

ORIGINAL

Decision No. 76065

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ESTELLE NUNEMAKER, GENOVEVA
GONZALEZ and MARCIA POWERS,

Complainants,

vs.

PACIFIC TELEPHONE & TELEGRAPH
COMPANY,

Defendant.

Case No. 8735
(Filed December 14, 1967)

HENRY WOOD, et al

Complainants,

vs.

PACIFIC GAS & ELECTRIC COMPANY,

Defendant.

Case No. 8770
(Filed February 9, 1968)

Gilbert T. Graham, for complainants.

Robert E. Michalski, for defendant The Pacific
Telephone and Telegraph Company; F. T.
Searls, J. C. Morrissey, J. C. M. Lambert,
for defendant Pacific Gas and Electric
Company.

Leonard J. Snaider, Counsel, and Ermet J.
Macario, for the Commission staff.

O P I N I O N

Case No. 8735 is a complaint by Estelle Nunemaker, Genoveva Gonzalez and Marcia Powers against The Pacific Telephone and Telegraph Company (hereinafter referred to as PT&T). The complaint alleges that the complainants have no telephone service because they have been required, in accordance with PT&T's tariffs,

to give a deposit; that they are unable to afford the deposit, and that the portions of PT&T's tariff requiring deposits are illegal. Case No. 3770 is a complaint by Henry Wood against Pacific Gas and Electric Company (hereinafter referred to as PG&E). The complaint alleges that for a period of approximately seven months Wood was deprived of gas and electric service because he did not give a deposit, as required by PG&E's tariff; that Wood could afford to pay monthly gas and electric bills as they came due but he could not afford to pay the deposit and that the portions of PG&E's tariff requiring deposits are illegal. The two complaints were consolidated for hearing.

A duly noticed public hearing was held before Commissioner Symons and Examiner Jarvis in San Francisco on May 15, 16, 17, June 5, 6, 7, 20, 24, 25 and July 3, 1968. On occasion, Commissioner Morrissey and Commissioner Bennett attended the hearing. The matters were submitted subject to the filing of briefs which were filed by September 16, 1968.

In addition to the named complainants, both complaints have incidental language that they are also on behalf of all prospective customers who might be required to make deposits. The Presiding Examiner correctly ruled that the complaints were not class actions but that complainants would not be inhibited from establishing their situation as members of a given class, if relevant. The Presiding Examiner also correctly ruled that because the complaints were not brought by twenty-five or more actual or prospective consumers the reasonableness of the amounts of the deposits here involved were not at issue. However, the Examiner ruled that complainants would have the opportunity to show, if they could, that the deposit requirements themselves, without regard to amounts, were so unreasonable as to be illegal.

Except as hereinafter indicated there are no statutory provisions authorizing class actions before the Commission. As a general rule class actions are not necessary because the statutory provisions dealing with discrimination (Public Util. Code §§ 453, 494, 532) make available the results of any Commission decision to all persons similarly situated. Section 1702 provides in part that any person can file a complaint "setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law...." The Presiding Examiner correctly ruled that the allegations in the complaints were sufficient to invoke the Commission's jurisdiction under this portion of Section 1702.

PT&T and PG&E have tariff provisions which provide for a rudimentary determination that a customer seeking service has the ability to pay for the requested service (hereinafter sometimes referred to as the establishment of credit) before the customer receives (in the case of PT&T) or continues to receive after initial connection (in the case of PG&E) utility service. The PT&T and PG&E tariff provisions are not identical. However, in general, they provide several ways in which a customer may establish credit. If a customer is unable to establish credit in any other way, these tariff provisions include the alternative of making a

deposit. As indicated, we are not concerned with the reasonableness of the amount of the deposits here in question. Nor are we concerned with whether better rules could be adopted. We are concerned with matters of legality and not policy. The specific issues presented are:

1. Does the Federal or California Constitutions prohibit the Commission from authorizing, and a public utility from adopting, a tariff provision which requires a consumer to establish credit as a pre-requisite for obtaining utility service, where one mode of establishing credit is by payment of a deposit?

2. If an establishment of credit tariff provision is constitutional, were the provisions in PT&T's and PG&E's tariffs legally authorized and adopted?

3. If the establishment of credit provisions were legally authorized and adopted, is the way in which they are applied or operate illegal?

PT&T's tariff provisions dealing with establishment of credit are contained in its Rules 6 and 7 which at the time of hearing were as follows:

"Rule No. 6

(T)

"ESTABLISHMENT AND RE-ESTABLISHMENT OF CREDIT

(T)

"A. Establishment of Credit

"Each applicant for telephone service will be required to establish credit, which will be deemed established upon qualifying under any one of the following: (C)

- "1. Applicant is a customer of the utility or any other telephone utility in California, for a similar class of service and has paid all bills for service without having been temporarily or permanently discontinued for non-payment thereof, for a period of twelve consecutive months immediately prior to the date of the present application.
- "2. Applicant has been a customer of the utility or any other telephone utility in California in the last two years and during the last twelve consecutive months that service was provided has paid all bills for such service, without having been temporarily or permanently discontinued for nonpayment thereof.
- "3. Applicant is the owner of the premises upon which the utility is requested to furnish service, or is the owner of other local real estate; in the case of business service, real estate must be business property.
- "4. Applicant for residence service has been continuously employed by his present employer (including military) for a period of two years or more, or is retired on pension.
- "5. Applicant furnishes a guarantor satisfactory to the utility to secure payment of bills of applicant for telephone service requested in the application.
- "6. Applicant's credit is otherwise established to the satisfaction of the utility.
- "7. Applicant makes the deposit prescribed in Rule No. 7.

"B. Re-establishment of Credit

- "1. A customer whose service has been discontinued for non-payment of bills will be required to pay any unpaid balance due the utility for the premises for which service is to be restored and may be required to pay a reconnection charge as prescribed in Rule No. 11 under 'Restoration - Reconnection Charge' and to re-establish credit by making the deposit prescribed in Rule No. 7, before service is restored.
- "2. An applicant who previously has been a customer of the utility and during the last twelve months of that prior service has had service temporarily or permanently discontinued for nonpayment of bills will be required to pay any unpaid balance due the utility, and will be required to re-establish credit by making the deposit prescribed in Rule No. 7. (C)

"Rule No. 7

(T)

"DEPOSITS

(T)

"A. Amount of Deposit

(C)

- "1. The amount of deposit required to establish credit for residential telephone service is \$25.00. Whenever a deposit is taken, service connection charges and an advance payment will not be collected at the time of application.
- "2. The amount of deposit required to establish credit for business telephone service is twice the estimated average monthly bill, but not less than \$25.00
- "3. The amount of deposit required to re-establish credit is equal to twice the average monthly bill for the last three months, when available.

"B. Return of Deposits

"The utility will refund the deposit in accordance with the following:

- "1. When an application for telephone service has been cancelled prior to the establishment of service, the deposit will be applied to any charges applicable in accordance with the tariff schedules and the excess portion of the deposit will be returned, and the applicant will be so advised.
- "2. When the customer's credit may be otherwise established in accordance with Rule No. 6, and upon the customer's request for return of the deposit with interest.
- "3. Upon discontinuance of telephone service, the utility will refund, with interest the customer's deposit or the balance in excess of unpaid bills for that service, and the customer will be so advised.
- "4. After the customer has paid bills for telephone service for 12 consecutive months without having had this service temporarily or permanently discontinued for nonpayment of bills, the utility will refund the deposit with interest.

