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Decision No. 90361 JUN 5 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOY PAULSON,

Complainant,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY,

Defendant.

Case No. 10620
(Filed July 12, 1978)

Neil J. Roberts, Attorney at Law, for complainant.
Peter H. Fuad, Attorney at Law, for defendant.

O P I N I O N

Complainant alleges that her electric service was summarily terminated by defendant on May 19, 1978, while she was currently paid up in her account and that defendant failed to reinstate her electric service upon demand made that same date. Complainant further alleges that service was not reinstated until on or about May 31, 1978; that from May 19 to May 31, 1978, complainant and her two minor children suffered hardship as a result of defendant's termination of service; and that such termination violates Section 451 of the Public Utilities Code and complainant's rights to due process. Complainant seeks an order requiring defendant to file a tariff pursuant to Public Utilities Code Sections 451 and 761 and an order that defendant permanently cease and desist from (a) summarily discontinuing domestic service for

reasons other than those covered by Public Utilities Code Section 779 and (b) refusing to immediately reinstate said service when requested to do so, orally or in writing, by a domestic service customer.

Defendant filed an answer wherein it admits terminating complainant's electric service on May 19, 1978 and that she was not delinquent in her account, but denies that such termination was done summarily. Defendant admits that it reinstated complainant's electric service on May 31, 1978 and that it does not have a tariff covering termination of service in buildings scheduled to be demolished, but denies generally and specifically all other allegations of complainant. Defendant concurrently filed a motion to dismiss the complaint on a number of grounds, among which are the following:

Because the action against which this complaint had been made, i.e., termination of electric service by defendant, was resolved when reinstatement of service was made by defendant, and that because the controversy originally existing between complainant and defendant no longer exists, the case is moot and should be dismissed.

Because complainant no longer has a personal stake in the controversy, defendant argues that she may not be adequately motivated to diligently pursue and vigorously argue the issues. Since complainant admits her service was reinstated, there is no further matter remaining in which she has a personal stake.

Because the only acts of defendant against which complaint has been made have been rectified, defendant argues that the cease and desist order and a new tariff sought by complainant cannot be granted to restrain a past and completed act. Defendant also argues that a cease and desist order, which is a form of injunctive relief, cannot

be granted where complainant has not alleged either existing or threatened irreparable injury will result from defendant's conduct. Because no such acts have occurred in the past, and none are reasonably expected in the future, defendant argues that the cease and desist order requested by complainant should not be granted.

Public hearings on the complaint were held in Los Angeles on November 9, 1978 and January 5, 1979 before Administrative Law Judge William A. Turkish and the matter was submitted at the conclusion of the hearing on January 5, 1979.

Complainant Joy Paulson and Mr. Billy Paulson, her son testified on her behalf. Warrent Ferguson, defendant's manager of tariffs, testified on behalf of defendant.

Complainant testified that on or about April 19, 1978 she was served a 30-days' notice by her landlord to vacate her rented premises as the building was to be demolished. On May 19, 1978, complainant was still residing in the premises as she had been unable to find other suitable living quarters. Sometime on May 19 complainant was informed by her 17 year old son that defendant's employees had been to the house and had disconnected complainant's electric service. On that same day, complainant called defendant's local office to notify defendant that she still lived on the premises and requested reinstatement of electric service. She was informed that the building was to be demolished and that defendant disconnected service so as to protect its equipment. Complainant was advised to contact the owner of the building. Complainant contacted her attorney on

May 22 or 23, who thereafter called defendant's emergency service on the evening of May 23 to obtain reinstatement of service but without success. On May 26, 1978, complainant's attorney wrote to defendant and demanded immediate reinstatement of service. Service was restored on May 31, 1978. Complainant was without electric service for 12 days. Complainant testified that her furniture in the residence and her children's toys outside were visible evidence of habitation of the premises. She further testified that it was extremely difficult for her and her children to get by without lights or refrigeration during those 12 days. Complainant continued to occupy the premises after reinstatement of electric service until July 1978 after which time she moved.

