

MAIL DATE
9/5/97

Decision 97-09-061 September 3, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric
Company for Authority, Among Other
Things, to Change its Rates and Charges
for Electric Service.

A.91-11-036
(Filed November 26, 1991)

ORDER DENYING REHEARING

The Utility Reform Network (TURN) has filed an application for rehearing of Decision (D.) 97-02-020, a decision that denied TURN's application for rehearing of D.95-10-033 which TURN filed on November 27, 1995.

Simultaneously TURN filed a Petition For Writ of Review of D.95-10-033 and D.97-01-020 with the California Supreme Court, arguing that the Commission unlawfully failed to enforce Public Utilities Code Section 489 (a). As TURN explained in its application for rehearing of D.97-02-020:

"In D.97-02-020 the Commission made no substantive changes to its original order in D.95-10-033. For this reason, TURN believes that D.97-02-020 is ripe for review by the Court at this time and that an additional application for rehearing to the Commission is neither necessary nor efficient. However, in order to protect TURN's right to seek review in the event the Court determines that TURN should have sought rehearing of D.97-02-020, TURN is filing this application for rehearing."

TURN also argued that D.97-02-020 erred in concluding that a Supreme Court order denying a writ without opinion is a decision on the merits both as to law and facts.

On May 28, 1997 the Supreme Court entered its Order Denying Review of TURN's Petition For Writ without opinion.

We agree with TURN that this application for rehearing is neither necessary nor efficient, because the order it appeals, D.97-02-020, itself a denial of TURN's initial application for rehearing of D.95-10-033, made no substantive changes to that order. Thus we believe TURN's petition for writ of review was the proper procedural vehicle for further appealing D.97-02-020. Since the California Supreme Court has denied that petition, the case is at an end.

However, in its petition to the Court as well as in its application for rehearing now before us, TURN challenged our statement in D.97-02-020 that "Denial by the Supreme Court of an order of the Commission is a decision on the merits both as to law and facts even though the order of the Court is without opinion. People v. Western Airlines (1954) 42 C 2d 621." (D.97-02-020, p.1.) We were there discussing the Court's recent summary denial of a petition for writ of review of Southern California Utility Power Pool et al. v. Public Utilities Commission, S.F. No. SO 49667, wherein similar issues were raised. We cited this case because it is based on the very same rationale as is D.95-10-033.

We explained to the Court that we were not citing Western Airlines for any stare decisis purposes, but rather for the purpose of demonstrating that in another case with essentially identical issues, the Court had denied a petition for writ of review of the decision which formed the basis for our decision in the instant case. As noted above, the Court has denied TURN's petition for writ of review of D.95-10-033 and D.97-02-020, which has rendered TURN's application for rehearing of D.97-02-020 moot. However, to the extent that our citation of Western Airlines might cause misunderstanding of our position, we will delete it from D.97-02-020.

Wherefore, **IT IS ORDERED** that:

1. Decision 97-02-020 is modified to delete the last sentence on page 1.
2. TURN's Application for Rehearing of Decision 97-02-020 is denied as moot.

3. This docket is closed.

This order is effective today.

Dated September 3, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners