

ORIGINAL

In the Matter of the Application of)
SAN JOSE WATER WORKS, a corporation,)
for an order authorizing it to increase) Application No. 51283
rates charged for water service in) (Filed July 30, 1969)
San Jose, Campbell, Cupertino, Los Gatos,)
Monte Sereno, Saratoga and vicinity.)

McCutchen, Doyle, Brown & Enersen, by Robert Minge Brown, for applicant.
Caputo, Riccardo & Burriesei, by Richard P. Caputo, for San Jose Highlands Homeowners' Association, protestant.
R. L. Warnick, for the Town of Los Gatos, interested party.
Cyril M. Saroyan, Counsel, for the Commission staff.

(1) A rate of return of 7.35 percent would have resulted for the test year 1967 if the requested rates had been in effect for the full year.

- (2) The rates would not become effective until July 1, 1967.
- (3) An annual decline of 0.4 percent in rate of return was indicated.
- (4) An average rate of return of 6-3/4 percent was found reasonable for applicant's then near future operations.

The decision stated that the 6-3/4 percent return could be expected for the period from July 1, 1967 through 1970. In the current proceeding, the staff contends that the present application was filed prematurely by applicant because the full period of applicability of the present rates anticipated by the previous decision will not have elapsed by the time any revised rates will have become effective in this proceeding. The staff contends that the period used to derive the 6-3/4 percent return actually was January 1, 1967 through December 31, 1970, rather than July 1, 1967 through December 31, 1970.

<u>Period</u>	<u>Rate of Return</u>
Jan. 1, 1967 - Dec. 31, 1967	7.35%
Jan. 1, 1968 - Dec. 31, 1968	6.95
Jan. 1, 1969 - Dec. 31, 1969	6.55
Jan. 1, 1970 - Dec. 31, 1970	6.15
Total	27.00%
Four-year Average	6.75%

Applicant contends that the period used to derive the 6-3/4 percent return actually was July 1, 1967 through June 30, 1970, rather than July 1, 1967 through December 31, 1970:

<u>Period</u>	<u>Rate of Return</u>
July 1, 1967 - June 30, 1968	7.15%
July 1, 1968 - June 30, 1969	6.75
July 1, 1969 - June 30, 1970	6.35
Total	20.25%
Three-year Average	6.75%

We concur with the staff's general premise. That is, when rates are set for a period of several years into the future, giving recognition to the indicated trend in rate of return, a utility should not accept the higher-than-average return at the beginning of the period and attempt to avoid the lower-than-average return at the end of the period. We are faced, however, with a situation where, in the previous decision, the rate of return found reasonable and the period of applicability found reasonable for the authorized rates are inconsistent. That is, if earnings are as predicted, the authorized rates (1) will produce an average rate of return of 6.75 percent from their effective date through about June 30, 1970 rather than through December 31, 1970, or (2) will produce an average rate of return of about 6.65 percent, rather than 6.75 percent, through December 31, 1970, but (3) will not produce an average rate of return of 6.75 percent from their effective date through December 31, 1970.

In any decision where rates are set prospectively there is a possibility that actual rates of return for any specific year will be slightly higher or lower than anticipated when the rates are established. Although Exhibit No. 8 presented by the staff can be interpreted to show that actual results for the period from July 1, 1967 through 1969, adjusted only to reflect average climatic conditions, may fall quite close to those anticipated by Decision No. 72627, that exhibit necessarily included estimates for the year 1969. Testimony by applicant's witnesses indicates that there have been unavoidable delays in construction of the new purification plant. These could affect the actual return for 1969, as well as 1970.

If we knew with reasonable assurance that present rates would produce 6-3/4 percent return through the full year 1970, we

could (1) proceed with the present application and make any rate adjustment effective January 1, 1971, or could (2) dismiss the application and await the more timely filing of another application. Either course would permit the consideration of more up-to-date information, such as actual 1969 results and actual progress on applicant's planned new treatment facilities and new financing. Inasmuch as we do not now know with reasonable assurance even the 1969 earnings, it is preferable to continue with the present proceeding. This will permit any rate revisions to become effective on, prior to, or subsequent to January 1, 1971, as later evidence herein dictates. If we were to start anew with another rate filing by applicant, we would not have this flexibility in timing of the effective date of any rate revisions, because of the delays inherent in the preparation, filing and processing of another application.

To assist in properly evaluating the appropriate timing of rate relief herein, applicant will be expected to furnish to all parties in this proceeding, and later to present as an exhibit, (1) summaries of actual results of operation from July 1, 1967 through December 31, 1969, (2) estimates of average results of operation from July 1, 1967 through June 30, 1970, and (3) estimates of average results of operation from July 1, 1967 through December 31, 1970. These exhibits should reflect applicant's present water rates, water sales based upon normal climatic conditions and, for the appropriate periods, the latest estimates of scheduling of work on the new purification plant.

San Jose Highlands Homeowners' Association asks that consideration of a separate rate for resale service be considered in this proceeding or in a separate proceeding. The Town of Los Gatos asks that consideration be given in this proceeding, or a separate

proceeding, to a requirement that applicant adopt more liberal policies regarding extension into newly developed hillside areas adjacent to applicant's service area. Staff counsel stated that the matter of resale service rates might be covered by the staff along with its work on this general rate increase proceeding but recommended that the Commission institute an investigation on its own motion into the matter of applicant's reluctance to expand into contiguous hillside areas. We will consider carefully the staff's recommendation of a separate formal proceeding and, if it appears appropriate, will issue an order instituting such investigation.

Finding and Conclusion

The Commission finds that, provided applicant presents supplementary information in exhibit form, as hereinbefore discussed, dismissal of this application is not warranted. The Commission concludes that the staff's motion to dismiss should be denied.

IT IS ORDERED that the Commission staff's motion to dismiss is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th
day of DECEMBER, 1969.

William J. Sproule President
John J. [unclear]
[unclear]
[unclear]
[unclear] Commissioners