

Decision 98-07-021 July 2, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

W. Victor,

Complainant,

vs.

GTE California Incorporated, GTE Corporation,
and Does 2001 through 2010,

Defendants.

And Related Matters.

ORIGINAL

Case 92-02-032
(Filed February 15, 1992)

See Attachment A

O P I N I O N

1. Summary

In this decision, we dismiss 30 formal complaints, 50 supplemental complaints, and 2 informal complaints that complainant has filed against this telephone utility since 1990. We release to the utility the remainder of the \$19,606.52 in disputed billing amounts impounded in connection with these and 18 earlier complaints. We acknowledge a settlement agreement between the parties in which complainant agrees to restrict his use of the Commission's complaint and impound procedures. In view of the settlement, we decline at this time to consider sanctions against complainant on grounds that he has engaged in frivolous and vexatious litigation. The cases at issue are closed.

These are complaint cases not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in Public Utilities (PU) Code § 1757.1.

2. Background

Since 1989, complainant William Victor has filed 98 formal and supplemental complaints against GTE California Incorporated (GTE) relating to his three unlisted telephone accounts. Victor alleged in his complaints that GTE had overbilled him, had become abusive when asked to correct bills, had refused to make adjustments promised by operators, had failed to send missing bills, and had improperly serviced the telephone lines.

GTE in its answers denied the allegations of the complaints. GTE alleged that it had made numerous accommodations to Victor over the years, and that it had written off hundreds of dollars in telephone charges based on Victor's representations of error. GTE further alleged that Victor, who is an attorney, has a history of bringing frivolous complaints against public utilities. GTE asked the Commission to deny the complaints, to release all impounded amounts, and to sanction Victor as a vexatious litigant.

The first 18 of Victor's complaints had been examined at hearing in Los Angeles. On January 21, 1998, the Commission in Decision (D.) 98-01-052 dismissed the 18 cases, finding that Victor's complaints were without merit. The Commission also ordered the consolidation of Victor's other complaints against GTE and directed the assigned administrative law judge (ALJ) to schedule a hearing promptly on these consolidated complaints. The ALJ also was directed to consider GTE's motion for sanctions against Victor for alleged vexatious litigation.

3. Procedural History

By ALJ Ruling dated January 23, 1998, all outstanding cases were formally consolidated with Case (C.) 92-02-032 pursuant to Rule 55 of the Rules of Practice and Procedure. Pursuant to Rule 49, a prehearing conference was scheduled for February 24 and 25, 1998, in the Commission's Los Angeles courtroom. Parties were directed to be prepared at the time of the prehearing conference to present and argue all matters preliminary to the evidentiary hearing in these cases.

On February 2, 1998, the prehearing conference was rescheduled to March 17 and 18, 1998, on the unopposed request of Victor, who claimed illness. On March 12, 1998, Victor requested a six-week continuance and submitted a supporting statement from his physician. The request was granted. On March 17, 1998, the parties in a telephone conference with the ALJ agreed to forgo the prehearing conference and proceed directly to evidentiary hearing. By ALJ Ruling dated March 18, 1998, the evidentiary hearing was set for May 19-22, 1998, in Los Angeles. Parties were instructed to exchange lists of prospective witnesses on or before April 24, 1998, and to file all pre-trial motions on or before April 29, 1998. The ALJ Ruling limited the number of witnesses at hearing to six for complainant and five for defendant. The ALJ Ruling stated that no further request for continuance would be considered.

Various pre-trial matters were resolved by ALJ Ruling dated May 8, 1998. Two informal complaints filed by Victor against GTE on April 6, 1998, were consolidated for hearing in this proceeding. Victor's late-filed request to call 29 GTE employees as witnesses was denied. GTE's motion asking that official notice be taken of exhibits and testimony in the cases decided in D.98-01-052 was granted. In numerous telephone conversations shortly before and after May 8, 1998, Victor's requests for further continuances were denied, as were his oral requests to disqualify the presiding ALJ.

The parties on May 12, 1998, announced that they had reached agreement on settlement, and Victor sought on that basis to withdraw his complaints. The ALJ denied the request to withdraw pending assurance that a settlement agreement had been executed, and that Victor's use of the Commission's complaint and impound procedures had been addressed by the parties. Those assurances were provided on May 13, 1998. Victor on the same date submitted a written request for withdrawal of all complaints. Accordingly, the hearing scheduled for May 19-22, 1998, was canceled pending a formal order of dismissal of these cases by the Commission.

4. Settlement Agreement

The parties represent that their settlement agreement resolves all outstanding complaints brought by Victor against GTE. Additionally, the parties represent that they have agreed, among other things, to the following procedures:

- Victor agrees in the future to pay each monthly bill when due; if payment is not made when due, he will incur late payment charges in accordance with GTE's normal payment provisions.
- Victor agrees that any questions he has about his telephone bills will be submitted in writing to GTE's regulatory tariffs and compliance section.
- Victor agrees to file any "complaint" with GTE for attempted resolution before he files a formal or informal complaint with the Commission.
- Victor agrees that if he files a complaint with the Commission, he will not seek to impound disputed amounts. Instead, Victor agrees to request any applicable refunds as reparation in such complaint should the Commission rule in his favor.

Based upon the representations of both Victor and GTE that they intend to be bound by these procedures, our order today directs the Commission's staff to accept no further impound amounts from Victor in complaints filed against GTE,

and to accept no complaint by Victor against GTE without written assurance that the complaint has first been submitted in writing to GTE and that GTE has been given an opportunity to respond.

