

ALJ/VDR/tcg **

Mailed 1/6/2000

Decision 00-01-003 January 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MICHAEL B. DASHJIAN,

Complainant,

vs.

PACIFIC GAS & ELECTRIC CO.,

Respondent.

Case 99-09-023
(Filed September 14, 1999)

OPINION

Summary

Case 99-09-023 is dismissed for failing to state a claim under Public Utilities Code § 1702. The Fiscal Office is directed to return to the complainant all funds he has deposited with the Commission.

Discussion

Complainant Michael B. Dashjian (Dashjian) filed this complaint seeking injunctive relief that would require respondent Pacific Gas and Electric Co. (PG&E) to administer its Tariff Rules 6(A)(2)(e) and 7(A)(1)(b), relating to the establishment of credit for nonresidential service, equally among all ratepayers. He also seeks compensation for the value of his time spent pursuing this matter for the benefit of other ratepayers, and attorney's fees and costs. The verified complaint includes correspondence and other documentation, which is incorporated by reference. PG&E has filed a verified answer denying the material allegations and requesting dismissal without hearing. PG&E's answer also includes documents that are incorporated by reference.

The material facts are not in dispute. Dashjian, an attorney and appellate specialist, opened a small law office in San Luis Obispo in May 1999. He had previously been a nonresidential customer of PG&E at two other office locations, and had an excellent credit history. When he opened the new office he contacted PG&E's business office to establish nonresidential utility service at that office. When Dashjian called, PG&E's agent told him that he would have to post a cash deposit to establish the service. Accordingly, on May 14, PG&E billed Dashjian \$150 for an initial deposit to establish service (Exhibit (Exh.) A to complaint).

Dashjian, believing that he should not have to post any deposit because of his creditworthiness and history of dealings with PG&E, disputed the billing and sent an informal complaint letter to the Consumer Affairs Division of this Commission on May 22 (Exh. B to complaint). He also deposited \$150 with the Commission, to be held in trust as provided in Government Code Section 16305.3 and Public Utilities Code § 1702.2(a), and he sent a copy of his letter to PG&E. In response PG&E initially offered to lower the amount of the deposit to \$86, and then, on June 4, sent him a letter which (1) defended its position that it could require a deposit under its Tariff Rule 6; (2) recognized that the \$150 requirement was too high under its Tariff Rule 7; and (3) agreed to waive the deposit requirement entirely on a "one-time exception basis" as long as Dashjian keeps his account current (Exh. C to complaint).

Although this outcome would appear to have resolved the problem, on June 12, Dashjian wrote a letter to the Commission's Consumer Affairs representative alleging that PG&E's action of waiving the deposit on a "one-time exception basis" effectively constitutes rate discrimination against other

customers who are similarly situated (Exh. E to complaint).¹ His letter claims that PG&E's actions violate §§ 453, 494, and 534 of the Public Utilities Code, and states that he now seeks relief requiring PG&E to adhere to its tariff rules, not only on his own behalf, but on behalf of others as well. PG&E acknowledges in its answer that its service representative initially quoted Dashjian an incorrect figure for the deposit (\$150), and claims that the "one-time exception" it granted to him refers only to Dashjian's own current nonresidential account, and not to other customers' accounts.

These arguments miss the mark. It is not the phrasing of the letter that dictates the outcome of this case, but the language of the controlling tariffs, which have already been approved by this Commission. The prefatory language in Tariff Rule 6, which governs establishment and reestablishment of PG&E service, states in pertinent part:

"An applicant for PG&E service may be required to establish credit."
(Emphasis added.)

Rule 6(A)(2) further provides that for nonresidential service, credit will be established if the applicant either meets certain specific criteria or,

"e) otherwise establishes credit to the satisfaction of PG&E; and

"f) has paid all bills for nonresidential electric service previously supplied applicant by PG&E."

These provisions on their face allow PG&E substantial discretion in establishing credit for a previous PG&E customer like Dashjian.

¹ His letter characterizes PG&E's offer as "kind" and states that he does "not wish to seem ungrateful." Id. at page 1.

Tariff Rule 7, which governs deposits, additionally makes it clear that the amount of the customer deposit is not specified by a strict schedule, like a rate schedule, but may be adjusted or waived by PG&E in accordance with its business judgement. Tariff Rule 7(1)(c) provides that for both residential and nonresidential accounts, the amount of deposit taken to establish credit, "may be subject to adjustment upon request by the customer or upon review by PG&E." (Emphasis added.)

It is undisputed that Dashjian persistently asked PG&E to establish his credit without requiring a deposit of any amount. In addition, Dashjian caused PG&E to review the credit requirements for establishing his service by contacting this Commission, and PG&E determined that it would waive the deposit requirement entirely when advised of this contact. As the foregoing tariff language indicates, PG&E's decision to do so was entirely within its sound discretion, particularly in light of Dashjian's exemplary credit history. Dashjian's decision to file this formal complaint therefore strikes us as peculiar, to say the least.

We need not reach Dashjian's contention that PG&E's actions violated any provision of the Public Utilities Code. PG&E acted properly and in accordance with Commission-approved tariffs. Moreover, Dashjian is estopped from asserting that PG&E acted wrongfully by the circumstance that he procured the very act of which he now complains. If ever there was a cognizable claim that PG&E violated its own tariffs by requiring an improper deposit, that claim was extinguished when PG&E responded by reducing the amount of the deposit to zero, as Tariff Rule 7(1)(c) permits it to do in such instances, in response to Dashjian's request.

Dashjian has now obtained the relief which he originally sought from this Commission. We will not commit more of our limited resources to create a

forum for a dispute which is no longer viable, nor open the door to a claim for intervenor compensation concerning such a dispute. We will dismiss the complaint.

Comments on Draft Decision

The draft decision of the administrative law judge in this matter was mailed to the parties in accordance with Public Utilities Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure.

Dashjian has filed timely comments on the draft decision.² In his comments, Dashjian contends that he has not yet had a meaningful opportunity to be heard on his legal analyses and arguments in response to gratuitous arguments included by PG&E in its answer. He also claims to be correct on the merits, because the facts alleged in the complaint indicate that PG&E has a uniform practice of discriminating against nonresidential customers who fail to complain to this Commission when required to make a deposit exceeding tariff requirements. This practice, he claims, renders Tariff Rule 6(A)(2)(e) a nullity. PG&E filed a reply to these comments.

Dismissal of the complaint, as reflected in the draft decision, was predicated upon uncontested facts alleged in the verified complaint and verified answer. The Commission is dismissing the case on its own motion, without reference to the arguments advanced in PG&E's answer, and not in response to a noticed motion by PG&E. Such action by the Commission is entirely justified when there is no basis in law for maintaining a proceeding.

Dashjian would apparently have us maintain this complaint case by extrapolating that his experience of first being required by a PG&E agent to post

² The document filed by Dashjian is titled, "Request for Reconsideration; Objections to Administrative Law Judge's Proposed Ruling."

a deposit, and then having the deposit waived after bringing his grievance to us, demonstrates the existence of a routinely followed discriminatory pattern or practice. By this device every consumer complaint against a utility that is subsequently resolved informally could be transformed into a class-action complaint. We will not make this inductive leap by generalizing from the particular facts of Dashjian's experience.

Viewing all of the facts in the light most favorable to Dashjian, the complaint alleges only that PG&E's agent erroneously quoted Dashjian an incorrect figure for a deposit under the applicable tariff rule and, when the error was called to the company's attention, the deposit requirement was waived altogether, consistent with tariff allowances.

We will not permit Dashjian to bootstrap these admitted facts into a global claim that PG&E follows this practice as a matter of policy. PG&E is entitled to the presumption that it complies with its tariff rules, absent allegations that indicate the existence of substantial evidence of a pattern or practice to the contrary.

Dashjian also claims we have incorrectly concluded that he is estopped from maintaining this proceeding, because he made no promise to forbear from filing the complaint in return for a waiver of the deposit. Whether or not this situation is characterized as a species of estoppel, PG&E had a reasonable expectation that complying with Dashjian's demands would buy its peace from the threat of litigating his case. If we were not so to hold, a utility could not adjust tariff disputes informally, as doing so would render it vulnerable to a formal complaint based upon a theory of rate discrimination. At the very least Dashjian's case is moot, and may not be maintained.

We have not altered the draft decision in any material respect in response to the comments we have received.

Findings of Fact

1. On or about May 9, 1999, Dashjian requested that PG&E institute nonresidential service at his law office in San Luis Obispo. At the time of his request Dashjian had been a nonresidential customer of PG&E at two other office locations.

2. PG&E initially informed Dashjian that he would be required to post a deposit to initiate this service, and accordingly billed him for a deposit of \$150.

3. On several occasions at or about the time he requested the service, Dashjian asked PG&E to waive the deposit requirement.

4. Dashjian disputed the \$150 deposit requirement, and sent an informal complaint letter to the Commission's Consumer Affairs Bureau, and a copy of the letter to PG&E. He also placed \$150 on deposit with the Commission.

5. On June 4, 1999, PG&E informed Dashjian that it agreed to waive the deposit requirement altogether.

6. The allegations of the complaint do not demonstrate that there may be any substantial evidence that PG&E has a policy of waiving its deposit requirement for starting nonresidential service only when the customer complains to the Commission, nor that it has any pattern of doing so.

7. There is no triable issue of fact concerning any material event alleged in the complaint.

Conclusions of Law

1. PG&E's waiver of the deposit requirement is permissible under PG&E's Commission-approved Tariff Rules 6 and 7.

2. Dashjian's complaint should be dismissed for failure to state a claim under Public Utilities Code § 1702.

3. Dashjian is estopped from claiming that PG&E's waiver of the deposit requirement violates §§ 453, 494, and 534 of the Public Utilities Code. Alternatively, Dashjian's complaint is moot as a matter of law.

O R D E R

IT IS ORDERED that:

1. Case (C.) 99-09-023 is dismissed.
2. The Commission's Fiscal Office shall return to complainant Michael B. Dashjian all funds on deposit in connection with this complaint.
3. C.99-09-023 is closed.

This order is effective today.

Dated January 6, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
Commissioners

I abstain.

LORETTA M. LYNCH
Commissioner