

**ORIGINAL**Decision No. 89106 JUL 25 1978

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion regarding whether  
utilities, when ordered by the  
Commission to make refunds, should  
pay such refunds to all customers  
or domestic customers only, and  
on what basis refunds should be  
divided between customers.

Case No. 10255  
(Filed February 8, 1977;  
amended March 15, 1977)

(Appearances are listed in Appendix A attached hereto.)

O P I N I O NIntroduction

On February 8, 1977 the Commission instituted this order of investigation to consider the question of how most equitably the refunds in several cases pending before the Commission might be made. The Commission is specifically concerned with the question of whether such refunds should be apportioned among all customers or only among domestic customers. In the order instituting investigation the Commission stated its concern that increases in rates may be passed on by higher prices, but that refunds may not be reflected in prices being lower than otherwise.

The Commission stated it was also interested in the relative administrative costs and difficulties of various methods of making refunds, as well as procedures for depositing amounts unclaimed.

Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SoCal Edison), Southern California Gas Company (SoCal Gas), The Pacific Telephone and Telegraph Company (PT&T), General Telephone Company of California (General Tel), Continental Telephone Company of California (Continental Tel), Sierra Pacific Power Company (Sierra Pacific), California-Pacific Utilities (Cal-Pac), and Pacific Power and Light Company (Pacific P&L) were named as respondents.

By Decision No. 87091 issued March 15, 1977 the Commission stated that a question has arisen whether refunds attributable to past purchases of natural gas pursuant to the proceedings in Federal Power Commission<sup>1/</sup> (FPC) Docket No. RP73-104 should be refunded directly to respondent utilities' customers or reflected as a credit to the balancing accounts established pursuant to Public Utilities Code Section 792.5 and amended the order of investigation to include the consideration of the disposition of refunds accruing to any of the respondents herein by virtue of proceedings before the FPC and to name Southwest Gas Corporation (SW Gas) as a respondent. ✓

On May 6, 1977 California Manufacturers Association (CMA), California Retailers Association (CRA), Kerr-McGee Chemical Corporation (Kerr-McGee), Amstar Corporation (Amstar), and General Motors Corporation (GM), hereinafter together referred to as petitioners, filed a petition requesting the Commission to issue an order to respondents PG&E, SoCal Gas, SDG&E, and Cal-Pac, all of which are natural gas utilities affected by the El Paso Natural Gas Company (El Paso) refunds ordered by the decision of the FPC of February 16, 1977, directing them to submit and implement without further delay appropriate plans for refunding the amounts received from El Paso, plus accrued interest, to all classes of customers, including non-domestic customers, in proportion to the amounts which each customer class paid to offset the gas supply cost increases refunded to such respondents by order of the FPC.

Responses were filed on or before June 1, 1977 by PG&E, SoCal Gas, California Farm Bureau Federation (Farm Bureau), the Secretary of Defense on behalf of all Executive Agencies of the United States (Executive Agencies of U.S.), the Department of Consumer Affairs (Consumer Affairs), and the Commission staff (Staff). The petition was taken under submission on June 13, 1977, the date of the filing by petitioners of their reply to the responses, and was denied by Administrative Law Judge Cline from the bench at the hearing on August 17, 1977. Judge Cline stated that the legal issues raised by the petition would be resolved by the Commission in this decision.

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<sup>1/</sup> Now the Federal Energy Regulatory Commission.

Utility rate refunds originate when a regulatory ratemaking agency such as the Commission or the FPC authorizes a utility to collect all or part of an increase in rates subject to a possible later refund after the agency has made a final determination of what the just and reasonable rates should be. Refunds may also accrue where a rate increase which has been put into effect is annulled upon judicial review.

The FPC regulates the prices for natural gas sold in interstate commerce by the natural gas producers and the rates charged by the interstate natural gas pipeline companies which transport gas sold to the California gas distributing utilities. Under the FPC procedures the gas producers and pipeline companies are permitted to collect requested rate increases, subject to refund when the FPC determines the final just and reasonable rates. Refunds, including interest, result when the FPC final rate determination is less than the level of rates originally requested. Under tariffs filed with the Commission the California gas distribution utilities to which such refunds have been made in turn may be required to distribute the refunds to their customers. The tariffs of such utilities either provide that any such refunds shall be shared by customers as refunds based upon the rates they have paid or provide that the refunds may be credited to the balancing accounts of the utilities.

