

is

Decision No. 83089

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
CALIFORNIA-PACIFIC UTILITIES COMPANY,	)	
a California corporation, for authority	)	Application No. 53884
to increase its rates for electric	)	(Filed March 9, 1973)
service in its Lassen Division.	)	
	)	

OPINION AND ORDER DENYING REHEARING  
AND MODIFYING DECISION NO. 82711

A petition for rehearing or modification of Decision No. 82711 was filed by California-Pacific Utilities Company (petitioner) on April 29, 1974. The Commission has considered each and every allegation of the petition and is of the opinion that good cause for rehearing of Decision No. 82711 has not been shown. However, the Commission considers it necessary to respond to some of petitioner's allegations.

The first allegation of petitioner is that Decision No. 82711 was discriminatory, arbitrary and confiscatory. (Pet., pp. 5-7.) At page 7 of the petition, petitioner states:

"[I]t is clear that the Commission's determination that a return on common equity for California-Pacific of 11.05% is reasonable for the future is unjustly discriminatory against California-Pacific and denies to California-Pacific the equal protection of the laws. California-Pacific is not being permitted to earn on its Lassen Electric Department property a return equal to that generally being made by electric utilities in the State of California. The returns found reasonable for California-Pacific in Decision No. 82711 are so unreasonably low when compared to those authorized in the recent past for the other California electric utilities, and for a comparably-sized gas utility, that the determination of the Commission in Decision No. 82711 is on its face arbitrary, discriminatory and confiscatory."

These contentions lack merit.<sup>1/</sup>

The only references in the record to California electric utilities were general assertions by counsel for petitioner that the Commission had recently authorized rates of return of approximately 12 percent on common equity of the three major utilities referred to at pages 5 and 6 of the petition for rehearing.<sup>2/</sup> Petitioner failed to introduce any evidence that would enable the Commission to compare the bases for the rates of return authorized to the three major utilities and the bases for the rates of return authorized petitioner. However, the Commission may still take official notice of the decisions referred to at pages 5 and 6 of the petition. An examination of these decisions reveals that the rates of return granted petitioner are not so "unreasonably low," as compared to the three major utilities, as to be "arbitrary, discriminatory or capricious," especially in light of the different risks encountered by petitioner and the three major utilities. At this point notice should be taken that petitioner's Lassen Electric Division supplies all its electrical power through a resale contract with PG&E. However, PG&E, SDG&E and SoCal Edison generate electrical power and must attract a great deal of capital in order to provide generation facilities.

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<sup>1/</sup> In Citizens Utilities Company of California et al v. PUC, S.F. Nos. 22909, 22910, 22911, writ. den., Aug. 16, 1972, three water companies claimed that the Commission's authorization of a 7.7 percent rate of return on rate base and an 8.57 percent return on equity constituted a denial of equal protection, and was confiscatory and arbitrary in light of higher returns granted to other water utilities. The denial of the writ of review constituted a decision on the merits with respect to these issues. (People v. Western Air Lines, Inc., 42 Cal.2d 621, 630 (1954).)

<sup>2/</sup> The three major utilities referred to were Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E) and Southern California Edison Company (SoCal Edison).

The decisions cited at pages 5 and 6 of the petition do not reveal the equity ratios of the major utilities. However, the following table includes these equity ratios as well as returns on rate base and returns on equity:

<u>Utility</u>	<u>Date of Decision</u>	<u>Equity Ratio</u>	<u>Return on Rate Base</u>	<u>Return on Equity</u>
PG&E (D.78187)	1/19/71	37.38%	7.5%	11.69%
SDG&E (D.80432)	8/29/72	32.34%	8.0%	11.96%
SoCal Edison (D.81919)	9/25/73	36.77%	8.2%	12.25%
Cal-Pacific (D.82711)	4/9/74	35.29%	8.35%	11.05%

Of the four electric companies, petitioner has received the highest return on rate base. The slightly lower return on equity in relation to the other utilities is based on different cost factors and weighted cost totals among the different companies. Petitioner cannot reasonably expect to earn a rate of return on equity capital equal to those of utilities having the higher risk factors described previously. Further, petitioner's financial vice-president and rate-of-return expert himself admitted in his prepared direct testimony that "[i]n the final analysis, the selection of what is a fair and reasonable rate of return ... is a subjective opinion; it is not a mathematically precise exercise. It is not a factual matter that is capable of being proven like how many vehicles the company uses." (Exhibit 5, Workman's testimony, p. 5.)

