

Decision No. 80234**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 San Diego Gas & Electric Company, a  
 corporation, for an order authorizing  
 Certificates of Public Convenience and  
 Necessity Authorizing it to Exercise  
 Electric and Gas Franchise Rights in  
 the City of San Diego, authority to  
 increase rates by surcharging for  
 additional franchise fees and authority  
 to deviate from Applicant's Rule 31.

Application No. 52250  
 (Filed October 16, 1970;  
 Modified November 25, 1970)

Chickering & Gregory, by Sherman Chickering,  
C. Hayden Ames and Edward P. Nelsen,  
Attorneys at Law, and Gordon Pearce,  
Attorney at Law, for applicant.  
C. M. Fitzpatrick, Chief Deputy City Attorney,  
for City of San Diego, H. Cushman Dow,  
Attorney at Law, for General Dynamics  
Convair Aerospace Division, and William H.  
Kronberger, Jr., Attorney at Law, for City  
of San Diego, interested parties.  
Donald C. Meaney, Attorney at Law, for the  
Commission staff.

O P I N I O N

This application was heard before Commissioner Moran and/or Examiner Coffey at San Diego on January 11; March 1, 2, 3; June 14 and 15, 1971, and was submitted upon the receipt of reply briefs on September 7, 1971. Copies of the application and notice of hearing were served in accordance with the Commission's procedural rules.

On October 16, 1970, San Diego Gas & Electric Company (SDG&E) filed this application for an order as follows:

"...(1) declaring that it will issue certificates of public convenience and necessity after Applicant has obtained the contemplated gas and electric franchise for the City of San Diego, (2) authorizing Applicant to increase rates by surcharging gas and electric bills for customers in the City of San Diego for additional franchise fees, and (3) authorizing an increased electric underground conversion program and appropriate deviation from Applicant's Rule 31."

On October 21, 1970, the City of San Diego (City) filed a petition for a hearing in which it supported SDG&E's application for items 1 and 3 above, urging ex parte or early appropriate action on said items and in which it requested a hearing on the authorization to increase rates by surcharging customers in City.

On October 27, 1970 the Commission issued Decision No. 77879 indicating it would issue the requested certificate of public convenience and necessity after SDG&E had obtained the contemplated franchises, authorized the requested deviation from Rule 31, and pending further hearing authorized SDG&E to insert a franchise tax surcharge clause in all rate schedules applicable within City of 1.9 percent for electric service and 1 percent for gas service, subject to refund with 7 percent interest if after hearing the Commission determined that the rates, the rate spread or the surcharge are unreasonable or discriminatory.

On November 25, 1970, SDG&E petitioned that Decision No. 77879 be modified to make it applicable to franchise specifications authorized on November 24, 1970, by City.

On November 30, 1970, City again petitioned for a hearing on item 2 above and again stated that it had no objection to an ex parte order on item 1 above or to an order on item 3 above.

On December 1, 1970 in Decision No. 78025, the Commission applied Decision No. 77879 to the gas and electric franchise specifications authorized on November 24, 1970 by the City Council of the City of San Diego.

Thereafter, beginning on January 11, 1971, six days of hearing in this matter were held.

#### Issues

The basic issue in this proceeding is "Is it appropriate to surcharge the gas and electric customers within the City of San Diego to offset increased franchise expenses which are substantially above the level paid by SDG&E and other California gas and electric utilities to other cities and where customers in other cities will not benefit from such increased franchise fees?"

City maintains that the reasonableness of the entire spectrum of SDG&E's tariffs, rates and charges is an issue since applicant requests a finding "that Applicant's proposed tariffs, rates and charges are just and reasonable". Applicant's counsel interpreted the foregoing request as being intended to refer to proposed rates and that the surcharge is the only proposed rate change.

We find that the reasonableness of existing rate tariffs and the spread of rates between tariffs is not an issue raised by applicant. However, hearings in the matter have been held to afford City an opportunity to demonstrate that rates charged within City or that the rate spread is unreasonable.

