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MAIL DATE
7/21/97

Decision 97-07-068 July 16, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUSAN C. MELKONIAN,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC
COMPANY,

Defendants.

C.96-05-016
(Filed May 3, 1996)

DECISION DENYING REHEARING OF DECISION 97-04-009

I. SUMMARY

Susan C. Melkonian (also "Applicant") filed an application for rehearing of our Decision (D.) 97-04-009 in which we denied her complaint against Pacific Gas and Electric Company (PG&E) for wrongful termination of utility service. Upon review of the application, and the opposition to the application filed by PG&E, we hereby deny rehearing because Applicant has not established legal error in our decision. The denial of the complaint is reasonably supported by the evidentiary record.

In the complaint, filed May 3, 1996, Applicant alleged that PG&E terminated her utility service on November 21, 1995 for approximately six hours without cause and without prior notice or any direct communication with her. The complaint further alleged that PG&E failed to restore her service promptly after being notified within two hours of the shut off of services. Further, the complaint alleged that PG&E employees improperly withheld and concealed information during the course of her inquiries regarding the cause of incident.

The complaint did not seek compensation for Applicant, but instead asked the Commission to impose civil penalties and/or seek a misdemeanor criminal prosecution of PG&E personnel. Applicant cited Sections 2107, 2110, 2113, 2101, and 2104 of the California Public Utilities Code for the Commission's enforcement authority.¹ The complaint also requested that the Commission require that PG&E properly train its employees and that PG&E be monitored to assure customer matters are handled honestly, fairly and in a timely manner. Complaint, p. 18, paragraphs 10 and 11.

Given the evidence presented by Applicant and PG&E's admissions, the Commission found in D.97-04-009 that Applicant's utility service had been mistakenly shut off for six hours because PG&E had confused her service with that of another resident in the same condominium complex. (D.97-04-009, p. 3, and Finding of Fact No. 1.) Nevertheless, the Commission did not order monetary penalties or the institution of a criminal misdemeanor action since Applicant had not presented evidence of intentional concealment of data, fraud or conspiracy on the part of PG&E employees. (D. 97-04-009, p.3, and Conclusion of Law No. 1.) No evidence was offered of widespread errors by PG&E similar to those suffered by Applicant.

In the application for rehearing, Applicant reiterates her charges against PG&E, namely that PG&E "refused to tell the truth and provide [Applicant] the true explanation for the closing of her account and termination of her service." (Application for Rehearing, p.4.) Applicant also finds it insufficient for the Commission to decide the case on the observation that since PG&E personnel are human, errors will occur. (See D.97-04-09, p.3.) Rearguing the allegations of the complaint, however, and disagreeing with the Commission's view of the evidence does not articulate any legal error in our decision as required by Section 1732 of the California Public Utilities Code in an

¹ Pursuant to Section 2102 of the California Public Utilities Code, the Commission may seek a court ordered injunction "[w]henver the commission is of the opinion" that a public utility is in violation of the law or any order, decision, or rule of the Commission. Emphasis added. Sections 2107, 2110, 2113, 2101, and 2104 of the California Public Utilities Code provide for enforcement actions.

application for rehearing. Disputing the weight given the evidence by the Commission does not establish unlawful decisionmaking.²

PG&E filed a response to the application for rehearing in which it defends against Applicant's allegations that some of PG&E's personnel were not truthful. As we discuss below, PG&E's defense on this issue is supported by the record.

II. DISCUSSION

Sometime in October 1995, a new resident to the condominium complex where Applicant resides requested PG&E utility service, but mistakenly gave a wrong address. PG&E recorded the new service request for Applicant's residence. Without communicating with Applicant as to whether she in fact wanted to close her account, PG&E sent her what the company calls a "closing bill." Without verification, PG&E simply substituted the new resident for Applicant on the service account. Shortly thereafter, the new resident informed PG&E of her correct address. Again, without communicating with Applicant, PG&E failed to reactivate Applicant's account and instead proceeded to terminate her utility services on November 21, 1995.

