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MAIL DATE

12/8/97

Decision 97-12-053

December 3, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Harold A. Curry,

Complainant

vs.

Southern California Gas Company,

Defendant

Case 96-10-003
(Filed October 3, 1996)

ORDER DENYING REHEARING OF D.97-06-011

I. SUMMARY

Harold A. Curry (Complainant) filed an application for rehearing of Decision (D.) 97-06-011 in which we granted in part and denied in part a complaint he filed against Southern California Gas Company (SoCalGas) on October 3, 1996. In our decision, we granted Complainant's demand that SoCalGas compensate him for certain costs he incurred when SoCalGas improperly failed to have attic insulation installed in his residence in accordance with SoCalGas's special weatherization program. We denied, however, Complainant's demand that the Commission initiate a generic investigation and audit of SoCalGas's entire weatherization program. Complainant now seeks rehearing of this latter determination.

Upon review of the application for rehearing, and SoCalGas's response to the application, we find that Complainant has not demonstrated legal

error in D.97-06-011 as required by Cal. Pub. Util. Code Section 1732, and we therefore deny rehearing.¹

II. DISCUSSION

Upon the filing of the subject complaint, and the timely filing of SoCalGas's answer to the complaint, the assigned administrative law judge (ALJ) issued a ruling on December 6, 1996 requesting comments from the parties with respect to the factual issues in dispute. In a subsequent ruling of January 17, 1997, the ALJ again sought to scope out the factual allegations and requested that Complainant respond to SoCalGas's comments submitted January 8, 1997. On the basis of Complainant's response, the ALJ ordered in a February 14, 1997 ruling that an evidentiary hearing would be convened only on the issues concerning the attic insulation at Complainant's residence. The evidentiary hearing was held in Morro Bay on March 14, 1997.

Based on the record of the case, the Commission concluded in D.97-06-011 that there was sufficient evidence to find that Complainant had been wrongfully denied attic insulation under SoCalGas's weatherization program. (D.97-06-011, mimeo, pp. 3-4; and Findings of Fact 2.) Since Complainant undertook to install the insulation himself, we ordered SoCalGas to compensate Complainant in the amount the company would have paid a contractor for the installation. (D.97-06-011, mimeo, Ordering Paragraph 1.)

Complainant now seeks rehearing of the denial of his demand for a full investigation and audit of SoCalGas's weatherization program. Complainant states in his application that he had not been given sufficient time to present evidence on this issue. However, the scope of the evidentiary hearing was properly limited by the ALJ in the rulings of January 17, 1997 and February 14,

¹ Unless otherwise indicated, hereinafter all statutory references shall be to the California Public Utilities Code.

1997 based on responses of the parties to the ALJ's questions on the factual issues. Moreover, Complainant does not deny that a fair evidentiary hearing was conducted with respect to his particular claims regarding the insulation for his residence, or that he was fairly awarded reparations. It is clear that the Commission honored Complainant's due process rights. Upon review of the record in this case, we reaffirm that Complainant failed to state a cause of action with respect to his demand for a generic investigation, and that the facts of his particular experience do not justify an investigation and audit of SoCalGas's entire weatherization program.

The complaint was based on an isolated incident. Complainant's demand for an investigation merely expressed an assumption that additional facts perhaps involving other SoCalGas customers could possibly be discovered. Requesting an investigation for the purpose of developing grounds for a broader complaint is obviously not a claim upon which relief may be granted in this complaint proceeding. By the very nature of the request, Complainant acknowledged that he could not allege specific facts or incidents, as required by Rule 10 of the Commission's Rules of Practice and Procedure, to support his demand for a generic investigation and audit.² Complainant failed to set forth the specific facts needed "to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint and the injuries complained of, ..." (Rule 10.)³

Further, the complaint in question has only one complainant, Harold A. Curry. This case, therefore, is not akin to a class action, or even a joint

² All subsequent references to Rules shall be to the Commission's Rules of Practice and Procedure, unless otherwise indicated.

³ We stated in our decision, nonetheless, that we are encouraging the Low-Income Governing Board, which we have established in connection with the administration of future weatherization programs, to be alert to the facts of Complainant's personal experience in this case. (D.97-06-011, mimeo, p. 4.)

complaint of several complainants. It was well within the discretion of the presiding ALJ, therefore, to receive into evidence only those matters relevant to Complainant's particular cause which, as we have indicated, was ultimately adjudicated in his favor.

The Commission, moreover, is not legally compelled to undertake a generic investigation upon the recommendation of a complainant. It is within the Commission's discretion to convene investigatory proceedings on its own motion. (California Constitution, Article XII, Section 2 and 6, California Public Utilities Code Section 701, and Rule 14.

Finally, Complainant's application for rehearing includes conclusory accusations of rule violations. In the second paragraph of the application, Complainant vaguely alleges what appears to be a violation of Rule 1 (Code of Ethics) by SoCalGas. However, Complainant makes only a cursory reference to SoCalGas's January 8, 1997 response to the ALJ's request for information. Complainant fails to explain his charge or identify anything in the record to substantiate a Rule 1 violation.

Similarly, Complainant claims in the third paragraph of the application that the Commission referred to him in D.97-06-011 as a "law breaker" and thereby allegedly committed criminal "slander" against him. If Complainant had reviewed the decision, the overly hasty and careless allegation may have been avoided. In D.97-06-011, we noted that SoCalGas "contends" Complainant violated safety code provisions when he installed the insulation himself. But we expressly disregarded the contention. (D.97-06-011, pp. 2 and 4.) We made no findings and stated no presumptions with respect to any code violations by Complainant.

III. CONCLUSION

Complainant has failed to identify errors of material fact or applicable law in D.97-06-011 and, therefore, has not substantiated grounds for rehearing.

IT IS THEREFORE ORDERED THAT:

1. The application for rehearing of D.97-06-011 is denied.
2. The docket for this proceeding shall be closed.

This order is effective today.

Dated December 3, 1997, at San Francisco, California.

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