

ORIGINAL

Decision 88-03-080 March 23, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

W. VICTOR,)
)
 Complainant,)
)
 vs.)
)
 SOUTHERN CALIFORNIA GAS COMPANY,)
)
 Defendant.)

Case 86-10-084
(Filed October 28, 1986)

W. Victor, for himself, complainant.
Peter N. Osborn, Attorney at Law, and Roy M.
 Rawlings, for Southern California Gas Company,
 defendant.

OPINION

This is a complaint by William Victor (Victor) against Southern California Gas Company (SoCal). The complaint alleges that SoCal unlawfully disconnected Victor's gas service for one day. Victor seeks injunctive relief to prevent further recurrences and consequential damages. SoCal denies that a disconnect occurred and seeks an order enjoining Victor from filing further alleged frivolous complaints.

A duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) Donald B. Jarvis in Los Angeles on January 22, 1987. The matter was submitted subject to the filing of transcript and briefs, which have been received.

I. Material Issues

The material issues presented in this proceeding are:
 (1) Is Victor entitled to any relief for any act or omission by SoCal in violation of any law or rule of the Commission? (2) Has

Victor engaged in frivolous and vexatious litigation for which sanctions should be imposed?

II. Victor's Complaint

Victor has been engaged in controversy with SoCal for several years. On September 26, 1986, SoCal sent Victor a disconnect notice with respect to an apartment at 473 Midvale Avenue, Los Angeles. The notice indicated that \$62.42 was under investigation and \$18.10 was due. The notice indicated that to avoid a turnoff of gas service \$18.10 must be paid by October 3, 1986. On October 3, Victor contacted Rudy De Leon (De Leon) who was a SoCal customer service representative. Victor told De Leon he was going to deposit the \$18.10 as a disputed bill deposit with the Commission and De Leon told him there would be no termination of service. Victor deposited the \$18.10 with the Commission on October 6, 1986.

Victor uses the Midvale apartment infrequently. On October 8, 1986, he went to the apartment and decided to take a shower. He found no hot water. He claims to have checked the water heater in the basement and found the pilot light to be off. He suspected that the gas service had been disconnected. He tried to call SoCal's regular telephone number but received no answer. He obtained an 800 number which turned out to be for SoCal's Redlands Division. The person who answered at the Redlands Division, alleged to be one Jack Ryan, told Victor he was on the cutoff sheet for October 8. This corroborated his suspicion that service had been terminated. Victor made other arrangements for showering and his evening activities, the costs of which are included in the \$1,624.25 consequential damages which he seeks herein.

On October 9, 1986, Victor contacted the Commission about the alleged improper disconnect. The Commission Consumer Affairs

Branch staff contacted SoCal and requested a report on the situation. At approximately 4 p.m. of October 9, SoCal's district service supervisor and a SoCal serviceman went to the Midvale premises and, in the presence of Victor, determined that gas was flowing through his meter and the pilot light on the water heater was on. They attributed the lack of hot water to a low thermostat setting in relation to outside temperature conditions.

Victor contends that SoCal disconnected his gas service on October 8, and, after complaint to the Commission, surreptitiously reconnected service on October 9 prior to the inspection previously discussed. In support of this conjecture, Victor testified that before noon on October 9, he saw the door to the apartment house basement where the meters are located ajar and there was a SoCal truck in the area. Victor does not claim to have seen anyone actually in the basement or working on his meter. The record indicates that there are numerous apartment buildings in the vicinity of the one in question with a frequent turnover of occupants. It would not be unusual for a SoCal truck to be in the vicinity.

We reject Victor's incredible scenario. The overwhelming weight of the evidence compels a finding that no disconnect occurred. SoCal's records kept in the ordinary course of its business which were received in evidence indicate that Victor's service was not disconnected. Evidence Code § 3548 contains the presumption that: "The law has been obeyed." Victor's speculation does not overcome the presumption.

Since there was no disconnect, Victor is entitled to no relief herein. We also note that the Commission has no jurisdiction to award consequential damages for alleged tortious conduct. (Mak v PT&T (1971) 72 CPUC 735.)

