BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NOS. 92-023-R & 94-045-R - ORDER NO. 2000-943

NOVEMBER 17, 2000

IN RE: Application of South Carolina Electric & Gas Company for Adjustments in the Company's Coach Fares and Charges, Rates, and Route Schedules.	))))	BUS ORDER UPHOLDING STAY

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion of Rehearing and Reconsideration of Commission Order 2000-818 Granting Stay filed by South Carolina Electric & Gas Company (SCE&G).

Our Order No. 2000-818 granted a Motion by the Consumer Advocate for the State of South Carolina (the Consumer Advocate) for a Stay of Order No. 2000-787. This Order was in compliance with the Orders of Circuit Court Judges Rushing and Lee, and substantially granted the 1992 SCE&G Application for an increase in rates and charges, and for a modification of various bus routes, along with certain other relief.

The Consumer Advocate argued that, absent a stay of the Commission's Order, SCE&G's bus riders may suffer irreparable harm, in that riders under the Low Income Discount plan may have to pay a seventy-five cent fare instead of the forty cent fare provided for under the plan. The Consumer Advocate went on to state that it is administratively impossible to make riders whole after the fact of paying the fare and riding the bus. SCE&G opposed the Motion of the Consumer Advocate, stating that the harm that the consumers may suffer is less than the harm which will be suffered by SCE&G from further delays in implementation of the relief sought by it. We proceeded

to balance the potential for "irreparable harm" that may occur with the bus ridership against the potential for "irreparable harm" that may be suffered by the Company. We resolved the balance in favor of the bus riding public, stating that as many as 50% of the ridership utilizes the Low Income Discount plan, and that suddenly subjecting this ridership to an increase from 40 cents to 75 cents would cause irreparable harm to that ridership, in that many riders may not have the financial wherewithal to withstand the increase. We also noted that such an increase could result in many riders being unable to afford a bus ride to places of employment, which could result in the loss of jobs, and that the ridership had no adequate remedy at law.

SCE&G moves for rehearing and reconsideration of Order No. 2000-818 on two grounds: 1) that our findings are too conjectural to provide a basis for staying the implementation of our Order; and (2) that the harm that is inflicted upon SCE&G by the issuance of a stay in these proceedings is measurable and calculable from the record in the case. SCE&G further states that the delay in implementing relief is substantial and the Company has no adequate remedy at law to be made whole for these losses which continue to mount. We deny the Motion.

Since the granting of a Stay under the Administrative Procedures Act is similar to the granting of an injunction, we believe that the law regarding injunctions is a useful reference in the present case. A decision to issue injunctive relief must be based upon the balancing of the equities in a case. Smith v. Phillips, 318 S.C. 453, 458 S.E. 2d 427 (1995). Again, we balanced the "irreparable harm" to be suffered by the bus ridership against the "irreparable harm" to be suffered by the Company, and held that the

irreparable harm to the bus ridership outweighed that to be suffered by the Company. An injunction, if otherwise proper, should not be withheld merely because it will cause some pecuniary loss. Sprouse v. Winston, 212 S.C. 176, 46 S.E. 2d 874 (1948).

Further, we do not believe that our findings and conclusions in Order No. 2000-818 were conjectural, as alleged by the Company. There is no question that a large percentage of the SCE&G bus ridership rides pursuant to the Low Income Discount Plan, perhaps as many as 50%. Logic dictates that increasing the fare from 40 cents to 75 cents per ride has got to increase the financial burden on these riders, who tend to be frequent riders. Further, this increased financial burden has got to constitute irreparable harm, making it likely that such riders would be unable to afford a bus ride to their places of employment on a long term basis. There is no question that it would be administratively impossible to make such riders whole after the fact of paying the fare and riding the bus, if the Low Income Discount plan were later upheld. We regret the pecuniary loss to the Company, but we believe that the equities in this case mandate ordering the stay of our latest Order on the merits in this case in order to protect the bus riding public, while the merits of the case are debated in the Court system.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)