

Process
15

Decision 83 07 022

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARK BERNSLEY,)
)
 Complainant,)
)
 vs.)
)
 GENERAL TELEPHONE COMPANY OF)
 CALIFORNIA, a part of GENERAL)
 TELEPHONE & ELECTRONICS,)
)
 Defendant.)

Case 83-01-07
(Filed January 31, 1983)

Mark Bernsley, Attorney at Law, for
himself, complainant.
Susan E. Amerson, Attorney at Law,
for defendant.

O P I N I O N

This is a complaint for improper application of tariff rules. The matter was heard by Administrative Law Judge Colgan on April 7, 1983 and submitted that day pending receipt of briefs which were timely submitted by the parties by April 21, 1983.

The complaint alleged that General Telephone Company of California (General) was applying the late charge authorized by the Commission in Decision (D.) 82-06-054 (June 15, 1982) to all amounts billed and not collected by the fourth day of the following month "regardless of the date of the succeeding bill". Complainant Bernsley claimed that this practice is inconsistent with the authorized tariff rule (Rule 10) and inconsistent with Article XV, the usury provision, of the California Constitution.

Based on this Bernsley requested that General:

1. Be required to refund or credit, with interest, all affected customers;
2. Be stopped from continuing the improper application of late payment charges; and
3. Be required to pay Bernsley reasonable attorney's fees.

After the hearing Bernsley modified his allegations, claiming that:

1. Because the late payment charge takes effect on a date selected unilaterally by General and was neither disclosed to customers nor approved by the Commission, it cannot be considered a penalty to compel performance of an obligation; and
2. The late charge cannot be considered liquidated damages because it bears no relation to actual damages suffered due to delay.

Therefore, Bernsley reasons, the late charge must be regarded as interest paid for the privilege of not paying an obligation by its due date, a forbearance. He states that the Constitution (Article XV, Section 1(1)) sets a maximum of 10% per annum on such obligations, and concludes that the rate charged by General is therefore usurious and void and the relief sought in the complaint should be granted.

It is true that the usury provisions of the Constitution set a maximum interest rate of 10% per annum for certain loans or forbearances. Bernsley claims that General's late charge constitutes a forbearance subjecting it to these provisions. General strongly disagrees, arguing that utilities regulated by this Commission are not bound by the state constitutional usury provisions. However, we need not reach that issue to resolve this case.

General's late payment charge was authorized by the Commission in D.82-06-054 dated June 15, 1982. We did not specify the legal basis upon which we authorized the late charge of 1.5%. However, our decision did take note of General's claim that the proposed amount "generally reflects General's cost of short-term borrowing" and "will encourage more customers to pay their bills on time which will reduce the requirement for short-term borrowing and thus reduce General's cost of operations." D.82-06-054, mimeo. page 59. This language clearly indicates that we regarded the late payment charge as a means to compel timely performance.

Timely performance is an important ratemaking concern since late payments increase the utility's revenue requirement by adversely impacting the working cash component of rate base. This adverse impact is felt ultimately by all ratepayers, including those who pay their utility bills on time. The Commission's goal in authorizing the late payment charge was to avoid this adverse impact by providing an inducement to timely payment of utility bills. Concomitantly, the late payment charge is intended to assure that those ratepayers contributing to additional expense, due to late payment, pay accordingly.

Thus, the cited constitutional provision is not applicable to this late charge.

The hearing testimony revealed that General has divided its customers into ten approximately equal groups for billing purposes. Each group's bills are processed monthly during a three- (occasionally four) day period.

Bernsley is in the group called billing cycle 6. In 1982 for the months of October, November, and December cycle 6 activity was "closed" by General's computer at midnight on the 15th of each month and processing of the data began one minute later on the 16th. Processing proceeded during the 16th, 17th, and 18th. Then the bills were mailed on the 19th. Some of the

bills that were heavier than usual and had to be handled manually were not mailed until the 20th. Sometimes some bills were also mailed a day early.

The billing date which appeared on these bills was the 19th (which General calls the "presentation date"). The bills also listed a due date of the 4th of the following month.

The witnesses explained that the computer's data on each customer is updated daily, but no new entries are added during the last three days of each billing cycle when the information is being processed for billing. Thus, if the payment for cycle 6 customers was not received by General's computer by the 14th of the months in question, the late charge was assessed.