The Commission staff and City have also raised a question as to whether the surcharge for electric service would result in excessive earning by SDG&E's Electric Department. The staff does not propose a change in the present 1 percent gas franchise surcharge but recommends that the electric franchise surcharge of 1.9 percent be made effective April 1, 1971. City would have the request for the surcharges denied.

#### History

On November 22, 1920, City granted a franchise for the use of City's streets to provide gas and electricity to the customers of SDG&E. Pursuant to that franchise SDG&E agreed to pay City a fee equal to 2 percent of its "total gross annual receipts arising from the use, operation or possession of said franchise."

After making appropriate adjustments for revenues derived from gas and electricity served under the constitutional franchise for lighting purposes, SDG&E has been paying City an amount equal to approximately 1.1 percent of its gross receipts from the sale of electricity within the corporate limits of City and approximately 2 percent of its gross receipts from the sale of gas within the limits of City. This franchise expired on September 27, 1970.

Prior and subsequent to the expiration of the franchise, protracted negotiations between SDG&E and City took place concerning a new franchise. City, because of the requirements of its charter provisions, asked for bids before the granting of franchises. City drew up specifications for the new gas and electric franchise which called for a payment of 3 percent of gross receipts derived from the sale of gas and electricity within the corporate limits of City. The City Council of San Diego awarded the franchise to SDG&E based on the 3 percent fee.

For many years, the various cities in the service area of SDG&E required franchise payments from SDG&E, which the applicant "buried" in the rate structure. Prior to the franchise which is the subject of this application, franchise payments made to City were the same, to the nearest one-tenth of one percent, as the average payment to all the various local cities requiring such a payment.

#### Surcharge

Applicant argues that the surcharges are appropriate in view of the substantial increase in franchise fees required by City, that these franchise fees are significantly higher than the level of fees paid by SDG&E to other cities and counties where it serves, that the fees are substantially higher than the level of fees paid by any of the major gas or electric utilities in the State of California and that in the absence of surcharges, SDG&E customers outside the City would have to help support these additional costs without receiving any benefit therefrom.

Representatives of the Cities of Chula Vista, El Cajon and La Mesa, all stated they are opposed to the customers in their cities paying for the increased San Diego franchise fees. The Mayor of La Mesa said, "We feel that the people of La Mesa should not bear the added cost of the franchise fee that the City of San Diego has used. The Mayor of El Cajon stated, "We figure it should be a surcharge so that only those people are paying for the benefits that are only going back to San Diego."

The staff agreed that the surcharges are appropriate, but recommends a refund of the electric surcharge collected for essentially the first quarter of 1971.

City's evidence is directed almost exclusively at the underlying basic electric rates.

City has confused the distinction between basic rates and surcharges. The basic rates are those designed to recoup the cost of serving all customers. They are the regular rates set forth in SDG&E's published tariffs and vary by customers' classes and by zones. A surcharge, on the other hand, is superimposed on the basic rates for the purpose of paying for a particular expense.

The merits of a surcharge and the particular expense giving rise to the requested surcharge can and should be considered separately from problems concerning the basic rates.

Prior to the current 3 percent franchise fees, SDG&E was paying the City 1.1 percent of its gross electric revenues and 2 percent of its gross gas revenues within the City. In comparison with the new 3 percent fees, in 1969, Pacific Gas and Electric Company paid 0.7 percent of gross revenues for gas franchises and 0.6 percent for electric; Southern California Edison Company paid 0.7 percent for electric franchises and the Pacific Lighting companies paid 1.2 percent of gross revenues for gas franchises. The new 3 percent fees substantially exceed the fee requirements

of the Broughton and 1937 Franchise Acts (Public Utilities Code, Sections 6006 and 6231). Based on 1969 figures, the annual amount of the surcharge would be \$241,400 for gas and \$937,500 for electric, totaling \$1,178,900.

