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Decision 91-07-053 July 24, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Independent Consulting Services,)
a Division of Independent)
Communications Services, Inc.,)
a California corporation,)

Complainant,)

v.)

Pacific Bell,)

Defendant.)

ORIGINAL

Case 85-07-008
(Filed July 1, 1985)

Application of General Telephone)
Company of California, a)
California corporation, to)
discontinue its obligation to)
provide refunds for Protective)
Connecting Arrangements pursuant)
to Decision 87620.)

Application 87-08-019
(Filed August 10, 1987)

OPINION

This decision grants, in part, a petition to modify Decision (D.) 88-03-069 and D.86-05-071 filed on April 30, 1990 by Independent Consulting Services, Inc. (ICS). The petition asks the Commission to modify the decisions to clarify that Pacific Bell (Pacific) and General Telephone Company of California (GTEC) shall file reports with the Commission detailing unrefunded balances in their Protective Connecting Arrangements (PCA) accounts. We direct Pacific and GTEC to file reports, within 30 days of the effective date of this decision, accounting for unrefunded balances. We also find that unrefunded balances must be delivered to the Controller of the State of California, pursuant to the Unclaimed Property Law.

Background

PCA equipment is hardware designed to protect the telephone utility system from damage which the utilities at one time believed could be caused by customer-owned, independently manufactured telephone equipment. In D.87620, the Commission found that PCA equipment which had been required by telephone utilities was in fact not necessary to protect the integrity of their networks. The decision ordered the utilities to issue refunds to customers owning certified equipment who had been required to pay charges for PCA equipment.

D.86-05-071 addressed a complaint filed by ICS. The decision required Pacific to provide refunds to qualifying subscribers and submit a report in its next general rate case indicating refunds made to customers and amounts remaining in the fund established to hold unrefunded revenues. The Commission directed GTEC to take similar steps in D.88-03-069.

Since the issuance of those decisions, neither GTEC nor Pacific has filed general rate case applications. The Commission no longer requires general rate case filings from Pacific and GTEC pursuant to D.89-10-031 in which we adopted a new regulatory framework for the two utilities.

ICS' Petition to Modify D.86-05-071 and D.88-03-069

ICS requests that the Commission modify D.86-05-071 and D.88-03-069 to require the utilities to file information regarding unrefunded PCA balances. The decisions now require Pacific and GTEC to file the information in general rate case applications. ICS argues that if the decisions are not modified, the utilities will receive an unwarranted "windfall" at the expense of their ratepayers, contrary to the explicit intent of D.86-05-071.

Protest by Pacific to ICS' Petition to Modify

Pacific opposes ICS' petition. It states that Ordering Paragraph 3 of D.86-05-071 is no longer in effect. It argues that in an Application for Stay of D.86-05-071, it informed the

Commission that it could not comply with the ordering paragraph because it held no fund for PCA charges. It believes the Commission accepted this argument in D.86-09-025, which modified D.86-05-071 in response to Pacific's application for rehearing of that decision. It believes D.86-09-025 reversed a statement in D.86-05-071 that Pacific would receive a "windfall" if unrefunded amounts were not returned to ratepayers by recognizing that Pacific could not maintain an accounting of unrefunded balances.

Pacific also argues that it has already fulfilled its obligations by submitting a report to Commission Advisory and Compliance Division (CACD) regarding the amounts it has paid out to customers.

Protest by GTEC to ICS' Petition to Modify

GTEC does not oppose the ICS' request to make D.88-03-069 and D.89-10-031 consistent, although it suggests a less burdensome procedure for filing the information. It recommends Ordering Paragraph 4 of D.88-03-069 be modified to direct GTEC to include its PCA refund account balance in its price cap filing to be submitted each year on October 1.

Comments of the Division of Ratepayer Advocates (DRA) to ICS' Petition to Modify

DRA supports ICS' petition and suggests Pacific be directed to file an advice letter for review and approval of amounts to be refunded to ratepayers by way of a surcredit.

Comments of the Controller of the State of California (Controller) to ICS' Petition to Modify

The Controller filed comments to ICS' petition. It supports the petition but asks the Commission to clarify that, under the Unclaimed Property Law, unclaimed refunds from the PCA program should be delivered to the Controller, from whom it may be claimed by the owner at any time. It argues the right of the State Controller to take title to unclaimed refunds payable by telephone

companies to customers was established in Cory v. Public Utilities Commission (1983) 33 Cal. 3d 522, 189 Cal. Rptr. 386, 658 P. 2d 749.