In Bernsley's case, the evidence showed that his check was received by General from the post office on November 15--one day after the closing date for accepting bill payments. Bernsley then received the following month's billing from General dated November 19--four days after it received his money--claiming that a late charge was owing.

The testimony of General's witnesses showed that mail is received from the post office several times a day and that keypunch operators record the amount of each check received from the post office and this amount is transferred to the central computer. General's business records for November 14 for the activities of the department which keypunches this information (Exhibit 2) show that all the mail received from the post office that day was processed. Nothing was left to be done the next day. Testimony about the markings on the back of Bernsley's canceled check indicate its receipt was entered on the computer on the 15th.

Bernsley correctly states that there is no indication on the bill of the actual date upon which General implements its right to collect a late charge. (In this instance it was the 15th of each month in question.) He argues that the customer has a right to know that date. He also argues that the late payment charge he received violated General's tariff Rule 10.E. because it can only be applied to an amount remaining due from a prior bill at the time of a current bill. Since General mailed the November bill on the 19th and since General actually received his October payment on the 15th, Bernsley reasons that nothing remained due on the 19th and thus General had no right to impose the late charge. Rule 10.E. states:

"A late payment charge of 1.5 percent applies to each customer's bill when the previous month's bill has not been paid in full, leaving an unpaid balance carried forward. The 1.5 percent charge is applied to the total unpaid amount carried forward and is included in the total amount due on the current bill."

General considered that Bernsley's bill had "not been paid in full" when it had not been paid by the 14th of the month. General's tariffs do not require General to give its customers a full month to pay their bills. Rule 11.A.3. specifies that service may be discontinued if the customer has not paid within 15 days of presentation of the bill. General sets out this date on its bills as the due date (the fourth of the month in Bernsley's case), but does not implement its right to discontinue service on that date. Rather, General uses the date to notify customers that their payment is overdue. General continues to accept payments until reaching the date for closing the computer's receipt of further

payment information. This practice gives customers about 10 extra days past the "due date" to pay their bills. After this cutoff date, which is the 27th or 28th day from the bill presentation date, the late payment charge is assessed.

We believe this practice is a reasonable application of Rule 10.E. and that Bernsley's bill was properly considered unpaid when his check failed to arrive at General by midnight on November 14. However, we agree with Bernsley's assertion that the customers have a right to know the actual cutoff date relied upon by General for receipt of payment each month. Furthermore, the actual practice engaged in by General ought to be spelled out in its tariff. Therefore, while we do not think that Bernsley's treatment violated the Constitution or any law or tariffs, or that General has acted improperly, we do think that General should spell out its practices in writing and make them available to its customers.

Findings of Fact

1. Bernsley received a bill from General with a presentation date of October 19, 1982.
2. The bill was mailed by General on either October 19 or October 18, 1982.
3. The bill showed a due date of November 4, 1982.
4. Bernsley paid the bill by check sent after the due date.
5. Bernsley's check was received by General from the post office on November 15, 1982.
6. Bernsley received a bill from General with a presentation date of November 19, 1982. It included a late payment charge for the previous month's bill.

7. It is General's usual practice to close access to its computer for entering bill payments on the 27th or 28th day from the last presentation date. Payments made before this date are accepted without penalty. Others are deemed late and the late payment charge authorized by tariff Rule 10.E. is added to the next month's bill. Customers are not informed of this date.

8. General's cutoff date for the computer recognizing payments for its October 19, 1982 billing was November 14, 1982, comporting with its usual practice.

9. After the computer cutoff date, General takes three days for processing the previously submitted billing data and preparing bills for mailing on the fourth day. Sometimes bills are mailed on the third day and sometimes, if they are large and require extra postage, they are mailed on the fifth day.

10. General's tariff Rule 11.A.3. permits General to discontinue service 15 days after presentation of its monthly bill.

11. In practice, General does not discontinue service 15 days after presentation of its bills. Rather, General issues a notice that the bill is past due after that date.

12. General's tariff Rule 10.E. permits General to apply a late payment charge of 1.5% to the total unpaid amount of a previous month's bill and include it on the current bill.

Conclusions of Law

1. General's cutoff date for accepting bill payment information for processing is reasonable, since it permits payment to be accepted without penalty beyond the 15 days which are permitted for timely payment under Rule 11.A.3.

2. General does not exceed its authority nor violate the Constitution or any statute by applying the late payment charge authorized by Rule 10.E. to any bill amount for which payment has not been received by the computer cutoff date.