City has presented no evidence supporting the reasonableness of the 3 percent fees. It recommends that these increased costs be reflected in the basic rates and argues "Between major rate cases there may be many changes in levels of expenses that are not reflected in surcharges or offsets, such as wage increases, material price increases, and fuel oil price increases." City does not differentiate between wages, material and fuel costs that have a company-wide effect that should be borne by all customers and the San Diego franchise fees that are geographically limited and may be applied to the cost of operations within the City. City does not come to grips with the basic issue in this proceeding--the appropriateness of the surcharge to recoup the added expense of the City's high franchise fees.

To reflect these increased costs in basic rates would mean all customers would share in paying for the City's higher than average franchise fees. City does not demonstrate any special benefit to customers outside of City that warrants their support of the 3 percent fees. City does not differentiate between SDG&E's use of the streets of San Diego, as opposed to the streets of National City, Coronado, or Chula Vista, that justifies all customers to defray the 3 percent franchise fees. It is true that between major rate cases, there are changes in levels of expenses which are not reflected in "surcharges or offsets". It is just as true that there are levels of expenses which can reasonably be reflected in "surcharges or offsets" without going through a general rate case.

The surcharges for electric and gas service, 1.9 percent and 1 percent, respectively, represents the increase in the new electric and gas franchise fees over that City received under the old franchise. The surcharge percentages are also the same as the difference between the 3 percent now paid to City and the average of franchise payments made by SDG&E throughout the rest of its service territory.

City points out that franchise fees vary among communities throughout the State. However, the magnitude of the variation nowhere approaches that which exists between City and other communities in SDG&E's service territory.

The franchise fees which counties can charge in this State are set by the Broughton Act (Public Utilities Code, § 6001, et seq.). Those which general law cities can charge are set by either the Broughton Act or the Franchise Act of 1937 (Public Utilities Code, §6201, et seq.). Because these statutes set fees on a formula basis relating in part to the amount of equipment utilities have on public property, some variations are inevitable. Since San Diego is a charter city, it is not bound by these provisions.

The position of the staff is that whether or not the city is correct as to any adjustment in the rate spread or the zones, there should be a separate statement of the additional franchise payment.

Public policy favors informing the ratepayers of a particular locality that part of their utility bill is levied by their local government. Any other treatment of this request would be tantamount to an invitation to other charter cities in the State to increase franchise fees to gas and electric utility companies in anticipation that the utilities will increase their rates throughout their service territories and recoup these expenses from ratepayers in general law cities and unincorporated territory, thus transferring a large portion of the increased burden of charter city levies to customers of the utility residing outside the charter cities.

Rates and Rate Spread

City maintains that the rate "spread" and the zoning are such that because of allegedly lower costs to serve ratepayers in City, there should be a downward adjustment in rates that would in effect offset surcharges to the ratepayers in City.

City's witness attacked the level of basic rates and the structure of individual rates, recommended six zone rates instead of the present four, a rate of return of 7 percent instead of 7.4 to 7.6 percent, higher rural rates and lower urban rates.

SDG&E and staff maintain that this issue belongs in a general rate case rather than in an offset proceeding, arguing that public policy requires that the necessity for separately stating each ratepayer's share of the increase in the franchise payment applies whether or not City is correct that its rates should be lowered to an extent which would offset the additional franchise fee. With an abundance of caution, we have offered City every opportunity to demonstrate the reasonableness of its position, but we are not persuaded by City's presentation that present electric rates, either in level or spread are unreasonable. At most, City's presentation suggests that additional studies might demonstrate the soundness of its position. Since on August 10, 1971, SDG&E by Applications Nos. 52800, 52801 and 52802 has requested general increases in rates for electric, gas and steam services, City will have ample opportunity to make such showing as may be appropriate and to test those of SDG&E and the Commission's staff relative to rate levels and spread. We will not discuss in detail City's showing herein which is adequately reviewed in the briefs.

Surcharge Effective Date

The staff agrees with the appropriateness of the surcharges, but urges that the amounts collected for electric surcharge prior to April 1, 1971 be refunded. Since the surcharges went into effect December 17, 1970, the staff in effect recommends refunding the electric surcharge amounts collected in the first quarter of 1971.



The following tabulation sets forth rates of return shown by applicant for the test year 1971 on two bases, one, reflecting increases in the cost of gas, cost of fuel oil and wages on the dates when they will occur and the second assuming the increased costs were effective on January 1:

	<u>Rates of Return</u>		
	<u>1971 Estimated</u>		
	<u>Electric</u>	<u>Gas</u>	<u>Combined</u>
Phased Costs	7.45%	7.13%	7.37%
Annualized Costs	6.21%	6.97%	6.36%

The staff recommends, based on phased costs, that SDG&E should not be granted any offset increase which would allow it to earn at a level in excess of the last authorized return.<sup>1/</sup>

The above results indicate that in 1971 the earnings level on a pro forma basis for the Electric Department will have dropped below the range in rate of return of 7.4 percent to 7.6 percent authorized in Decision No. 77581. However, since two of the factors that caused the rate of return to decrease occurred March 1, 1971 (wage increase) and March 31, 1971 (cost of gas increase) the staff recommends that the proper time to make the electric franchise surcharge effective would be April 1, 1971.

If the refund is made as recommended by the staff, the Electric Department rate of return drops to 7.4 percent.

The staff advocates that an offset rate increase should not be made effective until the point of time in which the rate of return falls below the last authorized rate of return.

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<sup>1/</sup> Finding No. 5, in Decision No. 77581, dated August 4, 1970, in Application No. 51674, reads: "A range of 7.4 to 7.6 percent in rate of return for the future is reasonable, and a rate of return of 7.5 percent is reasonable for the test year 1970. Such rate of return on rate base will produce estimated yield on common equity of 10.75 percent."

SDG&E submits that the Commission has held that in an offset case, the rate relief may not result in earnings which exceed the last authorized rate of return and that the staff premise that offset relief cannot be granted until earnings drop below the last authorized rate of return is without any supporting Commission decision.

The City argues that Finding No. 5 in Decision No. 77581 is inapplicable in this proceeding insofar as the electric department is concerned because Application No. 51674 was for a gas rate increase. In making this argument City overlooks the fact that the finding speaks to return on common equity which includes all departments of the company. The rate of return finding is on a company-wide rather than departmental basis. SDG&E has not had an electric general rate increase since 1958 at which time the Commission found 6.25 percent to be a reasonable rate of return. It would be inappropriate to follow City's suggestion by taking the position that no electric offset can exceed the 6.25 percent found reasonable in 1958. Decision No. 77581 contemplates a reasonable rate of return for the entire company and can reasonably be applied to current electric operations.

We note that Application No. 51674, although an application to offset higher gas costs, was, in effect, a general rate increase proceeding in which the applicant presented 13 witnesses, the

staff six witnesses and in which the record comprised 681 pages of transcript and 28 exhibits.

To demonstrate the reasonableness of its earnings, SDG&E presented Exhibit No. 1, a three page earnings statement of its Gas Department, Electric Department, and combined department for the year ending October, 1970, as recorded and adjusted. Exhibit No. 12 was a revision of Exhibit No. 1. Exhibit No. 13 is a two page estimate of electric, gas and combined earning for the year 1971 with increases in costs phased and annualized.

The staff witness testified that he had reviewed applicant's exhibits and the associated work papers, discussed by telephone with company personnel the background of certain of the adjustments reflected in the work papers, and that his review did not represent the type of detailed study the staff would perform in a general rate increase proceeding.

#### Findings and Conclusions

We find that:

1. The City Council of the City of San Diego on November 24, 1970, authorized gas and electric franchises for SDG&E which specify a fee of 3 percent of gross receipts derived from the sale of gas and electricity within the corporate limits of City.

