

L/SK:bjw

Decision 83 10 OSS OCT 19 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARK BERNSELY,

Complainant,

vs.

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

Defendant.

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

ORDER MODIFYING DECISION (D.)  
83-07-022 AND DENYING REHEARING

An application for rehearing of D.83-07-022 has been filed by the complainant (Bernsley). We have carefully considered each and every allegation of error and have concluded that D.83-07-022 should be modified in several respects, but that such modification does not entail rehearing. First, as there is an ambiguity in defendant's (General's) tariff rules which is material to the facts presented in Bernsley's case, General must refund the late payment charge imposed on Bernsley. Second, pending resolution of the ambiguity, General must refrain from collecting late charges where payment is received before the presentation date of the following bill. Third, pending determination of the applicability of Article XV of the California Constitution, General must charge interest on late payments that does not exceed the interest rates allowable under the cited constitutional provisions. Fourth, in the pending OII 83-08-02, which has been consolidated for hearing with A.83-07-02 (General's pending rate proceeding), General shall present evidence and argument on the issue of whether the cited constitutional

provisions apply to General's late payment charges. Therefore, good cause appearing,

IT IS ORDERED that

(1) D.83-07-022 is modified as follows:

(a) The discussion beginning with the first paragraph on mimeo. page 3 and extending through the first paragraph on mimeo. page 4 is deleted in full and replaced with the following:

"In a recent decision involving a pipeline corporation, we concluded as a matter of law that the usury provisions did apply to that utility's late payment charges. (D.82-01-90 (Jan. 19, 1982), mimeo. p. 13, Concl. of Law No. 4.) Furthermore, in OII 49, the Commission criticized late payment charges as a regulatory mechanism. (D.93533 (Sept. 15, 1981), mimeo. p. 23.) When the Commission authorized General's late payment charge (in D.82-06-054 (June 15, 1982)), the issue of the applicability of the usury provision was not considered, nor were the above precedents discussed. Thus, General's late payment charge needs to be considered in light of the usury provisions and prior Commission policy. The appropriate forum for such consideration is OII 83-08-02, which has been consolidated for hearing with A.83-07-02 (General's rate case now pending). General should there present evidence and argument on the following questions: Do the usury provisions of the California Constitution limit the interest rate that General is able to charge on late payments? If not, is it appropriate in light of the precedents discussed above to allow an interest rate in excess of that allowable under the usury provisions? Until resolution of these issues, General is directed to collect late payment charges not greater than those which would be allowable under the usury provisions."

- (b) The fourth and fifth lines of the third paragraph on mimeo. p. 4 should be modified as follows to correct typographical errors: "45th 14th of each month ... later on the 46th 15th."
- (c) The first full paragraph on mimeo. p. 7 is deleted in full and replaced with the following:

"We have carefully examined General's tariffs with respect to the due date (Rule No. 11.A.3) and the late payment charge (Rule No. 10.E.), as well as the decision authorizing General's late charge (D.83-06-054) and the facts presented by Bernsley's case. We are persuaded that Rule No. 10.E. is ambiguous in its application to a payment, such as Bernsley's, which is received by General between the date when access to General's computer is cut off and the presentation date of the following bill. Accordingly, General is directed to refund to Bernsley the amount of the late payment charge imposed with respect to the purported late payment of Bernsley's bill bearing the presentation date of October 19, 1982. Furthermore, until General has clarified Rule No. 10.E., General must refrain from collecting any late payment charges where payment is received before the presentation date of the following bill.

"We are denying Bernsley's request for attorney fees. He failed to research the Commission's prior decisions, did not engage in any discovery, did not assist in the establishment of novel or complex principles, or otherwise substantially assist the Commission in its fact-finding and decision-making."

- (d) Finding of Fact No. 3 on mimeo. p. 7 should be modified to indicate that the due date shown was November 3, 1982.

- (e) Findings of Fact Nos. 10 and 11 are deleted in full, and Finding of Fact No. 12 is renumbered as No. 10.
- (f) Conclusions of Law Nos. 1, 2, and 3 are deleted in full and replaced with the following:
  - "(1) The Commission has determined in a prior proceeding that the late payment charges of a pipeline corporation are subject to the usury provisions of the California Constitution.
  - "(2) The Commission has made no determination with respect to the applicability of the usury provisions with respect to General's late payment charges.
  - "(3) Pending determination by the Commission of the applicability of the usury provisions to General's late payment charges, General should only impose such charges at an interest rate consistent with that which would be allowed under the usury provisions.
  - "(4) General's Rule No. 10.E. is ambiguous with respect to payments received between the cutoff date for General's computer to recognize payments and the presentation date for the following bill.
  - "(5) Ambiguities in a tariff rule are to be construed strictly against the promulgating utility.
  - "(6) Because of the ambiguity in Rule No. 10.E., Bernsley's is entitled to a refund of the late payment charge imposed with respect to his payment of General's bill bearing the presentation date of October 19, 1982.

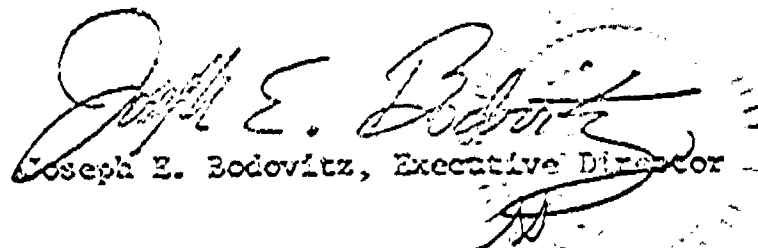
- "(7) Until General has clarified Rule No. 10.E., General must refrain from collecting any late payment charges where payment is received before the presentation date of the following bill.
- "(8) Bernsley is not entitled to attorney's fees."
- (g) The ordering paragraph is modified to read in full as follows:

"IT IS ORDERED that General Telephone Company of California (General) refund to the complainant (Bernsley) in Case 83-01-07 the sum of twenty-three cents (\$0.23). General shall also clarify its Rule No. 10.E. and, pending such clarification, shall refrain from collecting any late payment charges where payment is received before the presentation date of the following bill. General shall impose late payment charges only at such interest rate as is consistent with that which would be allowed under Article XV of the California Constitution. In OII 83-08-02, General shall present evidence and argument on the following questions: Do the usury provisions of the California Constitution limit the interest rate that General is able to charge on late payments? If not, is it appropriate in light of this Commission's decisions to allow an interest rate in excess of that allowable under the usury provisions? The Commission staff is also directed to address the above questions. The Executive Director shall cause a copy of this order to be served on all parties participating in A.83-07-02 and OII 83-08-02. Except as noted above, the Complaint in Case 83-01-07 is denied."

- (2) Rehearing of D.83-07-022 as modified herein is denied.  
This order becomes effective 30 days from today.  
Dated OCT 19 1983, at San Francisco, California.

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

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

  
Joseph E. Bodovitz, Executive Director

L/SK:bjw

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Thus, General's late payment charge needs to be considered in light of the usury provisions and prior Commission policy.

The appropriate forum for such consideration is OII 83-08-02, which has been consolidated for hearing with A.83-07-02 (General's rate case now pending).

General should there present evidence and argument on the following questions: Do the usury provisions of the California Constitution limit the interest rate that General is able to charge on late

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Decision \_\_\_\_\_ L/SK:bjw \*

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President

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