

Decision 90 09 023 SEP 12 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joseph T. Fernandez,
Complainant,

vs.

Southern California Gas
Company, and Southern
California Edison Company,

Defendants.

ORIGINAL

Case 90-05-026
(Filed May 11, 1990)

O P I N I O N

Joseph T. Fernandez (Fernandez) complains against Southern California Gas Company and Southern California Edison Company that their programs of assistance to low-income electric and gas customers constitute discriminatory pricing policies adopted by the Commission under an unconstitutional statute (Section 739(g), Public Utilities (PU) Code.)

Section 739(g), PU Code provides as follows:

"The Commission shall establish a program of assistance to low-income electric and gas customers, the cost of which shall not be borne solely by any single class of customer."

Complainant expresses his view that Low-Income Ratepayer Assistance (LIRA) programs are nothing more than a tax which should either be abolished or declared a tax so that they would be deductible for income tax purposes.

On June 15, 1990, defendants filed a joint motion to dismiss the complaint on the grounds, among others, that the complainant has alleged no violation of any law or of any order or rule of the Commission (Rules 9 and 10, Rules of Practice and

Procedure), and that neither defendants nor the Commission have the authority to declare PU Code § 739(g) unconstitutional (Article 3, § 3.5, California Constitution.)

Findings of Fact

1. Fernandez complains that Low-Income Ratepayer Assistance programs established by the Commission pursuant to PU Code § 739(g) are unconstitutional.

2. Fernandez' complaint against defendant utilities alleges no violation of any law or of any order or rule of the Commission.

3. Defendants filed a motion to dismiss the complaint on the grounds that neither the Commission nor the defendants have authority to declare PU Code § 739(g) unconstitutional and that complainant has alleged no violation of any law or of any order or rule of the Commission as required by Rules 9 and 10, Rules of Practice and Procedure, and by PU Code § 1702.

Conclusions of Law

1. The Commission has no authority to declare a statute unconstitutional.

2. Complainant has not alleged any violation of a law or of an order or rule of the Commission.

3. The complaint should be dismissed for failure to state a cause of action.

O R D E R

IT IS ORDERED that Case 90-05-026 is dismissed.

This order is effective today.

Dated SEP 12 1990, at San Francisco, California.

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SAULMAN, Executive Director