The evidence introduced by respondents disclosed the following FPC refunds on hand or anticipated:

On March 25, 1977, SoCal Gas received \$44,389,826.80 from El Paso which is presently being held and accumulating interest at seven percent. In addition, SoCal Gas received \$15,103,861.41 on May 11, 1977 and \$12,141,716.66 on July 13, 1977.

PG&E has accumulated \$48,700,000 in FPC supplier refunds, and in addition there is a credit balance in the refund account of \$1,200,000 due customers, making a total of \$49,900,000, exclusive of interest.

The Staff in its brief has pointed out that for several years the Commission has been involved with the question of the proper regulatory treatment of accelerated tax depreciation and investment tax credit for the two major telephone utilities operating in California, PT&T and General Tel, in several rate proceedings. PT&T and General Tel have been collecting rate increases subject to later refund depending upon how the tax ratemaking questions are finally resolved. On September 13, 1977, the Commission issued Decision No. 87838 determining the proper regulatory treatment and ordering refunds of \$205,586,000, including seven percent interest, by PT&T, and \$65,440,000, including seven percent interest, by General Tel. PT&T and General Tel were also ordered to file refund plans for all current subscribers utilizing a proportional reduction in the recurring basic exchange primary service rates. (See Decision No. 87838, mimeo.p. 40.) The implementation of these refunds is stayed pending judicial review of Decision No. 87838. (See Decision No. 88103, dated November 8, 1977.)

During 1972 and 1973 the Commission authorized the electric utilities subject to its jurisdiction to increase electric rates by a fuel cost adjustment tariff provision to provide for increases and decreases in the cost of fossil fuel. This authority was granted because the electric utilities' fuel costs, particularly for oil, were

changing rapidly. Because the major electric utilities had been able to acquire by this procedure significant revenues over their actual fuel expenses, the Commission instituted Case No. 9886 on March 18, 1975, to investigate this situation. Upon the conclusion of this investigation the Commission in Decision No. 87531, issued April 27, 1976, revised the fuel cost offset procedure for the future and ordered the amortization of the excess amounts collected over the actual fuel costs. SoCal Edison appealed this decision to the California Supreme Court. Oral argument was held before the Court in February of 1977. On March 23, 1978, the Court filed a decision sustaining the Commission's Decision No. 87531 (Docket No. S.F. 23500). On February 7, 1978, SoCal Edison filed a petition for rehearing. The Supreme Court denied rehearing on May 25, 1978. Subsequent to Decision No. 87531, PG&E received Commission authorization to amortize its overcollections against future fuel costs. SDG&E was authorized by Decision No. 87639 issued July 19, 1977 in Application No. 55627 to credit its overcollections to its balancing account.

SoCal Edison and the electric departments of PG&E and SDG&E share in the gas supplier refunds referred to above to the extent natural gas is used in their generation of electricity, and the gas department of SDG&E shares in such refunds to the extent that it purchases gas from SoCal Gas.

The record also discloses that lesser gas and electric refunds have accrued or are anticipated to accrue to Cal-Pac, Sierra Pacific, and SW Gas.

Twenty-two days of hearing were held before Administrative Law Judge Cline between July 20 and October 12, 1977, at various locations throughout California, including Los Angeles, Marysville, Sacramento, Fresno, San Diego, San Bernardino, San Francisco, Visalia, and Bakersfield. Opening briefs were filed on or before December 12, 1977. The matter was taken under submission upon the filing of closing briefs on December 29, 1977.

During the hearings testimony was offered by the utility respondents, the Staff, and interested parties including Consumer Affairs, Farm Bureau, Executive Agencies of U.S., the City of Los Angeles, County of Lassen, University of California, Monolith Portland Cement Company, Toward Utility Rate Normalization (TURN), CRA, and California Public Interest Research Group (CPIRG).

On September 19, 1977, Senate Bill 604, now Section 453.5 of the Public Utilities Code, was enacted. This section provides that whenever the Commission orders rate refunds to be distributed, the Commission shall require public utilities to pay refunds to all current utility customers, and, when practicable to prior customers, on an equitable basis. The effect of this legislation on this proceeding was considered at the hearing on October 12, 1977 and in the briefs.

Opening briefs only were filed by PG&E, SoCal Gas, CRA, the City of San Diego, and TURN. Opening and closing briefs were filed by the Staff, SoCal Edison, CMA, the City of Los Angeles, Executive Agencies of U.S., and Consumer Affairs. Closing briefs only were filed by California Portland Cement Company, the Metropolitan Water District of Southern California, and the University of California.

