

Decision 99-10-061 October 21, 1999

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.

Case 92-02-032
(Filed February 15, 1992;
Petition to Modify
filed July 1, 1999)

OPINION

1. Summary

Petitioner seeks to modify Decision (D.) 98-07-021. The petition is without merit and is denied.

2. Background

In D.98-07-021, issued on July 2, 1998, we dismissed 30 formal complaints, 50 supplemental complaints and 2 informal complaints that Petitioner William Victor had filed against GTE California Incorporated (GTE) since 1992.¹ We released to the utility \$19,423.30 in disputed billing amounts held in escrow in connection with these and earlier complaints. We approved a settlement

¹ In D.98-01-052, issued on January 21, 1998, we dismissed 18 earlier cases that Petitioner had brought against GTE, following a hearing in Los Angeles. All of the complaints dealt with billing disputes on Petitioner's three GTE telephone accounts.

agreement between the parties in which Petitioner agreed to restrict his use of the Commission's complaint and impound procedures. In view of the settlement, we declined to consider sanctions against Petitioner for alleged frivolous and vexatious litigation. We cautioned Petitioner that we would look to California's vexatious litigant statute (Code of Civ. Proc. § 391) in our handling of any future complaints brought by him.

3. Petition to Modify

Under the terms of his settlement agreement with GTE, Petitioner was to receive a refund of any impound amount in excess of Petitioner's outstanding accounts with GTE. GTE states that, after applying the \$19,423.30 to the outstanding accounts, it refunded \$101.45 to Petitioner. Petitioner believes that the refund should have been more. GTE states that the difference in monies released by the Commission and Petitioner's outstanding balances resulted in part from credits issued to Petitioner's accounts over time.

Petitioner filed his petition to modify D.98-07-021 on July 1, 1999. The petition seeks to make changes in the decision that would require a further accounting of monies that Petitioner had deposited in the Commission's escrow account, a review of all complaints filed by Petitioner for the past 10 years, and various changes to the text of the decision (for example, to eliminate the word "numerous" in describing cases that Petitioner had filed against utilities since 1988.)

Petitioner states that his copies of complaints against GTE were damaged by earthquake and flooding in 1994 and 1995. He acknowledges that the Commission's staff has on several occasions made copies of his complaints available to him, but he believes that these copies are incomplete. He acknowledges that the Commission's Fiscal Office provided him with a formal

accounting of his deposits to the escrow account, but he now believes this accounting is incorrect. He states that he has reviewed the file maintained by GTE, but he believes that this file also is incomplete.

Petitioner states that he does not challenge his settlement agreement with GTE. GTE in its response to the petition opposes modification of D.98-07-021 as unjustified and unnecessary.

4. Discussion

Petitioner, who is an attorney, provides us with no evidence, affidavit or declaration to support his request for modification of D.98-07-021. (See Rule 47-Petitions for Modification.) He raises no issue that could not have been the subject of discovery years ago. A review of the record shows that Petitioner was given many opportunities to examine copies of his complaints at the Commission's Los Angeles office. He was in possession of the Fiscal Office accounting of his escrow funds before he reached settlement with GTE. He raised no objection to the accounting at that time, nor did he seek to dispute the recorded amount at hearing.

The Commission file shows that four of petitioner's checks were returned because of a closed bank account, and this may account in part for what Petitioner believes is the disparity in the amount deposited. Petitioner seems to have kept no records of the adjustments that GTE made to his accounts, nor apparently has he examined those adjustments through GTE's records. The fact that, with all these adjustments, the escrow amount was within \$102 of the outstanding balance shown on GTE's books attests, we believe, to the accuracy of these records.

Petitioner provides no justification for modifying the conclusions or the text of D.98-07-021. In the absence of any evidence of error, the petition to modify D.98-07-021 should be, and is, denied.

5. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. On August 31, 1999, Petitioner by telephone requested a 30-day extension in time to comment on the draft decision. The extension was granted. Petitioner was given until October 8, 1999, to comment. Petitioner has filed no comments.

Findings of Fact

1. The Commission in D.98-07-021 approved a settlement reached between GTE and Petitioner, dismissing 30 formal complaints, 50 supplemental complaints and two informal complaints.
2. The Commission released to GTE \$19,423.30 in disputed billing amounts held in escrow in connection with Petitioner's complaints.
3. GTE applied the funds to Petitioner's outstanding account and refunded back to Petitioner \$101.45.
4. A formal accounting of the escrow amount had been furnished to Petitioner prior to his settlement with GTE.
5. One year after issuance of D.98-07-021, Petitioner seeks modification of the decision to require another accounting of the escrow amount and a review of all cases he had filed against GTE in the past 10 years.

Conclusion of Law

Petitioner fails to justify modification of the conclusions or the text of D.98-07-021.

O R D E R

IT IS ORDERED that the Petition of W. Victor to Modify
Decision 98-07-021 is denied.

This order is effective today.

Dated October 21, 1999, at San Francisco, California.

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