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Decision 92-11-019 November 6, 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.

ORIGINAL

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

ORDER MODIFYING DECISION 92-09-003 AND DENYING REHEARING

Angelo Markoulis, individually and doing business as the American Industrial Center (AIC), by his attorney-in-fact, Steve Markoulis, and Gregory Markoulis (complainants) have filed an application for rehearing of Decision 92-09-003.¹ Decision 92-09-003 modifies Decision 91-09-008 to allow complainants to file a motion seeking an order from the Commission dismissing Gregory Markoulis as a party to the proceeding. The challenged 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.²

1. Upon filing this application for rehearing the automatic stay provisions of Public Utilities Code section 1733(a) became effective. The stay hereby expires with this decision.

2. The procedural background of this matter is set forth in Decision 92-09-003.

Complainants' only allegation of error is that we incorrectly denied the motion to dismiss on the ground that the Commission had not entertained the issue of Gregory Markoulis' liability for the charges during the proceeding. No issue has been raised concerning our modification of Decision 91-09-008 to permit complainants to file their motion to dismiss.

Complainants claim that they have litigated the issue of Gregory Markoulis' non-liability as follows: 1) In a reference in Paragraph 3 of their Complaint denying any partnership between Angelo Markoulis and Gregory Markoulis or any basis for finding Gregory Markoulis liable to PG&E; 2) In complainants' prayer requesting the Commission to order PG&E to cease attempting to bill and collect charges from all complainants; and 3) In producing evidence linking Angelo Markoulis as the owner of the AIC and signatory to the agreement.

However, as grounds for this application for rehearing complainants argue that we do not have jurisdiction to find Gregory Markoulis liable for the amount in controversy. We disagree with complainants. Once the Commission has assumed jurisdiction, it cannot be "hamp[er]ed, interfe[r]ed with, or second guessed by a concurrent superior court action addressing the same issue." (Barnett v. Delta Lines, Inc. (1982) 137 Cal.App.3d 647, 681; see also, Pacific Tel. & Tel. Co. v. Superior Court (1963) 60 Cal.2d 426, 429-430.) We believe that we are the proper forum for disposing of the motion for dismissal of Gregory Markoulis as a party.

Upon reviewing each and every allegation of error raised by complainants, we conclude that grounds for rehearing have not been shown. Accordingly, we shall modify Decision 92-09-003 set forth in the attached order and find that the motion to dismiss Gregory Markoulis as a party shall be granted.

ORDER

IT IS ORDERED that:

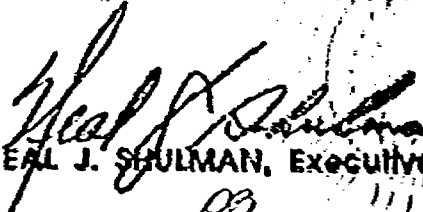
1. Decision 92-09-003 is modified as set forth in the attached order, to grant the motion to dismiss Gregory Markoulis as a party to Case 89-02-012.

2. Rehearing of D.92-09-003, as modified herein, is denied. This decision becomes effective today.

Dated November 6, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director

Decision 92-09-003
as modified by Decision 92-11-019, on November 6, 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 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. This decision also grants complainants' motion to dismiss Gregory Markoulis as a party to this proceeding.

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 89-02-012, against Pacific Gas and Electric Company (PG&E). Complainants alleged that PG&E's charges for electric use at the

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

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

Complainants filed an application for rehearing of Decision 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 Decision 91-12-064 which modified Decision 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: "Finally, we note that Gregory Markoulis was joined as a defendant in the related superior court action³ and

3. After failing to receive payments for electric use at the AIC in accordance with the agreement, PG&E filed a complaint in 1986 for breach of contract. This action is Case No. 854303 in the Superior Court in and for the City and County of San Francisco. PG&E named the AIC, Angelo Markoulis and his son Gregory Markoulis as defendants. In its lawsuit, PG&E sought to recover the balance owed to it for electric service provided to the AIC pursuant to the agreement. Subsequently, Angelo 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 this Commission. The superior court issued an order which required Markoulis to file a complaint with the Commission within 60 days. Pursuant 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.

complainants have never filed a motion to have him removed as a party from this action...." (D.91-12-064, p. 2.)

On April 2, 1992, complainants filed a petition to modify Decision 91-09-008 to allow Gregory Markoulis an opportunity to file a motion to dismiss himself as a party to this proceeding. On June 5, 1992, complainants 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 the AIC. Accordingly, complainants assert that there is no basis for holding Gregory Markoulis liable for PG&E's charges for electric service provided to the AIC. PG&E has not filed any response to complainants' pleadings.

Discussion

There are two pleadings before us: first, the petition to modify Decision 91-09-008 to allow Gregory Markoulis an opportunity to file a motion to dismiss himself as a party to the proceeding; and 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 the AIC.

We will modify Decision 91-09-008 and accept complainants' motion. However, we do not 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. Once the Commission has assumed jurisdiction of the complaint, which we did here upon the filing of the complaint, our authority over the matter takes precedence over that of a superior court, and includes the authority to determine the liability of the named defendants. (Barnett v. Delta Lines, Inc. (1982) 137 Cal.App.3d

647, 681; see also, Pacific Tel. & Tel. Co. v. Superior Court (1963) 60 Cal.2d 426, 429-430.) In the exercise of this authority, we find that Gregory Markoulis should be dismissed as a party to the underlying action. Accordingly, we grant complainants' motion.

Findings of Fact

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

2. The Commission issued Decision 91-09-008 which denied complainants' request and ordered them to continue paying their electric bills in accordance with a written agreement between Angelo Markoulis and PG&E.

3. Complainants filed an application for rehearing of Decision 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 Decision 91-09-008, the Commission issued Decision 91-12-064 which denied a rehearing of Decision 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 or the superior court action.

5. Complainants filed a petition to modify Decision 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. Gregory Markoulis is listed as a complainant in all documents before the Commission.

8. Gregory Markoulis is also listed as a defendant in PG&E's complaint against the AIC in the superior court.

9. Upon the filing of the complaint in this action, the Commission assumed jurisdiction over the matter.

Conclusions of Law

1. Decision 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 granted.

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 granted.

This order becomes effective 30 days from today.

Dated November 6, 1992, at San Francisco, California.

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

(END ATTACHMENT)