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Decision 96-09-100 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Pacific Bell for Rehearing of)
Resolution T-15695)

ORIGINAL

A.95-01-036
(Filed January 26, 1994)

ORDER DENYING REHEARING OF RESOLUTION T-15695

An application for rehearing of Resolution T-15695 (December 21, 1994) was filed by Pacific Bell (Pacific). In Resolution T-15695 (Resolution) we ordered Pacific to reduce its annual revenue by \$231.557 million effective January 1, 1995, to implement its 1995 annual price cap index filing in Advice Letter (AL) Numbers (No.s) 17116A and 17116B. As part of this order we required Pacific to continue the USOA Turnaround adjustment adopted in D.89-12-048. Pacific challenges our treatment of the USOA Turnaround adjustment in the Resolution.

In its application, Pacific alleges that our determination that \$23.123 million is the appropriate USOA Turnaround adjustment amount for 1995 is unlawful because the Resolution contains no discussion of why \$23.123 million is an appropriate amount. (Application, p. 2.) Pacific requests that we correct the Resolution to specify that Pacific's rates are subject to refund or adjustment pending a final determination of what specific adjustment amount, if any, is appropriate for the USOA Turnaround for 1995 and thereafter. Pacific states that it believes that the USOA Turnaround was completed in 1994, but notes that we stated in the Resolution that the Pacific price cap filing was not the appropriate proceeding in which to consider elimination of USOA Turnaround adjustments.

The Division of Ratepayer Advocates (DRA) filed a protest to Pacific's Application For Rehearing. DRA argues that

Pacific's application for relief is untimely and requires the Commission to engage in retroactive ratemaking. DRA asserts that to grant Pacific's request would unfairly reward Pacific for failing to follow the guidelines of D.90-10-039, as well as for failing to request collection of its rates subject to refund in sufficient time for the Commission to consider such a request, and for other parties to respond prior to Commission action.

In considering Pacific's application for rehearing we have reviewed the history of the USOA Turnaround adjustment. In (Re Uniform System of Accounts for Telephone Companies (D.87-12-063) (1987) 26 Cal.P.U.C.2d 349), we adopted the use of FCC parts 32 and 36 accounting rules and in so doing authorized Pacific to recover revenue requirements associated with this capital to expense accounting rule change in the amount of \$136.150 million dollars. Following adoption of the New Regulatory Framework (NRF), we found in D.89-12-048 as follows:

"[c]onsistent with the finding in D.88-09-030 that the USOA capital to expense shift will result in a yearly revenue requirement reduction and the conclusion that ratepayers should realize the benefit of reduced revenue requirement impacts that will occur in future years, we conclude that USOA turnaround adjustments should continue under the new regulatory framework through recognition as exogenous factors." (Re Alternative Regulatory Frameworks for Local Exchange Carriers (D.89-12-048) (1989) 34 Cal.P.U.C. 2d 155, 178.)

On January 17, 1990, Pacific filed an application for rehearing and petition for modification of D.89-12-048. Pacific sought rehearing on the ground that the revenue requirement adjustment for the USOA Turnaround was unsupported by the evidence and resulted in unlawful confiscation of Pacific's property. We denied Pacific's application in D.90-04-031, on the basis that the arguments raised by Pacific merely reflected Pacific's earlier position on the USOA Turnaround. GTE

California, Inc. (GTEC) also filed a petition to modify D.89-12-048 to delete the requirement for annual z-factor adjustments to the price cap index to reflect the ongoing impact of the USOA Turnaround. The petition was denied in D.90-12-039 on the ground that GTEC raised no new arguments. In that same decision we indicated that we would entertain proposals to assess the remaining USOA impacts and reflect such impacts in rates, "e.g., through a one-year present-value rate adjustment similar to the adjustment for tax benefits resulting from early bond retirements." (D.90-10-039, mimeo at 4.)

Both Pacific and GTEC, in their 1995 Price Cap filings, eliminated the revenue reduction associated with the USOA Turnaround. In both companies' 1995 Price Cap filings, the USOA Turnaround was eliminated without any substantiation of the requirements outlined in D.90-04-031 and D.90-10-039. In the Resolution we stated that Pacific should file an application if it desires to eliminate the USOA Turnaround revenue adjustment. Because Pacific did not follow the suggested procedure in D.90-04-031 and D.90-10-039, we denied its request. However, we did so without prejudice. We reiterated that if Pacific still desired to remove the USOA Turnaround, it should file an application with the Commission with complete and detailed reasons for eliminating the USOA Turnaround adjustment.

