ALJ/bw

Decision 82 07 009 JUL 7 - 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THOMAS H. FRANKEL,

Complainant,

vs

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Case 82-03-03
(Filed March 8, 1982)

ORDER OF DISMISSAL

Complainant, an individual, alleges that all of the rates of defendant Pacific Gas and Electric Company (PG&E) are unreasonable because of "frivolous, unnecessary, unreasonable and expensive" advertisements, specifically those printed in newspapers on or about November 20, 1981 thanking PG&E's employees for their work in handling damage resulting from a severe storm.

Complainant also challenges the reasonableness of PG&E's discount tariffs for utility service furnished its employees.

PG&E moved for dismissal on a variety of grounds. On May 21, 1982, complainant filed an amended complaint. The allegations are identical, and its purpose is apparently to add the number of signatures required to avoid the consequences of Public Utilities Code § 1702, which requires the signatures of at least 25 ratepayers on a complaint challenging rates.

We have repeatedly held in the past that expense for image-building advertisements, as distinguished from those designed to benefit the ratepayers (for example, by promoting conservation), is not to be included in ratesetting but must be borne by the stockholders. Complainant seeks disclosure of the sums expended and a reduction in rates so that ratepayers will not be charged for them.

PG&E's most recent general rate increase proceeding was Application 60153, filed December 23, 1980 and decided on December 30, 1981 (Decision (D.) 93887). All the advertising

evidence was admitted well in advance of the November 1981 storm, and none of the test year estimates for advertising included any sums for the particular advertising which is the subject of the complaint.

The particular newspaper ads which are the subject to this complaint contained a notice that they were paid for by PG&E's stockholders and not ratepayers. This means they were charged to a below-the-line account, which will not be reflected in rate-making and trended or otherwise built into the advertising expenditure base that will be the starting point for review in the next PG&E general rate proceeding.

However, it is appropriate to explain, generally, how utilities' advertising expenditures are reviewed and interrelate to ratesetting. A utility's budget is reviewed in general rate proceedings. If complainant believes too much advertising expense is allowed for ratemaking, or as expense ratepayers will bear through their rates, he can and should participate in PG&E's general rate proceedings. As one element in determining a utility's prospective revenue requirement in general rate proceedings we adopt a reasonable level of advertising expense; in doing that, proposed advertising programs that are primarily corporate image-building and/or those which do not benefit ratepayers are not funded. We do not allow recovery, through rates, of operating expense for such advertising. Once rates are set, after our review of the evidence and issuing a general rate decision, utilities may spend more for advertising than allowed when we adopted the test year revenue requirement. Likewise, they may spend less.

In any event ratepayers are not charged for types of advertising that are disallowed. However, the point is we adopt a prospective level of reasonable expense, and we have no hindsight review. Advertising expense for PG&E will again be reviewed in its next general rate proceeding, where we will be reviewing proposed expenditures for the 1984-85 period.

Complainant additionally seeks an order from us prohibiting PG&E from placing such advertisements in the future. Such requests (concerning advertisements of varying subject matter) have been made several times in previous complaints. We have ruled that while we may disallow advertising expenses which we find unreasonable, we cannot issue gag orders without interfering with a utility's freedom of speech rights. We adhere to this determination. The U.S. Supreme Court has specifically disapproved advertising prohibitions by regulatory commissions, and has specifically held that the right of free speech extends to corporations. (Central Hudson Gas & Elec. Co. v Pub. Serv. Comm. of N.Y. (1980) 447 US 557; Consolidated Edison Co. v Pub. Serv. Comm. of N.Y. (1980) 447 US 530.

Lastly, complainant challenges the reasonableness of PG&E's employee discounts for utility service. The Commission is well aware of problems relating to employee discounts and is conducting a complete investigation on the subject (Order Instituting Investigation 104). Such statewide investigation naming all appropriate utilities as respondents is a more appropriate format for such a proceeding than a complaint against one utility.

We find that complainant is not entitled to any relief and conclude that this complaint should be dismissed without prejudice.

IT IS ORDERED that this complaint is dismissed without prejudice.

This order becomes effective 30 days from today.

Dated JUL 7 1982, at San Francisco, California.

RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

Commissioner John E. Bryson, being necessarily absent, did not participate.

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

Joseph E. Bodovitz, Executive Director