

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



December 17, 1999

TO: PARTIES OF RECORD IN I.99-04-021  
DECISION 99-12-055, Mailed 12/17/99

On November 16, 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:tcg

Attachment

Decision 99-12-055

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's own motion and Order to Show Cause into the operations and practices of Aijaz Ali Khan and Clara Ines Martinez, dba People's Electric Supply Company, ESP #1222,

Respondents.

Investigation 99-04-021  
(Filed April 22, 1999)

No appearance for Aijaz Ali Khan and Clara Ines Martinez.

Carol Dumond, Attorney at Law, for  
Commission Consumer Services  
Division.

**OPINION REVOKING  
ELECTRIC SERVICE PROVIDER AUTHORITY**

**Summary**

This decision revokes electric service provider (ESP) authority #1222 held by Aijaz Ali Khan and Clara Ines Martinez (respondents), dba People's Electric Supply Company (PESCO) because they violated Pub. Util. § 394.25(b) and Decision (D.) 98-03-072, a statute and rules governing ESPs, by soliciting customers and salesmen while their authority was suspended.

**Background**

Respondents received authority to operate as an ESP on December 15, 1997. On March 26, 1998, the Commission revised rules governing ESPs. On April 1, 1998, the Commission notified all existing ESPs of the new requirements

and of the consequences for the ESP of failure to comply. Because respondents failed to present a contract for service with an underlying utility district by August 18, 1998, their authority was suspended. After this date, potential customers and businessmen complained that PESCO continued to solicit customers and distributorships and to receive deposits from both. The Commission's Consumer Services Division (staff) subsequently requested that the Commission issue an order for respondents to show cause why their authority should not be permanently revoked.

An evidentiary hearing was held in Stockton, California on June 9, 1999 where the respondents failed to appear. The matter was submitted on August 16, 1999 after the filing of staff's brief.

### **Notice of Proceeding**

At the evidentiary hearing, staff witness Bob Bennett testified that he personally delivered a copy of the Commission's Order to Show Cause (OSC) and Notice of Evidentiary Hearing to the two addresses on file at the Commission as respondents' current and prior business addresses. However, Bennett was unable to locate respondents or a representative of PESCO. Bennett spoke with the current tenant at one business location who provided the name and telephone number of a neighboring business that might know respondents' whereabouts. When contacted, this business was not familiar with respondents or their company. Bennett also talked with the manager of the commercial complex and with representatives of the San Joaquin District Attorney's Office. Staff eventually obtained five other business addresses of respondents and an address in New York for Clara Martinez. Staff subsequently mailed a copy of the

OSC and notice of evidentiary hearing to the alleged current address and the New York address. Both mailings were returned.<sup>1</sup>

### **Violations**

Staff witness Ashok B. Chinai testified that he paid \$200 to Jatiner Gill, a salesman for PESCO, in April 1998 to become a PESCO business customer for electric service. Gill promised him a 20% discount. Chinai complained after two months that he was not switched to PESCO's service. He called for a refund and subsequently received a letter dated July 30, 1998 from Aijaz Khan promising the refund within 30 days. Chinai has never received this refund. A week after Chinai's check was cashed, PESCO requested that the Commission place its authority on inactive status.

Richard Chan, who supervised the staff's investigation of respondents, interviewed Gill. Gill told Chan he gave the \$200 deposit to Khan, who had a business account at the Bank of America. He provided Chan a copy of the receipt from Khan for the \$200, copies of other customer checks and a copy of an energy agreement with a customer. Gill said that he never received his promised commission for signing up customers.

Gill told Chan that Khan used to be secretary at the Islam Mosque. However, Khan could not be located there. Members of the mosque had not seen Khan and thought he had a sister in New York.

The bank manager indicated that Khan had a business account in the name of PESCO that was closed in June 1998. This account revealed checks from other

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<sup>1</sup> The Notice of Evidentiary Hearing, which was ordered by the Commission to be sent by personal service return receipt requested, was also returned and is in the formal file for this proceeding.

customers and sales agents later discovered to be similar victims. In all, 19 customers deposited approximately \$4,550 for service never received. Signatures on the cancelled checks matched those of the signature cards of Khan and Martinez.

### **Remedies**

The acts of Khan and Martinez show that they intentionally solicited and received deposits for electric service knowing that they did not have the facilities to provide this service. These acts violate D.98-03-072 and constitute fraud under Pub. Util. Code § 394.25(b). Staff subsequently turned its investigation over to the District Attorney for criminal prosecution for taking money under false pretenses and grand theft. Since respondents have committed fraud, appear to be no longer in the state, and have not informed the Commission of their address, as required of ESPs, they are not fit to continue to hold ESP certification and their authority should be revoked. This revocation should be effective immediately to prevent further acts of fraud. Respondents should also be ordered to return deposits they received, plus interest at the current commercial paper rate, if they are located and before any further certification to do business by this Commission. Should respondents seek any future certification from this Commission, they should be ordered to reference this proceeding.

In I.98-04-009, D.98-12-075, the Commission established overall guidelines for imposing fines. In doing so, the Commission determined that the purpose of a fine is to effectively deter further violations by the perpetrator in question or others. For this reason, fines are paid to the State of California, rather than to victims. Effective deterrence creates an incentive for public utilities to avoid violations. Deterrence is particularly important for violations which could result in public harm, and particularly against those where severe consequences could

result. To capture these ideas, the Commission adopted two general factors to set the level of a fine: (1) severity of the offense and (2) conduct of the utility.