An opening brief of CPIRG which was received for filing by the Docket Office on January 6, 1978, but was not filed until January 16, 1978, at which time an affidavit of mailing executed January 13, 1978, and showing service by mail only upon ten of the respondent utility companies on December 21, 1977, was received by the Commission. As Ruling No. 5 of the Presiding Officer issued November 8, 1977 specified that briefs should be served upon all appearances in Appendix A attached thereto whose names were underlined, and since service by mail was not made upon any of such parties until December 21, 1977, nine days after December 12, 1977 the date set for filing of opening briefs, and then only upon ten of the 62 parties listed in said Ruling No. 5, the brief of CPIRG will be ordered removed from the formal file and placed in the correspondence file pertaining to this proceeding.

Summary of Position of the Parties

During the course of the hearing a Staff witness recommended that (1) commercial, industrial, and agricultural customers should receive a 50 percent refund of overcharges, (2) governmental entities should receive no refunds, (3) resale customers should receive a full refund of overcharges provided they pursue refund policies comparable to those recommended by the Staff, and (4) residential customers should receive full refunds of overcharges generated by the residential class plus (a) 50 percent of the refunds generated by overcharges to commercial, industrial, and agricultural customers, and (b) all refunds generated by overcharges to governmental entities.

Consumer Affairs proposed that all refund monies generated by overcharges to nonresidential customers should be paid into an Energy Conservation Trust Fund to be administered by the Public Utilities Commission with technical assistance from the State Energy Commission. These agencies would jointly draft guidelines to evaluate the technical merit of each grant request and would monitor and evaluate each project. Businesses would apply for grants from the trust fund to finance capital investments in energy conservation technology and would be required to put up matching funds of their own.

TURN proposed that all of the FPC ordered refunds for natural gas sales be placed in an Energy Conservation Trust Fund to be administered by a California Conservation Authority whose board of directors would include representatives of the Public Utilities Commission, the State Energy Commission, local governmental entities (municipalities, counties, water districts, and so forth), and civic, professional, and public interest organizations. The Energy Conservation Trust Fund would be used to make grants and loans to firm gas customers for the purposes of promoting energy conservation within California. CPIRG also strongly supported the establishment of an Energy Conservation Trust Fund.

The other nonutility parties to the proceeding generally advocated that refunds be distributed to each customer without regard to customer class in the amount of the overcharge actually paid by that customer.

In its brief PG&E states that it is willing to distribute the refunds applicable to service prior to 1977 (\$45,400,000, including interest to August 1977) to its customers by means of a refund plan according to the provisions of Section 453.5 and the tariffs then in effect. PG&E points out that its presently filed tariffs are not a barrier to such a distribution because they were not in effect at the time the rate increases for which such refunds are attributable went into effect. Refunds received from suppliers for service beginning January 1, 1977 (\$5,800,000, including interest to August 1977) would be distributed to customers by means of the balancing account pursuant to presently existing tariffs.

SoCal Edison asserts that the balancing account treatment of rate refunds is appropriate under Senate Bill 604 for electric utilities and that the implementation of Staff's refund proposal as set forth in Exhibit No. 2 or any of the proposals of Consumer Affairs, TURN, or CPIRG would be unlawful.



SoCal Gas contends that due to the enactment of Senate Bill 604 only one real issue remains; namely, whether balancing accounts may be used to dispose of refunds, and that this issue should be resolved in the affirmative.

Issues

1. May this Commission require utilities to pay amounts which they have received as refunds from gas suppliers into an Energy Conservation Trust Fund to be administered by this Commission and others for the purpose of providing funds to finance capital investment in energy conservation technology and otherwise to be used to promote conservation in California?

2. May this Commission require entities to make refunds disproportionately in favor of residential customers?

3. May this Commission authorize utilities to credit amounts, which otherwise would be required to be refunded to its customers pursuant to Section 453.5 of the Public Utilities Code, to balancing accounts for the benefit of present and future customers instead of for the benefit of prior customers on the basis of past usage of the utilities' services, or in the case of small customers on the basis of current usage of the utilities' services?

