

Decision No. 89322 SEP 6 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SunValley, a
California Partnership, and
H.A.R.T. Properties, a California
Partnership, to resell electricity
on a metered basis in a commercial
development.

Application No. 57919
(Filed March 7, 1978)

ORDER DENYING MOTION TO DISMISS

By the above application, SunValley and H.A.R.T. Properties, California partnerships, request authority under the provisions of Electric Rule 18(c)(4) of the Pacific Gas and Electric Company (PG&E) to resell electricity purchased from PG&E to commercial tenants at the SunValley and Eastridge shopping centers on a metered basis.

On June 26, 1978, PG&E filed a motion to dismiss on the grounds:

1. The Commission made a definitive determination of Rule 18 in Decision No. 79811.
2. Wells Fargo Bank, as trustee, holds legal title to the property and the applicants, as beneficiaries, lack standing to seek the authority requested.

PG&E's first contention is based upon its claim that pursuant to Decision No. 79811 a commercial shopping center seeking to resell electricity to its tenants is permitted only one of three alternatives, to wit:

- "(a) To renegotiate its leases with all of the tenants served with electricity so that they are in conformity with Rule 18.C(2).
- "(b) Arrange with PG&E for direct service to all of Bayshore's tenants.
- "(c) Seek a certificate of public convenience and necessity as an electric utility."

(Decision No. 79811 (at mimeo. p. 5).)

However, the language of Decision No. 79811 immediately preceding the above cited options states that:

"Given our interpretation of Rule 18 (below), Bayshore is left with only a few permissible courses of action including:" (Emphasis added.)

It is therefore clear that the list of options was not intended to be exhaustive, a fact clearly borne out by reference to Conclusion No. 2 of Decision No. 79811 holding that:

"PG&E may not provide electricity to a customer who is a commercial landlord and who resells the electricity to its tenants under any arrangement whereby the rent varies with an increase in electrical consumption, except subject to the provisions of Rule 18, paragraph C.4 or 5 and under paragraph D." (Emphasis added.)
(Decision No. 79811 (at mimeo. p. 9).)

Paragraph (c)(4) of Rule 18 is precisely the provision pursuant to which applicant seeks relief. Thus PG&E's contention that Decision No. 79811 bars the relief sought is ^{without merit.} ~~unmeritorious.~~

With regard to PG&E's second contention we note simply that according to the provisions of the trust agreement,^{1/} applicants (the trust beneficiaries) have complete control and management of the property. The trustee is specifically restricted in dealing with the property and can do so only when authorized and directed in writing by the beneficiaries.

^{1/}In response to the motion, applicants filed a copy of the trust agreement which was executed on May 31, 1966.

Therefore, IT IS ORDERED that the motion to dismiss is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 6th
day of SEPTEMBER, 1978.

Robert Batistich
President
William S. Brown
Vernon L. Stinson
Charles D. Smith
Commissioners

Commissioner Claire T. Dedrick, being
necessarily absent, did not participate
in the disposition of this proceeding.