

L/afm

Decision 88 01 056 JAN 28 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell, a corporation, for authority to increase certain intra-state rates and charges applicable to telephone services furnished within the State of California

)
) Application 85-01-034
) (Filed January 22, 1985;
) amended June 17, 1985 and
) May 19, 1986)
)

)
) I.85-03-078
) (Filed March 20, 1985)
)

And Related Matters.

)
) OII 84
) (Filed December 2, 1980)
)

)
) C.86-11-028
) (Filed November 17, 1986)
)

ORDER MODIFYING DECISION 87-10-075
AND DENYING REHEARING

Pacific Bell has filed an application for rehearing of Decision (D.) 87-10-075, in which the Commission, at Pacific Bell's request, delayed the filing date for Pacific Bell's 1988 attrition advice letter until January 30, 1988, and also made Pacific Bell's rates subject to refund beginning January 1, 1988 to account for any adjustments associated with the Commission's 1988 attrition review. The Division of Ratepayer Advocates (DRA) has filed a response in opposition to Pacific Bell's application. The DRA opposes Pacific Bell on the merits and also argues that Pacific Bell's application was untimely. We turn first to the DRA's contention that Pacific Bell's filing was untimely.

The DRA points out that Public Utilities Code §1731(b) provides for the filing of an application for rehearing of a decision within 30 days after the date when the Commission mails the decision. The DRA therefore contends that Pacific Bell's

mimeo at 11.) However, to ensure that the delay Pacific Bell requested would not harm its ratepayers, it was essential that we make Pacific Bell's rates subject to refund beginning January 1, 1988.

In any event, there are several reasons why the subject to refund provision of the Decision does not violate the rule against retroactive ratemaking.

The Commission may properly subject a utility's rates to refund to account for adjustments to be made pursuant to a methodology, or formulas, adopted before the date the utility's rates become subject to refund. Any ratemaking is prospective because the formulas are in place before the utility's rates become subject to refund. The California Supreme Court has approved the use of adjustment clauses and noted the importance of the time when the Commission adopts the methodology, as compared with the relative unimportance of the time of its application. See City of Los Angeles v. Public Utilities Commission, 15 Cal. 3d 680, 695-703 (1975); Southern California Edison Co. v. Public Utilities Commission, 20 Cal. 3d 813, 823, 828-30 (1978) (SoCal Edison).

The Commission does not engage in unlawful retroactive ratemaking when it first makes a utility's rates subject to refund for a specified purpose (beginning on a future date) and thereafter calculates the amount to be adjusted starting from the date the utility's rates became subject to refund. See Southern California Gas Co. v. Public Utilities Commission, 23 Cal. 3d 470, 487 (1979).

The rule against retroactive ratemaking applies only to the promulgation of general rates. The Commission does not engage in such general ratemaking when it applies adjustment formulas and therefore the rule against retroactive ratemaking does not limit the Commission when it orders adjustments pursuant to such formulas. See SoCal Edison, 20 Cal. 3d at 816-17, 828-30. See also California Manufacturers Association v. Public Utilities Commission, 24 Cal. 3d 251, 261 (1979).

In sum, we have carefully considered all of the issues and arguments raised in Pacific Bell's application for rehearing

CORRECTION

**THIS DOCUMENT HAS
BEEN REPHOTOGRAPHED**

TO ASSURE

LEGIBILITY

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The DRA points out that Public Utilities Code §1731(b) provides for the filing of an application for rehearing of a decision within 30 days after the date when the Commission mails the decision. The DRA therefore contends that Pacific Bell's

application must be rejected because it was filed on Monday, November 30, 1987, 31 days after the Decision was mailed. However, Code of Civil Procedure §§12, 12a, and 12b and Rule 44.2 of the Commission's Rules of Practice and Procedure extend the period for filing a pleading when the last day for filing is a Sunday. Since Sunday, November 29, 1987 was the 30th day after the Decision was mailed, PacBell's application for rehearing was timely when filed the next day.

