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ORIGINAL

Decision

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RICHARD L. FARRINGTON, et al.,)

Complainant,)

vs.)

CITIZENS UTILITIES COMPANY OF)
CALIFORNIA,)

Defendant.)

Case 84-06-049
(Filed June 14, 1984)
(Amended October 17, 1984)

Richard L. Farrington, for himself, and
Kenneth W. Torbert, Carlos E. Benemann,
Carlos E. Benemann, and Harry M. Smith, for
Richard L. Farrington, et al., complainants.
E. Garth Black, for Citizens Utilities Company
of California, defendant.
Office of Congressman Douglas H. Bosco,
by Nicholas R. Tibbetts, Attorney at Law,
Amicus Curiae.

OPINION

This is a complaint against Citizens Utilities Company of California (Citizens) by Richard L. Farrington and twenty-six other customers of Citizens. The complaint alleges that the rates for telephone service established in Decision (D.) 83-10-092 in Application (A.) 82-09-052 are void because Citizen's failed to give the notice required by law. This allegation applies to events which occurred during the hearing after a notice of the filing of the application had been given. The complainants also contend that the rates established in D.83-10-092 are unreasonable.

A duly noticed public hearing in this matter was held by Administrative Law Judge (ALJ) Donald B. Jarvis in Ferndale on October 23, 24, 1984; in San Francisco on December 6, 1984 and February 26, 1985 and in Ferndale on March 18, 19, 1986. The

matter was submitted subject to the filing of the transcript and briefs, which have been received.

I. Statement of Facts

In 1982, Citizens decided to seek an increase in rates for its telephone operations in California. Its last increase was authorized in 1951. Citizens filed A.82-09-052 on September 30, 1982. It mailed a notice of the filing to each customer and published and posted notice. The mailed and posted notice contained the following:

"On September 30, 1982, Citizens Utilities Company of California (Citizens) filed Application No. 82-09-52 with the California Public Utilities Commission (Commission) for authority to increase its rates for telephone service to provide additional annual revenue of \$8,871,000, a 20% increase in total revenues.

"This increase is necessary in order to enable Citizens to meet the increased cost of providing service, and to continue its programs of upgrading customer service.

"Shown below are examples of the rate increases proposed by Citizens. The Commission Staff will review the application and may propose rate changes as they deem appropriate. The Staff proposed rate changes may, in some cases, be greater or lesser than those shown by Citizens. In addition, the Staff may propose rate changes for services not included for increase by Citizens and may propose the implementation of nonoptional local measured business services and optional local measured residence service. Although a variety of rate proposals may be submitted by Citizens, Commission Staff, or other parties, the final rate determination will be made by the Commission after the hearings are held.

<u>"Some Specific Items</u>	<u>Present Rate</u>	<u>Proposed Rate</u>	<u>Percentage Increase</u>
Residential basic access line service--one-party:			
Alturas	\$ 5.10	\$13.50	165%
Special Rate Areas for			
Chester, Herlong, Greenville	7.35	17.60	139%
Greenville (Crescent Mills)	6.60	15.40	133%
Ferndale	5.60	11.65	108%
Millville	6.15	11.95	94%
Elk Grove Zone A	7.10	15.40	117%
Most Other Areas	5.10	11.00	116%
Business basic access line service--one-party:			
Alturas	7.60	21.00	176%
Special Rate Areas for			
Chester, Herlong, Greenville	11.35	25.35	123%
Greenville (Crescent Mills)	9.10	19.75	117%
Greenville (Taylorsville)	9.85	21.60	119%
Ferndale	8.60	17.95	109%
Millville	8.70	18.75	129%
Elk Grove Zone A	11.00	22.00	100%
Most Other Areas	7.60	16.00	111%

The published notice did not contain that portion of the text of the third paragraph which followed the first sentence.

At the time A.82-09-052 was filed and the times notices were given, Citizens was not aware that the Commission staff (staff) would propose to equalize rates among its exchanges. At all times during the proceeding Citizens was willing to accept the rate spread it proposed in the various exchanges. The hearing on A.82-09-052 held in 1983, was bifurcated. The first phase dealt with revenue requirements. The second phase addressed rate spread. Rate spread was not considered in the revenue requirements phase and Citizens was not aware of the staff's position at that time. There was a recess in the proceeding between phases. During this period the staff indicated to Citizens that it would propose a rate spread which would equalize rates among the various exchanges.

Citizens reviewed the staff's proposed figures. It had two objections which were communicated to the staff: (1) The figures were based on a slightly lower revenue requirement than requested, and (2) The proposed rate schedules did not yield the revenue requirement proposed by staff.

Citizens' primary concern was the revenue requirement. The rate spread which would provide the revenues to yield the revenue requirement was a secondary concern.

