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Decision 90-03-041 MAR 14 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Wilbert Thorne and Daria Mack,)

Complainant,)

vs.)

Pacific Gas and Electric)
Company,)

Defendant.)

Case 85-08-071
(Filed August 30, 1985)

Sheila Standley,)

Complainant,)

vs.)

Pacific Gas and Electric)
Company,)

Defendant.)

Case 87-04-004
(Filed April 6, 1987)

ORDER DENYING MODIFICATION

Complainants WILBERT THORNE, DARIA MACK, and SHEILA STANDLEY all filed complaints against PACIFIC GAS & ELECTRIC COMPANY (PG&E), charging PG&E with unjust and unreasonable practices. Although each complainant cited a different set of specific facts, all had been required, through no fault of their own, to pay the utility for gas or electricity used by others, after the utility had been made aware of the facts in each case. Further, the utility listed complainant Thorne as a bad credit risk.

On December 19, 1988, we issued Decision (D.) 88-12-080 on the consolidated complaints, denying relief except as to Thorne's bad credit listing, but directing our Legal Division to prepare an Order Instituting Investigation (OII) into the

mismetering question. We said there: "New approaches must be devised to ensure that customers are not required to pay for common usage or diverted energy under the threat of termination of service and negative credit ratings. That will be the purpose of the OII." D.88-12-080, p. 18, partially quoted in the petition for modification at pp. 3-4.

Complainants applied to us for rehearing, alleging legal error because we had not found that the utility's behavior had been unjust and unreasonable within the meaning of § 451 of the California Public Utilities Code. Preparation of the OII was suspended during our consideration of the application for rehearing. The application did not, in our opinion, state grounds sufficient to justify a grant of rehearing, and on August 3, 1989, we denied it in D.89-08-043. PG&E has now filed a petition for modification of D.88-12-080, alleging that new legislation, together with new procedures which PG&E and other utilities drew up assertedly "in cooperation with" our staff, will obviate the need for the OII.

The Legislation

We first examine whether the new legislation will have the effect of protecting the consumer as we contemplated when we ordered the OII. For if the procedures and purpose of the OII, as stated in D.88-12-080 and above, have already been fulfilled, the OII will be unnecessary.

SB 696 (Stats. 1989, ch. 861, approved by the Governor September 25, 1989; adding § 1940.9 to the Civil Code) imposes a duty of information on the landlord and makes explicit the tenant's right to take court action in the event of the landlord's failure to carry out that duty. However, SB 696 alone does not fulfill the purpose for which we ordered the OII in D.88-12-080.

The Procedures

PG&E argues that the procedures submitted fulfill our purpose in requiring an OII in D.88-12-080. We have not seen these procedures in action and cannot yet say whether they are sufficient to make an investigation unnecessary for the protection of the ratepayers. And, while we have found that the utility's behavior was not unreasonable or unjust under the law and our regulations at the time they occurred, we remain convinced that a problem exists and that it is within our jurisdiction to correct it.

Therefore we will order PG&E to implement its procedures while working closely with community groups and with our own staff, particularly the Joint Tariff Revision Committee, for the next six months. The utility is to bear in mind that our purpose in ordering the OII was that of protecting ratepayers from unfair situations such as those seen in the underlying case. After six months the utility will report to us on the operation of these procedures; PG&E will file the report with us and serve it on all parties to this action. We will examine the report's record of the implementation of these procedures. If they, along with the new legislation, are shown sufficient to prevent the contemplated harm, we will order PG&E to submit an advice letter incorporating them into the utility's tariffs. We will further require other gas and electric utilities to submit similar advice letters using similar procedures.

Today we will grant PG&E's petition to modify D.88-12-080 so as to remove the requirement of an OII into mismetering situations. If, after the six month trial period is over, we find that the procedures are insufficient to protect the ratepayer, we will issue an Order Instituting Rulemaking (OIR) rather than an OII, to consider what rules should apply to the mismetering situations in order to protect the ratepayers and the utilities fairly.

Conclusions of Law

1. If the purpose of a Commission Order Instituting Investigation is fulfilled by other procedurally proper means before the investigation takes place, the OII will become unnecessary.

2. SB 696 alone does not fulfill the purposes for which we ordered the OII in D.88-12-080.

3. The procedures appended to PG&E's petition for modification as Exhibit B have not yet been tested to determine whether they will fulfill the purposes for which we ordered an investigation in D.88-12-080.

Therefore,

IT IS ORDERED that:

1. PG&E's Petition for Modification is hereby granted to the extent that it asks us to modify D.88-12-080 so as to remove the requirement of an OII into mismetering situations.

2. PG&E is ordered to implement its procedures in close cooperation with community groups and with the Joint Tariff Revision Committee for the next six months, bearing in mind that our purpose in ordering the OII was that of protecting ratepayers from unfair mismetering situations and keeping records of each case in which the procedures are used.

3. Six months from the effective date of this order, PG&E is ordered to file with us, and serve on all parties hereto,

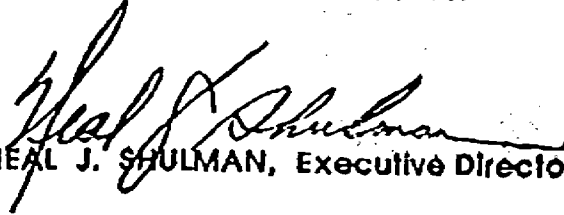
its report of the implementation of these procedures. At that time we will consider the need for an OIR for dealing with mismetering problems.

This order is effective today.

Dated March 14, 1990, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director

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