

Decision 97-12-118

December 16, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ethel Dotson,)
)
 Complainant,)
)
 vs.)
)
 Pacific Gas and Electric Company,)
)
 Defendant.)

(ECP)
 Case 96-04-036
 (Filed April 23, 1996)

ORDER DENYING REHEARING OF D.96-09-025

I. SUMMARY

On April 23, 1996, Ethel Dotson filed her sixth complaint against PG&E in an effort to avoid having her residential energy services terminated for non-payment of overdue bills. Generally, each complaint in this series noted problems with her energy bills from PG&E, referenced attempts by PG&E to terminate her service for non-payment of overdue bills, and asked the Commission for an order prohibiting termination due to her status as an elderly and disabled customer, pursuant to the provisions of the federal Public Utility Regulatory Policies Act (PURPA) and the Commission's D. 93533, which adopted rules and procedures for termination electric and gas service to implement the relevant provisions of PURPA.

In 1995, we issued D. 95-02-015 to respond to the fifth Dotson complaint. In our decision, we found no violation of PURPA or the Commission's rules implementing the Act. The opinion addressed complainant's overdue payment problem by setting an amortization schedule to repay an overdue balance of \$1, 050.97. The repayment schedule was based on complainant's receiving annual energy assistance and

curtailing her energy usage. Dotson sought rehearing of this decision, which was denied. She sought further review by the California Supreme Court and a stay and review of the decision from the United States Supreme Court. These requests were denied.

Following the refusal of the state and federal appeals courts to review the 1995 decision, Dotson filed her sixth complaint under our ECP process, alleging that her monthly income had decreased since the last complaint, and that PG&E has continued to violate PURPA and the Commission's implementing rules in threatening to terminate her service for non-payment. A hearing was held, and the record indicated that Dotson had not met the amortization schedule in D.95-02-015, and that her outstanding balance as of April 26, 1996, had grown to \$3,285.37. PG&E opposed any lowering of payments under the 1995 amortization plan because it would result in a permanent unpaid balance, and noted that, due to Dotson's failure to make the previously ordered payments, maintaining the current payment plan would now produce the same result. PG&E asked for an order authorizing termination of Dotson's service for non-payment under the amortization agreement, and an order increasing the amortization payment plan to address the larger unpaid balance. In addition, PG&E sought an order directing the Consumer Services Division not to accept an informal or formal complaint from Dotson against PG&E without her depositing with the Commission the amount in dispute. In the challenged decision we declined to grant the relief requested by either party, reasoning that the basis for the complaint had already been addressed in D. 95-02-015, and ordered that the complaint be dismissed.

Both Dotson and PG&E have filed timely challenges to D. 96-09-025. Dotson filed both a request for rehearing and a petition for modification. The request for rehearing alleges the decision (1) fails to address issues of incorrect billing and double billing raised at the hearing of the complaint, (2) violates P.U. Code Section 451, and (3) fails to address the requested change to the payment plan based on her decreased income. She also requests that the challenged decision be stayed pending rehearing and judicial review. PG&E challenges that portion of the decision which rejects its request for an order that Dotson not be allowed to file further complaints unless she deposits the disputed billed amount with the Commission.

II. DISCUSSION

The Dotson application: The complainant has apparently accepted the correctness of the legal principles expressed in our 1995 decision that neither PURPA nor the Commission's utility payment policies require the provision of utility service without payment. Thus, the current rehearing request centers on the factual issues surrounding incorrect billings that were alleged to have occurred between September, 1995 and March, 1996 and the changes in Dotson's ability to pay under the amortization plan adopted in 1995. We consider Dotson's alleged errors as follows:

1. Incorrect billings: Dotson is correct that the challenged decision does not discuss in detail her allegations of billing problems. However, this is not a legal error for two reasons. First, her complaint generally states a "...disagreement with the amount I am being charged...", but then goes on to link this with the payments required under the 1995 amortization agreement. PG&E's reply correctly observes there is no reference in Dotson's complaint to billing errors, either in the 1994-95 timeframe (which supports the amortization arrangement) or the 1995-96 period, which is raised on rehearing. Rule 10 of the Commission's Rules of Practice and Procedure requires a complaint to 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." Even acknowledging that Dotson was representing herself on a pro per basis, she has failed to satisfy this fundamental due process requirement in attempting to have the billing issue considered as part of her complaint. Furthermore, PG&E did address the billing issues during the hearing of the 1996 complaint, and the Commission subsequently issued an order (D. 97-01-008) in response to Dotson's petition to modify the challenged decision discussing both the billing issues and her reduced ability to make payments under the amortization arrangement we endorsed in 1995. The 1997 decision concluded that PG&E had developed the record sufficiently to disprove her improper billing claims, and denied the request to modify the challenged decision on either of these grounds.

2. Violation of Section 451: Dotson simply states in her application that Section 451 does not allow a utility "...to unreasonably or unjustly charge a customer for its services." Rule 86.1 of our Rules of Practice and Procedure requires an applicant for rehearing to set forth specifically the grounds on which applicant considers the order of the Commission to be unlawful or erroneous. Section 451 generally requires a utility to maintain just and reasonable charges, rates, and services. However, the application for rehearing is utterly lacking in any linkage between this basic mandate and the challenged decision. Thus, the allegation lacks merit.

3. Failure to address Dotson's decreased income: Complainant alleges the decision is defective because it failed to address her reduced income status, a change that allegedly took place after the time D. 95-02-015 was issued. Unlike the billing problems, this issue was clearly raised by the current complaint. However, the challenged decision did not dispose of it by weighing the new evidence of reduced income against the 1995 amortization arrangement with PG&E. Instead, we treated this development as an issue "...already heard and decided in the prior complaint." To avoid any confusion on this point, we again reiterate the fundamental principle decided by this Commission years ago, which we have applied consistently to Dotson's most recent complaints, regarding her obligation to pay PG&E for energy services rendered at lawful rates. In denying rehearing of D.95-02-015, we stated:

"In D.93533, 6 CPUC 2d 741 (1981) we established minimum standards and procedures for termination of gas and electric service in accordance with a requirement of PURPA that each state regulatory authority adopt or explain its failure to adopt such standards. In discussing the standards for exemption from termination of service for those customers dependent on utility service for medical reasons and unable to pay their utility bill, we specifically concluded that Congress did not intend that a customer be permanently excused from paying lawful tariff charges. We reasoned that free service to any customer discriminates against those customers who are able to pay for it." (D.95-07-053 - slip op. at p.1)

In the challenged decision, we continue to rely on this principle, which has been affirmed by the highest courts of review, to reject attempts by complainant to avoid payment of lawful utility charges on a permanent basis.

The PG&E application: With regard to PG&E's application for rehearing, we are unable to detect any allegation of legal error in the challenged decision. Instead, the utility's representative candidly states that "...it is a prayer for relief to stop further abuse of process by Complainant in her continual attempts to defer or avoid payment of outstanding PG&E bills as ordered by the Commission in D. 95-02-015." In its application, PG&E simply renews its request for the Commission to invoke the procedure adopted in International Wholistic Health v. PT&T (D. 84-03-114) which would require Dotson to deposit some or all of the disputed bill amounts with the Commission before a further complaint is accepted. We discussed this option in our 1995 opinion and rejected it in the hopes the amortization plan would be successful. In the challenged decision we again declined to adopt the procedure. We take this opportunity to remind PG&E of its existing ability to terminate service to a customer for non-payment of utility bills, pursuant to its Commission approved tariffs.

Whether or not to treat Dotson as a vexatious litigant and impose any additional entry barriers to the Commission's complaint system lies entirely within the discretion of the Commission. While there is no legal error regarding this issue, we wish to reemphasize our ongoing concern with abuse of our formal complaint process by any party. In this regard, we place Ethel Dotson on notice that any future complaint filings by her that are clearly lacking merit will be disposed of swiftly and finally.

III. CONCLUSION

Based on the discussion herein, **IT IS ORDERED THAT:**

1. The application for rehearing and request for stay of D.96-09-025 by Ethel Dotson is denied.

2. The application for rehearing by PG&E is denied.

3. This proceeding is closed.

This order is effective today.

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

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