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ORIGINAL FILED

MAY 31 2001

**LOS ANGELES
SUPERIOR COURT**

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
13

14 JOHN DONALDSON, ADREA AND PETE
15 STOKER, AMELIA NIETO, ROGER
16 ERICKSON, JOHN RICHARD DEATS, TRACI
17 WILSON- KLEEKAMP AND STEVE
18 KLEEKAMP, JOSEPH WEINSTEIN,
COLETTE MARIE AND RICHARD
MCLAUGHLIN, RONALD B. NOE, , AND
LONG BEACH CITIZENS FOR UTILITY
REFORM,

19 Plaintiff,

20 vs.

21 CITY OF LONG BEACH, CITY COUNCIL
22 FOR THE CITY OF LONG BEACH, HENRY
TABOADA, in his official capacity, and DOES
1-100

23 Defendants.
24
25
26

Case No. **BC251505**

**CLASS ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE AND
DECLARATORY RELIEF**

- 1) VIOLATIONS OF SECTION 1502 OF THE LONG BEACH CITY CHARTER
- 2) VIOLATIONS OF SECTION 1501 OF THE LONG BEACH CITY CHARTER
- 3) VIOLATIONS OF SECTION 15.36.100 OF THE LONG BEACH MUNICIPAL CODE
- 4) TAXPAYER CLAIM AGAINST ALL DEFENDANTS

JURY TRIAL DEMANDED

1 **PARTIES**

2 **A. Plaintiffs**

3 7. At all times material herein, plaintiff John Donaldson has been a customer of the City of Long
4 Beach Gas Department, and has been a resident of the City of Long Beach for twenty two years. Mr.
5 Donaldson has paid taxes to the City within the preceding year. Mr. Donaldson is 55 years old and
6 currently lives on social security and disability insurance payments, having suffered a stroke three years
7 ago. His charges for his gas bill grew dramatically beginning in December 2000. Prior to the rate
8 increase, his gas charges were approximately \$109. After the rate increase, his charges doubled, despite
9 the fact that he was using significantly less gas each month.

10 8. At all times material herein, plaintiffs Pete and Adrea Stoker have been customers of the City
11 of Long Beach Gas Department, and are resident citizens of the City of Long Beach who have paid taxes
12 to the City within the preceding year. Age 69, Pete Stoker has lived in the City of Long Beach and
13 surrounding communities his entire life. His wife, Adrea Stoker, is a lifetime resident of the City of Long
14 Beach. Mr. Stoker served for more than 28 years as a firefighter for the Long Beach Fire Department
15 before his retirement. Mrs. Stoker was a schoolteacher and later worked in real estate before her
16 retirement. Mr. and Mrs. Stoker have watched as the charges for their gas service have skyrocketed
17 from \$16.66 on the November 8, 2000 bill, to \$55.56 on the December 11, 2000 bill, to \$103.98 on the
18 January 11, 2001 bill, and even up to \$176.29 on the February 12, 2001 bill. In the last few months, the
19 charges for gas service have subsided some as their May 11, 2001 bill was for \$18.59. The smaller bill
20 reflects in part these plaintiffs' efforts to use less gas.

21 9. At all times material herein, plaintiff Amelia Nieto has been a resident of the City of Long
22 Beach and a rate payer with the City of Long Beach Gas Department for approximately five years. She
23 earns approximately \$700 per month on which she is raising four children. She has paid taxes to the City
24 within the preceding year. Her gas bill has increased significantly since the rate increase approved by
25 defendants.

26 10. At all times material herein, plaintiffs Traci Wilson-Kleecamp and Stephen Kleecamp have
27 been residents of the City of Long Beach since 1991 and are the parents of three minor children. They
28 have paid taxes to the City within the preceding year. Their gas bill for a modest three bedroom one bath

1 house went from approximately \$150 per month to over \$390 per month after the rate increase by
2 defendant City of Long Beach.

