

L/LJP/afm

Decision No. 90 07 069 JUL 18 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LASSEN MUNICIPAL UTILITY DISTRICT

Complainant

vs.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Case 89-10-039
(Filed May 17, 1990)

ORDER DISMISSING APPLICATION FOR REHEARING

In early May 1988, Pacific Gas and Electric Company (PG&E) submitted its Advice Letter No. 1203-E to the Commission. The purpose of the filing was to change PG&E's electric service area map to reflect the transfer of the Chester Electric Facilities from Lassen Municipal Utility District (LMUD) to PG&E. The Chester territory includes distribution and substation facilities in Plumas and Tehama Counties. These facilities were among those which the Commission authorized LMUD to purchase from CP National Corporation, in Decision (D.) 88-04-027 dated April 13, 1988.

On May 19, 1988, the Chief of the Energy Branch of the Commission Advisory and Compliance Division wrote to PG&E stating that "The Commission has approved and filed your Advice Letter No. 1203-E. We are returning one copy of the tariff with the file date and an effective date of May 10, 1988, shown thereon, for the utility's files." In fact, the advice letter and accompanying tariff sheets were not the subject of any formal Commission action, they were simply filed by the Commission's Staff.

Over a year later, on October 24, 1989, LMUD filed C.89-10-039. This complaint alleges that PG&E engaged in various anticompetitive activities in order to get LMUD to transfer the

electric facilities in Plumas and Tehama Counties to PG&E without charge. PG&E moved to dismiss the complaint arguing, inter alia, that the Commission lacks jurisdiction over the subject matter of the complaint and that the complaint is barred as an untimely application for rehearing. In response, in mid-December 1989, LMUD filed its opposition to PG&E's motion to dismiss and attempted to file an application for rehearing of Advice Letter No. 1203-E. It claimed that the application for rehearing was timely because LMUD did not receive a copy of the Staff letter of May 19, 1988 until on or about December 1, 1989, when PG&E included it as an Appendix to its motion to dismiss. The Docket Office did not file the application for rehearing, but instead stapled it to LMUD's opposition to PG&E's motion.

After a prehearing conference held on May 8, 1990, the ALJ assigned to C.89-10-039 issued a ruling referring the application for rehearing to the Legal Division for further proceedings. The ruling also advised complainant to amend its complaint to more clearly invoke the jurisdiction of this Commission. PG&E has filed an opposition to LMUD's application for rehearing, arguing that the application was untimely. PG&E relies on our D.85-07-030 in City of Vallejo v. PG&E.

Public Utilities (P.U.) Code §1731(b) and Rule 85 of the Commission's Rules of Practice and Procedure both provide for applications for rehearing of a Commission "order or decision". We are not aware of any instance in which the Commission has entertained an application for rehearing of a letter sent by the Commission's Staff. In the absence of any "order or decision" issued by the Commission, it appears that LMUD's application for rehearing is not authorized by statute or rule and should be dismissed on procedural grounds.

Even if the Staff letter of May 19, 1988 were an "order or decision" of the Commission, we would still dismiss LMUD's application for rehearing on procedural grounds. Under P.U. Code §1731(b), a "party" to an action or proceeding may apply for rehearing (within 30 days after the Commission mails the order or

decision to the parties). Here, it appears that LMUD did not protest PG&E's advice letter filing or take any other action that would have made it a "party." (Compare Peninsula Commute and Transit Committee, 76 Cal. P.U.C. 2, 4 (1973)).

We do not find our Decision in City of Vallejo, on which PG&E relies, to be particularly on point. In that case Vallejo was a party to a formal Commission proceeding, the Commission issued a decision and order, and Vallejo did not file a timely application for rehearing, although it could have done so. Here, in contrast, there was no "order or decision" and even if there was, LMUD was not a "party," and therefore it could not properly have filed an application for rehearing.

Accordingly, we will dismiss LMUD's application for rehearing on procedural grounds, without prejudice to continued litigation of LMUD's complaint against PG&E. Even if LMUD's complaint is seen as a challenge to PG&E's tariff filing, the mere fact that the Commission has filed a utility's tariff does not prevent someone from challenging the tariff filing by means of a complaint. Compare Rule 10 of General Order 147-B (General Freight) (Commission review of any tariff rate which is in effect may be initiated by filing a formal complaint); P.U. Code §734 (the Commission may order reparations in a complaint case when a public utility has charged an excessive rate, but not if the rate in question has, by formal finding, been declared by the Commission to be reasonable). PG&E's other jurisdictional challenges to LMUD's complaint are, of course, still pending.

Findings of Fact

1. PG&E's advice letter 1203-E and accompanying tariff sheets were filed by the Commission's Staff. They were not the subject of any formal Commission action.

2. It appears that LMUD did not protest PG&E's advice letter or take any other action at the Commission concerning PG&E's advice letter before Staff mailed PG&E the letter notifying PG&E that its advice letter and accompanying tariff sheets had been filed.

Conclusions of Law

1. In the absence of any "order or decision" issued by the Commission, LMUD's application for rehearing should be dismissed as unauthorized by statute.

2. Even if the Staff letter of May 19, 1988 were an "order or decision" of the Commission, LMUD's application for rehearing would still be improper, because LMUD would not have been a "party."

3. The mere fact that the Commission has filed a utility's tariff does not prevent someone from challenging the tariff filing by means of a complaint.

4. We should dismiss LMUD's application for rehearing on procedural grounds, without prejudice to continued litigation of LMUD's complaint against PG&E.

Therefore, good cause appearing,

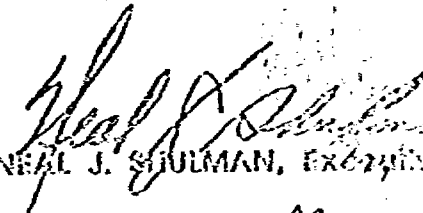
IT IS ORDERED that Lassen Municipal Utility District's application for rehearing is dismissed without prejudice to continued litigation of its complaint against PG&E.

This order is effective today.

Dated JUL 18 1990, 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


NEAL J. STULMAN, Executive Director
PB