Petitioner also contends that Decision No. 82711 was not supported by sufficient findings of fact or by sufficient evidence in the record. Section 1705 of the Public Utilities Code requires that a decision contain, separately stated, findings of fact and conclusions of law on all issues material to its decision. However,

Section 1705 does not require that each evidentiary fact be set forth as a separate finding, or that the decision contain a review of every fact presented in the record.

Petitioner specifically asserts that Decision No. 82711 failed to make a finding that:

"The returns authorized will permit California-Pacific to sell additional common stock on a basis which will preserve the investment of the existing stockholders or permit the future financing of required construction expenditures." (Pet., p. 8.)

A finding that an 8.35 percent rate of return would be sufficient "to enable applicant to attract capital and function properly" (Decision No. 82711, mimeo, p. 11) <sup>3/</sup> certainly takes into consideration the ability of the petitioner to sell its stock<sup>4/</sup> and to permit adequate financing for capital expansion. This is especially true here, since the 8.35 percent figure was based on Exhibit 10 submitted by the Commission staff (staff) which stated that a reasonable rate of return should "allow earnings for common equity sufficient to increase retained earnings moderately after payment of a suitable dividend" and should enable the utility "to obtain additional capital at reasonable costs when needed in order to satisfy the public's demands for its services." (Exhibit 10, p. 5.) Exhibit 10 also stated that;

"[t]he earnings allowance for common equity is necessarily a judgment based on many considerations some of which are (a) capital structure and related costs; (b) trends in interest rates and coverage for senior securities; (c) earnings experience of

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<sup>3/</sup> It is arguable that the language at page 11 of the decision (mimeo) should be included under Findings at page 14 of the decision. (See infra p. 8 for modification of Finding No. 3.)

<sup>4/</sup> Though there was evidence in the record to support petitioner's assertion that California-Pacific was selling its common stock below book value (Pet., pp. 6-7), there was also evidence in the record that PG&E at the time of the hearing was the only western utility selling its stock above book value and only slightly above book value. (Tr., p. 221.)

applicant and other utilities; (d) capital requirements and sources of financing; (e) growth trends on plant and revenues; and (f) the objectives of the federal government's Economic Stabilization Program." (Ibid.) 5/

All of these factors were discussed in Exhibit 10 and in the testimony of the staff's rate-of-return expert. (Tr., pp. 191-195, 219-226.)

Further, petitioner's rate of return expert enumerated several factors to be considered in determining a reasonable rate of return (see Exhibit 5, Workman's testimony, pp. 5, 20-22).

A study of Exhibits 2, 5, 9 and 10 shows that all these factors were considered by both petitioner and the staff in arriving at what they considered to be a reasonable rate of return.

Though the Commission authorized a rate of return at a lower end of a range recommended by the staff, there is sufficient evidence in the record to support the Commission's decision. Therefore, such finding will not be disturbed.

Petitioner is correct in its assertion that Decision No. 82711 had "no finding as to the returns on common equity being earned by comparable companies concerning which evidence was presented both by the staff and by the Company." (Pet., p. 8.) Both petitioner (Exhibit 2, Table 17-6) and the staff (Exhibit 10, Tables 5, 6, and 7) presented evidence as to the common equity ratios and the returns on common equity being earned by comparable companies. Petitioner's evidence was based on year-end common equity for 1971 and 1972. The staff's evidence included rates of return on year-end common equity for petitioner (Exhibit 10, Table 5) as well as earnings rates on average common equity for petitioner and for comparable companies (Exhibit 10, Table 7).