"C. Interest on Deposits

- "1. The utility will pay simple interest at the rate of 1/2 percent per month on deposits held, except as mentioned in 2. below. Such interest will be paid at the time the deposit is returned.
- "2. No interest will be paid if service is temporarily or permanently discontinued for nonpayment of bills, or if deposit is held less than full month increments.

(C)"

On January 28, 1969, after these consolidated matters were submitted, PT&T filed Advice Letter No. 9888, which sought authority to revise Paragraph A5 of Rule 6. The Commission takes official notice that it accepted the filing which became effective on February 28, 1969. Paragraph A5 of Rule 6 now provides:

"5. Applicant furnishes a guarantor satisfactory to the Utility to secure payment of bills of applicant for telephone service requested in the application. The amount of the guarantee shall be in the same amount (N) as the deposit computed in accordance with Rule No. 7 and this amount shall be specified on the Guaranty Form. This guaranty shall continue in full force and effect for one year from the installation date of the service or until applicant's credit is otherwise established. (N)"

PG&E's tariff provisions dealing with establishment of credit are contained in Rules 6 and 7 of its gas and electric tariffs. The gas tariff rules are as follows:

"RULE No. 6

"ESTABLISHMENT AND RE-ESTABLISHMENT OF CREDIT

"(A) Establishment of Credit--Domestic Service:

"Each applicant will be required to satisfactorily establish credit which will be deemed established:

- "1. If applicant is the owner of the premises to be served or of other real estate within the territory served by the Company; or
- "2. If applicant makes a cash deposit to secure payment of bills as prescribed in Rule No. 7; or
- "3. If applicant furnishes a guarantor, satisfactory to the Company, to secure payment of bills for the service requested; or
- "4. If applicant has been a customer of the Company within the past two years and during the last twelve consecutive months of that prior service has not had more than two past due bills as defined in Rule No. 11-(A); or
- "5. If applicant's credit is otherwise established to the satisfaction of the Company; and
- "6. If applicant has paid all bills for domestic gas service previously supplied applicant by the Company.

"(B) Establishment of Credit--Other Than Domestic Service:

"Each applicant will be required to satisfactorily establish credit which will be deemed established:

- "1. If applicant is the owner with a substantial equity, of value satisfactory to the Company, in the premises to be served; or
- "2. If applicant makes a cash deposit to secure payment of bills as prescribed in Rule No. 7; or
- "3. If applicant furnishes a guarantor, satisfactory to the Company, to secure payment of bills for the service requested; or
- "4. If applicant has been a customer of the Company for a similar type of service within the past two years and during the last twelve consecutive months of that prior service has had not more than two past due bills as defined in Rule No. 11-(A), provided that the periodic bill for such previous service was equal to at least 50% of that estimated for the new service, and, provided further, that the credit of applicant is unimpaired in the opinion of the Company; or
- "5. If applicant's credit is otherwise established to the satisfaction of the Company; and
- "6. If applicant has paid all bills for non-domestic gas service previously supplied applicant by the Company.

"(C) Re-establishment of Credit--All Classes of Service:

- "1. An applicant who previously has been a customer of the Company and whose gas service has been discontinued by the Company during the last twelve months of that prior service because of nonpayment of bills, may be required to re-establish credit by depositing the amount prescribed in Rule No. 7 for that purpose, and by paying bills regularly due; except, an applicant for domestic service will not be denied service for failure to pay such bills for other classes of service.
- "2. A customer who fails to pay bills before they become past due as defined in Rule No. 11-(A), and who further fails to pay such bills within five days after presentation of a discontinuance of service notice for nonpayment of bills, may be required, to pay said bills and re-establish his credit by depositing the amount prescribed in Rule No. 7. This rule will apply regardless of whether or not service has been discontinued for such nonpayment.
- "3. A customer using other than domestic service may be required to re-establish his credit in accordance with Rule No. 6-(B) in case the conditions of service or basis on which credit was originally established have, in the opinion of the Company, materially changed."

"RULE No. 7

"DEPOSITS

"(A) Amount of Deposit:

"The amount of deposit required to establish or re-establish credit for gas service is twice the estimated average monthly bills, but in no case may the amount of deposit be less than \$5.00.

"(B) Return of Deposit:

- "1. Upon discontinuance of service, the Company will refund the customer's deposit or the balance in excess of the unpaid bills for gas service furnished by the Company.
- "2. After the customer has paid bills for service for twelve consecutive months without having had more than two past due bills, as defined in Rule No. 11-(A), the Company will refund the deposit. If the customer has had more than two past due bills, the Company will thereafter review the account every twelve months and will refund the deposit after the customer has not had more than two past due bills during the twelve months prior to any review.
- "3. The Company may return the deposit at any time upon request, provided the customer's credit may otherwise be established in accordance with Rule No. 6.

"(C) Interest on Deposit:

"The Company will pay interest on deposits at the rate of 5% per annum for the first twelve consecutive months during which a customer has paid bills for service without having had more than two past due bills as defined in Rule No. 11-(A) and for the additional time thereafter up to the date of refund or the date upon which a check is mailed to the customer.

"No interest will be paid if service is discontinued or if the deposit is returned before twelve months from date on which deposit was made."

PG&E's electric tariff Rules 6 and 7 are identical to those in its gas tariff.

Complainants' first contention is based upon a misconception of certain principles of constitutional law and an oversimplification of generalized statements of public utility law, which, because of the context in which they were made did not include all of the applicable requirements and qualifications. Complainants argue that public utilities have a duty to serve the entire public. From this they derive a constitutional right of all persons to utility service. At times complainants say this alleged right is "conditioned only on payments of bills rendered." At other times complainants argue that the right is such that "a public utility, even if it concludes that a portion of its consumers may present a higher risk of loss than the overall public, must cover any such loss by the overall rate base of the utility." There is no merit in this contention.

Complainants misread the cases which hold that a utility may be required to conduct certain operations at a loss. It is true that a utility may be required to conduct certain of its operations at a loss if the utility has an overall return which is not confiscatory. (Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591; Greyhound Lines, Inc., 67 Cal.P.U.C. 85, 89, affirmed 68 Cal.2d 406; Southern Pacific Co. v. Pub. Util. Com., 41 Cal.2d 354, 366.) However, this does not confer a constitutional right on any individual or class of persons to continue to have the police power so exercised in perpetuity. "The Commission has frequently held that no customer or class of customer has a preferential right to any particular advantageous system cost. In establishing schedules of rates from time to time,

the Commission is confronted with the task of apportioning system operating costs to classes of customers and to customers within each class as equitably as circumstances permit." (California Water Service Company, 49 Cal.P.U.C. 463, 469.)

We now examine whether the challenged tariff provisions violate the due process or equal protection provisions of the Federal or California Constitutions in content or application.

The reasons for rules dealing with establishing credit were cogently stated in an early Commission decision:

"The question is frequently asked: 'Why does a water, gas, electric or telephone utility have the right to demand payment in advance, or deposits or other security to insure payment for service to be delivered, while the ordinary tradesman does not make similar demands?'

"The answer is that the condition of the tradesman is entirely different from that of the utility. The tradesman sells only to whom he pleases. If he does not like a person or believes that his credit is not good, he is free to demand cash on delivery or to refuse to sell at all. The utility on the other hand, is obliged to supply its service to all who demand it within the area to which the utility's obligations extend. As the law now stands, a baker may refuse to sell bread, but a water utility may not refuse to sell water to any one who complies with its reasonable regulations. Water, gas, electric and telephone service have come to be regarded largely as public necessities, and they may not be denied even to the impecunious or to the financially irresponsible members of the public. Hence, unless some measure of protection is accorded the utility, it will find itself in the position of having delivered, under compulsion, service for which it receives no pay. Such a condition not merely decreases the ability of the utility to perform effectively its duties to the public, but also affects injuriously those consumers who pay their bills and who, in the last analysis, will have their rates increased by the failure of other consumers to pay their bills."

