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Decision 92-07-088 July 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Lloyd J. Keller

Complainant,

vs.

Pacific Gas and Electric Company
Pacific Bell

Defendants.

ORIGINAL

Case 91-10-065
(Filed October 29, 1991)

ORDER DENYING REHEARING

LLOYD J. KELLER (Keller) filed an application for rehearing of Decision (D.) 92-04-041, claiming that the decision was based on based on insufficient, incomplete, misleading and irrelevant testimony. After reviewing all the allegations in the application for rehearing, we are of the opinion that no basis for granting rehearing has been demonstrated.

We have set out the facts surrounding this complaint in D. 92-04-041; we summarize them only briefly here. Keller lives in Marin County. From his house one can see Richardson Bay, Strawberry, Sausalito, the hills behind Sausalito and behind those hills, sunsets. A joint use overhead line system runs along the street in front of Keller's house. In 1979 and 1981 Pacific Bell replaced the wires and conductor boxes on the system with thicker wires and taller conductor boxes. In 1980 Pacific Gas and Electric Company (PG&E) added one pole to the system near Keller's house and, in 1989 and 1990, PG&E reconductored the system with thicker wire and replaced some poles with thicker, taller poles.

Keller complained, first informally through our Consumer Affairs Branch, and then formally in this proceeding, that PG&E

and Pacific Bell had added so much new equipment to the line system that his views had been blighted.

Pacific Bell responded that its additions to the line system replaced obsolete technology with state-of-the-art equipment. PG&E responded that it was necessary to "reconductor" its Alto 1122 circuit in order to reduce power outages, which were 350% of average. The line system in front of Keller's house is part of the Alto 1122 circuit. PG&E claimed the circuit could not have been reconducted without adding equipment in front of Keller's house.

PG&E further claimed that the line system in front of Keller's house is established and maintained pursuant to a valid franchise from the Town of Tiburon. Tiburon Ordinance No. 31 § 2 (1965) provides, "The franchise to construct, maintain and use poles, wires, conduits and appurtenances necessary or proper for transmitting and distributing electricity to the public for any and all purposes, in, along, across, upon, under and over the streets within City [Tiburon] is hereby granted to Grantee [PG&E]."

Pacific Bell claims that it has a franchise, under Public Utilities Code § 7901, to construct lines along any public road. Public Utilities Code § 7901 provides, in relevant part:

"...telephone corporations may construct... telephone lines along and upon any public road or highway... and may erect poles, posts, piers or abutments for supporting the insulators, wires and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway...."

Both PG&E and Pacific Bell moved that the complaint be dismissed for failure to state a claim. Pacific Bell further claimed that, since it had not added any equipment to the line system since 1980, the complaint, as to it, was untimely. After a hearing before an Administrative Law Judge, we dismissed the

complaint for failure to allege or prove a violation of the law or of any order or rule of the Commission.

Keller now applies for rehearing of that decision alleging that it was based on insufficient, incomplete, misleading and irrelevant testimony. The majority of the points raised in the Application rebut claims made by PG&E. The remainder of the Application states facts or discusses the relevancy or probative value of various pieces of evidence.

In our view, the application for rehearing fails because it does not demonstrate any error in the decision. Our findings of fact and law are adequately supported by evidence in the record. Although Keller understandably maintains that the evidence should be looked at in a light more sympathetic to him, such claims, without more, do not demonstrate legal error. The Application does not set forth any specific grounds on which the decision may be considered unlawful or erroneous. Therefore, we are of the opinion that it should be denied.

THEREFORE, IT IS ORDERED that, Rehearing of D.92-04-041 is denied.

This order is effective today.

Dated July 22, 1992 at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director