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DEC 28 1990

Decision 90-12-121 December 27, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the matter of Competitive Access to Customer List Information.) (Filed January 24, 1990)

INTERIM OPINION

Summary

In this interim opinion in the Customer List OII, we dismiss the respondent energy utilities and narrow the focus of the proceeding to consider only the use of customer information in the telecommunications field. We also require Pacific Gas and Electric Company (PG&E) to reform its internal practices to require release of information to law enforcement agencies only pursuant to legal process. We do this in order to align its practices with those of the other energy respondents.

Discussion

When the Commission instituted this investigation (OII), we stated that the main focus would be on telecommunication local exchange carriers (LECs), but that the generic issues of competitive access to customer information were also relevant to the gas and electricity utilities. The OII also consolidated: (1) a Pacific Bell (Pacific) application to adopt a tariff to offer certain customer information and (2) a limited rehearing on the issue of compensation for GTE California Incorporated's (GTEC) use of a joint directory assistance data base in a competitive context and reciprocal compensation to be paid to GTEC by Pacific. No energy proceedings were so consolidated. In order instituting investigation (I:) 90-01-033, we ordered the participants to respond to eleven (11) specific questions concerning customer

information, most of which dealt only with the telecommunications industry. We also recognized that telephone directory listing information was the main impetus for the OII, although access to customer information was to include credit, usage, and demographic information on customers.

I.90-01-033 also noted that the gas and electric utilities traditionally have not released customer information, either under tariff or through other means. An exception has been made for information on customers who negotiate special contracts which have been made public. I.90-01-033 noted informal efforts made to obtain listing information on such topics as gas transportation and conservation. It also observed that, on the energy side, customer usage information might be useful to suppliers of conservation equipment or noncore gas competitors. The Commission noted that in some areas of California, gas and electric firms are in direct competition and each firm may desire information from the other concerning usage patterns in order to direct their marketing efforts. A specific example cited was competitors which may wish to target their conservation efforts to customers who are weatherized. I.90-01-033 also observed that information on gas contracts would be useful in the competitive noncore gas markets.

The respondents in this OII are 22 LECs and 4 energy utilities. A large number of interested parties responded on the telecommunications focus of the investigation. However, only two energy groups, the California Large Energy Consumers Association (CLECA) and the California Manufacturers Association (CMA), filed brief comments regarding the energy customer list information issues. In addition, the Commission's Division of Ratepayer Advocates (DRA) filed comments on the energy issues. Two consumer groups, Toward Utility Rate Normalization (TURN) and Utility Consumers Action Network (UCAN), filed joint comments but they did not specifically address the energy issues.

San Diego Gas & Electric Company (SDG&E) does not sell or rent customer information and has no plans to do so in the future. SDG&E participates in an equal benefit exchange, the Equifax Customer Information Exchange System (ECIES), with other energy utilities. This system is authorized by Public Utilities (PU) Code § 761.5. SDG&E provides customer information to third persons only upon the written request or consent of the specified customer or under legal mandate.

At present, SDG&E does not plan to release any additional customer information which it holds within its business records. SDG&E does not currently provide access to customer information to its subsidiaries and affiliates. SDG&E stated that it believes the issues raised by the OII are currently unique to the telecommunications industry and urges the Commission to make no changes to the current regulation of energy utilities in regard to customer information.

Southern California Gas Company (SoCalGas) states that it makes no commercial use of customer information because there is no logical place for such usage in the ordinary course of its gas service business. SoCalGas observes that, for telephone companies, the commercial use of customer information is an integral, vital, and indispensable part of the service rendered, but for gas service, commercial use of customer information is not. SoCalGas does not routinely release customer information, except when necessary or convenient for the conduct of its gas utility business or as required by legal process. Such information is released without prior customer authorization only if the information is legally required or is used for a legitimate SoCalGas business purpose, such as bad debt collections. Otherwise, SoCalGas requires written customer permission before it releases information to third parties.

SoCalGas notes that its customers have never expressed an interest in inclusion on a customer list which is made public, free

or for commercial purposes, whereas telephone company subscribers do wish to be on such lists. SoCalGas requests I.90-01-033 be terminated as to the energy utilities, since there is little or no need for the information service market as to their customers.

