

Decision 93477 SEP 1 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY for authority, among other things, to increase its rates and charges for water service provided by its Placer Water System.

Application 58632 (Petition filed May 12, 1981)

ORDER DENYING SECOND PETITION FOR REHEARING

On June 4, 1981, Lorenzo Moffett et al., for themselves and for the Upper Placer Citizens Committee (Committee) petitioned "for rescission and amendment" of Decisions (D.) 92298 and 92645 in this application, stating that we should "rescind" these decisions, "reopen" the proceeding, and "amend" the decisions in this application, filed by Pacific Gas and Electric Company (PG&E) for rate relief for service provided by its Placer Water System.

In this decision, we deny any relief to the petitioners, without prejudice to them to raise the same substantive issues in any future rate increase application for the Placer Water System.

Legal Status of the Petition

PG&E's application was filed in 1979. Hearings were held that year. D.92298 dated October 8, 1980 dealt with all substantive issues. Committee filed a petition for rehearing on November 7, 1980, claiming that we did not correctly deal with the issue of allocation of ditch system operation and maintenance expenses, and certain associated payroll issues. D.92645 dated January 21, 1981 denied rehearing on these issues (although it modified D.92298 in other particulars).

How should Committee's present petition be categorized? The relevant Public Utilities (PU) Code sections and our rules

provide for a petition (or an "application") for a rehearing (PU Code §§ 1731 - 1736), a petition to reopen (Rule 84), and a petition for modification (Rule 43). Petitions for modification, other than in highway carrier tariff matters, "shall only be filed to make minor changes in a Commission decision or order. Other desired changes shall be by application for rehearing or by a new application." (Rule 43.) Thus the modification procedure is inapplicable here, as is the petition to reopen (or "petition to set aside submission") which Rule 84 stipulates must be made after submission of a proceeding but before a decision issues.

While under PU Code § 1708 we may "at any time, upon notice to the parties and with opportunity to be heard...rescind, alter, or amend any order or decision..." we have under this section adopted Rules 43 and 84 to specify what petitions (other than for rehearing) we will entertain concerning our decisions and orders.^{1/} And as for rehearings, Rule 85 specifies time limits for filings, and does not provide for the filing of repetitive petitions. In sum, we have never treated PU Code § 1708 as an open-ended method of filing petitions to "rescind, alter, or amend" any decision or order, regardless of its age, and regardless of whether a petition for rehearing has been previously considered and denied.

While we have an interest in protecting the substantial rights of the parties to our proceedings (and we have done so here; see discussion below) we also consider it our responsibility, and in the public interest, not to prolong litigation unreasonably. The Supreme Court has recognized our problems in this regard. (Northern Cal. Ass'n. v Public Util. Com. (1964) 61 Cal 2d 126; 37 Cal Rptr 432.)

^{1/} Rule 87 would allow us to accept other petitions than are specifically set forth in Rules 43 and 84, in special cases where good cause is shown, but we do not use this rule to accept petitions which are, substantively, untimely and repetitive petitions for rehearing.

Under our rules, we thus construe Committee's petition to be a second petition for rehearing. This being the case, we could deny it on procedural grounds without further comment. However, (and although PU Code § 1731 provides that there is no cause of action in any court from an untimely petition for rehearing), we will briefly discuss the history of this proceeding and certain contentions of the petitioners.

History of Proceeding

Because no rate relief had been awarded since 1954, the Commission considered this and associated applications exhaustively. The record consists of 77 exhibits and 1586 pages of transcript. Prior to the regular hearings, there was an informal meeting on the Placer System held in Colfax on June 7, 1979. A noticed (formal) public hearing was held there on August 15, 1979. An additional 12 days of hearing were held in San Francisco in September and October of 1979.^{2/}

A review of the record does not disclose any rulings of the Administrative Law Judge which excluded evidence or testimony offered by petitioners. Nor does the record show complaint by any petitioner that efforts at discovery were frustrated, or that for any other reason evidence on the issues of interest to petitioners could not be presented.

