

Decision D.99-08-029

August 5, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Michael Monasky, et. al.

Complainant,

vs.

Citizens Communications,

Defendant.

Case 98-03-008
(Filed March 4, 1998)

ORDER CLARIFYING AND
DENYING REHEARING OF D.99-04-055

I. SUMMARY AND BACKGROUND

In this order, the Commission will deny the application for rehearing of Decision (D.) 99-04-055 (Decision), after clarifying the basis on which the Decision dismissed the complaint. The complaint here was filed by Michael Monasky (Monasky), who asserted that his monthly bill for local telephone service ought to approximately be \$30 less. The complaint made generalized allegations that Citizens Telecommunications Company of California, Inc.'s (Citizens') rates were too high and that it was abusing its monopoly power. The complaint also asserted that Monasky was subject to improper charges for local service that Citizens could not explain. Finally, the complaint claimed that as a measured rate customer Monasky was entitled to a bill listing each local call placed from his telephone number, indicating the number called and the length of the call.

The Decision found the complaint did not back up its generalized allegations with any specific claims indicating why Citizens' rates or practices

were unreasonable or should be changed. Prior to the complaint, the Commission had reviewed and approved Citizens' rates in Re: Citizens Utilities Company of California [D.95-11-024] (1995) 62 Cal.P.U.C.2d 244. The rates challenged by Monasky complied with those authorized by the Commission in that 1995 decision.¹ Yet, the complaint did not claim that circumstances had changed in a way that made Citizens' previously approved rates and practices unreasonable now. Further, Citizens' past practice has not been to provide calling detail to measured rate customers and all the evidence submitted indicated it would be prohibitively expensive to do so. However, the complainant did not propose to justify why this expensive new practice should be adopted.

As a result of this analysis, the Commission dismissed the complaint, with prejudice, before holding a hearing. Monasky filed a "Motion For Request for Review, Request for Appeal, Request for Rehearing, and Request for Reconsideration (Motion)" on June 1st, 1999. This pleading was docketed as a "Request for Rehearing" and we will treat it as an application for rehearing (application). Citizens opposed Monasky's application.

II. DISCUSSION

The application for rehearing alleges error on two main grounds. First, the application notes that the Decision differed from the proposed decision of the assigned administrative law judge (Proposed Decision) in certain respects. The application alleges that the revisions to the Proposed Decision should have been recirculated for comment prior to their being adopted by the Commission. Second,

¹ Portions of the complaint's allegations misunderstand the nature of Citizens charges for "extended area services," or "EAS." These charges are for calls outside a customer's local calling area. Formerly, Citizens collected a flat rate for extended area service (EAS) as part of its monthly charges. The EAS charge did not appear as a separate line item in Citizens' bills. In Re: Citizens Utilities Company of California, supra, the Commission determined that the amount each customer paid for EAS should be based on that customers' actual use of EAS. A separate charge was established that varied from customer to customer according to the plan each customer chose.

the application comments on the substance of those changes, apparently alleging that the revisions themselves contain errors.

A. The Revisions to the Proposed Decision Do Not Require Recirculation.

Rule 77.6, subdivision (c), of the Commission's Rules of Practice and Procedure requires that "alternates" to Commission decisions must be "filed and served on all parties to the proceeding and . . . subject to public review and comment. . . ." (See, Cal. Code Regs., tit. 20, §77.6, subd. (c).) However, the term "alternate," as used in Commission practice, refers to an alternative to a Proposed Decision authored by a Commissioner and placed on the Commission's Public Agenda as its own separate item. (E.g., Re: Pacific Gas and Electric Company [D.99-02-089] (1999) __ Cal.P.U.C.2d __.) For example, at today's meeting alternate item H-3a was placed on the agenda by Commissioner Neeper as an alternate to Item H-3. In addition, pursuant to Rule 77.6, subdivision (a), changes made to a proposed decision constitute the issuance of an "alternate" only when those changes amount to "a substantive revision . . . that materially changes the resolution of a contested issue, or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs" of a proposed decision. (Cal. Code Regs., tit. 20 § 77.6, subd. (a).)

