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Decision 83 05 062 MAY 18 1983

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Robbie Canter and Randolph Menna,<br><br>Complainants,<br><br>vs.<br><br>San Diego Gas & Electric Company,<br><br>Defendant. | Case 82-11-07<br>(Filed November 26, 1982) |

Thomas F. Homann, Attorney at Law, for Randolph Menna and Robbie Canter, complainants.
Maya Sanchez, Attorney at Law, for San Diego Gas & Electric Company, defendant.

# O P I N I O N

## Summary of Complaint

Robbie Canter and Randolph Menna (complainants) leased a premises in early 1982 on Highland Avenue in National City (City) to operate a "video exchange, selling video tapes and books and novelties" (Tr. 3). In June 1982, City issued a permit for electric work at the premises. At the end of June complainants were notified by the City that the structure was in compliance with applicable City safety codes. It came to the City's attention in July that "video booths" (for individually viewing films) were going to be

installed. This activity was not, in the City's opinion, covered by the earlier permit and inspection. San Diego Gas & Electric Company (SDG&E) was asked by the City to terminate complainants' electric service under its Tariff Rule 11-B.[1] The City's request (Exhibit 2) stated as its reason for asking SDG&E to terminate service: "unknown work done to structure without permits, may have involved electrical work - electrical equipment installed without permits. Potentially dangerous to life and property." SDG&E terminated service some time between August 13 and 17. Thereafter, a contractor, on behalf of complainants, applied to the City for a permit to install electric circuits for the video projectors. A permit was not issued. The City indicated that from the signs on the complainants' structure it was clear that the premises were going to be used to offer adult entertainment in violation of City ordinances prohibiting such business in the locality. On October 2, 1982, the Superior Court issued a preliminary injunction against opening the business in violation of City ordinances. That injunction has been appealed.

Complainants contend that SDG&E had no legal basis to terminate their service and, further, that they were denied due process because "no independent tribunal made any determination of

[1] SDG&E's Tariff Rule 11-B, "unsafe equipment", provides: "The utility may refuse or discontinue service to a customer if any part of his wiring or other equipment, or the use thereof, shall be determined by the utility to be unsafe or in violation of applicable laws, ordinances, rules or regulations of public authorities, or if any condition existing upon the customer's premises shall be thus determined to endanger the utility's service facilities, until it shall have been put in a safe condition or the violation remedied."

probable cause to terminate electric power prior to termination of the service" (complaint, page 2). Also, they contend SDG&E did not abide by its Rule 11-B because SDG&E relied on the City's determination that a potentially hazardous condition existed, rather than independently inspecting and deciding whether it would be hazardous to connect service. Essentially, complainants contend that SDG&E's Rule 11-B, and the manner in which it was applied, was really a means of assisting the City with enforcing a zoning ordinance unrelated to public safety. The relief they request is the restoration of electric service. We note from the complainants' recent letter of April 14, inquiring about the status of this proceeding, that as of that date service had not been restored.

SDG&E admits, in its answer to the complaint, that it disconnected complainants' service without any prior notice to them. As defenses, it states: (1) that under Rule 11-B it must terminate service if a customer's wiring or other equipment is unsafe or in violation of applicable laws, ordinances, rules, or regulations of public authorities; (2) it terminated service after notification from the City's Department of Building and Safety; and (3) the procedure followed is consistent with due process guarantees.

The issues we must address are: (1) is Rule 11-B constitutional; and (2) if Rule 11-B is constitutional, did SDG&E discharge its obligation in administering it.

Procedural History

A public hearing was held in San Diego on January 12, 1983. Seven exhibits were received. Opening and reply briefs were filed. Appendix A sets out the sequence of events in detail.

Discussion

Complainants contend that the termination of electric service should be subject to the same procedures which apply when telephone service is disconnected for cause. They cite Goldin v PUC (1979) 23 C 3d 638 at length; that decision addressed the procedural

due process required before telephone service can be disconnected for allegedly unlawful use. It held that an order of probable cause (supported by affidavits) must be obtained from a magistrate before service can be terminated, followed by a post-termination hearing before this Commission (if the disconnected subscriber files a complaint seeking the restoration of service).

We believe the procedural steps which must be followed before communications service can be disconnected for unlawful or illegal activity involving the use of the telephone network are not required when electric service is to be terminated under Rule 11-B. The requirements set out by the Goldin decision (supra), and upon which complainants rely, do not per se attach to all forms of utility service and in all circumstances of service termination.

