

ORIGINAL

Decision 88-01-038 January 28, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

William Victor,

Complainant,

vs.

Pacific Lighting Corporation,
Pacific Lighting Gas Supply
Company, and Southern
California Gas Company,

Defendant.

Case 86-05-048
(Filed May 27, 1986)

William Victor, for himself, complainant.
Peter Osborn, Attorney at Law, for Pacific
Lighting Corporation, Pacific Lighting Gas
Supply Company, and Southern California Gas
Company, defendants.

OPINION

The complaint of William Victor alleges as follows:

"1. SoCal's invoice for period ending
January 28, 1986 has not been received despite
requests and refusals from SoCal on March 7,
1986 and on other dates. ✓

"2. No credit has been given on statements for
at least \$124.00 in payment. ✓

"3. On March 7, 1986 VICTOR requested copy of
bill and usage information underlying turn-off
notice received immediately prior thereto which
information was rudely refused by SoCal. ✓

"4. On March 7, 1986 employee of SoCal on
premises refused to check VICTOR meter for
leaks or other malfunction while employee
servicing other meters on premise and employee
refused same.

"5. VICTOR informed by sources from PUC that subject bill was 15 therms, but no bill supplied. 15 therms clearly in excess of VICTOR usage for period covered in said statement.

"6. On March 7, 1986 SoCal consumer affairs office refused to supply copy of bill, refused to explain or give statement of payments credited for prior six months while admitting same was available.

"7. SoCal has admitted awareness that they have been ordered to turn off furnace prior to the period in question and in fact pilot was so turned off prior to period in question.

"8. VICTOR has been informed and hereby concedes for purposes of this billing period that 'industry usage standards' for pilot light only on said water heater for an identical period is an average of 5.9 therms and a maximum of the range at 9 therms. Accordingly, with no usage of any other gas appliance had only the use of pilot light for water heater during said period, bill for 15 therms is clearly excessive, that there is basis for requesting SoCal and defendants to perform (a) high bill complaint investigation (which they have refused more than once) and (b) a meter test which they have also refused a duplicity of times.

"9. SoCal and other defendants named herein have indicated to VICTOR that they refuse to do so and have so indicated that the reason in part is because they believe that this complaint is without merit based on other complaints.

"10. VICTOR herein contends that other complaints believed to be valid by VICTOR absolutely should have no bearing on instant complaint and also notes respectfully that defendants conspicuously have omitted the complaints where VICTOR has been found to been meritorious with respect to billing error.

"11. All defendants herein and PUC have been informed that VICTOR has no nor regularly manned telephone number, is not required to have telephone numbers published to qualify for said gas service, alleges herein that VICTOR has been harassed continuously by said SoCal sufficiently by mail for example by turn-off notices unprecedented by statements and by refusal to supply same), contends that no published number is available and if a number were to become published it would become an additional instrumentality by which SoCal would have available and likely use to continue to harass VICTOR. Rule No. 10 must be read to require the insertion of a published and/or full time manned telephone, none of which are available from VICTOR. To interpret Rule 10 to require that gas ratepayers obtain a published number or provide an unpublished one would be discriminatory against those such as VICTOR who do not have available a published telephone number where payer may be regularly reached and therefore unconstitutional making the remedies of the PUC available only to those who obtain other utility service, such as published telephone service.

"12. The defendants are all subject to the jurisdiction of the PUC, all serve VICTOR and all have principal offices as set forth above.

"13. On information and belief PLGS and SoCal jointly sought and obtained authorization from PUC for research projects totalling in excess of \$6,300,000 of which a significant portion was devoted to development of 'new or improved instrumentation for...various operational tasks such as gas metering' and it appears that to the extent PLGS and SoCal have failed to adequately 'develop new methods of accurately measuring gas flows' as then represented to the PUC and in turn the ratepayers of California including VICTOR. It is further noted that results of above projects were represented as 'expected to be inexpensively installed' for purposes of field test. PLC is the controlling corporation controlling inter alia production, transmission, availability, and fair measuring of gas to ratepayers by SoCal and the role of PLGS, which has contractual relations with the

two other named defendants affecting service and compliance of which VICTOR is an intended third party beneficiary as are all other ratepayers.

"14. PLG has been the formal applicant and recipient, on information and belief, of numerous research projects where the apparent failure to realize adequate results has impacted fair billing for ratepayers throughout California including VICTOR.

