

Decision 83 06 086

JUN 29 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ethel Dotson,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 83-01-02
(Filed January 7, 1983)

Ralph McClain and Ethel Dotson, for complainant.
A. Kirk McKenzie, for defendant.

O P I N I O N

Complainant, Ethel Dotson, requests an order directing defendant, Pacific Gas and Electric Company (PG&E), not to terminate her electric and gas service. Complainant alleges that this Commission and PG&E are not complying with § 115(g) of the Public Utility Regulatory Policies Act of 1978 (PURPA) 16 U.S.C. § 2625(g). Complainant further alleges that she is disabled and ill, is unable to pay, and needs her utilities for life-sustaining purposes.

Public hearing was held before Administrative Law Judge (ALJ) Frank J. O'Leary on the afternoons of February 25, and February 28, 1983. At the conclusion of the hearing on February 28, complainant made a request to present rebuttal evidence. The ALJ directed complainant to file a pleading by March 21, 1983, indicating the evidence of PG&E to be rebutted. The pleading was timely filed with the ALJ but not the Docket Office. The pleading is received as Exhibit 9. Upon review of this pleading, the request to present rebuttal evidence was denied by ALJ Ruling dated April 27, 1983. The ALJ Ruling provided for the filing of concurrent written closing statements no later than May 12, 1983. A closing statement was timely filed by PG&E. Complainant did not file a closing statement.

Complainant resides in a building which she owns located at 396 South Street, Richmond. The building consists of an upper and lower flat separately metered as PG&E accounts CJT 06 53915 and CJT 06 54016, respectively. Complainant resides in the upper flat. It is not clear from the record what the lower flat is used for. A representative of PG&E observed the premises about November 3, 1981, and noted that the lower flat appeared to be used as an office. Utility service for the lower flat was billed at the commercial rate. The lower flat was changed to the residential rate at a later date based upon a subsequent utility observation that the lower flat did not appear to be used as an office. Exhibits 7 and 8 are PG&E's statements of accounts for the upper and lower flats, respectively. Exhibit 7 discloses a balance due of \$542.63 as of January 4, 1983. Exhibit 8 discloses a balance due of \$741.76 as of August 27, 1982. Exhibit 8 indicates that the electric meter has not been read since August 27, 1982. The statement further indicates that complainant's gas meter for the lower flat was removed on that date.

On April 5, 1982, complainant entered into a written agreement (Exhibit 1) with PG&E in which she agreed to pay her past due accounts as follows: \$50 on April 15, 1982, and four payments of \$73, in addition to current billings payable on the 15th day of May, June, July, and August 1982. The signed agreement contains the following language:

"Should I not keep this agreement, I understand my GAS and/or ELECTRIC service will be terminated without further notice, and restored only after total bill is paid."

Subsequently, on or about April 7, 1982, complainant entered into an oral agreement to pay her past due bills in ten monthly installments and pay current bills as they become due. On or about April 28, 1982, complainant paid \$50. On or about July 28, 1982, \$200 was paid on behalf of complainant as a result of the Low Income Energy Assistance Program. No other monies have been paid.

Complainant does not dispute the amount of the bills. Complainant alleges that she is ill and unable to pay and that because of these two reasons PG&E may not terminate her service because of PURPA. Complainant further alleges that PG&E and the Commission are not complying with PURPA.

PG&E does not dispute that complainant is in ill health. Exhibit 6 is a written statement from her doctor which states in part. "I believe that her current medical condition constitutes a disabling situation, and for this reason, I believe that for medical reasons, her PG&E should be made available to her".

On or about March 3, 1982 the electric service to the lower flat was disconnected and on or about August 27, 1982 the gas service to the lower flat was discontinued. A representative of PG&E testified that on March 9, 1982 he observed an unauthorized reconnection of electric service. He also testified that on September 3, 1982 he observed an unauthorized reconnection of gas service. He further testified that the unauthorized connections did not meet PG&E's requirements and that both unauthorized connections posed a hazard to the immediate area. Subsequently, electric service was reconnected by PG&E. PG&E is presently providing electric service to both flats and gas service to the upper flat.

