rate-making purposes, the Federal income taxes herein are computed on an "as paid" basis in our adopted results. Deducted therefrom are the annual charges on the net amount of all tax items refunded, amounting to approximately \$3,000, and interest calculated on the average tax refund, including refund of interest less income tax thereon, (herein considered to be the deferred income tax reserve) at the fair rate of return on the rate base adopted herein, amounting to about \$4,000."

It is noted that the majority deducted from the Federal income tax allowance granted applicant an amount in the sum of \$3,000 which it characterizes as "annual charges on the net amount of all tax items refunded". I have been unable to obtain a logical explanation either as to the source of this \$3,000 deducted or the reasoning behind it. After deducting these so-called "annual charges", the majority proceeds to make a further deduction from the Federal income tax allowed applicant of an amount equal to "interest" on the deferred tax reserve computed at the fair rate of return authorized, despite the fact that there is no assurance that applicant will earn said rate of return. Thus applicant is being doubly penalized for having taken advantage of the provisions of a Federal statute, which Congress clearly intended to provide additional internally generated funds with which applicant could meet, in part, the insistent demands of growth. It is significant that both the disallowance of "working cash" and the Federal income tax allowance as set forth in the majority opinion, again were computed by Commission engineers and not by the financial and tax experts of the Commission.

I am fully aware that a decision of the majority becomes a decision of the Commission and if the majority were to observe *scrupulously* its own decision in this regard, I would not dissent in this instance. Since the majority opinion in Decision No. 59926 refuses to recognize the necessity of a deferred tax reserve when a taxpayer avails himself of liberalized depreciation, reserves heretofore set aside by applicant should be deducted from applicant's rate base. Such treatment, in my opinion, would be consistent with the majority opinion in Decision No. 59926 and would prevent applicant from being doubly penalized for having taken advantage of a Federal statute.


C. LYN FOX
Commissioner