"15. SoCal and its personnel have continually 'stonewalled' the protracted efforts of VICTOR and repeated efforts, and said failure to act fairly as required by the Public Utilities Code the treatment by SoCal personnel and the personnel of other named defendants herein has become more uncordial, unprofessional, petulant, and unresponsive resulting in increasingly unfair billing practices that can hardly be considered mere coincidence at this point, resulting in failure by each defendant herein to comply with its obligations under the PU Code including inter alia § 451 which requires among other conditions reasonable treatment pertaining to its charges and services to ratepayers including VICTOR. SoCal's failure and refusal to respond to inquiries, supply billing information and history serve merely as exhibits to this noncompliance. In view of failure to act honorable by personnel of SoCal in the past, VICTOR requests Commission prior to the hearing on the matters to specifically outline the procedure which has been considered vague even by at least one ALJ of PUC whereby subpoena's are to be issued in this proceeding, and served, and it is requested that said outline be directed to all parties in written form.

"16. PUC Code authorizes the Commission to establish standards to secure the accuracy of all meters and provide for testing of any to further said assignment, See § 770(d) and 771.

"WHEREFORE, VICTOR seeks reparation of all amounts charged in excess of industry average standard for only a pilot light on similar water heater for the period that existing meter

has been in place plus interest at the maximum allowable rate from the date of deposit or payment by VICTOR whichever is earlier and that said SoCal defendant and all named defendants test under PUC supervision the existing or further installed meter making any further reparation and interest to VICTOR deemed just in view of the fact that usage for said period has not been other than gas necessary to maintain minimum pilot light."

Defendants deny that complainant was overbilled for gas during the period in question and deny other pertinent allegations of the complaint. Defendants contend that Pacific Lighting Corporation and Pacific Lighting Gas Supply Company are not public utilities.

A hearing was held on the case in Los Angeles on October 28, 1986, November 18, 1986, January 15, 1987, and March 9, 1987. Complainant's final brief in the case was accepted for filing on August 3, 1987.

The period that existing meter has been in place, as referred to in the prayer to the complaint, was from July 30, 1985 through July 7, 1986. The location of the gas meter was at complainant's apartment on Midvale Avenue in Los Angeles.

Defendants contend that since the only relief sought in the prayer in the complaint is relief in connection with the alleged high bills, then the matters alleged in the complaint not having to do with the alleged high bills are extraneous and should not be considered. The Commission, however, has held that a "complaint is not required to set forth a theory of relief; it is only necessary to allege facts upon which the Commission may act." (Sunland Refining Corp. (1976) 80 CPUC 807, 809.) Therefore, we may not dismiss the complaint as to the "extraneous matters" merely because no remedy for their alleged violation is requested in the prayer in the complaint. (See also Public Utilities (PU) Code Section 1702 which requires a complaint to only set forth some act

of omission by a public utility alleged to be in violation of any law or order of the Commission.)

Unresponsiveness of SoCal

Complainant testified that he had not received his gas bill for the monthly period ending January 28, 1986 and that on March 7, 1986 he had telephoned Mr. de Leon, an employee of SoCal, and requested that Mr. de Leon send him a duplicate copy of the bill. During the telephone conversation complainant testified that he also requested Mr. de Leon to send complainant a bill and usage information underlying the turn-off notice (Exhibit 1 and transcript page 39) complainant had received. Complainant stated that in the same conversation he had requested Mr. de Leon to have SoCal undertake a test of his gas meter. Complainant testified that Mr. de Leon rudely refused these requests and told him that Mr. de Leon had been told not to do anything for complainant nor to respond to complainant's calls. Complainant testified that Mr. de Leon did refer complainant to other employees of SoCal.

Mr. de Leon, who handled company complaints pertaining to regulatory affairs, testified that whereas he had received 20 to 30 telephone calls from complainant in the last three or four years, he did not remember complainant calling him on or around March 7, 1986 or of making such requests of him. Mr. de Leon testified that he recently checked his written notes with his supervisor but they could find nothing to indicate that Mr. de Leon talked with complainant on or around March 7, 1986 about the request. Mr. de Leon testified he would have passed the requests to appropriate company employees to take action on them and that he normally made notes of such requests. Mr. de Leon denied on cross-examination that he ever told complainant that he had been directed to refuse to help complainant. Mr. de Leon testified that the first time he knew complainant wanted a copy of his January 28, 1986 gas bill or wanted a high bill investigation and meter test was when Mr. de Leon read a copy of the complaint filed in this proceeding.

Mr. de Leon's supervisor, Mr. Puckett, testified that SoCal's gas bills are mailed out as part of a computerized process. He presented, as Exhibit 7, a copy of complainant's bill for the period ending January 26, 1986. Mr. Puckett testified that the Exhibit 7 copy of the bill could not have been prepared but for the fact that the original bill had been made up. He also said that the bill had been regularly mailed out and had not been returned to SoCal undelivered. Mr. Puckett also testified that had complainant talked to Mr. de Leon on or about March 7, 1986 Mr. de Leon, without exception would have talked to Mr. Puckett about the call. However, Mr. Puckett testified that Mr. de Leon did not mention such a call to Mr. Puckett.

