

ORIGINAL

Decision No. 79390

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM M. BENNETT, CONSUMER  
SPOKESMAN (WMB) AND CONSUMERS ARISE  
NOW (CAN),

Complainants,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,  
ROBERT H. GERDES, SHERMER SIBLEY,  
ROBERT GROS, JOHN DOE 1, JOHN DOE 2,  
and JOHN DOE 3,

Defendants.

Case No. 9221

ORDER OF DISMISSAL

The complaint in the above-entitled action was filed on May 10, 1971. Following the procedure set forth in Rule 12 of the Commission's Rules of Practice and Procedure, a copy of the complaint was sent on that same day to the attorney for defendant Pacific Gas and Electric Company, together with a note requiring that any asserted defects in the complaint be submitted to the Commission within 10 days.

By letter dated May 20, 1971, defendant submitted a statement of defects. Included among the defects cited by defendant is the assertion that complainants have improperly verified their complaint, in violation of Rule 5 of the Commission's Rules of Practice and Procedure. Rule 5 states, in part, as follows:

"Verification may be made before a notary public  
or by certification or declaration under the penalty  
of perjury."

The verification in the complaint reads as follows:

"Plaintiffs state that the allegations herein are provable, and to the best of our knowledge, true and correct.

/s/ WILLIAM M. BENNETT"

It was not made before a notary and does not contain either a certification or declaration under the penalty of perjury.

Defendant's statement of asserted defects, dated May 20, 1971, indicates that they received a copy of the complaint which did not contain a magazine article referred to in the complaint and included with the original complaint. Rule 11 of the Commission's Rules of Practice reads as follows:

"The number of copies of a complaint required to be filed is an original and conformed copies equal in number to twelve plus twice the number of defendants."

Since the complaint served upon the defendant did not have the magazine article contained in the original complaint on file with the Commission, it cannot be considered conformed.

On May 26, 1971, the Commission advised complainants of the statement of asserted defects filed by defendant on May 20, 1971. It further advised complainants that they had until June 11, 1971 in which to dismiss, amend or stand on their complaint. The Commission's letter of May 26, 1971 also contained the following paragraph:

"You are further advised that your complaint does not contain the proper form of verification and does not contain sufficient copies of the attachment. These deficiencies should be corrected by June 11, 1971 so as not to delay further processing of this matter."

By letter of June 15, 1971, the Secretary of the Commission again quoted the above language, and stated as follows:

"As of this date, we have not received any communication from you correcting these deficiencies. You are hereby placed on notice that further processing of this matter will be suspended pending compliance."

There has been no subsequent response from complainants with regard to the two matters mentioned in the Commission's letters of May 26, 1971 and June 15, 1971. -2-

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Complainants having been informed by the Commission that the complaint would be suspended until compliance with the Commission's notices of May 26 and June 15, 1971, and complainants having failed to comply with the notice of deficiencies in the complaint as stated in the Commission's letters of May 26 and June 15, 1971,

IT IS ORDERED that the complaint herein is dismissed for failure to diligently prosecute the matter. This dismissal shall be without prejudice.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this 23rd day of NOVEMBER, 1971.

William J. Lyons Chairman  
[Signature]  
Thomas L. Stinger  
[Signature] Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.