On the last day of hearing in A.82-09-052, the staff presented a rate spread exhibit with which Citizens agreed. The following testimony occurred:

"Q. Mr. O'Brien, [Citizens' Vice President For Revenue Requirements, California] you just heard Mr. Betts' and Mr. Shantz' statements concerning their understanding of the agreement between the staff and the company on rate design.

"Do you agree with the -- does the company agree with the revised rate design proposal as out-lined by Mr. Betts and Mr. Shantz?

"A. Yes, and while agreeing with the proposals and recommendations, we would qualify that to the extent, as I believe both of them have mentioned, that their positions and their calculations reflect the staff's revenue requirement from the main case."

* * *

"With that understanding clear, that the dollars presented by their total revenue requirement are subject to change, based on the company's position, we then do adopt the revised positions as presented by the staff witnesses." (RT in A.82-09-052, pp. 846-47.)

D.83-10-092 adopted the rate spread proposed by the staff. The difference in the rates adopted for the Ferndale

Exchange and the examples of proposed increases in the notices are as follows:

	<u>Percentage Increase Examples Notices</u>	<u>Percentage Increase Authorized By Commission</u>
Residential	108%	150%
Business	109%	232%

Complainants, who did not participate in the hearing on A.82-09-052, were extremely upset when they read in the local newspaper of the increase in rates granted by the Commission. Some of the complainants wrote letters to the Commission protesting the increase. A petition, with numerous names, opposing the increase was submitted to the Commission's Consumer Affairs Branch. The Commission took no action on the letters and petition and the rates authorized in D.83-10-092 went into effect. The present complaint was filed on June 14, 1984, almost 8 months after the issuance of D.83-10-092.

The original complaint was signed by 17 persons. On September 25, 1984, the presiding ALJ issued a ruling which provided in part that:

"4. Complainants challenge the legality of Decision (D.) 83-10-092. To prevail on this issue it is necessary for the complainants to present substantial evidence, oral and/or documentary, to establish that due process and/or provisions of the Public Utilities (PU) Code were violated in the issuance of D.83-10-092."

* * *

"7. PU Code § 1702 provides that the reasonableness of telephone rates or charges may be attacked on a prospective basis by a complaint filed "by the mayor or the president or chairman of the board of trustees or a

majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of telephone service.

"One of the signatories to the complaint is David Nicholson, the mayor of Ferndale. It would appear that the complaint meets the requisites of § 1702. Furthermore, the complaint is signed by 17 persons. There is a reasonable probability that the complaint can be amended at least five days prior to hearing to include eight additional complainants. (Rule 8.) Were this to occur, it would also confer jurisdiction under § 1702."

Thereafter, complainants filed an amendment in which 10 additional persons joined in the complaint.

II. Positions Of The Parties

A. Complainants

Complainants contend that there was not proper notice about the application because the published notice omitted the portion previously noted. Their main contention, however, is that they relied on the percentages shown in the notices as defining the limit of rates which might be granted. They argue that while they were not happy with these prospective rates they were willing to accept them. Thus, they did not participate in the proceeding. Had they known of the rates actually adopted, they would have appeared in the proceeding to protest them. Complainants assert that when Citizens agreed to the rate spread proposed by the staff, the rate spread became Citizens' proposal and it had a legal duty to notify customers about this new proposal. Complainants also contend that the rates which were adopted are unreasonable.

B. Citizens

Citizens contends that the notice given was proper. It argues that it was under no legal obligation to give additional

notice when it agreed to the staff's rate spread. Citizens also asserts that the rates which were adopted are reasonable.

III. Material Issues

The material issues presented in this proceeding are:

- (1) Was proper notice given with respect to A.82-09-052? (2) Are the rates adopted in D.83-10-092 reasonable?

IV. Discussion

A. Applicable Law

1. Nature Of This Proceeding

None of the complainants filed an appearance in A.82-09-052. Therefore, they had no standing to petition for a rehearing of D.83-10-092 or seek review of that decision in the Supreme Court.

"The basic law governing this Commission's power to grant rehearings is found in Section 1731 of the Public Utilities Code, which is quoted in part:

'After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear...'

"Section 1731 gives the Commission the discretion to grant or deny a petition for rehearing, but does not provide any discretion on the part of the Commission as to who may file such a petition. Under Section 1731, rehearing may only be sought by '...any party to the

action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected,'

"Peninsula was not a "party to the action or proceeding", since it made no effort to intervene, protest, or ask for a hearing and did not formally notify the Commission of its position in opposition to the application until after the issuance of Decision No. 811288, which granted the application ex parte."

(SP Transportation Co., (1973) 76 CPUC.2, 4;
Airport Service, Inc. (1979) 2 CPUC.2d 302.)

