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Decision No. 90900 FEB 27 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the effect of the addition of Article XIII A to the Constitution of the State of California on the rates of the California public utilities and transportation companies subject to the ratemaking power of the Commission named in Appendix A attached hereto.	OII No. 19 (Filed June 27, 1978)

(See Decision No. 89194 for appearances.)

INTERIM OPINION

On June 27, 1978, the California Public Utilities Commission (Commission) issued OII No. 19, initiating a special proceeding for the purpose of ensuring that all ad valorem tax reductions over which it has jurisdiction through its ratemaking powers will be passed through to the customers of each of the respondent utilities. Tax Initiative Accounts were ordered to be established and voluntary advice letter reduction filings were encouraged.

Hearings were scheduled and held so that any and all objections to our proposed method of implementing Article XIII-A as it applies to utilities could be fully presented. During the course of hearings, evidence and arguments were presented which persuade the Commission to draw a distinction between certain utilities and between certain classes of customers, in order to better achieve our goal of full flow-through of Article XIII-A tax reductions to those ratepayers most directly affected by 1978-1979 changes in ad valorem tax levels. These classes of utilities are the airlines, the buslines, the railroads, and the Class D water companies. The

classes of customers are those on lifeline rates and those on the several street lighting schedules of the energy suppliers.

Although substantially all of the stationary utilities, as distinguished from transportation companies, listed in Appendix B of the OII have concurred in the fundamental fairness of our stated objective in this proceeding of ensuring that property tax reductions mandated by the constitutional initiative measure are promptly passed through to the ratepayers and have accordingly filed advice letters reducing rates which have already taken effect, several respondents argue against our power to order them to lower rates commensurate with Proposition 13 tax reductions. Those respondents are: Pacific Power & Light Company (PP&L), Sierra Pacific Power Company (Sierra), and San Gabriel Valley Water Company (San Gabriel). The tax reductions in the current year for these utilities are $318,800 for PP&L, $90,400 for Sierra and $227,600 for the Whittier and El Monte Districts of San Gabriel.

Objecting Stationary Utility Respondents

All of the aforesaid objecting respondents should be ordered to file tariffs which will provide for rate reductions to the extent of the amounts in their Tax Initiative Accounts and in harmony with our objective herein as reflected in the advice letter filings already voluntarily placed into effect by the other stationary utilities listed in Appendix B to the OII. We will be concise in giving our reasons for rejecting the objections here discussed, as they were previously considered by us in denying rehearing of Decision No. 89194, dated August 8, 1978, in this case. We officially notice the petitions for rehearing of said Decision No. 89194 filed by PP&L and by Continental Telephone Company which were denied on November 6, 1978, exhausting the administrative remedy process at that time as to the issues then presented. We then concluded, and reaffirm in this decision, that the Commission has ample authority, perhaps rising to the level of duty, to initiate

a special proceeding for the purpose of establishing ratemaking jurisdiction over the extraordinary type of tax reductions to be received by California public utilities and to order rate reductions of a magnitude equal to those tax reductions. We are fully persuaded that the adjustments in rates which we order in this case do not constitute general ratemaking nor violate the rule against retroactive ratemaking.

Except in the instance of Sierra which we will discuss in due course, the evidence before us shows no dispute as to the difference in ad valorem tax for each objecting respondent in Appendix B between the tax years 1977-1978 and 1978-1979, which differences are segregated into Tax Initiative Accounts. We order these amounts passed through to the ratepayers. That one or more respondents may be earning less than the last authorized rate of return, that the rate of return is itself allegedly inadequate, or that ad valorem taxes in the last general rate case were allowed in a lesser amount than those paid in 1977-1978 is beside the point. The Commission is not closing its doors to the normal application process for rate relief. That normal application process remains, and its availability to respondents is the complete answer to those asserting that they be allowed to retain the tax reductions as an offset to increased costs or as a substitute for an application for increased rates and charges. Indeed, we view our order in this regard as essential to the maintenance of uniformity of treatment of ad valorem taxes among all of the California utilities.

We have previously pointed out that this is not a general rate proceeding and does not, as argued, involve retrospective refunds. We established jurisdiction over the subject matter here involved on June 27, 1978, which was the time of issuance of OII No. 19. The tax reductions with which we are concerned are applicable to the fiscal year commencing July 1, 1978. Yet even those who draw the finest line of procedural due process must concede that our authority was complete on August 1, 1978, the first day of public hearings herein.

It is urged that rates may not be reduced based upon a single item of expense. We disagree, noting both our established policy with respect to fuel cost adjustments and that we have granted rate increases to offset ad valorem tax expenses in the past.

We have thus far discussed the legal issues briefed by the objecting respondents. There remains one contention of Sierra to consider, and that is its contention that its actual ad valorem tax reduction is only $4,700, a de minimis amount considering the number of ratepayers and the administrative costs associated with adjusting their rates. We agree, as we will shortly explain, that such practical considerations may form a rational basis for classification of both utility and customer. However, in the case of Sierra, the alleged de minimis amount is calculated by the respondent's deducting increased taxes in other states from its California tax reduction. As these other state tax increases are not related to Proposition 13, we accept the staff's calculation of $90,400 as the correct amount of Sierra's tax reduction for purposes of this proceeding and order its distribution by reduced rates.