Rule 11-B addresses protecting life and property from direct and imminent harm due to hazardous conditions. If there is utility service to a premises where conditions beyond the meter[2] are potentially unsafe, the utility, if it knows of the hazardous condition, can be exposed to liability if it does not act. Electrical current and equipment can pose a grave hazard to life and property if wiring is unsafe or if it is used unsafely. And while this Commission carefully sets standards for the facilities electric utilities build and use to distribute electricity, local governmental entities enact detailed building codes covering premises wiring and electricity use to protect life and property. Thus, there are two jurisdictional levels regulating to protect public safety in getting electricity from the point of generation to the customer's point of end use: we regulate electric utilities, whose facilities cross many

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[2] Ordinarily the meter is the last point at which an electric utility maintains facilities; from that point on (often called premises wiring) the customer is responsible for ensuring that electric facilities are safe. Local building codes and safety ordinances set the standards which the customer's premises wiring must meet.

county and city boundaries, to the point of the customer's connection; and local government sets and administers the safety standards for premises distribution and use. However, this does not mean we expect the electric utilities we regulate to ignore what goes on past its point of connection with the customer's premises.

Rule 11-B clearly states that SDG&E shall not furnish electricity if conditions beyond its point of connection with the customer's premises are hazardous. Complainants contend SDG&E must always and as a matter of course physically investigate and find conditions hazardous before terminating service. We disagree. If SDG&E's employees observe or otherwise have knowledge of potentially hazardous conditions, it should evaluate the situation and act. Likewise, it must act when it receives unequivocal notice from the responsible local governmental agency that potentially hazardous conditions exist. When an electric utility receives notice from the responsible public agency requesting termination of service (or a request not to connect service), it must abide by the expertise and judgment of the agency. Otherwise electric utilities would be second guessing the directly responsible governmental agency; the result would be governmental disorder. And, carried to the extreme, it would mean electric utilities would be the point of first review when a customer thought the local agency acted unreasonably (there are, of course, remedies available through the courts if an affected member of the public believes a local agency is acting arbitrarily or unreasonably).

We think it is important to keep in mind the nature of the public hazard Rule 11-B addresses and the regulatory role of local agencies vis-a-vis public utilities and/or this Commission. Quick action must be taken if a potential hazard exists. Electricity can be extremely dangerous - even fatal. There simply must be a high degree of cooperation and reliance between electric utilities and local agencies regulating the safety of premises wiring and end use.

The public interest protected by the telephone utilities' Rule 31 is to thwart criminal activity, and, particularly criminal activity of a prolonged nature where the telephone network is repeatedly used. While criminal activity can certainly jeopardize life and property, the crimes involving repeated telephone use ordinarily do not pose immediate bodily harm. For example, if a murder threat was made over the telephone network, the police would probably not invoke Rule 31 to terminate the caller's telephone service as a first course of action. However, when the public is exposed to the immediate threat of a hazardous electrical condition, a condition which can be just as life threatening as it can appear benign to the unsuspecting, immediate remedial action is critical. Possible criminal activity which repeatedly relies upon the use of the telephone, or any utility service for that matter, should logically be dealt with at the outset through the criminal justice process and with its safeguards; under those circumstances service should not be terminated absent a magistrate's finding of probable cause. On the other hand, a hazard posed by a potentially unsafe electrical condition is not initially dealt with through the criminal justice process because the codes, ordinances, and standards are civil and jurisdictionally under the auspices of those expert with the subject matter (e.g., local building safety departments).

We find that Rule 11-B protects a vital public interest. While the rule needs some clarification to amplify the electric utility's role vis-a-vis local agencies and this Commission, we find its application in the case before us did not violate due process. We will address the needed clarification later in this opinion.

A final point is a customer's rights and remedies when Rule 11-B is applied. SDG&E would have reconnected service if it received notice from the City that the potentially hazardous condition on the complainants' business premises had been abated. The complainants' real dispute, as the circumstances of this matter unfolded, is with the City - either its Building and Safety Department and/or the zoning agency. As such, the complainants could have pursued relief from the local courts. There could be instances where a customer may file a complaint with this Commission seeking to compel an electric utility to connect service when Rule 11-B has been applied. Those are instances, which we think are relatively infrequent, where the utility applies Rule 11-B on its own with no impetus or input from the city or county agency responsible for premises wiring and/or end use of electricity. In such cases the customer may pursue remedies in this forum if it thinks the utility's application of Rule 11-B is unreasonable.

