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Decision No. 87158

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KINGS ALARM SYSTEMS, INC.
dba AMERICAN PROTECTION
INDUSTRIES-ALARM DIVISION,

Complainant,

vs.

PACIFIC TELEPHONE & TELEGRAPH
CO., GENERAL TELEPHONE COMPANY
OF CALIFORNIA,

Defendants.

Case No. 9914

ORDER DENYING REHEARING

On January 13, 1977 we issued Decision No. 86879 revoking Decision No. 86191 and issuing a new opinion and order on re-hearing after consideration of the petition for rehearing of Decision No. 86191 by complainant Kings Alarm Systems, Inc. (Kings) dba American Protection Industries-Alarm Division. The grounds on which Decision No. 86181 was revoked and a new opinion and order issued are more fully explained in Decision No. 86879. Briefly, this case involves the issue of interpretation by Pacific Telephone and Telegraph Company (Pacific) and by General Telephone Company of California (General) of their tariffs so as to charge Kings an amount higher than the published rate for the service provided. During the period complained of, December 2, 1968 to August 17, 1974, the applicable Pacific tariff made no distinction between a charge for metallic return and one for ground return channel. During this period Kings was billed at twice the published rate for interexchange signal channel service. After the applicable tariff was revised in August, 1974, the newly published rate for a single channel, McCulloch effect type service, was charged. During the entire period at issue there was no change in the actual physical facilities supplied to Kings by Pacific and General.

Upon review of the record and consideration of the material defects in Decision No. 86191 demonstrated by Kings in its petition for rehearing, we revoked Decision No. 86191 and issued Decision No. 86879, finding that Pacific and General had interpreted their applicable tariffs during the period at issue to charge a rate higher than the published rate for the service provided, thus placing an interpretation upon their own tariffs most favorable to the utility and adverse to their customer Kings.

The substance of the record relied upon in Decision No. 86879 was primarily testimony and exhibits supplied by Pacific at the evidentiary hearing. Pacific now complains that it was entitled to a "rehearing" of the type which would enable it to make an additional evidentiary record before we could revoke Decision No. 86191. Pacific also asks for a stay of Decision No. 86879 until completion of the rehearing requested by Pacific in its petition. 1/

Kings opposes Pacific's petition for rehearing alleging that Decision No. 86879 is based upon undisputed facts supplied primarily by Pacific at the hearing in this matter which consumed four hearing days in addition to a prehearing conference. Kings alleges that Pacific has not stated any new facts which it would present at an additional hearing and that granting a stay would simply further delay Pacific's performance of its obligations to compute and pay the amount of reparations required by our order in Decision No. 86879. _____

1/ At page 2 of its petition, Pacific alleges that it did not receive a copy of Decision No. 86879 until two weeks after the decision was issued, too late to permit Pacific to file a petition for rehearing staying said decision. Decision No. 86879 was issued January 18, 1977. The formal file in this proceeding contains a receipt, dated January 21, 1977, by a Pacific representative, of the registered mail delivery of Decision No. 86879. Thus, it appears that the decision was in the possession of Pacific for a period of seven days within which Pacific could have filed a petition for rehearing in time to stay the decision.

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We have carefully considered Pacific's petition and Kings' opposition thereto and once again have reviewed the entire record in this proceeding. Upon further consideration of all of the facts alleged in the entire record herein, we have concluded for the reasons set forth more fully below, that Pacific's petition for rehearing and for a stay of Decision No. 86879 should be denied in all respects.

THE COMMISSION WAS NOT REQUIRED
TO CONDUCT FURTHER EVIDENTIARY
HEARINGS BEFORE ISSUING DECISION NO. 86879

Pacific complains that Sections 1708, 1731 and 1736 of the Public Utilities Code require that further evidentiary hearings be held before the Commission could revoke Decision No. 86191 and issue Decision No. 86879. Pacific alleges that Decision No. 86879 could be issued only after notice to the parties and after the parties have had an opportunity to be heard.

Both Pacific and General filed briefs in opposition to Kings' petition for rehearing. Accordingly, Pacific and General were on notice of the arguments and of the relief requested by Kings in its petition, namely:

"CONCLUSION

Based upon the foregoing, it is respectfully urged that complainant's petition for rehearing be granted, that the Commission's opinion and order be vacated, and that an order be entered granting reimbursement to Kings for the overcharges made by Pacific. The opinion of the Commission reflects the application of an erroneous standard determining the ambiguity of the applicable tariffs, and the undisputed evidence established that the tariffs were ambiguous as a matter of law."

Neither Pacific or General in their opposition to Kings' petition challenged our power to vacate or revoke Decision No. 86191 or to grant reimbursement to Kings.

Pacific's reliance upon Public Utilities Code Section 1708 as requiring further evidentiary hearings before we could issue Decision No. 86879, is misplaced. Section 1708 is contained in Chapter 9, Article 1 of the Public Utilities Code, which sets out the rules for hearings. Section 1708 applies to a decision which is not under review pursuant to the rehearing provisions of Article 2, Sections 1731-1736, and the Commission acts to determine whether the decision should be rescinded, altered or amended. City of Los Angeles v. Public Utilities Commission 15 C.3d 680 at 707 (1975).