Since D.83-10-092 had become final it is not subject to collateral attack. (PU Code § 1709.) The only avenue available to attack D.83-10-092, which is the one utilized by Complainants, is to allege that the decision is void. As indicated, Complainants contend that it is void because of the lack of proper notice.

2. Burden of Proof

Complainants had the burden of proof in this proceeding. (Evidence Code §§ 500, 550; Shivell v Hurd (1954 129 CA.2d 320, 324; Ellenberger v City of Oakland (1943) 59 CA.2d 337.) It was necessary for them to produce evidence to sustain this burden.

B. Was The Notice Which Was Given A Proper One?

PU Code § 454(a) provides in part that:

"Whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to increase any rate of charge, other than an increase reflecting and passing through to customers only increased costs to the corporation, for the services or commodities furnished by it, the corporation shall furnish to its customers affected by the proposed increase notice of its application to the commission for approval of the increase. The corporation may include the notice with the regular bill for charges transmitted to the customers within 45 days if the corporation operates on a 30-day billing cycle, or within 75 days if the corporation operates on a 60-day billing cycle. The notice shall state the amount of the proposed increase expressed in both dollar and percentage terms, a brief

statement of the reasons the increase is required or sought, and the mailing address of the commission to which any customer inquiries relative to the proposed increase, including a request by the customer to receive notice of the date, time, and place of any hearing on the application, may be directed."

Rule 24 of the Commission's rules of Practice and Procedure provides in part that:

"Gas, electric, telephone, telegraph, water or heat utilities, within ten days after the filing of the application, shall publish at least once in a newspaper of general circulation in the county within, from or to which the increases are proposed to be made effective a notice, in general terms, of the proposed increases in rates or fares. Such notice shall state that a copy of said application and related exhibits may be examined at the offices of the California Public Utilities Commission in San Francisco or Los Angeles and in such offices of the applicant as are specified in the notice, and shall state the locations of such offices. Proof of such publication shall be filed with the Commission at or prior to the opening of such hearing as may be had upon the application.

"Electrical, gas, heat, telephone, water, or sewer system corporations, within 45 days, if the corporation operates on a 30-day billing cycle, or within 75 days, if the corporation operates on a 60-day or longer billing cycle, after the filing of an application to increase any rate of charge, other than an increase reflecting and passing through to customers only increased costs to the corporation, for the services or commodities furnished by it, shall furnish to its customers affected by the proposed increase notice of its application either by mailing such notice postage prepaid to such customers or by including such notice with the regular bill for charges transmitted to such customers. The notice shall state the amount of the proposed increase expressed in both dollar and percentage terms, a brief

statement of the reasons the increase is required or sought, and the mailing address of the Commission to which any customer inquiries relative to the proposed increase, including a request by the customer to receive notice of the date, time, and place of any hearing on the application, may be directed."

The mailing of notice to customer provisions of PU Code § 454(a) were first enacted in 1973. (Stats. 1973, C. 1105, p. 2251.) At the time of this enactment, applications for increases in rates were made in terms of seeking additional gross annual revenues. (Cal. Water Service Co. (1972) 73 CPUC 549; So. Cal. Edison (1971) 72 CPUC 282, 283; Gen. Tel. Co. of Cal. (1969) 69 CPUC 601, 606.)

Historically this had been the practice. (PT&T Co. (1947) 47 CPUC 399, 400; Cal. Water & Tel. Co. (1947) 47 CPUC 563.) At the time of enactment of PU Code § 454(a) the Commissions' Rules of Practice and Procedure provided:

"(Rule 23) Rate Increase Applications. (P.U. Code, Sec. 454) This rule applies to applications for authority to raise any rate, fare, toll, rental or charge, or so to alter any classification, contract, practice, or rule as to result in such an increase. In addition to being drafted to comply with Rules 2 through 8, 15 and 16, such applications shall contain the following data, either in the body of the application or as exhibits annexed thereto or accompanying the application:"

* * *

"(c) A statement of the proposed increases or changes which will result in increases, which applicant requests authority to make effective. Such statement need not be in tariff form, but shall set forth the proposed rate structure with reasonable clarity. Except as to carriers, the statement shall also show the amount of proposed gross revenues together with

the percentage of increase if in excess of one percent, estimated to result from the proposed rates." (Emphasis added. Rules of Practice and Procedure, effective July 14, 1967.)

The 1973 amendment to PU Code § 454 requiring the mailing to customers of a notice of the filing of an application for a rate increase used substantially the same language as that of Rule 23 at the time of enactment.¹ It is clear that the notice required by §454(a) contemplates a statement of additional gross annual revenues sought and the percentage of increase these revenues would yield over presently authorized annual gross revenues. (See, e.g., So. Cal. Gas Co. (1974) 77 CPUC 733.)

Each form of notice given by Citizens (mailing, publication and posting) contained the following:

"On September 30, 1982, Citizens Utilities Company of California (Citizens) filed Application No. 82-09-52 with the California Public Utilities Commission (Commission) for authority to increase its rates for telephone service to provide additional annual revenue of \$8,871,000, a 20% increase in total revenues."

This portion of the notice clearly complied with the statutory requirements of PU Code § 454(a) (mailing notice) and Rule 24 (publishing and mailing notice).

Other portions of the notices sent by Citizens were not mandated by a statute or rule. Their genesis is as follows.

Rule 52, which provides for notice of hearing (as distinguished from the filing of an application) provides that:²

¹ There is similar language in the present Rule 23.

² PU Code § 454(a) provides that any customer who receives notice of the filing of an application for an increase in rates may request a notice of hearing.

"(2) Whenever any electrical, gas, heat, telephone, water, or sewer system utility files an application to increase any rate, the utility shall give notice of hearing, not less than five nor more than 30 days before the date of hearing, to entities or persons who may be affected thereby, by posting notice in public places and by publishing notice in a newspaper or newspapers of general circulation in the area or areas concerned, of the time, date, and place of hearing. Proof of publication and sample copies of the notices shall be filed at or before the hearing.

"(3) In addition to the notice required by this rule, parties shall provide such notice of hearing as the presiding officer may designate. Sample copies of the notices shall be filed at or before the hearing."

The requirement of posting notice is one which applies to notices of hearing although many utilities use posting as an additional method of giving notice of the filing of a rate application. Also, the format mandated by the Commission for giving notice of hearing provides in part as follows:

"The California Public Utilities Commission will hold public hearings as listed below on the request of Utility to increase its rates by \$ per year. If the entire amount is approved by the Commission, the impact on customers will be as follows:

"(Brief description of which rates the utility proposed to raise - or lower - and the \$ and ¢ amount. The effect on the average residential customer's monthly bill shall be shown. The effect on rates of all customer classes shall be shown. A statement of the reasons for the rate increase shall also be included.)"

Many utilities voluntarily include this information in the notice of filing. Furthermore, Rule 63 provided that:

"Authority. The presiding officer may set hearings and control the course thereof; administer oaths; issue subpoenas; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or motions which do not involve final determination of proceedings; receive offers of proof; hear argument; and fix the time for the filing of briefs. He may take such other action as may be necessary and appropriate to the discharge of his duties, consistent with the statutory or other authorities under which the Commission functions and with the rules and policies of the Commission."

Under this rule the assigned ALJ sometimes directs that the proposed notice of filing of a rate application be submitted for review prior to mailing, publication and, where done, posting. This review may cause the ALJ to direct additions or modifications in the notice.

With the foregoing in mind, we turn to complainants' contention that the notice of filing of A.82-09-052 was deficient because the published notice omitted the portion of a paragraph, which was in the mailed and posted versions, which read as follows:

"The Commission Staff will review the application and may propose rate changes as they deem appropriate. The Staff proposed rate changes may, in some cases, be greater or lesser than those shown by Citizens. In addition, the Staff may propose rate changes for services not included for increase by Citizens and may propose the implementation of nonoptional local measured business services and optional local measured residence service. Although a variety of rate proposals may be submitted by Citizens, Commission Staff, or other parties, the final rate determination will be made by the Commission after the hearings are held."

There is no merit in this contention.

Neither PU Code §454(a) nor any of the Commission's rules required that the omitted language be included in the notice of the

filing of A.82-09-052. Therefore, the omission did not result in the violation of a statute, rule or due process. Furthermore, if it be assumed for the purpose of discussion only, that the omission in the published notice resulted in a failure to comply with a ruling or directive of the assigned ALJ, there was no prejudice to complainants. The record indicates that each complainant was mailed a copy of the notice which had the full text. There is no showing that the omission in the published text caused detriment to any complainant.

Complainants also cite PU Code § 491 in support of their position. There is no merit in this position. Section 491 does not deal with notices to customers about applications for rate increases. It deals with proposed tariff changes sought by advice letter and the publication of rate schedules after hearing. Ordering Paragraph No. 1 of D.83-10-092 provided that:

"1. Citizens Utilities Company of California (Citizens) is authorized to file with this Commission, not less than five days after the effective date of this order, and in conformity with General Order 96-A, revised tariff schedules with rates, charges, and conditions as set forth in Appendix A. The effective date of the revised tariff schedules shall be five days after the date of filing. Revised tariff schedules shall apply only to service rendered on and after the effective date of the tariffs."

There is no evidence that Citizens did not comply with Ordering Paragraph 1. Compliance was made with PU Code § 491 in establishing the rates here in question.