Discussion

1. May this Commission require utilities to pay amounts which they have received as refunds from gas suppliers into an Energy Conservation Trust Fund to be administered by this Commission and others for the purpose of providing funds to finance capital investment in energy conservation technology and otherwise to be used to promote conservation in California?

and,

2. May this Commission require utilities to make refunds disproportionately in favor of residential customers?

Issues 1 and 2 will be considered together in view of the enactment of Senate Bill No. 604 on September 19, 1977, which provides:

"SECTION 1. Section 453.5 is added to the Public Utilities Code, to read:

"453.5. Whenever the commission orders rate refunds to be distributed, the commission shall require public utilities to pay refunds to all current utility customers, and, when practicable, to prior customers, on an equitable pro rata basis without regard as to whether or not the customer is classifiable as a residential or commercial tenant, landlord, homeowner, business, industrial, educational, governmental, nonprofit, agricultural, or any other type of entity.

"For the purposes of this section, 'equitable pro rata basis' shall mean in proportion to the amount originally paid for the utility service involved, or in proportion to the amount of such utility service actually received.

"Nothing in the section shall prevent the commission from authorizing refunds to residential and other small customers to be based on current usage.

"SEC. 2. Section 1 of this act is hereby declared to be the positive expression of a continuing legislative intent with respect to the statutory construction of Section 453 of the Public Utilities Code, and the supplementation of Section 453 made by this act is, accordingly, a clarification of the law and not a change thereof.

"SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

"In order that refunds contemplated by the Public Utilities Commission be distributed equitably and without delay to all utility customers entitled to refunds, and in order that these refunds be distributed without distinction, discrimination, or prejudice based on arbitrary classifications such as residential or commercial tenancy, landlord, homeowner, business, industrial, educational, governmental, nonprofit, agricultural, or any other types of classifications, it is necessary that this act go into immediate effect." (Chapter 897.)

Refunds historically have been allocated to customer classes on an equitable pro rata basis and then distributed to the customers within the classes on various bases for administrative convenience and cost considerations. Large customers have received refunds based on usage for the past refund period. Small customers have received refunds based on the number of customers of current record or on current usage. Special refunds have been made on request to small customers who are not current customers but who were customers during the period covered by the refund. The tariffs have made no distinction in the manner of refunds as between the customers in different classes. Senate Bill No. 604 has recognized this distinction. The bill provides that refunds be made on an "equitable pro rata basis", i.e., "in proportion to the amount originally paid for the utility service involved, or in proportion to the amount of such utility service actually received." In its final amended form, the bill further authorized "refunds to residential and other small customers to be based on current usage."

Nothing in the statutes specifically authorizes this Commission to require utilities to pay amounts which they have received as refunds from gas suppliers into an Energy Conservation Trust Fund to be administered by this Commission and others as urged by Consumer Affairs, TURN, and CPIRG. It is contended by Consumer Affairs, TURN, and CPIRG that this Commission pursuant to Sections 451, 701, 702, 728, 729, and 761 of the Public Utilities Code and under its general equity powers has authority to require the establishment of such an Energy Conservation Fund. The Commission is of the opinion that an Energy Conservation Trust Fund should not be established without specific guidelines and direction from the State Legislature, especially in view of the enactment of Senate Bill No. 604 which in our view prohibits such disposition of refunds.

The enactment of Senate Bill No. 604 also makes clear that this Commission has no authority to require utilities to make refunds disproportionately in favor of residential customers.

3. May this Commission authorize utilities to credit amounts, which otherwise would be required to be refunded to its customers pursuant to Section 453.5 of the Public Utilities Code, to balancing accounts for the benefit of present and future customers, instead of for the benefit of prior customers on the basis of past usage of the utilities' services, or in the case of small customers on the basis of current usage of the utilities' services?

Section 792.5 of the Public Utilities Code, which was added in 1976, specifically provides for the use of a balancing account as follows:

"792.5. Whenever the commission authorizes any change in rates reflecting and passing through to customers' specific changes in costs, except rates set for common carriers, the commission shall require as a condition of such order that the public utility establish and maintain a reserve account reflecting the balance, whether positive or negative, between the related costs and revenues, and the commission shall take into account by appropriate adjustment or other action any positive or negative balance remaining in any such reserve account at the time of any subsequent rate adjustment."

Thus, it is clear that prior to the enactment of Section 453.5 of the Public Utilities Code quoted above the Commission was authorized to make use of balancing accounts where it authorized any change in rates reflecting and passing through to customers specific changes in costs.

CMA, CRA, the City of Los Angeles, the City of San Diego, the Executive Agencies of U.S., California Portland Cement Company, the Metropolitan Water District of Southern California, and the University of California all contend that the enactment of Section 453.5 precludes this Commission from ordering that amounts which otherwise would be refunded directly to the customers of the utilities be credited to a balancing account to reduce current or future rate increases.