In its original petition for rehearing, filed November 7, 1980, Committee relied solely on the testimony and exhibits of the staff engineer for its argument that the Commission's adopted

^{2/} The proceeding consisted of consolidated applications for rate relief for six systems (A.58628 through 58633). Hearings were also held (one day each) in Willits, Oroville, Angels Camp, Sutter Creek, and Sonora, in August of 1979. The issues contested by petitioners relate to the Placer System only.

methodology for ditch system operation and maintenance payroll expenses were erroneous, and resulted in an inflated test-year estimate. The reasons for our rejection of the staff engineer's methodology were exhaustively explained in D.92298 (pp. 27 - 30, see also pp. 32 - 37). As mentioned previously, the original petition for rehearing was denied by D.92645 dated January 21, 1981.

The Present Petition

The present petition essentially raises the same alleged error, and includes:

1. A declaration of Lorenzo Moffett and two other persons containing certain observations of ditch-cleaning methods by PG&E crews in the Colfax area;
2. PG&E's schedules for improvements, maintenance, and cleaning (shutoff schedules) of PG&E for 1972 through 1981; and
3. Certain calculations based on the above, which, it is contended, refute PG&E's testimony and support the staff engineer.

The petition recites, "The new evidence referred to in this petition refutes the testimony of the [union shop] steward and is based upon years of observation by residents of the area." (Emphasis added.)

By the petition's own allegations, the evidence, assuming its materiality, was available (at least through 1979) to the petitioners at the time hearings were held in this proceeding.

Discussion

The petition shows only that petitioners failed to marshal their evidence and present it to the Commission at the time they should have done so — that is, at the hearings. Their original petition for rehearing relied on no other matter beside the evidence of the staff witness, and raised no objection to any evidentiary rulings.

Thus, in addition to the petition's legal defectiveness, it presents us with no valid equitable considerations which should cause us to take the unusual step of ignoring our own rules and exercising our general jurisdiction over our decisions under PU Code § 1708 in order to grant the petition.

The Committee should prepare to participate in the next PG&E rate proceeding for the Placer System. We simply cannot relitigate issues in rate proceedings or else we could not process the current volume of new proceedings.

Findings of Fact

1. Petitioners were given a full opportunity to present their evidence at the hearings in this proceeding in 1979.

2. The first petition for rehearing, filed by petitioners on November 7, 1980, relied solely on the testimony of the staff witness, and raised no objection to any evidentiary rulings.

Conclusions of Law

1. The petition filed by the Committee and certain of its members on May 12, 1981 is a second and untimely petition for rehearing.

2. The petition filed on May 12, 1981 presents no good cause for us to waive or ignore our own rules and grant relief under PU Code § 1708.

3. The petition should be denied without prejudice to the petitioners to raise the same, or similar, substantive issues in a timely manner in any future rate increase application by PG&E for its Placer Water System.

IT IS ORDERED that:

1. The "Petition for Rescission and Amendment of Decision", filed by Upper Placer Citizens Committee and Lorenzo Moffett et al., dated May 12, 1981, is denied.

2. This denial is without prejudice to petitioners to raise the same, or similar substantive issues in a timely manner in any future rate increase application by Pacific Gas and Electric Company for its Placer Water System.

3. This proceeding is closed.

This order becomes effective 30 days from today.

Dated SEP 1 1981, at San Francisco, California.

John E. Byron
President

Richard D. Govek
Commissioners

Alister C. Green
Commissioners

I dissent:

I would grant rehearing so that petitioners, who are members of the public have the opportunity to participate in our hearing process and present their evidence to us. Today's decision is overly legislative to be applied to these customers who were unrepresented by counsel.

Richard D. Govek

I concur:

These petitioners had full opportunity to support the staff presentation to make their case and largely did so. They can present additional evidence in the next case which will reportedly be filed within one year. To reopen this case now, imposes costs on all parties, and the Commission ends its support taxpayer which are unwarranted.

John E. Byron