III. SoCal's Motion for Sanctions

SoCal filed a joint motion in this proceeding and in Case (C.) 86-05-048 seeking orders dismissing both complaints and enjoining Victor from filing further frivolous complaints.

Decision (D.) 88-01-038 in C.86-05-048, dated January 28, 1988, hereinafter discussed, did not consider SoCal's motion. However, the presiding ALJ in this proceeding received evidence and argument relating to the motion.

SoCal contends that Victor's filing of complaints against it are in bad faith and designed to be a nuisance. The complaints are frivolous. SoCal argues that:

"Complainant purposefully prolongs the proceedings through lengthy and irrelevant argument, testimony and cross-examination. Complainant's pattern of conduct in this case demonstrates that he is more concerned with 'playing lawyer' before the Commission than he is with his gas bills."

SoCal asks that the Commission enter an order precluding Victor from filing any additional complaints unless the Commission's Consumer Affairs Branch certifies that it believes the proposed complaint is made in good faith.

The Commission is a regulatory body of constitutional origin deriving certain powers, including judicial power from the California Constitution. (Cal. Const., Art. XII; People v Western Air Lines (1954) 42 Cal. 2d 621, 630, 634.) Article XII, Sections 2 and 6 of the California Constitution provide that:

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"SEC. 6. The commission may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction."

Section 701 of the Public Utilities (PU) Code provides that:

"701. The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

As a quasi-judicial body, the Commission has inherent powers analogous to those of courts with respect to the exercise of its judicial duties. The power to prevent abuse of its process does not depend upon constitutional or legislative grant but is inherently "necessary to the orderly and efficient exercise of jurisdiction." (See Arc Inv. Co. v. Tiffith (1958) 164 Cal. App. 2d Supp. 853, 857.)

" ... 'Courts are not powerless to formulate rules of procedure where justice demands it.' (Adams v. Superior Court (1980) 113 Cal.App.3d 505, 509 [169 Cal.Rptr. 866], citing Addison v. State (1978) 21 Cal.3d 313, 318-319 [146 Cal.Rptr. 224, 578 P.2d 491].) The inherent power of courts to control their processes and orders and to prevent wrongful use of process has been noted in, e.g., Bloniarz v. Roloson (1969) 70 Cal.2d 143, 148 [74 Cal.Rptr. 285, 449 P.2d 221]; Arc Inv. Co. v. Tiffith (1958) 164 Cal.App.2d Supp. 853, 857 [330 P.2d 305]. 'Similar inherent power has been recognized as available to the court to prevent unfair results, although the relevant statute itself contains no provision for such limitation.' (Venice Canals Resident Homeowners Assn. v. Superior Court (1977) 72 Cal.App.3d 675, 680 [140 Cal.Rptr. 361].)" (Western Steel & Ship Repair, Inc. v. RMI, Inc. (1986) 176 Cal.App.3d 1108, 1116-1117.)

We examine the cases filed by Victor against SoCal in the light of these authorities.

Victor is an attorney who is a member of the State Bar of California. He says he is a trademark and copyright attorney and "The man on the street might know more than I do for a matter before the PUC." (RT 2.) A member of the bar is subject to all its obligations and cannot unilaterally restrict them to one area. Rule 13 of the Rules of Professional Conduct (B&P Code § 6076) provides that:

"Rule 13. Spite, harassment or delay; appeals

A member of the State Bar shall not accept employment to prosecute or defend a case solely out of spite, or solely for the purpose of harassing or delaying another; nor shall he take or prosecute an appeal merely for delay, or for any other reason, except in good faith."

Victor appears in pro se in this proceeding. We need not tarry to examine his status because the rule is that:

"While appellant is appearing in propria persona, that affords no excuse for permitting him to abuse the legal processes. A litigant appearing in propria persona is entitled to the same, but no greater, consideration than other litigants and attorneys." (Muller v Muller (1956) 141 Cal. App. 2d 722, 732.)

In the proceeding at bench while Victor may have believed on October 8, 1986 that a disconnect had occurred there was no reasonable basis after October 9 for harboring such belief. The complaint, which was filed on October 28, 1986, based on speculation with no support of credible evidence that a surreptitious disconnect and reconnect occurred is frivolous and a sham.

On December 11, 1979, Victor filed C.10806 against SoCal. On March 4, 1980, the Commission entered D.91379 which found the complaint to be vague and unintelligible and dismissed it for failure to state a cause of action. The decision also noted that

Victor "asked the Administrative Law Judge to disqualify himself for unspecific reasons other than to state that the judge knew him, and while the judge may or may not recall the acquaintance, he believed the judge would be inclined to act against complainant's interest." Victor's petition for rehearing of D.91379 was denied on June 17, 1980 in D.91958.

On June 28, 1982, C.82-06-04 (ECP) was filed by 4013 Sunset Associates, c/o W. Victor against SoCal. The complaint was signed by Victor. The complaint was set for hearing on August 20, 1982 but was reset to October 12, 1982. Prior to the hearing, the parties entered into an agreement for dismissal. SoCal contends that at the time of settlement the only thing at issue was Victor's claim that a proposed refund was 60¢ short. It alleges that it agreed to the settlement because the proceedings at that juncture were upsetting the assigned ALJ.

D.82-11-003 in C.82-06-04, dated November 3, 1982, indicates that it is based on the agreement of the parties. No findings are made about the sufficiency of the complaint or the motives in bringing the proceeding. We will not consider C.82-06-04 and D.82-11-003 in making our determination about frivolous or vexatious litigation.

On August 8, 1985, Victor filed C.85-08-026 against SoCal. The complaint alleged that Victor was improperly billed for gas and questioned the accuracy of his meter. D.86-04-054, dated April 16, 1986, dismissed the complaint for lack of prosecution on the grounds that by refusing to present evidence after an adverse ruling, Victor had failed to carry his burden of proof. D.86-08-026, dated August 6, 1986, modified D.86-04-54 and denied Victor's petition for rehearing.

On May 27, 1986, Victor filed C.86-05-048 against SoCal. Victor complained about an allegedly defective meter, SoCal's refusal to credit him with unadjudicated customer deposits made by him to the Commission and acts alleged to be harassment.

D.88-01-038, dated January 28, 1988, found against Victor on all issues and denied him any relief.

The record indicates that Victor has not made a direct payment for gas service to SoCal since January 1985. He has made disputed bill deposits to the Commission, many of which have been disbursed to SoCal. The others are subject to formal or informal complaints.

Victor's modus operandi appears to be to enlarge the formal proceedings by using dilatory tactics such as baseless motions, unnecessary cross-examination, seeking to present irrelevant matters, and attempting to disqualify the assigned ALJ (ALJ Turkish in C.10806, ALJ Levander in C.85-08-026, and ALJ Pilling in C.86-05-048.)

The Commission finds that Victor has engaged in a course of conduct of bringing frivolous complaints against SoCal. It is argued by SoCal that the appropriate relief would be entry of an order which prevents Victor from filing a complaint against it unless the Commission's Consumer Affairs Branch determines that the complaint is made in good faith. This is not an appropriate remedy.

Complaints before the Commission are provided for and governed by PU Code § 1702 and the Commission's Rules of Practice and Procedure (Rules). The Commission is a five-person body established by the Constitution. (Cal. Const., Art. XII, Sec. 1.) Unless all parties agree, an action by a majority of the Commission is necessary to dismiss an application or complaint. (PU Code § 308.) Rule 63 provides that:

"63. (Rule 63) Authority. The presiding officer may set hearings and control the course thereof; administer oaths; issue subpoenas; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or motions which do not involve final determination of proceedings; receive offers of proof; hear argument; and fix the time for the filing of briefs. He may take

such other action as may be necessary and appropriate to the discharge of his duties, consistent with the statutory or other authorities under which the Commission functions and with the rules and policies of the Commission." (Emphasis added.)

