

Decision 99-06-061

June 10, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Reform Network, for rehearing of Resolution T-16260, approving Pacific Bell's re-estimate of the revenue effect of price changes ordered in Decision 98-07-033.

Application 99-01-025
(Filed January 22, 1999)

ORDER GRANTING REHEARING OF RESOLUTION T-16260

I. SUMMARY

By Resolution T-16260 we approved Pacific Bell's (Pacific) methodology for reconciling its actual draw from the California High Cost Fund-B (CHCF-B) with updated estimates of the revenue impacts of the price reductions we ordered in Decision (D.) 98-07-033. The Utility Reform Network (TURN) now moves for rehearing of Resolution T-16260 on the grounds that the resolution unlawfully permitted Pacific to "re-estimate" the revenue effect of the price changes ordered in D.98-07-033 by using more recent call volume data. TURN argues that this contradicts D.98-07-033 which explicitly rejected arguments that the revenue effect of the price changes should be reexamined or recalculated. TURN claims that because the resolution changes a material finding in D.98-07-033 without holding an evidentiary hearing, it is in violation of California Public Utilities (PU) Code Sections 1757 and 1708.

Pacific responds that D.98-07-033 permitted it to make a one-time re-estimate, or true-up, of the price reductions ordered in that decision with

Pacific's draw from the CHCF-B. Pacific claims that since Resolution T-16260 does not change the decision, there is no violation of Sections 1757 and 1708.

We find TURN's assertions to be correct. In D.98-07-033 we held that Pacific could file an advice letter and true-up the difference between its estimated and actual draw on the high cost fund once the actual draw amount was determined. However, we specifically noted that Pacific would not be allowed to true-up the revenue effect of the price changes ordered in that decision.

Pacific subsequently filed Advice Letter 19765 in response to D.98-07-033 in which it performed two separate true-ups. First, it responded to the Commission's invitation to true-up the difference between its estimated and actual draw on the high cost fund by advice letter. However, rather than waiting for the actual approved draw from the CHCF-B, as instructed in the decision, Pacific relied on its previously submitted CHCF-B claims for this true-up. Resolution T-16260 subsequently rejected this part of Pacific's advice letter as premature because the CHCF-B Administrative Committee had not yet approved Pacific's actual draw from the CHCF-B. The resolution further held that Pacific's previously submitted CHCF-B claims were not an appropriate substitute for the actual draw amount.

Pacific performed a second true-up in its advice letter. Despite D.98-07-033's specific holding to the contrary, Pacific true-up the price reductions ordered in D.98-07-033 using more recent call volume data. Nonetheless, in Resolution T-16260 we accepted this second true-up stating that it would be unfair not to allow the company to re-estimate the revenue effect of the price changes ordered in D.98-07-033. However, in approving this second true-up we inadvertently modified D.98-07-033 without providing the parties with adequate notice and an opportunity to be heard on this modification, as is required by PU Code Sections 1757 and 1708. We therefore agree with TURN that the part of the resolution that permitted the second true-up is legally erroneous.

By this order we hereby grant rehearing of Resolution T-16260 and reopen the proceeding in order to remand the issue to the Administrative Law Judge ("ALJ") Division so that the assigned ALJ may set a prehearing conference within 90 days for the purpose of establishing a procedural schedule.

II. BACKGROUND

Prior to D.96-10-066, ratepayers subsidized the provision of basic exchange service in certain areas of the state by paying above-cost rates for many of Pacific's services. In D.96-10-066, we replaced a portion of local service subsidies that were built into Pacific's rates with a 2.87 percent surcharge on all customers' bills.

In D.96-10-066, we ordered Pacific to reduce its rates in an amount equal to its estimated draw on the CHCF-B in order to prevent Pacific from double recovering revenues from its above-cost rates and the end-user surcharge. Subsequently, in D.98-07-033, we estimated Pacific's draw on the CHCF-B to be \$305.2 million. That amount was derived from the offsetting price reductions we adopted in that decision, which totaled \$305.2 million.¹ We recognized that Pacific's approved draw on the CHCF-B might be larger or smaller than the estimated \$305.2 million. We held that if the amount was lower than \$305.2 million, rates would need to be increased to make the company whole. If higher than \$305.2 million, rates would need to be decreased to prevent the company from recovering a windfall.

