MAIL DATE
9/5/97

L/dd

Decision 97-09-062 September 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Park Regency Apartments, Complainant, vs. Pacific Gas and Electric Co., Defendant.	ORIGINAL Case 94-06-043 (Filed June 24, 1994)

ORDER DENYING APPLICATION FOR REHEARING OF DECISION 94-11-036

This decision denies the application for rehearing of Decision (D.) 94-11-036 filed by Park Regency Apartments (Park Regency). In D.94-11-036, we resolved Park Regency's complaint against Pacific Gas and Electric Co. (PG&E) by denying Complainant's request for refund of alleged overcharges related to PG&E's change from general service rate schedules to residential rate schedules for the polyphase electric service, as authorized by Re Pacific Gas and Electric Company (1992) 44 Cal P.U.C.2d 153 (D.92-04-063). Park Regency's application for rehearing and PG&E's response were timely filed.

I. INTRODUCTION

Park Regency is an 892-unit residential apartment complex in Walnut Creek, California. In the complaint resolved by D.94-11-036, Park Regency alleges that PG&E failed to timely notify the apartment complex of its eligibility, pursuant to D.92-04-063, for the residential rate schedule applicable to

its polyphase electric service and therefore claims that PG&E is required to compensate Park Regency for resulting overcharges billed at existing rates from May 1, 1992. In D.94-11-036, we reviewed D.92-04-063 and determined that while that decision allowed PG&E a one year implementation period, commencing May 1, 1992, for the identification of eligible customers and the conversion of their accounts to the residential rate schedules, the date by which such account changes were required to be effective was May 1, 1993. Accordingly, we concluded that May 1, 1993, not May 1, 1992 as argued by Park Regency, was the mandated date for billing under the new rate schedule and the appropriate date from which any overcharges arising from PG&E's failure to effect timely account changes should be refunded. Because it was undisputed that PG&E already had refunded to Park Regency overcharges related to the tardy account conversion dating back to May 1, 1993, we correctly concluded in D.94-11-036 that Complainant's request for additional refunds was not warranted.

In its application for rehearing, Park Regency claims that in D.94-11-036, the Commission erred because there was no evidentiary hearing and because there was no adequate review of the procedure used by PG&E to notify its customers of the newly available rate schedules. We have carefully considered Park Regency's allegations of error and the responses in opposition thereto. For the reasons explained more fully below, we conclude that rehearing on the grounds asserted by Park Regency is not warranted.

II. ALLEGATIONS OF ERROR

In support of its allegation that it was deprived of due process of law because no evidentiary hearing was held prior to the issuance of D.94-11-036, Park Regency cites California Trucking Ass'n. v. Public Util. Com. (1977) 19 Cal.3d 240 (CTA) and Goldberg v. Kelly (1970) 397 U.S. 254, 269, 90 S. Ct. 1011, 25

L.Ed.2d 287.[1] However, neither case supports Park Regency's position. Both are easily distinguishable from the instant case. On the facts presented here, it is clear that the instant dispute is over the interpretation and legal effect of the rate schedule conversion implementation provision of D.92-04-063. Interpretation of the meaning and legal effect of an explicit provision of a previous Commission decision requires no evidentiary hearing. It is a question of law, not a question of fact. In resolving this purely legal question, an evidentiary hearing could not assist us. Therefore, to require an evidentiary hearing under these circumstances would be an exercise in futility which due process of law does not require.

The legal question is whether the rate schedule change was required to be effective May 1, 1992, as Park Regency apparently claims. Our unambiguous response to that question, detailed in D.94-11-036, is no. D.92-04-036 was signed by this Commission on April 22, 1992. In establishing the one year window for rate schedule conversion, with the identification of eligible customers and conversion of their accounts to commence only nine days after the decision was signed, we did not and could not have intended that May 1, 1992 be the mandated billing date for all such account changes. Notwithstanding Park Regency's allegation to the contrary, nothing in D.92-04-036 either states or implies such a result. As we explained in D.94-11-036:

---

[1] In the CTA case, the California Supreme Court held that the opportunity to be heard expressly provided for in Section 1708 of the Public Utilities Code meant the kind of hearing that is referenced in the statutes addressing complaint proceedings before the Commission, that is, an evidentiary hearing at which parties are entitled to be heard and to introduce evidence. Notwithstanding the court's reference to evidentiary hearings in connection with the Commission's complaint proceedings, the CTA case does not stand for the proposition that evidentiary hearings are required in all complaint proceedings.