The petitions by Kings and Pacific herein were processed pursuant to Sections 1731-1736. Kings did not file its petition for rehearing of Decision No. 86191 in time to stay said decision pursuant to Section 1733 of the Public Utilities Code. Kings' petition for rehearing was filed before the effective date of Decision No. 86191. Thus, it was timely filed and prevented the decision from becoming final during the period of review by preserving our jurisdiction over the subject matter for the purpose of correcting errors of law or unlawful results accruing from the decision. City of Los Angeles supra; Sylvia M. Siegel 74 CPUC 559 (1972). By issuing Decision No. 86879, we were not reasserting jurisdiction, reopening the case or readjudicating the same transactions differently with respect to the same parties in a new proceeding. Golconda Utilities Co. 68 CPUC 296 (1968).

No party sought to include additional facts in the record nor were there any allegations of substantially changed circumstances. The evidentiary record was complete. The substance of Kings' petition was that the undisputed facts in the record compelled a set of conclusions different from those in Decision No. 86191. We agreed, as more fully explained in Decision No. 86879. Under the circumstances, a review of the record upon the written submissions of the parties in response to the relief requested by Kings was an adequate procedure to protect the rights of the parties to a fair hearing. Federal Communications Commission v. Station WJR Goodwill Station 93 L.Ed 1353 at 1360 (1949).

Upon an exhaustive review and reconsideration of the entire record and of the arguments raised by Kings in its petition and of those in opposition to Kings, we were convinced that the material and undisputed facts in the record required us to issue Decision No. 86879 pursuant to our powers to correct unjust or unwarranted orders or decisions as provided in Public Utilities Code Section 1736. No party requested additional hearings nor did it appear from our review of the record that any useful purpose would be served by scheduling additional hearing days. Accordingly, we are confident that in issuing Decision No. 86879 we proceeded in compliance with Section 1736. (Compare California Code of Civil Procedure, Section 663.)

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PACIFIC HAS NOT SPECIFIED GROUNDS
SUFFICIENT TO CAUSE US TO ORDER FURTHER
EVIDENTIARY HEARINGS OR TO MODIFY DECISION NO. 86879

In its petition, Pacific alleges eight specifications of error as grounds for granting an additional hearing in Case No. 9914. These specifications attack our ultimate finding and conclusion that the applicable tariffs of Pacific were ambiguous and capable of more than one interpretation. Pacific's arguments in support of the alleged specifications of error simply restate the position it has maintained throughout the entire proceeding that the facts in the record support its position that its tariffs were not ambiguous. Pacific does not disclose with any reasonable particularity the character and scope of new evidence that it would provide or the extent to which such evidence would modify our findings in Decision No. 86879. Pacific Freight Lines 43 CRC 559 at 570 (1941).

The principal issue in this case is whether Pacific's tariffs were ambiguous. After a time-consuming review of the entire record in this proceeding, we once again conclude that Pacific's tariffs were ambiguous as more fully reasoned and decided in Decision No. 86879. Error cannot be equated with a result contrary to the desires of the petitioner for further hearings. Sylvia M. Siegel, supra. The primary evidence supporting our Decision No. 86879 was presented by Pacific. In its petition for rehearing not only has Pacific not specifically stated what new evidence, if any, it would provide, it has not attacked the evidence upon which we have relied as discussed in Decision No. 86879. We hereby find and conclude that there is adequate and persuasive evidence in the record to support Decision No. 86879. Yucaipa Water Co. No. 1, v. Public Utilities Commission, 54 Cal. 2nd 823 at 828 (1960).

FINDINGS

1. Kings filed a petition for rehearing in Case No. 9914 before the effective date of Decision No. 86191, thus causing us to review and to correct any erroneous or unlawful result accruing from the decision.

2. Although Kings had not filed its petition for rehearing in time to stay Decision No. 86191, the petition was filed in time to prevent the decision from becoming final during the period of review, thus preserving our jurisdiction over the subject matter and our power to correct errors of law or unlawful results accruing from the decision.

3. Both Pacific and General were on notice of Kings' petition for rehearing and the arguments therein by which Kings persuaded us that there was such fundamental error in Decision No. 86191 as to cause us to revoke the decision and to issue Decision No. 86879.

4. Pacific has not alleged with adequate particularity any new facts which it would introduce in evidence to support its petition for rehearing herein.

CONCLUSIONS

1. Further evidentiary hearings were not required prior to issuing Decision No. 86879.

2. The undisputed facts of record adequately and persuasively support our decision and order in Decision No. 86879.

3. Pacific has not stated grounds sufficient to cause us to modify or grant a rehearing of Decision No. 86879.

ORDER

Having considered Pacific's petition for rehearing and being of the opinion that good cause for rehearing has not been made to appear,

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IT IS ORDERED that rehearing of Decision No. 86879 is hereby denied.

IT IS FURTHER ORDERED that Pacific comply with ordering paragraph No. 3 of Decision No. 86879 forthwith.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 29th day
of MARCH, 1977.

Robert Bateman
President
William Lyons Jr.
James L. Sturgeon
Alonzo
Richard D. Howell
Commissioners