jmd/JR

Decision No. 80073

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RICHARD H. SEIDEN, Complainant, vs. PACIFIC GAS AND ELECTRIC COMPANY, Defendant.	Case No. 9367 (Filed April 20, 1972)
DICK GREGORY, WALTER KWIATEK, GEORGE MCADOW, LESLIE MCADOW, PATRICIA MACDONALD, RUTH O'HEARN, JUDI PHILLIPS and MYRA SCHIMKE, Complainants, vs. PACIFIC GAS AND ELECTRIC COMPANY, Defendant.	Case No. 9370 (Filed May 2, 1972)
PEOPLE'S LOBBY, INC., Complainant, vs. PACIFIC GAS AND ELECTRIC COMPANY, Defendant.	Case No. 9372 (Filed May 5, 1972)

Thomas J. Gundlach, Attorney at Law, for People's Lobby, Inc.; William M. Bennett, Attorney at Law, for complainants in Case No. 9370; Richard T. Franco, San Francisco Neighborhood Legal Assistance Foundation, for William H. Mitchell; and Richard H. Seiden, in propria persona; complainants.
John C. Morrissey, Malcolm H. Furbush, Robert Ohlbach and Daniel B. Gibson, Attorneys at Law, for Pacific Gas and Electric Company, defendant.
Richard Gravelle, Attorney at Law, for the Commission staff.

O P I N I O N

Complainants have each filed a complaint alleging, inter alia, that defendant is using money collected from ratepayers for political advertising against the Clean Environment Act (Proposition 9 on the State ballot) to be submitted to the voters on June 6, 1972, and that such activity is unlawful. In addition, Case No. 9372 alleges that defendant has called meetings of its employees to inform them that Proposition 9 is bad legislation and that employees may lose their jobs if it becomes law. Complainants sought a cease and desist order, and pray for an injunction against defendant to prevent it from opposing Proposition 9 and from engaging in other political activity. In Decision No. 80048, dated May 9, 1972, the Commission denied cease and desist orders in all three cases, stating: "None of the complaints cite specific and convincing authority for the issuance of a cease and desist order against defendant based on its corporate practice of enclosing editorials with its monthly billings or other activities on issues before the voters in impending elections. Therefore, complainants' request for a cease and desist order is denied." In the same decision, the Commission set the three cases for oral argument on May 12, 1972, limited to "the legal issues raised in these pleadings regarding the lawfulness of defendant's activities with regard to Proposition 9, as alleged in the various complaints, and the Commission's jurisdiction to act thereon..."

The defendant answered the complaints, denied many of the allegations, but admitted that it was engaging in activity to influence voters to vote against Proposition 9, and did not deny a statment in the complaint that a speaker at a meeting of company employees asserted that if Proposition 9 passed "it would cause mass unemployment and Local 1245 (a union representing PG&E employees) could be out of a job." The matter came on for oral argument on May 12, 1972 before Examiner Barnett, at which time defendant moved to dismiss all complaints on the ground that they did not state facts sufficient to constitute a cause of action.

For the purpose of this opinion, we consider all material facts well pled as true. In essence, these material facts are, and we find: (1) For approximately the past two months defendant expended over $16,000 to disseminate articles in opposition to Proposition 9 in a publication called "The PG&E Progress". The publication is distributed to all customers of defendant as an insert in its billing envelope. One statement in the articles was to the effect that defendant's ability to serve adequate and reliable energy to its customers would be greatly lessened if Proposition 9 became law; (2) on April 27, 1972, defendant called a meeting of some 200 employees for the purpose of discussing Proposition 9 at which time the employees were told that Proposition 9 was bad legislation and that its passage could mean the loss of jobs to defendant's employees; and (3) the aforesaid activity is political activity.

The only issue that need be decided is whether the methods and activities of defendant in presenting its opinion concerning a Proposition that will be on the ballot on June 6, 1972 is in violation of law. We express no opinion on the merits or demerits of Proposition 9, or on the truth or falsity of any statements made by defendant in its presentation.

In our opinion, defendant's political activities are not in violation of law and, therefore, not subject to being enjoined by this Commission. In Miller vs. Pacific Gas & Electric (Decision No. 67946, dated September 30, 1964, in Case No. 7603) the Commission

dismissed a complaint which asserted that defendant's political activities in publishing the PG&E Progress were unlawful. We said, among other things, "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." In Pacific T&T vs. Public Utilities Commission (1954) 34 Cal. 2d 822, 828, the Supreme Court recognized that the devotion of property to a public use by a corporation does not destroy its ownership and, in the absence of statutory authority, does not justify the taking away of management and control of the property from the corporation on the ground that public convenience would better be served thereby, or that the corporation has proven false or derelict in the performance of its public duty.

We have found no statute prohibiting political activity on the part of utilities. The Public Utilities Code sections relied upon by complainants, Sections 451, 453 and 478, relate to rates and service, and should not be stretched to prohibit political activity. There is no intimation in the complaints in these cases, or in the arguments of counsel, that defendant's ability to provide gas and electric service at reasonable rates without discrimination has in any way been impaired by the activities complained of. (Cf. Pacific T&T vs. Public Utilities Commission, supra, 34 Cal. 2d at 832.)

As we have stated on occasions too numerous to mention, the expenses of political activity such as indulged in by defendant cannot be charged to the ratepayer, but must be paid for from earnings. In Pacific T&T vs. Public Utilities Commission (1964) 62 Cal. 2d 634, 670, the Commission disallowed $17,000 for legislative advocacy, but refused to reach the issue of the utility's right to engage in such activity. The Supreme Court agreed "with the general policy of the Commission that the cost of legislative

advocacy should not be passed on to the ratepayers" and found the disallowance proper. (At p. 670.) Defendant follows Commission policy in accounting for the expenses associated with defendant's political activity.

The case of Mines vs. Del Valle (1927) 201 Cal. 273, cited by complainants is not in point. In Mines the Supreme Court affirmed judgment against certain officers of the city of Los Angeles compelling repayment of money expended upon publicity in the form of newspaper ads, etc., for the purpose of supporting a municipal bond issue. The basis for the decision was that there was no statutory authority to authorize such expenditures. This case has nothing to do with the expenditures of the earnings of an investor-owned public utility.

In our opinion, the statement made to employees at a meeting on April 27, 1972 that the passage of Proposition 9 would mean the loss of jobs was merely a prediction and not a threat to the employees.

The Commission concludes that the complaints do not state facts sufficient to constitute a cause of action.

O R D E R

IT IS ORDERED that the complaints are dismissed.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th day of MAY, 1972.

Chairman

Commissioners