They point out that the customers who will get the benefit of the amounts credited to a balancing account as a result of refunds to utilities are not the same customers as those who initially paid the rates which are related to the amounts later refunded to the utilities. In many instances tariffs providing for refunds to customers, such as the following, were in effect at the time certain FPC refunds were made to the utilities.

1. Tariff provision of SDG&E:

"Refunds received from Southern California Gas Company as related to FPC Dockets RP 72-125, RP 72-128, RP 72-150, RP 72-155, RP 73-104, RP 74-52, and RP 74-57 will be made to various customer classes in proportion to the contingent offset charges applicable during the periods to which the refunds apply." SDG&E Preliminary Statement Sec. 7., Revised Cal. PUC Sheet No. 2307-G, filed Dec. 10, 1976, effective Jan. 7, 1977. See also earlier Revised Cal. PUC Sheet No. 1485-C.

2. Tariff provision of SoCal Gas:

"Refunds received from El Paso Natural Gas Company and Pacific Lighting Service Company as related to the FPC dockets listed in subsection 'c' will be made to various customer classes in proportion to the contingent offset charges collected during the periods to which the refunds apply." SoCal Gas Preliminary Statement, Sec. E 4d., Revised Cal. PUC Sheet No. 14280-G, filed Nov. 4, 1975, effective Nov. 5, 1975. See also earlier Revised Cal. PUC Sheet No. 13773-G.

3. Tariff provision of PG&E:

"(b) Refund of Contingent Offset Increases.

The Company will refund to its customers any refund received from El Paso Natural Gas Co. or Pacific Gas Transmission Co., pursuant to an order of the Federal Power Commission in Dockets listed in (a) above." PG&E Preliminary Statement, Sec. 7(b), Revised Cal. PUC Sheet No. 9915-G, filed Aug. 24, 1976, effective Aug. 27, 1976. See also 1973 Revised Cal. PUC Sheet No. 9016-G.

It should be noted, however, that PG&E's presently filed tariffs provide that if PG&E receives refunds from its gas suppliers, such refunds are to be recorded as a credit to the balancing accounts. (PG&E Preliminary Statement, Section 7(c), Revised Cal. PUC Sheet No. 101-G, filed December 31, 1976, effective January 1, 1977.)

In Exhibit No. 50, p. 4, it is indicated that there are eight Southern California cement plants now burning coal, fuel oil, or petroleum coke as their primary fuel instead of natural gas as used during the offset period when certain of the overcharges were paid which produced the refunds to the respondent utilities now at issue.

Exhibit No. 50 shows that the total amount which California Portland Cement Company would receive if refunds are made pursuant to Section 453.5 of the Public Utilities Code would be in the neighborhood of \$265,218.67. Because the increasing lack of availability and the rising costs associated with natural gas have forced the company to curtail its use of natural gas and to use other forms of fuel, the crediting of the refund amounts to a balancing account and the resulting deferral or reduction in increases in rates to present and future customers would be of little benefit to California Portland Cement Company.

The increasing curtailment of gas service to low priority customers means that such customers will not receive a pro rata share of any refunds which are credited to balancing accounts to produce a rate increase deferral.

CMA has attached copies of the original, amended, and final versions of Senate Bill No. 604 (Section 453.5 of the Public Utilities Code) as Appendix C to its brief.

On August 10, 1977, the version of Senate Bill No. 604 adopted by the Senate was amended in the Assembly to provide:

"Nothing in this section shall prevent the commission from...adopting procedures to amortize refunds similar to those used under the commission's procedures established for energy cost adjustment clauses."

The language pertaining to the use of procedures to amortize refunds through balancing accounts was deleted by further amendment in the Assembly on August 23, 1977. The full paragraph as it appears in the final amendment version of Senate Bill No. 604 is as follows:

"Nothing in this section shall prevent the commission from authorizing refunds to residential and other small customers to be based on current usage, or to prevent the commission from adopting procedures to amortize refunds similar to those used under the commission's procedures established for energy cost adjustment clauses. customers to be based on current usage."

Various of the parties to this proceeding contend that the deletion of the balancing account treatment of refunds from Senate Bill No. 604 as finally enacted makes such treatment unlawful.