Southern California Edison Company (Edison) states that it has a long-standing policy of utilizing customer information only in connection with the provision of utility service. It does not release it to third parties, except in limited circumstances. Edison discloses information to third parties for the purpose of conducting credit checks and assisting in the collection of past-due customer bills. It participates in the ECIES. However, information released to ECIES is held in confidence and is available to subscribing utilities only to identify potential financial risks and locate delinquent accounts. Edison releases customer information to third parties pursuant to legal process. Edison states that it does not transfer customer information to any affiliate company. Its utility-related subsidiaries only use the customer information to provide traditional utility services or to comply with Commission mandated programs. Edison does not want the duty to collect customer data beyond that required to provide utility service.

PG&E states that it regards all data on former and present customers as confidential. It is not released to third parties without the written permission of the customer except:

- (1) when the information is requested or required by this Commission or other regulatory bodies with jurisdiction over PG&E;
- (2) to law enforcement agencies, whether or not the request is supported by subpoena;
- (3) pursuant to court order;
- (4) to collection agencies working on closed PG&E accounts, but in such cases only essential information is released; and
- (5) to contractors or consultants providing utility-related services, but only to the extent necessary to render the service and subject to confidentiality provisions in the contracts between them and PG&E.

PG&E makes no nonutility commercial use of customer information and proposes no additional customer information be made available to third parties. PG&E generally does not provide individual customer information to its subsidiaries and affiliates. However, PG&E does not consider aggregation of customer information retained by the company as confidential. A copy of PG&E's written Standard Practice on Third Party Inquiries Regarding Individual Customers was furnished to the Commission.

CLECA, an association of 15 large electric consumers, opposes strongly any dissemination of customer information to third parties. CLECA's members believe their electric usage information is particularly sensitive and should not be released to third parties. CLECA asserts that there is no commercial value to energy utilities arising from the release of customer list information, but the competitors of the end user customer would value it. CLECA acknowledges that there may be vendors of energy efficiency or conservation devices which may be aided by customer usage information. However, it observes these companies can and do present proposals directly to end users and can obtain the information directly from the end users if they wish to release it.

CMA, a voluntary organization representing 800 manufacturers and processors doing business in California, notes that the telecommunications industry operates at a far higher degree of competition for specific services than do the energy utilities. CMA observes that the Commission has already authorized the release of the contents of negotiated transmission contracts, including customer specific information. CMA feels the Commission should differentiate between the information only utilities possess, such as specific billing persons within a customer company or specific plant usage or usage patterns, and information which exists in other forums, such as The California Manufacturers Association Register. CMA opines that as long as the information base exists, there is no reason to require utilities to duplicate

the effort, even though this might make access easier. If access to customer information is granted, it should be limited to nonsensitive data, such as mailing addresses and contact persons, and to customers who choose to be on a mailing list. CMA asserts that the mailing list should be available only to legitimate competitors of the utility.

DRA was the only commenting party which favored release of energy customer information. DRA supports the release of energy customer information, with prior customer authorization, so that energy utility competitors in the field of Demand Side Management (DSM) vendors, cogeneration vendors, and alternate gas suppliers may have competitive equity. DRA observes that its informal survey showed only weak demand for energy customer information lists. It recommends the Commission hold a workshop to determine if sufficient interest exists to proceed with development of an energy customer information release program. Thus, DRA asserts that energy customer information lists should only be made available conditioned upon demonstration of a market for such lists and the determination that enough utility customers would opt to participate in the program to make its creation worthwhile.

DRA also recognizes that basic list information from energy utilities is virtually redundant to that information contained in telephone utility white pages, which is basically a customer's name, address, and telephone number. Therefore, it admits that the market for a similar list of energy customers is questionable. It also admits that, while telephone utilities have a long history in the directory business, energy utilities do not. And, while telephone directory business contributes revenues to reduce basic rates, with a majority of the contribution coming from yellow pages revenue, only a minor portion of contribution comes from sale of basic list information. There is also no comparable product to the yellow pages in the energy utility industry. Telephone directory operations also face competition from other

advise SDG&E to place them on the list. Also noted is PG&E's ceiling insulation program, administered by the Electric and Gas Industries Association (EGIA), which permits customers interested in more rebate information to fill out a form attached to the payment envelope and include it with the bill or call EGIA directly on an 800 number. However, DRA then asserts that these alternative mechanisms are outside the scope of the OII, but should be alternatives for later consideration by the Commission.

No interested parties in the DSM or cogeneration vendor or alternate gas supply industries filed comments in support of energy customer information release.

DRA's reply comments on energy issues were that the opposition of CLECA and CMA to the release of energy customer information without prior customer authorization was not counter to DRA's proposal that energy customer information only be released with prior customer authorization to DSM, cogeneration, and alternate gas suppliers.

Edison's reply comments assert that DRA's concern with competitive equity in the energy field is a fallacious premise, because Edison is not in competition with DSM or cogeneration vendors or alternate gas suppliers. Edison is not in competition with DSM vendors because its programs typically focus on promotion of energy efficiency to Edison's customers rather than use of specific Edison products or services. Edison represents that it provides information and incentives to its customers to encourage them to seek out qualified DSM industry vendors to supply equipment for and carry out the installation of recommended DSM measures.

Edison contends that, when it opposes or seeks to defer a proposed cogeneration project, this is not an effort to compete with cogeneration vendors. Edison asserts that the uneconomic displacement of Edison's service adversely affects Edison's remaining customers, but that Edison does not oppose economic bypass situations which are not injurious to remaining utility

customers. Edison also declares that it is not in the business of supplying gas, except for a de minimis operation on Catalina Island, and is, therefore, not in competition with alternate gas suppliers.

Edison agrees with DRA that alternative, more administratively efficient methods exist to achieve equal footing for energy utility competitors, other than release of customer information. However, Edison argues such ideas are not outside the scope of this proceeding. Edison feels that it is counter-productive to commence the customer list process, as recommended by DRA, before an investigation of all alternatives which may fulfill Commission objectives. Edison asserts that, only if the Commission finds that alternatives which do not involve the production of customer lists are outside the scope of the OII, should the Commission then convene an appropriate separate proceeding to consider them. Although it does not believe it is a business competitor of DSM or cogeneration vendors and alternate gas suppliers, Edison is not opposed to workshops or other informal means to discuss the issues raised in the OII, as long as all viable options for accomplishing the objectives of the OII are given due consideration prior to adoption of a course of action.

SoCalGas's reply comments assert that, due to the dispute over ownership of the customer list information, it is premature to hold workshops, as suggested by DRA, to discuss the energy customer list information. SoCalGas contends that fundamental issues as to ownership of customer list information and competitive equity must be addressed and resolved prior to the conduct any workshop dealing with the structure of a marketing program for customer list information held by energy utilities.

SoCalGas states that DRA's comments make a case for the Commission to do nothing further in I.90-01-033 as to energy utilities. It points to DRA's admission that there is little demand for the information by third parties and no desire on the

part of energy utilities to market the information. SoCalGas also asserts that DRA wants to be a market maker for this information, as no market exists. It contends market creation is not a proper concern of DRA.

The Commission finds the arguments of the energy utilities most persuasive and takes note of the higher degree of competition in the telecommunications industry for specialized services that is not present in the energy field. The only areas of possible interest raised as to energy customer information were as to DSM or cogeneration vendors or alternate gas suppliers. None of these entities filed comments in support of information release. We find that any possible future demand for information by these vendors and suppliers can be better addressed in individual energy proceedings or a later OII specific to the energy utilities.

The present stated practice at all respondent energy utilities is not to make commercial use of customer information. All utilities expressed no desire or intention to do so. Reflective of these facts, no tariffs similar to the LECs' credit information and customer usage or directory listing tariffs exist in the energy field. Additionally, the available basic list information possessed by utilities is duplicative to that in telephone company directories and may often be obtained from other outside sources. DRA admits weak demand for customer information and that, in order to be marketable, the customer information must contain more than just basic list data. Yet CLECA and CMA both expressed objections to release of information concerning customer usage, in particular. To institute and administer such a detailed customer information program would result in the incursion of costs to the utilities, to be passed to ratepayers, with little likelihood of long-run profitability.