3 11. At all times material herein, plaintiff Joseph Weinstein has been a resident of the City of
4 Long Beach and a rate payer with the City of Long Beach Gas Department. He is 62 years old, a
5 mathematician, and has been a resident of Long Beach since 1992. He has paid taxes to the City of Long
6 Beach within the preceding year. His gas bill has also increased significantly since the rate increase
7 approved by defendants.

8 12. At all times material herein, plaintiffs Colette Marie and Richard McLaughlin have been
9 residents of the City of Long Beach and rate payers with the City of Long Beach Gas Department. Mr.
10 McLaughlin is 66 years old and a retired professor with California State Long Beach and has resided in
11 Long Beach since 1969. His wife, Colette McLaughlin, is a school planner with a local school district
12 and has resided in Long Beach since 1984. Together they live on a fixed income plus a modest
13 government salary. They too faced significant rate increases to their gas bill as a result of the rate
14 increase approved by defendants.

15 13. At all times material herein, plaintiff Ronald B. Noe has been a resident of the City of Long
16 Beach and a rate payer with the City of Long Beach Gas Department. He is 42 years old, self employed
17 transportation consultant, and has been a resident of Long Beach for seventeen years. He has paid taxes
18 to the City of Long Beach within the preceding year. His gas bill has also increased significantly since
19 the rate increase approved by defendants.

20 14. At all times material herein, plaintiff John Richard Deats has been a resident of the City of
21 Long Beach and a rate payer with the City of Long Beach Gas Department. He has been a resident of
22 Long Beach for twenty two years. He has paid taxes to the City of Long Beach within the preceding
23 year. His gas bill has also increased significantly since the rate increase approved by defendants.

24 15. At all times material herein, plaintiff Roger K. Erickson has been a resident of the City of
25 Long Beach and a rate payer with the City of Long Beach Gas Department. He is a teacher and has lived
26 in Long Beach for forty nine years. He has paid taxes to the City of Long Beach within the preceding
27 year. His gas bill has also increased significantly since the rate increase approved by defendants.

28 16. Long Beach Citizens for Utility Reform is an unincorporated organization of citizens and rate

1 payers which advocates for reliable, cost effective and sustainable utility services for the City of Long
2 Beach residents and businesses.

3 **Defendants**

4 17. At all times material herein, defendant City of Long Beach is a municipal entity in the
5 County of Los Angeles, State of California.

6 18. At all times material herein, defendant City Council for the City of Long Beach ("City
7 Council") is charged with the governance of the City of Long Beach, including the passage of ordinances
8 for the health, safety and benefit of the people of Long Beach

9 19. At all times material herein, defendant Henry Taboada is the current City Manager of the
10 City of Long Beach. As City Manager, Mr. Taboada has legal authority to direct and supervise the
11 administration of all Manager-directed departments of the City, including the Gas Department. Mr
12 Taboada is sued in his official capacity only.

13 20. The true names and capacities, whether individual, corporate, associate, or otherwise of the
14 defendants sued herein as Does 1 through 100 are unknown to plaintiffs who therefore sue these
15 defendants by such fictitious names. Plaintiffs are informed and believed, and based thereon allege, that
16 each of the Doe defendants is legally responsible in some manner for the occurrences herein alleged, and
17 that the injuries to plaintiffs and all others similarly situated as herein alleged were proximately caused by
18 their conduct and the conduct of the named defendants. All allegations in this complaint which refer to
19 the named defendants refer in like manner to those defendants identified as Does 1 through 100, inclusive.
20 Plaintiffs will amend this complaint to allege the true names and capacities of the Doe defendants when
21 the same have been ascertained.

22 **CLASS ALLEGATIONS**

23 21. The named plaintiffs bring this action on behalf of themselves and a class consisting of all
24 customers of the City of Long Beach Gas Department from December 1, 2000, through the date of trial
25 of this action.