On the other hand, PG&E, SoCal Edison, and SoCal Gas take the position that the Commission has the discretion either to order refunds pursuant to Section 453.5 of the Public Utilities Code or to order the utilities to credit such refunds to balancing accounts and thereby defer or reduce future rate increases.

Exhibits Nos. 58 and 59 were received in evidence as part of the legislative history of the enactment of Senate Bill No. 604.

Exhibit No. 59 which is a letter dated September 6, 1977 from Senator John Stull to Honorable Edmund G. Brown, Jr., Governor, on page two contains the following statements:

"Under Senate Bill 604 the PUC would retain sufficient flexibility in reviewing and approving refund plans. Where appropriate, the PUC could still order funds into balancing accounts pursuant to Public Utilities Code Section 792.5 and other authority. . . ."

Exhibit No. 58 which is a statement dated September 20, 1977 from Edmund G. Brown, Jr., Governor, to the members of the California Senate reads as follows:

"I signed Senate Bill No. 604 on an opinion of the Public Utilities Commission's legal staff that this measure does not preclude the Commission from amortizing potential refunds in balancing accounts similar to existing amortization procedure associated with energy cost adjustment clauses as authorized by the Commission."

In its brief the Commission staff points out:

" . . . SB No. 604 adds Section 453.5 to the Public Utilities Code. Section 453.5 provides that 'Whenever the commission orders rate refunds to be distributed, the commission shall...' The section goes on to reflect principles of distribution. It is obvious that the new section provides a methodology where refunds are ordered only. If no refunds are ordered, then clearly Section 453.5 does not apply. This becomes apparent when it is noted that SB No. 604 as enacted deleted a provision dealing with balancing accounts. This must have been deemed by the Legislature to be superfluous and beyond the intended scope of Section 453.5. We must infer this because (1) the PG&E tariff specifically adopting the balancing account treatment was in effect during the period in which this bill was considered; and (2) the commission utilized the balancing account method in SDG&E D.87639 in July of 1977. Yet no specific language was adopted precluding its use. The Legislature could easily have said: 'where overcollections accrue or energy supplier refunds are received, the commission shall require refunds according to some formula.' Instead, the Legislature left the threshold determination of whether to refund at all to the commission's discretion; and required only that, following the threshold determination, if refunds are to be ordered, that they be ordered according to the dictates of Section 453.5.

\* \* \*



"To the extent the balancing account Treatment benefits one customer more than another, such treatment is not entirely inconsistent with prior refund practice. As Exhibits 6-C and 32 (prior refund plans of SoCal Gas Co. and PG&E) herein indicate past refunds have been made to some classes of customers on the basis of usage during the refund period and to other customers on the basis of current customers of record or current usage for administrative convenience. Exhibits 6-C and 32, and other refund plans which have been adopted by the Commission (of which it may take official notice) indicate that the Commission has exercised its discretion adopting various forms of refund plans, rather than being bound to any single plan. For example, Pacific Telephone and Telegraph Company made refunds based on basic exchange, message units, message toll and non-recurring charges pursuant to D. 80345 and D. 80995 in A. 51774. (Ex. 4.) However, most recently telephone refunds have been ordered on the basis of recurring basic exchange service to all current customers in D. 87838 in A. 53587, September 13, 1977."

In its closing brief the Staff points out that the petition of the CMA, et al., to the California Supreme Court for an order requiring immediate refunds by the Commission in this proceeding was denied on November 17, 1977. (SF 23691.)

In Decision No. 88261, issued December 20, 1977, in Application No. 57481, the Commission ordered that the gas supplier refunds in the amount of \$52,400,000 held by PG&E be credited to the balancing account partially to offset a purchased gas adjustment. At mimeo. sheet 8, this Commission stated: "Consequently, it is this Commission's intention to apply such occasional gas supplier refunds as may occur as credits to the balancing accounts set up to account for revenue recovered pursuant to authorized purchased gas adjustment increases." The petition filed by CMA, et al., for writ of mandate and for stay of Decision No. 88261 and to require this Commission to make refunds was denied by the California Supreme Court on December 28, 1977. (SF 23751.) On March 7, 1978 this Commission denied the petition of CMA, et al., for a rehearing of Decision No. 88261. Commissioners Symons and Sturgeon dissented. Petition for writ of review filed by CMA is now pending before the California Supreme Court. (SF 23823.)