The turn-off notice (Exhibit 1) covered service through December 27, 1985. Complainant did not indicate that he had not received any bills covering service up to that date.

Disputed Bill Payments

Complainant testified that SoCal gave him no credit on the turn-off notice or on his other bills for the \$124 in disputed bill payments he had made in the last year and a half to the Commission pending the outcome of this complaint and another high bill formal complaint (C.85-08-026). SoCal witness Puckett testified that disputed bill payments on deposit with the Commission, such as those made by complainant, are not credited to the subscribers or their bills until the money is actually received by SoCal. Since the Commission was holding the \$124 and had not released it to SoCal as yet, as the complaints had not been finally determined, there could be no credit to complainant's account on SoCal's books.

Refusal of Serviceman

Paragraph 4 of the complaint alleges that a SoCal serviceman checking the gas meters refused complainant's request to check complainant's meter for leaks or other malfunctions. Complainant testified that on March 7, 1986, he observed a SoCal maintenance man servicing equipment somewhere in complainant's apartment house complex and asked the maintenance man to check complainant's meter for a leak in the meter "to explain the high usage because I had not been there during the period to use the service." Complainant also asked the maintenance man to change his meter if the maintenance man happened to have an extra meter with him. The maintenance man declined both requests. Complainant testified that there was another meter changed that day in his apartment house complex.

SoCal witness Puckett testified that he had SoCal's records checked and could not find any order for a serviceman to be at complainant's address on or about March 7, 1986. Concerning the serviceman's refusal to check or replace complainant's meter, the witness testified as follows:

"A. Unless there was an indication of an emergency that would endanger life or property, he would refuse simply because his time is ordered by the dispatcher, by his supervisor, and he has enough orders to work through the day to take up his full time, and he cannot be accepting orders in the field from customers when other customers who have already called in for service are expecting him to be there to do the work they've requested." (Transcript pages 158-59.)

The SoCal witness stated that to request service from his company a customer need only call the number listed in the telephone directory or the number shown on the gas bill.

High Bill Complaint

Complainant contends that the 15 therms he was charged with using during the monthly period ending January 28, 1986 is excessive since the only appliance turned on was the pilot light to his gas water heater. He testified at the October 28, 1986 hearing as follows:

"... I cut the furnace off years ago, and well before the period in question here, and I haven't had it turned on because I'm barely there at all.

"The water heater was only--the pilot was left on very low only to accomodate when I needed to take a hot shower or wash a glass or something when I was there, and that's it.

"There were no--during this period in question there were no other people residing in that premise other than myself." (Transcript page 41.)

He later testified that SoCal witness Mr. de Leon knew that the furnace had been turned off for over a year. He also testified that, except to pickup mail, he was not in his apartment from Christmas, 1985 until the beginning of February, 1986. He introduced his SoCal gas bill for the period ending January 26, 1984 which showed a usage of 7 therms for the period, during which time, he testified, he had house guests between the 14th and 26th of January, 1984. This low use of 7 therms contrasts to the alleged high use of 15 therms as billed for a like period ending January 26, 1986.

The "industry average standard" mentioned by complaint refers to a letter dated March 20, 1986 from the Commission Consumer Affairs Branch (Exhibit 3) written to complainant in response to an informal high bill complaint made by complainant to the Commission which states, in part, as follows:

"During our telephone conversation on March 19, 1986, you stated your high bill was questioned because you didn't believe that your furnace

with pilot light use only could consume the 15 therms billed. I was not aware at the time that you also have a gas water heater.

"For your information, the following industry usage standards for a forced air (gravity) furnace (pilot light only) and a 30 gallon water heater is as follows:

	<u>Usage Range</u>	<u>Average</u>
"Forced Air (Gravity)		
Furnace.	9-14 therms	11.5 therms
30-Gal. water Heater	2.8-9 therms	<u>5.9 therms</u>
Total		17.4 therms"

SoCal witness Mr. de Leon, on cross-examination, denied having knowledge that complainant's furnace was off or was to be turned off and denied knowledge of any industry standards for a pilot light or a water heater. SoCal started serving complainant at his Midvale Street apartment in October or November 1983. Exerpts from complainant's gas bills for 1984, 1985, and 1986 up to October (Exhibit 8) show the billed therms and dollar amounts to be as follows:

	<u>1984</u>		<u>1985</u>		<u>1986</u>	
<u>Month</u>	<u>Therms</u>	<u>Amount</u>	<u>Therms</u>	<u>Amount</u>	<u>Therms</u>	<u>Amount</u>
Jan.	7	\$6.99	47	\$27.19	15	\$9.41
Feb.	9	8.01	36	21.40	10	7.25
March	9	8.53	23	14.78	13	8.29
April	8	7.50	16	11.26	15	9.28
May	7	6.83	12	8.72	5	5.30
June	6	6.66	9	7.02	2	4.03
July	6	6.44	8	6.71	3	4.74
August	5	5.81	9	7.13	2	4.03
Sept.	6	6.66	8	6.50	3	4.47
Oct.	6	6.44	8	6.39	3	4.22
Nov.	9	8.31	11	7.89	-	-
Dec.	23	15.26	11	7.89	-	-

Prompted by the complaint SoCal removed complainant's meter on July 7, 1986 for testing and substituted another meter in its place. The SoCal employee who tested complainant's meter testified that the results of the test were "check: -0.2, open: -0.1" and

that these results were within the limits prescribed by Commission General Order 58.

Complainant had filed a previous high bill complaint against SoCal (Case 85-08-026, filed August 8, 1985) concerning service during the eight month period ending July 1985¹ and in his complaint he alleged as follows:

"In mid-January 1985 it was also learned that the furnace had been on when it was in fact to be turned off since prior to the period in question."

Paragraph 10 of the complaint contends that previous complaints of complainant against SoCal should not have any bearing on complaint at issue here.

Harassment by SoCal

Paragraph 11 of the complaint alleges that complainant has been continually harrassed by SoCal. An example of such harrassment given by complainant was the continual sending of turn-off notices unpreceded by statements. It also alleges that Rule 10 of the Commission's Rules of Practice and Procedure is discriminatory and therefore unconstitutional because it provides that a complainant must put its telephone number on the complaint. Exhibit 1 is the only copy of a turn-off notice submitted by complainant and pertains to charges up to December 27, 1985. Complainant did not allege that he did not receive any bills covering any of the periods up to December 27, 1985. Complainant testified that he has not paid a gas bill to SoCal for at least a year and a half.

Status of PLGS and PLC

Paragraph 12, 13, and 14 of the complaint allege that all defendants are subject to the jurisdiction of the Commission and

¹ D.86-04-054 dismissed the complaint and the dismissal was upheld on rehearing by D.86-08-036.

that complainant is a third party beneficiary to contracts between the three. The record shows that only SoCal renders any utility service to complainant.

Meter Test Procedure Used

SoCal Exhibit 11 is a copy of a letter from SoCal dated June 25, 1986 to complainant notifying him, as a result of this complaint that SoCal intended to remove his gas meter on July 7, 1986 and asking him to call to schedule an appointment to witness the testing of the meter. SoCal witness Puckett testified that one copy of the letter was sent first class mail and another copy was sent certified mail. The certified mail letter was returned marked unclaimed with the notation on it that delivery had been attempted on July 7, 12, and 22 (Exhibit 13). The returned envelope also showed that the fourth digit of the Zip Code in complainant's address on the envelope was incorrect but was corrected by a hand written change. The SoCal witness stated that the first class mail letter was not returned but complainant denied getting the first class mail letter.

SoCal Exhibit 10 is a copy of a letter dated July 10, 1986 on SoCal's letterhead informing complainant that his meter was being held at SoCal's Pico-Rivera facilities of SoCal (map enclosed) for testing on Thursday, July 17 at 1:00 p.m. and inviting complainant to attend. The SoCal witness also stated that a copy of this letter had been sent certified mail and a copy regular first class mail. Exhibit 13 is a copy of the certified mail envelope properly addressed to complainant showing that delivery was attempted on July 14, 19, and 29 and that it had been returned to SoCal unclaimed. Complainant's Exhibit 14 is a copy of the same July 10, 1986 dated letter received by complainant. Attached to the exhibit is the first class mail envelope it came in and it is post marked by SoCal's meter stamping device with a date of July 9, 1986. Complainant contends he received this letter on July 17, 1986.

In any event, complainant was not in attendance when SoCal tested the meter on July 17, 1986. Complainant introduced a letter to him from SoCal dated July 22, 1986 notifying him that his meter had been tested on July 17, 1986 and that it "was found to have no variation in accuracy." The letter contained a copy of the test report form with complainant's name, address, and correct meter number filled in. However, the test date that was typed in on the form was "7-17-84."

Paragraph 15 of the complaint states, in effect, that the previously recited and alleged acts or omissions of SoCal were in violation of the provisions of PU Code Section 451. Complainant was furnished, prior to the hearing, a copy of the Commission's Rules of Practice and Procedure pertaining to subpoenas.

Complainant was issued subpoenas calling for certain SoCal employees, one of which was Mr. de Leon, to appear and testify but complainant was prevented from serving them despite several attempts to do so. Complainant subsequently served defendants' attorney at the hearing with a notice under CCP 1987(b). The administrative law judge ruled that the service of such notice is not effective under Rule 60 of the Commission's Rules of Practice and Procedure. Eventually, complainant, an attorney at law, sought service of a subpoena under CCP 1988 on the Vice President of SoCal who signed the answer to the complaint based on information and belief. SoCal moved that the subpoena be quashed. The motion to quash was granted. ✓

Discussion

Complainant's contention that the failure of SoCal to give him credit for his last year and a half worth of disputed bill payments made to the Commission and not released to SoCal amounts to an unfair billing practice in violation of PU Code Section 451 is without merit. These monthly payments were not made to SoCal, have no effect on his account balance with SoCal, and so are not properly a credit until the money is released to SoCal. As a

matter of fact, it would be unfair and highly confusing to a customer for SoCal to bill a customer for less than his actual account balance, having given the customer credit for the past months' disputed bill payments paid to the Commission and not released to SoCal.

The SoCal serviceman's refusal to check or replace complainant's meter did not result in a violation by SoCal of any provision of PU Code Section 451. SoCal's practice in respect to such requests as testified by witness Puckett was reasonable: Unless there is an indication of an emergency the serviceman should refuse such request and continue on his appointed rounds so as not to keep those customers who have previously called in for service waiting.

Complainant made no showing with respect to PLGS or PLC.

Complainant testified that on March 7, 1986 he called Mr. de Leon with certain requests. Mr. de Leon denied that complainant called him on or about March 7, 1986 or that complainant had ever made such requests of Mr. de Leon. Even when complainant, on cross-examination of Mr. de Leon, hinted that complainant had a witness to his conversation with Mr. de Leon and reminded Mr. de Leon that he was under oath, Mr. de Leon refused to back down. (Complainant did not present a witness to his alleged conversation with Mr. de Leon.) Additionally, Mr. de Leon could find no notes of the call and requests. (Commission General Order 58-A, paragraph 35(b) requires each gas utility to keep a chronological record of all complaints received.) Furthermore, the subject of complainant's alleged calls to Mr. de Leon would have been brought up without exception, by Mr. de Leon to Mr. de Leon's supervisor, but was never brought up. Both complainant and Mr. de Leon are adamant in their respective testimony. In this situation we do not believe that complainant has carried the burden of proof so as to convince us that the March 7, 1986 call, or the requests made at about that time, was made to Mr. de Leon.

Complainant complained about not receiving his gas bill for the monthly period ended January 28, 1986. Complainant made no mention of not routinely receiving a gas bill each month for the other 35 months SoCal had been serving him with gas. We do not think this alleged lapse, apparently inadvertent and unintentional, in failing to render one month's bill put SoCal in violation of PU Code Section 451 as giving inadequate, inefficient, unjust, or unreasonable service.

The complaint challenges the accuracy of his gas meter based on the primary premises that the only gas used was that used to keep the pilot light of his gas water heater lit and the recitation in Exhibit 3 letter, previously quoted, that the industry average usage for such a pilot light was 5.9 therms. But according to the Exhibit 3 letter the informal high bill complaint lodged with the Commission on March 19, 1986 concerned the use of gas by his gas furnace pilot light, not his water heater pilot light. Furthermore, complainant testified he took hot showers at his apartment. Obviously, then there were other apparatuses beside the water heater pilot light which consumed gas for an unknown period of time during the period in question. Therefore, complainant used more gas than necessary to keep his water heater pilot light lit, the actual amount of gas used being that which was registered on his gas meter.

Complainant argues that because his meter did not test 100% accurate it was faulty and, being faulty, it could have registered excessively high. But the meter tested within the accuracy required by Rule 23 of GO 58-A and no amount of argument by complainant can turn the meter into one which registered excessively high.

Concerning SoCal harassing complainant by sending him turn off notices, the evidence shows that complainant has not sent a gas bill payment to SoCal in a year and a half but that he paid \$124 in disputed bill payments to the Commission. Complainant did

not indicate when any of these payments were made to the Commission or whether the payments were or were not timely made. We therefore have no evidence on which to base a finding that at the time the turn off notices were sent SoCal had received word from the Commission that a deposit had been made with the Commission in time to save complainant from receiving a turn off notice.

As part of his prayer for relief complainant requested as follows:

"...that said SoCal defendant and all named defendants test under PUC supervision the existing or further installed meter..."

Complainant contends this constitutes a requests under Rule 26 of GO 58-A for a referee test. That rule provides that upon written application to the Commission accompanied by a specific fee a test of subscriber's meter will be conducted as soon as practicable by a representative of the Commission. Once the referee test is invoked the rule provides that, after the utility is notified of such request, it shall not remove, interfere with, or adjust the meter to be tested without the written consent of the customer, approved by the Commission. Complainant's request, as can be seen, is in the alternative: test complainant's present meter or test a further installed meter. The prayer also does not request the Commission to test the meter but requested the Commission to order SoCal and two other nonutility entities to test the meter. Additionally, no fee accompanied the application. Complainant's request does not satisfy by a substantial margin the requirements to invoke a referee test as set forth in Rule 26 of GO 58-A.