26 22. This is a proper class action under Code of Civil Procedure §382. Plaintiffs are informed and
27 believe and, based upon such information and belief, allege that the above-mentioned class consists more
28 than 100,000 individuals, families, businesses, nonprofit institutions and other entities within the City of

1 Long Beach that have received and continue to receive gas from the City of Long Beach Gas
2 Department. The class is definite and ascertainable, and it is so numerous that the joinder of all members
3 is not practicable.

4 23. There are substantial questions of law and fact common to plaintiffs and members of the
5 class. The claims of the named plaintiffs are typical of the claims of the class as a whole. The plaintiffs
6 will fairly and adequately represent the interests of the class. The plaintiffs have no conflict of interest
7 with any other class member and are represented by attorneys who are experienced in class actions and
8 litigation against government entities.

9 24. Defendants have acted or refused to act on grounds generally applicable to the class as a
10 whole. Only by adjudication of this controversy as a class action can relief be granted so as to avoid a
11 multiplicity of lawsuits.

12 FACTUAL ALLEGATIONS

13 A. Provisions of the City Charter and Municipal Code:

14 25. In 1980 the voters of Long Beach approved a revised Charter for the City of Long Beach
15 ("City Charter").

16 26. At all times material herein, Section 1500 of the City Charter has provided:

17 There is hereby created and established a Department of Public Utilities, to be under the
18 supervision and control of the City Manager in all matters. This department shall consist
19 of the City's Gas Utility and such other public utilities as may, from time to time, be
20 owned, operated or controlled by the city. The City Manager shall appoint a General
21 Manager of the Department of Public Utilities and such other supporting superintendents
22 or managers as he determines necessary to serve at the pleasure of the City Manager.

23 27. At all times material herein, Section 1501 of the City Charter has provided that revenues
24 received from the operation of each public utility owned and operated by the City of Long Beach shall be
25 deposited and kept in a separate revenue fund in the name of the utility generating the revenue. Section
26 1501 further provides that revenues shall be disbursed therefrom in the following order of priority

27 (a) Payment of interest and principal coming due on any bonded indebtedness relating to
28 the utility which generates in such specified fund;

1 (b) Payment of the annual operating and maintenance expenses, acquisitions,
2 improvements and extensions of the respective utility system;

3 (c) Set aside a portion of each fund as a reserve to be used for contingencies in the
4 operation of each such utility;

5 (d) The remainder in any of these funds determined by the City Manager to be unnecessary
6 to meet the above obligations may be transferred into the General Purpose Fund of the
7 City as approved in the annual budget by the City Council.

8 28 At all times material herein, Section 1502 of the City Charter has provided:

9 The rates to be charged users for any services or commodities supplied by any public
10 utility owned and operated by the City shall be based upon the prevailing rates for similar
11 services and commodities supplied or sold other like utilities whether public or private,
12 operating in the Southern California area

13 29 At all times material herein, Section 15.36.100 of the Long Beach Municipal Code provides:

14 The General Manager of the City's Gas Department shall regularly review rates, tariffs,
15 fees, charges and services of other like utilities whether public or private operating in the
16 Southern California Area and submit to the City Manager a schedule of natural gas rates,
17 fees, charges which are reasonable and comparable to rates, fees, and charges by other like
18 utilities in the Southern California area. The City Manager shall adjust gas rates, fees, and
19 charges for the City contained in Chapter 15.36 of the Municipal Code to reflect increases
20 or decreases in the price of the commodity, transportation, charges, fees, and related
21 services. The City Clerk shall post such new rates, fees, charges, and services at three
22 conspicuous places within the City. The City Manager shall report changes in rates,
23 charges, fees, and services to the City Council as soon as practicable. The City Council
24 may approve, disapprove or modify such changes by resolution.

25 30 At all times material herein, Chapter 15.40 of the Municipal Code has contained the Gas
26 Regulations. Section 15.40.075 of the Municipal Code provides for the refund of gas utility charges due
27 to a billing error made by the City. Section 15.40.075 further provides that any refund shall be made
28 within three years after payment of money to the City of Long Beach.

1 **B. The Rates for Gas Charged by the City of Long Beach Gas Department**

2 31. Throughout the 1980s and 1990s, the City of Long Beach Gas Department accumulated
3 profits of over \$250,000,000 as a result of the rates it was charging for gas to customers. Despite the
4 clear provisions of Section 1501 of the City Charter, requiring adequate amounts from these profits to be
5 maintained in reserves, the entire amount was transferred to the General Fund by defendants and
6 disbursed.

7 32. Notices to Customers sent out by the City of Long Beach Gas Department regularly
8 informed customers that the utility service rates it was charging, according to the City Charter, had to be
9 based on the prevailing rates of other like utilities operating in Southern California. Such Notices
10 routinely cited Southern California Gas Company as the comparable gas company on which the City of
11 Long Beach Gas Department was basing its rates.

12 33. On or about September 15, 1998, defendant City Council adopted Resolution No. C-27411
13 which set forth new gas rates for customers of the City of Long Beach Gas Department effective October
14 1, 1998. A true copy of Resolution No. C-27411 is attached hereto, marked as Exhibit "A", and
15 incorporated herein by reference.

16 34. On or about September 21, 1999, defendant City Council adopted Resolution No. 27584
17 which set forth new gas rates for residential, small commercial, commercial/industrial and cogeneration
18 customers of the City of Long Beach Gas Department effective October 1, 1999. A true copy of
19 Resolution 27584 is attached hereto, marked as Exhibit "B", and incorporated herein by reference.

20 35. Meanwhile, the gas rates charged customers of the City of Long Beach Gas Department
21 varied only slightly from the gas rates charged customers of Southern California Gas Company from
22 March 1998 until December 1, 2000.

23 36. Beginning December 1, 2000, defendants elected to charge customers of the City of Long
24 Beach Gas Department gas rates that were not comparable to the gas rates charged customers of
25 Southern California Gas Company.

26 37. Plaintiffs are informed and believed, and based thereon allege, that in the months beginning
27 with December 1, 2000, until the present, the City of Long Beach Gas Department has charged plaintiffs
28 and other members of the class significantly more than the rates charged by the Southern California Gas

1 Company with the possible exceptions of the bills prepared in April. In February 2001, for example, the
2 City of Long Beach Gas Department charged more than \$1.60 per therm whereas Southern California
3 Gas charged approximately \$.65 per therm. A therm is a quantity of heat and is the equivalent of
4 100,000 British thermal units.

5 38. These rate increases have had a significant impact on all ratepayers, doubling and in some
6 instances trebling their gas bills. The impact has been felt most strongly by poor and low income families,
7 as well as disabled and elderly persons on fixed incomes, many of whom have seen their gas bills
8 skyrocket by hundreds of dollars in one month despite conservation and other measures to limit gas use.
9 Defendants' response has been callous at best, informing the poor, disabled and elderly to "wear more
10 layers," rather than ending the illegal rate changes or drawing on reserves to stabilize the rate increases.

11 **C. Filing of the Government Code Claim**

12 39. On or about May 31, 2001, plaintiffs presented a claim to defendant City of Long Beach for
13 the injuries, losses and damages and incurred by them and a class of similarly situated persons by reason
14 of the above-mentioned actions, all in compliance with the requirements of Government Code Section
15 905. A true copy of this claim is attached hereto, marked as Exhibit "C", and incorporated herein by
16 reference. Defendant City of Long Beach has not yet acted on this claim.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION BY ALL DEFENDANTS OF SECTION 1502 OF THE CITY CHARTER**

19 40. Plaintiffs reallege and incorporates by reference the allegations contained in paragraphs 1
20 through 39 above.

21 41. At all times material herein, defendants have violated Section 1502 of the City Charter, by
22 not basing the rates for gas from the City of Long Beach Gas Department upon the prevailing rates
23 charged for gas by like utilities in the Southern California area and by instead charging plaintiffs and
24 members of the class significantly more for gas than is being charged by these other utilities. This
25 conduct has caused the proposed plaintiff class to suffer significant damages, in an amount estimated to
26 exceed \$38 million.

