

Decision No. 83602

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James S. D'Amato,

Complainant,

vs.

San Diego Gas and Electric,

Defendant.

Case No. 9703  
(Filed April 5, 1974)

James S. D'Amato, for himself,  
complainant.  
Leonard Earl Ligon, Attorney at  
Law, for defendant.

O P I N I O N

Complainant seeks to keep his electric meters where they were originally located and seeks damages of \$10,000 from defendant.

Complainant presented his own case, stating that he did not have much more to add to his complaint other than that the company was negligent in responding to his requests. The best way to state complainant's testimony is to quote the pertinent parts from his complaint as follows:

- "2. This complaint is the result of an addition to the building the complainant owns at 31727 Coast Hwy. So. Laguna, Ca. 92677.
- "3. I asked S.D.G. & E. to send out some one regarding remodeling [sic]. To my knowledge no one came.

- "4. Next time I saw meter reader, I asked to have some one come out to check what was needed in case of construction. No one came.
- "5. I finally asked meter reader, Doug McDonald what kind of clearance was there necessary to read meters and take care of any work. He said 3 feet clearance.
- "6. We proceeded with construction on that information, receiving all govt. ok's. In the middle of construction I finally get a call from S.D.G. & E., after funding, to make alteration. I told them what I had done, and had received the ok from them already, so I was not going to make any changes.
- "7. They sent me letters and stuff, I told them I would let the P.U.C. decide. They then threaterend [sic] to turn my power off."

Hearing on the complaint was held in Laguna Beach on August 15, 1974 before Commissioner Thomas Moran and Examiner Bernard A. Peeters.

Complainant was uncertain about the dates when he first contacted defendant with respect to the proposed addition to his restaurant. He thought it was about September or October of 1972. He claims to have called the defendant on its Zenith number at this time. He believed that he saw the meter reader in December 1972 when he asked him to have somebody from the company to come by. Some time during February or March in 1973 he talked to a meter reader named Doug McDonald and asked him about the requirements for meter location. According to complainant, it took an excessive amount of time to obtain his building permits, so that he had to renegotiate his financing. He replied in the affirmative to a question from the County Electric Department whether he had clearances from the defendant. Construction was started in July 1973.

Some time in August 1973, complainant stated he received a call from a Mr. Weatherholt of San Diego Gas & Electric Company informing him that certain changes would have to be made with respect to his electric meters. Complainant replied that he would not make any changes because he already had all the proper approvals. As to the letters from defendant (Exhibits 2, 3, and 4), complainant stated that he talked to defendant's man who had a bad attitude, was insolent, and therefore upset complainant. Complainant states that the defendant was negligent in not complying with his requests. The building where the meters in question are located is a restaurant. Complainant states that they were never accessible because they were located in a yard which was surrounded by a fence.

Defendant's first witness was Doug McDonald, the meter reader from whom complainant claimed to have received the permission to go ahead. The witness recalled having talked to complainant, but did not recall just when. Although he had been on the route, which included complainant's meters, for eight years, he had talked to him only once. He stated that complainant asked him if it was all right to enclose the side of the building where the meters were located. The witness stated that it was okay with him so long as there was a three-foot clearance in front of the meters. The witness also stated that other customers inquire from time to time about meter locations and that it is his normal practice to tell the customer to call the planning department. He does not recall whether he told complainant to do this. At the time of his conversation, the framing of the addition to the building was already completed. Before the addition, the meters were located on the outside of the building in a storage area and were accessible without having to go inside the building. However, he stated there were times when the access to the meters was obstructed by rubbish.

It was then he told complainant that there had to be a three-foot clearance in front of the meters. After the construction, it was necessary to go inside the building and into the basement to read the meters (Exhibit 1). Since it was not clear from the testimony and Exhibit 1 exactly where the present location of the meters is, the parties agreed to go to 31727 Coast Highway, Laguna Beach, and view the premises as they now exist.

Defendant's San Clemente office manager testified that it is standard practice to keep a record of telephone calls, particularly if referral to another party is required and that party is not in. He also testified that the San Clemente office is the only office that has a Zenith number. A thorough check of the records did not disclose a record of a phone call from the complainant. Return receipts were received for the letters contained in Exhibits 2, 3, and 4, which were sent by certified mail to complainant.