In the Goldberg case, the United States Supreme Court held that a hearing must be provided to a welfare recipient before the Social Services Commission of the City of New York could terminate the recipient's benefits. Associate Justice Brennan made it clear that procedural due process is of paramount importance in circumstances where the administrative termination of benefits might deprive an eligible recipient "of the very means by which to live while he waits." Goldberg v. Kelly, *supra* 397 U.S. 254, 264. Obviously, Goldberg is imminently distinguishable from the case before us.

> "Even if PG&E was unreasonably slow in processing Complainant's account earlier than it did, Complainant has not shown that PG&E could have reasonably completed the processing as early as May 1, 1992. Yet, Complainant bases its request for relief on this date. Moreover, D.92-04-063 did not provide for a retrospective reasonableness review of PG&E's implementation procedures as a basis to determine when a particular customer's effective date should begin for billing under the revised tariffs. Instead, a prospective deadline for implementation was imposed of one year from May 1, 1992. By granting a one-year deadline for implementation, D.92-04-063 anticipated that the time required for processing changes in eligible customers' accounts would be deemed reasonable up to May 1, 1993. There is no basis to find PG&E unreasonable merely for failing to complete processing of Complainant's account earlier than May 1, 1993.
>
> If PG&E had not completed processing of an eligible customer's account by May 1, 1993, that customer would be entitled to retroactive adjustments to its account back to May 1, 1993. Parties agree that PG&E did not complete processing of the Complainant's account by the May 1, 1993 deadline. Parties also agree that Complainant did receive refunds computed based on a retroactive effective date of May 1, 1993 for applying the revised residential tariffs. Thus, the parties' dispute is limited to billings applicable to the period prior to May 1, 1993." (D.94-11-036, pp. 4-5.)

We affirm our decision in D.94-11-036 that, as a matter of law, D.92-04-036 requires that effective May 1, 1993, eligible customers should have been billed according to the polyphase electric service residential rate schedules. We now turn to Park Regency's remaining allegation of error.

The application for rehearing alleges that, in D.94-11-036, the Commission "too narrowly" construed the allegation that PG&E was unreasonably slow in making the required account transfers. Park Regency claims that we failed

to consider PG&E's actions in the context of the mandate of Tariff Rule 12. According to Park Regency, Rule 12 controlled the rate schedule notification process and at the time D.92-04-063 was issued, the Rule provided:

> "In the event of the adoption by PG&E of new or optional schedules or rates, PG&E will take such measures as may be practicable to advise those of its customers who may be affected that such new or optional rates are effective." (Application for Rehearing, page 3.)

Although Park Regency did not mention Rule 12 in its complaint, it asserts that nothing in D.92-04-063 excused PG&E from compliance with the Rule. Further, Park Regency claims that triable, disputed issues remain unresolved by D.94-11-036 because there is no evidence in the record that PG&E's efforts or methods of identifying and notifying eligible polyphase customers was reasonable or practicable. Clearly Park Regency misses the point. The applicability of tariff Rule 12 to the rate schedule conversion relevant here can only be interpreted in the context of the decision authorizing the new rate schedule. In that decision, the Commission authorized the schedule changes in the context of a one year parameter for completion. In other words, while PG&E's notification methods should be consistent with the reasonableness anticipated by Rule 12, D.92-04-063 provided that notification and conversion within the period from May 1, 1992 to May 1, 1993 was, by definition, reasonable. Correspondingly, notification and/or account conversion after May 1, 1993, pursuant to the implementation parameters of D.92-04-063, would be unreasonable. Park Regency has already been compensated for PG&E's failure to convert its account by May 1, 1993. Further argument about the reasonableness of PG&E's method of notification, which, according to the record, was a traditionally acceptable procedure, cannot result in the additional compensation which Park Regency's complaint seeks.

We endeavor to ensure that the dictates of our decisions are unambiguous - that the reader knows what we have ordered, why we have done so and what is expected as a result of that order. We believe that we have achieved that clarity in D.92-04-063, as further interpreted in D.94-11-036. Therefore, we conclude that Park Regency has failed to state a valid claim of legal error and that the application for rehearing of D.94-11-036 should be denied.

IT IS ORDERED that:

The application for rehearing of D.94-11-036 is denied.

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