In this proceeding, it is important to prevent the perpetration of fraud on the public in rendering electric service, especially under recent electric regulation which allows new competitors. These new competitors must not be allowed to discourage public participation with new electric providers by engaging in fraud. Because it is proven that respondents engage in such acts, a fine is warranted to deter such behavior.

### **Severity of the Offense**

The severity of the offense includes several considerations, basically, economic harm and physical harm. Economic harm will reflect the amount of expense imposed upon the victims or customers as well as any unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in establishing the fine. In comparison, violations that cause actual physical harm to people or property are generally considered the most severe, with violations that threaten such harm closely following.

In this proceeding, respondents have engaged in conduct which causes economic harm to customers and salesman relying on respondents. Deposits were paid that were not refunded and no service provided. Distributors paid for distributorships and were unable to make anticipated commissions. In addition, customers involved in this fraud are now hesitant to participate in the competitive environment of electric service, thus, this new regulatory framework is damaged. From their fraud, Respondents have gained at least \$4,500. We must send a strong signal to future electric service providers that such criminal behavior will not be tolerated.

### **Conduct of the Utility**

Every utility is required by Pub. Util. Code § 702 to obey and comply with every order, decision, direction, or rule of the Commission. Such compliance is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, should be punished severely. Intentional fraudulent conduct must also be dealt with severely.

The number of the violations is a factor in determining the severity of the offense. A widespread violation that affects a large number of consumers is a more severe offense than one limited in scope. In this proceeding 19 customers and one salesman provided deposits relying on respondents' promise to provide service. Respondents engaged in fraudulent conduct at least from the time they knew they had no active operating authority on August 18, 1998. For a "continuing offense," Pub. Util. Code § 2108 counts each day as a separate offense. Respondents had notice on April 1, 1998 that they were operating unlawfully without an underlying electric provider. We notified them that their operating authority was suspended on August 18, 1998. Therefore, the penalty imposed is multiplied by 295 days, one day each from August 18, 1998 to June 9, 1999, the date of the hearing in this proceeding when it was apparent that respondents had left the state. Thus, the range of penalty allowable under § 2107 at \$500 to \$20,000 per offense is \$147,500 to \$5,900,000.

### **Financial Resources of the Utility**

Effective deterrence also requires that the Commission recognize the financial resources of the public utility in setting a fine that balances the need for deterrence with the constitutional limitations on excessive fines. Some California utilities are among the largest corporations in the United States, and others are extremely modest, one-person operations. The Commission adjusts the fine

levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

We also set the level of the fine in conjunction with the overall package of sanctions ordering refunds to all customers and salesman of their deposits or fee for distributorships, revoking certification, and notice to the Commission of this proven unlawful conduct in any future request for certification.

In conclusion, based upon respondents' intentional conduct, the economic harm to customers and salesmen in the amount of \$4,500, the length of the violation and damage to the community's motivation to participate in future competitive utility endeavors, we determine a fine of \$500 per day, or a total of \$147,500, to be appropriate for this small company.

### **Findings of Fact**

1. Aijaz Ali Khan and Clara Ines Martines, dba People's Electric Supply Company had been authorized to do business as an ESP under registration #1222.
2. Respondents have received approximately \$4,500 in deposits from customers for service, and also have received payment from at least one salesman for the right to sell services, after they knew they had no contracts with underlying local utility companies to provide service.
3. Staff made diligent, good faith efforts to serve respondents with the order to show cause and notice of evidentiary hearing in this proceeding.
4. The Commission's efforts to personally serve respondents with the order to show cause and notice of evidentiary hearing were not successful.
5. Respondents did not appear at the scheduled hearing, have not informed this Commission of a forwarding address, and appear to have moved from the State.



### **Conclusions of Law**

1. Respondents have violated D.98-03-072 and Pub. Util. Code §§ 394.25(b)(1) and (b)(2) by internationally soliciting and receiving deposits for electric service while they did not have the facilities to provide this service.
2. Respondents' certification as an energy service provider #1222 should be revoked immediately.
3. Respondents should pay restitution to customers from whom deposits were obtained in the amount of the deposit plus interest at the current commercial paper rate. Respondents should return all payments for distributorships to all individuals making such payments.
4. Respondents should pay a fine of \$500 per day for violations which continued for 295 days pursuant to Pub. Util. Code §§ 2107 and 2108.
5. Respondents should be ordered to reference this proceeding in any future request for certification filed at this Commission.
6. This order should be effective immediately to prevent further acts of fraud.

### **ORDER**

#### **IT IS ORDERED that:**

1. The authority to provide electric service of Aijaz Ali Khan and Clara Ines Martinez, dba People's Electric Supply Company (PESCO), ESP #1222, is revoked.
2. PESCO, Aijaz Ali Khan and/or Clara Ines Martinez shall immediately refund to individual customers all deposits for service from those customers, and shall immediately refund all payments for distributorships to all individuals making such payments. All deposits and payments that are unrefunded as of 30 days after the effective date of this order shall be remitted to the Fiscal Office of the California Public Utilities Commission, and if these deposits and payments

remain unclaimed, shall escheat to the state of California pursuant to Code of Civil Procedure § 1519.5.

3. Within 180 days after the effective date of this order, respondents shall remit to the Fiscal Office of the California Public Utilities Commission a fine in the amount of \$147,500 payable to the General Fund of the State of California.

4. In any future certification proceeding before this Commission, Aijaz Ali Khan and Clara Ines Martinez must make reference to this proceeding.

5. The Executive Director shall cause personal service of this order to be made upon respondents. If personal service cannot be accomplished within 30 days after this order is signed, service will be deemed made by mailing a copy of this order to the last known address of respondents.

6. This proceeding is closed.

This order is effective today.

Dated December 17, 1999, at San Francisco, California.