

Decision No. 43949

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

UNITED STATES OF AMERICA,
 Complainant,
 vs.
 PACIFIC GAS AND ELECTRIC COMPANY,
 Defendant.

ORIGINAL

Case No. 4950

OPINION AND ORDER DENYING PETITION FOR REHEARING

The petition for rehearing filed herein by the United States respecting Decision No. 43720, rendered January 17, 1950, which granted the defendant's motion to dismiss, has received the careful consideration of the Commission. A reading of this petition convinces us all the more that petitioner either does not know what kind or type of special rate relief it desires, or is unable to make known to the Commission, with reasonable certainty, its desire in this regard. The Commission can be guided only by the record and petitioner's assertions as to what relief it is demanding. The petition for rehearing would appear to ask for a return to the "exchange" or "wheeling" theory of the case, which theory was abandoned by petitioner in its briefs.

Petitioner reiterates that it is not asking defendant to do anything more or other than it is now doing. Obviously, this cannot be so. Were it so, petitioner would not now be before this Commission seeking to invoke its jurisdiction in the premises.

The authorities cited by petitioner are not in point. Due process of law has been accorded to the fullest extent. The simple

fact is that petitioner did not prove a case that would justify the Commission in awarding it any type or kind of special rate relief. In arriving at such conclusion, the Commission viewed petitioner's evidence in the most favorable light and gave to it the benefit of every inference and presumption to which it was entitled and, where any conflict existed, adopted the view most favorable to petitioner and accepted as true the evidence, which petitioner presented. But viewed in this light, the petitioner failed to make out a case. Nothing appears in the petition for rehearing warranting the Commission in changing the view it expressed in its decision, concerning which rehearing is sought.

In denying the petition for rehearing, herein, we wish to make it clear that the record in this case is in such a confused and contradictory state that it does not lend itself to a rational adjudication or prescription of any type or kind of special rate or rate relief and, when we speak of "the record," we are referring to the record that this petitioner, itself, has made. The proof made by petitioner tended to support the relief prayed for in its complaint but that type of relief was rejected and disowned by petitioner in its briefs. The Commission cannot speculate as to the relief desired. It can interpret and adjudicate only the record which petitioner made and not some record it should have made.

No useful purpose, we believe, could be served by granting the petition for rehearing and taking further evidence or hearing further argument. Surely, this could add only further confusion to the presently confused record.

The action taken by the Commission in dismissing the complaint herein was upon a motion to dismiss and, in light of the grounds upon which such action was based and the state of the record (the

record as it stood at the close of complainant's case), such dismissal was not an adjudication upon the merits as that term is generally understood in law. There is nothing to prevent petitioner from filing a new complaint seeking whatever relief it may be advised to pray for.

In our opinion, no justification has been shown by petitioner for the granting of a rehearing, and, accordingly,

IT IS ORDERED that said petition for rehearing, filed herein, be and the same is hereby denied.

Dated, San Francisco, California, this 14th day of March, 1950.

R. J. [Signature]
Justice J. [Signature]

[Signature]

[Signature]
Commissioners