

Decision 89 10 006 OCT. 12 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NORTH COUNTIES UTILITY
CONSUMERS ACTION NETWORK,

Complainant,

vs.

PACIFIC POWER & LIGHT COMPANY,

Defendant.

ORIGINAL

Case 85-04-053
(Filed April 15, 1985)

OPINION

This complaint was filed on April 15, 1985 by North Counties Utility Consumers Action Network (North Counties) against Pacific Power & Light Company (PP&L). North Counties sought access to PP&L's monthly billing envelopes. The complaint alleged that:

"...the action set forth herein is filed in response to Public Utilities Commission Decision (D.) 93887 (Dec. 1981), modified, D.82-13-047 (March 1982), in which the Public Utilities Commission (hereinafter referred to as 'commission' or 'PUC') solicited suggestions to determine how the extra space created by unused weight in utility billing envelopes could best be used to benefit ratepayers. The action herein challenges the practice of PP&L of using the extra space in its billing envelopes to enclose only its own inserts, contrary to the Public Utilities Commission's holding that the extra space in utility billing envelopes belongs to the ratepayers and must be used for their benefit. (D.82-03-040 (April 1983).)" (Citation in original.)

On May 17, 1985, then-assigned Administrative Law Judge (ALJ) Meaney ruled that an amended complaint should be filed within 30 days. He also ruled that if the parties wished to stipulate that an answer was not required until the U.S. Supreme Court ruled

on whether the Commission may require non-utility messages to be included in the utility billing envelope, then a formal stipulation should be filed within 30 days from the filing of the amended complaint.

The U.S. Supreme Court did issue its anticipated opinion in Pacific Gas and Electric Company v. Public Utilities Commission of California, et al. (475 US 1, 1986). The Commission subsequently rendered its opinion in the consolidated proceedings of Case (C.) 83-08-04, California Public Interest Research Group, et al. v. Pacific Telephone and Telegraph Company, and C.83-12-03, Toward Utility Rate Normalization v. Pacific Telephone and Telegraph Company (D.87-05-073, May 29, 1987).

The consolidated proceeding arose from the filings of consumer groups proposing to use the "extra space" in the utilities' billing envelopes more efficiently for ratepayer benefit. The Commission denied the consumer groups access to the billing envelopes. The filing of North Counties is a counterpart action aimed at gaining access to the billing envelope of PP&L.

The Commission's formal file maintained for this proceeding contains no pleadings other than the complaint, which was filed on April 15, 1985, and the defendant's Request of Pacific Power & Light Company for Extension of Time to Answer, which was filed on May 16, 1985.

In March of this year, the currently assigned ALJ asked the parties by letter how they wish to proceed with the case. PP&L, the defendant, replied that it wishes to dispose of this matter as soon as possible and is prepared to file the necessary pleadings. The complainant's attorney, Mr. Hoffart, has not responded to the ALJ's letter and cannot be reached by telephone. The ALJ has learned from the State Bar that Mr. Hoffart is no longer authorized to practice law in California and it therefore has no address where he may be reached. There has been no substitution of attorney. No representative or address has ever

been provided for the client, a ratepayer association. PP&L's attorney was also unable to reach Mr. Hoffart.

The complaint is predicated on the Commission's characterization of the unused capacity of the utility's billing envelope as "extra space". The Supreme Court did not overrule that finding. However, it limited the use to which that extra space could be put. It determined that the utility enjoyed a First Amendment right of association that protected it from having to disseminate speech with which it did not agree. On that basis, the Commission has only required utilities to carry a notice of the existence of intervenor groups in their billing envelopes.

(D.87-05-073.) Complainant should contact the Commission's Public Advisor if it wishes to participate in this program.

The complaint seeks access to PP&L's billing envelope to offer ratepayers membership in a consumer representative organization. The complainant would also enclose "a statement concerning matters which NCUCAN determines may affect the interests of PP&L's residential ratepayers." Whether the complainant is entitled to this relief or not, it has not responded to the ALJ's request for an indication of how it will proceed in light of the Supreme Court's decision.

The Commission has made a reasonable effort to contact the complainant's attorney. It has been four years since the complainant has taken any action in this proceeding. Based on the complainant's failure to prosecute the complaint and the failure of its counsel to respond to the ALJ's request, the complaint should be dismissed.

Findings of Fact

1. Complaint was filed on April 15, 1985 by North Counties, a non-profit membership group engaged in consumer advocacy. The complaint was filed in response to Commission Decision D.93887, which solicited suggestions to determine how the extra space

created by unused weight in utility billing envelopes could best be used to benefit ratepayers.

2. The defendant, PP&L, filed its Request for an Extension of Time to Answer on May 16, 1985.

3. The parties have filed no other pleadings.

4. The U.S. Supreme Court has since held that a public utility enjoys a First Amendment right of association which protects it from being associated with speech with which it does not agree (475 US 1, 1986).

5. On the basis of the Supreme Court decision, the Commission has only required utilities to provide a notice of the existence of intervenor groups in utility billing envelopes.

6. In March 1989, the ALJ asked the parties by letter how they wished to proceed with this case in light of the Supreme Court decision and the Commission's decision.

7. The complainant's attorney has not responded to the ALJ's letter, cannot be reached by telephone, and is not available through the State Bar Association. There has been no substitution of counsel. No representative or telephone number for the client non-profit consumer organization has been provided.

8. The defendant replied that it wishes to dispose of this matter and will file the necessary pleadings.

9. The Commission has made a reasonable effort to contact the complainant's attorney.

10. It has been four years since the complainant has taken any action in this proceeding.

Conclusion of Law

1. Based on the complainant's failure to prosecute the complaint and the failure of its counsel to respond to the ALJ's

request for an indication of how it wishes to proceed in light of the relevant decisions, the complaint should be dismissed.

ORDER

Therefore, IT IS ORDERED that:

The complaint of North Counties Utility Consumers Action Network vs. Pacific Power & Light Company, C.85-04-053, is dismissed.

This order becomes effective 30 days from today.

Dated OCT 12 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

- 5 -

Wesley Franklin
WESLEY FRANKLIN, Acting Executive Director

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