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The Honorable Stan Statham, Assemblyman, First District, has requested an opinion on a question which we have rephrased as follows:

When the Public Utilities Commission grants a rate increase to a public utility, may the commission fix different rates for service as between different classes of customers, for example, as between residential customers and agricultural customers?

CONCLUSION

The Public Utilities Commission has wide discretion to make rare classifications which reflect a broad and varied range of economic considerations. Accordingly, it may grant to a public utility a rate increase which fixes different rates for service as between different classes of customers where its decision is supported by its findings of facts based upon evidence adduced at a hearing held for such purposes and the classification is reasonable.

ANALYSIS

The California Public Utilities Commission is created by and exists pursuant to the provisions of article XII, section 1 of the California Constitution. Pursuant to article XII, section 6, "[t]he commission may fix rates . . . for all public utilities subject to its jurisdiction." (See also art. XII, § 4 re transportation companies.) Article XII, section 3 enumerates those persons or corporations which are "public utilities subject to control by the Legislature" and provides also that the "Legislature may prescribe that additional classes of private corporations or other persons are public utilities." "The Legislature has plenary power" consistent with article XII to, Inter alia, "establish the manner and scope of review of commission action in a court of record" and "to confer additional authority and jurisdiction upon the commission." (Cal. Const., art. XII, § 5.)

The requisite legislative action to implement article XII is found in the Public Utilities Code.[1] We are presented with the question whether the Public Utilities Commission, when exercising its rate fixing authority, may prescribe different rates for different types of customers, such as, for example, between residential customers and agricultural customers.

Section 451 provides that "[a]ll charges demanded or received by any public utility . . . shall be just and reasonable" and that "[e]very unjust or unreasonable charge demanded or received . . . is unlawful." Section 454, subdivision (a) provides that '[n]o public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in any rate except upon a showing before the commission and a finding by the commission that such increase is justified.

With respect to a possible discrimination in rates charged by a public utility, section 453 appears to be the most germane. It provides:

> "(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice oy disadvantage.
>
> "(b) . . . . . .
>
> "(c) No public utility shall establish or maintain any *unreasonable* difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service."

[1] Section references are to the Public Utilities Code unless otherwise noted.

"(d) . . . . . .

"(e) The commission may determine any question of fact arising under this section." (Emphasis added.)

Hearings before the Public Utilities Commission are held pursuant to section 1701 *et seq.* Section 1705 provides in part that "[t]he decision [of the commission] shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision." Judicial review of a decision is directly to the California Supreme Court by writ of certiorari or review. (§ 1756.) The scope of review is set forth in section 1757, as follows:

"No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of this State.

"The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review except as provided in this article. Such questions of/act shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination." (Emphasis added.)

It is thus seen that the statutory scheme with respect to possible discrimination in rates is (1) that rates shall be just and reasonable and that there shall be no unreasonable difference in rates as between classes of service; (2) that the commission shall make findings of fact as to the reasonableness of rate classifications and discrimination; and (3) that the commission's conclusions on such facts are final, subject to limited review by the California Supreme Court by writ of certiorari or review. Accordingly, statutorily the commission may legally render a decision approving different rates for different customers so long as there is a reasonable basis for such classification, and the commission has made the appropriate findings of fact as to such reasonableness based upon the evidence adduced at hearings held for that purpose.

The case law accords with this statutory scheme. In the early case, *Live Oak W.U. Ass'n. v. Railroad Com.* (1923) 192 Cal. 132 the court was faced with a review of the Railroad Commission's (the predecessor to the Public Utilities Commission) order and decision prescribing different water rates for "contract holders" and for other customers of

a water supplier. A charge of unlawful discrimination in rates was made. The court, after reviewing the constitutional and statutory power of the commission and the court's power to review the commission's order and decision under the predecessor to section 1257, *supra*, held.

> "The above cited article of the constitution and sections of the Public Utilities Act are conclusive upon the question that the Railroad Commission's decision and order in the instant case on the question of discrimination and classification is not subject to annulment by this court." (192 Cal. at p. 140.)

Additionally, the court after reviewing the evidence before the commission which supported the order and decision stated:

> "There is no claim made that the rates established by the Railroad Commission were confiscatory or oppressive. No design has been shown on the part of anyone to give any person an unlawful preference or unfair advantage over another or to indulge in an unlawful discrimination in any manner whatsoever. *Not every discrimination or recognition of a ground of difference may be classified as unlawful. A discrimination based upon reason and justice can properly exist. . . ."* (192 Cal. at p. 143.)

In *Wood v. Public Utilities Commission* (1971) 4 Cal. 3d 288, a more recent example of a claim of discrimination arose with respect to rules of both Pacific Telephone and Telegraph Company and Pacific Gas and Electric Company requiring customers who could not give evidence of established credit to make a cash deposit as a condition to receiving utility services. These rules were part of the utilities' rate tariffs. The court recognized that the decision as to the reasonableness of such rules was for the commission, not the court, stating:

> "It was for the commission to determine whether it is preferable to reduce bad debt losses by credit rules reasonably designed to do so or to spread those losses among all ratepayers by increased rates . . . . Having chosen the former alternative, the commission was obligated to determine the content of those rules. If the classifications adopted are reasonably related to the reduction of bad debt losses, they are valid, whether or not we claim that they could be improved." (*Id*. at pp. 295–296.)

Also, against the constitutional claim of denial of equal protection because such rules impacted primarily upon the poor, the court rejected the contention that the "strict scrutiny test" or "compelling state interest" should apply, stating:

> "We reject the application of the compelling state interest test to determine the validity of credit rules. They are in effect nothing more than a part of the utilities' rate structures. *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.* . . ..(*Id*. at pp. 294–295; emphasis added.)

See also, generally, *Pacific Tel. & Tel. Co. v. Public Util. Comm'n.* (1965) 62 Cal. 2d 634, 645–649; *Cal. Mfrs. Ass'n. v. Public Utilities Comm'n*. (1954) 42 Cal. 2d 530, 535–537; compare *California Manufacturers Ass'n. v. Public Utilities Comm'n.* (1979) 24 Cal. 3d 251, 260–261, record and findings insufficient to support commission's order establishing rate spread as between various classes of natural gas users.

Cases recognizing the ability of "rate-makers" to reasonably classify or "discriminate" as between users of services are found in cases involving publicly owned and operated utilities. For example, as stated in *Elliot v. City of Pacific Grove* (1975) 54 Cal. App. 3d 53, 58–59, quoting from an earlier case, *City & County of San Francisco v. Western Air Lines Inc.* (1962) 204 Cal. App. 2d 105, 137:

> " . . . 'Whether in particular instances a difference of rates as between users of a public utility service constitutes unjust discrimination, or whether such difference is justified by the conditions and circumstances attending such use, are questions of fact depending on the matters proved in each case. [citations]' This rule applies to a utility owned by a municipality and is applicable in the present case. . . ."

See also, *Boynton v. City of Lakeport Mun. Sewer Dist.* (1972) 28 Cal. App. 3d 91, 97–98; *Durant v. Beverly Hills* (1940) 39 Cal. App. 2d 133, 138–139.

From the foregoing statutory and case law, it appears that it is well settled in California that the Public Utilities Commission has wide discretion to make rate classifications which reflect a broad and varied range of economic considerations; that in doing so the commission may fix different rates for services as between classes of customers where there is a reasonable basis for such a classification or "discrimination"; and that if the commission makes proper findings of fact based upon the evidence adduced at a hearing held for such purpose, the court will uphold the rate classification ordered by the commission. In sum, differences in utility rates as between customers is legal and constitutional so long as there is no unreasonable discrimination.

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