Lifeline Customers

Toward Utility Rate Normalization (TURN) filed a motion to extend Proposition 13 tax reductions to all utility customers, including gas, electric, and water lifeline customers, therein expressing its view that the voluntarily filed advice letters of the respondents are unfair, unreasonable, and discriminatory because they include no reductions with respect to lifeline quantities.

We do not believe that the omission of lifeline quantity rate reductions from the voluntary filings in this case nor our disinclination to order such reductions marks an unlawful or inequitable departure by us from the established and codified principle that lifeline quantities of gas, electricity, and water may be treated separately for ratemaking purposes.

TURN's allegation that lifeline quantity rates were based on ad valorem assessments prior to Proposition 13 is inaccurate. We take official notice that such rates were and are designed to meet minimum family needs for essential quantities of gas, electricity, and water, and are designed by the Commission and intended by the Legislature to remain stable and to be fixed within the lower range of reasonableness.

The lifeline class of customers is distinguishable from other classes of customers, bears a rational relationship to legitimate Commission goals, and was established as a result of a proper and constitutional exercise of the Commission's discretion. There has been little, if any, increase in lifeline rates since January 1, 1976, a period of rapid and substantial increase for other categories of gas, electric, and water utility rates. It is consistent with the goal of stability in lifeline rates, and alleviates what may be perceived as a growing disproportion between lifeline rates and other rate categories to limit rate reductions resulting from this proceeding to categories other than lifeline. Moreover, it is equitable that ratepayers who have received the brunt of recent rate increases should benefit from this reduction in rates. Thus, it is clear that neither inequity nor unlawfulness results from our not ordering reductions in lifeline quantity rates based on ad valorem tax reductions.

Transportation Companies

The staff has moved to transfer all transportation respondents - air, rail, and highway carriers - named in Appendix B of OII No. 19 to Appendix A thereof. The utilities listed in Appendix A are, like those in Appendix B, required to establish Tax Initiative Accounts, to place their ad valorem tax reductions in such accounts, and to pass these reductions on to their ratepayers. They are, however, not subject to immediate order to do so, as are the stationary utilities listed in Appendix B.

The staff motion is supported by practical considerations flowing mainly from the fact that the test year principle does not have decisive application to the determination of transportation rates for either passengers or freight. We also officially notice that intrastate airline rates are now set in a range that the carrier itself has latitude to change. Freight and passenger rates reflect market conditions as well as costs. Highway and rail carriers are largely interstate in character. Finally, filings by most transportation companies show insufficient tax reduction amounts to affect across-the-board rates materially.

In these circumstances, we consider it appropriate to transfer the transportation companies to Appendix A, which will permit our staff to meet and confer with respondents and make recommendations as to how best to effect the Commission's purpose in this case by December 31, 1980.

Class D Water Companies

All California water companies not named as respondents in Appendix B are currently respondents subject to the provisions of Appendix A of OII No. 19. Among these respondents are approximately 300 Class D water companies. The staff now requests an order deleting all Class D water companies from the scope of OII No. 19.

If these 300 water companies remain as respondents, the staff will be forced to expend inordinate amounts of time to administer negligible rate reductions. The maximum annual gross revenue for each Class D water company is $50,000, and many have annual gross revenues considerably less than that figure. Property tax savings realized by these companies are necessarily very small; Class D water companies simply do not own large amounts of property. Often, tax savings resulting from Article XIII-A range from zero to several hundred dollars. Under these conditions rate reductions for these companies are likely to be minuscule.

The time which the staff must spend to administer refunds for these companies is totally disproportionate to the meager advantages to the ratepaying public. The staff must determine the accuracy of the tax savings claimed by each of these 300 companies, determine whether each company is properly keeping a Tax Initiative Account, and must see that each of these 300 companies is fully complying with all the other mandates specified in OII No. 19. This is a massive task compared to any advantage which might possibly accrue should staff undertake to accomplish it.

Of course, the tax savings of these companies will be factors to consider in ordering rates for these companies during future general or offset rate cases.

We, accordingly, order that all Class D water companies are dismissed as respondents from OII No. 19.

Street Lighting

Many counties and cities have petitioned the Commission to direct the energy utilities to reduce those rates and charges having to do with the lighting of streets to the extent of some or all of the ad valorem tax reductions received by those utilities, even beyond the pro rata reductions in all rates (excepting lifeline) which those utilities have already put into effect by advice letter filings.

Resolutions of the County of Los Angeles, for example, request the Commission to:

(a) Reevaluate high pressure sodium street lighting rates;

(b) Require a waiver of the facilities charge for street lights turned off due to lack of funds created by the passage of Proposition 13;

(c) Assign local government portions of the savings in property taxes by the denial of requested rate increases and reduction of current rates; and

(d) Reevaluate street lighting rates for midnight services.

