

ORIGINAL

Decision 90 07 039 JUL 18 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ethel Dotson, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 PGandE, )  
 )  
 Defendant. )

(ECP)  
 Case 90-02-054  
 (Filed February 22, 1990)

Ethel Dotson, for herself, complainant.  
Jose I. Tarango and Jorge A. Duran, for Pacific  
 Gas and Electric Company, defendant.

O P I N I O N

In this expedited complaint proceeding, Ethel Dotson (complainant) of 396 South Street, Richmond, California seeks an order of this Commission that defendant Pacific Gas and Electric Company (PG&E): (1) restore complainant's electric service, (2) establish a reasonable amortization agreement for the payment of overdue electric bills, and (3) provide her with 24-hour advance notice of any future service terminations.

This complaint was filed on February 22, 1990. Respondent answered on March 29, 1990 and hearing was held before Administrative Law Judge (ALJ) Wilson in San Francisco on May 21, 1990. Complainant appeared for herself with the assistance of Ralph McClain. PG&E was represented by Jose Tarango and Jorge A. Duran. The hearing was conducted pursuant to Rule 13.2 of the Commission's Rules of Practice and Procedure. The matter was deemed submitted at the close of the hearing.

Summary of Facts

On or about December 1, 1989, complainant's social security benefit income was interrupted. During the week of

January 8, 1990, complainant telephoned defendant's representative, Mr. Anthony Conroe, and requested an extension of time, at least until January 28, 1990, in order to restore her benefits and pay her PG&E bills.

At about the same time, complainant applied to an Alameda County social services agency for assistance with the payment of her bills. She subsequently telephoned defendant to advise that the agency would send defendant a check in the amount of \$300.

On February 13, 1990, defendant terminated service to one of the two electric meters serving complainant's building.<sup>1</sup> The termination followed written notice by at least 48 hours.

Complainant contacted defendant's representative Mr. Tarango on February 16, 1990. She was told that defendant had not received any payment from the county agency. Complainant contacted defendant again on February 21, 1990 and was told that the balance of her account would have to be paid before service would be restored.

After defendant received the \$300 partial payment on complainant's account and after complainant had filed this complaint, defendant contacted complainant and arranged for complainant to repay the \$366 remaining balance on her past bills. The terms of the amortization agreement provided that complainant would make quarterly payments of approximately \$90 each over a 12-month period, in addition to complainant's current monthly bills. Electric service was then restored.

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<sup>1</sup> Complainant's premises consist of a large building, part of which is or has been used as a "half-way house" and which is served by a commercial meter. The other portion of the building is complainant's residence and is on a residential meter. The commercial account was terminated.

Discussion

Because complainant's electric service was restored before the hearing, we need only consider whether the amortization agreement is enforceable and whether complainant is entitled to 24-hour personal contact notice before any future service terminations are made.

Complainant claims, in essence, that she entered into a prehearing amortization agreement which she cannot afford to pay. She claims she did so under duress in that it was the only way in which she could have her service restored. Complainant does not dispute that her account had become delinquent.

Taken alone, complainant's financial difficulties and the fact that defendant saw fit to terminate her service for nonpayment would not support an order by this Commission voiding the amortization agreement. However, if the termination was wrongful, and if, as a result, defendant was able to exert pressure on complainant which forced her to agree to terms which are unduly harsh, complainant would be entitled to relief.

Termination for nonpayment is governed by the Public Utilities Code and by Rule 11 of defendant's electric service tariffs.<sup>2</sup> PU Code § 779(c) establishes a right for residential customers to request, before termination, an extension of time in order to pay bills which they are unable to pay during the normal time period for payment. The section specifically requires the utility to consider whether an amortization arrangement should be granted.

PU Code § 779(b)(1) prohibits termination of service for nonpayment during the pendency of a customer complaint or request

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<sup>2</sup> For convenience, PU Code § 779 is set out in full as Appendix A at the end of the decision and PG&E Tariff Rule 11 is set out as Appendix B.

for investigation by the utility. Although this subsection does not specifically include requests for extension of time along with complaints and investigations we believe that "investigations" encompasses consideration of extensions of time. The purpose of restricting terminations during the pendency of a complaint or investigation is to avoid terminations which may prove unnecessary. It would serve that purpose to restrict terminations during the pendency of a request for extension of time as well.