In light of this procedural history, we conclude that Pacific's application for rehearing must be denied because no legal error has been shown. Pacific's argument for rehearing is premised upon the contention that the Resolution is unlawful because it does not contain any findings of fact or conclusions of law providing a basis for the Commission's conclusion that the USOA turnaround adjustment amount for 1995 and thereafter should be the same amount as in prior years. (Application, p. 3.) Pacific's argument overlooks the procedural history discussed above.

The USOA Turnaround adjustment amount was determined in D.89-12-048. In that same decision we found that the USOA

Turnaround adjustments should continue under the new regulatory framework. Prior to Pacific's filing of the annual price cap AL that preceded the Resolution, we had previously denied requests by both Pacific and GTEC to end the revenue reduction associated with the USOA Turnaround. In D.90-14-031 and D.90-10-039 we suggested procedures for Pacific and GTEC if they chose to seek re-examination of the USOA Turnaround adjustments. Pacific chose to ignore this directive and instead chose to eliminate the USOA Turnaround adjustment, without any substantiation, in its AL filing.

Public Utilities Code Section 1705 requires that a decision shall contain "...findings of fact and conclusions of law by the commission on all issues material to the order or decision." In the Resolution we did not resolve any material issue regarding the USOA Turnaround adjustment amount, because that issue was not properly before us. In the Resolution we reiterated that if Pacific wished to put this issue before us, it should do so with substantiation in an application. We had previously indicated a procedure for placing the continuation of the USOA Turnaround adjustments before us. The Commission commits legal error when it issues a decision which is unsupported by evidence before it. Camp Meeker Water System, Inc. v. Public Utilities Commission (1990) 51 Cal.3d 845. That is not the situation before us. The USOA Turnaround adjustment amount was adopted in D.89-12-048. The continuation of that amount did not require a review of that same evidence in this proceeding. No legal error has been shown.

We also reject Pacific's contention that the determination that \$23.123 million is the appropriate amount was arbitrary and capricious. Adoption of this amount is consistent with the findings in D.89-12-048. Pacific erroneously relies on California Manufacturers Assoc. v. Public Utilities Commission (1979) 24 Cal.3d 251 to support its claim. That case involved offset proceedings in which increased revenue requirements were reflected in a new method of allocating those costs among utility

users. The court found that the Commission's findings did not justify the change in the allocation of costs. (Id. at 259.) In this case, in denying Pacific's request for discontinuance of the adjustment, we limited our action to denial of Pacific's request for discontinuance of the USOA Turnaround. We note that there is no allegation that Pacific requested, in its AL filing, that any USOA Turnaround amounts be collected subject to refund.

In addition to denying the Application for Rehearing on the grounds that no legal error has been shown, the application must also be denied because it asks the Commission to engage in impermissible retroactive ratemaking. If the application for rehearing were granted, the Commission would make rates already in place subject to refund. The California Supreme Court has stated that the Commission does not have the power to roll back general rates already approved by it under an order which has become final, or to order refunds of amounts collected by a public utility pursuant to such approved rates and prior to the effective date of a commission decision ordering a general rate reduction. (Pacific Telephone and Telegraph Co. v. Public Utility Commission (1965) 62 Cal.2d 634,650.) The Commission does have the power to make rates subject to refund without engaging in retroactive ratemaking, but it must do so by beginning the period for which rates are subject to refund at a future date and then adjusting rates from the subject to refund date. (Re Pacific Bell (D.87-12-067) (1987) 27 Cal.P.U.C. 1, 142-143.) Pacific makes its request after the implementation of Resolution T-15695. To make rates subject to refund would be retroactive ratemaking. We reject the suggestion that Resolution T-15695 is not a final order because Pacific filed for rehearing of the resolution. The Commission made it clear in D.90-10-039 that if Pacific wished to raise the issue of the continuation of the USOA Turnaround adjustment, it was required to do so in a detailed application. The Resolution continued the adjustment that flowed from a final order.

No further discussion is required of Applicant's allegations of error. Accordingly, upon reviewing each and every allegation of error raised by Applicant we conclude that sufficient grounds for rehearing of Resolution T-15695 have not been shown.

Therefore, IT IS ORDERED:

That the application for rehearing of Resolution T-15695 filed by Pacific Bell is denied.

This order is effective today.

Dated September 20, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

Commissioner Josiah L. Neepor
being necessarily absent, did
not participate.