

Decision No. 88215 DEC 6 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation, for authority
to increase certain intrastate rates
and charges applicable to telephone
services furnished within the State
of California.

Application No. 53587

And Related Matters.

(Re Tax Reserve Matters)

Application No. 51774

Application No. 55214

Case No. 9503

Case No. 9802

Case No. 9832

Application No. 51904

Application No. 53935

Case No. 9100

Case No. 9504

Case No. 9578

RULING ON VARIOUS MOTIONS OF
THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY

On September 13, 1977 the Commission issued Decision No. 87838 which adopted a method of accounting for accelerated depreciation and the investment tax credit. On September 22, The Pacific Telephone and Telegraph Company (Pacific) filed an application for rehearing, for modification, and for stay of Decision No. 87838. On September 30, Pacific filed a motion for an order "directing the staff of the Public Utilities Commission to participate in proceedings before the Internal Revenue Service". On October 6, Pacific filed a motion requesting an order "establishing a briefing schedule, setting a date for oral argument before the Commission en banc, and staying Decision No. 87838".

The application for rehearing automatically stayed Decision No. 87838 by operation of law (Public Utilities Code Section 1733). This ruling does not concern the application for rehearing.

The motion for stay of Decision No. 87838 until the completion of rehearing and, if rehearing is denied, until the completion of judicial review of Decision No. 87838 is a repetition of Pacific's request for stay in its application for rehearing. On November 8, 1977, by Decision No. 88103, we stayed Decision No. 87838 until further action of this Commission. That stay is still in effect.

The motion for an order establishing a briefing schedule and setting a date for oral argument before the Commission en banc is denied. The request that the effective date of the decision be postponed until after the Internal Revenue Service issues its ruling is denied.

With respect to the motion for an order directing the staff of the Public Utilities Commission to participate in proceedings before the Internal Revenue Service, a reading of Pacific's request for a ruling which was attached to its motion leaves no doubt but that Pacific's position before the IRS is that Decision No. 87838, when final, will cause Pacific to lose its eligibility. Thus Pacific is actually requesting an adverse ruling. In addition, General Telephone Company of California (General) has provided us with a copy of its own request for a ruling. That request, much like Pacific's, stresses General's position that ineligibility will result from the tax treatments adopted in Decision No. 87838.

As we stated in Decision No. 87838, the methods we adopted for ratemaking treatment of accelerated depreciation and ITC were specifically developed to retain Pacific's and General's eligibility for those tax benefits. We consider Pacific's and General's attempts to secure adverse rulings from the IRS to be wholly inconsistent with our attempts to preserve their tax eligibility.

Therefore, we deny Pacific's motion to order the staff to participate in its proceedings with the IRS. We should also point out that if Pacific's and General's requests result in a loss of eligibility, it will be necessary for the Commission to consider setting the rates of Pacific and General on a flow through basis. The California Supreme Court has already held that, irrespective of eligibility, flow through is a proper rate making treatment of the tax benefits from accelerated depreciation and ITC. The IRS shall be advised of our determination in this regard.

The effective date of this ruling is the date hereof.

Dated at San Francisco, California, this 6th
day of DECEMBER, 1977.

I will dissent
William Symon, Jr.

Robert Batminal
President

I dissent
Vernon L. Sturgeon

Richard D. Gwalt
Clair T. D. Smith
Commissioners

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Pacific Telephone & Telegraph Company
Regulatory Treatment of Accelerated Depreciation
and Investment Tax Credits

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

The Commission does not act constructively on the motions before it. Instead the Commission chooses to bare its teeth once more towards applicants, and the Internal Revenue Service as well.

What is gained by this? All parties concede that a Commission majority has the naked power over California utilities to impose "flow-through" for ratemaking purposes. As the majority states, this would be "irrespective of eligibility" for federal tax benefits as provided by Congress. In fact, such an order would be absolutely destructive of eligibility. The consequent billion-dollar harm to the communication network which serves California would make such a calculated decision irresponsible regulatory action. I see no useful purpose in any veiled threats that we will take this course of action in the future.

Nor do I see any reason to seek to escape from the consequences of our decision. In concurring to D. 87838, two of the three majority commissioners asserted "Today's decision, while attributed to this Commission, is not really ours."^{1/} I respectfully disagree. The balancing formula was the Commission's, it was not that of the California Supreme Court.^{2/} Those adopting that formula have a definite interest and an obligation to do what can be done to see that it works in achieving eligibility for federal tax benefits. The majority is incorrect in stating that it is "... Pacific's position before the IRS" that "will cause Pacific to lose its eligibility". Rather, it is the

^{1/} Concurrence D.87838 in Application No. 53587, dated 9/13/77, p.1.

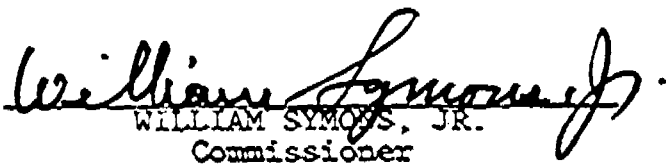
^{2/} The Court instructed as follows "...we emphasize that nothing in the course of this opinion should be construed as binding the Public Utilities Commission either now or in the future to any particular method of rate-setting which it decides is not useful" City of Los Angeles v. Public Utilities Com., 15 Cal 3d 680(1975), p.704, note 4

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suitability of the Commission's action in D. 87838 that decides the question of eligibility. Therefore, it is sensible for the California Public Utilities Commission to participate before the Internal Revenue Service and explain fully its enigmatic rationale of how D. 87838 conforms to United States law and treasury regulations.

It is unrealistic for the Commission to demand that Pacific and General argue, chameleon-like, against the positions they have publicly held for years in filed legal arguments and presentations before this Commission. Nor would such forced "converts" be believable advocates. The Commission's staff attorneys would be proper and able advocates of the Commission's logic. The mere pronouncement by the Commission that its formula is in conformity with federal requirements has less than persuasive force to entities not subject to the Commission's jurisdiction. Our attorneys should be instructed to forcefully and fully explain the Commission's position to the Internal Revenue Service. If not, and California utilities receive an IRS ruling denying eligibility, the Commission will have to develop the same arguments anyhow to present them to the United States Supreme Court. Why not be forthright about our case from the beginning?

San Francisco, California
December 6, 1977


WILLIAM SYMONS, JR.
Commissioner