The record is clear: PG&E made a series of mistakes which resulted in Applicant suffering the loss of her utility services for approximately six hours. However, the evidentiary record available to the Commission at the time of issuing D.97-04-009 reasonably supports the Commission's decision not to seek criminal sanctions or impose civil penalties against PG&E, its employees or officers.³ Applicant did not establish a pattern of conduct on the part of PG&E justifying severe enforcement actions. Further, the record shows PG&E acknowledged its error, apologized to Applicant, voluntarily

² Even upon review by the California Supreme Court, the judgment of the Commission as to the weight accorded the evidence may not be second-guessed. See Camp Meeker Water System, Inc. v. Public Utilities Commission (1990) 51 Cal.3d 845, 864; Goldin v. Public Utilities Commission (1979) 23 Cal.3d 638, 652-653.

³ We also note that early on Applicant was informed she had the right to seek compensation for money damages in a court of law, e.g. in a small claims action. And she had the right to request from this Commission reparations for service paid for, but not received. Applicant, however, presented no claim for reparations.

credited her account with \$25 credit for her inconvenience, and affirmed its procedures were improved to avoid similar incidents in the future. (D.97-04-009, Findings of Fact 2 and 3. See also, Tr. 111:21-28 to 112:1-12 and 118:4-9, and Exhibit E to the Complaint - a letter from PG&E dated January 5, 1996 expressly apologizing to Applicant and noting her account was credited with \$25 as promised.)

We have looked again, furthermore, at PG&E's written response to Applicant in a letter dated January 30, 1996, which lists the events preceding the termination of Applicant's electricity service on November 21, 1995. (See Exhibit G of the Application for Rehearing.) PG&E states that on October 4, 1995, a new resident in the complex contacted PG&E to have service begin in her name in the condominium unit occupied by Applicant. On November 17, 1995, the new resident again contacted PG&E to advise the company that she had given the wrong address. The PG&E letter then indicates that Applicant's service was subsequently turned off at 12:07 November 21, 1995, Applicant's phone call notifying PG&E of the shut-off was received at 1:57pm, and service was restored at 5:28. Finally, the letter states that Applicant's account will receive a \$25 credit.

We agree with Applicant that this letter does not expressly admit wrongdoing on the part of PG&E or offer an apology. We also agree that it does not convey the additional facts presented in the affidavit of the other condominium resident involved. (See Exhibit L to Applicant's Complaint filed May 3, 1996.) In this affidavit, the new resident states that on October 18 she spoke with a PG&E employee who was at the condominium complex and informed him of the address mix-up. The affidavit also indicates that the PG&E employee told the new resident that he would have her service connected to her correct address. However, on or about November 17, 1995, the new resident received a billing for both her unit and that of Applicant.

According to the affidavit, when the new resident notified PG&E of the double billing, her name was removed from Applicant's account, but the PG&E employee

she spoke with stated that whoever was connected to the meter at Applicant's address would be required to notify PG&E within three days or the electricity would be cut off. There is no evidence or testimony in the record that Applicant ever received, in any form, a notice of this three-day requirement.

As Applicant has explained, she was unaware of these events until after she found herself without utility services on November 21, 1995. There is no doubt or dispute, therefore, that the record shows PG&E erred. (See D. 97-04-009, p. 3 - "PG&E freely acknowledges that it made an error, and should not have terminated her service as it did.") Nevertheless, the record in this case does not support injunctive relief, civil penalties, or a misdemeanor prosecution as sought in the Complaint. Applicant did not demonstrate a pattern and practice of terminating customer service because of widespread incompetence of PG&E service personnel.

If, on the other hand, Applicant had presented proof of having paid for utility service not provided by PG&E in excess of the \$25 credit provided voluntarily by PG&E, the record would have supported a Commission order requiring that PG&E refund payments to Applicant. However, Applicant made no claim for any reparations.