27 42. Injunctive relief is necessary to prevent all the defendants from continuing to engage in the
28 unlawful practices as alleged herein. Defendants and persons acting in concert therewith, have done, are

1 now doing, and will continue to do or cause to be done, the above-described illegal acts unless restrained
2 or enjoined by this Court. Unless the relief prayed for below is granted, a multiplicity of actions will
3 result. Plaintiffs have no plain, speedy, or adequate remedy at law, in that it is difficult to measure the
4 amount of monetary damages that would compensate these plaintiffs and members of the class for the
5 wrongful acts of defendants and, in any event, pecuniary compensation alone would not afford adequate
6 and complete relief for class members. Unless these defendants are immediately restrained from
7 committing further illegal acts, their above-described acts will cause great and irreparable damage to
8 plaintiffs and others similarly situated. Some class members, for instance, will forego food to pay for the
9 increase in their utility bill, while other class members will be evicted and will become homeless.

10 43. An actual controversy exists between plaintiffs and all the defendants concerning their
11 rights, privileges, and obligations in that plaintiffs contend that defendants' above-mentioned actions have
12 violated and will continue to violate Section 1502 of the City Charter, and defendants contend in all
13 respects to the contrary.

14 SECOND CAUSE OF ACTION

15 VIOLATIONS BY ALL DEFENDANTS OF SECTION 1501 OF THE CITY CHARTER

16 44. Plaintiffs reallege and incorporates by reference the allegations contained in paragraphs 1
17 through 39 above.

18 45. Defendants have further violated Section 1501 of the City Charter by failing to establish
19 adequate reserves to be used for contingencies in the operation of each such utility, including meeting
20 their obligations under Section 1502. Over the past twenty years, the Gas Department has made over
21 \$250 million over expenses, which has been paid into the general fund and has not been placed in
22 reserves. As a result of defendants' failure to maintain adequate reserves which could have been tapped
23 to ensure rate stabilization, the proposed plaintiff class has suffered significant damages, in an amount
24 estimated to exceed \$38 million.

25 46. Injunctive relief is necessary to prevent all the defendants from continuing to engage in the
26 unlawful practices as alleged herein. Defendants and persons acting in concert therewith, have done, are
27 now doing, and will continue to do or cause to be done, the above-described illegal acts unless restrained
28 or enjoined by this Court. Unless the relief prayed for below is granted, a multiplicity of actions will

1 result. Plaintiffs have no plain, speedy, or adequate remedy at law, in that it is difficult to measure the
2 amount of monetary damages that would compensate these plaintiffs and members of the class for the
3 wrongful acts of defendants and, in any event, pecuniary compensation alone would not afford adequate
4 and complete relief for class members. Unless these defendants are immediately restrained from
5 committing further illegal acts, their above-described acts will cause great and irreparable damage to
6 plaintiffs and others similarly situated. Some class members, for instance, will forego food to pay for the
7 increase in their utility bill, while other class members will be evicted and will become homeless.

8 47 An actual controversy exists between plaintiffs and all the defendants concerning their
9 rights, privileges, and obligations in that plaintiffs contend that defendants' above-mentioned actions have
10 violated and will continue to violate Section 1501 of the City Charter, and defendants contend in all
11 respects to the contrary

12 THIRD CAUSE OF ACTION

13 VIOLATIONS BY DEFENDANTS CITY COUNCIL AND CITY MANAGER 14 OF SECTION 15.36.100 OF THE LONG BEACH MUNICIPAL CODE

15 48 Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1
16 through 39 above.

17 49 In violation of Section 15.36.100 of the Long Beach Municipal Code, defendant Taboada,
18 acting as City Manager, has posted gas rates, fees, and charges for the City which are not reasonable and
19 which are not comparable to rates, fees, and charges by other like utilities in the Southern California area.

