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Decision 92-09-003 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ANGELO MARKOULIS, individually and )  
dba AMERICAN INDUSTRIAL CENTER by )  
his attorney-in-fact, STEVE )  
MARKOULIS, AND GREGORY MARKOULIS, )

Complainants,

vs.

PACIFIC GAS AND ELECTRIC CO.  
(U-39-E),

Defendant.

Case 89-02-012  
(Filed February 3, 1989)

ORDER MODIFYING DECISION 91-09-008

Summary of Decision

This decision modifies Decision (D.) 91-09-008 to allow Angelo Markoulis, individually and doing business as American Industrial Center (AIC) by his attorney-in-fact, Steve Markoulis, and Gregory Markoulis (complainants), to file a motion seeking an order from the Commission dismissing Gregory Markoulis as a party to the proceeding.

The decision also denies complainants' motion to dismiss Gregory Markoulis as a party to this proceeding with leave to seek relief from the Superior Court of the State of California in and for the City and County of San Francisco (Superior Court).

Background

On February 3, 1989, Angelo Markoulis, individually and doing business as AIC through his attorney-in-fact, Steve Markoulis, and Gregory Markoulis, filed a complaint, Case (C.) 89-02-012, against Pacific Gas and Electric Company (PG&E). Complainants alleged that PG&E's charges for electric use at AIC

were improper and requested a Commission order requiring PG&E to cease billing them for the alleged improper charges.

The Commission issued Decision (D.) 91-09-008 in C.89-02-012 which denied complainants' request, found that PG&E's charges were in accordance with its tariffs, and ordered them to continue paying their electric bills in accordance with a written agreement (Agreement) entered into by Angelo Markoulis and PG&E. D.91-09-008 also ordered complainants to pay all past due bills for AIC with interest set forth in PG&E's tariffs.

Complainants filed an application for rehearing of D.91-09-008 raising numerous allegations of error. In addition, the application for rehearing sought an order from the Commission exonerating Gregory Markoulis from liability for charges for electric service provided under the Agreement. In response, the Commission issued D.91-12-064 which modified D.91-09-008 but denied complainants' request for rehearing. As to complainants' request to exonerate Gregory Markoulis from liability for charges for electric service, the Commission stated the following:

"...Finally, we note that Gregory Markoulis was joined as a defendant in the related superior court action<sup>1</sup> and complainants have never

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1 After failing to receive payments for electric use at AIC in accordance with the Agreement, PG&E in 1986 filed a complaint for breach of contract, Case No. 854303 in the Superior Court. PG&E named AIC, Angelo Markoulis and his son Gregory Markoulis as defendants. In its lawsuit, PG&E sought to recover the amount owed to it for electric service provided to AIC pursuant to the Agreement.

Subsequently, Markoulis and PG&E entered into a stipulation in the Superior Court case agreeing to an Order for Stipulated Judgment and Vacating of Trial Date. In the stipulation, Markoulis and PG&E agreed to have the issues raised in a complaint resolved by the Commission. The Superior Court issued an order which required Markoulis to file a complaint with the Commission within

(Footnote continues on next page)

filed a motion to have him removed as a party from this action...." (D.91-12-064, p. 2.)

In order to meet the Commission's procedural requirements, complainants, on April 2, 1992, filed a petition to modify D.91-09-008 to provide Gregory Markoulis an opportunity to file a motion to dismiss himself as a party to this proceeding. In anticipation of a favorable ruling from the Commission, complainants, on June 5, 1992, also filed a motion to dismiss Gregory Markoulis as a party to the proceeding on grounds that the Commission is without jurisdiction to find him liable for charges that are the subject of this proceeding.

Complainants contend that Gregory Markoulis was never a party to the Agreement and was never PG&E's customer of record for service to AIC. Accordingly, complainants assert that there is no basis for holding Gregory Markoulis liable for PG&E's charges for electric service provided to AIC.

PG&E has not filed any response to complainants' pleadings.

Discussion

There are two pleadings before us. First, the petition to modify D.91-09-008 to allow Gregory Markoulis an opportunity to file a motion to dismiss himself as a party to the proceeding. Second, complainants' motion to dismiss Gregory Markoulis as a party to this proceeding on grounds that the Commission is without jurisdiction to find him liable for PG&E's charges for electric use at AIC.

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60 days. According to the Superior Court order, the Commission's decision, when final, shall be entered as part of the final judgment of the Superior Court and be binding on both parties. The stipulation was the basis for filing this complaint.

Rule 56 of the Commission's Rules of Practice and Procedure (Rule 56) provides that a motion to dismiss due to jurisdictional defect may be made at any time. Accordingly, we will modify D.91-09-008 and accept complainants' motion. The following discussion addresses the motion.