C. Was Additional Notice Required?

The gravamen of this complaint is the contention that there was a legal requirement for Citizens to give its customers an additional notice when it agreed to accept the staff's proposals on rate spread during the hearing on A.82-09-052. Complainants argue that when Citizens adopted the staff proposal it became Citizens'

proposal. They argue that since this proposal differed from the one originally noticed a new notice was required.

In order to consider this argument it is necessary to look at how rate proceedings are conducted.

"In a general rate setting proceeding, the commission determines for a test period the utility expense, the utility rate base, and the rate of return to be allowed. Using those figures, the commission determines the revenue requirement, and then fixes the rates for the consumers to produce sufficient income to meet the revenue requirement. (City of Los Angeles v. Public Utilities Commission (1972) 7 Cal.3d 331, 336 [102 Cal.Rptr. 313, 497 P.2d 785].) Among the matters considered by the commission in a general rate proceeding is the method by which charges are to be allocated among the consumers." (California Manufacturers Assn. v. Public Utilities Com. (1979) 24 Cal.3d 251, 256-57.)

As indicated, the notice provisions apply to the additional revenue requirement sought by a utility seeking to increase rates. This is because the amount specified in the notice limits the amount of increase which can be granted.

While the Commission may be limited by the notice of filing of application for a rate increase from granting a utility a greater amount than requested, the utility in the notice of what it seeks cannot foreclose the Commission from exercising its constitutional and statutory jurisdiction to establish rates.

"The setting of utility rates and rates of return is a legislative act, delegated by the Legislature to the Public Utilities Commission. (Pacific Tel. & Tel. Co. v. Public Util. Com. (1965) 62 Cal.2d 634, 647 [44 Cal.Rptr. 1, 401 P.2d 353] [hereafter Pacific Tel. & Tel.].) As with any legislative act, the commission's findings and conclusions on matters of fact are final and its decisions are presumed to be valid." (So. Cal. Gas Co. v. Public Utilities Co. (1979) 23 Cal.3d 470, 480.)

In considering rate spread, the Commission has held that:

"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. Since rate schedules must be devised to reflect customer characteristics of one or more classes of customer, and since it is frequently advisable to make changes in the form of schedules to meet changing operating conditions, uniform percentage changes in billing for particular customers, or even for uniform consumptions, is rarely possible or appropriate." (California Water Service Co. (1950) 49 CPUC 463, 469; Nunemaker et al. v. PT&T and Wood et al. v. PG&E (1969) 70 CPUC 38, 44-45, affirmed 4 Cal:3d 288, appeal dismissed for want of federal question, 404 U.S. 931.)

In PG&E Decision No. 84902, (1975), 78 CPUC 638, 726-727, and 737, several ratemaking factors are listed for consideration when designing a particular rate spread. The Commission stated that:

"Over the years a generally accepted set of attributes of good rate structure has evolved; these are:

- Production of the revenue requirement.
- Simplicity and ease of understanding.
- Stability of revenue.
- Fair apportionment of cost of service.
- Discouragement of wasteful use.
- Encouragement of efficient operation of system.

"In the attempt to design rates possessing these attributes, various factors are usually considered. These are:

- Cost of service.
- Historical rate structure.
- Competitive conditions.

Value of service, including 'what the traffic will bear.'
Adequacy of service.
Customer acceptance."

The Commission also stated at page 737:

"Earlier we listed the generally accepted attributes of a good rate structure. These criteria are as valid now as they have ever been, but, ...their application requires a major overhaul in the traditional 'declining block' rate structure.... Today, the overriding task for this Commission, the utilities, and the public is conservation."

In rate proceedings, the applicant utility which has the burden of proof presents evidence to support its proposed rate spread. In many proceedings the staff presents evidence on rate spread, which may differ in whole or part from the evidence presented by the applicant. In these circumstances the staff is a litigant with the same status as all other parties in the proceeding.

"It is a long-established principle that staff testimony is not conclusive on the Commission (City of Palo Alto v Palo Alto Gas Co. (1913) 2 CRC 300, 312). Unless it can be shown that a Commission decision adopted the testimony of a staff witness that testimony is of little probative value in construing the decision." (So. Pac. Transp. Co. (1981) 6 CPUC.2d 336, 345.)

"The staff apparently understands the purpose of these proceedings. It is free, as is any other interested party, to present the evidence and proposals it thinks appropriate.

"We agree with the staff's response to CTA's motion:

[1][2] 'California Trucking Association (CTA) criticizes staff for having "predetermined" its position regarding OSH 244. Apparently, CTA takes issue with

staff having a position, implying that the staff has a kind of judicial role of impartiality which it is allegedly breaching by adopting a point of view before the hearing process has terminated. It is surprising that CTA should so misconstrue the function of staff at Commission proceedings. It is the Commission, not the staff, which makes the final determination as to whether any particular course of action be adopted. The staff is a party and is entitled to all the rights of a party, including the right to have an opinion and to advocate that opinion." (OSH 244 in Inv. of MRT 6-13 (1978) 83 CPUC 331, 333-34.)

In many proceedings, parties other than the applicant and staff present evidence or exhibits dealing with rate spread.

(E.g., PG&E Co. (1979) 2 CPUC.2d 466, 471 (California Manufacturers Association); PT&T Co. (1981) 6 CPUC.2d 441, 558 (Allied Telephone Companies Association); Pacific Power & Light Co. (1980) 4 CPUC 2d 544, 580, 584 (Consumer group TURN, California Farm Bureau); San Diego Gas & Electric Co., D.83-12-065 in A.82-12-57, dated December 20, 1983, pp. 151-52, 174, 176 (Western Mobilehome Association, Welfare Rights Organization.)

In determining rate spread the Commission is not bound by proposals made by the parties, provided there is evidence in the record to support the rates which are authorized.

"We reject the contention that the Commission is limited in the exercise of its expertise and statutory authority by the solutions proposed by litigants." (Market Street R. Co. v. Railroad Com. of Cal., 324 U.S. 548, 560-61.) (City of Visalia (1969) 69 CPUC 311, 319.)

"The commission must fix rates that will provide a reasonable return on the utility's investment, and in doing so it has wide discretion to make rate classifications that reflect a broad and varied range of economic considerations. (Pacific Tel. & Tel. Co. v. Public Utilities Commission (1965) 62 Cal.2d 634, 647; Cal. Mfrs. Assn. v. Public Utilities

Com. (1954) 42 Cal. 2d 530, 536; Pac. Tel. & Tel. Co. v. Public Utilities Com. (1950) 34 Cal.2d 822, 826-827)" (Wood et al v. PG&E Co. (1971) 4 Cal.3d 288, 294-95.)

Since the rate spreads proposed by utility applicants and other parties to a proceeding are not binding on the Commission, requiring the utility to give additional notice to customers where it does not contest or agrees in whole or part with a rate spread proposed by another party would inhibit utility expansiveness and not significantly assist the ratepayers to participate in the ratemaking process. The issue is not necessarily resolved when the utility acquiesces to another party's proposal. The procedural import of the utility's concurrence does not outweigh the administrative burden and expense of notifying the customers of the utility's position.

As indicated, in setting rates the Commission acts legislatively. While an applicant utility obviously has a point of view on rate spread it is also knowledgeable about the application of its rates to its customers. It is unlikely to give positive input or consideration to desirable proposals made by others if by so doing it would incur the additional expense of customer notice. Imposition of the contended for, additional notice requirements would likely cause rigidity and inflexibility.

We hold that PU Code § 454(a) and the Commission's rules apply to the revenue requirement (additional gross annual revenues sought and the percentage of increase these revenues would yield over presently authorized gross revenues) and not rate spread. Citizens did not seek to increase the revenue requirement in the course of the hearings on A.82-09-052. The notice given by Citizens complied with the law. No additional notice was required.

D. Are the Rates Authorized By D.83-10-092 Unreasonable?

As indicated, the Presiding ALJ permitted evidence on the reasonableness of the rates authorized by D.83-10-092 and presently

in effect. However, in considering this question complainants are precluded from attacking any of the matters adjudicated in D.83-10-092. (PU Code § 1709; Scott Transportation Co. (1957) 56 CPUC 1.)

Complainants allege that Citizens' rates are unreasonable for the following reasons: (1) Citizens inflated its rate base by overbuilding the Ferndale Central Office by replacing adequate step switch equipment with digital equipment. (2) Citizens inflated its rate base by making unnecessary expenditures in installing the Ferndale-Petrolia microwave project. (3) Citizen's staffing levels and operating expenses should have declined after the rebuilding of the Ferndale Central Office and the Ferndale-Petrolia microwave project. (4) Operating properties of Citizens were transferred to a nonutility subsidiary without an adjustment to reimburse ratepayers. (5) Citizens has used Stamford administrative overhead costs and California utility costs to finance nonutility operations. (6) Citizens has improperly commingled accounts of its various operations.

D.83-10-092 considered the question of installing digital equipment in the Ferndale Central Office. (Pp. 38-39.) The reasonableness of that installation cannot be collaterally attacked in this proceeding.

