J.:/NB

ORIGINAL

Decision No. 80379

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARIE P. BRESSLER, et al., Complainant, vs. BAYSHORE PROPERTIES, INC., a California corporation, Defendant.	Case No. 9186
MARIE P. BRESSLER, et al., Complainant, vs. PACIFIC GAS AND ELECTRIC COMPANY, Oakland, California, Defendant.	Case No. 9187
Investigation on the Commission's own motion into the status, operations, service, equipment, facilities, rates and records of BAYSHORE PROPERTIES, INC., and into the rules of PACIFIC GAS AND ELECTRIC COMPANY.	Case No. 9206
BAYSHORE PROPERTIES, Complainant, vs. PACIFIC GAS AND ELECTRIC COMPANY, Defendant.	Case No. 9217

OPINION AND ORDER OF MODIFICATION

Decision No. 79811 herein was issued on March 14, 1972. It interpreted Pacific Gas and Electric Company's (PG&E) Rule 18, C.2. not to authorize resales of electrical energy purchased from PG&E by a commercial landlord to its tenants on any terms which permit a charge which varies in proportion to the amount of energy consumed.

The parties were allowed until June 1, 1972 to rearrange their dealings so that they would be in conformity with Rule 18.

Bayshore Properties (Bayshore) petitioned for rehearing on March 24, 1972. Rehearing was denied by Decision No. 80023 on May 9, 1972. An application for review is now pending in the California Supreme Court (S.F. No. 1222).

On June 1, 1972, Bayshore filed its petition to modify. It advises that Bayshore is seeking to renegotiate its leases to a format which determines the lease payment without reference to consumption of electricity. Bayshore seeks a declaration that the lease format is not in violation of Rule 18, C.2.

Bayshore will enter into new leases with all tenants who consent thereto. For tenants who refuse to consent to lease modification, Bayshore will hold the modification offer open during the remainder of the tenant's lease term without prejudice to its rights to attempt to collect for electricity under the old lease.

Bayshore also seeks an order clarifying the reporting requirements imposed on it[1] by that decision and further an extension of PG&E's temporary authorization to serve Bayshore.

The staff on June 5, 1972 filed a reply to the petition to modify indicating support of the relief therein sought.

Complainant Bressler on June 7, 1972 filed a pleading in opposition to Bayshore's petition. The pleading indicated no opposition to indefinite extension, but challenged the proposed lease form.

---

1 Ordering paragraph 2 of Decision No. 79811 required Bayshore to report when one of the alternative methods of service described had been achieved and to make progress reports if no alternative had been accomplished within 60 days after the effective date thereof.

The Commission on June 13, 1972 issued Decision No. 80165, which in effect extended indefinitely the period within which the dealings between tenants and Bayshore may be brought into conformity with Rule 18.

Discussion

Complainant Bressler's contention that Bayshore has only two alternative modes of electric resale (i.e., either as a certificated utility or by submetering) is contrary to the plain meaning of Rule 18 and of our previous decision herein. Nothing in the rule itself or in our interpretation thereof purports to prevent a commercial landlord from supplying electricity under arrangements whereby the electrical charge is "absorbed".

Complainant Bressler asserts that the proposed new lease paragraph is "outrageous" and seeks disapproval of the proposal. The only grounds on which the lease could be "disapproved" is noncompliance with Rule 18. We have no general jurisdiction to either veto or reform leases, even though the landlord and tenant may have mutually agreed to electrical resale. Nor do we have the power to compel an unwilling landlord or tenant to accept resale or to elect one alternative form of resale.

Furthermore, the form of resale complainant seeks, submetered resale, is one which, under Rule 18, is not available in a commercial context without specific Commission approval (Rule 18, C.4.). Since the landlord herein has never indicated that it would find metered resale an acceptable alternative to resale with charges based on consumption estimates, it would be pointless for us to consider whether the allegations of the various pleadings would justify the grant of such authority and what conditions and restrictions would be necessary if it were authorized.

Complainant Bressler in a second response filed June 27, 1972 renewed her request for direct service from PG&E. While under Rule 18 a commercial tenant unable to obtain electrical service in accordance with the conditions of either Rule 18, C.2. or Rule 18, C.4., may require direct service, such relief might cause special problems.

Unless the landlord will voluntarily allow PG&E access to the tenant's premises, enforcement of this right would require PG&E to exercise its power of eminent domain as a utility (CCP §1238 (13)).

Under these circumstances, we think it appropriate to defer consideration of an order requiring direct service until such time as the affected tenants and the landlord have had full opportunity to negotiate on the various forms of resale contracts possible under Rule 18.

We find that:

1. A lease which does not specifically identify a charge for electricity or provide for a rent payment which varies with electrical consumption is in conformity with Rule 18, C.2.

2. The proposal, set forth in Bayshore's petition to modify, is such a lease.

3. Bayshore has never indicated that it would accept a metered resale arrangement.

4. Consideration of whether PG&E should provide direct service to Bayshore's tenants should be postponed to allow time for tenant-landlord negotiations.

We conclude that:

1. We have no power to order either Bayshore or any of its tenants to accept a lease which provides for either an absorption resale or a submetered resale.

2. We have no power to rescind or set aside any landlord-tenant agreement for resale of electricity which conforms to Rule 18.

3. When and if any tenant agrees to any form of lease modification having the characteristics set forth in Finding 1, electrical service by Bayshore to such tenant will be in conformity with PG&E's Rule 18, C.2.

We further find and conclude that the modification of the reporting requirements set forth in ordering paragraph 2 is justified.

IT IS HEREBY ORDERED that Bayshore is excused from the reporting requirements of ordering paragraph 2 of Decision No. 79811 and instead shall report to the Commission the progress of its negotiations with each tenant of Sun Valley Center sixty days after the effective date of this order.

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

Dated at San Francisco, California, this 15th day of AUGUST, 1972.

President

Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.