2. Said 3 percent gas franchise fee is 1 percent greater than the average payment in terms of percent of revenue for gas franchises in the service territory outside City.

3. Said 3 percent electric franchise fee is 1.9 percent greater than the average payment in terms of percent of revenue for electric franchises in the service territory outside City.

4. Pacific Gas and Electric Company in 1969 paid 0.7 percent of gross revenues for gas franchises and 0.6 percent for electric franchises.

5. Pacific Lighting Corporation in 1969 paid 1.2 percent of gross revenues for gas franchises.

6. This record does not demonstrate any benefit to customers living outside City from franchise fees paid to City.

7. Customers within City receive substantial benefit from franchise fees paid to City.

8. It is reasonable that gas and electric franchise fees paid to a city or other political subdivision above the averages paid to other political subdivisions within the utility's territory should be borne alone by customers within said political subdivision or subdivisions.

9. It is reasonable that surcharges be added to the bills of gas and electric customers within City to compensate SDG&E for franchise fees paid City in excess of the average gas and electric franchise fees paid in the territory outside City.

10. This proceeding is not a normal or general rate increase, being essentially a request for authorization to apply a surcharge to present rates and charges, which are reasonable until otherwise demonstrated, to compensate SDG&E for franchise fees paid City in excess of those paid outside City.

11. It is reasonable in this "offset" proceeding to limit the earnings of SDG&E so as not to exceed the rate of return last found reasonable in a recent SDG&E general rate proceeding.

12. It is reasonable in an offset rate proceeding to rely on a recent general rate proceeding that current revenues, expenses and rate bases are reasonable if such items are adjusted as found reasonable in said recent general rate proceeding.

13. On August 4, 1970, Decision No. 77581, in Application No. 71674, for a gas rate increase a range in rate of return of 7.4 to 7.6 percent and a rate of return of 7.5 percent for the test year 1970 was found reasonable.

14. In Decision No. 79562, on January 4, 1972, in Application No. 52800, a request for a general rate increase for electric service, the Commission stated its opinion, that the range in rate of return for the future, found reasonable in Decision No. 77581, applies to combined gas, electric, and steam operation of SDG&E and

therefore is appropriate for use in determining the reasonableness of an interim electric rate increase during a general rate proceeding to offset the cost of fuel oil.

15. The rate of return range, 7.4 percent to 7.6 percent, found reasonable by Decision No. 77581 in a gas rate increase application, is a recently established rate of return range applicable both to applicant's gas department and electric department for purposes of this offset proceeding.

16. The last decision in a general electric rate increase proceeding was Decision No. 57509, dated October 21, 1958, in Application No. 39680.

17. Decision No. 57509 is a decision in a rate proceeding that is not recent and therefore it is inappropriate to rely on the rate of return authorized in said proceeding for purposes of this offset proceeding.

18. In the year 1971, SDG&E will earn a rate of return of 7.13 percent on its gas operations and 7.45 percent on its electric operations before payment of increased franchise fees to City.

19. Payment of increased gas franchise fees to City in 1971 will decrease the rate of return in 1971 on SDG&E gas operations substantially below 7.13 percent and the range in rate of return last found reasonable.

20. A rate of return on gas operations that is 7.13 percent or less is unreasonable.

21. A surcharge of 1 percent for gas service in City will maintain earnings for gas operations at 7.13 percent and is reasonable.

22. Payment of increased electric franchise fees to City in 1971 will decrease the 1971 Electric Department rate of return below 7.45 percent, to a point which does not exceed the 7.4 percent - 7.6 percent range in rate of return last found reasonable.

23. A surcharge of 1.9 percent for electric service in City will maintain earnings for applicant's electric operations at 7.45 percent, which is not in excess of the recently established 7.4 percent - 7.6 percent range, and which is reasonable. The staff recommendation that April 1, 1971 is the proper time to make effective an Electric Department surcharge is reasonable.

24. On this record, City has not demonstrated that an increase in the number of SDG&E rate zones from 4 to 6 is reasonable.

25. On this record, City has not demonstrated that the present zone rate spread is inconsistent with the zone density spread.

26. On this record, City has not convincingly demonstrated that the present zone rate spread is inconsistent with zone costs to serve.

27. It is not appropriate to consider rate levels and zone rates in an offset rate proceeding inasmuch as many interested parties would receive no notice in such a proceeding.

28. City has had further opportunity in the current SDG&E general rate proceedings, Applications Nos. 52800, 52801, and 52802, to demonstrate the reasonableness of its views on rate spread and zoning.

29. Decision No. 77879 authorized the requested deviation from Rule 31.

We conclude that SDG&E should be authorized to insert a franchise tax surcharge clause in all rate schedules applicable within City, that the gas service surcharge rate should be 1.0 percent, the electric surcharge rate should be 1.9 percent until further authorization of this Commission, and that SDG&E should refund with 7 percent interest all amounts collected by the 1.9 percent surcharge on electric service, under authority of Decision No. 77879, prior to April 1, 1971.

The certificate to the Price Commission by this Commission, required by Price Commission regulation Section 300.16(e), is not included herewith since Price Commission regulation Section 300.16(c)

specifically exempts from the requirement of reporting and certification those price increases resulting from the pass-through of taxes, except income taxes, if the increase is not objected to by the appropriate regulatory agency and is authorized by statute, regulation, or order of the appropriate regulatory agency, or by an approved tariff provision.

O R D E R

IT IS ORDERED that:

1. The authorization of San Diego Gas & Electric Company to insert a surcharge clause in all rate schedules applicable to gas and electric service within the City of San Diego is continued.
2. San Diego Gas & Electric Company is authorized to continue to apply a surcharge rate of 1.0 percent to gas service within the City of San Diego.
3. San Diego Gas & Electric Company is authorized to continue to apply a surcharge rate of 1.9 percent to electric service within the City of San Diego.
4. Within thirty days after the effective date of this order, San Diego Gas & Electric Company shall tender to this Commission for filing a refund plan to refund to customers, with interest at 7 percent per annum, amounts which it collected prior to April 1, 1971, by applying the 1.9 percent surcharge for electric service within the City of San Diego. Upon approval by this Commission of a reasonable refund plan, San Diego Gas & Electric Company shall make refund in accordance with such an approved plan.
5. On or before March 1, San Diego Gas & Electric Company annually shall prepare and file with this Commission a written report setting forth the amounts and percentages of gross revenue it paid during the preceding fiscal year to each grantor of a franchise and the average of the amounts and percentages of gross revenue paid to grantors of franchises other than the City of San Diego. All amounts and percentages shall be separated between gas and electric operations.

6. All motions consistent with the findings and conclusions of this opinion and order are granted; those not consistent therewith are denied.

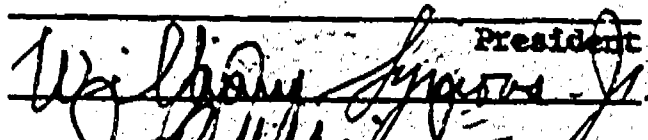
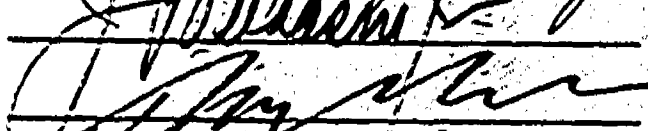
The Secretary of the Commission is directed to cause a certified copy of this order to be served forthwith upon San Diego Gas & Electric Company and cause a copy to be mailed to each appearance of record.

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

Dated at San Francisco, California, this 11<sup>th</sup> day of JULY, 1972.

I dissent:

  
Commissioner

  
President  
  
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.