

Decision No. 80588

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ralph T. Welch,

Complainant,

vs.

Pacific Telephone and Telegraph
Company and Pacific Gas and
Electric Company,

Defendants.

Case No. 9146
(Filed November 9, 1970)

Ralph T. Welch, Attorney at Law, for self,
complainant.

Robert E. Michalski, Attorney at Law, for The Pacific
Telephone and Telegraph Company and Bernard J.
Dellasant, Attorney at Law, for Pacific Gas
and Electric Company, defendants.

Richard A. Dawson, Attorney at Law, for City of
Los Angeles; Glenn A. Forbes, Attorney at Law,
for City of San Leandro; David A. Self, Attorney
at Law, for City of Oakland; and Stephen Kasdin,
Attorney at Law, for self and others listed
(Ellen A. Ewing, et al.); intervenors.

ORDER ON MOTION TO DISMISS

This complaint was filed on November 9, 1970. It alleges that the defendant utilities are required by city ordinance to collect and remit utility user taxes to the Cities of Vallejo, Oakland, Hayward and Berkeley, without being reimbursed for the service. It further alleges that defendants serve a large area of California and that rates charged their customers are based on the total expense of operating its entire system, which includes the service provided without charge to the cities named above, and to others that have adopted utility user taxes. Complainant alleges that he

is a resident of San Leandro which has no utility user taxes and that it is an unfair rate practice to compute his San Leandro rates on operating costs which include the expense of collecting utility user taxes. The complaint prays that defendants be ordered to cease operating as tax collectors without making a reasonable charge to the cities to cover the expense of providing the service.

The answer of PG&E alleges that the rates charged in San Leandro on the date of the complaint were the rates lawfully in effect pursuant to orders of this Commission; that the rates were established before the imposition of the utility users' taxes referred to in the complaint; and that the issue should be presented and considered in a rate proceeding, with all utilities and charter cities in this State invited to participate. The answer of Pacific alleges that the expense involved in collecting the tax is minimal and difficult to ascertain with accuracy; that the complaint does not meet the requirements of Rule 9 of the Commission's Revised Rules of Practice and Procedure, nor Section 1702 of the California Public Utilities Code, in that it is not signed by 25 customers of defendants (PG&E also raised this defense); and that the complaint challenges the rights of a municipality to adopt such an ordinance, which is an issue for the courts to determine and beyond the jurisdiction of the Commission. The scheduling of a hearing date was deferred at the request of the parties until the decision in Rivera vs. City of Fresno (S.F. No. 22810) was issued. The Supreme Court of California decided Rivera on November 29, 1971, holding that the utility users' tax imposed by the City of Fresno was valid and lawful (Rivera vs. City of Fresno (1971) 6 Cal. 3d 132).

Petitions in intervention were filed by the City of Los Angeles on January 12, 1971, by 26 customers of both defendants on February 10, 1971, and by the Cities of Hayward, Oakland, San Leandro and Vallejo on March 10, 1972. All petitions were granted by Commission Decision No. 79979, dated April 25, 1972.

A motion to dismiss was filed by Pacific on March 1, 1972. It argued that the decision in Rivera disposed of all issues presented herein. It further argued that the operational expenses of Pacific were reviewed by this Commission in Application No. 51774 and Cases Nos. 9036, 9042, 9043, 9044 and 9045. Defendant argues that no purpose would be served by scheduling another hearing to consider an issue which should have been before the Commission in other proceedings. The City of Los Angeles filed a motion to dismiss on March 29, 1972, which asserts that the complaint should be dismissed for failure to state a cause of action since it does not allege that defendants have violated any provision of law or rule or regulation of this Commission as required by Section 1702 of the Public Utilities Code. The motion further alleges that the issue touches on the legality of the tax and is therefore beyond the jurisdiction of the Commission and within the purview of the Superior Court; legal authorities are quoted to show that the courts have authorized taxing agencies to designate a utility as a tax collector even though it may be inconvenienced thereby. A hearing on the motions was held on April 19, 1972, in San Francisco, before Examiner Fraser.

Argument was presented by Pacific and the Cities of Los Angeles and Oakland in support of the motion, and by applicant in opposition. Counsel for the 26 customer complainants advised the Commission on the date of hearing, by telephone, that his clients were withdrawing from the proceeding.

Those supporting the motion argued that Rivera holds that the power to tax includes the power to provide a reasonable means to collect the tax. It was further argued that rates are determined on a basis which is applied to an extensive area encompassing many cities and towns. If separate rates were determined for each city and town, it would require a new method of determining rates and would require continuous litigation based on possible population or boundary changes. It was also argued that the jurisdiction to hear this complaint is exclusively in the Superior Court.

In 1967 the Commission held that it did not have jurisdiction to entertain a complaint by a motor carrier who alleged that it was not subject to taxation by a city under the provisions of Section 4302 of the Public Utilities Code (Highway Carriers Association vs. City of Burbank, 66 P.U.C. 705). It was argued that if defendants were ordered to stop collecting and remitting the tax as requested by the plaintiff, litigation to enforce the collection and remittance would undoubtedly be instituted in the Superior Court.

Complainant argued that the sole issue raised by his complaint is whether a municipality should be required to reimburse a utility for collecting and remitting a utility user tax imposed by the city. It was his understanding that some utility districts are compensated for providing the collection service. Counsel for the City of Oakland contended that defendants are reimbursed for their tax collection service. They can invest the money collected until required to turn it in, and they pay no taxes on the use of their own facilities.

Findings

1. Complainant alleges that defendants have perpetrated an unfair rate practice by including in the basis for rates charged in one city the operating expenses involved in collecting and remitting utility user taxes for various other municipalities, without being reimbursed therefor.

2. The allegations of the complaint do not set forth any act or thing done or omitted to be done by defendants in violation of any provision of law or any order or rule of the Commission.

The Commission concludes that complainant has not stated a cause of action within the jurisdiction of this Commission and that the complaint should be dismissed.

IT IS ORDERED that the motion is granted and the complaint is dismissed.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 11th day of OCTOBER, 1972.

Vernon L. Sturgeon
President
William J. Sweeney
John J. Sweeney
Don Sturges
Commissioners

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