The Commission cannot delegate to its Consumer Affairs Branch the authority to, in effect, dismiss a complaint.

As indicated, the Commission under its constitutional and statutory powers has the authority to deal with frivolous and vexatious litigants.

SoCal's motion alleges that "The cost to SoCalGas and the Commission of complainant's frivolous litigation is well over \$100,000." However, SoCal produced no specific evidence of these costs. There is no basis herein for making an order to pay reasonable expenses.

In the light of Victor's frivolous prosecutions of proceedings before the Commission against SoCal, we will provide for the following:

1. Upon any subsequent filing by Victor against SoCal, SoCal may file a motion for an order requiring that Victor furnish, for SoCal's benefit, security for reasonable expenses incurred in defending against the complaint. If, after a hearing on the motion, the Commission determines the complaint to be frivolous, it shall set an amount and date for payment of the security. If Victor fails to deposit this sum with the Commission within the time prescribed, the complaint shall be dismissed.

2. Victor will be placed on notice by this decision that the bringing of additional frivolous complaints before the Commission may cause us to invoke our contempt power in addition to other remedies. (Cal. Const., Art. XII, Sec. 6; PU Code §§ 312, 2113.)

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Victor is the occupant of an apartment at 473 Midvale Avenue, Los Angeles.
2. Victor has been engaged in controversy with SoCal for at least eight years.
3. Victor is a member of the State Bar of California.
4. On September 26, 1986, SoCal sent Victor a disconnect notice with respect to the apartment at 473 Midvale Avenue. The notice indicated that of the total amount billed \$62.42 was under investigation and \$18.10 was due. The notice stated that to avoid a turnoff of gas service \$18.10 had to be paid by October 3, 1986. Victor contacted SoCal customer service representative De Leon and advised De Leon that he was going to deposit the \$18.10 as a disputed bill deposit with the Commission. De Leon advised Victor that there would be no termination of service. Victor deposited the \$18.10 with the Commission on October 6, 1986.
5. Victor uses the Midvale Avenue apartment infrequently. On October 8, 1986, he went to the apartment and decided to take a shower. He found no hot water. He suspected his gas service had been disconnected. He tried to call SoCal's regular telephone number but received no answer. He obtained an 800 telephone number which turned out to be a number for SoCal's Redlands Division. At some point during the conversation with a person at the Redlands Division, Victor was told that he was on the cutoff sheet for October 8, 1986. At that time Victor believed his service had been disconnected.
6. SoCal's customer billing center is located in Monterey Park. When SoCal's records indicate that an account is delinquent its computer is programmed to generate a document called a nonpay close order. The computer printout of the compilation of nonpay close orders for a particular day is referred to by SoCal personnel as a cut sheet. Once a nonpay close order is generated the billing center sends it to the division or office of SoCal in which the

customer lives for investigation and action. If the division ascertains that payment was made or an extension to pay was granted, no further action is taken. Payment of a disputed bill deposit with the Commission automatically generates an extension for the amount deposited. If there has been no payment or extension the nonpay close order is sent to field personnel for action. The appearance of a name on a cut sheet does not mean that the person whose name appears has had gas service terminated or that the service will necessarily be terminated.

7. On October 8, 1986, SoCal's billing center generated a nonpay close order for Victor's Midvale Avenue apartment. The billing center sent the nonpay close order to SoCal's Beverly Hills office, which has jurisdiction over 473 Midvale Avenue. The nonpay close order was received by the Beverly Hills office, but no action was ever taken by that office or any other office or personnel of SoCal to terminate Victor's service at 473 Midvale Avenue on October 8 or 9, 1986.

8. On October 9, 1986, Victor contacted the Commission staff and complained about an alleged improper disconnection of gas service at the Midvale Avenue apartment. The Commission staff contacted SoCal and requested a report on the situation. At approximately 4 p.m. on October 9, 1986, SoCal's district service supervisor and a SoCal serviceman went to 473 Midvale Avenue, and in the presence of Victor, determined that gas was flowing through his meter and the pilot light of his water heater was on.

