

SEP 3 1992

Decision 92-09-027 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Kye S. & Hong J. Chung,

Complainants,

vs.

Southern California Gas Co.,

Defendant.

Case 91-09-047
(Filed September 19, 1991)OPINION

Kye Soon Chung and Hong Ja Chung (complainants) filed this complaint on September 19, 1991. The complaint alleges that from January 1984 to August 1987 there was a gas smell in the kitchen area at their place of business located at 317 S. Broadway, Los Angeles, California.

The complaint also alleges that on numerous occasions complainants contacted defendant requesting that defendant survey the premises to find and repair gas leaks. Defendant's personnel detected and repaired some leaks on a stove but did not detect a leaky gas line which was repaired by a plumber who completed his work on August 16, 1987.

Complainants request that defendant refund to complainants \$20,178.00 which complainants claim is the amount paid to defendant because of the leak. The \$20,708 was calculated by complainants as follows:

Gas Leak charges	\$13,803	(\$321 x 43 months),
Interest	5,521	(\$13,803 x 10% x 4 years)
Gas Tax	854	(\$13,803 x 6%)

The \$321 per month was arrived at by subtracting the monthly gas bill of \$200 per month after the repair of the leak from the monthly gas bill of \$531 per month before the repair of the leak.

On November 18, 1991, defendant filed its answer wherein it raised the following affirmative defenses:

1. Complainants have failed to allege that defendant has charged an unlawful rate or otherwise violated any order or rule of the Commission;
2. Complainants have failed to allege that their meters measured inaccurately, that their meters were incorrectly read or that they were billed at an unlawful rate under current tariffs filed with and approved by the Commission at any time material herein;
3. Complainants' claim is barred under Section 736 of the Public Utilities Code and/or any and all other statutes of limitations which are later found to be applicable herein;
4. Pursuant to General Order 58-A and defendant's Tariff Rule 26, defendant has no duty downstream of the meter where the leaks at issue under complainants' complaint allegedly existed; and
5. Complainants have failed to comply with their duty to mitigate the damages complained of herein.

Public hearing was held before Administrative Law Judge O'Leary on March 26 and May 13, 1992 at Los Angeles. The matter was submitted with the filing of the complete transcript on June 5, 1992.

Complainants did not appear at the March 26 hearing because they did not receive notice of the hearing. At the May 13 hearing, Kye Soon Chung reiterated the allegations contained in the complaint and adopted the text of the complaint as his direct examination.

During cross-examination Kye Soon Chung testified that prior to filing the complaint, he attempted to resolve the matter informally through the Consumers Affairs Branch (CAB). By letter,

dated November 14, 1988, CAB advised complainants that the matter could not be resolved informally.

The instant complaint was filed on September 19, 1991. No written claim was filed with the defendant or any other entity prior to the date the complaint was filed.

On February 5, 1992 defendant filed a motion to dismiss on the grounds that the complaint is barred under the statute of limitations set forth in Public Utilities Code § 736.

Section 736 provides:

"All complaints for damages resulting from the violation of any of the provisions of Sections 494 or 532 shall either be filed with the commission, or, where concurrent jurisdiction of the cause of action is vested in the courts of this state, in any court of competent jurisdiction within three years from the time the cause of action accrues, and not after. If claim for the asserted damages has been presented in writing to the public utility concerned within the period of three years, the period shall be extended to include six months from the date notice in writing is given by the public utility to the claimant of the disallowance of the claim, or of any part or parts thereof specified in the notice.

"Whenever the commission institutes an investigation of unauthorized undercharge by any public utility, the institution of the investigation by the commission shall toll the three-year period specified in this section until the commission has rendered its initial decision on the matter. The commission shall render its final decision within two years of the date of the order instituting the investigation."

The matter complained of occurred between January 1984 and August 16, 1987. Since no claim was presented in writing to defendant by August 15, 1990 the time for the filing of a complaint expired August 15, 1990. The instant complaint, not having been

filed within the time limit prescribed by Section 736 of the Public Utilities Code, must be denied.

Findings of Fact

1. Complainants request defendant to refund monies as a result of a gas leak at the premises at 317 S. Broadway, Los Angeles, California.
2. Complainants attempted to resolve the dispute informally through the Commission's CAB processes.
3. By letter, dated November 14, 1988, CAB advised complainants that the matter could not be resolved informally.
4. The instant complaint was filed over four years after the incident occurred.

Conclusions of Law

1. The complaint is barred under Section 736 of the Public Utilities Code.
2. The relief sought should be denied.

ORDER

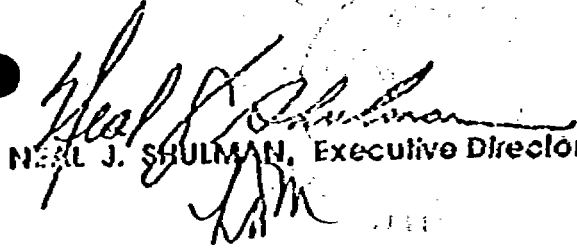
IT IS ORDERED that the relief sought by complainants is denied.

This order becomes effective 30 days from today.
Dated September 2, 1992, at San Francisco, California.

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

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEIL J. SHULMAN, Executive Director