SoCal removed complainant's meter on July 7, 1986, over a month after the complaint had been filed. There was an attempted delivery on July 7 and 12, 1986 of a certified mail copy of a letter informing complainant of the meter removal asking complainant to call SoCal to schedule an appointment to witness the testing of his meter. That letter was returned to SoCal without it

having been picked up by complainant. There was also an attempted delivery on July 14, 1986, among two other dates, of a certified mail copy of a letter from SoCal informing complainant that a test of his meter would be conducted July 17, 1986 at SoCal's Pico-Rivera facilities with map showing a map setting forth the location of the facilities. Complainant also neglected to pick up that letter. Complainant had refused to give his telephone number, if he had a telephone, to SoCal. Also, the complaint contains no telephone number where complainant could be reached. Hence, the only way to contact complainant was by mail, which SoCal attempted to do. We find that SoCal made reasonable and proper efforts to make complainant aware of the date and time when complainant could be present to see the test conducted on his meter.

Concerning the motion to quash the subpoena upheld by the administrative law judge, the SoCal officer who was the recipient of the subpoena and who signed the answer to the complaint did not allege in the answer to the complaint that he had personal knowledge of the facts alleged in the complaint, or, as a matter of fact, of any personal knowledge of any fact contrary to what was alleged in the complaint. The material set forth in the answer was verified only on information and belief. In addition, the subpoenaed Vice President of SoCal was not implicated either directly or indirectly as being involved in the facts surrounding the matters alleged in the complaint. His testimony, therefore, would have not added anything constructive to the hearing and the motion to quash was, therefore, properly upheld. ✓

During the course of the hearing SoCal moved to consolidate this proceeding with another complaint proceeding filed by complainant against SoCal (C.86-10-084). The subject matter of the two proceedings are different and handling the two matters together will be less efficient than handling them separately. Therefore, SoCal's motion to consolidate is denied.

SoCal filed a consolidated motion in this case and in Case (C.) 86-10-084, which is another case complainant has brought against SoCal, requesting that the Commission issue an order forbidding complainant from filing formal complaints against SoCal unless he first files an informal complaint with the Commission's Consumer Affairs Branch and that branch determines that his allegations are in good faith and are not frivolous. C.86-10-084 is the later filed of the two cases. Since that case has not, as yet, been decided and that case is used as one of bases of the motion, we consider the motion in this case to be premature and for that reason will deny the motion. This will allow consideration of the completed case C.86-10-084 in dealing with the motion in the decision to that case.

As of the date of this decision, the Commission's records indicate the complainant has on deposit with the Commission as disputed bill payments a total of \$99.63.

Findings of Fact

1. Complainant accuses defendants of violating PU Code Section 451 on several occasions for a variety of reasons as alleged in his complaint as heretofore set out.
2. Complainant resides in an individual apartment within an apartment complex in the City of Los Angeles.
3. Complainant's apartment has its own gas meter, gas water heater, and gas furnace and has gas furnished by defendant SoCal, a public utility.
4. Complainant thought his gas meter was registering excessive gas usage so brought this complaint requesting reparations and that the Commission order defendants to check his present or future meters in the presence of Commission personnel.
5. Prompted by this complaint, SoCal removed complainant's meter for testing.
6. SoCal attempted to warn complainant of such removal and to establish a date when complainant could witness the testing of

the meter by sending complainant a letter by certified mail which the U.S. Postal Service attempted to deliver to complainant on July 7, 12, and 22, 1986, but complainant failed to pick up the letter.

7. SoCal attempted to give notice to complainant that SoCal intended to test the meter on July 17, 1986 through a certified mail letter directed to complainant at his apartment which was attempted to be delivered on July 14, 19, and 20, 1986 but complainant failed to pick up the letter.

8. On July 17, 1986 SoCal tested complainant's gas meter and found that it was operating within the requirements of GO 58-A.

9. Complainant testified that he called Mr. de Leon with SoCal on March 7, 1986 and made certain requests of Mr. de Leon.

10. Mr. de Leon testified that complainant did not call him on or about March 7, 1986 or made such certain requests of him.

11. Complainant has not shown any rule which requires SoCal to credit complainant's bills with monies complainant has put on deposit with the Commission as a disputed bill payments.

12. It is not unreasonable for SoCal not to give credit on a bill for monies complainant has put on deposit with the Commission as disputed bill payments.

13. SoCal's requires its servicemen, short of an emergency, to refuse requests in the field for service so that the serviceman can continue his appointed rounds and not keep those customers who have previously called in for service waiting.

14. Complainant has not paid a gas bill to SoCal in the last year and a half.

15. The record does not show that complainant's disputed bill payments were made to the Commission in timely fashion to permit the Commission to inform SoCal of any such payments in time to save complainant from receiving any turn off notice.