9. SoCal did not disconnect gas service to Victor's Midvale Avenue apartment on October 8 or 9, 1986.

10. The reason Victor did not have hot water on October 8, 1986, was that the thermostat on his water heater was set at a setting so low that in the light of outside temperature the main burner would not ignite.

11. As of the evening of October 9, 1986 Victor had knowledge that no disconnect had occurred on October 8, 1986, and had no

reasonable basis for asserting that it had occurred. This complaint which was filed on October 28, 1986, which alleges that Victor's service was cut off on October 6, 7, or 8, 1986, is frivolous and filed for the purpose of harassing SoCal.

12. On December 11, 1979, Victor filed C.1080/ against SoCal. On March 4, 1980, the Commission entered D.91379 which found the complaint to be vague and unintelligible and dismissed it for failure to state a cause of action. Victor's petition for rehearing of D.91379 was denied in D.91958, dated June 17, 1980.

13. On August 8, 1985, Victor filed C.85-08-026 against SoCal. The complaint alleged that Victor was improperly billed for gas and questioned the accuracy of his meter. D.86-04-054, dated April 16, 1986, dismissed the complaint for lack of prosecution on the grounds that by refusing to present evidence after an adverse ruling Victor had failed to carry his burden of proof. D.86-08-026, dated August 6, 1986, modified D.86-04-054 and denied Victor's petition for rehearing.

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15. Victor has not made a direct payment to SoCal for gas service since January 1985. He has made disputed bill deposits to the Commission, many of which have been disbursed to SoCal. The others are subject to formal or informal complaints before the Commission.

16. Victor has sought to delay and extend formal proceedings before the Commission by using dilatory tactics such as baseless motions, unnecessary cross-examination, seeking to present irrelevant matters, and attempting to disqualify the assigned ALJ.

17. The Commission takes official notice of the following: D.91379 which indicates that Victor sought to disqualify the

assigned ALJ (ALJ Turkish) for unspecified reasons. In C.85-08-026 Victor sought to disqualify the assigned ALJ (ALJ Levander). (Application for Rehearing filed May 19, 1986, paragraph 7.) In C.86-05-048 Victor sought to disqualify the assigned ALJ (ALJ Pilling). (RT, C.86-05-048, p. 48.)

18. Victor has engaged in a course of conduct of bringing frivolous complaints against SoCal for the purposes of vexation and harassment.

Conclusions of Law

1. Victor is entitled to no relief in this proceeding because there was no disconnection of gas service at his apartment at 473 Midvale Avenue, as alleged.

2. The Commission has the power to prevent its processes from being used for frivolous litigation for the purposes of vexation and harassment.

3. Should Victor file any complaints against SoCal in the future, SoCal may file a motion for an order requiring that Victor post security for the reasonable expenses SoCal is likely to incur in defending against such complaint. If, after a hearing, the complaint or complaints are found to be frivolous, the Commission shall fix the amount and date for payment. If Victor fails to deposit this sum with the Commission within the time prescribed, the complaint(s) shall be dismissed.

4. Victor will be placed on notice by this decision that the bringing of additional frivolous complaints before the Commission may cause the Commission to invoke its contempt power as well as other remedies.

ORDER

IT IS ORDERED that:

1. The complaint of W. Victor (Victor) in C.86-10-084 is denied. Victor is entitled to no relief in this proceeding.

2. Upon any subsequent filing by Victor against SoCal, SoCal may file a motion for an order requiring that Victor furnish, for SoCal's benefit, security for reasonable expenses incurred in defending against the complaint. If, after a hearing on the motion, the Commission determines the complaint to be frivolous, it shall set an amount and date for payment of the security. If Victor fails to deposit this sum with the Commission within the time prescribed, the complaint shall be dismissed.

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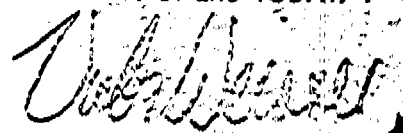
This order becomes effective 30 days from today.