Complainants have not established that unnecessary expenditures were made in the installation of the Ferndale-Petrolia microwave project. To support their position, complainants use an amount for funds expended for a cable project added to the estimate for the microwave system. It is not appropriate to use past revenues expended for a different project in considering the reasonableness of an estimate of investment for a project in a future test year. Complainants also argue that the microwave system is overbuilt because it has the capacity to serve 600 customers, and at the end of 1984 there were 212 customers in Petrolia. However, they presented no evidence of what cost

savings, if any, could have been achieved by designing a system with a smaller capacity, or whether such a smaller design was even feasible. Complainants provided no analysis or evidence of the ratemaking effects of any of their suggested alternatives.

Complainants assert that Citizens staffing levels and expenses in Ferndale are too high in the light of the digital and microwave projects. They argue that Citizens could eliminate one to one and a half central office technicians and a full time cable maintenance technician. Again, no evidence was presented to support this contention, nor was there any analysis or evidence to show its ratemaking effect.

Complainants introduced evidence which indicated that in 1973 Citizens sold a lot in Ferndale which had been used by its telephone division as a storage lot to William Busch (Busch). Busch paid his deposit in a check made out to Citizens. Thereafter, he was told to pay the balance to Citizens Resources Company (CRC) which is a wholly owned subsidiary of Citizens Utility Company, headquartered in Stamford, Connecticut (Parent Co.). Citizens is also a wholly owned subsidiary of Parent Co. After payment, Busch received a deed to the property from CRC. Complainants introduced in evidence an exhibit received in OII 83-11-09, which dealt in part with the transfer of assets from Citizens to CRC and other parties.

Complainants speculate that the transfers from Citizens to CRC were for less than the value received by CRC upon the sale of the properties to third parties. They allege that failure to properly account for these profits affect the rates to the detriment of the customers. The difficulty with complainants' argument is that there is no evidence to support the speculation.

Complainants introduced evidence that Parent Co. and CRC share offices in Connecticut. It is argued that since CRC is a nonregulated utility some of its costs were passed on to Citizens in overhead amounts allocable to Parent Co.. Again, there is no

evidence to show the amounts alleged to have been improperly allocated and the impact this might have on present rates.

Complainants contend that Citizens commingled accounts which somehow make the challenged rates unreasonable. They make a disjointed argument in support of this contention.

Complainants first argue that Citizens failed to comply with provisions of D.88125, dated November 22, 1977, which required it to conform to certain cost accounting procedures of office and administrative costs that are allocated by Parent Co. to its California subsidiaries. Not only is there no evidence to support this contention, what evidence there is in the record indicates that Citizens has complied with those provisions.

Next, complainants cite the testimony of a witness in A.82-09-052 to support a contention that Citizens violated General Order (GO) No. 65-A.

This contention must be disregarded for the following reasons. The testimony of the witness is not part of the record in this proceeding. Citizens was not afforded the opportunity to cross-examine the witness on the testimony with respect to the issues framed in this proceeding. The Commission made no finding to that effect in the other proceeding. Furthermore, GO 65-A deals with the periodic filing of financial reports. Complainants have failed to show how any alleged violation of GO 65-A affected the reasonableness of the rates challenged herein.

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

Findings of Fact

1. Citizens is a public utility subject to the jurisdiction of the Commission which operates in California as a telephone corporation and water corporation. It is a wholly owned subsidiary of Parent Co. CRC is a nonutility wholly owned subsidiary of Parent Co.

2. On September 30, 1982, Citizens filed A.82-09-052, which was an application for authority to increase rates for telephone service in the areas in which it operates.

3. Citizens mailed a notice of the filing of A.82-09-052 to each customer. It also published and posted notice. All the notices stated that Citizens sought additional annual revenue of \$8,871,000, which was a 20% increase in total revenues. The notices included examples of a rate spread proposed by Citizens.

4. The mailed and posted notices contained the following text prior to the examples:

"Shown below are examples of the rate increases proposed by Citizens. The Commission Staff will review the application and may propose rate changes as they deem appropriate. The Staff proposed rate changes may, in some cases, be greater or lesser than those shown by Citizens. In addition, the Staff may propose rate changes for services not included for increase by Citizens and may propose the implementation of nonoptional local measured business services and optional local measured residence service. Although a variety of rate proposals may be submitted by Citizens, Commission Staff, or other parties, the final rate determination will be made by the Commission after the hearings are held."

The published notice only contained the first sentence of the paragraph just quoted.

5. Each of the complainants in this proceeding received a copy of the mailed notice.

6. The examples provided in the notice included the following for the Ferndale Exchange.

	<u>Present Rate</u>	<u>Proposed Rate</u>	<u>Percentage Increase</u>
Residential	5.60	11.65	108%
Business	8.60	17.95	109%

7. Other than the notices referred to in Finding 4, and the appropriate notices of hearing given by the Commission, no other notices to customers were given in connection with A.82-09-052.

8. At the time A.82-09-052 was filed and the times notices were given, Citizens was not aware that staff would propose to equalize rates among its exchanges. At all times during the proceeding Citizens was willing to accept the rate spread it proposed in the various exchanges. Citizens' primary concern was revenue requirement, not rate spread.

9. The hearing on A.82-09-052, held in 1983, was bifurcated. The first phase dealt with revenue requirements. The second phase addressed rate spread. Rate spread was not considered in the revenue requirements phase and Citizens was not aware of the staff's position at that time. There was a recess in the proceeding between phases. During this period the staff indicated to Citizens that it would propose a rate spread which would equalize rates among the telephone exchanges served by Citizens. Citizens reviewed the staff's proposed figures. It had two objections which were communicated to the staff. (1) The figures were based on a slightly lower revenue requirement than requested. (2) The proposed rate schedules did not yield the revenue requirement proposed by staff.

10. On the last day of hearing in A.82-09-052, the staff presented a rate spread exhibit with which Citizens agreed. Citizens vice president for revenue requirements, California testified that "we then do adopt the revised positions as presented by the staff witnesses."

11. D.83-10-092 adopted the rate spread proposed by the staff. The difference in the rates adopted for Ferndale Exchange and the examples of proposed increase in the notices are as follows:

	<u>Percentage Increase in Examples in Notices</u>	<u>Percentage Increase Authorized By Commission</u>
Residential	108%	150%
Business	109%	232%

12. None of the complainants appeared as a party in A.82-09-052, and, therefore had no standing to petition for a rehearing of D.83-10-092.

13. The notice of filing of A.82-09-052 which was mailed, published and posted by Citizens met the requirements of PU Code § 454(a) and Rule 24.

The material omitted from the published notice was not required by PU Code § 454(a) or Rule 24. Since each complainant received a copy of the mailed notice which had the omitted material, none was prejudiced by the omission in the published notice.

14. The question of installing digital equipment in the Ferndale Central Office was considered and passed upon in D.83-10-092.

15. There is not sufficient evidence in this record to support a finding that Citizens inflated its rate base by making unnecessary expenditures in installing the Ferndale-Petrolia microwave project.

16. There is not sufficient evidence in the record to support a finding that the staffing levels and operating expenses of the Ferndale Central Office are excessive or unreasonable.

17. There is not sufficient evidence in the record to sustain a finding that Citizen's ratepayers suffered any detriment as the

result of transactions in which Citizens transferred utility property to CRC which in turn sold it to third parties.

18. There is not sufficient evidence in the record to sustain a finding that Citizens has improperly allocated Parent Co. administrative overhead costs to the detriment of Citizen's ratepayers.

19. There is not sufficient evidence in the record to sustain a finding that Citizens has improperly commingled accounts of its various operations to the detriment of its ratepayers.

Conclusions of Law

1. PU Code § 454(a) and Rule 24 require that the notice of filing of an application for a rate increase by a gas, electric, telephone, telegraph, water or heat utility include a statement of additional gross annual revenues sought (revenue requirement) and the percentage of increase these revenues would yield over presently authorized gross revenues.

2. There is no statute or Commission rule which requires a utility seeking an increase in rates to include in the notice of filing of application examples of how the proposed increase in revenues will affect particular classes of customers (rate spread). A utility may voluntarily include a proposed rate spread in the notice or may be directed by the presiding ALJ under Rule 63 to include such information in the notice.

3. PU Code § 454(a) and Rule 24 only require the giving of one notice. Unless in the course of a proceeding a utility seeks a revenue requirement greater than that set forth in the initial notice no further notice is required by PU Code § 454(a) or Rule 24. Under Rule 63, a presiding ALJ may direct that additional notice be given in appropriate circumstances.

4. The notice by Citizens of filing A.82-09-052 met the requirements of PU Code § 454(a) and Rule 24.

5. When, in the hearings on A.82-09-052, Citizens agreed to adopt the staff's rate spread proposal, no additional notice to customers was required under PU Code 454(a) and Rule 24.

6. The notice required by PU Code § 454(a) and rule 24 limits the amount of additional gross annual revenues which may be authorized for an applicant. It cannot foreclose the Commission in the performance of its constitutional and statutory duties from determining the appropriate rate spread among classes of customers to yield the amount of revenues authorized.

7. The reasonableness of installing digital equipment in the Ferndale Central Office cannot be collaterally attacked in this proceeding.

8. Complainants have failed to establish that the rates authorized in D.83-10-092 are unreasonable.

9. Complainants are entitled to no relief in this proceeding.

ORDER

IT IS ORDERED that the complainants are entitled to no relief in this proceeding and the complaint is denied.

This order becomes effective 30 days from today.

Dated JAN 28 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weissert, Executive Director