5. Vexatious Litigant

As part of the settlement, GTE has withdrawn its motion for a Commission order sanctioning Victor for alleged vexatious litigation. We decline at this time to consider such an order on our own motion.

For the guidance of the parties, however, we will comment briefly on this subject.

The Commission 10 years ago held that Victor had engaged in frivolous and vexatious litigation against a gas utility. (Victor v. Southern California Gas Company (1988) D.88-03-080, 1988 Cal. PUC LEXIS 198.) Based on that finding, the Commission imposed one of the sanctions authorized by California's vexatious litigant statute, Section 391 of the Code of Civil Procedure (CCP). The Commission held that, in any subsequent filing by Victor against the gas utility, the utility would be authorized to file a motion for an order requiring that Victor furnish, for the utility's benefit, security for reasonable expenses incurred in defending against the complaint. (CCP § 391.1.) If, after a hearing on the motion, the Commission determined that the complaint was frivolous, the Commission then would set an amount and date for payment of the security. If security was not posted, the complaint would be dismissed. (D.88-03-080, Ordering Paragraph 2; CCP § 391.4.)

Victor has not filed a complaint against the gas utility since the Commission's decision in D.88-03-080. He has, however, filed numerous complaints against other utilities. (See, e.g., Victor v. GTE California Incorporated (1998) D.98-01-052; Victor v. Southern California Edison Company

(1995) 61 CPUC2d 348; Victor v. Southern California Edison Company (1994) 54 CPUC2d 368.)

While we decline to consider sanctions as part of this proceeding, we intend to deal promptly with future complaints of any kind that are filed by Victor and, if appropriate, to consider at that time whether to authorize other utilities to seek posting of security pursuant to CCP § 391, or whether to impose other sanctions intended to discourage frivolous and vexatious litigation.

6. Conclusion

The 30 formal cases, 50 supplemental complaints, and 2 informal complaints shown on Attachment A are dismissed, and these cases are closed.

Findings of Fact

1. Victor has on file with the Commission 30 formal complaints, 50 supplemental complaints, and 2 informal complaints against GTE.
2. Commission records show that Victor since 1989 has deposited to the Commission's impound account a total of \$19,606.52, representing billing disputes with GTE.
3. All of the cases filed by Victor against GTE were consolidated for hearing on May 19-22, 1998.
4. On May 12, 1998, the parties announced that they had settled all pending cases.
5. In the settlement, the parties agreed that Victor in the future will submit complaints in writing to GTE before attempting to file formal or informal complaints with the Commission against GTE.
6. In the settlement, the parties agreed that if Victor files a complaint with the Commission against GTE, he will not seek to impound disputed amounts but, instead, will request refunds in such complaints should the Commission rule in his favor.

7. GTE has withdrawn its motion for a Commission order imposing sanctions on Victor for alleged vexatious litigation.

8. On May 13, 1998, Victor filed a written request to withdraw all complaints against GTE that are pending before the Commission.

Conclusions of Law

1. These are complaint cases not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.

2. Based on the agreement of the parties, the Commission's staff should be directed to accept no impound amounts from Victor in complaints filed against GTE.

3. Based on the agreement of the parties, the Commission's staff should be directed to accept no complaint by Victor against GTE without written assurance that the complaint has first been submitted in writing to GTE and that GTE has been given an opportunity to respond.

4. All complaints by Victor against GTE, as set forth in Attachment A to this decision, should be dismissed.

O R D E R

IT IS ORDERED that:

1. The 30 formal complaints, 50 supplemental complaints, and 2 informal complaints filed by W. Victor against GTE California Incorporated (GTE), as set forth in Attachment A hereto, are dismissed.

2. All moneys deposited with the Commission in connection with the complaints set forth on Attachment A shall be released to GTE.

3. The Commission's staff is directed to accept no impound amounts on behalf of W. Victor in complaints filed against GTE.

4. The Commission's staff is directed to accept no complaint on behalf of W. Victor against GTE without written assurance that the complaint has first been submitted in writing to GTE and that GTE has been given an opportunity to respond.

5. The cases set forth in Attachment A hereto are closed.

This order is effective today.

Dated July 2, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

ATTACHMENT A

Cases

C.90-09-066 C.90-09-067 C.90-10-066 C.90-10-067 C.90-10-068
C.90-11-050 C.91-01-004 C.91-01-005 C.91-01-041 C.91-02-090
C.91-02-102 C.91-02-103 C.91-03-067 C.91-04-045 C.91-04-046
C.91-07-017 C.91-07-018 C.91-07-019 C.91-07-048 C.91-08-062
C.91-08-063 C.91-10-021 C.91-10-052 C.91-11-014 C.91-11-016
C.91-12-030 C.92-01-019 C.92-01-020 C.92-02-005 C.92-02-032

Supplemental Complaints to C.92-02-032

1 st	2d	3d	4 th	5 th	6 th	7 th	8 th	9 th	10 th
11 th	12 th	13 th	14 th	15 th	16 th	17 th	18 th	19 th	20 th
21 st	22d	23d	24 th	25 th	26 th	27 th	28 th	29 th	30 th
31 st	32d	33d	34 th	35 th	36 th	37 th	38 th	39 th	40 th
41 st	42d	43d	44 th	45 th	46 th	47 th	48 th	49 th	50 th

Informal Complaints

No. 980-13852

No. 980-13847

(END OF ATTACHMENT A)