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JUN 20 1991

Decision 91-06-041 June 19, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Clifford E. Curry, Sr.,
Complainant,
vs.
Pacific Gas & Electric Company,
Defendant.

ORIGINAL

Case 89-11-037
(Filed November 14, 1989)

OPINION

Summary

Clifford E. Curry, Sr. filed this complaint on November 14, 1989. He requested continuation of hearing dates on three occasions. He failed to appear for hearing on April 9, 1991, claiming lack of notice. After acknowledging receipt of notice, he failed to appear for hearing on May 10, 1991. The complaint is dismissed for failure to prosecute.

Statement of the Case

Complainant is the owner of Curry Electric Co. in Oakland. He alleges that, in August 1983, he was the lowest responsible bidder on a Pacific Gas & Electric Company (PG&E) electrical contract valued at \$100,000. When PG&E failed to award him the contract, Curry retained an attorney who negotiated a settlement of the matter with PG&E. Curry states that, under the settlement, PG&E was to pay him \$600 and award his company a \$100,000 electrical contract within 18 months.

In a timely answer to the complaint, PG&E acknowledges that Curry bid on an electrical contract in 1983. It denies that Curry was the lowest responsible bidder, and it states that because of "mutual mistakes of material fact" in negotiations with Curry,

PG&E declined to award a contract to him. PG&E states that because of the mutual mistakes, it paid Curry \$600 to settle the dispute.

PG&E attached to its answer a "Release of Claims and Settlement Agreement" signed on or about December 7, 1983, by Curry and his wife, on behalf of themselves and Curry Electric Company. The agreement provides that, in exchange for PG&E's check for \$600, the Currys release and discharge PG&E "from any and all claims of any nature whatsoever" arising out of the disputed contract.

The settlement agreement was transmitted to PG&E by Curry's attorney, Fred F. Cooper, now deceased. The agreement contains a standard merger clause, which states that all understandings between the parties are merged in the settlement, and that any amendment to the agreement must be set forth in writing.

Curry alleges in his complaint that he was harassed and intimidated by PG&E management following the settlement. He seeks damages of \$100,000 and an order requiring PG&E to cease and desist from unfair practices. PG&E denies the allegations of the complaint and moves to dismiss on several grounds.¹

Procedural Background

A hearing on this complaint was originally set for December 18, 1989. It was rescheduled for February 20, 1990. The latter hearing was postponed indefinitely at Curry's request when

1 PG&E moves to dismiss the contract claim on grounds that: (1) the Commission does not hear contract disputes between a utility and a prospective contractor unless the matter involves alleged violation of law or Commission rules or decisions (See Decision 88-04-057); (2) the contract claim was not brought within two years, as required by Public Utilities Code § 735; (3) the signed settlement agreement and release bars further claims related to the matters released; and (4) the Commission is without authority to award general damages. At hearing on April 9, 1991, PG&E asked that the complaint be dismissed for failure to prosecute if complainant failed to appear at a subsequent hearing.

he reported that he had suffered a back injury. Meanwhile, in numerous telephone calls to the Commission, Curry objected to the consolidation of two complaints that he had filed against PG&E.² The first complaint was the subject of a hearing on November 28, 1990. The second complaint was scheduled for hearing on February 14, 1991.

Shortly before February 14, 1991, Curry requested a new hearing date for his second complaint. The hearing was rescheduled for April 9, 1991. Curry failed to appear, stating later that he had not received notice of the hearing date. The hearing was rescheduled again for May 10, 1991. On April 17, 1991, in a telephone conversation with the assigned administrative law judge, Curry acknowledged receipt of the notice of hearing and stated that he would appear.

Curry failed to appear at the hearing on May 10, 1991. PG&E appeared by its attorney, Jefferson C. Bagby, who was accompanied by two PG&E witnesses, Paulena Coughenour, senior community relations representative, and Charles E. Shepherd, equal opportunity purchasing program coordinator. The PG&E representatives also had appeared at the April 9 hearing.

After 30 minutes with no appearance or message from the complainant, the May 10 hearing was adjourned. The administrative law judge ruled that, in view of the many opportunities for hearing accorded to Curry, the case would be submitted with a recommendation that it be dismissed because of complainant's failure to prosecute.

² The first complaint, Case (C.) 89-09-008, alleging improper billing by PG&E for the complainant's residence, was dismissed in Decision 91-02-011 on February 6, 1991, after Curry appeared at hearing but refused to present evidence in support of his complaint.

Conclusion

The record in this proceeding is clear. Complainant has requested postponement of hearing on three occasions. He has twice failed to appear at noticed hearings. The alleged breach of contract and disputed dealings occurred nearly eight years ago. By his actions, complainant has demonstrated that he has no interest in pursuing this matter. We will grant PG&E's motion to dismiss for failure to prosecute. The dismissal is with prejudice to the filing of a further complaint by complainant based on the same set of facts.

Findings of Fact

1. Complainant filed Case 89-11-037 on November 14, 1989, alleging contract infractions and improper dealings by PG&E.
2. PG&E filed a timely answer denying the allegations of the complaint.
3. Complainant on three occasions requested and was granted continuances of the hearing date on this matter.
4. Complainant failed to appear at two noticed hearings.
5. This matter has been pending for more than a year and a half, and the alleged wrongdoing occurred more than seven years ago.
6. PG&E, alleging failure to prosecute, has moved to dismiss the complaint with prejudice against complainant's filing of further complaints on the same set of facts.

Conclusions of Law

1. PG&E's motion to dismiss this case with prejudice should be granted.
2. This order should be effective without further delay.

O R D E R

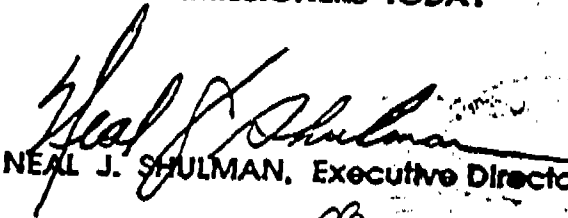
IT IS ORDERED that the motion to dismiss the complaint in Case 89-11-037, with prejudice because of complainant's failure to prosecute, is granted.

This order is effective today.

Dated June 19, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director
PB