

Decision 97-09-121 September 24, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of
GTE Corporation and Contel
Corporation.

A.90-09-043
(Filed September 14, 1990)

ORIGINAL

**ORDER DISMISSING APPLICATION FOR REHEARING
OF DECISION 96-04-053**

An application for rehearing of Decision (D.) 96-04-053 was filed by Toward Utility Rate Normalization (TURN). In D.96-04-053 we removed the stay imposed on Decision (D.) 94-04-083, which authorized the merger of Contel of California, Inc. (Contel) into GTE California (GTEC), the surviving corporation, and gave final approval for an earlier transaction in which GTEC acquired Contel Corporation. In D. 96-04-053 we also granted the equal (50-50) sharing between ratepayers and shareholders of forecasted short-term and long-term economic benefits that are expected to accrue from savings resulting from the merger of the two companies. We deferred rate integration and the determination of Contel's premerger startup revenue requirement to Phase III of the proceeding.

We have reviewed the application for rehearing filed by TURN, as well as the response filed by Division of Ratepayer Advocates (the precursor to Office of Ratepayer Advocates) in support of the application for rehearing. We have also reviewed the pleading by GTE Corporation, Contel Corporation, GTE California Incorporated and Contel of California, Inc., filed in opposition to the application for rehearing. That opposition contends that TURN's application for rehearing is untimely because it was not filed within 10 days after the Commission mailed D.96-04-053.

Public Utilities Code Section 1731 sets forth the time periods for filing of applications for rehearing of Commission decisions.

“... No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property. For purposes of this article, “date of issuance” means the date when the commission mails the order or decision to the parties to the action or proceeding.” (Public Utilities Code Section 1731.)

The Commission’s Rules of Practice and Procedure reflect the above statutory requirement in Rule 85. Rule 85 requires that applications for rehearing of Commission decisions relating to security transactions and the transfer or encumbrance of utility property must be filed within 10 days of mailing of the decision.

The decision (D.96-04-053) that is challenged by TURN in its application for rehearing was issued pursuant to Chapter 4, Article 6 of the Public Utilities Code. As stated above, in that decision we removed the stay on the merger of Contel into GTEC, and reached a decision regarding the allocation of economic benefits pursuant to Section 854 of the Public Utilities Code. Accordingly both Public Utilities Code Section 1731 and Rule 85 of the Commission’s Rules of Practice and Procedure mandate that any application for rehearing D.96-04-053 was to have been filed no later than 10 days after the date of mailing of the Commission decision.

D.96-09-053 was mailed on April 18, 1996. The ten-day period for filing applications for rehearing of this decision expired on April 29, 1996. TURN’s application for rehearing was not filed until May 20, 1996.

The time requirements set forth by the legislature in Public Utilities Code Section 1731 relating to the filing of applications for rehearing are mandatory. Section 1731 does not grant the Commission the discretion to extend these jurisdictional time periods. Accordingly, we reject TURN's application for rehearing on the basis that it was not timely filed.

No further discussion is required of TURN's allegations of error. Upon reviewing the application for rehearing and the related responsive pleadings, we conclude that the application for rehearing must be rejected on the basis that it was not timely filed.

Therefore, **IT IS ORDERED,**

That the application for rehearing of Decision 96-04-053 filed by TURN is dismissed as untimely.

This order is effective today.

Dated September 24, 1997, at San Francisco, California.

JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

President P. Gregory Conlon being necessarily absent, did not participate.