Rule 11-B Clarification

We think Rule 11-B should contain some amplification and clarification so that an affected customer can better know of his options and rights.

Rule 11-B should provide, at the time power is terminated, that a highly visible written notice shall be placed on the meter and/or delivered to the occupant of the premises, explaining that service was discontinued under Rule 11-B and giving the specific reason. Also, the rule should provide that within 24 hours of service termination, notice will be sent by certified mail to the customer at the address to which billing is made.

Rule 11-B should also clearly explain that if the utility receives a request from the responsible local governmental agency in charge of building and public safety to terminate or not connect

service, the utility will terminate or not connect service until it receives indication that the premises meets applicable safety standards; and when the utility receives such a request the customer should resolve the matter with the local agency. Likewise, the notice should explain that the customer may seek remedies before this Commission if service is terminated solely because of the utility's own investigation and determination that premises wiring is unsafe.

We think these changes to Rule 11 should be adopted by all electric utilities; the substance of SDG&E's Rule 11-B is in the tariffs of all electric utilities we regulate. Accordingly, we will order SDG&E to make an advice letter filing with these modifications to its Rule 11-B for our review and approval. It should coordinate with the other electric utilities, so that what we ultimately approve as changes to SDG&E's Rule 11-B can be uniformly applied to the other utilities through tariff filings for their respective tariffs. Ninety days is, we think, ample time for SDG&E to make such an advice letter filing.

Findings of Fact

1. Complainants were commercial customers of SDG&E.

2. Complainants' electric service was terminated by SDG&E under its Rule 11-B after it received notice from the City that their premises was potentially dangerous to life and property if SDG&E continued to supply electricity: City requested the termination of service.

3. SDG&E's Rule 11-B does not require notice of service termination to the affected customer.

4. Electricity can pose an imminent hazard to public safety if it is supplied to a premises or location having wiring or facilities not in compliance with building and safety codes dealing with wiring and use standards.

Conclusions of Law

1. This Commission regulates electric utilities to ensure their facilities are safe to the point of connection with a customer's wiring; however, local governmental agencies set standards and administer them to ensure premises wiring and electricity use is safe.

2. It is reasonable to allow electric utilities to terminate a customer's electric service without a hearing when the termination is made to protect the public from hazardous electrical conditions.

3. This Commission is not empowered, nor are electric utilities, to review determinations on building and safety code violations (and the extent to which violations pose a hazard) reached by local governmental agencies charged with enforcing such codes.

4. SDG&E's Rule 11-B should be modified so terminated customers are informed of the termination and the reason.

5. SDG&E's termination of complainants' service, and refusal to reconnect it until the City verified that the premises wiring was safe, were lawful and reasonable; the relief requested should be denied.

O R D E R

IT IS ORDERED that:

1. The relief requested is denied.

2. San Diego Gas & Electric Company (SDG&E) shall, within 60 days after the effective date of this order, make an advice letter tariff filing proposing a modified Rule 11-B which:

   a. Provides that when service is terminated, a conspicuous notice of the termination, and the reason, shall be either placed on the meter or given to the occupant at the premises; and within 24 hours of service termination, a notice shall be sent by certified mail to the person responsible for bill payment.

b. Explains that if service is terminated because of a request from a responsible local public safety agency, it will not be reconnected until that agency verifies that conditions are safe.

The proposed modification to Rule 11-B must be reviewed and approved by this Commission before becoming effective.

This order becomes effective 30 days from today.
Dated MAY 18 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
PRISCILLA C. GREW
DONALD VIAL
Commissioners

I dissent.
VICTOR CALVO, Commissioner

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

Joseph E. Bodovitz, Executive Director

## SEQUENTIAL SUMMARY OF EVENTS

Following is a summary of the facts and events relating to the complaint based on the testimony and exhibits presented at the hearing:

1. Early in 1982 complainants leased the premises at 1515 Highland Avenue in National City.
2. On June 10, 1982 the City issued an electrical permit to restore the grounding to the electrical system at complainants' premises. The work was performed and inspected on June 10, 1982.
3. On June 28, 1982 the City's Superintendent of Building and Safety sent a letter to counsel for complainants stating that the structure was in compliance with the fire and life safety codes enforced by his department.
4. In July and August of 1982 City building inspectors observed work occurring on complainants' premises. The City attempted to notify the people doing the work that it was in violation of city law to perform such work without a permit.
5. On August 13, 1982 Mr. Wilczak, Superintendent of Building and Safety, visited the premises and saw booths with video screens that had electrical cords running from them. Wilczak went back to the office to verify that no application had been filed with his department for installation of such booths and their electrical connections. No permit had been issued for such work. Wilczak observed electrical cords running from the booths

containing video screens, but could not say whether the machines were plugged in or not, nor whether any electrical work had actually been done.