Mr. Weatherholt, defendant's customer extension planner during the time in question here, testified that he was first aware of complainant's construction when he saw the framing going up. This was some time in September 1973. He telephoned the complainant and told him about relocating the meters and suggested that they get together on the problem. The witness testified that complainant stated there was nothing else to be done or required since all county approvals had been received for the construction. Mr. Weatherholt then sent a letter dated September 25, 1973 by certified mail (Exhibit 2) to complainant. No reply was received. Again on October 30, 1973, a second letter was sent by certified mail (Exhibit 3) and no reply was received. A third letter was sent on January 23, 1974 by certified mail (Exhibit 4), which advised that

the electric service would be discontinued by February 4, 1974 unless a mutually satisfactory solution was reached before that date. This time complainant responded by telephone. According to the witness, the complainant stated he could not relocate the meters due to financing and would not relocate the meters now. As to the prior letters, it was stated that complainant felt there was no reason to reply to them.

Defendant's manager of its Customer Extension Planning Department testified as to the policy reasons behind the tariff rule regarding meter location in commercial establishments. The preferred location of meters is on the outside of the building. A secondary location would be in a meter room with direct access from the outside through a door equipped with a company-keyed lock. These requirements are based upon the need of the meter reader to have ready access; for testing purposes and normal replacement of meters without disturbing the occupant; for fire department use to turn off power, rather than cutting wires; and for safety purposes with respect to the meter reader (California Occupational Safety Health Act, Division 5, Part 1, Chapter 2 of the California Labor Code). He testified that the present meter location is unsafe because of the number of steps leading to the meters with no handrails, working space in the present meter room is limited and cluttered, and access is extremely inconvenient by having to go through a public room, kitchen, storage area, and then down stairs to get to the meters now enclosed in a small room.

Defendant's last witness was the field inspector for the manager of the Customer Extension Planning Department. He viewed the premises on June 25, 1974 and took a photo of the meter location (Exhibit 5) which showed the meter room to be cluttered with paint cans and building materials. He pointed out that this constitutes a hazard. Upon trying to inform complainant of this, he was told that he had no right to be on the premises and stealing things. When the field inspector asked complainant whether he needed personal permission to get to the meters, it was stated that complainant answered in the affirmative.

Complainant indicated that he would have had a witness if he had realized the formal procedure his complaint invoked. Leave was granted to complainant to depose his witness, with defendant being present, and submit the deposition within 10 days from August 15, 1974. To date, the deposition has not been received, nor has a request for an extension of time to obtain it.

#### Discussion

It is clear from the facts that complainant made no serious attempt to comply with defendant's rules regarding meter location or to cooperate with the utility in trying to resolve the problem after construction was under way.

The on-site inspection demonstrated that the meters were originally located on the outside of the building. The addition to the building has now not only fully enclosed the meters, but has made access to them very impractical. They are located in a small room in the basement and are accessible only by going through a public dining room, into a kitchen, through a storage and office area, and down two flights of stairs with a 90° turn to a small room to the right. All areas are cramped for space. At the time of inspection, the room was cluttered; the cement steps, originally on the outside of the building, going past the meters are still in place thus causing at least two different levels in front of the meters.

In his closing statement, complainant agreed that the meters should be relocated, but he argues that had defendant followed through on complainant's original efforts to contact the defendant or have somebody come out before construction started, he would not be in the position he is now, and therefore the defendant is negligent and it should help him pay for the costs of relocation.

The Commission has repeatedly held that it has no jurisdiction to award damages for tortious conduct by a public utility toward its customers (San Francisco-0 Term. Rys. (1915) 8 CRC 48, W. M. Glynn (1964) 62 CPUC 511, Schumacher v PT&T (1965) 64 CPUC 295, Robert Bruce Walker v PT&T Co. (1971) 71 CPUC 778). In Vila v Tahoe Southside Water Utility (1965) 233 CA 2d 469 at 479, the court held that under Public Utilities Code Section 2106 the Superior Court has jurisdiction over actions for damages against public utilities.

#### Findings

1. Defendant provides electric service to complainant's restaurant located at 31727 Coast Highway, Laguna Beach, California.
2. Complainant constructed an addition to his commercial property without relocating the electric meters as required by defendant's Tariff Rule 21 A.1.a(2).
3. The present location of complainant's electric meters are in violation of defendant's tariff rules.
4. Defendant acted reasonably in attempting to require complainant to comply with the tariff rules.
5. The Commission does not have jurisdiction to award damages for tortious conduct by a utility toward its customers.

Conclusion

The relief requested should be denied.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 16<sup>th</sup>  
day of OCTOBER, 1974.

Veronica L. Stevenson  
President  
William J. Quinn, Jr.

[Signature]

[Signature]  
Commissioners

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