These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS SUBCOMMITTEE NO. 3

May 22, 1991 Hearing Room 357 9:00 A. M. Tapes 20 - 21

MEMBERS PRESENT:Rep. Hedy L. Rijken, Chair Rep. Lisa Naito Rep. Beverly Stein

MEMBER EXCUSED: Rep. John Schoon

STAFF PRESENT: Terry Connolly, Committee Administrator Annetta Mullins, Committee Assistant

MEASURES CONSIDERED: SB 670 PH SB 1096 PH

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TAPE 20, SIDE A

004 CHAIR RIJKEN calls the meeting to order at 9:10 a.m. and opens the public hearing on SB 670 .

SB 670 A ENG. - REQUIRES PUBLIC UTILITY COMMISSION TO ORDER REFUND OF INTERIM RATE INCREASE AND SPECIFIES TIME PERIOD FOR COMPARISON OF EARNINGS TO REASONABLENESS OF RATES. Witnesses:Ron Eachus, Public Utility Commissioner Paul Graham, Department of Justice

006 TERRY CONNOLLY, Administrator, reviews the Senate Staff Measure Summary (EXHIBIT A).

The Revenue Impact Analysis and Legislative Fiscal Impact Assessment are hereby made a part of these minutes (EXHIBIT B).

018 RON EACHUS, Public Utility Commissioner, introduces Paul Graham of the Attorney General's office, counsel for the commission in relation to SB 670 and the PGE rate case: I think most members have been given substantive written material. I will give background on what leads up to bill and explain why we think the bill is fair and is a reasonable approach and maybe address some of the arguments made by the opponents of the bill. I have given you graphs which I will refer to (EXHIBIT C).

In late 1987 one of the first cases the new three-person PUC decided was a major PGE rate case in which the commission reduced the rates after extensive rate case proceedings. There were a number of issues of contention in the rate case, chief of which was the investment tax credits and the treatment of the sale of the Boardman coal plant assets. Those two issues were appealed by PGE to the courts. At the time the commission did not order a refund of previously adopted rate increase.

Subsequent to that the Citizens Utility Board petitioned for reconsideration of the refund of the interim rate increase. While the commission did not grant reconsideration on the same ground, they did reconsider the rate increase order. In doing so, the commission determined there should be a $37.8 million refund of the interim rate increase.

Figure 1 (EXHIBIT C) is designed to give some idea of how the interim rate increase is considered. If a utility comes in and says they have increased costs and believe they need a rate increase, the commission can adopt it on an interim basis, subject to refunding in all cases, the commission believes. When the commission establishes a rate that is less than the interim rate increase was, the difference is subject to refund to the rate payers. In the case the commission found itself in a difficult position. One reason was the nature of the case itself.

The first problem was this case had two test years. When the interim rate increase was approved, represented by the red line (EXHIBIT C), it was done so because of increased costs related to coal strip four and a belief on the part of the commission that the company did need additional revenues to track those increased costs. The commission set about the rate case. In that rate case, two test years were used. One test year, 1986, was used primarily as a tracker of costs. However, there were a number of issues which changed between 1986 and 1987, chief amongst them was the tax reformat. By the time the tax reformat effects and other considerations such as the ITC and Boardman were taken into account, the commission eventually set a rate at a rate lower than the existing rate. On the chart the red line represents the interim rate, the blue line represents what would have the existing or old revenue requirement, the green line represents the new revenue requirement, less than the old one and applying prospectively.

We had an 86 test year applying to the tracking of the coal strip plant and a 87 test year which took the over all view and upon which the rates were set.

In looking back at it, we determined a refund was due. The amount that had been collected in the interim of $38.7 was due to be refunded. We ordered that refund and PGE appealed. Three major issues on appeal: the investment tax credit, the sale of Boardman and the refund issue.

108 During consideration of the refund issue the commission tried to find a middle ground because we recognized we had two test years and during one of those test years the interim rate increase was in all likelihood justified, during the other test year it was not. However, our reading of the law did not allow a middle ground; it would either be a zero refund or it would a $38.7 million refund.

When the issue was appealed, it gave us a chance and a need to pursue some settlement with PGE and the other parties. We were concerned about the ambiguities in the law which created a risk that we may lose on the refund issue in court and we were genuinely about the fairness. If the case had done anything, it had pointed out some of the problems with the existing law. The two ambiguities that concerned us were: the existence of two test years and whether or not we treated the two test years as one case ending up in one rate, which the commission did, or whether we treated them as two cases, which PGE believed it ought to be treated and there is some procedural grounds on which to base that.

137 REP. STEIN: Where in the statute does the test years appear, or is it an administrative method?

131 PAUL GRAHAM, Attorney General's office: It does not appear anywhere in the statute and is something that is authorized by the commission's general rate making authority. It is something that is used in all jurisdiction with set rates. A test year is a year that is selected by a utility to use as a basis for estimating its costs which go into rates. The staff and intervenors can either agree or disagree with the test year. You can't set rates without a test year. It is a concept

everyone agrees on. We can use a historic test year or a future test year.

148 REP. STEIN: When the case was filed, was the test year an issue?

MR. GRAHAM: No.

154 MR. EACHUS: The second ambiguity was of the law. In the interim statutes there are two subsections. Subsection (4) speaks to the granting of an interim rate increase where there is a hearing and requires that to be subject to refund. Subsection (5) speaks to granting of an interim where there is no hearing, which was this case. It is silent on the refund. The commission reads (4) and (5) together and believes a refund is required in either case. As the company reads (5) it is not subject to refund. We felt it was ambiguous enough and with the combination of the ambiguity in the law and the ambiguity created by the existence of the two test years, there really were two cases here that we were at a substantial risk of losing any refund in court.

187 REP. STEIN: Is there any precedence for having a refund for a rate that has been increased without a hearing?

190 MR. GRAHAM: Interims have been granted in past, but I don't think the situation has every come up where we have granted an interim increase and the final rates were below the interim.

Rep. Stein previously asked whether the test year was an issue and I would like to correct my previous statement. I remember staff had some concerns about the use of the 1986 test years and the coal strip tracker and someone else may have raised some concerns about it. No one appealed the issue, though. But there may have been other concerns about the 1986 test year.

204 MR. EACHUS: When we entered into discussion with the company we were concerned that the courts would end up deciding either zero or $37.8 million and we were concerned that either one wasn't necessarily fair and we were concerned that we may end up with zero. So we sought some settlement on a basis we felt was fair.

Referring to a previous CUB brief, the idea had been suggested a fair approach would be to allow the company to keep the interim increase related to the 1986 test year which indicated they did need the revenues because of their cost and to refund that part of the interim that was collected during the 1987 test year when they did not need the additional money. That was the basis of our settlement. We would not have proceeded with any settlement had we not believed there was some fair basis for determining the dollar amount.

We reached a settlement with PGE over the $15.7. At issue was the question of whether or not interest on the $15.7 was going to be required. We decided not to require interest. In part we decided that because this was part of the global settlement in which another issue, the investment tax credit issue or $47 million worth of that issue was dropped by PGE. As part of the overall settlement we agreed to the $15.7 without interest and PGE agreed to drop the investment tax credit.

Other parties objected to the settlement. CUB objected primarily on the grounds that the interest was not included.

240 REP. NAITO: If there is an interim rate increase that is later found to not be substantiated, would they be obligated to pay interest?

244 MR. EACHUS: There is no obligation in the law that would require interest. I think in most cases we would require the interest. In this case we did not because it was part of an overall settlement of other issues as well.

242 MR. EACHUS: SB 670 does two things. One, it solves the ambiguities that exist in law and, two, it applies what would be new law to this case and allows this settlement to take effect.

The first part that deals with the ambiguities makes it clear that all interim increases are subject to refund. It also allows the commission to take into account the company's earning picture during the time of the interim. It allows us to take the approach we took in the settlement, which was during the one test year it was justified and in the other test year it was not. And it requires, in the future, interest. The commission's option of negotiating away the interest will not exist.

We think that clears up the ambiguities and it is a fair way to approach interim rate increases. It applies that new law to this case. We believe this is a fair approach and it eliminates the risk the refund will be zero, it guarantees a $15.7 million refund to the rate payers.

CUB has raised some arguments. One argument is statements made in press conferences and other communications that this bill amounts to a $105 million give away to the rate payers. I think one of the problems has been the people representing CUB before the Legislature are not the same people who represent CUB in the court case. The issue before the court is zero or $38.7 million refund. The $105 million refund is not before the court. There is nothing on appeal or in the briefs which requests a $105 million refund. There is a brief reference in one of CUB's briefs to the concept that may be due but it goes on to what they think is a more likely and reasonable approach.

328 REP. NAITO: What is your authority on litigation to settle various points?

336 MR. EACHUS: We generally have authority to negotiate with parties and to reach settlement and bring those settlements to the court and the court will determine whether the settlement is approve. We had other parties objecting to the settlement. CUB's objection was not based on the $105 million. The concept of the $15.7 million came from CUB's briefs and submittals to the commission. CUB supported the $38.7 and indicated support for the concept of the $15.7 and objected only to the fact that it didn't have any interest. We have a case where other parties did not agree to settlement which PGE and the commission reached. In part because we were entering a rate case with PGE and wanted to have some basis to have the $15.7 million considered in the rate case, we issued an accounting order. We are unsure whether we can settle the case or an issue order when other parties are not agreeing. We are unsure whether or not we can do that on the basis of fairness and on the basis of avoiding litigation. That is an issue that would probably have to be decided by the courts. That, in part, is why we bring this bill to the Legislature. It would make it clear there is legislative authority, statutory grounds, upon which we can reach the settlement. That is why the new law is applied to this old case. It is our belief it is good law for the future and if it is good law for the future there should be nothing wrong with applying it to the past, particularly when the agreement, we think, is fair and it avoids the possibility that the commission and the rate payers will lose the refund entirely.

373 MR. GRAHAM: The bill says you can resolve the refund by applying the formula set forth in the bill.

TAPE 21, SIDE A

Issues discussed: >There has been no rate order. If the commission wants to go forward with the settlement, does have to enter another order telling company when and how to give back the $15.7 million. >Funding of CUB, an intervenor.

049 REP. STEIN: Do you think there is need to clarify in statute the role of the PUC and intervenors.

MR. EACHUS: We haven't addressed that. I don't think there is any question of our ability to settle question or to negotiate. Settlements are approved by courts. The court hears from everybody before it makes it decision. This doesn't deal with authority to settle issue, but the basis on which we make the settlement.

080 REP. STEIN: I am appreciative of the role of intervenors in rate cases. I wonder if there needs to be some kind of legislation that indicates that settlements can occur without the agreement of all parties. Cases could begin to be settled and the role of intervenors would be cut out.

087 MR. EACHUS: I don't believe intervenors are cut out at this time. The commission heard them and did not agree with them. They have the opportunity to go into court. I think if you put something into law that says nothing happens until everybody agrees to it, you would allow any party to stonewall any settlement. We are not entering this with the idea that our authority or the law pertaining to our ability to settle a case, in general, is at issue.

If the bill fails the courts will decide between zero and $37.8 million. If the bill passes, there is a good likelihood there will be a guaranteed refund of $15.7.

Another issue is over the need for statutes that would create ability for the commission to grant interim rate decreases. We do not have authority to do that. We object to that concept being added to this bill. We object because this bill is confined to changing existing statute and application to the pending case. The other reason is the energy companies are at issue. If you adopt the interim rate decrease provision, it beings in the telephone companies and everyone else.

162 REP. NAITO: Do you concur with the Senate amendments.

MR. EACHUS: Yes.

178 CHAIR RIJKEN closes the public hearing on SB 670, announces that it will be carried over to Friday agenda and opens the public hearing on SB 1026.

(Tape 21, Side A) SB 1096 - ALLOWS PORT TO OPERATE PIPELINES FOR PURPOSE OF TRANSPORTING MATERIALS TO INDUSTRIAL FACILITIES. Witness:Rep. Jackie Taylor

MR. CONNOLLY reviews the Senate Staff Measure Summary (EXHIBIT D).

The Revenue Impact Analysis and Legislative Fiscal Impact Assessment are hereby made a part of these minutes (EXHIBIT E).

217 REP. JACKIE TAYLOR: I am here to lend support to this request. I see it as an important potential tool to allow materials to be transported by pipeline. Our ports are exploring every creative means to provide excellent services to maritime shipping, aviation and commercial industry and want to keep our place of importance among West Coast ports. I have been impressed with the products that can be transported through pipelines. I request your favorable consideration.

243 CHAIR RIJKEN declares the meeting in recess at 9:55 for purposes of members attending the House floor session.

243 CHAIR RIJKEN reconvenes the meeting at 10:21 a.m. and announces that due to the Floor schedule the agenda items will be carried over to Friday morning at 8:30 a.m. and declares the meeting adjourned at 10:22 a.m.

Respectfully submitted,Reviewed by,

Annetta MullinsTerry Connolly AssistantAdministrator

EXHIBIT SUMMARY

A -SB 670, Senate Staff Measure Summary, staff B -SB 670, Revenue Impact Analysis and Fiscal Impact Assessment, staff C -SB 670, graphs, Ron Eachus D -SB 1097, Senate Staff Measure Summary, staff E -SB 1096, Revenue Impact Analysis and Legislative Fiscal Impact Assessment, staff