The application notes that several changes were made by the assigned administrative law judge to the Proposed Decision, and that those changes became part of the Commission's final decision.² However, because these changes were

² On page four the Decision deletes the sentence found in the Proposed Decision, "She further advised Mr. Monasky that if he thought the rates set in any of these proceedings, such as the EAS rate or local service surcharges, were excessive or unreasonable, that the appropriate means to attack those decisions was through the Commission's petition to modify process." Also on page four, the Decision adds the sentence, "If the asserted violation is of § 451, then the complaint must also include the signatures of 25 customers." In addition, on page seven the Decision contains two sentences not included in the Proposed Decision: "Having filed the complaint, Mr. Monasky bears the burden of proving, by a preponderance of the evidence, that Citizens' rates are unreasonable. Unsupported assertions of unreasonableness without even a

made by the assigned administrative law judge, they do not make the Commission's final Decision an "alternate" to the Proposed Decision. In addition, these changes were editorial in nature and not "substantive" in the manner required by Rule 77.6, subdivision (a), because they did not change the Decision's rationale or its result.

The first change shortened a summary of a letter provided by the Office of Ratepayer Advocates (ORA) by removing language stating ORA's view that Monasky should file a Petition to Modify. Shortening a summary of one party's position does not materially affect the decision. The second change added a reference to the 25 signature requirement to a summary of relevant law. The requirement—and the fact that it was complied with—is also stated on page two of both the Decision and the Proposed Decision. No change results when it is repeated on page four.

The last change expands upon the Decision's discussion of the burden of proof. The Proposed Decision found that Monasky "has failed to sufficiently support his claim of unreasonableness." Without changing this holding in any way, the Decision explained what constituted "sufficient support" by paraphrasing the Commission's long-standing requirement that complainants bear the burden of proof. (ARCO Products Company, etc. v. SFPP, L.P. [D.99-06-093] (1999) ___ Cal.P.U.C.2d ___, ___ at p. 12 (mimeo.), citing BBD Transportation Co., Inc. v. Pacific Southcoast Freight Bureau, et al. [D.82645] (1974) 76 Cal.P.U.C. 485, 508, City of Long Beach v. Unocal California Pipeline Company [D.93-12-0015] (1993), abstracted at 52 Cal.P.U.C.2d 317.) Making the basis of a decision more explicit in such a way is not a substantive change.

description of potential evidence which might convince the Commission to alter its previous conclusions, are insufficient to justify the expense of hearings."

B. The Content of the Revisions to the Proposed Decisions is Correct.

The application also comments on each of the changes to the Proposed Decision. The application appears to allege that the changes contain errors. However, these claims are difficult to follow and misunderstand the effect of the changes made. The first change eliminated a reference to ORA's view that Monasky should have brought his grievances in the form of a petition to modify instead of a complaint. Yet the application repeats Monasky's contention that he should not be required to file a petition to modify if he has already complied with the statutory requirements for filing a complaint. Since the application apparently disagrees with the language that was removed from the Proposed Decision, it does not show that the Decision—issued without this language—was in error.

Nevertheless, the application then implies that the Decision erroneously "removed" a "recommended remedy" when it eliminated this language. This is not the case. The Decision dismissed the complaint because Monasky failed to substantiate his allegations that Citizens' rates were unlawful, or that Citizens had charged Monasky the wrong rates. Because the Decision dismissed the case on its merits, it does not matter whether or not it was filed as a complaint or a petition to modify. As the discussion relating to petitions to modify in both the Decision and the Proposed Decision indicates, Monasky does not have two separate remedies for his grievance. Rather, there was a question as to which vehicle he should have used to present his concerns to the Commission, given Citizens rates had been established in a prior decision.

In this connection, the application implies that the complaint was erroneously dismissed simply because it was the wrong procedural vehicle. This, too, is not the case. The Decision dismissed the complaint because it did not provide specific allegations indicating why Citizens' rates or practices were erroneous or unlawful. Because the complaint was not substantiated, the Decision

speculated about the grounds Monasky might have believed indicated Citizens' actions were in error. In the absence of evidence or arguments indicating something specific was wrong with Citizens' rates, the Commission was not prepared to allow Monasky to relitigate already decided rate issues. That is, if Monasky simply sought reconsideration of Re: Citizens Utilities Company of California, supra, such reconsideration should not take place in this proceeding without the participation of all the parties to that proceeding or relying on the extensive record there.

