

## MINUTE ITEM

This Calendar Item No. 12  
was approved as Minute Item  
No. 12 by the State Lands  
Commission by a vote of 3 MINUTE ITEM  
to 0 at its 4-28-76

4/28/76  
GRH

12. <sup>meeting</sup> AMENDMENT OF REGULATIONS IN TITLE 2, DIVISION 3, OF THE CALIFORNIA ADMINISTRATIVE CODE, ARTICLE 2 FOR THE ENACTMENT OF A VOLUMETRIC RENTAL RATE ALTERNATIVE - W 5125.1.

During consideration of Calendar Item 12, Mr. James F. Trout, Manager, Land Operations, summarized the events leading to the preparation of these proposed regulations. He stated that the revised proposal presently before the Commission is based on the following staff determinations:

1. Land rentals, varying with the volume of commodities passing over unimproved lands, are being employed by other landowners in similar situations.
2. Volumetric rental, if otherwise reasonable under all circumstances, may be employed as one of the alternative rental basis used by the Commission.

Mr. Trout pointed out that some objections raised were that the Public Resources Code requires appraisals, that an Environmental Impact Report is required, and that by volume charges were a burden on interstate commerce.

Mr. Trout indicated the staff has found that the objections raised by the public and industry have no merit, and that the proposed regulations, as revised, have a sound basis in fact and in law.

In his presentation, Mr. Trout stated that public hearings had been held on volumetric rental rates on April 29 and May 2, 1975, and April 21, 1976. Additional meetings were held during July 1975 with the oil companies, common carriers, and public utilities.

Mr. N. Gregory Taylor, Assistant Attorney General, concurred in the staff's recommendations and advised there is no legal objection to proceeding with their adoption. Mr. Taylor noted for the record a report entitled "Report of the State Lands Commission on Volumetric Rental Rates", presented at the State Lands Commission meeting on April 28, 1976.

Mr. Gregory McClintock, attorney with the firm of McCurthen, Black, Verleger and Shea representing the Western Oil and Gas Association, appeared in opposition. Mr. McClintock's main objection was that the staff summary failed to do the following:

1. Address itself to the arguments made by WOGA and others who have spoken in opposition to the proposed regulations.

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2. Address itself to the issue of whether the charges can be legally imposed by the State.
3. Address itself to the comments made at the April 21 hearing, since the transcript of that hearing is not as yet available.

Mr. McClintock submitted for the record a copy of his statement presented at the April 21 hearing, on file in the office of the State Lands Commission and by reference made a part hereof.

Mr. Dennis Eagan, Deputy Attorney General, advised that the statements which were presented at the April 21 hearing were reviewed and incorporated in the staff summary. He indicated they were basically a recapitulation of points previously made last year at other public hearings and meetings. Mr. Eagan also responded to other allegations raised by Mr. McClintock.

Mr. Robert E. Shaw, representing Mobil Oil Corporation, appeared in opposition. Mr. Shaw stated that Mobil adopts the arguments presented by Mr. McClintock and urged the Commission to reconsider the matter.

Mr. Paul Hughey, General Manager, Contra Costa County Economic Development Association, appeared in opposition. Mr. Hughey contended that because 1) the additional charge would eventually be borne by the consumer; and 2) industry may eventually leave California due to this additional charge, with the end result being increased unemployment, he suggested the Commission take this economic impact into consideration.

Mr. Henry W. Simonson, in pro per, appeared in opposition. Mr. Simonson spoke as a businessman in Contra Costa and Solano Counties.

Commissioner Roy Bell clarified the record by saying that the Commission is presently acting on the regulations by themselves and that they are not, in themselves, burdensome to the consumer or business. He stated that the individual application of them, as each item comes before the Commission, is what will determine the economic hardship to the public.

By unanimous vote, the Commission adopted the resolution as presented in Calendar Item 12 attached.

Attachment:  
Calendar Item 12 (4 pages)

CALENDAR ITEM

12

4/76  
W 5125.1  
GRH

AMENDMENT OF REGULATIONS IN TITLE 2, DIVISION 3  
OF THE CALIFORNIA ADMINISTRATIVE CODE,  
ARTICLE 2 FOR THE ENACTMENT OF A VOLUMETRIC  
RENTAL RATE ALTERNATIVE

Pursuant to the Commission's authorization of March 31, 1975 (Minute Item 24, Page 278), and May 27, 1975 (Minute Item 18, Page 538), and in compliance with Government Code Sections 11423-25, public hearings were held in Sacramento on April 29, 1975, and Long Beach on May 2, 1975. As a result of those hearings, and upon recommendation of the staff, the Commission adopted changes to its general leasing regulations without reference to rental determination on the basis of the volume of commodities passing over State Lands.

Pursuant to the same Commission authorizations, the staff also held informal meetings with affected interest groups (i.e. utility companies, pipeline companies and Western Oil and Gas Association - W.O.G.A. Members). As a result of those meetings the staff has conducted additional studies and worked closely with the Office of the Attorney General in formulating the new proposed regulation changes.

In addition, the staff held another public hearing on April 21, 1976, at the Consumer Affairs Building in Sacramento. A summary of relevant arguments and statements (both written and oral) is on file in the office of the State Lands Commission and by reference made a part hereof.

