

ORIGINAL

Decision No. 76107

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the practices,)
contracts, service and facilities)
of The Pacific Telephone and)
Telegraph Company.)

Case No. 8858

ORDER DENYING THE COMMISSION
STAFF'S MOTION TO DISMISS

At the conclusion of The Pacific Telephone and Telegraph Company's (Pacific) direct case on the subject of the Western Electric adjustment in the above proceeding the Commission staff moved to dismiss this part of the proceeding on the ground that Pacific has not presented any "new substantial evidence" (TR. 1392).

The staff's motion is essentially identical with the one it presented by oral argument before the full Commission on June 24, 1969 (TR. 242). The Commission denied this motion (TR. 275). The only difference is that the present motion has been made after the conclusion of the cross-examination of Pacific's witness Harrigan. The only ground stated in support of the motion is that no "new substantial evidence" has been presented from that introduced by Pacific in the rate proceeding which preceded the initiation of the investigation herein (see Decision No. 74917 in App. No. 49142, dated November 6, 1968).

The Commission concludes that the staff's motion should be denied. Some of Pacific's evidence is new. Witness Kendrick has presented a production efficiency study not present in the recent ratemaking proceeding (Exh. No. 2). Two new exhibits have been introduced at the request of two members of the Commission

who questioned one of Pacific's witnesses (Exh. Nos. 11 and 14). Another late-filed exhibit, which may contain new data on an old argument of Pacific's, has not been received (Exh. No. 13A).

In stating the renewal of its motion, the staff did not present any detailed argument why the above evidence is entitled to little or no weight. The staff did not cross-examine any of Pacific's witnesses. Finally, Pacific has presented some testimony which purports to show that Western Electric Co. should receive the same treatment as accorded to the Automatic Electric Co. in our recent decision which established rates for the General Telephone Co. (Decision No. 75873 in App. No. 49835, dated July 1, 1969). The staff has not presented rebuttal testimony to Pacific's evidence on this point, nor did it present any specific argument on it while advancing its renewed motion.

In considering a motion to dismiss on the evidence presented by the party with the burden of proof (i.e. Pacific), we must view the evidence most favorably to it (16 Cal. Jur.2d 274). The direct evidence of one witness can be sufficient for proof of any fact (California Evidence Code, Sec. 411). We conclude that affirmative action on the staff's motion might be premature without considering the parties' arguments presented in briefs at the conclusion of the hearings.

C. 2858 - hh a

Good cause appearing,

IT IS ORDERED that the motion to dismiss presented orally by the Commission staff on July 31, 1969 (TR. 1392) is denied.

Dated at San Francisco, California, this 26th day of AUGUST, 1969.

William L. ...
President

J. P. ...
...
Commissioners

I dissent
August

Commissioner Fred P. Morrissey
Present but not participating.