However, this discussion is additional to the main point of the decision which Conclusion of Law 2, on page nine, states: "To support an allegation that recently approved rates are unreasonable, a complainant must state a rationale for re-litigating issues specifically addressed and resolved in the rate case." Since the application for rehearing indicates the reference to the petition to modify process in the discussion portion of the Decision detracts from the Decision's main point, the discussion portion of the Decision should be modified to make its holding clear.

The application also misunderstands the effect of the other two changes to the Proposed Decision. The application incorrectly asserts that the Decision's mentioning the 25 signature requirement implies that the requirement was not complied with. The required 25 signatures were indeed collected, as the Decision notes at page two. The Decision does not rely on the number of signatures collected as a basis for deciding the issues in this case; it merely notes that the procedural requirement was met.

The application further contends that the language explaining the burden of proof indicates the Decision dismissed the complaint to avoid the "expense of hearings[,] " rather than on the merits of the case. Again, this claim misunderstands the Decision. As both the Decision and the Proposed Decision explained on page six, the merits of the complaint did not warrant a hearing. The

complaint stated only a "vague dissatisfaction with Citizens' prices" and did not allege any violation of law, of a Commission order, or any rationale for why the Commission should reexamine Citizens' rate structure. As a result, the Proposed Decision and the Decision both concluded: "Having engaged in a lengthy public process, including evidentiary hearings, and developed a detailed record leading to a decision resolving rate case issues, the Commission is reluctant to expend public resources again to consider the same issues and evidence."

This conclusion correctly adheres to long-established Commission policy "to place the burden of proof on the party seeking to disturb the established rate scheme." (ARCO Products Company, et al., v. SFPP, L.P. [D.99-06-093] (1999) __ Cal.P.U.C.2d __, at p. 14 (mimeo.)) Unless a complaint provides some justification for the burdensome and expensive process of reconsidering recent rate determinations, the Commission and the numerous interested parties should not be required to engage in such an inquiry. The application contends that Monasky's grievances were "clearly delineated." However, as the Commission has repeatedly noted, the complaint stated only that Monasky disapproved of his rates, not why. Although Monasky's dissatisfaction was clearly stated, something more is necessary to warrant hearing. The purpose of a hearing is to develop an evidentiary record by giving parties the opportunity to present and contest evidence in a trial-type setting. With no substantiation supporting the complaint's allegations, the Decision properly dismissed the complaint before a hearing was held.

THEREFORE, good cause appearing, it is ordered that:

1. The first two paragraphs on page five (mimeo.) of Decision 99-04-055 are restated and combined into a single paragraph reading:

Mr. Monasky's letter includes a general reference to "reasonableness" of Citizens' rates, charges, and fees. The Commission has previously and explicitly determined that those rates, charges, and fees are reasonable, after lengthy hearings. In Citizens' last rate

case, the Commission adopted a three-tier pricing plan for extended area service. Citizens Utilities Company of California, 62 CPUC 2d 244, 303-8 (D.95-11-024). The first tier allowed for up to 120 minutes of calls within the extended area for no extra charge. Calls over 120 minutes would be charged \$0.02 per minute up to a maximum of \$6. Under the block plan, customers would pay an additional fee of \$2 per month and receive up to 300 minutes, with an extra charge for additional minutes. This pricing structure appears to be that to which Mr. Monasky objects.

2. The second full paragraph (mimeo.) of D.99-04-055 on page three is restated to read:

As this history illustrates, the rate issues Mr. Monasky raises are complicated and, if Mr. Monasky wishes us to reconsider our previous decision to determine if it contains errors, the complaint must indicate a basis for reconsideration and provide for reconsideration of the lengthy record already compiled at the Commission and an opportunity for interested parties to participate.

3. Rehearing of Decision 99-04-055 as clarified herein is denied.

This order is effective today.

Dated August 5, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners