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Decision 92-02-038 February 5, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Pacific Bell (U 1001 C) to change the
requirements that names of employees
earning over \$75,000 be reported
under General Order 77-K.

ORIGINALApplication 91-07-040
(Filed July 26, 1991)OPINION

On July 26, 1991, Pacific Bell (PacBell) filed an application seeking modification of Commission General Order (GO) 77-K so that the names of employees earning over \$75,000 per annum are not required to be included in the reporting required by that order. Notice of filing of the application was published in the Commission's Daily Calendar of August 5, 1991.

At the time of filing, PacBell did not serve a copy of the application upon any utility or other entity which is or may be covered or affected by GO 77-K, nor has it made such service subsequently. On August 23, 1991, the Commission's Division of Ratepayers Advocates (DRA) filed a protest urging a dismissal of the application, or in the alternative the opening of a "more suitable docket, such as an Order Instituting Investigation, in which to review the issue of modifying a General Order." In spite of the lack of service, a response was filed on August 27, 1991, by AT&T Communications of California, Inc., supporting PacBell's request for modification.

For the reasons hereinafter stated, we agree with DRA's first option and dismiss the application.

Background

GO 77-K was adopted March 19, 1986, effective March 19, 1986 pursuant to Commission Resolution F-615, and is comprised of four ordering paragraphs. In general, each of the first three

ordering paragraphs requires public utilities having gross operating revenues within certain specified dollar parameters (each ordering paragraph has different parameters thus applying to different size utilities) to report to the Commission the names, titles and duties of all Executive officers, and the annual compensation received by each such officer. In addition, the utility must report the names, titles, and duties of all employees other than the Executive officers who earn a specified amount or more per annum. The amounts in each ordering paragraph vary according to the operating revenues of the utility. The fourth ordering paragraph of G0 77-K requires all utilities having gross annual operating revenues of \$500,000 or more to report total dues, donations, subscriptions, etc., paid to employees directly or reimbursed to him/her.

PacBell's request pertains to ordering paragraph 3 which applies to all utilities having total operating revenues of \$1 billion or more per year, and seeks to remove the requirement of reporting to the Commission the names of its Executive officers and all other employees who earn \$75,000 or more per annum. It does not seek to modify other items of information required to be furnished the Commission.

PacBell's Argument

PacBell argues that its employees expect that their annual compensation is personal information not subject to disclosure to any member of the public, and that "[T]his privacy interest is being needlessly compromised by the present reporting requirements" contained in G0 77-K.

In support of its argument, PacBell cites Article I, Section 1 of the California Constitution, which "secures to all people the inalienable right of privacy." It further argues that the California Supreme Court has "recognized that 'the right of privacy extends to one's confidential financial affairs as well as

to the details of one's personal life'" as held in Valley Bank of Nevada v. Superior Court, 15 Cal. 3d 652, 656 (1957).

In addition, PacBell claims that in 1977, the Information Practices Act (Civil Code Section 1798, et seq.) "was enacted to deal with the growing threat to privacy by the indiscriminate collection, maintenance and dissemination of personal information; [and] it places strict limits on such activities (Civil Code Section 1798.1)...." PacBell continues that financial transactions of individuals are included within the definitions contained in the Act; that the collection of information on an employee's income is clearly the collection of personal information within the purview of the Act; and that all state agencies (with certain named agencies excluded) are subject to the Act. PacBell notes that the Commission is not among the agencies excluded from the operation of the Act. It thus concludes that GO 77-K's requirement of reporting the names of Executive officers and all other employees earning \$75,000 or more per annum is prohibited.

Discussion

We note in passing that while the body of PacBell's application is not specifically limited to the third ordering paragraph of GO 77-K, the caption of PacBell's application clearly limits its argument regarding modification of GO 77-K to those employees earning compensation of \$75,000 or more per annum. This raises the question of whether PacBell's argument extends to or is made on behalf of those Executive officers and employees of smaller utilities who are paid at levels lower than those of PacBell's employees and who are covered by ordering paragraphs 1 and 2 of GO 77-K, or whether PacBell's indignation extends only to those covered by the third ordering paragraph of GO 77-K.

If PacBell's argument is intended to extend to those covered by ordering paragraphs 1 and 2 of GO 77-K, the issue of standing arises, as neither of those paragraphs applies to PacBell.

If, on the other hand, PacBell's argument is limited to those covered by paragraph 3 of GO 77-K, and if PacBell were to be successful in its argument, the result would be that the names could not be required for Executive Officers and employees covered by ordering paragraph 3, but could be required for those covered by paragraphs 1 and 2. This is an interesting result, but it is illogical and internally inconsistent. Because of our resolution of this application, on procedural grounds we need not address either of these matters in this decision.

GO 77-K has existed basically in its present form for several years, and modification of the GO in the past has been in the nature of increasing the base levels of reportable income for the various size utilities subject to the GO. Past modifications were also undertaken only after a showing of widespread utility interest and participation in the proceeding. Such interest has not been demonstrated in this instance.