To resolve this problem, we ordered:

"Pacific shall reconcile its \$305.2 million estimate with its approved draw from the California High Cost Fund (CHCF-B) for the 12-month period immediately preceding the date rates are effective. If the adjustment

¹ The adopted offsetting price reductions were based on a reduction in rates for toll (\$154 million), local usage and ZUM (\$80.5 million), access (\$63,000), and custom calling services (\$7.1 million). (See D.98-07-033, mimeo, p. 4 [Table 1]).

resulting from Pacific's reconciliation of its \$305.2 million estimate to its approved draw from the CHCF-B is within 10% of \$305.2 million, Pacific shall file by compliance advice letter to recover or refund the difference through a change to local usage and zoned usage measurement prices. If the adjustment is greater than 10% of \$305.2 million, Pacific's advice letter filing will be subject to protest.” (D.98-07-033, mimeo, Ordering Paragraph 7; emphasis added.)

Pacific filed Advice Letter 19765 on October 22, 1998 in which it performed two separate true-ups. The first true-up pertained to the difference between Pacific's estimated and actual draw on the high cost fund. The second true up involved re-estimating the price reductions ordered in D.98-07-033. Pacific re-estimated the revenue effect of those price reductions by using more recent call volume data. The use of this new information resulted in Pacific proposing only a \$13,873,000 reduction (hereinafter rounded to \$13.9 million) rather than a \$47 million reduction.²

TURN and the Office of Ratepayer Advocates (ORA) filed protests to the advice letter. The protestants first alleged that Pacific arrived at the \$13.9 million reduction by erroneously re-estimating the revenue effect of the price changes ordered in D.98-07-033. Protestants contend that D.98-07-033 does not permit Pacific to true-up the revenue effect of the new price ceilings. Second, they asserted that Pacific's advice letter constituted an attack on the factual determination in D.98-07-033 that the revenue effect of the new price ceilings could not be re-estimated. Pacific did not file responses to the protests.

On December 17, 1998, we adopted Resolution T-16260 in which we rejected the first true-up in Pacific's Advice Letter 19765 as premature because the CHCF-B Administrative Committee had not yet approved Pacific's draw from the CHCF-B.

² D.98-07-033 had required that Pacific reduce local usage and ZUM rates by the difference between its submitted claims (\$352.2 million) and the \$305.2 million estimated draw (\$352.2 million - \$305.2 million = \$47 million).

However, in that resolution we approved the methodology that Pacific had used to perform its second true-up. Pacific's second true-up resulted in the \$13.9 million proposed reduction. We determined that this second true-up was both reasonable and consistent with Ordering Paragraph 7 of D.98-07-033, concluding that we believed it would be unfair not to allow the company to re-estimate the revenue effect of the price changes ordered in D.98-07-033.

TURN filed its application for rehearing of Resolution T-16260 on January 22, 1999. TURN argues that the part of the resolution that permitted the second true-up is erroneous on legal and policy grounds. It contends that "by allowing Pacific to adjust the revenue effect of the new price ceilings, it represents an arbitrary and capricious change in policy from D.98-07-033, which unequivocally ruled that the revenue effect of the new price ceilings was not subject to re-evaluation." (TURN Appl. at p.4.)

Pacific filed a reply to TURN's application for rehearing on January 29, 1999, claiming that the allegations by TURN are without merit.

III. DISCUSSION

By Resolution T-16260 we upheld Pacific's Advice Letter 19765's interpretation of D.98-07-033 as permitting further estimates that will serve to recognize the actual effects of the rated reduction ordered in the decision. We held that the actual effects of that rate change should be reflected as part of the one time true-up of the rate reductions associated with Pacific's CHCF-B draw. We stated in the resolution that it was just and reasonable to accept Pacific's estimates as accurate as possible by using more up-to-date information.