The issue before the Commission in this proceeding was whether complainants should continue to pay their electric bills for AIC in accordance with the Agreement and whether complainants should pay all past due electric bills for AIC. The issue of who the customer was and who was liable for PG&E's charges was not before the Commission. Specifically, the issue of whether or not Gregory Markoulis is liable for the charges was not raised during the evidentiary phase of the proceeding. Complainants raised this issue for the first time in their application for rehearing of D.91-09-008.

While the issue of whether or not Gregory Markoulis is liable for the charges was not raised during the evidentiary phase of this proceeding, it should be noted that Gregory Markoulis is listed as a complainant in all documents before the Commission and that Gregory Markoulis is listed as defendant in PG&E's complaint in the Superior Court against Angelo Markoulis and AIC. Accordingly, the Commission considered Gregory Markoulis as one of the complainants and held him, along with other complainants, liable for payment of PG&E's charges for electric service at AIC.

We do not necessarily agree with complainants' assertion that the Commission is without jurisdiction to find Gregory Markoulis liable for PG&E's charges. By filing this complaint, all complainants, including Gregory Markoulis, have submitted to our jurisdiction. However, the issue raised by complainants' motion appears to be whether or not Gregory Markoulis is liable under the Agreement. We believe that determination can best be made by the Superior Court in the action in which Gregory Markoulis is a named

defendant. Accordingly, we deny complainants' motion with leave to seek relief from the Superior Court.

Findings of Fact

1. Complainants filed a complaint, C.89-02-012, against PG&E alleging that PG&E's charges for electric use at AIC were improper and requested a Commission order requiring PG&E to refrain from billing them for the improper charges.

2. The Commission issued D.91-09-008 which denied complainants' request and ordered them to continue paying their electric bills in accordance with the Agreement.

3. Complainants filed an application for rehearing of D.91-09-008 requesting, among other things, an order from the Commission exonerating Gregory Markoulis for liability for payment of PG&E's charges.

4. In response to the application for rehearing of D.91-09-008, the Commission issued D.91-12-064 which denied a rehearing of D.91-09-008 and, among other things, noted that Gregory Markoulis was joined as defendant in the related Superior Court action and that complainants have never filed a motion to have him removed as a party to this action.

5. Complainants filed a petition to modify D.91-09-008 requesting a Commission order allowing Gregory Markoulis an opportunity to file a motion with the Commission to dismiss himself as a party to this proceeding.

6. Complainants also filed a motion to dismiss Gregory Markoulis as a party to this proceeding on grounds that the Commission lacks jurisdiction to find him liable for PG&E's charges.

7. Rule 56 provides that a motion to dismiss due to jurisdictional defect to be made at any time.

8. The issue of whether or not Gregory Markoulis is liable for PG&E's charges was not raised during the evidentiary phase of this proceeding.

9. Gregory Markoulis is listed as a complainant in all documents before the Commission.

10. Gregory Markoulis is also listed as a defendant in PG&E's complaint against AIC in the Superior Court.

11. The Commission considered Gregory Markoulis as one of the complainants and held him, along with other complainants, liable for payment of PG&E's charges for electric service at AIC.

12. The determination of whether or not Gregory Markoulis is liable for PG&E's charges under the terms of the Agreement can best be made by the Superior Court.

Conclusions of Law

1. D.91-09-008 should be modified to allow complainants to file a motion to dismiss Gregory Markoulis as a party to this proceeding.

2. Complainants' motion to dismiss Gregory Markoulis as a party to this proceeding should be denied with leave to seek relief from the Superior Court.

ORDER

IT IS ORDERED that:

1. Decision 91-09-008 is modified to allow Angelo Markoulis, individually and doing business as American Industrial Center through his attorney-in-fact, Steve Markoulis and Gregory Markoulis (complainants), to file a motion to dismiss Gregory Markoulis as a party to this proceeding.

2. Complainants' motion to dismiss Gregory Markoulis as a party to this proceeding is denied with leave to seek relief from the Superior Court of the State of California in and for the City and County of San Francisco.

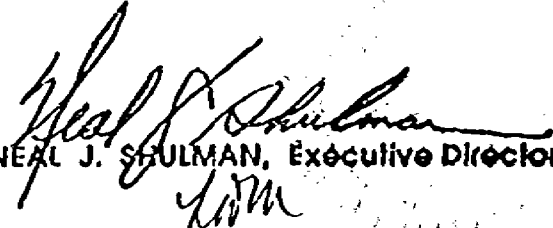
This order becomes effective 30 days from today.

Dated September 2, 1992, at San Francisco, California.

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

Commissioner Patricia M. Eckert,  
being necessarily absent, did  
not participate.

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

  
NEAL J. SHULMAN, Executive Director