Mr. Billy Paulson testified that he was at home watching television on May 19, 1978 when he saw defendant's serviceman outside disconnecting the service. The witness related that he spoke to the serviceman and informed him that he and his family were still living on the premises. He testified that the serviceman showed him the order to shut off the electricity because the building was to be demolished, whereupon the witness told the serviceman "Well, we're living here man, but if that is what you have to do, go ahead and do it." The serviceman then pulled out the meter and wire service and apparently left.

Mr. Warren Ferguson, defendant's manager of tariffs, testified with respect to defendant's policies concerning the turnoff and reinstatement of electricity of its customers. He stated that in building demolition situations, defendant is usually notified by the building owner or the demolition contractor, and not by the customer, because in almost all cases

the building has been vacated. A crew is then usually dispatched to remove energized wires, meters, and sometimes transformers and poles. Defendant does not have a specific tariff covering building demolitions but contends that its Rule No. 11 basically covers various situations allowing discontinuance of service, and that demolition situations would be covered by Rule No. 11C because it could create unsafe and hazardous conditions. He testified that according to company policy service crews are required to ascertain whether, in fact, somebody is living on the premises when they go to remove the electric service. The witness also testified that if there is evidence of the customer still in possession of the premises, the service would not be discontinued but that sometimes the service crew must make a fast judgmental determination when the demolition appears imminent, and they find nobody physically present at the site, even though some visible signs of occupation are present. He testified that although implicit in Rule 11H, is the fact that responsibility for terminating service lies with the customer, in apartment building situations, customers often move out without requesting termination and that termination occurs when a third party contacts defendant to establish new service. Defendant turns power on and off approximately one million times per year in its service area. Because of the volume of the operations it is not always able to confirm and verify each and every telephonic request to turn off service and determine whether the customer had in fact requested that service be turned off or whether the request was made by a third party. The witness testified that this is the first time within his memory of a formal complaint being filed involving the specific fact situation presented in this case. Although he could not cite any specific figures as to the frequency of occurrences wherein electricity was requested to be

turned off by someone other than the customer and it turned out in this case that the customer, in fact, wanted service to continue. He testified that he would be very surprised if such mistakes occurred as often as 20 times a year out of the one million service connections and disconnections made by defendant.

The witness also testified that it is defendant's policy to resolve all conflicts in favor of the customer where a third party calls in to have service turned off and the customer wants it to remain on. Upon cross-examination, the witness testified that defendant's policies about which he testified were embodied in defendant's system of employee instruction manuals. The witness further testified that he had no personal knowledge of the events of May 19, 1978 with respect to the turnoff of complainant's service.

Discussion

Although the matter complained of has long been rectified and arguably presents a moot issue, we are reluctant to dispose of this complaint simply on the basis of legal argument presented by complainant and defendant on defendant's motion to dismiss, and for that reason we deny the motion.

There is no question that complainant was a customer of record of defendant's electric service on May 19, 1978 and that she was not delinquent in the payment of her account on that date. Thus, there would ordinarily not have been good cause for defendant to have discontinued complainant's electric service absent some other compelling consideration. Apparently, defendant's notification by a demolition contractor on May 17, 1978 that the residence occupied by complainant was scheduled for demolition along with the request that defendant remove its meters and service wires

created the "other compelling consideration." This caused defendant, after verifying that the necessary fees and demolition permit had been issued by city authorities to the property owner and confirming the impending demolition, to dispatch a service crew to remove its meters and service wires from complainant's residence. Ordinarily, in such a situation, according to the evidence, premises scheduled for demolition are in almost all cases abandoned and unoccupied. Unfortunately, such was not the case here. Not only was the residence still occupied by complainant and her two minor children,with visual evidence of such habitation present, the service crew representative engaged in conversation with complainant's 17 year old son who informed him that they were still living in the house. At this point defendant's representative not only breached its policy against disconnecting service where the customer obviously wants it to remain on, but used poor judgment as well, in completing the disconnection rather than referring the matter to a higher company authority for further guidance in the matter. This poor judgment and breach of company policy did not merely end there. Complainant called defendant's office that same day to have the service reinstated. Defendant's representative with whom she spoke merely referred her to the building owner and refused to reinstate service, again in violation of defendant's stated policy of reinstating service when the customer states a desire to have service reinstated and offers facts sufficient to cause a reasonable person to conclude that a mistake may have been made in prematurely terminating service. Defendant compounded the situation even further by not responding to complainant's attorney who called defendant's office on May 23, and demanded reinstatement of service.