TURN's primary contention is that the approval of Pacific's methodology for adjusting local usage and ZUM rates, as both reasonable and consistent with Ordering Paragraph 7 of D.98-07-033, is legally erroneous. According to TURN, this methodology is contrary to the calculation we previously

ordered in D.98-07-033. TURN argues that D.98-07-033 did not permit Pacific to true-up the revenue effect of the new price ceilings, only the difference between Pacific's estimated and actual draw on the high cost fund. TURN sees Pacific's advice letter as an attack on our factual determination in D.98-07-033 that the new rates reduced the company's revenues by \$305.2 million. TURN asserts that if Pacific believed that the new price ceilings we adopted unfairly reduced its revenues by more than \$305.2 million, it should have asked us to reconsider the findings in D.98-07-033 by a petition to modify that decision.

TURN proposes that we rescind the resolution and that we order Pacific to comply with D.98-07-033, Ordering Paragraph 7, by reducing local usage and ZUM rates by the amount of the difference between the \$305.2 million and Pacific's approved draw on the CHCF-B.

In its response, Pacific argues that it was required to make a one-time true-up of the price reductions ordered in D.98-07-033 with Pacific's draw from the Universal Service Fund.³ It contends that Resolution T-16260 does not change this requirement and in fact confirms that the calculation method proposed by Pacific is correct and consistent with the one-time true-up required by D.98-07-033.⁴ Pacific contends that TURN simply disagrees in its rehearing application with our interpretation of our own decision, D.98-07-033, as expressed in Resolution T-16260.

Our language in D.98-07-033 supports TURN's assertions in its application for rehearing. Our stated intent in that decision was to reduce Pacific's rates by the same amount as its estimated draw on the fund (\$305.2 million) in order to keep the company revenue neutral. The new price ceilings we adopted were based on Pacific's prices, volumes, and elasticities for toll and switched access as entered into the evidentiary record of the proceeding. We explicitly

³ D.98-07-033, mimeo, pp. 42, 72 (Ordering Paragraph No. 7).

confirmed that those price ceilings were final when we stated that "We adopt final prices based on the testimony and workpapers in evidence in this proceeding. Further rate calculations are not necessary." (D.98-07-033, mimeo, p. 38; emphasis added). By that decision we held that further calculations would not be required as to our adopted prices since the adopted revenue effects of D.98-07-033 were the result of extensive litigation which included evidentiary hearings and an extended briefing schedule. (D.98-07-033, mimeo, p.38.)

D.98-07-033 clearly demonstrates our intent to proceed with the adopted results, and to not permit further litigation thereof. Both our decision and Pacific's response note that D.98-07-033 contains three examples where we decided implementation issues in such a way as to foreclose true-ups or subsequent adjustments that would have required relitigation of the adopted results, in order to timely adopt price reductions based on the record evidence.⁵

In the first instance, ORA had recommended that we delay adoption of permanent rate reductions until we had activated the CHCF-B trust and put in place the interim equal percentage reduction mechanism. We found that sufficient procedures were in place for us to be able to put in place permanent price reductions without further delay. D.98-07-033 enunciated the specific procedures by which Pacific's \$305.2 estimate could be timely reconciled with the actual draw we approved. Emphasizing the need for timely implementation, we rejected ORA's recommendation. (D.98-07-033, mimeo, p. 41.)

In a second instance, we once again demonstrated our intention to timely adopt price reductions based on the record evidence when addressing the Inter Exchange Carriers' (IXC) request to further litigate the rate changes to be filed by Pacific upon implementation of D.98-07-033. The IXCs' request was denied:

⁴ Resolution T-16260, mimeo, pp. 5-6.

“On the implementation issue of whether Pacific should file its tariffs by compliance filing or subject to protest, we select the compliance filing. We do this because we herein adopt the revenue effects and rate ceilings set forth in Appendices B and C and we want to deliver the benefits of the rate reductions we adopt to customers without undue delay. The IXCs object to this process, stating that parties should be given the opportunity to protest the filings, and to litigate the specific tariff adjustments using the latest available data and adopted costs. We disagree.

The Commission made clear in the Scoping Memo and in the hearing process that its purpose in this proceeding was to timely adopt price reductions and that it would do so based on the record.” (See D.98-07-033, mimeo, p. 41.)