Dated March 23, 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 Weissert, Executive Director

AB

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"701. The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

It is well settled that a judicial body has inherent power to impose sanctions for frivolous or vexatious litigation:

"A court has inherent power by summary means to prevent an abuse of its processes and peremptorily to dispose of causes of action and defenses that are sham, frivolous or wholly vexatious." (Estate of King (1953) 121 Cal. App. 2d 765, 774; Kessler v Lauretz (1974) 39 Cal. App. 3d 441, 446-47; Muller v Tanner (1969) 2 Cal. App. 3d 438, 443; Andrews v Joint Clerks, etc. Committee (1966) 239 Cal. App. 2d 285, 301-02.)

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D.82-11-003 in C.82-06-04, dated November 3, 1982, indicates that it is based on the agreement of the parties. No findings are made about the sufficiency of the complaint or the motives in bringing the proceeding. We will not consider C.82-06-04 and D.82-11-003 in making our determination about frivolous or vexatious litigation.

On August 8, 1985, Victor filed C.85-08-026 against SoCal. The complaint alleged that Victor was improperly billed for gas and questioned the accuracy of his meter. D.86-04-054, dated April 16, 1986, dismissed the complaint for lack of prosecution on the grounds that by refusing to present evidence after an adverse ruling, Victor had failed to carry his burden of proof. D.86-08-026, dated August 6, 1986, modified D.86-04-54 and denied Victor's petition for rehearing.

On May 27, 1986, Victor filed C.86-05-048 against SoCal. Victor complained about an allegedly defective meter, SoCal's refusal to credit him with unadjudicated customer deposits made by him to the Commission and acts alleged to be harassment. D.88-01-038, dated January 28, 1988, found against Victor on all issues and denied him any relief.

The record indicates that Victor has not made a direct payment for gas service to SoCal since January 1985. He has made disputed bill deposits to the Commission, many of which have been disbursed to SoCal. The others are subject to formal or informal complaints.

Victor's modus operandi appears to be to enlarge the formal proceedings by using dilatory tactics such as baseless motions, unnecessary cross-examination, seeking to present irrelevant matters, and attempting to disqualify the assigned ALJ (ALJ Turkish in C.10806, ALJ Levander in C.85-08-026, and ALJ Pilling in C.86-05-048.)

The Commission finds that Victor has engaged in a course of conduct of bringing frivolous complaints against SoCal. It is argued by SoCal that the appropriate relief would be entry of an order which prevents Victor from filing a complaint against it unless the Commission's Consumer Affairs Branch determines that the complaint is made in good faith. This is not an appropriate remedy.

Complaints before the Commission are provided for and governed by PU Code § 1702 and the Commission's Rules of Practice and Procedure (Rules). The Commission is a five-person body established by the Constitution. (Cal. Const., Art. XII, Sec. 1.) Unless all parties agree, an action by a majority of the Commission is necessary to dismiss an application or complaint. (PU Code § 308.) Rule 63 provides that:

"63. (Rule 63) Authority. The presiding officer may set hearings and control the course thereof; administer oaths; issue subpoenas; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or motions which do not involve final determination of proceedings; receive offers of proof; hear argument; and fix the time for the filing of briefs. He may take such other action as may be necessary and appropriate to the discharge of his duties, consistent with the statutory or other authorities under which the Commission functions and with the rules and policies of the Commission." (Emphasis added.)

The Commission cannot delegate to its Consumer Affairs Branch the authority to, in effect, dismiss a complaint.

As indicated, the Commission under its constitutional and statutory powers has the authority to deal with frivolous and vexatious litigants.

Section 128.5 of the Code of Civil Procedure provides that:

"§ 128.5 [Payment of expenses attributable to bad faith actions or frivolous or delaying

tactics] (a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

"(b) For purposes of this section:

"(1) 'Actions or tactics' include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint. The mere filing of a complaint without service thereof on an opposing party does not constitute 'actions or tactics' for purposes of this section.

"(2) 'Frivolous' means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.

"(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

"(d) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section."

SoCal's motion alleges that "The cost to SoCalGas and the Commission of complainant's frivolous litigation is well over \$100,000." However, SoCal produced no specific evidence of these costs. There is no basis herein for making an order to pay reasonable expenses.

In the light of Victor's frivolous prosecutions of proceedings before the Commission against SoCal, we will provide for the following:

1. Victor will be enjoined from filing any complaints against SoCal and its officers or employees unless he posts with the Commission the sum of \$100 to serve as security for an award for reasonable expenses if the complaint is found to be frivolous. (Venice Canals Home Owners Assn. v Superior Court (1977) 72 Cal. App. 3d 675; Western Steel & Ship Repair, Inc. v RMI, Inc. (1986) 176 Cal. App. 3d 1108, 1116; Arc Investment Co. v Tiffith (1958) 164 Cal. App. 2d Supp. 853, 856.)

2. A copy of this decision should be transmitted to the State Bar of California.

3. Victor will be placed on notice that the bringing of additional frivolous complaints before the Commission may cause us to invoke our contempt power in addition to other remedies. (Cal. Const., Art. XII, Sec. 6; PU Code §§ 312, 2113.)

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Victor is the occupant of an apartment at 473 Midvale Avenue, Los Angeles.

2. Victor has been engaged in controversy with SoCal for at least eight years.

3. Victor is a member of the State Bar of California.

4. On September 26, 1986, SoCal sent Victor a disconnect notice with respect to the apartment at 473 Midvale Avenue. The notice indicated that of the total amount billed \$62.42 was under investigation and \$18.10 was due. The notice stated that to avoid a turnoff of gas service \$18.10 had to be paid by October 3, 1986. Victor contacted SoCal customer service representative De Leon and advised De Leon that he was going to deposit the \$18.10 as a disputed bill deposit with the Commission. De Leon advised Victor

that there would be no termination of service. Victor deposited the \$18.10 with the Commission on October 6, 1986.

5. Victor uses the Midvale Avenue apartment infrequently. On October 8, 1986, he went to the apartment and decided to take a shower. He found no hot water. He suspected his gas service had been disconnected. He tried to call SoCal's regular telephone number but received no answer. He obtained an 800 telephone number which turned out to be a number for SoCal's Redlands Division. At some point during the conversation with a person at the Redlands Division, Victor was told that he was on the cutoff sheet for October 8, 1986. At that time Victor believed his service had been disconnected.

6. SoCal's customer billing center is located in Monterey Park. When SoCal's records indicate that an account is delinquent its computer is programmed to generate a document called a nonpay close order. The computer printout of the compilation of nonpay close orders for a particular day is referred to by SoCal personnel as a cut sheet. Once a nonpay close order is generated the billing center sends it to the division or office of SoCal in which the customer lives for investigation and action. If the division ascertains that payment was made or an extension to pay was granted, no further action is taken. Payment of a disputed bill deposit with the Commission automatically generates an extension for the amount deposited. If there has been no payment or extension the nonpay close order is sent to field personnel for action. The appearance of a name on a cut sheet does not mean that the person whose name appears has had gas service terminated or that the service will necessarily be terminated.

7. On October 8, 1986, SoCal's billing center generated a nonpay close order for Victor's Midvale Avenue apartment. The billing center sent the nonpay close order to SoCal's Beverly Hills office, which has jurisdiction over 473 Midvale Avenue. The nonpay close order was received by the Beverly Hills office, but no action

was ever taken by that office or any other office or personnel of SoCal to terminate Victor's service at 473 Midvale Avenue on October 8 or 9, 1986.

8. On October 9, 1986, Victor contacted the Commission staff and complained about an alleged improper disconnection of gas service at the Midvale Avenue apartment. The Commission staff contacted SoCal and requested a report on the situation. At approximately 4 p.m. on October 9, 1986, SoCal's district service supervisor and a SoCal serviceman went to 473 Midvale Avenue, and in the presence of Victor, determined that gas was flowing through his meter and the pilot light of his water heater was on.

