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Decision No. 86879

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KINGS ALARM SYSTEMS, INC. dba AMERICAN PROTECTION INDUSTRIES-ALARM DIVISION, Complainant, v. PACIFIC TELEPHONE & TELEGRAPH CO., GENERAL TELEPHONE COMPANY OF CALIFORNIA, Defendants.	Case No. 9914 (Filed May 9, 1975; amended August 22, 1975)

ORDER REVOKING DECISION NO. 86191
AND OPINION AND ORDER ON REHEARING

On August 3, 1976 the Commission issued Decision No. 86191 in Case 9914 wherein complainant Kings Alarm Systems, Inc. (Kings) dba American Protection Industries-Alarm Division, alleged it was overbilled in the amount of $84,950.33 by Pacific Telephone and Telegraph Company (Pacific) and $5,202.41 by General Telephone Company of California (General). Kings sought reparations from Pacific and General in the foregoing amounts plus interest. Decision No. 86191 denied the relief requested by Kings. Kings' petition for rehearing was not filed in time to automatically stay D. 86191. On September 7, 1976, Pacific and General both filed oppositions to the petition for rehearing.

In its lengthy petition for rehearing Kings alleges substantial legal error in Decision No. 86191 and prays the Commission to vacate its order and enter a new order granting reimbursement to Kings for the overcharges alleged. Upon reconsideration of the entire record and the undisputed facts we are persuaded that the grounds

alleged by Kings are sufficient to cause us to grant the relief requested by Kings to the extent provided herein. (Pub. Util. Code Sec. 1736) Since the only issues pertain to application of agreed facts, we do not believe that further evidentiary proceedings are required.

SUMMARY OF THE FACTS

The basic facts are not in conflict. During the period complained of, December 2, 1968 through August 17, 1974, Pacific and General supplied Kings with a pair of wires between Kings' customer locations and its monitoring station. The pair of wires, together with equipment supplied by Kings at the customer locations and the monitoring location, enabled Kings to supply its customers "McCulloh effect" burglar alarm service involving the transmission of a direct current signal on a 30 baud, interexchange, all metallic signal channel.

A general description of the McCulloh effect burglar alarm service provided to Kings is as follows:

The telephone company supplies a pair of wires (2 wires) between Kings' monitoring station and its customers. Thus the utility provided connection between the customer locations and the monitoring station is all metallic. Kings supplies receiving equipment and a wire to ground at its monitoring station, and a sensor, sending equipment, and a wire to ground at each customer location. When an alarm condition occurs at a customer location, it is detected by the sensor. By the process of interruption, a signal is sent to the monitoring station over the two wires by opening the pair of wires. Immediately thereafter the same signal is sent through the ground connection. The ground thus provides a backup for the pair of wires by producing a redundant signal. Consequently, if one of the two wires should become broken or otherwise incapacitated so that the initial signal could not pass to the monitoring station by interruption, the alarm signal can still be sent from the other wire to ground.

The record shows that from 1940 to 1953, Pacific Tariff 104-T expressly provided for a channel with ground return charged at the rate of $1.50 per interexchange mile per month. Channels with metallic return (a pair of wires), which permit the customer to derive an additional channel by providing a ground return at his own expense, were charged at the rate of $3 per interexchange mile per month. Thus metallic return channels were billed at twice the rate of ground return channels. In 1953 Pacific Tariff 104-T and the private line guide schedule were amended. Thereafter, until August 17, 1974, the tariff made no distinction between metallic return and ground return channels. However, Pacific continued to bill metallic return channels at twice the rate of ground return channels. On December 2, 1968 the tariff in dispute went into effect. The published rate per interexchange channel was made 90 cents per month, although Pacific, through tariff interpretation, billed at the rate of $1.80 when metallic return channels were utilized. On August 12, 1974 Pacific filed a revised Tariff 104-T, effective August 17, 1974, which expressly provided a separate and distinct billing rate for McCulloh effect service at the rate of $2 per interexchange mile per channel per month. The revision was made in order to specifically provide a service which would satisfy the requirements of McCulloh effect service and replace the nontariff preexisting practice of billing as though two single service ground return channels had been supplied.