We also observe that, unlike the LECs which have long published directories, the energy utilities are not in the directory publication business nor is it within the public

directory publication business nor is it within the public expectation that they will be. Also, for this reason, startup and administration costs for energy utilities would entail more expense than modifying present LEC systems, which are already making commercial use of some customer information, as a result of our final decision in this OII, should we find release of more information warranted.

However, we do impose a requirement on all four energy utilities to notify the Chief of the Energy Branch of CACD in writing ninety (90) days prior to any contemplated change in policies as to release or use of customer information.

We also direct respondent PG&E to modify its current practices to be in line with those of the other three energy utilities, so as not to release information to law enforcement agencies except pursuant to legal process, rather than merely upon the request of law enforcement agencies whether or not supported by subpoenas. PG&E should so revise its Standard Practice on Third Party Inquiries Regarding Individual Customers within 30 days of the effective date of this order and file a copy as part of the record in the OII.

Therefore, we conclude that the four energy respondents, PG&E, Edison, SoCalGas, and SDG&E are dismissed from the OII, which shall focus exclusively on the telecommunications industry. However, these respondents will continue to participate in the OII, as interested parties, unless they expressly withdraw.

Findings of Fact

1. The main focus of I.90-01-033 is on telecommunications LECs, but energy utilities were included as respondents to ascertain if sufficient interest existed in the release of energy customer information.

2. The only areas of interest in energy customer information raised were DSM and cogeneration vendors and alternate gas suppliers.

3. No DSM or cogeneration vendors or alternate gas suppliers participated to request release of such information.

4. There is, at present, a higher degree of competition in the telecommunications industry for specialized services that is not now extant in the energy field.

5. The stated practice at all respondent energy utilities is not to make commercial use of customer information. No energy utility expressed any intention to do so. Should any energy utility's policies change, the energy utility should notify the Chief of the Energy Branch of CACD at least 90 days prior to the contemplated change.

6. No tariffs similar to the LECs' credit information and customer usage or directory listing tariffs exist for the energy utilities.

7. The available basic list information of the energy utilities is duplicative to that of the LECs' telephone directories and also may be obtained from other outside sources.

8. Due to weak demand, energy customer information, to be marketable, would have to contain more than basic list data. Release thereof was protested by interested parties in the OII and would result in incursion of costs to the energy utilities to be passed on to ratepayers, with little likelihood of long run profitability.

9. Because energy utilities are not in the directory publication business, as LECs are, startup and administration costs would be higher than modification of any existing systems now possessed by the LECs.

10. It is not within the public expectation that energy utilities release customer list information, like LECs now do.

11. Respondent PG&E is the only energy utility reporting that it releases customer information to law enforcement agencies without subpoenas. PG&E should be required to modify its current

practices to permit release of customer information to law enforcement agencies only pursuant to legal process.

Conclusions of Law

1. The four energy respondents, PG&E, Edison, SoCalGas, and SDG&E should be dismissed from the OII.
2. I.90-01-033 should focus exclusively on the telecommunications industry.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), Southern California Gas Company (SoCasGas), and San Diego Gas & Electric Company (SDG&E) are dismissed as respondents in this proceeding. These utilities will continue to participate as interested parties, unless they expressly withdraw.
2. I.90-01-033 shall focus exclusively on the telecommunications industry.
3. PG&E shall revise its Standard Practice on Third Party Inquiries Regarding Individual Customers (Practice) to prohibit release of customer information to law enforcement agencies, except pursuant to legal process. A copy of the revised Practice shall be filed in this proceeding within thirty (30) days of the effective date of this order.

4. PG&E, Edison, SDG&E, and SoCalGas shall notify the Chief of the Energy Branch of the Commission Advisory and Compliance Division in writing ninety (90) days prior to any contemplated change in policies regarding release or use of customer information.

This order becomes effective 30 days from today.
Dated December 27, 1990, at San Francisco, California.

DECISIONAL

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.

Neil J. Sullivan
NEIL J. SULLIVAN, Executive Director