9. SoCal did not disconnect gas service to Victor's Midvale Avenue apartment on October 8 or 9, 1986.

10. The reason Victor did not have hot water on October 8, 1986, was that the thermostat on his water heater was set at a setting so low that in the light of outside temperature the main burner would not ignite.

11. As of the evening of October 9, 1986 Victor had knowledge that no disconnect had occurred on October 8, 1986, and had no reasonable basis for asserting that it had occurred. This complaint which was filed on October 28, 1986, which alleges that Victor's service was cut off on October 6, 7, or 8, 1986, is frivolous and filed for the purpose of harassing SoCal.

12. On December 11, 1979, Victor filed C.10806 against SoCal. On March 4, 1980, the Commission entered D.31379 which found the complaint to be vague and unintelligible and dismissed it for failure to state a cause of action. Victor's petition for rehearing of D.91379 was denied in D.91958, dated June 17, 1980.

13. On August 8, 1985, Victor filed C.85-08-026 against SoCal. The complaint alleged that Victor was improperly billed for gas and questioned the accuracy of his meter. D.86-04-054, dated April 16, 1986, dismissed the complaint for lack of prosecution on the grounds that by refusing to prevent evidence after an adverse

ruling Victor had failed to carry his burden of proof.

D.86-08-026, dated August 6, 1986, modified D.86-04-054 and denied Victor's petition for rehearing.

14. On May 27, 1986, Victor filed C.86-05-048 against SoCal. Victor complained about an allegedly defective gas meter, SoCal's refusal to credit him with unadjudicated customer deposits made by him to the Commission, and acts alleged to be harassment.

D.88-01-038, January 28, 1988, found against Victor.

15. Victor has not made a direct payment to SoCal for gas service since January 1985. He has made disputed bill deposits to the Commission, many of which have been disbursed to SoCal. The others are subject to formal or informal complaints before the Commission.

16. Victor has sought to delay and extend formal proceedings before the Commission by using dilatory tactics such as baseless motions, unnecessary cross-examination, seeking to present irrelevant matters, and attempting to disqualify the assigned ALJ.

17. The Commission takes official notice of the following: D.91379 which indicates that Victor sought to disqualify the assigned ALJ (ALJ Turkish) for unspecified reasons. In C.85-08-026 Victor sought to disqualify the assigned ALJ (ALJ Levander). (Application for Rehearing filed May 19, 1986, paragraph 7.) In C.86-05-048 Victor sought to disqualify the assigned ALJ (ALJ Pilling). (RT, C.86-05-048, p. 48.)

18. Victor has engaged in a course of conduct of bringing frivolous complaints against SoCal for the purposes of vexation and harassment.

Conclusions of Law

1. Victor is entitled to no relief in this proceeding because there was no disconnection of gas service at his apartment at 473 Midvale Avenue, as alleged.

2. The Commission has the power to prevent its processes from being used for frivolous litigation for the purposes of vexation and harassment.

3. Victor should be enjoined from filing any complaints against SoCal and its officers or employees unless he deposits with the Commission for each complaint he seeks to file the sum of \$100 as security for an award of reasonable expenses if the complaint is found to be frivolous.

4. A copy of this decision should be transmitted to the State Bar of California so it may be aware of the findings with respect to Victor's conduct.

5. Victor should be placed on notice that the bringing of additional frivolous complaints before the Commission may cause the Commission to invoke its contempt power as well as other remedies.

ORDER

IT IS ORDERED that:

1. The complaint of W. Victor (Victor) in C.86-10-084 is denied. Victor is entitled to no relief in this proceeding.

2. Victor is enjoined from filing any additional complaints before the Commission against Southern California Gas Company and its officers or employees unless he deposits with the Commission for each complaint sought to be filed the sum of \$100 as security for an award of reasonable expenses if the complaint is found to be frivolous.

3. The Executive Director is directed to transmit a copy of this decision to the State Bar of California.

4. Victor is placed on notice that the filing of additional frivolous complaints with the Commission may cause the Commission to invoke its contempt power as well as other remedies.

This order becomes effective 30 days from today.

Dated MAR 23 1988, at San Francisco, California.

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