

ALJ/WAC/sbf      **PROPOSED DECISION**      Agenda ID #11901 (Rev. 2)  
Adjudicatory  
3/21/2012 Item 7  
Decision PROPOSED DECISION OF ALJ COLBERT (Mailing 2/11/2013)

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

Maria V. Lawrence,

Complainant,

vs.

Pacific Gas and Electric Company (U39G),

Defendant.

Case 11-04-019  
(Filed April 25, 2011)

**DECISION DISMISSING THE COMPLAINT OF MARIA V. LAWRENCE**

**TABLE OF CONTENTS**

<b>Title</b>	<b>Page</b>
DECISION DISMISSING THE COMPLAINT OF MARIA V. LAWRENCE .....	1
1. Summary .....	2
1.1. Parties.....	2
2. Factual and Procedural Background.....	2
3. Scope of Proceeding .....	5
4. Standard for Ruling on a Motion to Dismiss .....	5
5. Parties’ Responses to Scoping Memo Issues.....	10
6. Discussion.....	15
7. Conclusion .....	17
8. Categorization and Need for Hearing.....	17
9. Comments on Proposed Decision .....	18
10. Assignment of Proceeding .....	18
Findings of Fact.....	19
Conclusions of Law.....	20
ORDER .....	21

**DECISION DISMISSING THE COMPLAINT OF MARIA V. LAWRENCE****1. Summary**

This Decision denies the relief requested and dismisses the complaint filed by Maria V. Lawrence against Pacific Gas and Electric Company (U39E).

Case 11-04-019 is closed.

**1.1. Parties**

Maria V. Lawrence (Ms. Lawrence or Complainant) owns and resides at 138 Virginia Court, Alamo, California (the Property). Complainant is a customer of Pacific Gas and Electric Company (U39E) (PG&E or Defendant).

Defendant is a provider of electricity and natural gas service and is an investor-owned public utility under the jurisdiction of the California Public Utilities Commission.

**2. Factual and Procedural Background**

Maria V. Lawrence (Ms. Lawrence or Complainant) originally filed a complaint against the Pacific Gas and Electric Company (PG&E or Defendant) on February 25, 2010 (Case (C.) 10-02-026), alleging a number of wrongful actions by the Defendant in relation to the initial placement and subsequent relocation of gas and electric lines on her property. On April 25, 2011 Complainant filed the instant complaint alleging that the Defendant improperly shut off her gas service from August 24, 2009 through October 1, 2009 and July 7, 2010 through July 9, 2010. The Complainant also alleges that Defendant improperly turned off her electrical service on May 26, 2010 and February 2, 2011. Complainant demands that: Defendant pay \$49 per day meal allowance for each day her gas service was turned off; pay \$150 for each day that electric service was turned off; refund \$713.14 for a bill and \$143 for a deposit. She also demands that the Defendant be required to turn off service manually not remotely and turn the service back on

when “it is safe” and that Defendant pay a substantial fine for causing hardship to Complainant as well as putting her health and welfare in jeopardy when it turned off her gas service.<sup>1</sup>

Defendant contends that Complainant’s gas service was properly shut off because she was constructing a structure over the gas line. In addition, Defendant contends that this issue was litigated in C.10-02-026 and that the claim is barred as a matter of res judicata and collateral estoppel.<sup>2</sup> The Defendant acknowledges that shut-off of the Complainant’s electrical service was not litigated in C.10-02-026 but does contend that the shut-off of service was due to Complainant’s failure to pay her electrical bill. Defendant asserts that the issue of remote shut off and restoration, by the use of a SmartMeter, is outside of the scope of the instant complaint. Defendant contends that Complainant is not entitled to any reparations resulting from the shut-off of her gas or electrical service.

Ms. Lawrence’s home was built in 1978. She purchased it from the original owner in 1985. In 2005 Ms. Lawrence planned to build a freestanding workshop/garage to the south of her house. PG&E asserts that Ms. Lawrence’s contractor failed to locate the underground gas and electric lines before excavating in preparation to install the new structure.<sup>3</sup> The contractor dug into and damaged the gas line. PG&E states that it advised the Complainant of her obligation to apply for service relocation prior to construction. In March 2005, Ms. Lawrence submitted an application to PG&E to relocate her utility lines and

---

<sup>1</sup> Complaint, § H.

<sup>2</sup> PG&E Answer to Complaint at 2.

<sup>3</sup> PG&E Answer to Complaint at 2.

paid PG&E an advance of \$1,000 required for engineering the job. However, she ultimately cancelled the contract with PG&E for relocation of its utility lines and deferred the project for reasons that are not material to this complaint.