6. Later, on August 13, 1982 Wilczak telephoned Mr. Barajas, service planner for SDG&E, and requested that electrical service to the premises be terminated since work had been done without permits. Barajas requested that a written request to discontinue service be provided to back up the oral request. Based on the City's finding of hazardous conditions, Barajas ordered service terminated on Friday, August 13, 1982. Complainants testified that the dates of service discontinuance were August 16 and 19, however, the record would support the August 13 and 16 dates testified to by SDG&E.

7. Electric service to complainants' premises was accidentally reinstated during the following weekend, and then discontinued again on Monday, August 16, when the City called asking SDG&E why the service had been reinstated.

8. On Monday, August 16, 1982, Barajas received the mailed written request from the City. The substantiation stated: "Unknown work done to structure without permits, may have involved electrical work--electrical equipment installed without permits. Potentially dangerous to life and property." (Exhibit 2.)

9. On August 17, 1982 Barajas sent a letter to Mr. Menna notifying him that SDG&E was discontinuing service to the building after notification from the City that an unsafe electrical condition existed. He cited City Ordinance #1587, Section 203 and SDG&E Tariff Rule 11-B as justification for SDG&E's action. Although the letter was sent to the service address, complainants deny receiving the letter. SDG&E stated that the letter notifying of the termination of service was a courtesy, and not required under its Rule 11-B.

10. Barajas testified that on August 16, 1982, on advice of SDG&E's Legal Department, he called complainants' counsel to advise him that SDG&E would restore service if the work was done after a city permit was obtained and work passed inspection. He also offered to meet with counsel and a City representative at the premises to make a determination so the City might notify SDG&E to reinstate service. The offer for a three-way meeting was rejected by complainants' counsel. SDG&E refused to agree to a two-party meeting between only counsel for complainants and SDG&E (since it was not an inspection agency).

11. On August 31, 1982 an application to install electric circuits for projectors was filed by a contractor. On September 1, 1982 the contractor was informed by the City that the permit could not be issued because the proposed use of the building was not permitted in this zone.

12. On September 7, 1982 a letter was sent to complainants' counsel from Wilczak indicating that the owner of the property had clearly identified the building as being a proposed adult entertainment facility by recently painting signs advertising adult books and movies, and that City Ordinance #1771 prohibits new adult entertainment establishments from locating in the commercial central business district zone. The letter also makes reference to City Ordinance #1770 which prohibits viewing rooms in conjunction with establishments that sell or rent prerecorded video tapes, movies, transparencies, films, projectable motion pictures, or equipment used for showing such items.

13. On January 7, 1983 Wilczak sent a letter to SDG&E responding to a request for verification of the disconnect order by SDG&E's Legal Department. The letter states that the status of the building had not changed since the previous disconnect order was issued. The letter further states that

"On October 7, 1982 a preliminary injunction was issued by the Superior Court forbidding the property owners from opening their business in violation of city laws." A disconnect order dated January 7, 1983 was attached to the letter to validate the discontinuance of electrical power.

(END OF APPENDIX A)

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D.83-05-062

VICTOR CALVO, Commissioner, I dissent:

I am concerned that the utility's unquestioned deference to a city's determination that electric service to a customer should be disconnected can lead to abuse.

In this particular case the facts indicate that the city rescinded an electric permit granted earlier to complainants at their place of business after the city learned that complainants planned to use electrical equipment different from that for which the city had issued a permit. In the city's view, the planned equipment created electrical hazards. Upon the city's request, San Diego Gas and Electric Company (SDG&E) terminated electric service to complainants.

Shortly thereafter a contractor on behalf of complainants applied for a second electric permit to install the planned electric equipment. The city, however, denied the permit on the basis that complainants' business did not conform to the city's zoning laws. SDG&E did not reinstate service.

From these facts it appears that the city has successfully enforced its zoning laws by using the electric utility to discontinue service to a customer allegedly in violation of those laws.

In related cases, this Commission has required Pacific Telephone Company (PT&T) to install telephone service to residents of a houseboat community, notwithstanding efforts by the county and the landlord of the community to evict these residents by denying them utility service.

I believe strongly that the Commission should ensure that utilities are not used by cities, counties, landlords, or other parties to enforce laws not directly related to the provision of utility service. Those laws should properly be enforced by the courts, not by this Commission through its regulation of public utilities.

Victor Calvo

VICTOR CALVO, Commissioner

May 18, 1983
San Francisco, California

installed. This activity was not, in the City's opinion, covered by the earlier permit and inspection. San Diego Gas & Electric Company (SDG&E) was asked by the City to terminate complainants' electric service under its Tariff Rule 11-B.[1] The City's request (Exhibit 2) stated as its reason for asking SDG&E to terminate service: "unknown work done to structure without permits, may have involved electrical work - electrical equipment installed without permits. Potentially dangerous to life and property." SDG&E terminated service some time between August 13 and 17. Thereafter, a contractor, on behalf of complainants, applied to the City for a permit to install electric circuits for the video projectors. A permit was not issued. The City indicated that from the signs on the complainants' structure it was clear that the premises ~~was~~ were going to be used to offer adult entertainment in violation of City ordinances prohibiting such business in the locality. On October 2, 1982, the Superior Court issued a preliminary injunction against opening the business in violation of City ordinances. That injunction has been appealed.

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We find that Rule 11-B protects a vital public interest. While the rule needs some clarification to amplify the electric utility's role vis-a-vis local agencies and this Commission, we find its application in the case before us did not ~~materially~~ violate due process. We will address the needed clarification later in this opinion.

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Rule 11-B Clarification

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Rule 11-B should provide, at the time power is terminated, that a highly visible written notice shall be placed on the meter and/or delivered to the occupant of the premises, explaining that service was discontinued under Rule 11-B and giving the specific reason. Also, the rule should provide that within 24 hours, notice will be sent by certified mail to the customer at the address to which billing is made.

Rule 11-B should also clearly explain that if the utility receives a request from the responsible local governmental agency in charge of building and public safety to terminate or not connect

service, the utility will terminate or not connect service until it receives indication that the premises meets applicable safety standards; and when the utility receives such a request the customer should resolve the matter with the local agency. Likewise, it should explain that the customer may seek remedies before this Commission if service is terminated solely because of the utility's own investigation and determination that premises wiring is unsafe.

We think these changes to Rule 11 should be adopted by all electric utilities; the substance of SDG&E's Rule 11-B is in the tariffs of all electric utilities we regulate. Accordingly, we will order SDG&E to make an advice letter filing with these modifications to its Rule 11-B for our review and approval. It should coordinate with the other electric utilities, so that what we ultimately approve as changes to SDG&E's Rule 11-B can be uniformly applied to the other utilities through tariff filings for their respective tariffs. Ninety days is, we think, ample time for SDG&E to make such an advice letter filing.

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2. Complainants' electric service was terminated by SDG&E under its Rule 11-B after it received notice from the City that their premises was potentially dangerous to life and property if SDG&E continued to supply electricity; City requested the termination of service.

3. SDG&E's Rule 11-B does not require notice of service termination to the affected customer.

4. Electricity can pose an imminent hazard to public safety if it is supplied to a premises or location having wiring or facilities not in compliance with building and safety codes dealing with wiring and use standards.

Conclusions of Law

1. This Commission regulates electric utilities to ensure their facilities are safe to the point of connection with a customer's wiring; however, local governmental agencies set standards and administer them to ensure premises wiring and electricity use is safe.

2. It is reasonable to allow electric utilities to terminate a customer's electric service without a hearing when the termination is made to protect the public from hazardous electrical conditions.

3. This Commission is not empowered, nor are electric utilities, to review determinations on building and safety code violations (and the extent to which violations pose a hazard) reached by local governmental agencies charged with enforcing such codes.

4. SDG&E's Rule 11-B should be modified so terminated customers are informed of the termination and the reason.

5. SDG&E's termination of complainants' service, and refusal to reconnect it until the City verified that the premises wiring ~~was~~ were safe, was lawful and reasonable; the relief requested should be denied.

SS

ORDER

IT IS ORDERED that:

1. The relief requested is denied.

2. San Diego Gas & Electric Company (SDG&E) shall, within 60 days after the effective date of this order, make an advice letter tariff filing proposing a modified Rule 11-B which:

a. Provides that when service is terminated, a conspicuous notice of the termination, and the reason, shall be either placed on the meter or given to the occupant at the premises; and within 24 hours of the termination, a notice shall be sent by certified mail to the person responsible for bill payment.