

Decision 84 10 062

OCT 17 1984

**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMITTEE OF MORE THAN 1 MILLION  
CALIFORNIA TAXPAYERS TO SAVE  
PROP. 13, a nonprofit tax-exempt  
organization,

Complainant,

v.

PACIFIC GAS & ELECTRIC COMPANY,  
a California corporation; SAN  
DIEGO GAS & ELECTRIC COMPANY, a  
California corporation; SOUTHERN  
CALIFORNIA EDISON COMPANY, a  
California corporation; SOUTHERN  
CALIFORNIA GAS COMPANY, a  
California corporation; GENERAL  
TELEPHONE COMPANY OF CALIFORNIA,  
a California corporation; and  
PACIFIC BELL, a California  
corporation,

Defendants.

Case 84-10-022  
(Filed October 4, 1984)

ORDER DISMISSING COMPLAINT

On October 4, 1984, the Committee of More Than One Million California Taxpayers to Save Prop. 13 (Committee) filed a complaint requesting access to the extra space in the billing envelopes of the major California energy and telephone utilities pursuant to Decision (D.) 93887 (as modified by D.82-03-047) and a motion for an ex parte order granting immediate and urgent relief or, in the alternative for a shortening of time for hearing on the complaint.

The Committee states that it is informed and believes that the utility Defendants are members of either the California Round Table or the California Taxpayers Association, both of which are lobbying and/or political action groups consisting of various

businesses in California, and that each of these associations has recently adopted resolutions to assess from its members and expend from such assessments substantial sums in opposition to the passage of Proposition 36. The Committee alleges, also on information and belief, that defendants will contribute funds seeking the defeat of Proposition 36, and that these funds are acquired from the monies received from ratepayers by defendants. The Committee is further informed and believes a principal argument to be propounded by the associations is that, if Proposition 36 is passed, it will result in an unreasonable limitation on the ability of public utilities to set rates necessary to meet ongoing variable expenses. The Committee opposes this argument.

The Committee asserts that defendants send a monthly bill packet by first class mail to each of their utility customers. The weight of the bill packet, which includes the mailing envelope and any required legal notices mailed with the bill, is less than one ounce. Because postage is charged in one ounce increments, the difference between the actual weight of the bill packets and the measure of one full ounce constitutes an additional measure of weight or "extra space" in the envelope which may be used at no additional postage charge.

The Committee alleges that defendants presently include inserts of their own in the "extra space" available in the billing envelopes but fail to make it available to ratepayers as required by D.93887 and D.82-03-047.

The Committee alleges that a substantial number of its supporters are ratepayers of the defendants and that all ratepayers of each of the defendants would benefit from accurate information on the possible effects of Proposition 36 on utility rates and services.

The Committee argues that it should be allowed to include informational inserts for the benefit of defendants' ratepayers in the billing envelopes of all defendants which would provide this assessment of the potential effects of Proposition 36 on utility rates. Since supporters of the Committee, who are ratepayers, are the source of the funds which Committee believes will be used to contribute to the campaign in opposition to Proposition 36, Committee should be permitted to use the "extra space" belonging to these ratepayers to counter the political contributions of defendants.

Since the election, in which Proposition 36 will be decided by the voters, takes place on November 6, 1984, Committee asks that defendants be ordered to allow the inserts in this month's (October's) billing envelopes.

Notice of the filing of this complaint appeared on the Commission's Daily Calendar of October 11, 1984. Under ordinary procedures, we would wait at least 30 days to receive answers from each of the defendants and to determine whether there were other parties whose intervention might prove useful in rendering an informed decision on the complaint. However, because of the shortness of time before the election, and so that Committee might know where it stands with respect to its complaint and can redirect its resources accordingly, we are taking the unusual step of dismissing the complaint without waiting for defendants' answers.

#### Discussion

Because we are complying with the Committee's request for "immediate and urgent action," we do not have the usual benefit of an evidentiary record or defendants' response to the complaint. We are forced in this instance to evaluate the Committee's complaint on its face.

The Committee relies primarily on our invitation in D.93887 (December 30, 1981) for proposals for using "the economic value of the 'extra space' more efficiently for ratepayers' benefit." The Committee proposes that ratepayers will benefit sufficiently from what the Committee asserts is accurate information about Proposition 36 to justify including the Committee's materials in the billing envelope of defendant utilities.

Since the invitation of D.93887, however, we have acted on several proposals that have allowed us to refine our views on the appropriate use of the extra space. Our emphasis in our two subsequent decisions has been on using the extra space to improve the quality and degree of consumer participation in our hearings. In granting the Utility Consumers Action Network (UCAN) access to the envelope of SDG&E, we found that an important interest was "the assurance of the fullest possible consumer participation in CPUC proceedings and the most complete consumer understanding possible of energy-related issues" (D.83-04-020, p. 17). Similarly, we granted Toward Utility Rate Normalization (TURN) access to PG&E's envelope in part because TURN had "demonstrated in its testimony and in past participation in proceedings before this Commission an ability to represent the interests of a substantial segment of the PG&E residential ratepayer population, (was) presently involved in Commission proceedings, (and could not) participate in all the regulatory proceedings of PG&E it might otherwise participate in without significant financial hardship" (D.83-12-047, p. 21).

Better and broader consumer participation not only serves the ideals of democratic government, but it improves the record in our proceedings. From this improved record comes more accurate fact-finding and sounder decisions, to the benefit of all ratepayers.

The Committee has not participated in our proceedings, and its complaint does not suggest that it ever will participate, apart from actions related to its complaint. Its claim to consumer representation is limited to a statement that a "substantial number" of its supporters are ratepayers.

In determining that the extra space could be used to benefit ratepayers, we did not intend to create a public forum for any group that could claim ratepayers as members. Access to the billing envelope has so far been granted only to groups organized specifically to represent ratepayers in our proceedings. While other proposals for use of the extra space may prove to have merit, we do not believe that the Committee's proposal, as set forth in its complaint, sufficiently benefits ratepayers as ratepayers to justify the order the Committee requests.<sup>1</sup>

This matter did not appear on our public agenda as required by the Government Code, however, a sufficient emergency exists, considering that our next regularly scheduled meeting falls after the election, to justify our action today under Public Utilities Code Section 306(b).

#### Findings of Fact

1. The complaint requests access to the extra space in utility billing envelopes for the purpose of providing information on the effects of Proposition 36 on utility rates.

---

<sup>1</sup> We also note that Public Utilities Code Section 453(d) states, "No public utility shall include with any bill for services or commodities furnished any customer or subscriber any advertising or literature designed or intended...to promote the passage or defeat of a measure appearing on the ballot at any election...." Although this statute would bar the relief sought in the Committee's complaint, Consolidated Edison v. Public Service Commission, 447 U.S. 580 (1980), has raised questions about the constitutionality of the statute. We therefore choose to base our dismissal of the Committee's complaint on other grounds.

2. The complaint does not allege that the Committee has participated or intends to participate in our proceedings.

3. The complaint does not allege that the Committee's use of the extra space will improve consumer participation in our proceedings.

Conclusion of Law

The complaint should be dismissed.

Therefore, IT IS ORDERED that the complaint of The Committee of More Than One Million California Taxpayers to Save Prop. 13 is dismissed.

This order is effective today.

Dated October 17, 1984, at San Francisco, California.

I will file a written concurrence.

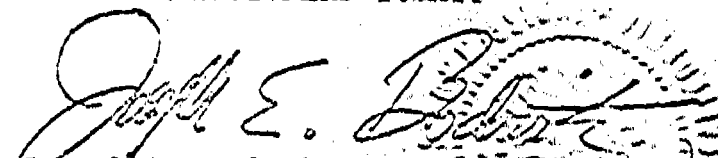
VICTOR CALVO  
Commissioner

VICTOR CALVO  
PRISCILLA C. CREW  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

I will file a written concurrence.

WILLIAM T. BAGLEY  
Commissioner

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director

C.84-10-022

D.84-10-062

COMMISSIONER VICTOR CALVO, concurring.

The reasons stated by the majority for dismissal of the complaint may be well and good, however, my concurrence with the results of this order follows a different reasoning. As I pointed out in my dissent to the order cited by the majority, I am not convinced that anyone, whether a ratepayer group or, as here, a political advocate, is entitled to invade a public utility's billing envelope to convey their messages. (See dissenting opinion of Commissioner Calvo, Toward Utility Rate Normalization, v. Pacific Gas and Electric Company, Decision 84-05-039, Case 83-05-13, \_\_\_\_\_ CPUC \_\_\_\_\_ (1984).)

I believe other media and forums exist that are better suited to carry those messages and I believe that they should be used in favor of a utility's billing envelope. As a result, I do not examine the issue of this complainant's worthiness or intentions. I would simply dismiss the complaint because the relief requested is still at issue before us and is something I am not inclined to grant.



VICTOR CALVO

Commissioner

October 17, 1984  
San Francisco, California

William T. Bagley, Commissioner, Concurring:

This concurrence is written in order to express my continuing disagreement with the Commission majority in T.U.R.N. v. PG&E, Decision 83-12-047.

In that decision, the majority (at page 23) states "It is reasonable to assume that the ratepayers will benefit more from exposure to a variety of views". As unconstitutionally presumptuous as that majority statement may be, if in fact it is valid for T.U.R.N. then it should be valid for Howard Jarvis and the petitioner herein. And if in fact T.U.R.N. has some type of "equitable property right" in the envelope space, derived through ratepayers, then perhaps so does the Committee of More Than One Million California Taxpayers to Save Prop. 13 (Committee). These people who signed the Proposition 36 petitions are California residents, voters and ratepayers.

And further, specific intervenors in P.U.C. proceedings now have the benefit of S.B. 4, (Montoya), signed by the Governor and chaptered as law this year. S.B. 4 authorizes the award of intervenor fees by the P.U.C. It thus becomes less "necessary" for intervenor organizations such as T.U.R.N. to exercise their equitable property right to use the billing envelope for fund raising purposes. That being the case, there is more relative reason to assign some of that space to organizations such as that of petitioners. Courts of Equity might so decree.

It is recognized, as stated in the T.U.R.N. v. PG&E dissent, that such extensions of the majority opinion will "result in a legal and administrative morass". Nonetheless, with that T.U.R.N. majority opinion before us, we cannot simply reject other applicants as is done here.

I do concur in the rejection, not on the basis stated by the majority, but because I continue to believe that any and all such assignment of envelope space by this Commission to other entities is a deprivation of the constitutional rights of the subject utility companies. The real solution, of course, is for this Commission to rescind Decision 83-12-047.

/s/

  
WILLIAM T. BAGLEY

October 17, 1984