Thus, during the period at issue, Pacific Tariff 104-T provided a charge of 90 cents per mile per month for interexchange channels without distinguishing between metallic return and ground return connections. During this same period of time Kings was billed as though it were using <u>two</u> signal channels at the rate of $1.80 per interexchange mile per month although it was actually supplied a metallic return facility from which Kings derived its own ground return channel by supplying ground return equipment at its own expense. Tariff 104-T effective December 2, 1968 expressly

provided that customers by the use of their own equipment could create additional channels from the channels furnished by the utility for signaling purposes. After August 17, 1974, when the amended Tariff 104-T became effective, Kings was billed for a single channel at the new tariff rate of $2 per interexchange mile per month. It is noted with emphasis that during this entire period there was no change in the operating equipment by which Kings was served.

The record shows that in April, 1974 Kings' service billing was transferred to General. This was done becuase Kings is located in General's service area. Upon completion of the transfer of the billing procedure to General, it was discovered by the bookkeeper at Kings that Pacific had been charging more for interexchange mileage than General was charging after taking over the billing, even though the actual service received by Kings was precisely the same. The bookkeeper notified Pacific that she would not pay Pacific's final bill until the difference in billing between Pacific and General had been resolved. It developed that General was following the practice of charging for the interexchange pair of wires at the single channel rate of 90 cents per mile per month whereas Pacific had been following the practice of charging for two channels at $1.80 per mile per month for the same pair of wires. After the complaint by Kings to Pacific, General began billing Kings at the rate of $1.80. The billing rendered by Pacific and General indicated only total amounts owed and did not show any cost breakdown for the service provided. Kings paid under protest the charges demanded by Pacific and brought this action.

Kings contends that it should have been billed at the published tariff rate for one signal channel during the period at issue and not for two channels as charged by Pacific through interpretation of its tariffs.

Pacific's explanation for billing an interexchange all metallic connection for McCulloh effect service as two channels is based on the policy that all metallic facilities are not usually provided for interexchange channels. Therefore, the use by one customer of all metallic interexchange facilities reduces the number of interexchange channels which would otherwise be available. Pacific argues that this customer use of all metallic interexchange channels justifies a tariff interpretation of double the rate charged for non metallic interexchange signal channels, consistent with its discontinued tariff which expressly provided for such a charge.

After four days of hearings, complainant and defendant, at the request of the hearing examiner, each submitted its proposed final decision and order. General did not present any witnesses or evidence but was represented at the hearings and submitted a proposed decision and order similar to that submitted by Pacific.

DISCUSSION

Although Pacific cites cases supporting consistency of interpretation of tariffs, the cases cited do not appear to be applicable here. The decisions on which Pacific rests its position deal with a situation in which a regulatory agency is interpreting its own rules and regulations and do not contemplate a situation as exists here where a utility, after initiating changes in its own tariffs, interprets the new tariff to its benefit.

Kings, on the other hand, has cited substantial authority to the effect that where a tariff is capable of more than one interpretation, the utility must interpret the tariff so as to give the customer the lowest possible rate. Transmix Corp. v. Southern Pacific Co. (1960) 187 Cal. App. 2d 257; Apex Smelting v. Southern California Gas Co. (1962) 60 CPUC 74. Although Pacific introduced testimony and evidence as to the intentions of its employees with

respect to the framing and interpretation of the Pacific tariffs at issue, it is a matter of settled regulatory law that the intention of the framers of tariffs cannot be given controlling weight. Pacific Freight Tariff Bureau (1927) 30 Cal. RRC 372; San Francisco Milling Co. v. Southern Pacific Co. (1929) 33 Cal. RRC 178; Westrope v. Northwestern Pacific Railroad Co. (1931) 36 Cal. RRC 616; Consolidated Vultee Aircraft Corp. v. Atchison Topeka and Santa Fe RR Co. (1945) 46 Cal. RRC 147; Cal. Chem. Co. (1965) 64 CPUC 590.