(Re deposits, 7 C.R.C. 830, 837-38.) The United States Supreme Court has held that "...not only are telephone rates fixed and regulated in the expectation that they be paid, but the company's ability to serve the public largely depends upon their prompt

payment. They usually are only a few dollars per month and the expense incident to collecting them by legal process would be almost prohibitive. It uniformly is held that a regulation requiring payment in advance of a fair deposit to secure payment is reasonable....If they may do this, it is difficult to perceive why the more lenient regulation in question was not reasonable." (Southwestern Tel. Co. v. Danaher, 238 U.S. 482, 489-90.)

Complainants argue that Danaher and other cases are no longer determinative of the alleged constitutional question. We do not agree. Complainants contend that the credit rules "are based upon financial and economic criteria, and thus are invidiously discriminatory." They cite cases such as Dribin v. Superior Court, 37 Cal.2d 345. These cases are not in point. In those cases the exercise of a right which was not fundamentally based on economic ability was made dependent on an economic test. In Dribin a statute which permitted divorce on the basis of insanity only if the sane spouse could prove financial responsibility, was struck down. The Court found that there was no compelling necessity for applying a financial test in order to obtain a divorce (a right which has no direct relationship to economic ability to pay money) on the ground of insanity. In the present proceedings the challenged rules deal with economic or financial criteria, but the alleged right to which they relate is directly dependent upon the payment of money. The purpose of the credit requirement rules is to insure that those who receive utility service pay for that service so as not to burden with higher rates the other customers, rich or poor, who pay their bills. If the purpose of the rules is justified and the rules reasonably relate to that purpose they involve a reasonable classification and are constitutional. Complainants point to the fact that in 1913 the Commission adopted a policy prohibiting PT&T to "at its election"

require deposits. (City of San Jose v. Pacific Telephone and Telegraph Co., 3 C.R.C. 720, 734.) However, two years later, in 1915, this policy was changed after a Commission investigation into the question of establishment of credit requirements for all utilities. (Re deposits, supra.) A change in permissible policy does not create a constitutional infirmity.

In considering the constitutionality of the establishment of credit rules we look to the factual background in which they operate. During the first six months of 1967, PT&T had an average of 5,485,949 accounts. As of March 31, 1968, it had in service in California 9,391,990 telephones. During the years 1964-67, PT&T had the following experience with respect to bad debt:

	<u>Approximate Number of Accounts Written Off For Bad Debt</u>	<u>Net Amount of Bad Debt</u>
1964	239,213	\$ 7,297,930
1965	281,671	9,769,464
1966	315,269	11,872,969
1967	369,057	14,498,312

PT&T discontinued taking deposits from new residence customers on February 3, 1964 and commenced taking deposits again on August 14, 1967.^{1/} The Commission takes official notice that in the recent PT&T rate case (Decision No. 74917) the Commission made an adjustment which reflected the operation of the reinstituted establishment of credit rule and decreased the amount of operating revenues required by PT&T in the net amount of \$1,402,000.^{2/}

^{1/} Complainants attack the procedure utilized in authorizing PT&T to reinstate its deposit rule. This point is hereinafter considered. We are here considering the constitutionality of the rules as distinguished from the alleged improper procedure used in their authorization.

^{2/} The Commission found that for the test year 1967 PT&T's uncollectibles would be reduced, as a result of the rule, by an estimated \$2,900,000 and that the operating expenses in connection with the rule would be \$1,498,000. (Decision No. 74917, p. 13; p. 64, Findings Nos. 13 and 14.)

In 1966 PT&T conducted a study of 16,711 final accounts which were written off as uncollectible during a 30-day period. Among the information which came from the study was that 93 percent of the persons having these accounts rented their living quarters, 71 percent had the same job for two years or less, 40 percent were unemployed or had been employed three months or less, 82 percent had service less than two years, 67 percent had service less than one year and of those customers who had service for less than one year, 46 percent had service less than three months. In the first six months of 1963 (when PT&T's establishment of credit rule was in effect) PT&T's net bad debt was \$2,856,433 and the Bell System's was \$11,860,122. In the first six months of 1965 (when PT&T did not apply such rule) its net bad debt was \$4,805,358 and the Bell System's was \$12,006,850. During the period from 1963 to 1965 the Bell System's net bad debt increased 1.2 percent while PT&T's net bad debt increased 68.2 percent.

In order to receive residential telephone service every customer must pay an installation charge of \$10.00.^{3/}

PG&E served 4,053,000 domestic customers in 1967. Approximately 36 percent of its customers move within one year. It issues in San Francisco, alone, 9,000 closing bills per month. PG&E suffered the following losses from uncollectible accounts.

^{3/} At the time of the hearing the installation charge was \$8.50 and the testimony relates to that figure. The Commission takes official notice that in Decision No. 74917 it authorized an installation charge of \$10 which is presently in effect.

	No. of Uncollectible Accounts		Amount of Bad Debt	
	<u>Domestic</u>	<u>Business</u>	<u>Domestic</u>	<u>Business</u>
1965	142,003	12,795	\$2,188,602	\$498,602
1966	141,178	12,307	2,198,271	541,710
1967	130,464	10,860	2,215,004	528,619

Seventy-five percent of PG&E's total loss from uncollectibles is from customers who received service at their last location for less than 12 months; 50 percent is from customers who received service at their last location for less than 6 months. In 1967, PG&E applied 60.8 percent of the deposits it held to closing bills for customers receiving service for less than one year.

As we look at the challenged rules we note that complainants' brief does not state them in their proper context and does not accurately reflect the undisputed evidence as to how they are applied. Complainants' brief states:

"In the case of PT&T, a deposit (usually \$25) is required prior to connection of service, unless the subscriber:"

"PG&E connects gas and electric service immediately upon request, but requires a deposit (usually \$20) to be made within five days or service will be disconnected. The exceptions to this policy are if the subscriber:"

PT&T's establishment of credit rule provides:

"Each applicant for telephone service will be required to establish credit, which will be deemed established upon qualifying under any one of the following...."

PG&E's establishment of credit rules each provide that:

"Each applicant will be required to satisfactorily establish credit which will be deemed established...."

PT&T's rule provides 7 ways in which credit may be established.

PG&E's rules provide 6 ways in which credit may be established.

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The undisputed evidence is that when a prospective customer contacts PT&T or PG&E for service, the company representative attempts to elicit information which would qualify the person for service in the other-than-deposit categories. Only if the person does not qualify in any one of these categories is a deposit required.

One method of establishing credit under the PT&T and PG&E rules is by the ownership of real property.^{4/} There is a reasonable relationship between this criterion and the purpose for which it was established. Actual experience indicates that property owners are a better credit risk, for the payment of utility bills than non-property owners. There is no evidence in the record of the extent to which "poor" people own real property. One may conjecture that some "poor" people do own real property. The evidence clearly shows that this rule

^{4/} PT&T's Rule 6(A)3 provides: "Applicant is the owner of the premises upon which the utility is requested to furnish service, or is the owner of other local real estate; in the case of business service, real estate must be business property."

