

Mailed

Decision 91-09-020 September 6, 1991

SEP 9 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Nahum Zilberberg,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

**ORIGINAL**

Case 91-03-055  
(Filed March 25, 1991)

Nahum Zilberberg, for himself, complainant.  
Proskauer, Rose, Goetz & Mendelsohn, by  
Michael W. Foster, Attorney at Law,  
for Pacific Gas and Electric Company,  
defendant.

OPINION

Summary of Decision

This decision dismisses Nahum Zilberberg's complaint against Pacific Gas and Electric Company.

Background

Nahum Zilberberg (complainant) receives electric service from Pacific Gas and Electric Company (PG&E) at 700 View Point Road in Mill Valley.

Complainant established electric service at 700 View Point Road on May 4, 1989. PG&E waived the \$200 deposit required to establish service at the time.

On January 8, 1990, PG&E terminated complainant's service for nonpayment of electric bills. PG&E restored the service on February 23, 1990 and terminated it again for nonpayment of bills on May 11, 1990.

On May 11, 1990, complainant provided PG&E a check in the amount of \$228.10 for the "past due" balance and service was restored on condition that complainant would also pay a \$350 restoration deposit.

On May 24, 1990, complainant's check for \$228.10 was returned by his bank due to insufficient funds. PG&E again terminated complainant's service on June 5, 1990 for nonpayment of the outstanding past due amount which had increased to \$358.07 as well as nonpayment of the \$350 restoration deposit. PG&E restored the service on June 15, 1990 after complainant paid the past due amount of \$358.07 and agreed to pay \$350 restoration deposit.

Complainant did not pay the agreed upon restoration deposit and PG&E terminated service on July 24, 1990. PG&E refused to establish service at 700 View Point Road without payment of a deposit.

On March 25, 1991, complainant filed a complaint, Case (C.) 91-03-055, against PG&E. Complainant seeks a Commission order requiring PG&E to restore his service without payment of a deposit.

Complainant also filed for protection under Chapter 11 of the United States Bankruptcy Code on January 11, 1991, in the United States Bankruptcy Court (U.S. Bankruptcy Court) for the Northern District of California. In that proceeding, complainant entered into a stipulation (Stipulation) with PG&E on April 19, 1991. According to the Stipulation, complainant agreed to pay PG&E a \$200 deposit to restore service at 700 View Point Road. Judge Jaroslovsky of the U.S. Bankruptcy Court issued an order approving the Stipulation.

Complainant has paid PG&E the required deposit and PG&E has restored service at 700 View Point Road as of April 22, 1991.

On June 6, 1991, PG&E filed a motion to dismiss the complaint asserting that relief requested by complainant has been granted pursuant to the Stipulation and that the complaint is moot.

Hearing

On June 13, 1991, a hearing was held before Administrative Law Judge (ALJ) Garde. During the hearing, complainant was given an opportunity to respond to PG&E's motion. Complainant claimed that he signed the Stipulation under duress. He also claimed that due to his ill health he needed electric service and had no choice but to sign the Stipulation. When asked by the ALJ the specific relief being sought, he responded as follows:

"ALJ Garde: What relief are you seeking now?

Mr. Zilberberg: I would like the money back that I paid because the agreement has not been kept and nothing really has changed in the conditions previous to the submission of relief--of the motion to dismiss. Nothing has changed in that I suffered for half a year without electricity for no good reason." (Tr. p. 3.)

PG&E disagrees with complainant's claim that the Stipulation was signed under duress. PG&E insists that the Stipulation was jointly prepared by attorneys for complainant and PG&E and that there is no evidence that it was signed under duress.

Discussion

Complainant's service has been restored and he is receiving service in accordance with the Stipulation. The relief sought by complainant has been granted.

As to complainant's request for refund of the \$200 deposit, we believe that complainant's past payment record clearly warrants the need for the deposit.

Complainant's claim that the Stipulation was signed under duress should have been raised in the U.S. Bankruptcy Court.

There are no issues in this complaint which the Commission has to resolve. We will dismiss the complaint.

Findings of Fact

1. PG&E provides complainant electric service at 700 View Point Road in Mill Valley.
2. PG&E terminated complainant's service on January 8, 1990, due to nonpayment of bills.
3. PG&E restored complainant's service on February 23, 1991, upon payment of past due bills.
4. PG&E had to terminate complainant's service on May 11, 1990, June 5, 1990, and July 24, 1990, for nonpayment of bills and/or restoration deposit.
5. PG&E restored complainant's service on May 11, 1990 and June 15, 1990, upon payment of past due bills and upon an agreement by complainant to pay a restoration deposit of \$350.
6. PG&E terminated complainant's service on July 24, 1990, for the final time for nonpayment of the restoration deposit.
7. PG&E refused to reinstate complainant's service without payment of the restoration deposit.
8. Complainant filed this complaint, C.91-03-055, requesting a Commission order requiring PG&E to reinstate his service without the payment of a deposit.
9. Complainant also filed for protection under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court.
10. In the proceeding before the U.S. Bankruptcy Court, complainant and PG&E signed the Stipulation.
11. According to the Stipulation, complainant agreed to pay a deposit of \$200 to PG&E for restoration of service.
12. Complainant paid PG&E a deposit of \$200 and PG&E restored his service on April 22, 1991.
13. PG&E filed a motion asserting that the relief sought by complainant has been granted, and requesting that the complaint be dismissed as moot.
14. Complainant claims that the Stipulation was signed under duress and requests that the \$200 deposit be refunded to him.

15. Complainant should have raised the issue of duress before the U.S. Bankruptcy Court.

16. The Stipulation was approved by the U.S. Bankruptcy Court.

17. Complainant's past payment record warrants a deposit requirement with PG&E.

18. The relief sought by complainant has been granted.

19. There are no issues for the Commission to resolve.

Conclusion of Law

The complaint should be dismissed.

ORDER

IT IS ORDERED that:

1. Nahum Zilberberg's complaint against Pacific Gas and Electric Company, Case (C.) 91-03-055, is dismissed.

2. The proceeding in C.91-03-055 is closed.

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