

ORIGINAL

Decision No. 79930

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James B. Packard,  
Complainant,

v.

The Pacific Telephone and  
Telegraph Company,

Defendant.

Case No. 9326

James B. Packard,  
Complainant,

v.

Pacific Gas and Electric  
Company,

Defendant.

Case No. 9327

ORDER OF DISMISSAL

In Case No. 9326, Complainant has alleged that Defendant, The Pacific Telephone and Telegraph Company (PT&T), has arbitrarily raised its rates to Complainant without his consent. He asks for damages of \$658,000, as well as a refund of \$577.15, which is his calculation of the difference in the rates charged in 1947 and the amount that PT&T has collected from him since then.

In Case No. 9327, Complainant seeks damages in the amount of \$1,500,000 from Defendant Pacific Gas and Electric Company (PG&E)

as well as a refund of \$360.74, based on the difference between the rate schedules in force at the time Plaintiff's gas and electric services were initiated and the present rates for these services.

Since the theories of both complaints proceed on common grounds, they will be consolidated for purposes of this order.

Complainant indicates that he obtained services from Defendants on the dates shown in his complaint and at no time has agreed to pay higher rates than those established at the time of commencement. Thus, Complainant states that:

"Plaintiff's Complaint based on prohibition of Cal.Const. Art. I Section 16, Public Utilities Code Section 451 - unjust charges - and Section 532 - Commission prohibited from authorizing any increase in plaintiff's contract rates previously filed with and authorized by the Commission without plaintiff's consent."

Article XII, Section 23 of the California Constitution reads, in part, as follows:

"The Public Utilities Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Public Utilities Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution."  
(Emphasis added.)

The Legislature has conferred the power to fix rates to be charged by public utilities on the Commission. Public Utilities Code, §§451, et seq. Defendants are public utilities within the provisions of Article XII, §23 of the California Constitution and §§218, 222, and 234 of the Public Utilities Code.

No allegation is made that either Defendant charged or received payment in excess of effective tariffs on file with the

Commission at the time service was rendered.

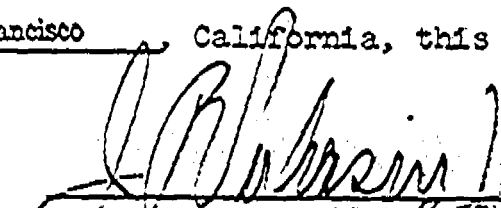
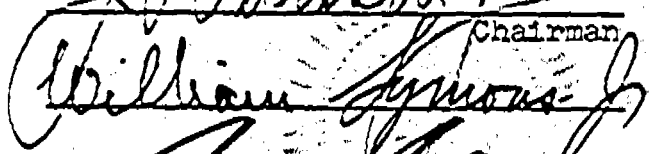
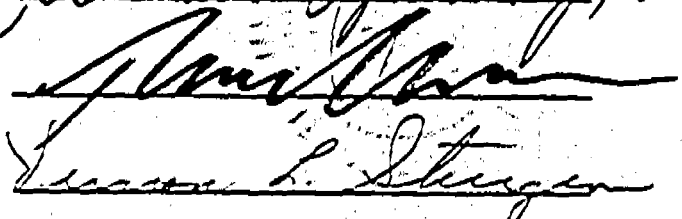
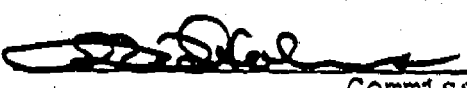
Motions to dismiss were filed by each Defendant. These motions will be granted. Complainant has stated no action of the Defendants which is violative of law or public policy. It would appear that Complainant is under the misapprehension that utility rates are a private contract matter between the utility and the customer. This is not so. Just and reasonable rates are set by this Commission (Public Utilities Code, §451) and the utility is required to charge those rates, and no others, unless with the special permission of the Commission. Public Utilities Code, §453. At such time as the Commission duly determines that a different rate is required, it becomes the just and reasonable rate, and all other charges become unlawful. Public Utilities Code, §451.

Insofar as Complainant asks for damages other than a return of moneys paid to the Defendants, it seeks a remedy not within the power of this Commission to accord. Money damages are a matter for the courts.

The complaints herein are dismissed for failure to state a cause of action.

The effective date is the date hereof. The Secretary is directed to serve a copy of this order on all parties to this proceeding.

Dated at San Francisco, California, this 11<sup>th</sup>  
day of APRIL, 1972.

  
Chairman  
  
  
  
Commissioners