PG&E's Gas and Electric Tariff Rules 6(A)1 provide: "If applicant is the owner of the premises to be served or of other real estate within the territory served by the Company;"

is applied equally to anyone, "poor" or "rich" who owns real property and when it is applied PT&T or PG&E does not know and does not inquire into the economic status of the customer. They inquire only as to the fact of ownership of the real property.

Another method of establishing credit is in the case of PG&E by having paid all bills for domestic service previously supplied by PG&E or by having been a customer within the two years immediately past and within the preceding 12 consecutive months not having had more than two past due bills. In the case of PT&T credit is established if the applicant has been a customer of PT&T or any other California telephone utility for two years preceding the application and in the last 12 consecutive months has paid all bills for service without having it temporarily or permanently disconnected for nonpayment thereof.^{5/} A history of paying similar past bills is indicative of the ability and willingness to pay utility bills in the future. While the PT&T and PG&E rules differ somewhat, the periods looked to and conditions relating to past payment are reasonable. Again, by the terms of the rules and in actual practice these rules are based upon past readily ascertainable facts and apply equally to all persons "poor" or otherwise.

^{5/} PG&E's Rules 6(A) 4 and 6 provide as follows: "4. If applicant has been a customer of the Company within the past two years and during the last twelve consecutive months of that prior service has not had more than two past due bills as defined in Rule No. 11-(A);" "6. If applicant has paid all bills for domestic gas [electric] service previously supplied applicant by the Company."

PT&T's Rule 6(A) 2 provides as follows: "Applicant has been a customer of the utility or any other telephone utility in California in the last two years and during the last twelve consecutive months that service was provided has paid all bills for such service, without having been temporarily or permanently discontinued for nonpayment thereof."

Still another method of establishing credit is by the furnishing of a guarantor to secure the payment of the utility bill.^{6/} PG&E will accept as a guarantor another customer who has had service for at least one year and has satisfactorily paid for the service. The amount of the guarantee is the same as the amount of any deposit which would be required. PG&E handles bill guarantees similar to deposits. If the customer establishes credit in some other way or pays his bills satisfactorily for one year the guarantee is returned. As of June 6, 1968, PG&E had, in San Francisco, 1037 guarantees of which 970 were for domestic service. PT&T will accept as a guarantor another customer who has had service for at least 6 months and has satisfactorily paid for the service. At the time of the hearing there was no ceiling on the amount for which a guarantor would be liable. As indicated, PT&T revised its rule which now provides that the guarantee shall be for the same amount as any deposit which would be required. PT&T's practice was to return or destroy the guarantee after one year if the customer satisfactorily paid his bills. The revised rule specifically provides for this and that it will be returned earlier if the customer establishes credit in some other way. Historically, the use of a guarantor has been one way of establishing credit. The guarantor

6/ PG&E's Gas and Electric Rule 6(A)3 provides: "If applicant furnishes a guarantor, satisfactory to the Company, to secure payment of bills for the service requested;"

At the time of the hearing PT&T's Rule 6(A)5 provided: "Applicant furnishes a guarantor satisfactory to the utility to secure payment of bills of applicant for telephone service requested in the application." It presently provides: "Applicant furnishes a guarantor satisfactory to the Utility to secure payment of bills of applicant for telephone service requested in the application. The amount of the guarantee shall be in the same amount as the deposit computed in accordance with Rule No. 7 and this amount shall be specified on the Guaranty Form. This guaranty shall continue in full force and effect for one year from the installation date of the service or until applicant's credit is otherwise established."

rules are equally applied to all customers. The record shows that on two occasions complainant Marcia Powers established credit to receive service from PG&E because guarantees were executed by her mother.

A further way of establishing credit is by having been continuously employed by the same employer for a period of time or being retired on a pension.^{7/} There are some differences between the PT&T and PG&E rules. PT&T requires continuous employment by a present employer for two years; PG&E only requires continuous employment for more than one year. PT&T's rule specifically includes military service as being included as employment within its purview. PT&T considers Social Security as a pension within the meaning of its rule, whereas PG&E does not. While the rules are not the same, each is reasonable. They apply to "rich" and "poor" alike. If the applicant has been employed for the requisite period of time, his credit is established regardless of the amount of his earnings. In the case of a pension, credit is established regardless of the amount of the pension. The fact of continuous employment or the receipt of a pension is an indication of the ability of the prospective customer to pay his utility bill when it becomes due.

In addition to the foregoing rules, both PT&T and PG&E provide that credit may be established "to the satisfaction" of the utility.^{8/} Under this rule PT&T will check with any Bell System

^{7/} PT&T's Rule 6(A)4 provides that: "Applicant for residence service has been continuously employed by his present employer (including military) for a period of two years or more, or is retired on pension."

PG&E does not have specific rules on this point but it uses similar tests under its Gas and Electric Rules 6(A)5, hereinafter discussed.

^{8/} PT&T's Rule 6(A)6 provides: "Applicant's credit is otherwise established to the satisfaction of the utility."

PG&E's Gas and Electric Rules 6(A) 5 provide: "If applicant's credit is otherwise established to the satisfaction of the Company;"

telephone company and establish credit for an applicant if he has promptly paid his bills for the requisite period of time. As indicated, PG&E uses this rule to establish credit for a person continuously employed by an employer for one year or more. Both PT&T and PG&E establish credit, under this rule, for members of professions. Members of professions which require extensive training and a license to practice within a state are likely to remain in the state where they are licensed and are apt, as a result of practicing in their profession, to have the ability to pay a utility bill. While this rule permits a certain discretion on the part of PT&T and PG&E, that discretion must be used reasonably. There is no evidence of any unreasonable application of the rule in this record. When a criterion is established under the rule it is applied equally to all who meet it. The evidence clearly indicates that in determining whether to grant credit PT&T does not inquire about or consider the ethnic group or neighborhood of the applicant. Insofar as possible it avoids probing into the details of his economic situation (it does not ask questions dealing with bank accounts, net worth, etc.). There is no indication that PG&E's practices are otherwise.

If an applicant for service does not qualify for credit under any of the aforesaid rules, he is then required to put up a deposit to obtain service. PT&T requires a deposit of \$25.^{9/} The record shows that the average monthly residential bill of a PT&T residential customer is \$11.50, the average closing bill is \$30 and that under PT&T's usual current billing procedures,

9/ PT&T's Rule 7(A)1 provides: "The amount of deposit required to establish credit for residential telephone service is \$25.00. Whenever a deposit is taken, service connection charges and an advance payment will not be collected at the time of application."

23 to 53 days can elapse from the time a charge is incurred until the service is subject to a temporary disconnect for failure to pay the bill for it. PG&E requires a deposit of twice the average estimated monthly bill with a minimum deposit of \$5.00.^{10/} In 1967, the average residential deposit was \$17. In 1967, the average domestic gas and electric bill was \$16.51; the average uncollectible domestic bill written off was \$13.68. Under PG&E's normal procedures 60 to 90 days can elapse from the time the service is used until it is subject to a temporary disconnect for failure to pay the bill for it.

PT&T and PG&E refund deposits if the customer's credit is otherwise established or if he has paid his bill for 12 consecutive months.^{11/} PT&T pays interest on deposits which it holds at

^{10/} PG&E's Gas and Electric Rules 7(A) provide: "The amount of deposit required to establish or re-establish credit for gas service is twice the estimated average monthly bill, but in no case may the amount of deposit be less than \$5.00."

^{11/} PT&T's Rule 7(B) 2 and 4 provide: "2. When the customer's credit may be otherwise established in accordance with Rule No. 6, and upon the customer's request for return of the deposit with interest." "4. After the customer has paid bills for telephone service for 12 consecutive months without having had this service temporarily or permanently discontinued for non-payment of bills, the utility will refund the deposit with interest."