Finally, by D.98-07-033 we denied ORA’s request that we annually track the revenues from the permanent rate reduction offset to ensure they are within a reasonable range of the amount drawn by Pacific from the CHCF-B. ORA was concerned that revenues could be inaccurately forecasted and that any adopted elasticity estimate, whether or not accurate, could soon be inapplicable. In denying ORA’s request, we stated that we expected that there would be some changes in the annual revenue effect of the price reductions we adopted, and that the changes could be due to a number of factors both within and beyond Pacific’s control. We stated; “As with IRD, we find that is acceptable. We do not chose to adopt a mechanism that would blunt Pacific’s incentives for efficiency and innovation.” (D.98-07-033, mimeo, p. 43.)

Our disposition of these three separate issues in D.98-07-033 demonstrates that we intended to proceed with the adopted rates and revenue effects. We denied ORA’s and the IXCs’ true-up requests because they would

⁵ Pacific’s Response to TURN’s Application for Rehearing of Resolution T-16260, at p. 2.

have delayed the timely implementation of rate reductions, would have required further litigation, and could have thwarted incentives.

Nonetheless, Pacific's Advice Letter 19765 ignores D.98-07-033's holding that further rate calculations for purposes of the one time true-up would not be necessary.⁶ Pacific instead substituted its own estimation of the revenue effect of the new price ceilings we had adopted. Pacific asserted that the price changes ordered in D.98-07-033 reduced its revenues by \$338.3 million, resulting in a reduction estimate of \$13.9 million.⁷ The new price ceilings we had adopted in D-98-07-033 were set to reduce Pacific's revenues by \$305.2 million, not \$338.3 million. The advice letter was intended to be a simple matter of adjusting the \$305.2 million price reduction we adopted either upward or downward to reflect the difference between the company's estimated and actual draws on the CHCF-B. Pacific instead adopted the new benchmark of \$338.3 million without even trying to demonstrate that D.98-07-033 incorrectly calculated the revenue effect of the new price ceilings. In fact, Pacific has failed to provide any authority for its claim that D.98-07-033 permitted it to recalculate the revenue effect of the new price ceilings. As noted, both ORA and the IXC's had been previously denied the opportunity to revise adopted prices.

Thus, in approving Pacific's compliance filing, which by definition is not intended to be controversial, we inadvertently modified D.98-07-033 without providing notice to the parties and an opportunity to be heard on the modification as is required by PU Code section 1708.

⁶ D.98-07-033, Ordering Paragraph 7, did allow Pacific the opportunity for a one-time true-up to reconcile the \$305.2 million estimate with Pacific's actual approved draw from the CHCF-B. Pacific attempted to make that true-up by Advice Letter 19765. However, by Resolution T-16260 we determined that Pacific had filed prematurely since we had not yet approved Pacific's CHCF-B claims. We held in the resolution that it was contrary to the decision's holding for Pacific to rely on its previously submitted CHCF-B claims rather than the actual approved draw from the CHCF-B. The resolution therefore states that we could not adopt a final true-up at that time. (See Resolution T-16260, Finding of Fact No. 11.)

⁷ Pacific subtracted \$338.3 million from its draw on the CHCF-B (\$352.2 million - \$338.3 million = \$13.9 million as the reduction).

We therefore grant rehearing of Resolution T-16260 and reopen the proceeding in order to remand the issue to the Administrative Law Judge ("ALJ") Division so that the assigned ALJ may set a prehearing conference within 90 days for the purpose of establishing a procedural schedule.

IV. CONCLUSION

We find that Resolution T-16260 does not conform with the requirements set forth in D.98-07-033. Therefore, we will grant TURN's rehearing application and reopen the proceeding for the purpose setting a prehearing conference at which time a procedural schedule can be established.

IT IS THEREFORE ORDERED that:

1. Rehearing of Resolution T-16260 is granted and the proceeding is reopened in order to remand the issue addressed in TURN's rehearing application to the ALJ Division.
2. The ALJ Division is directed to set a prehearing conference within 90 days after the effective date of this order for the purpose of establishing a procedural schedule.

This order is effective today.

Dated June 10, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
LORETTA M. LYNCH
JOEL Z. HYATT
Commissioners