3. General's customers have a right to be informed of the policy it has established to implement Rule 10.E. and to determine whether payment is considered timely.

O R D E R

IT IS ORDERED that the complaint in Case 83-01-07 is denied. However, General Telephone Company of California (General) shall, within 90 days of the effective date of this order, prepare a clear statement informing customers where they can call or write for a copy of the explanation of all billing procedures. Such

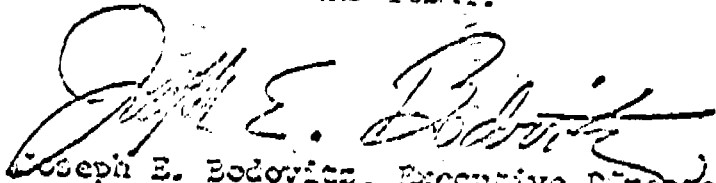
statement shall be added to the back of all bills within 90 days after approval by the Commission staff.

This order becomes effective 30 days from today.

Dated JUL 20 1985, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
FRISCILLA C. CREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director

Decision 83 07 022 JUL 20 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARK BERNSLEY,
Complainant,

vs.

GENERAL TELEPHONE COMPANY OF
CALIFORNIA, a part of GENERAL
TELEPHONE & ELECTRONICS,
Defendant.

~~(ECP)~~
Case 83-01-07
(Filed January 31, 1983)

SS

Mark Bernsley, Attorney at Law, for
himself, complainant.
Susan E. Amerson, Attorney at Law,
for defendant.

O P I N I O N

This is a complaint for improper application of tariff rules. The matter was heard by Administrative Law Judge Colgan on April 7, 1983 and submitted that day pending receipt of briefs which were timely submitted by the parties by April 21, 1983.

The complaint alleged that General Telephone Company of California (General) was applying the late charge authorized by the Commission in Decision (D.) 82-06-054 (June 15, 1982) to all amounts billed and not collected by the fourth day of the following month "regardless of the date of the succeeding bill". Complainant Bernsley claimed that this practice is inconsistent with the authorized tariff rule (Rule 10) and inconsistent with Article XV, the usury provision, of the California Constitution.

SS
Thus, the cited constitutional provision is not applicable to this late charge. ~~Furthermore, even if we had concluded that the constitutional provision did apply to this charge and that utilities under our jurisdiction were bound by it, Bernsley failed to show in either the hearing or the legal argument presented in the post-hearing brief how he arrived at the conclusion that the rate charged exceeded the constitutional maximum as alleged.~~

The hearing testimony revealed that General has divided its customers into ten approximately equal groups for billing purposes. Each group's bills are processed monthly during a three- (occasionally four) day period.

Bernsley is in the group called billing cycle 6. In 1982 for the months of October, November, and December cycle 6 activity was "closed" by General's computer at midnight on the 15th of each month and processing of the data began one minute later on the 16th. Processing proceeded during the 16th, 17th, and 18th. Then the bills were mailed on the 19th. Some of the

2. General does not exceed its authority nor violate the Constitution or any statute by applying the late payment charge authorized by Rule 10.E. to any bill amount for which payment has not been received by the computer cutoff date.

3. General's customers have a right to be informed of the policy it has established to implement Rule 10.E. and to determine whether payment is considered timely.

O R D E R

Denial - IT IS ORDERED that the complaint in Case 83-01-07 is ~~granted, to the extent that~~ General Telephone Company of California (General) shall, within 90 days of the effective date of this order.

- a. Submit by advice letter tariff rules to this Commission setting forth the procedures presently in practice for the implementation of Rule 10.E. and for determining whether payment is timely.
- b. Prepare a written description of each year's billing cycles, what General regards as timely payment, and the implementation of Rule 10.E. and submit it for approval by the Commission staff. Such description shall be made available to each customer requesting it after it has been approved.

H
c. ^{postpaid.} Prepare a clear statement informing customers where they can call or write for a copy of the explanation of all billing procedures described in ~~paragraph b, above.~~ Such statement shall be added to the back of all bills within 90 days after approval by the Commission staff.

AS ~~The complaint is denied in all other respects.~~

This order becomes effective 30 days from today.

Dated JUL 20 1983, at San Francisco, California.

LEONARD M. CRIMES, JR.
President

VICTOR CALVO
FRISCILLA C. CREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners