

FEB 7 1991

Decision 91-02-011 February 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Clifford E. Curry, Sr.
Bettye J. Curry,

Complainants,

vs.

Pacific Gas and Electric Company,

Defendant.

ORIGINAL

Case 89-09-008
(Filed September 6, 1989)

O P I N I O N

Complainants Clifford E. Curry, Sr., and Bettye J. Curry filed this complaint against Pacific Gas and Electric Company (PG&E) on September 6, 1989. The complaint alleges (1) that PG&E charged higher rates than normal for gas and electricity usage at complainants' single-family home; (2) that PG&E used faulty meters and fraudulently conducted meter testing and reporting; and (3) that PG&E representatives sought to intimidate, harass, and racially discriminate against complainants and their family.

PG&E answered on October 6, 1989, denying the allegations of the complaint. As an affirmative defense, PG&E alleged that complainants "have engaged in a series of informal complaints to the Commission, culminating in this formal complaint, for the sole purpose of delaying payment of their utility bills." (Answer of Defendant PG&E, p. 3.)

On motion of PG&E, we dismiss the complaint with prejudice for failure to prosecute. At hearing on November 28, 1990, complainants declined to proceed with their case despite repeated requests by the administrative law judge (ALJ) that they do so. Instead, Mr. Curry used the hearing as a forum in which to

make unsupported allegations of racism against all other participants in the proceeding.

Background

A hearing on this complaint was set for December 18, 1989. It was rescheduled for February 20, 1990. The latter hearing was postponed indefinitely at Mr. Curry's request when he reported that he had suffered a back injury. Meanwhile, in numerous telephone calls to the Commission, Mr. Curry objected to the consolidation of two complaints he had filed with the Commission, and he objected to the Commission's complaint procedures.¹ A public hearing on the first of Mr. Curry's complaints was set for November 28, 1990, in Oakland, for the convenience of complainants, who are Oakland residents. In the notice of hearing, complainants were encouraged to consult the Commission's Office of Public Advisor if they had questions about the hearing procedure.

Hearing

At hearing, Clifford E. Curry, Sr., and Bettye J. Curry appeared on their own behalf. PG&E was represented by its attorney, Jefferson C. Bagby, who was accompanied by two PG&E witnesses, Deanna Taylor, of the company's billing department, and George Taylor, of the company's meter and meter testing unit.

Mr. Curry immediately protested the complaint procedure. When it was explained to him that he was required to present testimony or other evidence supporting his complaint, and that PG&E then would be entitled to present evidence in its defense, Mr. Curry stated that he refused to participate in the hearing

¹ The second complaint, Case (C.) 89-11-037, alleging that the utility unlawfully failed to hire Mr. Curry as an independent contractor, has been scheduled for separate hearing on February 14, 1991, in Oakland.

"because PG&E is racist and you both are in collusion."
(Transcript p. 7.)

The transcript of the hearing shows that Mr. Curry on 12 separate occasions was asked to offer evidence in support of the complaint that he had filed. Mr. Curry on each occasion refused to proceed. Mrs. Curry requested a recess, which was granted. Upon return to the record, she was asked if she would proceed with the complaint. She declined to do so. The ALJ suggested that the Currys permit PG&E to proceed first with its defense, so that the Currys could cross-examine. Mr. Curry refused.

PG&E's representative, although interrupted frequently by comments from Mr. Curry, stated that the company and its witnesses were present and prepared to go forward. He said that Deanna Taylor was prepared to testify as to the billing on the Curry account, and that George Taylor was prepared to testify that the Currys' meter had been tested and found accurate. PG&E's representative stated that the Currys now owe \$4,790.76 on their account, and that the company has not pressed collection because of the pendency of the complaint. PG&E stated that if Mr. Curry was unwilling to present evidence with respect to his complaint, then PG&E would move that the case be dismissed with prejudice for lack of prosecution.

The ALJ advised the Currys on three occasions that unless they presented some evidence in support of the complaint they had filed, the ALJ would have no alternative but to recommend dismissal of the complaint on the basis of failure to prosecute. The Currys continued to refuse to present evidence with respect to their complaint.

Discussion

Ratepayer complaints and questions about utility services generally are investigated first by the Commission's Consumer Affairs Branch (CAB), which seeks to informally resolve disputes and questions. Mr. Curry had made informal complaints with the

CAB, but he stated that he was not satisfied with the results. Mr. Curry then filed this formal complaint. The Commission's formal complaint procedure is designed to provide a ratepayer with the opportunity to present evidence supporting the complaint. The utility, in turn, is required to formally respond to each allegation of the complaint. The Commission's Public Advisor's office is available to provide procedural information and advice to individuals so that they may effectively present their evidence at a public hearing.

At hearing, an appointed ALJ hears a complainant's evidence and a utility's defense. (Public Utilities Code §§ 1701, et seq.) After being satisfied that the complainant has had a full opportunity to be heard, the ALJ takes the evidence under consideration and renders a recommended decision to the Commission. Occasionally, the parties settle their dispute at hearing, and no decision on the evidence is required.

These procedures are designed to offer the opportunity for due process. If a ratepayer, after filing a formal complaint, refuses to take advantage of the opportunity for hearing, then the Commission is left with no evidence upon which to proceed and is obliged to dismiss the complaint. Where, as here, a complainant is offered numerous opportunities to proceed, and refuses to do so, and instead uses the hearing procedure as a forum in which to make unsubstantiated accusations and speeches, it is clear that the complaint was not brought in good faith, and the dismissal should be granted with prejudice to foreclose subsequent complaints arising from the same set of facts.²

² See, e.g., Decision 90-09-015, finding that such filings result in the waste of Commission resources and those of the defendant as well.

Findings of Fact

1. Complainants filed C.89-09-008 on September 6, 1989.
2. Defendant filed a timely answer.
3. After two postponements, complainants appeared at hearing in Oakland on November 29, 1990.
4. Despite 12 requests by the assigned ALJ that complainants present evidence to support their complaint, complainants refused to do so.
5. Defendant moved to dismiss the complaint with prejudice for failure to prosecute.
6. This matter has been pending for more than a year.

Conclusions of Law

1. Defendant's motion to dismiss C.89-09-008 with prejudice should be granted.
2. This order should be effective without delay.

O R D E R

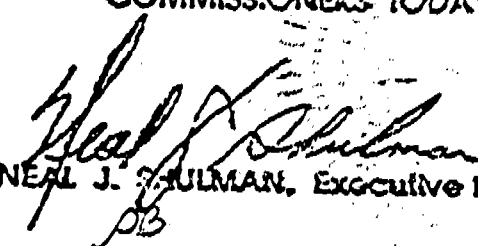
IT IS ORDERED that the motion to dismiss the complaint in Case 89-09-008 with prejudice because of complainants' refusal to prosecute is granted.

This order is effective today.

Dated February 6, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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


NEAL J. SCHULMAN, Executive Director