

51639

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HARRY G. CLARK and
KATHERINE CLARK,

Complainants,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,
a corporation,

Defendant.

Case No. 5601

F. A. Taliaferro, for complainants.
F. T. Searls and John Carroll Morrissey,
for defendant.
John J. Doran, for Commission staff.

O P I N I O N

Harry G. Clark and his wife filed their verified complaint in this matter on December 6, 1954. They alleged in substance that the defendant utility refused to render electric service to them at the premises designated as No. 2904 - 16th Street, San Pablo, California, hereinafter referred to as No. 2904. They went on to allege that such refusal to serve was wrongful, there being no defect in the electric wiring in the house involved. Complainants do not specifically allege ownership of the property concerned but this defect has been cured by the evidence. The property is alleged to be in the City of San Pablo. The complainants' prayer seeks an order of the Commission requiring defendant to furnish electricity at No. 2904.

After being served with an order to satisfy or answer, defendant filed an answer, verified by its vice-president and

general manager on January 17, 1955. Defendant admitted its refusal to give electric service. It alleged that the wiring and premises do not conform to the uniform electrical and building codes both of which have been adopted by the City of San Pablo. There was an allegation that defendant and its employees would become liable for violation of the city ordinances if they energized No. 2904. Adequacy of complainants' wiring was denied upon lack of information and belief.

Two special defenses were pleaded, one based on provisions of the uniform electrical code and the other on a rule and regulation in defendant's tariff. Under the first of these defenses, allegations were made that defendant is ready and willing to furnish electric service to complainants but No. 2904 does not have final approval of the chief electrical inspector. It was further alleged that this officer is authorized to disconnect or order discontinuance of service. Where he does so it is unlawful for a utility to serve until a certificate of approval is issued. The chief electrical inspector of the City of San Pablo has ordered that electric service be withheld from the premises here involved. That defendant has not received evidence that the electric wiring in No. 2904 conforms to legal requirements nor is there any such allegation in the complaint. That defendant cannot comply with complainants' request because if it did it would subject itself and its agents or employees to fine, imprisonment or both.

The second special defense revolves around rule and regulation No. 11(C) in defendant's applicable tariff. That rule states that defendant reserves the right to refuse service if the customer's lines, appliances or apparatus shall at any time be unsafe or if the utilization of electricity by means thereof is

prohibited by any municipal ordinance or regulation. The defendant further reserves the right to refuse service until the customer's installations are made safe or the ordinance or regulation complied with. It is finally alleged that defendant has exercised its rights under rule and regulation 11(C) and is justified in refusing service to complainants.

Upon the issues as thus defined a public hearing was held before Examiner John Power in San Pablo on April 11, 1955. Mr. Clark and one other witness testified on behalf of the complainants. Defendant called the chief building (and electrical) inspector of the City of San Pablo and three of its own employees. An assistant utilities engineer of the Commission's staff also testified. Fifteen exhibits were received in evidence. These included among other things the council resolution appointing the chief building inspector; ordinances adopting the uniform electrical code (which in turn incorporates the National Electrical Code [1951 edition] by reference) by the City Council of San Pablo; an inspection report covering 2904 - 16th Street, San Pablo; several items of correspondence; and some photographs of No. 2904. The defendant's applicable tariff is also on file with the Commission and will be considered. From these sources the pertinent facts appear.

Complainants resided at No. 2904 themselves until 1946 and received gas and electricity from defendant there. Between April 10, 1946 and August 10, 1953 the records of defendant show service to various individuals other than complainants, presumably tenants. Subsequently, the City appears to have requested defendant by telephone not to serve No. 2904. This was confirmed by a letter, a copy of which is included in the record (Exhibit No. 8), and dated September 21, 1954.

The complainant Clark testified that he had applied for service in his own name at about the time the last tenant's service was cancelled. This was refused by defendant. On April 28, 1954 the chief building inspector and his deputy made an inspection of the building at No. 2904. A report of this inspection was received in evidence as an exhibit. It took many exceptions to many features of the building and specifically describes the general condition of the wiring as "poor". It also pointed out that there was only a single circuit and that there were too many outlets on it.

The question of whether or not the wiring of No. 2904 was ever corrected was never clearly resolved on this record. The complainant had never obtained a permit to do any electrical work. This omission represented a violation of the local electric ordinance if any wiring had in fact been done. For that reason objections were made by complainant's counsel when complainant was questioned as to whether No. 2904 had been rewired. These objections were sustained. The staff witness, the city inspector and one of defendant's employee witnesses gave testimony which indicated that some rewiring had been done. The evidence is entirely inadequate to show that the wiring, including changes and additions made after the April, 1954 inspection, was installed in a safe and adequate manner.

In order for a complaining party to obtain relief it is necessary that all the material allegations of his complaint be sustained. Complainant has the burden of proof. In this case a necessary allegation is that "... no defect of any sort exists in the electrical service at 2904 ..." Complainants have failed to produce sufficient evidence to support the allegation quoted. Therefore the Commission cannot make the necessary finding that the wiring of No. 2904 is safe and adequate. Because of the

failure of complainants' proof it has not been necessary for the Commission to consider, nor has it considered, the two special defenses raised by defendant.

The defendant made a motion to dismiss this case because the complaint does not allege facts sufficient to constitute a cause of action. The Commission is of the opinion that the allegations of the complaint are sufficient. The motion will accordingly be denied.

O R D E R

Complaint having been filed with this Commission, a public hearing having been held thereon, the matter having been submitted and now being ready for decision,

IT IS HEREBY ORDERED that the above-entitled complaint be and it is dismissed.

Dated at San Francisco, California, this 5th day of July, 1955.

Justin J. Casner
President
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Commissioners

Commissioner Peter E. Mitchell being necessarily absent, did not participate in the disposition of this proceeding.