Section 532 of the Public Utilities Code prohibits a public utility from charging for services rendered other than as specified in its tariff schedules on file and in effect. Before 1953 Pacific had a tariff which expressly distinguished between ground return and metallic return. (Exhibit No. 25, pg. 4.) During the time at issue (1968-1974) Pacific's tariff, modified at Pacific's request, eliminated this distinction. (Exhibit No. 25, pgs. 2-3.) The record shows that Pacific again changed its tariff in 1974, (Exhibits Nos. 9 and 10) after Kings discovered that it was being billed by Pacific for two channels and by General for a single channel, (Exhibit No. 17) although the actual service equipment provided Kings did not change. Accordingly, all reasonable doubts as to the meaning of the tariffs as written by the utility must be resolved against the utility. Transmix Corp.; Apex Smelting Co. supra. and Southern Pacific Co. (1963) 61 CPUC 58.

During the period at issue, the only applicable rate appearing in the tariff is a charge for a single channel at 90 cents per mile. After the Pacific tariff was amended in August of 1974, the only applicable rate appearing in the tariff is a charge for a single channel at $2 per mile. Kings is entitled to be charged the lowest applicable rate published in Pacific's tariffs. Therefore, during the time at issue Kings should have been charged for a single channel. Accordingly pursuant to the provisions of Section 532 of the Public Utilities Code, Kings should be provided with the relief

it has requested in the form of reparations for overcharges from Pacific and General to the extent such relief is available pursuant to Public Utilities Code Section 736.

Section 736 provides that all complaints for damages resulting from the violation of any of the provisions of Sections 494 or 532 of the Public Utilities Code shall be filed with the Commission within three years from the time the cause of action accrues and not after. Kings' complaint was filed on May 9, 1975. Section 532 also provides for an extension of six months of the three year period from the time of written notice of disallowance by the utility of the claim for refunds. The record shows substantial correspondence between Pacific and Kings regarding Kings claim and its disallowance by Pacific. Accordingly, relief should be granted to Kings in the form of reparations with interest from Pacific and General running from November 9, 1971 to August 17, 1974. Townsley v. PT&T Co. (1972) 74 CPUC 341 at 344. See also Apex Smelting Co. supra.

The exact amount of reparations due Kings is not of record. Therefore, the parties will be directed to submit to the Executive Director an agreed computation of reparations, with interest at the rate of 7 percent per annum. Should Kings and defendants not reach an agreement as to the amount of said overcharge and interest, this matter may be reopened for supplemental proceedings. Chromcraft v. Davies Warehouse Co. (1960) 57 CPUC 519.

FINDINGS OF FACT

1. Kings is a company providing alarm services to the public and defendants Pacific and General are public utilities regulated by this Commission and providing certain private line services to Kings pursuant to tariff.

2. During the period complained of by Kings, December 2, 1968 through August 17, 1974 Pacific and General supplied Kings with a pair of wires in a continuous loop between Kings customer locations and its monitoring station.

3. The pair of wires, together with equipment supplied by Kings, enabled Kings to provide its customers McCulloh effect burglar alarm service. This service requires an all metallic interexchange communications channel between Kings' monitoring location and the customer locations.

4. When an alarm condition exists, McCulloh effect service permits a metallic return signal to be sent from the customer location to Kings monitoring location over the pair of wires by the process of interruption. Immediately thereafter the same signal is sent through a ground return connection provided by Kings at the customer location and at the monitoring location thus providing a redundant signal.

5. From 1940 to 1953 Pacific tariff 104-T provided for a ground return channel at the rate of $1.50 per interexchange mile per month. A channel with metallic return (a pair of wires) was charged at the rate of $3.00 per interexchange mile per month.

6. In 1953 Pacific tariff 104-T and the private line guide schedule were amended. Thereafter, until August 17, 1974 the tariff made no distinction between metallic return and ground return channels.

7. During the period December 2, 1968 when the charges in dispute became effective, until August 17, 1974 Pacific tariff 104-T provided a charge of 90 cents per interexchange mile per month for an interexchange channel without distinguishing between metallic return and ground return connections. During this period tariff 104-T expressly provided that customers by the use of their own equipment, could create additional channels from the channels furnished by the utility, for signaling purposes.

8. From December 2, 1968 until August 17, 1974, Kings was billed for two signal channels at the rate of $1.80 per interexchange mile per month.

9. Effective August 17, 1974 Pacific's revised tariff 104-T expressly provided a separate and distinct billing rate for McCulloh effect service at the rate of $2.00 per channel per interexchange mile per month.

10. After August 17, 1974 when the amended tariff 104-T became effective Kings was billed for a single channel at the new tariff of $2.00 per interexchange mile per month.

11. Prior to, during, and after the period at issue, December 2, 1968 through August 17, 1974, there was no change in the operating equipment by which Kings was served.

12. Pacific billed for the jointly provided services from December 2, 1968 to April 14, 1974, at which time service billing was transferred to General. From the period April 14, 1974 to August 17, 1974, General billed for the jointly provided services.

13. Upon completion of the transfer of the billing procedure to General, Kings discovered that Pacific had been charging for two interexchange channels per month while after taking over the billing General charged for only one interexchange channel. Shortly after Kings' complaint to Pacific, General began billing Kings for two channels.

CONCLUSIONS

1. A utility may not charge or receive a different compensation for any service rendered other than as specified in its tariff schedules on file and in effect. Where a tariff is capable of more than one interpretation the utility must interpret the tariff so as to give the customer the lowest possible rate.

2. Facts in this case show that Pacific and General during the period at issue interpreted their tariff to apply a charge of double the published tariff rate for the service provided to Kings.

3. The testimony of Pacific's witnesses as to the intentions of its employees with respect to the framing and interpretation of Pacific's tariffs at issue cannot be given controlling weight.

4. All reasonable doubts as to the meaning of Pacific's tariffs at issue as written by Pacific, must be resolved against Pacific.

5. Kings is entitled to be charged the lowest applicable rate published in Pacific's tariffs during the period at issue.

6. The only applicable rate appearing in the tariffs is a charge for a single interexchange channel at 90 cents per mile per month.

7. Kings should be provided with the relief it has requested in the form of reparations of overcharges from Pacific and General to the extent such relief is available pursuant to Public Utilities Code Section 736.

8. The period for which reparations may be obtained runs from November 9, 1971 to August 17, 1974.

9. The exact amount of reparations due Kings is not of record. Therefore the parties will be directed to submit to the Executive Director an agreed computation of reparations with interest on the amount of the overcharge at the rate of seven percent per annum.

10. Should Kings and defendants not reach an agreement as to the amount of said overcharges and interest, this matter may be reopened for supplemental proceedings.

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ORDER

Based upon the evidence of record and upon the discussion, findings and conclusions set forth above,

IT IS ORDERED THAT:

1. Decision No. 86191 is hereby revoked.

2. The relief requested by Kings in its petition for rehearing is granted to the extent that it is consistent with the discussion herein and in all other respects is denied.

3. Within ten days after the effective date of this order Pacific, General and Kings will together submit to the Executive Director an agreed computation of reparations to be refunded to Kings with interest on the amount of the overcharge at the rate of seven percent per annum, consistent with the discussion herein.

4. Within thirty days after the receipt of the statement of the agreed upon amount of reparation, the Executive Director shall notify the parties whether an objection will be interposed by the Commission or the Staff with respect to the proposed payment. If the parties are notified that no objection will be interposed, payment will be made within ten days from the date of such notice and a receipt for said payment shall be filed herein as soon as possible thereafter by defendants.

5. Any unresolved dispute remaining as to the amount of overcharges to be refunded to Kings may be referred by any party to the Commission for further action and the entry of a supplemental order should such be necessary.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California this 18th day of JANUARY, 1977.

Robert Batinovich
President
William Symons Jr.
Vernon L. Sturgeon

Commissioners