Defendant's own tariff supports this interpretation. Rule 11A2k mirrors PU Code § 779(c) but specifically includes requests for extensions of time. The rule states that the customer "must contact PG&E to request consideration of special payment arrangements to avoid discontinuance of service". (Emphasis added.)

The rule goes on to specify in subparagraph (1) of Rule 11A2k that after reviewing the request PG&E will either advise the customer whether it will negotiate an amortization agreement or it will specify the date on which the full payment must be made.

The undisputed facts show that during the week of January 8, 1990 complainant did request an extension. The testimony of the parties shows that defendant did not consider the request until February 21, 1990 and only after it terminated service on February 13, 1990. Defendant thereby gained tactical advantage over complainant. It can be seen without difficulty that the effect of this was to encourage complainant to accept any terms which might result in restoring service as quickly as possible.<sup>3</sup> ✓

Even if we were to find that defendant did not violate PU Code § 779(b)(1), we would conclude that the service termination

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<sup>3</sup> It was after defendant received the check for \$300 in partial payment of her and after this complaint was filed that defendant reversed its course and offered the amortization agreement which complainant now challenges.

violated subsection (b)(3) of that section. This provision clearly prohibits termination where a customer obtains the certification of a licensed physician stating that termination would be life threatening and where the customer is willing to enter into an amortization agreement. Defendant's tariff Rule 11A2j is even more restrictive on terminations for nonpayment. That rule requires only that termination be "especially dangerous" rather than life threatening. It also allows for certification by a public health nurse or a social worker, in lieu of a licensed physician.

Complainant offered considerable testimony at hearing as well as in her complaint to the effect that she is medically disabled and that her life is endangered by termination of her electric service. Defendant did not challenge the testimony. This Commission specifically found in D.83-06-085 that complainant is "in ill health" (Finding No. 11).<sup>4</sup> The evidence in this proceeding demonstrates no change in complainant's health since 1983 and we conclude that subsection 779(b)(3) applies giving rise to automatic permission, on request, to amortize unpaid bills pursuant to subsection 779(e).

Defendant's primary argument is that it properly terminated the service because complainant was in breach of an agreement which was struck in C.88-07-005, a complaint which was filed by Mrs. Dotson with this Commission in July 1988. That case

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<sup>4</sup> This finding was supported by a letter from Dr. Tolbert J. Small, which states in part that Dr. Small believed complainant was disabled and "that for medical reasons, her PG&E should be made available to her."

involved facts which are very similar to those of this case.<sup>5</sup> There, complainant fell behind on her monthly payments, her service was terminated and she filed her complaint. Prior to hearing, complainant obtained assistance from a social services agency for partial payment of her bills. Following the hearing on September 1, 1988 but prior to submission, the parties entered into an amortization agreement and service was restored. We denied complainant's request for re-establishing service and for amortization based in part on the fact that the agreement had resolved the issues.

At the hearing in this complaint, the ALJ inquired as to the date on which the September 7, 1988 agreement terminated. Defendant answered that the agreement expired on January 27, 1990.<sup>6</sup> However, the Commission's decision in C.88-07-005 recites that the agreement was struck on September 7, 1988 and extended for a term of 12 months (D.89-01-046). We must, therefore, infer that the agreement expired in September 1989. Defendant offered nothing to show that any of the amount owed as of February 13, 1990 became delinquent during the term of the September 7, 1988 agreement. Complainant, on the other hand, testified that she had made regular payments.

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5 This complaint is Mrs. Dotson's third since 1983. In each case, complainant fell several hundred dollars behind in her payments and service was terminated. In each case, complainant arranged for assistance in making partial payment and entered into a prehearing amortization agreement for the remainder. (See D.83-06-085 and D.89-01-046.)

6 It is conceivable that defendant was confusing the date of the Commission's decision in C.88-07-005 with the date of the amortizations agreement. The agreement itself was not presented as an exhibit in this proceeding although it was made available in C.88-07-005.

If complainant had in fact breached the September 7, 1988 agreement by failing to pay any of the monthly bills due between September 7, 1988 and September 7, 1989, it is surprising that there was no termination made at that time.

Complainant claims that her income will not allow her to pay more than \$100 in any month in which her quarterly payment would fall due under the amortization agreement. Defendant pointed out that based on her historical pattern of electric use, this amount would be insufficient to cover both the quarterly payment of approximately \$90 and the current bill for that month.