There is no question, of course, as to the severity of the street lighting problem faced by all local governmental entities in the wake of Proposition 13. Hard questions as to priorities in funding are everywhere raised, yet it is not the province of the Commission to establish priorities for government spending, which is essentially what we are being asked to do. Even if we were to attempt dictation of street lighting expenditures through rate reductions for that service, we acknowledge that each community could negate our efforts by simply reducing the street lighting budget by the amount of any rate reductions we decreed.

The street lighting schedules are properly litigated before the Commission in general rate cases where, of course, the tax reductions flowing from Article XIII-A will be reflected in test year expenses. We will not further adjust street lighting

rates and charges in this proceeding beyond the pro rata reductions already in force, and we deny the petitions without prejudice to their being pursued in the appropriate general rate cases.

Findings of Fact

1. Substantially all of the respondents listed in Appendix B of OII No. 19 have established Tax Initiative Accounts and, with the exception of transportation companies, have filed advice letters in accordance with the Commission's Order Instituting Investigation.

2. Hearings have commenced and evidence has been taken.

3. PP&L, Sierra, and San Gabriel filed timely objections to the Commission's proposed procedure as set forth in OII No. 19.

4. The legal issues raised by the objecting respondents previously were raised in the petitions for rehearing of Decision No. 89194, dated August 8, 1978. These legal issues were considered by the Commission and were found to be without merit, and the petitions for rehearing were denied on November 6, 1978.

5. It is just and reasonable that Proposition 13 tax reductions received by public utilities under the Commission's jurisdiction be passed through to the ratepayers.

6. The Commission acquired jurisdiction over the subject matter herein on June 27, 1978, and commenced hearings on August 1, 1978.

7. There is no dispute, except in one instance, that the amounts of tax reductions established in this record are accurate.

8. The deduction of out-of-state tax increases from reductions in California ad valorem tax reductions is improper.

9. The Commission has adjusted rates in the past, both upward and downward, based upon one item of cost or expense, when the public interest so requires.

10. Lifeline rates are not based upon traditional tax calculations, but are designed to meet minimum family needs for essential quantities of gas, electricity, and water, are in the lower range of reasonableness and are intended to remain relatively stable.

11. Practical considerations mitigate against transportation utilities remaining in Appendix B to OII No. 19.

12. Pursuing ad valorem tax savings of Class D water companies in this proceeding presents administrative problems out of proportion to the tax reductions received by them.

13. The further adjustment of street lighting schedules in this proceeding might not accomplish the results sought by petitioners, could be construed as Commission interference in the setting of funding priorities by local government, and would be inappropriate in view of the Commission's intention to pass through tax savings equitably to customers which have received drastic rate increases in recent years.

Conclusions of Law

1. In this proceeding the Commission has ratemaking jurisdiction over each respondent with respect to the Tax Initiative Account of each, and with respect to the total ad valorem tax reduction accruing to each, said tax reductions being the difference between 1977-78 taxes and 1978-79 taxes.

2. This is a special proceeding not constituting general ratemaking and is not violative of the rule against retroactive ratemaking.

3. Uniform ratemaking considerations require that all respondents included in Appendix B which have not voluntarily filed advice letters reducing rates be ordered to do so now.

4. There is established Commission precedent for our order in this case.

5. Failure to include the lifeline quantity class of customers in those classes of customers receiving rate reductions from Proposition 13 effects does not result in undue discrimination, unlawfulness, or inequity.

6. Transportation utilities should be ordered transferred from Appendix B to Appendix A.

7. Class D water companies should be dismissed as respondents from OII No. 19.

8. No further change in street lighting rates should be ordered in this proceeding.

9. The following order should be effective on the date hereof so that the tax reductions anticipated by the public in enacting Article XIII-A can be available to them at the earliest possible date.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Power & Light Company, Sierra Pacific Power Company, and San Gabriel Valley Water Company (Whittier and El Monte Districts) shall, within twenty days from the effective date of this order, file tariffs which will reduce their rates to the extent of the amounts shown in the Tax Initiative Account of each and such reductions shall be as uniform as practicable to those heretofore voluntarily filed by the other stationary utilities listed in Appendix B.

2. The transportation utilities enumerated below are transferred from Appendix B to Appendix A of OII No. 19. These are:

Air California
Pacific Southwest Airlines
Greyhound Line, Inc.
Continental Trailways, Inc.
The Atchison, Topeka, and Santa Fe Railway Company
Southern Pacific Transportation Company
Union Pacific Railroad Company
The Western Pacific Railroad Company

3. All Class D water companies are dismissed from this proceeding.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 27th day of FEBRUARY, 1979.

John E. Bryson
President
Vernon L. Sharp
Richard D. Gravelle
Robert T. Bockman
Leonard M. Grimes
Commissioners