PG&E's Gas and Electric Rules 7(B) provide: "Return of Deposit: 1. Upon discontinuance of service, the Company will refund the customer's deposit or the balance in excess of the unpaid bills for gas service furnished by the Company. 2. After the customer has paid bills for service for twelve consecutive months without having had more than two past due bills, as defined in Rule No. 11-(A), the Company will refund the deposit. If the customer has had more than two past due bills, the Company will thereafter review the account every twelve months and will refund the deposit after the customer has not had more than two past due bills during the twelve months prior to any review. 3. The Company may return the deposit at any time upon request, provided the customer's credit may otherwise be established in accordance with Rule No. 6."

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the rate of 1/2 percent per month. PG&E pays interest on deposits held at the rate of 5 percent per annum, if the deposit is held for 12 months or more.

Complainants attack the establishment of credit rules as being arbitrary and unconstitutional on the ground that if they were not in effect PT&T and PG&E would realize greater net revenues, thereby benefiting all ratepayers. This argument is based on false premises and speculation thereon. The Commission finds as not true the contention that 100,000 persons, who could otherwise afford telephone service except for the requirements of PT&T's establishment of credit rules, are denied telephone service each year. The Commission finds as not true that if persons denied service because of the application of PT&T's and PG&E's establishment of credit rules were permitted to have service the net revenues of PT&T or PG&E would increase.

Complainants contend that techniques other than an establishment of credit rule are available which would lower the amount of uncollectible bills. They refer to practices which would cause earlier disconnection of service for nonpayment of bills and a procedure known as advanced toll billing. If it be assumed, for purposes of discussion only, that methods other than an establishment of credit rule might better reduce uncollectibles, this does not make the credit rule unconstitutional. Furthermore, the contentions are not sound. There is no evidence that a policy of earlier disconnects for nonpayment of bills would have a better impact on reducing uncollectibles than the present establishment of credit rules. PT&T's

advanced toll billing procedure^{12/} involves only toll calls and has no relationship to the basic service charge. A deposit under the credit rule applies to the basic service charge as well as other charges.

We turn now to the evidence adduced by the complainants in determining the constitutionality of the rules. No evidence was presented with respect to complainant Genoveva Gonzalez. Complainant Marcia Powers testified that she and her three-year old daughter lived exclusively on a welfare allowance of \$148 per month; that she had been on welfare since 1964; that she had lived in seven or eight different places since 1964; that she had had PG&E service in many of these places, but at the time of the hearing gas and electricity were included as part of her rent; that PG&E always required a deposit before she could receive service; that PG&E told her that her mother could not act as a guarantor for her to receive service; that she never had any telephone service and did not have any at the time of the hearing; that she was a generally responsible person in paying her bills; that except for approximately \$30 which she owed her mother, she had no debts and that if she did not have to put up a deposit she could afford to pay her monthly bill for telephone service. However, other evidence in the record clearly indicates that Marcia Powers

^{12/} Advanced toll billing is a procedure established by PT&T whereby a computer is programmed in multiples of \$50 to indicate when a customer's current toll-call usage reaches a predetermined amount (this amount currently varies among area offices from \$150 to \$300). When the computer prepares a notice that a customer's toll calls have exceeded the predetermined amount, the notice is forwarded to the business office which handles the account where it is evaluated by a service representative in the light of the customer's past usage and credit information. If the evaluation indicates that there is a substantial risk of nonpayment of the toll charges, a short period bill is sent to the customer. The customer is given five days to pay the bill. If it is not paid service is disconnected.

previously had telephone service from PT&T and that at the time of the hearing owed PT&T \$30.05 for such service. The record also indicates that, on occasion, Marcia Powers received gas and electric service from PG&E without being required to put up a deposit; that on two occasions PG&E permitted her mother to be a guarantor so that she could receive service and that at the time she testified, she owed PG&E \$17.42 for service rendered in August of 1967.^{13/} If anything, the facts pertaining to Marcia Powers show the need for an establishment of credit rules. We find nothing unconstitutional in the application by PT&T and PG&E of their establishment of credit rules to Marcia Powers.

Complainant Estelle Nunemaker gave no testimony with respect to PG&E. She testified that she did not have telephone service from PT&T; that she was on welfare; that the only source of income for her and her minor son was a welfare payment of \$172 a month; at the time of the hearing she did not need a telephone because the landlord in the rooming house where she lives had a pay telephone installed; that previously she and Marcia Powers decided to share the cost and attempted to get telephone service; that at the time the attempt was made she was receiving \$148 per month in welfare payments and her rent was \$60 per month; that in order to pay for a telephone or her share of a monthly telephone bill she would have to use money from her welfare budget which was allocated for food; that she is a generally responsible person and that if she did not have to pay a deposit it was "most likely" that she would have the capacity to pay monthly telephone bills. Estelle

^{13/} The record indicates that six days after Marcia Powers gave her testimony her mother paid the \$17.42 which had been owed to PG&E.

Nunemaker had four jobs in the two years prior to her having a child and going on welfare. We find nothing unconstitutional in the application or prospective application of the establishment of credit rules to Estelle Nunemaker.

Complainant Henry Wood is a retired farmer with a monthly pension of \$85. At the time of the hearing he had \$3,500 which had been awarded to him for back Social Security payments. Henry Wood gave no evidence relating to PT&T. He testified he "doesn't use the telephone." At the time his complaint was filed Henry Wood lived at 311 - 5th Street, San Francisco and was receiving service from PG&E. He previously rented an apartment at 457A Clementina Street, San Francisco, for \$65 a month. Henry Wood wanted gas and electric service but did not directly apply to PG&E. He had the apartment manager make application for him. He did not provide the manager with any personal history information. On May 24, 1967 the apartment manager requested service for Henry Wood and service was immediately provided. The manager represented to PG&E that Henry Wood was a retired laborer whose last address was Los Angeles. In fact, he had lived in San Francisco for most of the preceding 20 years and for three years prior to the application for service. Based on the information supplied by the manager, PG&E sent Henry Wood a request for a deposit on May 31, 1967. He ignored the request. A second request was made on June 8, 1967. It, too, was ignored. Henry Wood testified that he received the requests and understood that PG&E wanted him to contact the company but that he did not do so. After receiving no response from Henry Wood, PG&E terminated his electric service on June 21, 1967 and gas service on July 7, 1967. Henry Wood's predicament was of his own doing. If he had contacted PG&E and provided the requested information he

would have established credit without the payment of a deposit. We find nothing unconstitutional in the application of the establishment of credit rules to Henry Wood.

In addition to the testimony of the individual complainants heretofore set forth, complainants called witnesses in an attempt to prove that complainants were part of a larger group of "responsible poor" persons as to whom the establishment of credit rules were allegedly unconstitutional, thereby making them unconstitutional as to complainants. Complainants do not define what constitutes a "responsible poor" person. For the purpose of posing a question to a witness, complainants' counsel defined "low-income groups" as "persons between--below \$3,000 per year, single; \$4,000 per year, married; plus \$600 per child." (R.T. 946.) We next examine this evidence.