There are three questions which should be answered, namely:

1. Must PG&E continue to provide complainant utility service because of her health condition and her inability to pay?
2. Have PG&E and the Commission complied with PURPA?
3. Can PG&E terminate complainant's service because of the hazardous conditions which were caused by the unauthorized reconnection of electric and gas service?

We will first address question 2 above. PURPA required the Commission to consider the adoption of the termination standards set forth in Section 115(g) of PURPA. As a result of PURPA the

Commission on May 22, 1979 instituted Order Instituting Investigation (OII) 49 to provide a vehicle for inquiry into PURPA standards for the termination of gas and electric service. On September 15, 1981 we issued Decision (D.) 93533 in OII 49 and ordered the respondent utilities to file tariffs as required by the order contained in D.93533, which decision is now final. In that decision the Commission adopted the standards proposed by PG&E with the exception that "elderly" was defined to mean persons over 62 years of age rather than 65 years of age.

PG&E's proposal was as follows:

"Electric (gas) service to a residential customer will not be discontinued for non-payment when the customer has established to the satisfaction of the utility that such termination would be especially dangerous to the health of the consumer*; or the customer has established to the satisfaction of the utility that the consumer is among the elderly (over 65 years of age) or handicapped*; and the customer establishes to the satisfaction of the utility that he or she is unable to pay for such service in accordance with the provisions of the utility's tariffs; and the customer is willing to arrange installment payments, satisfactory to the utility, including arrangements for prompt payment of subsequent bills.

*"Certification from a licensed physician may be required by the utility." (D.93533, mimeo. pp. 20-21.)

In adopting this we intentionally did not include the inability to pay provision set forth in PURPA. In D.93533 we stated:

"In addition to establishing that termination may be dangerous to health, PURPA requires that the customer must also establish that he is unable to pay for service or that he is only able to pay by

installment. We do not believe that Congress intended that a customer should be excused permanently from paying the lawful tariff charges for his utility services if he should find himself financially embarrassed during a period when termination of service would be especially dangerous to his health. The dilemma is that those who pay their utility bills, rich or poor, sick or well, old or young, must ultimately pay the bills of those customers who do not pay in addition to the collection costs caused by those customers who are sporadic or unreliable in their payment practices. We also point out that permanently relieving some customers from payment may cause discrimination.¹⁰ Therefore, we will not permanently excuse a customer from payment.

"10/ The DOE guideline itself recognizes the problem of uncollectible expense but contemplates that late payment charges will offset increases in uncollectibles. This assumption however is not true for California utilities. At this time we are not inclined to impose late payment charges on customers. Late payment charges, if adopted, would most likely fall upon the poor, elderly and handicapped, or upon those least able to pay and upon those whose burdens the guideline intends to ease. We also point out that there is nothing in the record which would support the establishment of late-payment charges." (D.93533. mimeo. p. 23.)

Clearly in this instance PG&E complied with our order in D.93533. The Commission and PG&E have complied with PURPA.

The answer to the first question, of course, is that PG&E may terminate complainant's service provided it follows the termination rules set forth in its tariff. The applicable rule in this instance is Rule 11(2)(k) of PG&E's electric and gas tariffs; the rule is identical in each instance and reads as follows: ✓

"Electric (gas) service to a residential customer will not be discontinued for nonpayment when the customer has established to the satisfaction of the Utility that such termination would be especially dangerous to the health of the consumer, or the customer has established to the satisfaction of the Utility that the consumer is among the elderly (62 years or older) or handicapped, and the customer establishes to the satisfaction of the Utility that he or she is unable to pay for such service in accordance with the provisions of the Utility's tariffs, and the customer is willing to arrange installment payments, satisfactory to the Utility, including arrangements for prompt payment of subsequent bills.