Complainant stated that gas service has recently been installed in her building and that she expects her heating costs will decline in the future. Neither party offered an estimate of how much less her future combined gas and electric bills might be in comparison with her historical electric use, which until now involved all-electric heating. Nevertheless, it is possible that smaller monthly amortization payments could be more easily made than larger payments on a quarterly basis. In view of this, the terms of the amortization agreement appear unreasonably harsh.

It was neither necessary nor proper for defendant to terminate service before considering complainant's request for an extension of time. By so doing defendant placed itself in a position to take unfair advantage of complainant, and for that reason we will not enforce the terms of an agreement that was bargained on unequal terms and while the lights were out. We will order defendant to enter into a new amortization agreement not to exceed 12 months which takes into account complainant's ability to fully repay the amount she owes plus her current monthly bills. Should a new amortization agreement be reached, respondent may not subsequently terminate service unless complainant fails to abide by its terms. If no agreement is reached, the parties may proceed under the terms of tariff Rule 11K2.

Turning to complainant's request that she be given 24-hour notice in person before any future termination, we will not grant relief. Complainant argues that because of her medical problems, she is entitled to this form of notice. Defendant argues that 24 hours is, in fact, the minimum advance notice and is only permitted if contact is made in person or via telephone. According to defendant, written 48-hour notice is superior in that it allows a customer more time to respond before service is cut off. Defendant's Tariff Rule 11A24 (filed February 23, 1990) is consistent with that rationale in that it establishes a minimum of 48 hours' advance notice for persons who are 62 years old or older or who are handicapped. The PU Code § 779.1, on the other hand, prescribes the same termination notice for all customers, 24 hours with personal contact or 48 hours on written notice, and makes no special provision for handicapped customers.

Complainant did not offer any explanation of how 24-hour notice would relate in any particular way to her medical condition.<sup>7</sup> There being no basis in law or fact for requiring 24-hour notice, we will deny complainant's request.

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<sup>7</sup> In her complaint, Mrs. Dotson alleged that she had been diagnosed as having a terminal illness, that she suffered from bouts of hemorrhaging, that she needed to traverse a stairway in order to leave her building, that using the stairway after dark was dangerous without adequate lighting and that without electricity, ambulance service and fire protection would be hampered. These circumstances would apply to anyone without electric service. In any case, we fail to see how 24-hour notice in person or via telephone would eliminate any of these concerns.



ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company shall contact Ethel Dotson and attempt in good faith to establish a reasonable amortization agreement whereby complainant may repay in full the amount which was delinquent on February 13, 1990 over a period not to exceed 12 months in addition to payment of her currently monthly bills.

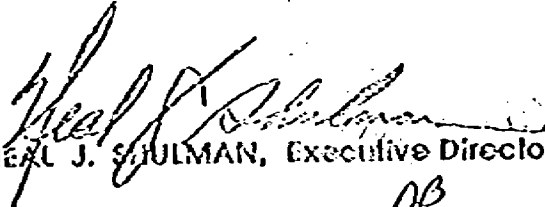
2. In all other respects, the relief sought by complainant is denied.

This order is effective today.

Dated JUL 18 1990, 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

  
NEAL J. SHULMAN, Executive Director  
JB

APPENDIX A

Public Utilities Code Section 779

779. (a) No electrical, gas, heat, or water corporation may terminate residential service for nonpayment of a delinquent account unless the corporation first gives notice of the delinquency and impending termination, as provided in Section 779.1.

(b) No electrical, gas, heat, or water corporation may terminate residential service for nonpayment in any of the following situations:

(1) During the pendency of an investigation by the corporation of a customer or subscriber dispute or complaint.

(2) When a customer has been granted an extension of the period for payment of a bill.

(3) On the certification of a licensed physician and surgeon that to do so will be life threatening to the customer and the customer is financially unable to pay for service within the normal payment period and is willing to enter into an amortization agreement with the corporation pursuant to subdivision (e) with respect to all charges that the customer is unable to pay prior to delinquency.