The application for rehearing also reargues the claim that PG&E personnel made false statements, but the argument is not substantiated and does not specify any persuasive evidence on this point which the Commission failed to consider. Instead, Applicant expresses her disagreement with the Commission's declining to penalize any PG&E employee for not immediately explaining the cause of the errors which led to her utility service being terminated.⁴

Applicant also claims that during the hearing a witness for PG&E was not truthful. (Application for Rehearing, pp. 7-10.) In support of this allegation, Applicant

⁴ In the judicial review of Commission decisions, the court does not reweigh the factual evidence. The Commission's judgment on the relative weight of the evidence is, therefore, final. Goldin v. Public Utilities Commission *supra*, 23 Cal. 3d, at 653; Camp Meeker Water System, Inc. v. Public Utilities Commission, *supra*, 51 Cal. 3d, at 864.

presents only conclusory accusations and personal reactions to the testimony of the witness. (See, e.g., Application for Rehearing, p. 10.) We can discern no specific facts in the record proving PG&E personnel intended to lie or knowingly disregarded the truth of the matter.

In particular, Applicant charges a PG&E witness with misrepresenting the facts when he testified that he received documents from other customer service employees regarding Applicant's service termination only after, and not at the time of, receiving applicant's letter of January 10, 1996 demanding an explanation for what had happened. Applicant contends that this employee actually requested and obtained the specific documents in question before she communicated with him, and that he willfully withheld information in his possession. In support, Applicant refers to an affidavit dated September 11, 1996 in which the same PG&E witness indicates he sought documents regarding customer service orders from the PG&E's Customer Advocacy Desk, and that he received copies of these orders. (Application for Rehearing, Exhibit F, paragraphs 3 and 4.)

We find, however, that this affidavit does not establish a clear chronology of events and therefore cannot be considered conclusive proof of perjury or intentional misleading testimony. The affidavit of September 11, 1996 does not state when the PG&E witness actually obtained the documents. He could have received the service orders after January 10, 1996. Furthermore, this PG&E witness responded to Applicant by letter dated January 30, 1996 with the abbreviated summary of what had occurred, as described above, presumably based on the service orders he had by then received. (Application for Rehearing, Exhibit G.) The record as it stands, therefore, allows for the receipt of the service records by the PG&E witness sometime between January 10 and January 30, 1996. Contrary to Applicant's accusations, therefore, the Commission finds no evidence of the witness having lied about the time he received the documents relevant to the incident.

III. CONCLUSION

In sum, as we found in D.97-04-009, PG&E was clearly at fault in terminating Applicant's utility service without first notifying her that another resident had requested service at the same address and without giving her proper notice prior to shutting off the utilities. Applicant, however, has not requested reparations to compensate her for payments made for utility service that was not received. In addition, whether the Commission imposes civil penalties on a regulated public utility, its employees, and officers, or cites a witness for contempt is a matter within the discretionary authority of the Commission. (See Article XII, Section 6 of the California Constitution and Section 701 of the California Public Utilities Code.) After reviewing the record and the circumstances of the case, we have determined that we reasonably denied the remedies and punishments requested by Applicant. There is neither misapplication of the law, nor material factual errors in D.97-04-009. Accordingly, we find no legal error in our decision requiring rehearing.

THEREFORE, IT IS ORDERED that the application for rehearing of D. 97-04-009 be denied.

This decision is effective today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

Wrong Address Given for Turn-on

created 06/06/96

When a customer indicates they gave a wrong address/apartment number when requesting service:

1. Access incorrect service address:
 - Issue a retroactive turn-on for original customer
 - In remarks put "Do not field - Records only"
2. If correct address is known, take note of credit information from incorrect address, and issue retroactive turn-on for this customer at the correct address.
3. If correct address is still unknown, request customer to call back when address is known.

Exhibit 15
CPUC Proceeding C96-05-016
Spouse/Witness VFE-Guzman
Date Ident. 11-7-96 Recd. -7
William R. Stalder Administrative Law Judge

1 A Correct.

2 Q If you had received this phone call from either
3 Larry Pena or Petra Pena saying they never lived in 101
4 and they were on service in 121, what, in your opinion,
5 would have been the proper course of action?