16. No showing has been made by complainant that PLGS and PLC are public utilities.

17. For some indeterminate time during the period in question the pilot light of complainant's furnace was lit.

18. Complainant turned on his water heater in order to take hot showers an indeterminate number of times during the period in question.

19. The pilot light of complainant's water heater was on constantly during the period in question.

20. Complainant had other apparatuses consuming gas besides the pilot light of his water heater.

21. Complainant's gas meter accurately reflected complainant's gas usage.

22. Defendants did not harass complainant.

23. Complainant did not request a GO 58-A referee test of its meter.

24. The testimony of the subpoenaed SoCal officer would have been irrelevant.

25. Mr. de Leon did not receive a telephone call from complainant on or about March 7, 1986.

26. Mr. de Leon did not receive any request from complainant on or about March 7, 1986.

27. In the ordinary course of mailing out monthly gas bills complainant should have received his gas bill for the period ending January 28, 1986.

Conclusions of Law

1. SoCal did not violate PU Code § 451 for not crediting complainant's bills with the money he had deposited with the Commission as disputed bill payments.

2. SoCal did not violate PU Code § 451 because SoCal's serviceman refused the nonemergency field request of complainant.

3. SoCal did not violate PU Code § 451 by sending complainant turn off notices.

4. SoCal did not violate GO 58-A procedure in testing complainant's gas meter.

5. SoCal did not violate PU Code §451 in testing complainant's gas meter.

6. SoCal did not charge complainant for the use of an excessive amount of gas.

7. PLGS is not a public utility.

8. PLC is not a public utility.

9. Rule 60 of the Commission's Rules of Practice and Procedure does not authorize use of a notice as described in CCP 1987(b) in Commission's proceedings as a substitute for the service of a Commission issued subpoena.

10. The motion of SoCal to consolidate this case with another case should be denied.

11. The motion of SoCal to enjoin complainant from filing further frivolous complaints should be denied.

12. SoCal did not violate PU Code 451 because complainant did not receive his gas bill for the period ending January 28, 1986.

13. The complaint against SoCal should be denied.

14. The complaint against PLGS should be denied.

15. The complaint against PLC should be denied.

ORDER

IT IS ORDERED that:

1. The motion of Southern California Gas Company (SoCal) to consolidate this case with another case is denied.

2. The motion of SoCal to enjoin complainant from filing further complaints is denied.




3. Case 86-05-048 is denied and the proceeding closed.
4. The amount of \$99.63 on deposit with the Commission in this proceeding shall be disbursed to SoCal.

This order becomes effective 30 days from today.

Dated January 28, 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weiss, Executive Director

Decision 88 01 038 JAN 28 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

William Victor,

Complainant,

vs.

Pacific Lighting Corporation,
Pacific Lighting Gas Supply
Company, and Southern
California Gas Company,

Defendant.

Case 86-05-048
(Filed May 27, 1986)

William Victor, for himself, complainant.
Peter Osborn, Attorney at Law, for Pacific
Lighting Corporation, Pacific Lighting Gas
Supply Company, and Southern California Gas
Company, defendants.

OPINION

The complaint of William Victor alleges as follows:

- "1. SOCAL's invoice for period ending January 28, 1986 has not been received despite requests and refusals from SOCAL on March 7, 1986 and on other dates.
- "2. No credit has been given on statements for at least \$124.00 in payment.
- "3. On March 7, 1986 VICTOR requested copy of bill and usage information underlying turn-off notice received immediately prior thereto which information was rudely refused by SOCAL.
- "4. On March 7, 1986 employee of SoCal on premises refused to check VICTOR meter for leaks or other malfunction while employee servicing other meters on premise and employee refused same.

"5. VICTOR informed by sources from PUC that subject bill was 15 therms, but no bill supplied. 15 therms clearly in excess of VICTOR usage for period covered in said statement.

"6. On March 7, 1986 SOCAL consumer affairs office refused to supply copy of bill, refused to explain or give statement of payments credited for prior six months while admitting same was available.

"7. SoCal has admitted awareness that they have been ordered to turn off furnace prior to the period in question and in fact pilot was so turned off prior to period in question.

"8. VICTOR has been informed and hereby concedes for purposes of this billing period that 'industry usage standards' for pilot light only on said water heater for an identical period is an average of 5.9 therms and a maximum of the range at 9 therms. Accordingly, with no usage of any other gas appliance nad only the use of pilot light for water heater during said period, bill for 15 therms is clearly excessive, that there is basis for requesting SoCal and defendants to perform (a) high bill complaint investigation (which they have refused more than once) and (b) a meter test which they have also refused a duplicity of times.