Pacific Bell's application for rehearing contends that the subject to refund provision of D.87-10-075 (the Decision) violates the rule against retroactive ratemaking. However, after careful consideration, we conclude that the Decision properly made Pacific Bell's rates subject to refund beginning January 1, 1988 to account for any adjustments associated with the Commission's 1988 attrition review and ordered Pacific Bell to file a 1988 attrition year advice letter on or before January 30, 1988 using the formulas referenced in the Decision.

Pacific Bell's application conveniently ignores the fact that the subject to refund provision about which it now complains became essential because the filing date for Pacific Bell's 1988 attrition advice letter was delayed at Pacific Bell's request. When we issued D.86-12-099 (the December Decision), we contemplated that Pacific Bell would file for 1988 attrition on or before October 1, 1987 (regardless of whether 1988 attrition would increase or decrease its rates), so that the Commission could complete its review of Pacific Bell's filing before January 1, 1988 and implement the new rates on that date. (See Ordering Paragraph 3 of D.85-03-042, requiring Pacific Bell to make future attrition filings not later than October 1.) However, in its petition for modification of the December Decision, Pacific Bell asked the Commission to delay its 1988 attrition filing date past October first because issues pending before the Commission remained unresolved. In our Decision we granted Pacific Bell's request for a delay, to allow Pacific Bell to include in its attrition filing the results of certain specified Commission proceedings, and ordered Pacific Bell to file its 1988 attrition advice letter on or before January 30, 1988. (See D.87-10-075,

mimeo at 11.) However, to ensure that the delay Pacific Bell requested would not harm its ratepayers, it was essential that we make Pacific Bell's rates subject to refund beginning January 1, 1988.

In any event, there are several reasons why the subject to refund provision of the Decision does not violate the rule against retroactive ratemaking.

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In sum, we have carefully considered all of the issues and arguments raised in Pacific Bell's application for rehearing

and the DRA's opposition and are of the opinion that sufficient grounds for granting rehearing have not been shown. We are, however, of the view that the Decision should be modified in several respects.

Therefore, good cause appearing,

IT IS ORDERED that D.87-10-075 is modified as follows:

1. The last sentence in the second full paragraph on page 9 is modified to read:

Given current conditions in the telecommunications industry, Pacific Bell's present rates will become unreasonable in 1988 unless: they are reviewed for operational and financial attrition pursuant to our adopted methodology; and adjusted if application of that methodology shows that rate adjustments are in order.

2. The following language is added at the end of the first partial paragraph on page 14:

We adopted this attrition methodology in our prior decisions precisely so that it could be used in succeeding years to review the reasonableness of Pacific Bell's rates in the years between test years and so that we could order any rate adjustments, which, by application of the attrition methodology, appear warranted. Our adopted attrition methodology was promulgated in proceedings in which Pacific Bell was a party and the few specific changes we now allow are changes coming out of other proceedings in which Pacific Bell is also a party.

3. Finding of Fact No. 10 is modified to read:

Pacific Bell's Petition does not contain facts sufficient to justify relief from the requirement that a 1988 attrition year filing be made, since most of the uncertainties it cites will be resolved by year-end 1987; however, it appears feasible to grant Pacific Bell's Petition to the extent of allowing a delay in the filing, in order to avoid undue complexity in calculating updates to arrive at a 1988 attrition year revenue requirement. This delay will result in Pacific Bell being able to include additional material in its 1988

attrition filing, as it requested in its Petition.

4. Finding of Fact No. 15 is modified to read:

Pacific Bell's present rates will become unreasonable in 1988 unless: they are reviewed for operational and financial attrition pursuant to our adopted methodology; and adjusted if application of that methodology shows that rate adjustments are in order.

IT IS FURTHER ORDERED that rehearing of D.87-10-075 as modified herein is denied.

This order is effective today.

Dated JAN 28 1988, at San Francisco, California.

STANLEY W. HULFETT
President

DONALD VIAL
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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


Victor Weissor, Executive Director

AB

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