

Decision 89 11 046 NOV 2 2 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Guy Votaw,)
)
 Complainant,)
)
 vs.)
)
 Pacific Gas and Electric Company,)
)
 Defendant.)

ORIGINAL

(ECP)
Case 89-04-062
(Filed April 25, 1989)

O P I N I O N

Complainant Guy Votaw (Votaw) disputes the charges Pacific Gas and Electric Company (PG&E) billed him for replacement of a power pole on his property. Of the \$1167.58 billed, Votaw is willing to pay \$661.71, which is the net of the amount billed less non-productive labor, general engineering expense, supervision expense, and payroll additives.

PG&E denies each and every allegation in the complaint, except that it is the defendant. PG&E defends the charges as correct and justified, and argues that Votaw is responsible for the total costs incurred and billed. PG&E did not request that the Commission dismiss the complaint for lack of jurisdiction.

A duly noticed hearing was held on May 18, 1989 in Tracy, California, and evidence was taken. The matter was submitted at the conclusion of the hearing.

Later, while a decision was pending before the Commission, PG&E filed a claim in Small Claims Court of the County of San Joaquin, in Tracy, California, to recover the same amount, \$1167.58, which was contested in this complaint proceeding. A hearing was held and a judgment issued on August 11, 1989. The judgment found that although Votaw filed a complaint with the

Commission, the administrative proceeding does not preclude PG&E from pursuing its claim in Small Claims Court.

The reasonableness of a utility's efforts to collect from third parties for alleged damages to utility property is ordinarily not a matter of concern to the Commission. Under Public Utilities Code § 7952 a utility may pursue a civil remedy to recover such damages. However, we are concerned that PG&E did not inform the Commission of its intent. If PG&E intended to pursue that remedy at the time it prepared its answer to the complaint, it should have moved to dismiss the complaint on the grounds that it involves an issue which is properly decided by a civil court. Instead, PG&E answered the complaint, offered evidence and arguments on the merits, and the matter was submitted for decision by the Commission. If PG&E decided later to pursue a civil remedy, it should have promptly notified the Commission, and should have timely informed us of the progress of the civil proceeding. Instead, PG&E made no attempt to notify the Commission of this action at any time.

We find this action by PG&E to be unfair and wasteful of the time and resources spent by three parties, Votaw, PG&E, and the Commission, at an unnecessary administrative hearing. Moreover, PG&E's failure to seek dismissal even after it obtained a court judgment has put us to additional trouble and expense of preparing a decision.

In the face of a Small Claims Court judgment in favor of PG&E for the full amount of the dispute at issue in this proceeding, the issue before us is now moot. We reluctantly dismiss the complaint.

ORDER

IT IS ORDERED that Case 89-04-062 is dismissed.
This order becomes effective 30 days from today.
Dated NOV 22 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

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Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director
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