The following table indicates the rates of return on common equity of petitioner and the rates of return on common

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5/ At the time of Application No. 53884 the Economic Stabilization Program was in effect.

equity of ten comparable electric utilities (based on an average equity of these utilities) by petitioner's expert and the staff's expert for the years 1971 and 1972: <sup>6/</sup>

	<u>Calif-Pacific</u>	<u>Average of Ten Comparable Electric Utilities</u>
	(For 1971)	
Workman (year-end)	9.9%	10.7%
Leonard (average)	10.15%	10.27%
	(For 1972)	
Workman (year-end)	12.3%	11.7%
Leonard (average)	12.72%	11.5%

The year-end figures of Workman and Leonard with respect to petitioner's earnings rates for 1971 and 1972 are the same. (See Exhibit 2, Table 17-6; Exhibit 10, Table 5.)

The following table indicates the common equity ratios of petitioner and the average common equity ratios of ten comparable electric utilities, as determined by petitioner's expert (Mr. Workman) and the staff's expert (Mr. Leonard) for the year 1972.<sup>7/</sup>

	<u>Calif-Pacific</u>	<u>Average of Ten Comparable Electric Utilities</u>
	(For 1972)	
Workman (year-end)	38.3%	36.2%
Leonard (average)	35.94%	32.93%

Based on the figures in the above tables and the other factors enumerated at pp.4,5 above, an 11.05 percent rate of return on common equity for petitioner is reasonable. Both petitioner's

<sup>6/</sup> Decision No. 78180, issued on January 13, 1971, provided petitioner its last authorized increase in electric rates prior to Decision No. 82711. Decision No. 78180 provided petitioner a 7.6 percent rate of return on rate base, and a rate of return on equity of approximately 10 percent.

<sup>7/</sup> Petitioner submitted equity ratios for its ten comparable electric utilities only for the year 1972.

figures and the staff's figures indicate that petitioner had a 2 percent to 3 percent higher common equity ratio than the average common equity ratios of comparable electric utilities. Again, it should be emphasized that petitioner was seeking an increase in electric rates on its Lassen Electric Division only.<sup>8/</sup>

Petitioner is also correct in its assertion that Decision No. 82711 had "no findings as to the returns earned or allowed in California on the electric operations of other utilities." (Pet., p. 9.) However, as stated above, no evidence, other than vague pronouncements by petitioner's counsel, was offered concerning the returns authorized to other California electric utilities, namely PG&E, SDG&E and SoCal Edison. Also, as shown above, (see pp. 2, 3) a comparison of these three major utilities with petitioner does not affect the reasonableness of the rates of return authorized petitioner in Decision No. 82711.

Finally, petitioner alleges the rate of return authorized by the Commission is unrealistic in light of developments subsequent to the hearings, namely the change in the cost of capital and the expiration of the Economic Stabilization Act. The Commission must reach its decision in the light of facts existing at the time the decision is made. If petitioner considers that changed circumstances make the rates of return authorized in Decision No. 82711 unrealistic, it is free to file a new application for a general rate increase.

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<sup>8/</sup> It is also noteworthy that the staff's evidence showed that since 1970 the earnings rates of petitioner on both average common equity and average total capital have far surpassed those of the ten electric and ten combination utilities used by the staff as a basis of comparison. (Exhibit 10, Tables 11, 11-A.)

Based on the foregoing discussion,

IT IS ORDERED that:

1. Rehearing of Decision No. 82711 is hereby denied.
2. Finding No. 3 of Decision No. 82711 is hereby modified

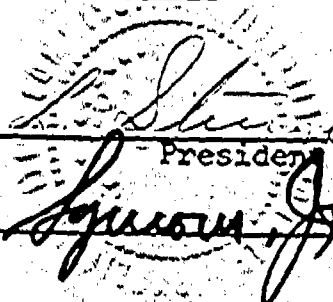
as follows:

"3. A rate of return of 8.35 percent on the adopted rate base and return on common equity of 11.05 percent for the future is reasonable. Such rates of return would enable applicant to attract capital and function properly. Such rates of return are also reasonable in light of the rates of return authorized utilities having comparable operating revenues and capital structures. Rates should be increased by approximately \$179,000."

In all other respects Decision No. 82711, as supplemented by Decision No. 82791, shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 2nd day of JULY, 1974.

  
William L. Stevenson  
President  
William L. Stevenson, Jr.  
[Signature]  
[Signature]  
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.