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Decision No. 80711

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ELEANOR B. BOUSHEY, customer of the Pacific
Gas and Electric Company,

Complaining Party

Against

PACIFIC GAS AND ELECTRIC COMPANY, a Cali-
fornia corporation

Case No. 9455
(Filed October 18, 1972)

ELLEN STERN HARRIS, stockholder and customer
of the Southern California Edison Company

Complaining Party

Against

SOUTHERN CALIFORNIA EDISON COMPANY, a Cali-
fornia corporation

Case No. 9456
(Filed October 18, 1972)

SHERMAN W. GRISELLE, customer of the
Southern California Edison Company

Complaining Party

Against

SOUTHERN CALIFORNIA EDISON COMPANY, a Cali-
fornia corporation

Case No. 9457
(Filed October 18, 1972)

John R. Phillips, Attorney at Law, Center
for Law in the Public Interest, for
complainants.

Malcolm H. Furbush, Daniel E. Gibson,
Attorneys at Law, and Kathy Todrank,
for Pacific Gas and Electric Company,
defendant.

Rollin E. Woodbury, Attorney at Law, for
Southern California Edison Company,
defendant.

Hector Anninos, Attorney at Law, for the
Commission staff.

O P I N I O N

Complainants Eleanor B. Bouskey, Ellen Stern Harris, and Sherman W. Griselle have each filed on October 18, 1972, a verified complaint alleging, inter alia, that defendants Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) are public utilities subject to the jurisdiction of the Commission; that defendants have mailed, and will continue to mail, with their customers' monthly bills written matter stating defendants' opposition to Proposition 20, the Coastal Conservation Act, which will be presented to the voters on November 7, 1972; and that complainants are harmed as ratepayers and voters by this practice.

Complainants seek an order from this Commission directing that defendants cease and desist from such practices; that defendants be required to mail a letter or statement from proponents of Proposition 20 to all customers who have received defendants' written materials; that the Commission rule that regulated utilities may not now or in the future engage in the complained of conduct; and that these complaints be acted upon expeditiously.

The complaints were consolidated for hearing pursuant to Rule 55 of the Commission's Rules of Procedure. Because of the shortness of time between the filing of these complaints and the election on November 7, 1972, the defendants were required to answer the complaints and serve copies upon the complainants no later than 5:00 P.M. Friday, October 27, 1972. Public hearing was held before Commissioner Thomas Moran and Examiner Robert Barnett on October 30, 1972 at Los Angeles.

Defendants answered the complaints and also moved to dismiss the complaints on the ground that they failed to set forth facts sufficient to constitute a cause of action. Evidence was not taken; the complaints were submitted for disposition of the motions to dismiss.

For the purpose of this opinion we consider all material facts well pled as true. In essence, as to PG&E, these material facts are, and we find:

1. PG&E mails a statement of charges for service to all of its customers on a monthly basis for usage of electric power. Included in each monthly bill is a newsletter entitled "PG&E Progress" comprised of general items of interest to the customers of PG&E.

2. Expenses involved in the mailing of the bills, such as paper, postage, envelopes and employees' time, are included as business expenses in the preparation of profit and loss statements, as these bills must be sent in order to enable PG&E to obtain payment from their customers for the services it provides.

3. In October 1972, PG&E has mailed and will continue to mail its monthly bill to its customers. Enclosed in the envelope which contains each bill is the monthly "PG&E Progress". The first three pages of the report deal specifically with the major opposition arguments against the Coastal Conservation Act which will appear on the November 1972 ballot as Proposition 20; and objections to the measure itself are expressly mentioned.

4. The discussion of the Coastal Conservation Act is a political statement.

5. PG&E has not provided its customers with an equal exposure to the side in opposition to the political statement contained in the "PG&E Progress".

The allegations against Edison are similar to those against PG&E and need not be set forth.

The only issue that need be decided is whether the methods and activities of defendants in presenting their opinion concerning a Proposition that will be on the ballot on November 7 is in violation of law. We express no opinion on the merits or demerits of the Proposition, or on the truth or falsity of any statements made by defendants in their presentation.

We take official notice of Commission records which show that the expenses of defendants connected with political activities, such as are involved in this case, are not charged to the ratepayers.

This Commission has recently considered allegations similar to those presented in this case in Seiden vs. PG&E, Decision No. 80073 decided May 16, 1972 in Case No. 9367. In Seiden we held that articles in opposition to Proposition 9 distributed by PG&E in the "PG&E Progress" were political activities which were not in violation of law and, therefore, not subject to being enjoined by this Commission. In our opinion Seiden controls the disposition of this matter.

In this case the complainants assert that we should promulgate a "fairness doctrine" which essentially would require a utility to include in its billing envelopes, at the same time that it includes political material setting forth the utility's point of view, political material prepared by opponents of the position taken by the utility. The opponent's political material would be paid for by the opponents and delivered to the utility for mailing. In our opinion such a fairness doctrine, which would affect all public utilities in the State, both large and small, raises such serious issues concerning freedom of speech and of the press, not to mention the practical problems of notice to opponents, timing of mailing, and costs, that we should only consider such a doctrine in a statewide proceeding where all utilities and other interested parties may participate.

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 7th day
of NOVEMBER, 1972.

Vernon L. Stenger
President

William J. Moran - J.

[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being
necessarily absent, did not participate
in the disposition of this proceeding.

Commissioner Thomas Moran, being
necessarily absent, did not participate
in the disposition of this proceeding.