

FEB 5 1992

Decision 92-02-021 February 5, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

STERLING RILEY and DARKES RILEY, )

Complainants, )

vs. )

PACIFIC POWER & LIGHT CO., )

Defendant. )  
(U 901 E)

ORIGINAL

Case 91-08-059  
(Filed August 28, 1991)

O P I N I O N

1. Summary

This complaint seeks damages for an alleged wrongful disconnection of power for nonpayment. Defendant's motion to dismiss, on the basis of res judicata and lack of jurisdiction to award the general damages sought, is granted.

2. Background

Sterling E. Riley and Darkes Riley (complainants) of Project City operated a potato farm and processing shed in which they raised, cleaned, sorted, and stored potatoes. Complainants allege that in June 1988, defendant Pacific Power & Light Co. (Pacific) wrongfully disconnected their power. Complainants allege that, without power to cool the packing plant, both their 1988 and 1989 crops were ruined and, as a result, the farm was lost. Complainants allege that Pacific violated an implied agreement not to press for payment until crops were harvested and sold. The complaint seeks "damage[s] from [Pacific's] wrongful treatment of us, which is the los[s] of our crop for 1987, 1988, 1989, 1990, 1991."

Pacific denies any wrongdoing and denies that it had agreed to postpone collections until crops were sold. In its

answer, Pacific states that complainants have a history of delinquencies, and that in 1988 the account became delinquent in the amount of \$5,424.12. After notice of disconnection, the power to the complainants' processing shed and potato cellar was disconnected for nonpayment on April 5, 1988. Pacific states that on April 27, 1988, its area manager agreed that power would be restored if complainants would pay \$3,000 of the amount due and agree to pay the balance, plus a \$15 reconnection charge, within 30 days. Complainants paid the \$3,000 and power was reconnected on or about April 28, 1988. Pacific alleges that the balance of the payment was not made in 30 days and that, following notice of disconnection on May 25, 1988, complainants' power again was disconnected on June 21, 1988.

On October 18, 1991, hearing on this complaint was set for December 6, 1991, in Redding. On October 30, 1991, Pacific moved for a continuance to January 17, 1992, because of prior commitments by its attorney. Complainant Darkes Riley, in a telephone call to the assigned Administrative Law Judge, objected to a continuance on grounds that she now is located in another state and had purchased a restricted airline ticket for the December 6 hearing. On November 14, 1991, the motion for a continuance was denied. On December 2, 1991, complainant Darkes Riley telephoned the Office of the Calendar Clerk to request cancellation of the December 6 hearing and an indefinite continuance on grounds of illness. Accordingly, the hearing scheduled for December 6, 1991, was cancelled.<sup>1</sup>

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<sup>1</sup> On December 23, 1991, Darkes Riley called the Commission and left a telephone message that her husband had died following a long illness and that she intends to return to California some time in 1992. While our policy is to seek to accommodate a pro se complainant, we see no merit in further postponing our decision in this case, especially since there has been no response to defendant's motion to dismiss.

### 3. Motion to Dismiss

On or about November 15, 1991, Pacific submitted a motion to dismiss the complaint on grounds that: (1) the complaint is barred by the doctrine of res judicata in that the complaint raises the same issues previously determined in Pacific's favor in Siskiyou County Superior Court Action No. 42423 and (2) the Commission lacks jurisdiction to award the general damages sought by the complainants. Both grounds for dismissal had been raised earlier in Pacific's answer, as amended. Under Rule 42 of the Rules of Practice and Procedure, complainants were entitled to respond to the motion to dismiss within 15 days. Complainants have filed no response.

### 4. Discussion

#### 4.1 Res Judicata

On or about April 5, 1989, complainants filed a Complaint for Damages in the Superior Court of the State of California for the County of Siskiyou. A copy of the complaint is attached to Pacific's motion to dismiss. Summary judgment was granted to Pacific on March 5, 1991. Judgment was granted on the basis of the court's findings (also attached as an exhibit to Pacific's motion to dismiss) that:

- "1. Defendant discontinued plaintiffs' power for nonpayment in accordance with defendant's tariff Rule 11B. (Declaration of Brian Teague; Declaration of Isadore Lefebvre; Rule 11B.)
- "2. Defendant did not breach an agreement with plaintiffs in discontinuing plaintiffs' power. (Declaration of Isadore Lefebvre; Declaration of Daniel S. Frost; Darkes Riley August 11, 1990, deposition transcript, page 17 line 17, through page 38 line 19.)
- "3. If plaintiffs contended in June of 1988 that their power bill was not past due, they failed to exhaust their administrative remedies under defendant's tariff Rule 11C.

(Declaration of Isadore Lefebvre, paragraph 12.)<sup>2</sup>

Under the doctrine of res judicata, where a subsequent cause of action is between the same parties, on the same cause of action, with the same quality of representation, a prior judgment on the merits operates as a bar to the second action. (Judgments, 40 Cal.Jur.3d § 229; Zimmerman v. Stotter (1984) 160 Cal.App.3d 1067, 1073.) Where a party has previously lost a case in state court, the Commission has applied res judicata to bar a subsequent action seeking the same remedy from the Commission. (Taylor v. Pacific Gas and Electric Co. (1958) 22 PUR 3d 318; see also, Parts Locator, Inc. v. PT&T (1982) 9 CPUC 2d 283.) In Flowers v. Pacific Gas and Electric Co. (1990) 37 CPUC 2d 2, we stated:

"[I]dential claims for refund of charges during shutoff periods were brought before the small claims court. The Commission should not relitigate them here. Complainant chose to take the claim to another forum, whose judgment is conclusive on this issue."