(c) Any residential customer who has initiated a complaint or requested an investigation within five days of receiving the disputed bill, or who has, before termination of service, made a request for extension of the payment period of a bill asserted to be beyond the means of the customer to pay in full within the normal period for payment, shall be given an opportunity for review of the complaint, investigation, or request by a review manager of the corporation. The review shall include consideration of whether the customer shall be permitted to amortize any unpaid balance of the delinquent account over a reasonable period of time, not to exceed 12 months. No termination of service shall be effected for any customer complying with an amortization agreement, if the customer also keeps the account current as charges accrue in each subsequent billing period.

(d) Any customer whose complaint or request for an investigation pursuant to subdivision (c) has resulted in an adverse determination by the corporation may appeal the determination to the commission. Any subsequent appeal of the dispute or complaint to the commission is not subject to this section.

(e) Any customer meeting the requirements of paragraph (3) of subdivision (b) shall, upon request, be permitted to amortize, over a period not to exceed 12 months, the unpaid balance of any bill asserted to be beyond the means of the customer to pay within the normal period for payment. (Added Stats. 1977, Ch. 1027; amended Stats. 1984, Ch. 796; 1985, Ch. 888.)

(END OF APPENDIX A)

APPENDIX B  
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Exerpts from PG&E Tariff Rule 11

A.2a. (4) Where PG&E is aware that the customer is among the elderly (62 years or older) or handicapped, PG&E shall make every good faith effort to give the customer advance notice not less than 48 hours before the date discontinuance is to become effective. Such notice may be made by telephone or visit to the customer's premises, provided, however, that if personal contact with an adult cannot be made, a dated notice shall be left at the premises where service is to be terminated at least 48 hours prior to termination. Such elderly or handicapped persons, moreover, may designate a third party (friend, family member, or public or private agency) to receive notice on customer's behalf provided written consent of such third party to receive such notice is submitted to PG&E. All customers will be informed annually of the availability of this (third party) service... .

A.2j. Electric service to a residential customer will not be discontinued for nonpayment when the customer has established to the satisfaction of PG&E that such termination would be especially dangerous to the health of the consumer, or the customer has established to the satisfaction of PG&E that the consumer is among the elderly (62 years or older) or handicapped, and the customer establishes to the satisfaction of PG&E that he or she is unable to pay for such service in accordance with the provisions of PG&E's tariffs, and the customer is willing to arrange installment payments, satisfactory to PG&E, including arrangements for prompt payment of subsequent bills.

Certification from a licensed physician, public health nurse, or social worker may be required by PG&E.

k. A residential customer who receives a discontinuance of service notice and alleges inability to pay the full amount stated in the notice must contact PG&E to request consideration of special payment arrangements to avoid discontinuance of service. A residential customer who has initiated a termination dispute prior to termination, or has initiated a complaint or requested an investigation within five days of receiving a disputed bill, will be given an opportunity for review of his dispute. The review shall include consideration of whether the customer should be permitted to amortize the unpaid balance of his account over a reasonable period of time not to exceed 12 months and shall include information on the availability of financial assistance.

APPENDIX B  
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- 1) After review, PG&E will determine and advise the customer: (1) if an amortization period to pay the unpaid balance is warranted; or (2) the date the unpaid balance of his account must be paid. If an amortization period is warranted and agreed to by the customer, service will not be discontinued for nonpayment for any customer complying with such amortization agreement, provided the customer also keeps current his account for utility service as charges accrue in each subsequent billing period. If the customer fails to comply with such amortization agreement, service shall be subject to discontinuance for nonpayment of bills as provided in this Rule.
- 2) If after review, a customer and PG&E fail to agree on payment arrangements PG&E will explain to the customer that:
  - a) He should write to the Commission's Consumer Affairs Branch (CAB) to make an informal complaint alleging to the Commission an inability to pay and that lawful payment arrangements have not been extended to him. It is the responsibility of the customer to timely inform CAB to avoid discontinuance of service.
  - b) Within ten business days after receiving the informal complaint, CAB will report its proposed resolution to PG&E and the customer by letter.
  - c) If the customer is not satisfied with the proposed resolution of the CAB, he shall file within ten business days after the date of the CAB letter a formal complaint with the Commission under Section 1702 on a form provided by the CAB. The complaint shall be processed under the customer's service... .
  - d) Failure of the customer to observe the above time limits shall entitle PG&E to insist upon payment, or upon failure to pay, to terminate the customer's service... .

(END OF APPENDIX B)