6 A If I had received this call, seen that it was an
7 apartment, the first light that would go on in my head
8 would be that, okay, most likely then that the prior
9 customer that we had on record, the chance is going to be
10 very great that that customer is still living there, so we
11 simply need to reconstruct and reestablish billing. I
12 would not have issued a shut off order. I would have
13 simply issued what we call the retro change party to
14 reestablish that prior customer. And depending on the
15 date that the call comes in advising that local PG&E
16 office, wherever it may land, we may still have the old
17 customer billing information is still on the computer, if
18 it's like just a week couple weeks old. If it's several
19 months down the road, that information may not be
20 available on the computer for a rep to maybe look at it,
21 and it may say account not found when we changed the
22 account number to try to retrieve that information.

23 Therefore, when we have to get up from our
24 desk -- for example, speaking from the office I'm in -- go
25 to microfiche, at least, to get that information and
26 reconstruct. I see it's Susan Melkonian, write that
27 information down and reestablish her billing. If I'm
28 speaking to the Penas, if they were the ones who initiated

1 the phone call, I would say what apartment are you in
2 and -- or I might even go a step further, Did you have
3 service prior to this address; where were you living? And
4 if they say yes, Well, what was that address? to ensure,
5 number one, did we close that account out; if so, it might
6 even confirm, well, what was the mailing address they gave
7 us and sometimes that supports.

8 For example, did the mailing address say 118 East
9 Escalon Apartment 101. Because normally what happens is
10 if we receive a call where a customer says I'm moving from
11 point A to point B within the Fresno area, we can simply
12 say -- we'll issue a transaction to first close out your
13 account at your old site, indicate the address you're
14 moving to, and then we ask Do you want the service
15 transferred into your name at the new location? If the
16 response is yes, there's a section I go in and give a yes
17 or a no. That allows them to save a little bit of time in
18 retrieving and asking credit information. They can go
19 over and say is this still accurate? Now that
20 automatically transfers over. That's way the closing will
21 be forwarded to the new location.

22 Q So in other words, there was a way to do this to
23 make sure that even if there was an error in terms of the
24 apartment number that her service would not have been
25 terminated?

26 A Yes.

27 MS. ROBINSON: I would like to mark for
28 identification the following exhibit.

1 ALJ STALDER: All right. A one-page document
2 wrong address given for turn on will be identified as
3 Exhibit 15.

4 MS. ROBINSON: Q Now we've spoken before today,
5 haven't we?

6 A Yes, we have.

7 Q And we've spoken about the fact that you and Ms.
8 Makar had a difference of opinion as to how you would
9 handle this situation?

10 A Right. I shared with you how I felt, what's
11 obvious insight with the years behind me -- and I've been
12 in this position -- how I felt it should have been
13 handled, not knowing at the call center maybe what
14 instructions she has to go by.

15 Q So you acknowledge she may have different
16 instructions than what you --

17 A How I would have handled it, yes.

18 Q But the document I have given you, can you
19 identify what this document is?

20 A This document is the -- from the call center call
21 guide, I believe is what they call it now. It addresses
22 this exact situation in which a wrong address is given,
23 what to do to correct it -- which has been something that
24 between the call center and PG&E, what we call division
25 representatives such as where I'm at and the
26 communications that we've had trying to help resolve
27 unique problems that sometimes maybe we see occurring so
28 that hopefully they don't reoccur.

1 Q So according to this document, this policy or this
2 procedure was instituted on June 6 of 1996?

3 A Based on that notice created 6-6 of '96.

4 Q And this would be a procedure to be followed by
5 all the call centers?

6 A Correct.

7 Q So if Ms. Melkonian -- put it this way, if the
8 same situation happened today where we realize that we had
9 a turn on in error, a customer calls in and says I gave
10 you the wrong apartment number, this would be the policy
11 followed in all the call centers to address that problem?