Pacific's Response to the Comments of the Controller

Pacific disagrees with the Controller's interpretation of the Unclaimed Property Law and Cory. It states that Section 1519.5 and Cory require the existence of an "owner." The Commission-ordered PCA refund program was ordered only for customers who informed Pacific that they had been owners of certain PCA equipment. Only those customers who notified Pacific became "owners" of the refund amount. In contrast, the Cory case involved owners of refundable amounts who were not identifiable.

Discussion

ICS' petition asks simply that we recognize that, pursuant to D.89-10-031, Pacific and GTEC no longer file general rate case applications, and to require that information which was to be submitted in general rate cases be submitted in another forum. All parties responding to ICS' petition, except Pacific, support the request to modify D.86-05-071 for Pacific's filing and D.88-03-069 for GTEC's filing.

Pacific's arguments that it need not file the information required by D.86-05-071 are without merit. Ordering Paragraph 3 of D.86-05-071 directed Pacific to file a report in its next general rate case application. The decision clearly states that "the outstanding balance of PCA charges...will be credited to Pacific's ratepayers." D.86-09-025, which responded to an application for rehearing of D.86-05-071, did not change Ordering Paragraph 3 or the Commission's intent to submit unrefunded balances to ratepayers. Contrary to Pacific's belief, D.86-09-025 did not "implicitly recognize" that Pacific could not maintain a special account for PCA balances. The decision states only that D.87620 "in no way determined which specific customers were entitled to refunds, or in what amounts." In D.86-09-025, Pacific's petition

for rehearing of D.86-05-071 was denied in all respects. Finally, Pacific's submittal to CACD regarding funds it paid out does not relieve Pacific of its obligation to file information regarding unrefunded balances pursuant to Ordering Paragraph 3 of D.86-05-071.

We concur with the Controller that unrefunded PCA charge balances must be delivered to the Controller pursuant to the Unclaimed Property Law. We do not agree with Pacific's narrow interpretation of Cory. Whether or not Pacific was able to identify customers who qualified for refunds, those who qualify are nevertheless owners of the overcharges they paid. As a matter of law, our determination that unrefunded balances would be submitted to ratepayers should be modified to require that unrefunded balances should be delivered to the Controller.

We will modify D.86-05-071 and D.88-03-069 to require that GTEC and Pacific file the required information, with supporting work papers, in an advice letter within 30 days of the effective date of this decision. Any remaining balances shall be delivered to the State Controller following a Commission resolution confirming the accuracy of the accounting.

Findings of Fact

1. D.86-05-071 ordered Pacific to file in its subsequent general rate case applications an accounting of unrefunded balances from PCA equipment charges.

2. D.86-09-025 denied rehearing of D.86-05-071 in all respects.

3. D.88-03-069 ordered GTEC to file in its subsequent general rate case application an accounting of unrefunded balances from PCA equipment charges.

4. Neither Pacific nor GTEC has filed a general rate case application since the issuance of decisions requiring them to file information regarding unrefunded PCA equipment balances.

D.89-10-031 eliminated general rate case proceedings for Pacific and GTEC.

Conclusions of Law

1. ICS' petition to modify D.86-05-071 and D.88-03-069 should be granted to the extent that Pacific and GTEC should be directed to file, within 30 days of the effective date of this decision, advice letters providing an accounting of unrefunded balances of PCA equipment overcharges.
2. The Unclaimed Property Law requires that utility property which is unclaimed by the owner must be delivered to the Controller.
3. Unrefunded balances in PCA equipment accounts should be submitted to the Controller following a Commission resolution confirming amounts remaining in such account.

ORDER

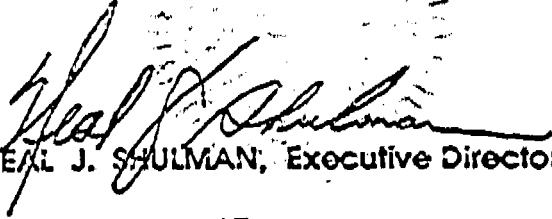
IT IS ORDERED that:

1. The petition to modify D.86-05-071 and D.88-03-069 filed by Independent Consulting Services (ICS) is granted to the extent that Pacific Bell (Pacific) and General Telephone Company of California (GTEC) shall, within 30 days of the effective date of this order, file advice letters, including work papers, providing an accounting of unrefunded revenues resulting from overcharges for protective connecting arrangements (PCA) pursuant to the program set forth in D.87620. The balances set forth in the advice letters shall be subject to a Commission resolution confirming the amounts.
2. Unrefunded balances for PCA overcharges by Pacific and GTEC shall be delivered to the Controller of the State of California following issuance of a Commission resolution confirming the amounts.

3. Because all pending matters in these proceedings have been resolved, Case 85-07-008 and Application 87-08-019 are closed. This order becomes effective 30 days from today. Dated July 24, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director