The most recent prior attempt to modify GO 77-K occurred in December of 1989, when PacBell sought to raise its applicable reportable salary base to \$100,000 with a yearly inflation increase thereafter, on the ground that reporting at the present \$75,000 level is burdensome. On January 8, 1990, Toward Utility Rate Normalization (TURN) filed a protest to the application. In addition, certain legislators expressed interest in the possibility of a modification which would include considerations of race, gender and ethnicity. By letter dated January 29, 1990, PacBell withdrew its application "upon reconsideration" with no further explanation given.

At the time PacBell filed its application to modify GO 77-K, for reasons best known to itself, it failed to serve a copy of the application on any utility subject to GO 77-K, and made no attempt to ascertain whether those utilities supported any change in the GO. As previously stated, notice of the filing of the application was published in the Commission's Daily Calendar on

August 5, 1991. In spite of the fact that the Daily Calendar exists for the purpose of informing those interested in Commission matters of filings such as that involved here, only one utility, other than the applicant expressed any interest in this proceeding. In the face of such lack of interest on the part of the industry, and considering the fact that the Commission's Division of Ratepayer Advocates is strongly opposed to the application, we feel any proceeding to consider this application is not economically justifiable.

Conclusion

PacBell's application must be dismissed for failure to comply with the Commission's rules regarding service.

Findings of Fact

1. By this proceeding, PacBell seeks a modification of GO 77-K to eliminate the requirement of reporting the names of Executive officers and employees who earn \$75,000 or more per annum.

2. PacBell failed to serve a copy of the application on any utility or other entity which may be affected by GO 77-K.

Conclusions of Law

1. Applicant failed to comply with the Commission's rules pertaining to service of applications.

2. The application should be dismissed.

O R D E R

IT IS ORDERED that Application 91-07-040 is hereby dismissed.

This order is effective today.

Dated February 5, 1992, at San Francisco, California.

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

We will file a written concurring opinion.

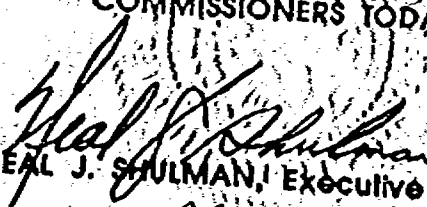
/s/ DANIEL Wm. FESSLER
President

/s/ NORMAN D. SHUMWAY
Commissioner

I will file a written concurring opinion.

/s/ JOHN B. OHANIAN
Commissioner

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


NEAL J. SHULMAN, Executive Director
PO

A.91-07-040
D.92-02-038

DANIEL WM. FESSLER, PRESIDENT, CONCURRING:

I join the substance but not the tone of today's order. In essence what we do today is await a refiling of this application with appropriate service on "any utility or other entity which is or may be covered or affected by GO 77-K." We do this notwithstanding the observation of the Administrative Law Judge that the matter was published on our Daily Calendar, has attracted the active support of at least one such entity, and--by virtue of these facts--is apparently widely known within the community of those affected by or interested in the content of GO 77-K.

I take this occasion to assert the view that it is not self-evident to me that the work of this Commission is markedly facilitated by a requirement that we have the names of employees in the covered income categories. The issue of executive office compensation is, to me, an entirely different matter. Naturally, any reform of the General Order should encompass the covered employees of all utilities subject to its terms and not merely those covered by ordering paragraph 3.

I am authorized to say that COMMISSIONER SHUMWAY joins in the expression of these sentiments.

/s/ Daniel Wm. Fessler
DANIEL WM. FESSLER, PRESIDENT

February 5, 1992
San Francisco, California

A.91-07-040

Commissioner John B. Ohanian, Concurring

Let me say at the outset that I wholeheartedly concur with our unanimous decision to dismiss Pacific Bell's application to change certain requirements of General Order 77-K. The concern I wish to raise with my concurring opinion is one of guidance. If I can use the analogy of a baseball game, Pacific Bell never even got up to the plate. They don't even know whether they would have hit a home run or struck out. The merits of the case were not addressed. My guidance does not go to the merits, but rather to what expectations that I would have if Pacific Bell did serve all parties affected by General Order 77-K.

It may be argued that Pacific Bell should properly have known how to execute service of an application. I do not address here whether they should have known or not. I leave that discussion to Pacific Bell's management and Law Department. But Pacific Bell may wish to file another application on the same subject or other utilities may wish to come before us and seek changes to our General Orders. We have an obligation to let them know what to expect. Otherwise, we have the unfortunate and very inefficient situation of utilities groping in the dark at what should be asked for, and the Commission summarily dismissing applications. That process serves no one.

When we issue a General Order, it generally applies to several utility industries or large segments of utility industries. There is a presumption when a General Order is

adopted that its application is far reaching and inclusive of all the affected utilities. Underlying the requirements of the General Order is a commonality that exists for all the affected utilities.

In order to seek modification of a General Order, I see two paths. The first is where an applicant must demonstrate that circumstances have changed to such an extent that an exemption to the General Order should be granted to that utility and they should be treated in a unique fashion. The second is where changed circumstances have affected a large segment of the utility industry and an overall modification to the General Order is warranted.

In the latter case, if a large segment of utilities are in need of revision of a General Order, it would serve them well to pool their resources and jointly file an application. In either case, the burden is on the applicant(s).

/s/ John B. Ohanian
John B. Ohanian

San Francisco, California
February 6, 1992