We have examined complainants' cause of action in the Superior Court and find that it is virtually identical in its allegations to the complaint filed here. There are identical parties and identical claims. The remedy sought (general damages) is the same. Complainants were represented by an attorney in the court action. Complainants have offered us no reason why the matters resolved in Superior Court should be relitigated here. We agree that the claim before us is barred by res judicata.

#### 4.2 Recovery of Damages

In their prayer for relief, complainants ask damages for the loss of their crops for the years 1987 through 1991. In the

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<sup>2</sup> See Findings in Support of Order Granting Summary Judgment, Case No. 42423, Superior Court, County of Siskiyou, Exhibit C to Declaration of Daniel S. Frost in Support of Motion to Dismiss.

body of their complaint, complainants also seek compensatory and exemplary damages for their loss of business and mental anguish. Pacific argues that the Commission does not have jurisdiction to award damages of this nature, and that, therefore, the complaint should be dismissed. (Mak v. PT&T Co. (1971) 72 CPUC 735; Vila v. Tahoe South Side Water Utility (1965) 233 Cal.App.2d 469.)

While the Commission has broad authority in fashioning relief where it finds that a public utility is in violation of any provision of law or of any order or rule of the Commission,<sup>3</sup> its statutory authority to make a monetary award to a complainant is for the most part limited to reparations.<sup>4</sup> Complainants here do not seek reparation, nor do they allege that the rates charged by the utility were unreasonable or in violation of any law or Commission order. The gravamen of their complaint is that the utility breached an implied agreement not to enforce collection of amounts owed until the complainants had sold their crops. We are not authorized to award the compensatory or exemplary damages embodied in a complaint of that nature.

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3 The Commission is empowered to enforce its orders by suit (Public Utilities (PU) Code § 2102), by mandamus or injunction (PU Code § 2102); it also has power to impose fines (PU Code § 2100) and recover them by an action (PU Code § 2104), and to punish for contempt (PU Code § 2112). Actions for damages, however, must be brought in a court of competent jurisdiction (PU Code § 2106).

4 PU Code § 734 states: "When complaint has been made to the commission concerning any rate for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection..." See also, Parts Locator, Inc. v. PT&T Co. (1982) 9 CPUC 2d 283, where the Commission concluded that there was basis in equity for granting complainant a degree of reparation.

#### 4.3 Other Matters

Because we agree with Pacific that this complaint is barred by res judicata, and that the relief requested is beyond the capacity of the Commission to grant, it is not necessary for us to address other jurisdictional issues not raised by the parties. We note, however, that the complaint on its face appears to be untimely both under PU Code § 734 (two-year statute of limitations for rate complaints) and PU Code § 736 (three-year statute of limitations on discrimination complaints). Moreover, were we to go forward, complainants would be obligated to state specifically the "act or thing done or omitted to be done...claimed to be in violation of any provision of law or of any order or rule of the Commission" (PU Code § 1702) in order to state a cause of action for which relief can be granted by this Commission.

#### 5. Conclusion

For the reasons stated, Pacific's motion to dismiss is granted.

#### Findings of Fact

1. Complainants operated a potato farm and processing shed in or near Project City.
2. In June 1988, Pacific disconnected power to complainants' processing shed and potato cellar for nonpayment of power bills.
3. Complainants had paid approximately \$3,000, or about half, of the amount owed to Pacific before the power was disconnected in June 1988.
4. Complainants did not pay the balance of the amount owed to Pacific before the power was disconnected in June 1988.
5. Complainants on or about April 5, 1989, filed a Complaint for Damages, Case No. 42423, against Pacific in the Superior Court of the State of California for the County of Siskiyou.
6. An order granting Pacific's motion for summary judgment and judgment for Pacific was entered in Superior Court Case No. 42423 on March 5, 1991.

7. The Superior Court's Findings in Support of Order Granting Summary Judgment in Case No. 42423 were entered on March 19, 1991.

8. Complainants filed a complaint against Pacific, Case 91-08-059, with the Commission on August 28, 1991.

9. Pacific on or about November 15, 1991, filed a motion to dismiss Case 91-08-059 on grounds that the complaint is barred by the doctrine of res judicata and that the Commission lacks jurisdiction to award the general damages sought in the complaint.

10. Complainants have not responded to Pacific's motion to dismiss.

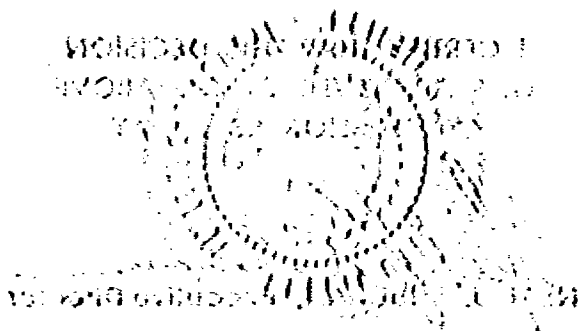
Conclusions of Law

1. Complainants' cause of action before the Superior Court for the County of Siskiyou is essentially identical to the cause of action filed before the Commission.

2. The cause of action before the Commission involves the same parties and the same allegations as those before the Superior Court for the County of Siskiyou.

3. The doctrine of res judicata should apply to the cause of action alleged in this case.

4. The Commission does not have jurisdiction to award compensatory or exemplary damages on a cause of action alleging breach of implied contract.



O R D E R

IT IS ORDERED that the motion of Pacific Power & Light Co. to dismiss this complaint is granted. Case 91-08-059 is closed.

This order becomes effective 30 days from today.  
Dated February 5, 1992, at San Francisco, California.

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

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

  
NEAL J. SHULMAN, Executive Director