

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



March 12, 1999

TO: PARTIES OF RECORD IN CASE 98-01-025
DECISION 99-03-031, Mailed 3/12/99

On February 9, 1999, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 8.2 of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

A handwritten signature in cursive script that reads "Lynn T. Carew".

Lynn T. Carew, Chief
Administrative Law Judge

LTC:jva

Attachment

Decision 99-03-031

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Coast Volvo and GMC Trucks, Inc.,

Complainant,

vs.

Southern California Gas Company,

Defendant.

Case 98-01-025
(Filed January 29, 1998)

Neal Hufford, for Pacific Coast Volvo
and GMC Trucks, Inc., complainant.
Sid Newsom, for Southern California Gas Company,
defendant.

OPINION DENYING COMPLAINT

Summary

The complainant, Pacific Coast Volvo and GMC Trucks, Inc. (Pacific Coast) alleges that defendant, Southern California Gas Company (SoCal), has wrongfully withheld a rebate of \$15,000 which the City of Los Angeles (City) promised if complainant delivered two converted natural gas (CNG) powered vehicles to the City.

Complainant alleges City entered into an oral agreement with defendant to receive a rebate under SoCal's natural gas vehicle incentive program in 1995. This program ended in 1995, prior to complainant's billing to City for the cars. Complainant reduced the price of the vehicles by the amount of the rebate on the City's bill. SoCal refused complainant's request for the rebate.

Defendant alleges it has no written application or other documents to verify that complainant or City was enrolled in the program.

An evidentiary hearing was held on October 7, 1998 where the parties presented evidence and argument to support their allegations. The matter was submitted two weeks after the receipt of transcripts on November 3, 1998.

Discussion

Complainant alleges that SoCal made the representation to the City early in 1995 that a rebate would be issued. However, Account Manager for the Natural Gas Vehicle Program, Rick Price, denied that he or any authorized SoCal employee made this representation. He pointed out that the tariff rules governing the vehicle incentive program require that such an agreement be in writing. He has no such written agreement in his records. Thus, the main issue of whether there was an agreement between the parties or the City and defendant is highly disputed.

The burden of proving that there was such an agreement is on the complainant. Complainant was not present when the alleged agreement was made and did not call as a witness any representative from City to establish that, in fact, this agreement was made. City was aware of the Commission's hearing, according to complainant's testimony, and chose not to appear. Therefore, complainant relies on a letter from City to him referencing the rebate to prove that there was an agreement between City and defendant.

Complainant's testimony was credible, that is, he believes that City had an agreement. However, he was not a party to the alleged agreement and has no personal knowledge of the facts surrounding the oral commitments, if any. He can only testify that City told him there was an agreement with defendant to provide the rebate. Without the testimony of City, we cannot be certain of the

facts surrounding the alleged agreement or that it was reasonable to assume there was an oral promise by defendant.

SoCal's witness testified that the company was well aware that this tariff would expire before several written contracts were fulfilled. Therefore, SoCal listed such contracts in its 1995 rate case for reimbursement after the program expired. Because there was no written contract between SoCal and City, SoCal did not list City as a participant in the rebate program. The fact that there is no written agreement as required and this lack of SoCal's mention of City in this program makes it clear that there was no written contract. Therefore, we must conclude that complainant has not carried his burden of proof and this complaint must be denied.

Findings of Fact

1. Complainant supplied the City of Los Angeles with two natural gas vehicles that he believed would qualify him to receive a \$7,500 per vehicle rebate under defendant's Natural Gas Incentive program.
2. Complainant did not enroll in the Natural Gas Incentive Program but relied on the representation of a City of Los Angeles representative that he would receive a rebate of \$15,000 from defendant.
3. Complainant delivered two trucks to the City of Los Angeles and billed the City an amount reduced by the \$15,000 rebate.
4. Defendant produced no reliable evidence that the City of Los Angeles enrolled in the Natural Gas Incentive program by completing an application and receiving approval to participate in the program, as required by defendant's tariff.
5. Defendant denied complainant's request for a \$15,000 rebate.

Conclusions of Law

1. Complainant has not met his burden to prove by a preponderance of the evidence that he is entitled to a \$15,000 rebate.
2. This complaint should be denied.

O R D E R

IT IS ORDERED that:

1. The complaint in this proceeding is denied.
2. This proceeding is closed.

This order is effective today.

Dated March 12, 1999, at San Francisco, California.