12 A They follow this procedure. They would never
13 experience the misfortune that Ms. Melkonian did.

14 MS. ROBINSON: And I think that's all the
15 questions I have of you.

16 ALJ STALDER: Ms. Melkonian.

17 MS. MELKONIAN: No questions.

18 ALJ STALDER: All right.

19 Thank you Mr. Guzman.

20 MS. ROBINSON: I would like to call Ms. Makar.

21 ALJ STALDER: All right. You're still under oath
22 Ms. Makar.

23 ANNA GRACE MAKAR, having been previously sworn,
24 testified as follows:

25 DIRECT EXAMINATION

26 BY MS. ROBINSON:

27 Q Ms. Makar, can you tell us your educational
28 background?

1 A Sure. I've got a bachelor of arts in English, and
2 I'm currently working on my teaching credentials with the
3 expected graduation date on December 21st, to be exact.

4 Q Congratulations would be in order?

5 A Thank you.

6 Q And can you tell us if you've ever received any
7 commendations as a result of your work at the call center
8 at PG&E?

9 A Yes, I have. I've had numerous letters written to
10 me from customers about my quality of customer service and
11 that I satisfied them on the first call. I also was just
12 voted employee of the month at the Sacramento call center,
13 and I have numerous others, as I said.

14 Q When you found out that you were going to be a
15 witness in this case, how did you feel?

16 A How did I feel emotionally or --

17 Q Right. How difficult --

18 A I felt badly that I had issued -- but can I take a
19 step back --

20 Q Sure.

21 A -- to that every issue?

22 If you do something wrong, such as I did, my
23 supervisor came and spoke with me and we talked and you
24 bring up the call guides, which was what he was talking
25 about, and they say this is the procedure and this is what
26 you need to follow. And it has not happened since, so I
27 remedied that.

28 I felt badly that something I did had escalated

1 the situation with Ms. Melkonian to a point of upset, and
2 when I read the letter of a panicky feeling about PG&E
3 that upset me because I wouldn't want our customers to
4 feel that at any moment, Here I'm at my computer and I can
5 just shut her service off because that is absolutely not
6 true. And that you know, I felt badly because in my
7 career I do want to help the customers, and obviously I
8 did not help Ms. Melkonian and I apologize for that, and,
9 you know, that is me. And so I wanted to come and express
10 that this is not company policy, that an error was made on
11 my part and in the manner in which I took the service
12 request.

13 Q And do you understand the policy -- the document
14 that I gave you --

15 A Yes, I do.

16 Q -- to be the current --

17 A Uh-huh.

18 Q -- policy?

19 A Yes, I do.

20 Q So if you were to receive the same call from
21 Mr. Pena saying that I'm not on service on 101 I'm on
22 service on 121, do you understand that to be the policy
23 that you --

24 A Exactly. And I would if you follow this to the
25 tee. I would pull this -- I would say can you hold on,
26 because these are things that happen so rarely that I, you
27 know, there's so much information at the job that there
28 is -- I would have to look this up.

1 For example, something just happened, an old meter
2 set, those are the kind kinds of things that you don't
3 deal with so often that you would need material to pull
4 up, and it's always accessible to every person within the
5 call center and I'm sure outside of the call centers also.

6 MS. ROBINSON: I don't have any further
7 questions.

8 ALJ STALDER: Ms. Melkonian.

9 CROSS EXAMINATION

10 BY MS. MELKONIAN:

11 Q Earlier you had indicated that policies or policy
12 changes from 1995 until today?

13 A Uh-huh.

14 Q Are these transitions a problem to keep up with?
15 Are they constant? Are there a lot of changes happening
16 all the time? Are they difficult to keep up the
17 transitions between one to the next?

18 A No, because the infrastructure is such that every
19 day billing questions remain the same. The policy is
20 there and that remains the same but these little things
21 that happen occasionally do get changed and then,
22 therefore, you have -- we have boards, these are things
23 where we are all drawn together with the supervisor and
24 they say here is the new implements on the computer
25 system, take 15 minutes right now, review it, come back
26 and we'll go over it.

27 So there's ample opportunity and unfortunately
28 sometimes in this line of work I am human and I'm not