As a result of substantial staff investigation, consultation with outside valuation experts and concurrence by the Office of the State Attorney General, the staff is recommending that the Commission adopt the proposed changes to its regulations as set forth in Exhibit "A" attached hereto.

- EXHIBITS: A. Proposed Amendments to Division 3, 2 Cal Adm. Code, Article 2
- B. Summary of Public Hearings and Written Statements.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT THERE HAS BEEN COMPLIANCE WITH GOVERNMENT CODE SECTIONS 11423 THROUGH 11425 RELATING TO PUBLICATION, PUBLIC HEARING AND NOTIFICATION TO THE RULES COMMITTEE OF EACH HOUSE OF THE LEGISLATURE AND OTHER INTERESTED PERSONS.
2. ADOPT AMENDMENTS TO ITS REGULATIONS AS SET FORTH IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF, RELATING TO NON-EXTRACTIVE LEASING, WHICH SHALL BE EFFECTIVE JUNE 1, 1976.

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3. DETERMINE THAT THERE ARE NO STATE MANDATED LOCAL COSTS IN THIS REGULATION THAT REQUIRE REIMBURSEMENT UNDER SECTION 2231 OF THE REVENUE AND TAXATION CODE BECAUSE THERE IS AN OPTION AS TO COMPLIANCE AND, IN THE ALTERNATIVE NOTWITHSTANDING SECTION 2231 OF THE REVENUE AND TAXATION CODE, THERE SHALL BE NO REIMBURSEMENT PURSUANT TO THIS REGULATION BECAUSE DUTIES, OBLIGATIONS OR RESPONSIBILITIES IMPOSED ON LOCAL GOVERNMENTAL ENTITIES BY THIS REGULATION ARE SUCH THAT RELATED COSTS ARE INCURRED AS A PART OF THEIR NORMAL OPERATING PROCEDURES.

Attachment: Exhibit "A"

PROPOSED AMENDMENT TO REGULATIONS  
OF THE STATE LANDS COMMISSION IN  
CALIFORNIA ADMINISTRATIVE CODE

ARTICLE 2

Leasing or Other Use of Lands

Section 2006 is amended to read:

- (b) Rental Rate Schedule: The following rental rates shall be computed at the rate of 8% per annum of the appraised value of the leased land, provided, however, that the following rates shall apply to the classifications listed below:
- (2) Industrial Lease: Eight percent per annum of the appraised value of leased land net underlying pipelines or conduits, plus 1-1/2 cents per diameter inch per lineal foot for conduits and pipelines with a \$450 minimum annual rental, together with 1-1/2 cents per diameter inch per lineal foot for pipelines and conduits within the leased premises; or, an annual rental, with a specified minimum, based upon the volume of commodities passing over State land. The minimum rental under either of these alternative rentals shall be not less than \$450 per annum.
- (7) Right of Way: Eight percent 8% per annum of the appraised land value, together with damages, if any; except that rental rates for rights of way for pipeline and conduit purposes shall be at the rate of one and one-half cent per diameter inch per lineal foot. Minimum rental shall be \$100 per annum, or alternatively, for pipelines and conduits, 1-1/2 cents per diameter inch per lineal foot per annum, or, in lieu of either of the foregoing, an annual rental, with a specified minimum, based upon the volume of commodities passing over State land. The minimum rental under any of the above alternatives shall not be less than \$100 per annum.
- (b) Selection among alternative Rentals for Industrial and Right of Way Leases: The following factors shall be considered by the Commission in determining which of the alternative rentals provided for industrial and right of way leases is in the best interests of the State;
- (1) Whether the land to be leased has been classified as environmentally significant under Article 11 of this Division;

- (2) The actual and potential environmental damage inhering in the lessee's proposed use of the land, and the extent to which such damage is quantifiable;
- (3) The revenue that would accrue to the State under each alternative;
- (4) Whether a particular rental rate would have the result, if imposed by the Commission, of compelling the use of substitute facilities by the prospective lessee.
- (5) The availability, reliability, and applicability of comparable or related data concerning the value of the land to be leased;
- (6) Such other factors as, in the opinion of the Commission, reasonably bear on the appropriateness of the rental to be charged.

Section 2007 is amended to read:

2007. PERCENTAGE RENTALS AND LIMITATIONS ON RENTALS BASED ON VOLUME OF COMMODITIES.

- (a) Commercial leases may provide for the payment to the State by the lessee of a minimum flat rent based upon land value, and/or a reasonable percentage of gross receipts where the Commission finds it is in the best interests of the State.
- (b) If the Commission determines that a rental based on the volume of commodities passing over State land is in the best interests of the State, the following limitations to such volume rentals shall apply:
  - (1) Rental shall not be imposed for passage of a commodity over State land if rental has already accrued on that identical commodity for passage over the same State land over which it is again passing, provided the commodity is still in the same ownership as upon the next preceding passage over said State land for which rental has accrued.
  - (2) The rental rates for rights of way shall be apportioned in the proportion that the length of the pipeline or other structure over State land bears to the total length of the subject pipeline or structure over the land of the State and other persons. "Subject pipeline or structure" is defined as a pipeline or structure by which the commodity is being transported on a route between two facilities, uninterrupted by another facility. "Facility" includes terminal, production facility, storage facility, refinery or other manufacturing or processing facility, or point at which the commodity is or may be intermixed with the same or a different commodity.