

ORIGINAL

Decision No. 67946

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Richard Connelly Miller et al.,

Complainant,

vs.

Pacific Gas and Electric Company,

a corporation,

Defendant.

Case No. 7603
(Filed April 29, 1963)

Hallinan, Shapiro and Patrick Sarsfield Hallinan,
by Carl B. Shapiro, with Richard Connelly Miller,
for complainants.

F. T. Searls, John C. Morrissey and Malcolm A. MacKillop,
for defendant.

Greville L. Way, for the Commission staff.

O P I N I O N

Complainants allege that as consumers of gas and electric-
ity sold by defendant in various Northern California cities they
have been obliged, because of defendant's advertising and other
informational activities, to pay "excessive, unlawful, unjust,
and unreasonable rates." They request: (1) a cease and desist
order requiring defendant to discontinue all sales promotion,
political and educational activities referred to in the complaint,
and (2) a reduction in rates commensurate with the alleged savings
and costs to be achieved by discontinuance of such activities.

The answer objects to the form of the complaint as
indefinite and uncertain with respect to the statutes, regulations
or laws alleged to have been violated and the transactions or
activities alleged to be "unlawful, unjust and unreasonable
practices." Defendant denies all of complainants' allegations

(except the one which refers to its corporate existence and principal place of business), and presents two affirmative defenses:

(1) that the "functions" to which complainants object may lawfully be performed and that to prohibit these functions would deny to defendant various rights guaranteed by the United States and California Constitutions; (2) that expenditures by public utilities for sales promotion, development and advertising are legitimate charges upon income for rate purposes; that expenses for political activities, lobbying and "PG&E Progress" (a publication enclosed with customers' bills) are not claimed in rate proceedings before the Commission and are not a charge to ratepayers; that expenditures for all its functions have been and are reasonable in amount. Defendant alleges, in light of the foregoing assertions, that the complaint fails to state a cause of action and requests that it be dismissed.

Defendant filed a motion to dismiss the complaint on July 12, 1963, prior to the commencement of the hearings, and renewed the motion orally at the hearings, which were held on seven days during July and August, 1963, at San Francisco before Examiner Gregory. At the conclusion of complainants' presentation of evidence defendant elected to submit the case on its motion to dismiss. The case was taken under submission on January 6, 1964, after receipt of briefs from both parties.

On March 20, 1964 complainants filed a petition to set aside submission and to reopen the case for receipt in evidence of a recent Federal Power Commission order which instituted an accounting classification (Account 426.4) for recording expenditures by utilities subject to the provisions of the Federal Power Act

(of which defendant is one) for certain civic and other activities.^{1/} Petitioners requested that the evidence be evaluated in accordance with the new accounting "definition of political activity" and that "the whole of the proceedings be recommenced in the light of this new and additional evidence" (Pet. p.3.).

The petition should be denied. As noted by both parties, we can take official notice of the prescription by the FPC of Account 426.4 and we do. We do not, however, perceive any reason for reopening the proceeding to allow additional evidence concerning defendant's accounting for expenditures in the questioned classification. The gravamen of the complaint is that defendant be ordered to cease--not just to account for--the various activities mentioned in the pleading. Neither the FPC rule nor Item 573 of this Commission's Annual Report form purports to forbid the activities complained of; moreover, complainants have not pointed out, either in their petition to set aside submission or in their request to the Commission, during the hearings, for reversal of the examiner's rulings on this point (which was denied), a single instance of exclusion of factual evidence as a result of the examiner's rulings based on Item 573 of the Annual Report form. Finally, the definition of "political activity" contended for by complainants at the hearing was, at that

^{1/} FPC Order No. 276 of December 18, 1963, instituting Account 426.4--"Expenditures for certain civic, political and related activities"--(28 Fed. Reg. 14267, December 25, 1963). Pacific Gas and Electric Company is required to maintain its accounts in accordance with the FPC Uniform System of Accounts for Class A and B Utilities and Licensees, effective January 1, 1961 (Resol. No. 302, adopted by this Commission on September 20, 1960). Account 426.4, as finally adopted by the FPC, differs little from Item 573 of the Annual Report forms prescribed by this Commission and used by defendant. (See pg.478 - PG&E Annual Report to Commission; also, see Exhibit A of Answer to Petition to Set Aside Submission for texts of FPC proposed and adopted "definitions" and the "definition" in Item 573 of the Annual Report form.)

time, only a proposed definition to be used in Account 426 of the FPC Uniform System of Accounts. The adopted text is quite different from the one previously proposed.

We pass to a brief review of the complaint and the evidence adduced by complainants, followed by a consideration of the motion to dismiss.

The complaint alleges, in substance, that complainants have been forced to pay excessive and unlawful rates for gas and electricity because of "functions" undertaken by defendant unrelated to the "lawful and proper function" of delivering gas and electricity at reasonable costs and profits related to the fulfillment of that "function". The alleged improper functions are, in substance, (complaint, pars. 6-12) that defendant: (1) engages in "political activity" as defined in standard dictionaries; (2) sponsors contests; (3) presents information, argument and other material through paid advertisements; (4) indoctrinates youth through free distribution of films and other materials to schools and other institutions, groups and individuals; (5) diffuses news and opinion to the public through the "PG&E Progress"; provides speakers, maintains a News Bureau "and exercises this function through still other means"; (6) indoctrinates employees at extended lunch hour "indoctrination sessions" and by magazines and other unspecified methods; (7) promotes sales of appliances to increase consumption of gas and electricity. The balance of the complaint is argumentative in content and tone.

Complainants, at the hearing on July 30, 1963, sought leave to amend the complaint by inclusion of allegations concerning defendant's employment practices. The request was denied by the examiner, who later sustained objections to questions directed by

complainants to defendant's personnel manager concerning that subject, on the ground of irrelevancy. The examiner's rulings concerning defendant's employment practices were affirmed by the Commission after consideration of complainants' written appeal for reversal of the rulings and defendant's answer thereto. The appeal also included objections to other rulings by the examiner made during the hearing. We reaffirm our previous disposition of the issues presented by complainants' appeal from the examiner's rulings.

Complainants' evidence, produced chiefly through officials and employees of defendant who appeared voluntarily, relates primarily to activities of the company in the fields of sales promotion and dissemination of news and other information concerning defendant's operations, service and interests as an investor-owned public utility. The company conceded that it had conducted these activities. There is no evidence in this record, however, that the monies alleged to have been expended by defendant for such activities were not properly accounted for. At the risk of unduly expanding this opinion, we believe that a recital of the main features of complainants' charges and the context in which we are asked to consider them may be helpful at this point.

Complainants insist that they are acting voluntarily on behalf of all consumers of gas and electricity supplied by defendant, a burden which they state should be undertaken by this Commission in an investigatory proceeding on its own motion in order to develop the relevant facts.^{2/}

^{2/} Of the 43 complainants and intervenors, 31 have Berkeley addresses (22 separate premises); 3 are in Oakland (2 premises); 4 are in Albany (2 premises); 2 are in San Francisco (2 premises); 2 are in Carmel (1 premise); one is in Orinda.

Taking complainants' statement of the evidence as it appears in their brief (pp. 4-8), under the subject heading "Points Raised By Complainants", the record shows, with respect to alleged improper political activity, that defendant "gave money to organizations"; "overtly" participated in a Palo Alto election; "continues to maintain interest-free deposits in various banks"; engaged in "lobbying" activity. With regard to sales promotion, the record shows that the company paid for advertising on billboards and in newspapers and other media. In connection with the charge of improper educational and informational activities, the record reveals that defendant financed films for schools, furnished comic books to school children (or paid the cost thereof), introduced cookbooks in schools and conducted public home economic demonstrations. With regard to alleged improper dissemination of news and opinion, it was shown that defendant issued press releases; assigned speakers for public meetings; issued the "PG&E Progress"; issued pamphlets on various aspects of natural resources; put out films; maintained a News Bureau designed to produce news releases for submission to newspapers throughout defendant's system. In connection with informational activities related to its employees, the record shows that employees were informed, from time to time, concerning matters considered to be of mutual interest to them and the company, by means of a magazine, "PG&E Life", and by training sessions including the showing of movies. The record further shows that defendant has been active in promoting sales of gas and electric appliances on the assumption, not controverted by complainants' showing, that increased use of gas and electricity tends to reduce unit costs and thereby benefits the consumers. Finally, it was shown that defendant conducts tours of inspection of its facilities.

The record presents no substantial factual issue, since defendant has conceded that it performs the activities complained of while asserting their propriety in its motion to dismiss and its briefs.

Defendant, noting in its motion that complainants' request for reduced rates obviously cannot be considered unless the utility were to be required to discontinue all the activities complained of, argues that this Commission and others throughout the United States have consistently authorized expenditures for sales and promotional activities and that such commission action finds ample support in decisions by the Supreme Court of the United States. With regard to political activities and publishing of "PG&E Progress", defendant asserts that it has not claimed expenses for such activities in rate proceedings and that the Commission has found, in prior proceedings, that such expenses are not a charge to ratepayers; moreover, there is no Commission rule or regulation forbidding political activity by defendant.

Complainants' other allegations of improper activity by defendant require no special comment, other than that they find no support in the evidence, or otherwise, in this record. There is no showing that any activity complained of was in violation of any rule, regulation or order of this Commission, was improperly accounted for, or was otherwise unlawful or unreasonable.

The motion to dismiss the complaint should be granted.

O R D E R

IT IS ORDERED that complainants' petition to set aside submission of and reopen this proceeding be and it is denied, that

defendant's motion to dismiss the complaint herein be and it is granted, and that the complaint herein be and it is dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at Los Angeles, California, this 30th day of SEPTEMBER, 1964.

Franklin B. Holoboff
President

John E. Kitchell

George T. Grover

William L. Demott

Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.