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Decision No. 90057 ; MAR 13 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

L. M. GUNSTON and L. GUNSTON, aka)
LEO J. GUNSTON,)

Complainants,)

v.)

PACIFIC GAS AND ELECTRIC COMPANY,)
a California corporation,)

Defendant.)

Case No. 10698
(Filed December 7, 1978)

ORDER OF DISMISSAL

This is a complaint by L. M. Gunston and L. Gunston (complainants) against Pacific Gas and Electric Company (defendant). Complainants seek: (1) An order "1. For a jury trial before the Public Utilities Commission or if not feasible and in the alternate to stay this disputed bill proceeding until the Court determines finally the condemnation award in No. 477365, Alameda County, Superior Court or as a third possibility a transfer of the instant disputed bill proceeding to Superior Court for consolidation with No. 477365;" and (2) "[A]n appropriate decision as to PG&E's de facto attorney's fees allowance to themselves, including but not limited to the dicta of the equal protection clause of the 14th Amendment...." Complainants deposited \$49.79 with the Commission as a disputed bill deposit.

Defendant filed an answer and a motion to dismiss on the ground that the complaint fails to state a cause of action.

The complaint indicates that complainants have an action pending against defendant in the Alameda Superior Court. Complainants seek to offset current utility charges against an anticipated victory in the superior court with an award for damages. Complainants contend that they should not be subjected to the Commission's rules with respect to discontinuance of service because it will deny them the right to a jury trial. There is no merit in this contention.

The Commission clearly has no jurisdiction to determine the inverse condemnation matter which is the subject of the Superior Court action. (Packard v PT&T et al. (1970) 71 CPUC 469, 472.) Defendant has the right to terminate utility service for nonpayment of charges. (Public Utilities Code § 779.) This right is not dependent upon the outcome of collateral litigation between the parties. The procedures for discontinuance of service are within the exclusive jurisdiction of the Commission. (Waters v PT&T (1974) 12 C 3d 1, 6.) Complainants are not entitled to a jury trial before the Commission. (Perry Farms, Inc. v Agricultural Labor Relations Bd. (1978) 86 CA 3d 448, 464-65.)

The Commission has promulgated rules requiring utilities to adopt consonant tariff provisions with respect to discontinuance of service for nonpayment of bills. (General Order No. 96-A, Title II, Section C(4) 10, 11.) The Commission takes official notice that defendant has filed tariff provisions pursuant to the rule. The complaint alleges no facts which would preclude defendant from applying its tariff provisions relating to discontinuance of service for nonpayment of bills.

The complaint also seeks an order excluding from defendant's operating expenses monies paid to its attorneys. There is no basis for such an order. A utility is allowed to amortize or deduct as operating expenses prudent expenditures for legal services. (Southern Cal. Water Co. (1968) 69 CPUC 36; Oak Park Heights Land & Water Co. (1919) 16 CRC 798.) The complaint alleges no facts indicating imprudent legal expenditures by defendant.

Public Utilities Code Section 1702 provides in part that: "Complaint may be made...by any corporation or person...by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission." Rule 10 of the Commission's Rules of Practice and Procedure provides in part that: "The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired." Nothing in the complaint sets forth "any act or thing done or omitted to be done...in violation or claimed to be in violation, of any provision of law or of any order or rule of the Commission". In the circumstances the complaint should be dismissed for failure to state a cause of action. (Blincoe v PT&T (1963) 60 CPUC 432, 434.)

The Commission makes the following findings and conclusions.

Findings of Fact

1. There is no lawful basis to withhold payment for utility service rendered on the premise that pending litigation in the Superior Court will ultimately result in a judgement which will offset the charges.

2. The complaint fails to state a cause of action because it does not allege any violation or claimed violation of any provision of law or any order or rule of the Commission.

3. The sum of \$49.79, which was received by the Commission as a disputed bill deposit, should be disbursed to defendant.

Conclusions of Law

1. The complaint should be dismissed.
2. The disputed bill deposit of \$49.79, as may have been augmented to the effective date of this order, should be disbursed to defendant.

IT IS ORDERED that:

1. The complaint in Case No. 10698 is dismissed for failure to state a cause of action.

2. Deposits by complainants in the sum of \$49.79, and any other sums deposited with the Commission by complainants with respect to this complaint, shall be disbursed to defendant Pacific Gas and Electric Company.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 13th day of MARCH, 1979.

John E. Byrne
President
William L. Stegeman
Robert D. Gault
Clare J. Deering
James M. Quinn
Commissioners