The Commission is of the opinion that the use of balancing accounts results in fairness to the ratepayers, even though some of them who are no longer receiving service will not benefit from the crediting of the refunds to balancing accounts. Such ratepayers may have already benefited by reasons of the leveling of rate increases through the prior use of balancing accounts. For example, during the recent drought some of the increases in generating costs of electricity resulting from the reduced use of hydropower and the increased use of fuel oil were charged to balancing accounts resulting in the electric rate increases being less than they otherwise would have been. Later, with the end of the drought, some of the reductions in generating costs resulting from the greater availability to hydropower were credited to these balancing accounts. The use of balancing accounts produced electric rate increases which were more level than they otherwise would have been. The electric customers, as a whole, have benefited from this leveling of electric rates.

The Commission reaffirms its previous determination that this Commission has the discretion to authorize or require utilities to credit amounts, which otherwise would be required to be refunded to its customers pursuant to Section 453.5 of the Public Utilities Code, to balancing accounts.

Whether the Commission will order refunds or will order amounts credited to balancing accounts will be determined in particular proceedings involving the particular respondents, as was done in Decision No. 88261 involving amounts previously refunded to PG&E.

Findings

1. This Commission should not establish an Energy Conservation Trust Fund utilizing amounts which would otherwise be refunded to utility customers or credited to balancing accounts to defer or reduce rate increases, without specific guidelines and direction from the State Legislature.

2. This Commission has no authority to require utilities to make refunds disproportionately in favor of residential customers. ✓

3. This Commission has the discretion to authorize or require utilities to credit amounts, which otherwise could be required to be refunded to its customers pursuant to Section 453.5 of the Public Utilities Code, to balancing accounts.

4. Whether the Commission should order refunds or order such amounts to be credited to balancing accounts should be determined in particular proceedings involving particular respondents, as was done in Decision No. 88261 involving amounts previously refunded to PG&E.

5. The Executive Director of the Commission should be directed to remove the opening brief of CPIRG filed on January 16, 1978, from the formal file and place it in the correspondence file pertaining to this proceeding.

Conclusion

This order of investigation should be discontinued.

O R D E R

IT IS ORDERED that this investigation is discontinued.

The Executive Director of the Commission is directed to remove the opening brief of California Public Interest Research Group filed on January 16, 1978, from the formal file and place it in the correspondence file pertaining to this proceeding.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 25th  
day of JULY, 1978.

*I will file a dissent.  
William Green*

*Robert Bateman*  
President

*Verdon L. Stenger*  
*Robert D. Thacker*  
*Clair T. Derrick*  
Commissioners

APPENDIX A  
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LIST OF APPEARANCES

Respondents: Orrick, Herrington, Rowley & Sutcliffe, by Robert J. Gloistein, Attorney at Law, and John P. Vetromile, for California-Pacific Utilities Company; Albert M. Hart and H. Ralph Snyder, Jr., Attorneys at Law, for General Telephone Company of California; Malcolm H. Furbush, Bernard V. Della Santa, and William H. Edwards, Attorneys at Law, for Pacific Gas and Electric Company; John N. Howarth, Attorney at Law, and E. F. Neal, for The Pacific Telephone and Telegraph Company; Stephen A. Edwards, Jeffrey Lee Guttero, and Vincent P. Master, Sr., Attorneys at Law, and John H. Woy, for San Diego Gas & Electric Company; George Stout, Attorney at Law, for Sierra Pacific Power Company; Rollin E. Woodbury, Robert J. Cahall, William E. Marx, H. Robert Barnes, and Mrs. Carol B. Henningson, Attorneys at Law, and Warren Ferguson and Philip D. Lester, for Southern California Edison Company; John S. Fick, Les E. Lo Baugh, E. R. Island, and David B. Follet, Attorneys at Law, and Martha J. McMahon and Jonel C. Hill, for Southern California Gas Company; and William A. Claerhout, Attorney at Law, for Southwest Gas Corporation.

