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ORIGINAL

Decision No. 87396 June 1, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARIE P. BRESSLER, et al.,
Complainant,

vs.

BAYSHORE PROPERTIES, INC., a
California corporation,
Defendant.

Case No. 9186
(Filed January 28, 1971)

MARIE P. BRESSLER, et al.,
Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,
Oakland, California,
Defendant.

Case No. 9187
(Filed February 1, 1971)

Investigation on the Commission's
own motion into the status,
operations, service, equipment,
facilities, rates, and records of
BAYSHORE PROPERTIES, INC., and
into the rules of PACIFIC GAS AND
ELECTRIC COMPANY.

Case No. 9206
(Filed March 30, 1971)

BAYSHORE PROPERTIES,
Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,
Defendant.

Case No. 9217
(Filed April 28, 1971)

O P I N I O N

Cases Nos. 9186 and 9187 were brought by commercial tenants of Sun Valley, a regional shopping center in Contra Costa County controlled by Bayshore Properties, Inc. (Bayshore).

Case No. 9186 alleged that Bayshore, by selling electricity purchased from Pacific Gas and Electric Company (PG&E) to its tenants, was acting as a public utility; the complainant sought adjustment of alleged overcharges. Case No. 9187 alleged that Bayshore's resales were in violation of PG&E's Rule 18^{1/} and sought an order requiring PG&E either to terminate sales to Bayshore or to provide direct service to tenants.

Case No. 9206 was initiated to allow the staff to participate in the determination of the issues of fact and law.

In Case No. 9217 Bayshore alleged that PG&E during the construction of the shopping center had represented to Bayshore that the proposed resale arrangements were in conformity with Rule 18, that Bayshore had relied on that representation, and that many other named commercial landlords had similar resale arrangements. Bayshore sought a declaration that its resale arrangements were in compliance with Rule 18.

Rule 18 permits resale of electricity by landlords of commercial properties under one of two alternatives: Under paragraph 18.C.2 a commercial landlord may resell to tenants if the payments for electricity are absorbed in the rent; alternatively, the commercial landlord may, after obtaining the Commission's

^{1/} This is PG&E's tariff rule applicable to sale of electricity for resale by persons or entities other than public or municipally owned utilities.

permission,^{2/} install submeters and assess charges based on metered consumption at rates equal to PG&E's. If neither option is followed the rule obligates PG&E either to serve tenants directly or to discontinue service.

By an Examiner's Prehearing Memorandum certain questions of law were submitted: (1) Whether a landlord which distributes but does not generate electricity for its own and its tenants' use can be an electrical corporation within Section 218 of the Public Utilities Code. (2) Whether a landlord's furnishing of electricity to its tenants under the Bayshore lease violates PG&E's Rule 18.

Decision No. 79811 issued in this proceeding determined that Bayshore was in effect submetering without meters and without Commission consent and hence violated the tariff rule. Bayshore proposed an alternative form of resale in which electricity was provided without any specified charge and in which payments did not vary with consumption of electricity.

In Decision No. 80379 issued in this proceeding the Commission declared the proposed form of resale to be in accordance with Rule 18.C.2 as an absorption resale. That decision rejected complainant Bressler's contention that Bayshore should be required to provide metered service under paragraph 18.C.4. Bayshore reported that it had commenced renegotiations of its leases to incorporate the approved lease form and represented that the form would be adopted in each new lease.

The proceedings to date have generally disposed of all the issues arising under PG&E's tariff rule. The remaining issue involves Bayshore's status as a public utility. If Bayshore is not a public utility, our orders concerning PG&E exhaust our jurisdiction in these matters.

^{2/} In Decision No. 63562 in Application No. 42434, 59 CPUC 547, the Commission declared that the policy underlying Rule 18 was to discourage resale of electricity by landlords of commercial buildings.

Is Bayshore a Public Utility?

If Bayshore does not serve the public or any portion thereof it cannot be a public utility. There is no dispute that Bayshore serves only its tenants.

Section 207 of the Public Utilities Code defines that phrase as follows:

"'Public or any portion thereof' means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the State, for which the service is performed or to which the commodity is delivered."

Story v Richardson (1921) 186 Cal 182, 198 interpreted an earlier but materially similar version of Section 207, and held that a landlord serving electricity to tenants and to a few other persons in neighboring buildings was not a public utility. The opinion relied heavily on the description of public utility service as one which is "...not confined to privileged individuals but is open to the indefinite public". (Thayer v California Development Co. (1912) 164 Cal 117, 127.) Applying that holding here, Bayshore must be held not to be serving a portion of the public if it offers electricity only to its own tenants. A review of the pleading shows no controversy over the fact that Bayshore serves only its own tenants; it is unchallenged that Bayshore does not offer service to any nontenants.

We find that Bayshore offers to provide service only to its own tenants. We conclude that Bayshore is not a public utility.

PG&E's Rule 18

It has been the Commission's policy to encourage individual metering by the utility to enhance conservation and promote reliable service. In addition, the Commission through Rule 18 has provided customer protection by limiting rates for submetered service to tenants to the levels that the utility would

charge. It is the Commission's intention to continue such policies. This status decision, which is limited to the facts relating to Bayshore, should in no way be construed as affecting the Commission's policies relating to the submetering of electric energy.

O R D E R

IT IS ORDERED that except for the relief granted in Decision No. 79811 and Decision No. 80379 all other relief requested is denied. The investigation is discontinued.

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

Dated at San Francisco, California, this 1st day of JUNE, 1977.

Robert Bolger
President
William J. ...
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Commissioners