20 50 In violation of Section 15.36.100 of the Long Beach Municipal Code, defendant City
21 Council has not adopted resolutions disapproving of the above-mentioned gas rates posted by the City
22 Manager and approving gas rates for the City of Long Beach Gas Department that are reasonable and
23 that are comparable to rates, fees, and charges by other like utilities in the Southern California area.

24 51 Injunctive relief is necessary to prevent all the defendants from continuing to engage in the
25 unlawful practices as alleged herein. Defendants Taboada and City Council and persons acting in concert
26 therewith, have done, are now doing, and will continue to do or cause to be done, the above-described
27 illegal acts unless restrained or enjoined by this Court. Unless the relief prayed for below is granted, a
28 multiplicity of actions will result. Plaintiffs have no plain, speedy, or adequate remedy at law, in that it is

1 difficult to measure the amount of monetary damages that would compensate these plaintiffs and
2 members of the class for the wrongful acts of defendants and, in any event, pecuniary compensation alone
3 would not afford adequate and complete relief for class members. Unless these defendants are
4 immediately restrained from committing further illegal acts, their above-described acts will cause great
5 and irreparable damage to plaintiffs and others similarly situated. Some class members, for instance, will
6 forego food to pay for the increase in their utility bill, while other class members will be evicted and will
7 become homeless.

8 52. An actual controversy exists between plaintiffs and defendants Taboada and City Council
9 concerning their rights, privileges, and obligations in that plaintiffs contend that these defendants' above-
10 mentioned actions have violated and will continue to violate Section 15.36.100 of the Long Beach
11 Municipal Code, and these defendants contend in all respects to the contrary.

12 **FOURTH CAUSE OF ACTION**

13 **TAXPAYER CLAIM AGAINST ALL DEFENDANTS**

14 **FOR INJUNCTIVE AND DECLARATORY RELIEF**

15 53 Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1
16 through 39 above

17 54. Defendants' actions and practices complained of in this complaint and petition constitute a
18 waste of public funds within the meaning of Code of Civil Procedure §526a. It would be futile to make a
19 demand on defendants.

20 55. There is no adequate remedy at law and plaintiffs, as taxpayers, will suffer irreparable injury
21 if the requested injunction does not issue to prevent the illegal expenditure of taxpayer monies.

22 56. Plaintiffs have no plain, speedy, or adequate remedy at law other than the relief requested in
23 this complaint.

24 57. An actual controversy exists between plaintiffs and all the defendants concerning their
25 rights, privileges, and obligations in that plaintiffs contends that defendants' above-mentioned actions
26 have violated and will continue to violate Section 1502 of the City Charter and Section 15.36.100 of the
27 Long Beach Municipal Code, and defendants contend in all respects to the contrary.

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiffs respectfully pray that this Court grant the following relief.

3 58. Certification of the first and second causes of action as a class action on behalf of the
4 proposed class;

5 59. A preliminary and permanent injunctions prohibiting all defendants and their respective
6 agents, employees, and all other persons acting in concert with them from continuing to charge customers
7 of the City of Long Beach Gas Departments gas rates that are significantly different and higher than the
8 gas rates charged by like utilities in the Southern California area,

9 60. Issue a declaration that the challenged policies and practices of defendants violate Section
10 1501 and 1502 of the City Charter and Section 15.36.100 of the Long Beach Municipal Code,

11 61. Disgorgement and/or payment of all overcharges to the proposed class. Such charges
12 currently are \$38 million and increasing;

13 62. Award plaintiffs and/or their counsel reasonable attorneys' fees and costs for bringing this
14 lawsuit;

15 63. Provide a jury trial on all issues so triable, and

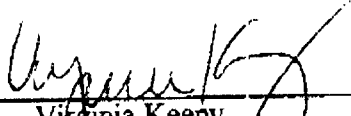
16 64. Grant such other and further relief as the Court deems just and proper.

17 DATED: May 31, 2001

Respectfully submitted,

HADSELL & STORMER, INC.

LAW OFFICE OF ROBERT D. NEWMAN

21 By 
22 Virginia Keeny
23 ATTORNEYS FOR PLAINTIFFS