

Decision 84 01 050~~JAN 19 1984~~

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC POWER & LIGHT)
 COMPANY for approval of certain)
 standard offers pursuant to)
 Decision 82-01-103 in Order)
 Instituting Rulemaking No. 2.)

Application 82-03-67)
 (Filed March 18, 1982;)
 amended May 5, 1982)
 and January 24, 1983)

(See Decisions 82-12-120 and 83-11-047 for appearances.)

DENIAL OF MOTION TO ACCEPT
APPLICATION FOR REHEARING

On December 2, 1983, Arcata Lumber Company and Independent Energy Producers (Arcata) tendered an application for rehearing of Decision (D.) 83-11-047. D.83-11-047, issued on November 2, 1983, directed the filing of certain purchase power standard offers by Pacific Power and Light Company. Because Arcata's application for rehearing was tendered 30 days after the issuance of D.83-11-047 and failed to include a certificate of service, the application was rejected by the Commission's Docket Office. In response to this action, Arcata filed this motion for acceptance of the tendered document as an application for rehearing.

At the time of Arcata's attempted filing, Public Utilities Code §1731 required applications for rehearing to be filed "before the 30th day after the date of issuance" of the Commission's decision. This legislative mandate is incorporated in Rule 85 of the Commission's Rules of Practice and Procedure. This rule also requires the application for rehearing to "be served on all parties" to the proceeding.

Arcata argues in its motion that D.83-11-047 was not issued on the date that it was signed, but rather on the date that it either was mailed or first became publicly available. According to Arcata, this date, at the earliest, would have been November 3, 1983. Arcata also asserts that the Commission in the past has interpreted § 1731 to permit the acceptance of applications for rehearing on the 30th day after issuance of the decision.

We believe that Arcata's arguments have been definitively answered by our recent D.83-11-021, issued November 2, 1983. In responding to a similar request for acceptance of an application for rehearing tendered on the 30th day after issuance of a Commission decision, we concluded:

"CIA's argument that Section 1731, as presently written, contemplates counting of time from the date of mailing is totally without substance. The Commission does not presently use the mailing date for counting time for any other party's application for rehearing and there is nothing in the code to indicate that it should. To do so for CIA would be giving it a preference not accorded to other applicants and would be manifestly unfair." (D.83-11-021, pp. 2-3.)

This same conclusion can be drawn with respect to counting time from the date that a decision first becomes publicly available.

Arcata's arguments also overlook a critical flaw in its attempted filing. Our rules, as previously mentioned, require the service of an application for rehearing on all parties to the proceeding. A certificate of service, however, was not attached to Arcata's application when it was tendered. As such, the application was incomplete and could not have been accepted when tendered even if the filing could have been made on the 30th day after issuance of

D.83-11-047. We note that a certificate of service was eventually received from Arcata, but was dated December 13, 1983, the 41st day after issuance of D.83-11-047.

Because Arcata's petition was both incomplete and untimely, the motion for accepting the tendered document as an application for rehearing must be denied. In its motion, Arcata asks that the document be considered in the alternative as a petition for modification of D.83-11-047. We will do this.

Therefore, for failure to show good cause,
IT IS ORDERED that:

1. The motion of Arcata Lumber Company and Independent Energy Producers to file an application for rehearing of D.83-11-047 which was missing from the certificate of service on the 30th day after issuance of that decision is denied.

2. The pleading is docketed as a petition for modification.
This order is effective today.

Dated JAN 19 1984, at San Francisco, California.

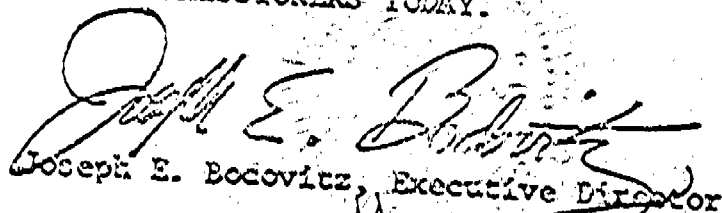
I abstain.

PRISCILLA C. GREW Commissioner

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director