"Certificate from a licensed physician, public health nurse or social worker may be required by the utility."

The willingness of the customer to arrange installment payments, satisfactory to the utility, contemplates that the installment payments will be made. The failure of the complainant to make the agreed installment payments negates the agreement. Without the agreement for installment payments Rule 11(2)(k) does not apply as all of the required elements of the rule are not present.

Prior to termination PG&E must, of course, comply with the notification procedure set forth in its tariffs.

With respect to question 3 there is no question that PG&E not only can but is obligated to terminate service as soon as possible when a hazardous condition exists. In the situation of unauthorized connection, PG&E could also invoke Rule A6 of its filed tariffs which provides as follows:

"Abuse or Fraud

"The Utility may refuse or discontinue electric (gas) service to any premises at any time if found necessary to do so in order to protect itself against abuse, harassment, theft or fraud."

Findings of Fact

1. Complainant resides in a building which she owns located at 396 South Street, Richmond. The building consists of an upper and lower flat separately metered.

2. PG&E is presently providing electric service to both flats and gas service to the upper flat.

3. PG&E's statement of accounts disclose a balance due, as of January 4, 1983, in the amount of \$542.63 for the upper flat.

4. PG&E's statement of accounts disclose a balance due, as of August 27, 1982, in the amount of \$741.76 for the lower flat.

5. On April 5, 1982, complainant agreed in writing to pay her past due accounts, which at that time totaled \$411.44 for the lower flat and \$610.51 for the upper flat, as follows: \$50 on April 15, 1982 and four payments of \$73 in addition to current billings on the 15th day of May, June, July, and August 1982.

6. On or about April 7, 1982 complainant entered into an oral agreement to pay her past due amounts in 10 monthly installments and pay current bills as they became due.

7. Since the dates set forth in Findings 4 and 5, payments have been received by PG&E as follows: \$50 from complainant and \$200 on complainant's behalf as a result of the Low Income Energy Assistance Program.

8. Rule 11(2)(k) of PG&E's tariffs provides that service to a residential customer will not be disconnected for nonpayment when the customer has established that termination of service would be dangerous to the customer's health, that he or she is unable to pay, and that he or she is willing to arrange installment payments, satisfactory to the utility including arrangements for prompt payment.

9. Complainant has established that she is in ill health.

10. Complainant has established that she will not pay. Whether or not she is unable to pay for service cannot be determined from this record.

11. Complainant has entered into agreements to pay past-due charges in installments but has not paid in accordance with the agreements.

12. Complainant has not complied with the provisions of Rule 11(2)(k) of PG&E's electric and gas tariffs in that she has not made payments agreed to, thereby negating the agreements entered into with defendant to pay past-due charges.

13. The Commission instituted an investigation (OII 49) to consider the adoption of termination standards set forth in PURPA which resulted in D.93533 which decision is now final.

14. PG&E complied with the order set forth in D.93533.

Conclusions of Law

1. The Commission has complied with the provisions of PURPA.
2. The relief sought by complainant should be denied.

O R D E R

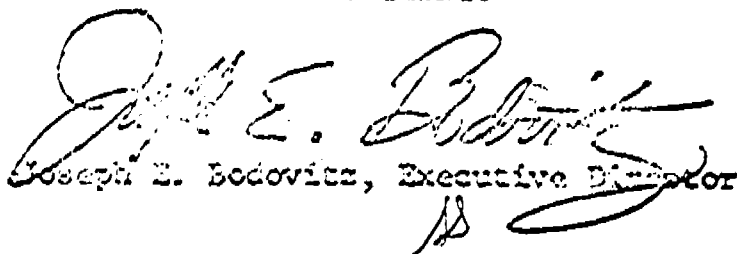
IT IS ORDERED that the relief sought by complainant is denied.

This order becomes effective 30 days from today.

Dated JUN 29 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. CREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director