ALJ/EA /jt

Decision 83 02 007 FEB 2 - 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Center For Public Interest Law and Robert L. Simmons, Complainants, vs. San Diego Gas & Electric Co., Defendant.	Case 82-03-05 (Filed March 11, 1982)

ORDER DENYING APPEAL OF
ADMINISTRATIVE LAW JUDGE'S RULING
OF NOVEMBER 19, 1982 AND
MOTION TO RESCIND OR ALTER RULING

This Commission has carefully considered the allegations of error set forth in the above-described "appeal and motion" filed by defendant San Diego Gas & Electric Company (SDG&E) in Case 82-03-05. For the following reasons we are of the opinion that good cause has not been shown for granting either the appeal or the motion.

SDG&E's arguments are confused and unpersuasive. SDG&E seems to claim that because the U.S. Supreme Court has held that U.S. Constitutional First Amendment free speech guarantees extend to corporations, this somehow means that the corporate right to privacy is the equivalent of an individual's right of privacy under Article I, Section 1 of the California Constitution. Three of the four cases cited in support of this proposition have to do with the extent of the privacy rights of particular individuals against disclosure of their personal records by governmental agencies. The fourth case cited is a federal case which has to do with standing of a corporation to challenge a state statute regulating

the sale of contraceptives. In this latter case the federal court did not rest its determination on a corporate privacy right, so the case is irrelevant to the issue for which it is cited. Likewise, the three individual privacy rights cases have nothing to do with corporate privacy.

What SDG&E totally fails to address is the California Evidence Code privilege statutes. Evidence Code Section 911 states: "Except as otherwise provided by statute: ...(b) no person has a privilege to refuse to disclose any matter or to refuse to produce any writing, object, or other thing. . . ." There are only 11 privileges against disclosure in the Evidence Code. None of them has to do with protecting "proprietary information", a term used often by SDG&E to describe the three documents in question. In fact, the only privilege which comes close to that suggested by SDG&E is the privilege to protect trade secrets. However, no assertion that any trade secrets are contained in these documents was made. And no California case law is cited by SDG&E in support of this proprietary information claim. Rather, SDG&E cites state court decisions in Kansas and Illinois and two federal district court decisions which have to do with the definition of proprietary information. These cases do not persuade us that California's Evidence Code should be ignored in this instance.

Nor are we persuaded by SDG&E's citation to Southern California Edison Company v Superior Court (1972) 7 C 3d 832, which has to do with deposition procedures which, if permitted, would have a chilling effect on class actions at the discovery stage by either imposing "impossibly expensive burdens" or "chipping away at the size of the class". The production of the three documents contested by SDG&E has very little in common with the court's holding in Edison. In fact, we frankly find that holding irrelevant to the matter before us.

With respect to SDG&E's request that we strike certain language in the Administrative Law Judge's (ALJ) Ruling which it describes as "gratuitous, procedurally improper", we decline to do so. The language in question, while unnecessary to the resolution of the question presented, is dictum having no effect on the order or on our ultimate disposition of this matter.

We also reject SDG&E's argument that the documents need not be produced because the affidavit in support of the subpena duces tecum in question is defective. The affidavit is clearly sufficient to give notice to SDG&E of what is being requested and how such documents are relevant to the issues before the Commission. SDG&E seems to confuse the burden to be met in discovering documents before a hearing with the much greater burden the proponent must meet in showing their admissibility into evidence. Admissibility is a matter which can only be decided after discovery.

Because the Commission will be considering the matter underlying this procedural question within a short time, the parties have an immediate need to access to a full record. Thus, it is necessary to make this order effective without delay.

Therefore, IT IS ORDERED that:

1. The appeal of the ALJ Ruling filed November 19, 1982 and the motion to rescind or alter that ruling are denied.

2. Defendant shall comply with the terms of the ALJ Ruling of November 19, 1982.

This order is effective today.

Dated FEB 2 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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

Joseph E. Bodovitz, Executive Director