On May 31, 12 days after terminating service, defendant responded to a letter from complainant's attorney and finally restored service to complainant. Thus, for 12 days, complainant and her children were without refrigerator use or lights. There is no doubt that the lack of electric service caused complainant some degree of hardship and this was indeed an unfortunate and regrettable situation.

We do not find, however, any evidence which would indicate that the act of defendant was done deliberately with malice toward complainant. Rule No. 11 of defendant's tariff relates to discontinuance and restoration of service and covers some situations, other than for nonpayment of bills, which allow defendant to discontinue service. Among such situations are those outlined in Rule No. 11C which are deemed by the defendant to constitute an unsafe condition or which may endanger the defendant's service facilities.[1/] Termination of service due to demolition can reasonably be interpreted as falling within Rule No. 11C.

The only remedies which complainant seeks would require defendant to file a specific tariff covering termination of service in building demolition situations and a cease and desist order prohibiting defendant from summarily discontinuing domestic

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1/ 11C. Unsafe Equipment. The Company 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 Company 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 Company's service facilities, until it shall have been put in a safe condition or the violation remedied.

The Company does not assume any responsibility of inspecting or repairing the customer's wiring or other equipment or any part thereof and assumes no liability therefor.

service for reasons other than those covered by Public Utilities Code Section 779 and prohibiting defendant from refusing to immediately reinstate said service when requested to do so, orally or in writing, by a domestic service customer. We reject complainant's request for a cease and desist order. Such remedy is in the nature of injunctive relief and cannot be granted to restrain the commission of an act or acts which have already been completed and which no longer exist.

Although we deplore the actions of defendant against complainant, we do not think it necessary to require the filing of such tariff by defendant. The evidence fails to show that the action taken by defendant against complainant was other than an isolated event. In almost all instances of notification of imminent building demolitions, the buildings are already unoccupied according to defendant's witness. Testimony that no more than 20 erroneous disconnections (which may or may not include disconnections due to building demolition), out of one million turn-ons and disconnections, occur annually points up the fact that even if defendant were required to formulate a tariff with respect to building demolitions, the same happening could still occur. However, the likelihood of it again happening to complainant is small considering the percentage of wrongful turnoffs which occur annually. Defendant already has a written policy to prevent what actually happened and yet it still occurred. We see the occurrence as happening not because of any rule or lack thereof but because of the poor judgment of one employee, compounded several times by administrative error. What appears to be called for is not yet another rule but better internal training and awareness on the part of defendant's employees that their actions often

affect the welfare of their customers and calls for the exercise of good sound judgment in carrying on their assigned tasks.

Findings

1. Complainant was a customer of defendant's electric service from May 19, 1978 through May 31, 1978.

2. Complainant was not delinquent in the payment of her electric bill during the billing period immediately preceding the period from May 19-31, 1978.

3. Defendant terminated electric service to complainant's rented residence during the period May 19-31, 1978.

4. Defendant was informed by a demolition contractor that complainant's rented residence was scheduled to be demolished.

5. Defendant verified with city authorities that a demolition permit to demolish complainant's rented residence had been issued.

6. Defendant has a policy of restoring service when informed by a customer that service turnoff was a mistake and service is desired.

7. Defendant's service representative was advised by complainant's son that they were still living on the premises when the representative arrived at the complainant's residence to turn off service.

8. Defendant was informed by complainant following termination of service that she was still living on the premises and needed to have the electric service.

9. Defendant failed to respond until May 31, 1978 to either complainant's or her attorney's demand that service be reinstated.

10. Disconnection of electric service due to imminent building demolition is covered by Rule No. 11C of defendant's tariff.

11. Defendant acted in good faith in dispatching a service crew to remove its meter and service wires from complainant's residence after being notified and verifying the impending demolition of the premises.

Conclusions

1. A cease and desist order is not appropriate in this matter.
2. Complainant is entitled to no relief in this proceeding.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 5th day of JUNE, 1979.

John E. Bryson
President

Commissioners