"9. SoCal and other defendants named herein have indicated to VICTOR that they refuse to do so and have so indicated that the reason in part is because they believe that this complaint is without merit based on other complaints.

"10. VICTOR herein contends that other complaints believed to be valid by VICTOR absolutely should have no bearing on instant complaint and also notes respectfully that defendants conspicuously have omitted the complaints where VICTOR has been found to been meritorious with respect to billing error.

In any event, complainant was not in attendance when SoCal tested the meter on July 17, 1986. Complainant introduced a letter to him from SoCal dated July 22, 1986 notifying him that his meter had been tested on July 17, 1986 and that it "was found to have no variation in accuracy." The letter contained a copy of the test report form with complainant's name, address, and correct meter number filled in. However, the test date that was typed in on the form was "7-17-84."

Paragraph 15 of the complaint states, in effect, that the previously recited and alleged acts or omissions of SoCal were in violation of the provisions of PU Code Section 451. Complainant was furnished, prior to the hearing, a copy of the Commission's Rules of Practice and Procedure pertaining to subpoenas.

Complainant was issued subpoenas calling for certain SoCal employees, one of which was Mr. de Leon, to appear and testify but complainant was prevented from serving them despite several attempts to do so. Complainant subsequently served defendants' attorney at the hearing with a notice under CCP 1987(b). The hearing officer ruled that the service of such notice is not effective under Rule 60 of the Commission's Rules of Practice and Procedure. Eventually, complainant, an attorney at law, sought service of a subpoena under CCP 1988 on the Vice President of SoCal who signed the answer to the complaint based on information and belief. SoCal moved that the subpoena be quashed. The motion to quash was granted.

Discussion

Complainant's contention that the failure of SoCal to give him credit for his last year and a half worth of disputed bill payments made to the Commission and not released to SoCal amounts to an unfair billing practice in violation of PU Code Section 451 is without merit. These monthly payments were not made to SoCal, have no effect on his account balance with SoCal, and so are not properly a credit until the money is released to SoCal. As a

having been picked up by complainant. There was also an attempted delivery on July 14, 1986, among two other dates, of a certified mail copy of a letter from SoCal informing complainant that a test of his meter would be conducted July 17, 1986 at SoCal's Pico-Rivera facilities with map showing a map setting forth the location of the facilities. Complainant also neglected to pick up that letter. Complainant had refused to give his telephone number, if he had a telephone, to SoCal. Also, the complaint contains no telephone number where complainant could be reached. Hence, the only way to contact complainant was by mail, which SoCal attempted to do. We find that SoCal made reasonable and proper efforts to make complainant aware of the date and time when complainant could be present to see the test conducted on his meter.

Concerning the motion to quash the subpoena upheld by the hearing officer, the SoCal officer who was the recipient of the subpoena and who signed the answer to the complaint did not allege in the answer to the complaint that he had personal knowledge of the facts alleged in the complaint, or, as a matter of fact, of any personal knowledge of any fact contrary to what was alleged in the complaint. The material set forth in the answer was verified only on information and belief. In addition, the subpoenaed Vice President of SoCal was not implicated either directly or indirectly as being involved in the facts surrounding the matters alleged in the complaint. His testimony, therefore, would have not added anything constructive to the hearing and the motion to quash was, therefore, properly upheld.

During the course of the hearing SoCal moved to consolidate this proceeding with another complaint proceeding filed by complainant against SoCal (C.86-10-084). The subject matter of the two proceedings are different and handling the two matters together will be less efficient than handling them separately. Therefore, SoCal's motion to consolidate is denied.

5. SoCal did not violate PU Code §451 in testing complainant's gas meter.

6. SoCal did not charge complainant for the use of an excessive amount of gas.

7. PLGS is not a public utility.

8. PLC is not a public utility.

9. Rule 60 of the Commission's Rules of Practice and Procedure does not authorize use of a notice as described in CCP 1987(b) in Commission's proceedings as a substitute for the service of a Commission issued subpoena.

10. The motion of SoCal to consolidate this case with another case should be denied.

11. The motion of SoCal to enjoin complainant from filing further frivolous complaints should be denied.

12. SoCal did not violate PU Code 451 because complainant did not receive his gas bill for the period ending January 28, 1986.

13. The complaint against SoCal should be dismissed.

14. The complaint against PLGS should be dismissed.

15. The complaint against PLC should be dismissed.

ORDER

IT IS ORDERED that:

1. The motion of Southern California Gas Company (SoCal) to consolidate this case with another case is denied.

2. The motion of SoCal to enjoin complainant from filing further complaints is denied.

3. Case 86-05-048 is denied and the proceeding closed.
4. The amount of \$99.63 on deposit with the Commission in this proceeding shall be disbursed to SoCal.

This order becomes effective 30 days from today.

Dated JAN 28 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
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