Miss Scottie McKinney, a social worker for the City and County of San Francisco testified that the welfare program does not provide funds for utility deposits, although welfare workers have been trying to persuade the Department of Social Services to provide utility deposits for welfare recipients.^{14/} If a person receiving welfare fails to pay gas and electric bills and is threatened with disconnection of service, the Department of Social Services will arrange with PG&E to pay for current service, but not for the past due bills, and service is continued. The department does not make similar arrangements with respect to telephone service. Miss McKinney testified that in extreme cases, the department will lend a welfare recipient the money for a utility deposit, but the loan must

14/ The record indicates that PT&T and PG&E would permit a welfare department to act as a guarantor without the necessity of putting up deposits.

be repaid. She testified that of the 30 to 50 new cases which she handles each month four or five have problems involving a PG&E deposit. Miss McKinney testified that she was not familiar with the establishment of credit rules and that it was her understanding "that everyone had to pay a deposit in order to get PG&E turned on unless they had a previous account with them." She stated that she knew of instances where welfare clients resorted to prostitution, begging and stealing to raise money for deposits. Miss McKinney testified that the budget of a welfare recipient is "very inadequate" and that there are needs of the recipient not covered by the budget allowed them. She testified that "We don't encourage them [welfare recipients] to go out and get telephones because we don't provide the monthly telephone bill and they usually end up paying for this bill out of their food money...." There is nothing in the testimony of Miss McKinney which indicates that PT&T's and PG&E's establishment of credit rules are unconstitutional.

Miss Janice Gallagher, a then new employee of the Economic Opportunity Council testified at the hearing. None of her testimony related to PG&E. At the time she testified she had been employed by the EOC for two weeks. Prior to being employed by the EOC, she had been in Korea with the agency for International Development and, after returning to the United States in the fall of 1967, spent her time taking care of a sick grandmother. Miss Gallagher testified that she was told that it was important that she have a telephone in her job because she was available to her clients 24 hours a day. She contacted PT&T to secure telephone service two weeks before the hearing and the day she testified. On each occasion she was told that in order to obtain service she would have to pay a \$25 deposit.

On one occasion, a guarantor was suggested. Her salary is \$425 per month. She testified that she could not afford the deposit because she had other responsibilities such as "supporting an orphan in Korea and a few things like that."

Miss Gallagher, with a monthly salary of \$425, does not seem to fit into the category of "poor" as referred to by complainants. The reason she allegedly has no money for a deposit is self-imposed. She has placed a higher priority on other expenditures. However, it is not the function of PT&T to inquire into a subscriber's priority of expenditures. If Miss Gallagher rearranges her expenditures for one month, she has the financial ability to pay the deposit, which, if she pays her bills, will be refunded to her, with interest, after one year. Because she chooses not to do so does not make PT&T's establishment of credit rules unconstitutional.

Mr. Garth Brown, who had worked for the Legal Assistance Foundation about a year testified, among other things, that he had conducted intake interviews with approximately 2500 persons; that many of these persons "have come in with financial trouble" and that 25 to 30 percent of those interviewed did not have telephones. There is nothing in this testimony which would indicate that the establishment of credit rules are unconstitutional.

Mr. Floyd Seaborn, an employee of the Legal Assistance Foundation testified that he is a resident of Hunters Point in San Francisco, which includes a public housing area which has approximately 25,000 people; that he is aware of the problems of the residents of that area; that in the public housing gas and electricity are included in the rent; that he had not heard of the PT&T \$25 deposit provision until four days prior to testifying, when

the attorney for complainants asked him to get information about it; that he called a meeting in Hunters Point to find out what complaints the residents had about PG&E and PT&T; that most did not relate to deposits and those which did were "just about a drop in the bucket." Mr. Seaborn, himself, had no trouble securing a telephone, even though he did not qualify under the specific rules for establishing credit.^{15/} He paid \$11 or \$13 in order to get service, which he thought was a deposit.^{16/} In the course of his testimony Mr. Seaborn testified that whether or not it was true, residents in the Hunters Point area believed that PT&T discriminated in applying its establishment of credit rules. In the light of this testimony, the Presiding Examiner stated to counsel for complainants:

"This is not for the witness, but I am talking to counsel.

"This testimony raises two issues.

"One, the overall problem of all poor people supposedly in this category, but there is also a problem of potential discrimination if in fact a non-Negro person could have obtained telephone service with the same type of guarantor but in fact a Negro cannot.

"I think this presents very serious problems that don't necessarily go to the overall problem here which I think the Commission would be interested in."

No evidence was presented in this record which indicates that PT&T discriminates against Negroes in applying its establishment of

^{15/} Credit was extended under PT&T's Rule 6(A)6, "otherwise established to the satisfaction of the utility."

^{16/} The record indicates that this amount could not have been a deposit. The money appears to have been paid for installation charges.

credit rules. There is nothing in the testimony of Mr. Seaborn which indicates the establishment of credit rules are unconstitutional.

In considering the evidence presented by all of the witnesses we find that there is no evidence which could justify a finding that there is an ascertainable class of persons known as "responsible poor" people. We take official notice that there are some poor, rich and in-between persons who are in varying degrees "responsible" and others who are not. Even if it be assumed for purposes of discussion only, that there is an ascertainable class of persons known as the "responsible poor", there is no evidence to show that they have not been continuously employed for like periods of time as other responsible persons, that they have not paid their utility bills for like periods of time as other responsible persons, that they have any greater difficulty in securing guarantors than other responsible persons, that they are less apt to receive a pension or Social Security than other responsible persons or to what degree, if any, they are less likely to own real property than other responsible persons. As indicated, the establishment of credit rules do not relate to the amount of money earned or received by a prospective customer. A person who is employed for the requisite period of time, whether a laborer, janitor or corporation executive, establishes credit without making a deposit. Neither PT&T nor PG&E inquires as to the amount of salary derived from the employment. In the case of a pension (and with PT&T, Social Security) the amount is not asked. The fact of the periodic payment is sufficient. In considering payment of past utility bills there is no inquiry into the customer's economic

status. If there has been proper past payment, credit is extended. Where there is ownership of real property, credit is extended. There is no inquiry as to the value, etc., of the property. Therefore, even if it be assumed that the "responsible poor" group could be ascertained there is no evidence which shows that they are treated any differently than other responsible persons and no evidence which would support a finding that they are less likely to qualify for credit without paying a deposit than other responsible persons.

In addition to considering the specific rule provisions involved and all the testimony of the witnesses heretofore mentioned, we note that the record contains the following evidence. Major utilities throughout the United States and public districts in California have establishment of credit rules which include deposit provisions. Ninety-three percent of all households in California have telephone service. PT&T's application of its establishment of credit rule results in deposits being required from 10 to 12 percent of its domestic customers. In other industrial states the percentage is greater. For example, in New York 92 percent of the households have telephones and 31 percent of the residential customers pay deposits; in Pennsylvania 93 percent of the households have telephones and 24 percent of the residential customers pay deposits; in Illinois 91 percent of the households have telephones and 22 percent of the residential customers pay deposits and in Ohio 91 percent of the households have telephones and 32 percent of the residential customers pay deposits. As of December 31, 1967 PG&E was holding deposits from approximately 6 percent of its domestic customers.

The record shows that many people in so-called low income areas qualify for utility service without paying deposits and that

deposits are required from some people in so-called high income areas. The establishment of credit rules, which include the deposit provision, are applied equally throughout the State. The record clearly indicates that the establishment of credit rules are effective for the purpose for which they were established. The record discloses that the percentage of PT&T's and PG&E's uncollectibles decreased after the reinstituting or reactivating of these rules. In addition, the total number of PT&T temporary and permanent disconnects for nonpayment of bills had decreased after the reinstituting of its rule. The Commission finds and concludes that PT&T's and PG&E's establishment of credit rules are constitutional in form, substance and in their application by PT&T and PG&E.

Complainants next contend that even assuming PT&T's and PG&E's establishment of credit rules are constitutionally sustainable with respect to substance and application they should have no effect because they were not legally authorized. Complainants contend that (1) due process was violated because no public hearing was held when the Commission authorized the adoption of the rules and (2) the Commission did not follow its own rules when it authorized PT&T and PG&E to adopt their establishment of credit rules. Before considering these contentions we look to the facts involved.

PG&E's establishment of credit rules were first put into effect on August 31, 1919. (Pacific Gas and Electric Company, 17 C.R.C. 143, 147-49; Pacific Gas and Electric Company, 17 C.R.C. 155, 158-59.) These rules provided that credit could be established by:

(1) ownership of the premises where service was requested or ownership of real property within the district of the company where service was requested, (2) making a cash deposit, (3) furnishing a guarantor or bond and (4) having been a PG&E customer and paid all bills for 12 consecutive months for service within two years of the request. Where a cash deposit was required the amount was set at \$2.50. In Decision No. 11575 entered on January 30, 1923 (Pacific Gas and Electric Company, 22 C.R.C. 971) the Commission authorized PG&E to apply its electric rules uniformly over the territory served by Northern California Power Company and Sierra and San Francisco Power Company. Pursuant to this decision, PG&E reissued its establishment of credit rule in its electric tariff with substantially the same contents as the 1919 rules. In 1943, the Commission authorized PG&E to reduce the amount of interest paid on customer deposits from 6 percent to 5 percent because of prevailing interest rates. (Pacific Gas and Electric Company, 44 C.R.C. 718.) The rules remained the same in other respects.

In 1954 PG&E acquired Coast Counties Gas and Electric Company. Coast Counties had a different establishment of credit rule which provided that where a deposit was required the minimum deposit would be \$5.00. In Application No. 38668 (which dealt with gas rates only) PG&E requested authority to modify its gas Rule 7 to provide that the amount of deposit required to establish or reestablish credit be twice the estimated average monthly bill, but in no case less than \$5.00. The Commission authorized this change in Decision No. 56967, entered on July 9, 1958. (P.G.&E. Co., 56 Cal.P.U.C. 423, 452.) Gas Rule 7 was revised, pursuant to the Commission's decision, by Advice Letter No. 359-G and became effective on August 1, 1958. On February 2, 1959, PG&E filed Advice Letter No. 165-E which sought authority to revise its electric Rules 6 and 7 and Advice Letter No. 372-G which sought authority to revise its gas Rules 6 and 7. The revisions did not substantially change the rules nor did they affect the amount of the deposit provided for in Rules 7. The Commission authorized the revisions in Resolutions Nos. G-1095 and E-1014. These rules are the ones which are presently in effect.

PT&T has had tariff rules requiring the establishment of credit continuously in effect since 1915. One of the ways in which credit could be established has been by the payment of a deposit. PT&T had applied these rules so that customers who did not establish credit in any other way could pay a deposit if they were billed in arrears and by paying for a month's exchange service before connection if they were billed in advance. In January of 1964 this Commission directed a letter to PT&T indicating that the tariff rule under which PT&T was collecting deposit payments from customers who were billed in advance applied only to business accounts and not residential accounts. As a result, in January of 1964, PT&T was only authorized,

under its tariff, to take deposits from residential customers who were billed in arrears. The deposit was limited to the amount of one month's exchange service, which at that time was less than \$3.00. In the circumstances, PT&T decided not to take deposits from anyone. Toward the end of 1964, PT&T's situation with respect to uncollectibles began to deteriorate. PT&T began to consider the possibility of securing Commission authorization for revising its tariff to provide for an establishment of credit rule applicable to all residential customers. Commencing in the latter part of 1965 members of the Commission's technical staff became concerned with PT&T's deteriorating uncollectibles situation and its impact on PT&T's ratepayers, generally. This matter was raised, with other matters, in conferences between members of the staff and representatives of PT&T. The staff requested that PT&T provide information and develop statistics with respect to the uncollectibles.

In July of 1966 PT&T filed with the Commission an advice letter similar to the one here under consideration. The Commission required PT&T to put out a press release about the filing. The City Council of the City of Richmond protested the filing and the advice letter was rejected. On February 10, 1967 PT&T filed Application No. 49142 which sought a systemwide rate increase. The Commission staff, which was still concerned about the uncollectibles, believed the Commission should consider the question of PT&T's reinstituting an establishment of credit rule for residential customers. It submitted in Application No. 49142, Exhibit 32 which was a copy of the advice letter which had been rejected in July of 1966. The advice letter had as attachment thereto financial data relating to the uncollectibles. The rate spread submitted by the Commission staff gave an impact of \$2,900,000 to the adoption of an establishment of credit rule. While Application No. 49142 was pending, PT&T

on July 14, 1967 filed Advice Letter No. 9585. This advice letter is the one here under consideration. It sought authority to reinstitute an establishment of credit rule. Announcement of the filing was made at the hearings in Application No. 49142. On July 14, 1967 PT&T issued a press release about the requested authority. News coverage based on the press release was published in 30 newspapers in California. The Commission received no protests. On August 15, 1967 the Commission adopted Resolution No. T-6342 which authorized PT&T to reinstitute its establishment of credit rules. On August 15, 1967 the Commission issued a press release which indicated the action which it had taken. News coverage based on the press release was published in 45 newspapers in California.

The simple answer to complainants' contentions is that these consolidated proceedings are attempts to collaterally attack the Commission's Decisions and Resolutions (Orders) which authorized the establishment of credit rules and such collateral attacks are prohibited by law. Section 1709 of the Public Utilities Code provides that:

"1709. In all collateral actions or proceedings, orders and decisions of the commission which have become final shall be conclusive."

(See People v. Western Air Lines, 42 Cal.2d 621, 630.)

However, complainants were afforded the opportunity to show, if they could, that the challenged decisions and orders were unconstitutional, void, or procured by extrinsic fraud.

Complainants contend that the procedure used in authorizing the establishment of credit rules violated procedural due process because public hearings were not held when they were authorized. This contention is not strictly accurate because PG&E's

gas establishment of credit rules were authorized in a form substantially similar to the ones presently in effect in a proceeding which had public hearings. (P.G.&E. Co., 56 Cal.P.U.C. 423.) In 1959 when PG&E filed advice letters for minor modifications in its gas establishment of credit rules and to have its electric establishment of credit rules revised to be identical with the gas rules, Section 454 of the Public Utilities Code provided:

"454. No public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in any increase in any rate except upon a showing before the commission and a finding by the commission that such increase is justified."

In 1967 when PT&T filed its advice letter seeking to revise its establishment of credit rule, Section 454, which had been amended in 1961, provided:

"454. No public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in any increase in any rate except upon a showing before the commission and a finding by the commission that such increase is justified."

"The commission may establish such rules as it considers reasonable and proper for each class of public utility providing for the nature of the showing required to be made in support of proposed increases, the form and manner of the presentation of such showing, and the procedure to be followed in the consideration thereof. Rules applicable to common carriers may provide for the publication and filing of any proposed increase together with a written showing in support thereof, giving notice of such filing and showing in support thereof to the public, affording an opportunity for protests thereto, and to the consideration of, and action on, such showing and any protests filed thereto by the commission, with or without hearing; provided that the proposed increase shall not become effective until it has been approved by the commission."

No public hearing is required under Section 454. ✓

Complainants next contend that the establishment of credit rules are void because the Commission did not follow its own rules when it authorized them. At the time the advice letters here in question were filed General Order No. 96-A or its predecessor

General Order No. 96 were in effect. Both General Order No. 96-A and General Order No. 96 contain the following provisions:

"VI. PROCEDURE IN FILING INCREASED RATES

"The tariff schedules of a utility may not be changed whereby any rate or charge is increased, or any condition or classification changed so as to result in an increase, or any change made which will result in a lesser service or more restrictive conditions at the same rate or charge, until a showing has been made before the Commission and a finding by the Commission that such increase is justified.

"A formal application to increase rates shall be made in accordance with the Commission's Rules of Procedure, except where the increases are minor in nature. If the Commission grants such application the utility shall prepare and file appropriate tariff sheets, accompanied by an advice letter as provided in Section III herein. In cases where the proposed increases are minor in nature the Commission may accept a showing in the advice letter, provided justification is fully set forth therein, without the necessity of a formal application. The filing of any tariff sheet which will result in any increase in any rate or charge or in a more restrictive condition shall be by the advice letter designated in Section III."

Any increased charges that resulted from the requested changes in the credit rules were minor in nature.

The Commission has often dealt with establishment of credit rules under the advice letter procedure. In 1967 and 1968, in addition to PT&T, the Commission authorized revision of establishment of credit rules to provide for a deposit or greater deposit, using the advice letter procedure for California Interstate Telephone Company, Kerman Telephone Company, Dorris Telephone Company, Evans Telephone Company, Foresthill Telephone Co., Inc., Livingston Telephone Company, San Miguel Telephone Company of California, James Telephone Company, Golden State Telephone Company, Golden West Telephone Company, Tuolumne Telephone Co., Western California Telephone Company, Citizens Utilities Company of California, Colfax Telephone Company, The Siskiyou Telephone Company, Roseville Telephone Company and Ducor Telephone Company.

Complainants were afforded the opportunity to show that the resolutions authorizing the establishment of credit provisions sought by advice letter were procured by extrinsic fraud. They failed to do so. As indicated the PG&E gas rule was authorized by Decision No. 56967 after public hearing on a systemwide rate increase application. On January 30, 1959 PG&E filed Advice Letter No. 165-E which stated, in part:

"The present \$2.50 deposit from applicants for domestic service was established over 35 years ago and is now substantially less than one-half the average monthly bill for either gas or electric domestic service. The average monthly bill for domestic gas service was \$5.58 in 1957 and \$5.64 in 1956, and for Domestic electric service it was \$6.44 in 1957 and \$6.17 in 1956. A \$2.50 deposit obviously affords little protection to the Company. Ten years ago the Company discontinued taking deposits from Domestic applicants because the \$2.50 deposit was inadequate, and because the cost of handling deposits did not justify taking deposits of only \$2.50. Deposits, however, are taken from applicants for non-domestic service who cannot otherwise establish credit. The average of such deposits is approximately \$60."

PT&T's establishment of the credit rule here under consideration was requested by Advice Letter No. 9585 and was authorized by Commission Resolution No. T-6342 entered on August 15, 1967. It was subsequently liberalized, to a minor degree, by Advice Letter No. 9888. In considering complainants' arguments we primarily refer to Advice Letter No. 9585 and Resolution No. T-6342. PT&T attached to Advice Letter No. 9585 an explanation of the proposal, including an estimate on revenues, a copy of the news release which it issued on the date the advice letter was filed, a synopsis of the survey, previously referred to, of 16,711 final

accounts which were written off as uncollectible and collection data for PT&T and the Bell System for the years 1963 (when PT&T had an establishment of credit rule in effect) and 1965.

There is no evidence which would indicate that any of the information presented by PG&E and PT&T was false or that it was not presented to the Commission in good faith. The only attack on the information is that, in complainants' opinion it was insufficient and not properly used. A statistician who testified on behalf of complainants stated that, in his opinion, the statistics presented by PG&E and PT&T "looked at one side and its not that this is irrelevant but that its incomplete." However, the witness was unable to give an opinion as to what would constitute a valid and complete study. His testimony was contradicted and rebutted by a plethora of evidence adduced by PG&E and PT&T.

No other points require discussion. The Commission makes the following findings and conclusion.

Findings of Fact

1. Complainants are individuals.
2. PT&T and PG&E have tariff provisions which provide for a determination that a customer seeking service has the ability to pay for the requested service (establishment of credit) before the customer receives (in the case of PT&T) or continues to receive after initial connection (in the case of PG&E) utility service. The PT&T and PG&E tariff provisions are not identical. However, in general, they provide several ways in which a customer may establish credit. If a customer is unable to establish credit in any other way, these tariff provisions include the alternative of making a deposit.

3. PT&T's tariff provisions dealing with establishment of credit are contained in its Rules 6 and 7.

4. PG&E's tariff provisions dealing with establishment of credit are contained in Rules 6 and 7 of its gas and electric tariffs.

5. PG&E's electric tariff Rules 6 and 7 are identical to its gas tariff Rules 6 and 7.

6. There is no constitutional right requiring the furnishing of utility service without payment therefor.

7. No customer or class of customers of PT&T or PG&E has a preferential right to any particular advantageous rates or rules.

8. When a prospective customer contacts PT&T or PG&E for service, the company representative attempts to elicit information which would qualify the person for service in the other-than-deposit categories. Only if the person does not qualify in any one of these categories is a deposit required.

9. PT&T has applied its Rule 6(A)6 in a reasonable and nondiscriminatory manner.

10. PG&E has applied its Gas and Electric Rules 6(A)5 in a reasonable and nondiscriminatory manner.

11. There is no evidence in this record which would support a finding that PT&T or PG&E discriminates against Negroes in applying their establishment of credit rules.

12. There is no evidence in this record which would support a finding that there is an ascertainable class of persons known as "responsible poor" people. The Commission takes official notice that there are some poor persons, rich persons and persons of varying degrees of wealth who are in varying degrees "responsible" and some who are not.

13. Even if it be assumed that there is an ascertainable group known as "responsible poor" people, there is no evidence which would support a finding that these persons are less likely to qualify for credit without paying a deposit under PT&T's and PG&E's establishment of credit rules than other responsible persons.

14. PT&T's and PG&E's establishment of credit rules are applied to all persons equally throughout the State without discrimination.

15. Many people in so-called low income areas qualify for utility service from PT&T and PG&E without paying deposits. Many people in so-called high income areas are required to pay deposits in order to establish credit to obtain utility service from PT&T and PG&E.

16. The purposes of PT&T's and PG&E's establishment of credit rules are to attempt to insure some measure of protection to public utilities who must serve the public, within the scope of their dedication and rules and regulations, without discrimination, and to protect consumers who pay their utility bills from having to pay higher rates because of irresponsible persons who do not pay their utility bills.

17. To the extent that the credit rules of PT&T and PG&E result in increased charges to customers the increase is minor.

18. Prior to Commission approval PT&T and PG&E made a showing before the Commission that their proposed credit rules were justified.

19. The PT&T and PG&E credit rules were authorized in a manner consistent with Section 454 of the Public Utilities Code and Commission General Orders Nos. 96 and 96-A.

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20. PT&T's and PG&E's establishment of credit rules were lawfully authorized and are constitutional and legal in form, substance and in their application by PT&T and PG&E.

Conclusion

None of the complainants is entitled to any relief in these proceedings.

O R D E R

IT IS ORDERED that Cases Nos. 8735 and 8770 are dismissed.

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

Dated at San Francisco, California, this 26th day of AUGUST, 1969.

William J. ...
President

... Monissey

William J.

Thomas P. ...
Commissioners

*I concur in
Conclusion and order only
August*