Interested Parties: Robert L. Schmalz, Attorney at Law, for Amstar Corporation; Charles S. Richardson, for Apple Inn Motel, City of Susanville, Lassen Community College, and Sylvia Jiler; John Geesman, for California Citizen Action Group; Richard A. Elbrecht, Richard Spohn, and Joseph Garcia, Attorneys at Law, for California Department of Consumer Affairs; Allen R. Crown and Glen J. Sullivan, Attorneys at Law, for California Farm Bureau Federation; Vaughan, Paul & Lyons, by John G. Lyons, Attorney at Law, and E. James Houseberg, for California Fertilizer Association; Graham & James, by Boris Lakusta, David J. Marchant, and Jerome J. Suich, Attorneys at Law, for California Hotel & Motel Association, and Collier Carbon & Chemical Corporation; Brobeck, Phleger & Harrison, by Gorden E. Davis and William H. Booth, Attorneys at Law, for California Manufacturers Association; John L. Frogge, Jr., Attorney at Law, for California Portland Cement Company; Vincent L. Schwent, for California Public Interest Research Group; Thomas Knox, for California Retailers Association; Burt Wilson, for CAUSE (Campaign Against Utility Service Exploitation); Pillsbury, Madison & Sutro, by Dudley A. Zinke, Attorney at Law, for Chevron U.S.A., Inc.; Thomas M. O'Connor, City Attorney, by Leonard L. Snaider, Deputy City Attorney, and

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Robert R. Laughead, for the City and County of San Francisco; Louis Possner, for the City of Long Beach; Burt Pines, City Attorney, by Ed Perez, Deputy City Attorney, for the City of Los Angeles; John W. Witt, City Attorney, by William J. Shaffran, Deputy City Attorney, for the City of San Diego; Herman Mulman, for Coalition for Economic Survival, and CAUSE; John J. Clarke, for Collier Carbon and Chemical Corporation; Alice T. Dresel, for CPU Customers in Lassen County, and herself; Hill, Farrer & Burrill, by William C. Farrer, for Garden State Paper Company, Inc.; Downey, Brand, Seymour & Rohwer, by Philip A. Stohr, Attorney at Law, for General Motors Corporation, Frazer F. Hilder, General Counsel, and Julius J. Hollis, Esquire; T. W. Anderson and J. C. Porter, for General Portland, Inc.; Charles J. Mackres and Etta Gail Herbach, Assistant Counsels, for the Department of Defense, and John L. Mathews, Attorney at Law, for the General Services Administration, on behalf of the consumer interests of the Federal Executive Agencies; Kenneth M. Robinson, Attorney at Law, for Kaiser Steel Corporation, Kaiser Cement & Gypsum Corporation, and Kaiser Industries Corporation & Divisions; Morrison & Foerster, by Charles R. Farrar and James P. Bennett, Attorneys at Law, and Thomas R. Cochran, Attorney at Law, for Kerr McGee Chemical Corporation; Jim Chapman, Lassen County Supervisor, for Lassen County Board of Supervisors and the citizens of Lassen County in Lassen Division of CPU; William E. Emick, Attorney at Law, for Long Beach Gas Department; Gregory C. O'Brien, Jr. and David A. Ogden, Attorneys at Law, for Los Angeles Department of Water and Power; R. D. Twomey, Jr., Attorney at Law, and Robert W. Thompson, for the Metropolitan Water District of Southern California; Bill B. Betz, Attorney at Law, for Monolith Portland Cement Company; William Byrne, for P.O.W.E.R. Committee (People-Outraged-With-Electric-Rates); Robert M. Brandon, Attorney at Law, for Public Citizen Inc., and Ralph Nader; Roger F. Lapum, for Safeway Stores, Inc.; Hilary B. Goss, for Sacramento Self Service Car Wash Association/Sacramento Laundry Association; Lance Montauk, Attorney at Law, for Senate Rules Committee; Hyman Finkel, for Seniors for Legislative Issues; Edward Novikoff, for Seniors for Political Action; Donald H. Ford and Scott M. Barnes, Attorneys at Law, for Southwestern Portland Cement Company; William M. Bennett, Attorney at Law, for the State Board of Equalization, protestant, and himself; Sylvia M. Siegel, and David Gray Tishman and Robert Spertus, Attorneys at Law, for Toward Utility Rate Normalization (TURN);

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Allen B. Wagner, Attorney at Law, for The Regents of the University of California, and Harry K. Winters and John H. Oliphant, for the University of California; George Ember, for U. S. Energy Research and Development Administration; Jack E. Gould, for West Los Angeles-Santa Monica Bay Area Committee on Aging, Affiliated Committees on Aging of Los Angeles County, Inc.; and Ms. Ann Abney, Myrna Alrich, Harvey L. Becher and others on fixed income, Henry F. Lippitt, 2nd, Attorney at Law, Herbert R. McMaken, Christina Nunan, Fred Schwarz, and Jack Write, for themselves.

Commission staff: Timothy E. Treacy, Attorney at Law, and Mehdi G. Radpour.