

Mailed

Decision 91-09-015 September 6, 1991

SEP 9 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

J. T. Orr,)
)
 Complainant,)
)
 vs.)
)
 GTE California, Incorporated,)
)
 Defendant.)

ORIGINAL
 Case 90-09-065
 (Filed September 28, 1990)

Michael L. Allan, Attorney at Law, for GTE
 California, Incorporated, defendant.

OPINION

This case was originally filed as an Expedited Complaint Proceeding (ECP) after the complainant tried to resolve his dispute with the defendant with the assistance of the Commission's staff. At the complainant's request the proceeding was recalendared under the Commission's regular procedure pursuant to Public Utilities Code Section 1702.1(a) and Rule 13.2(g) of the Commission's Rules of Practice and Procedure. At the time of his request, the complainant represented to the Administrative Law Judge (ALJ) that he would be represented by counsel.

A prehearing conference (PHC) was duly noticed and held in Los Angeles on March 21, 1991. Neither the complainant nor his attorney appeared. At the PHC the ALJ set the matter for one day of hearing, commencing 10:00 a.m., May 17, 1991, in Los Angeles.

Timely notice of the hearing was served by mail upon the complainant at his address of record. The notice was not returned to the Commission. It specifically admonished him that at the time of the hearing he should be prepared to satisfy his burden of coming forward with evidence in support of his complaint. It

further stated that no continuance would be granted, except upon a showing of good cause.

The hearing was convened at the time and place stated in the notice. Neither the complainant nor his attorney appeared. Defendant appeared by counsel and moved that the complaint be dismissed with prejudice, and that costs be awarded to the defendant.

Inasmuch as the complainant failed to satisfy his evidentiary burden (despite the express admonition contained in the hearing notice) and made no effort to obtain a continuance of the hearing date, the complaint is dismissed with prejudice. The complainant had ample opportunity to avail himself of a fair hearing in this matter. Twice, properly noticed proceedings were convened, and twice the complainant simply failed to show up. Unfortunately, the expense of convening those proceedings will ultimately be borne by telephone subscribers.

The defendant's request for an award of costs is denied in view of the absence of authority under the Commission's rules. We note, however, that in his dealings with Commission staff and the ALJ, the complainant was abusive to a degree bordering upon contempt. We are unaware of the reasons for his conduct, but he is not deserving of the Commission's sympathy, and none should be inferred from the denial of defendant's motion. Only the absence of an express provision governing the award of costs prevents the Commission from fully granting that motion.

Findings of Fact

1. Notice of the hearing in this matter was properly served and published in the Commission's Daily Calendar.
2. At the hearing the complainant failed to come forward with any evidence in support of his complaint.

Conclusions of Law

1. The complaint should be dismissed with prejudice.
2. No award of costs should be made in this case.

ORDER

IT IS ORDERED that:

1. The complaint is dismissed with prejudice.
 2. Defendant's motion for award of costs is denied.
- This order becomes effective 30 days from today.
Dated September 6, 1991, at San Francisco, California.

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

I abstain.

/s/ G. MITCHELL WILK
Commissioner

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


NEAL J. SHULMAN, Executive Director
ps