In 2009 Ms. Lawrence renewed her plans to build the garage, and again applied to PG&E to reroute the utility lines, resubmitting her 2005 design for the work. Construction began on the structure in mid-2009 prior to the gas lines being relocated. When PG&E learned of the construction over the gas line it shut off the gas. PG&E asserted that it does not allow or place gas lines under buildings as a leak in the line could cause gas to build up inside the structure.<sup>4</sup> Service was resumed when the parties agreed that no roof would be placed on the structure until the gas line was moved.<sup>5</sup>

The shut-off of electrical service on May 26, 2010 and February 2, 2011 was not directly related to the dispute over construction of the garage. On this issue, PG&E contends that Ms. Lawrence failed to pay her electricity bill resulting in the service termination. PG&E contends that service was promptly restored when the bill was paid. PG&E requests the Commission find that the Complainant has failed to state a claim upon which relief can be granted and on that basis deny the complaint and dismiss the complaint.<sup>6</sup>

The Defendant's Issue Brief was filed on January 23, 2012. The Complainant's Reply/Issue Brief was filed on February 3, 2012. On March 14, 2012 Defendant filed a motion to strike portions of Complainant's issue brief. On March 22, 2012 the Commission issued a decision extending the statutory

---

<sup>4</sup> Prehearing Conference (PHC) Transcript 10:3-24.

<sup>5</sup> PHC Transcript 16:1-19.

<sup>6</sup> PG&E Issue Brief at 16.

deadline of the instant proceeding until October 31, 2012. On March 22, 2012 Complainant filed a response to the Defendant's motion to strike. On October 11, 2012 the Commission issued a decision extending the statutory deadline of the instant proceeding until January 31, 2013. On January 24, the deadline was extended to May 31, 2013.

### **3. Scope of Proceeding**

A PHC was held on August 10, 2011. The Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo), in the instant proceeding, was issued on December 7, 2011. The Scoping Memo determined that there were four primary issues to be addressed in this proceeding:

1. Were the circumstances and repercussions of the shut-off of the Complainant's gas service fully litigated in C.10-11-026?
2. If not, did Defendant act reasonably when it shut off gas service to Complainant when she began construction on her garage but prior to a roof being placed on the structure?
3. What is the legal and factual basis for the amount of reparations that the Complainant is seeking from the Defendant?
4. Was the Complainant's electrical service terminated for non-payment of her bill and was she given proper notice of the shut-off in conformance with Commission rules and mandated procedures under the applicable tariff?

### **4. Standard for Ruling on a Motion to Dismiss**

As noted earlier (*see* footnote 6 and accompanying text), Defendant requests that the Commission dismiss the complaint. In effect, the request is a Motion to Dismiss.

A Motion to Dismiss requires the Commission to determine whether the party bringing the motion prevails based solely on undisputed facts and matters

of law. The Commission treats such motions as a court would treat motions for summary judgment in civil practice.<sup>7</sup> A motion for summary adjudication is appropriate where the evidence presented indicates there are no triable issues as to any material fact and that the moving party is entitled to judgment as a matter of law.<sup>8</sup> The interpretation of a statute or regulation is generally seen to be a pure legal issue.<sup>9</sup>

While there is no Commission rule expressly for summary judgment motions, the Commission's Rules of Practice and Procedure (Rules) have Rule 11.2,<sup>10</sup> which governs motions to dismiss. This procedure is analogous in several respects to a motion for summary judgment in civil practice.<sup>11</sup> The Commission has explained that the purpose of both types of motions is to permit determination before hearing whether there are any triable issues as to any material fact.<sup>12</sup> The Commission looks to California CCP § 437(c) for the standards on which to decide a motion for summary judgment. Section 437(c) provides:

---

<sup>7</sup> Scoping Memo and Ruling of Assigned Commission on Motion to Dismiss and Preliminary Matters at 3, in *Raw Bandwidth Communications, Inc. v. SBC California, Inc. and SBC Advanced Solutions, Inc.*, C.03-05-023 (September 11, 2003), citing to *Westcom Long Distance, Inc. v. Pacific Bell et al.*, Decision (D.) 94-04-082, 54 CPUC2d 244, 249.

<sup>8</sup> Code of Civil Procedure (C.C.P.), Section 437c; Weil & Brown, *Civil Procedure Before Trial*, 10:26-27.

<sup>9</sup> See *Manriquez v. Gourley*, 105 Cal. App. 4th 1227, 1234-35 (2003), quoting from *Culligan Water Conditioning v. State Bd. of Equalization*, 17 Cal.3d 86, 93 (1976).

<sup>10</sup> All references to Rules are to the Commission's Rules of Practice and Procedure, which are available on the Commission's website.

<sup>11</sup> *Westcom Long Distance v. Pacific Bell*, D.94-04-082, 54 CPUC2d 244, [249] (1994).

<sup>12</sup> *Id.*

The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers ... and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

C.C.P. §§ 437c(f)(1) and (2) provide for summary adjudication by an analogous procedure:

A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty....

A motion for summary adjudication shall proceed ... in all procedural respects as a motion for summary judgment.

A further purpose of such a motion is that it promotes and protects the administration of justice and expedites litigation by the elimination of needless trials.<sup>13</sup> As such, where appropriate, the Commission regularly grants motions for summary judgment or summary adjudication.<sup>14</sup> Initially, the moving party bears the burden of establishing evidentiary facts sufficient to prove or disprove the elements of a particular claim, and then the burden shifts to the opposing

---

<sup>13</sup> Westcom Long Distance, *supra*, 54 CPUC2d at 249.

<sup>14</sup> See D.07-07-040 (granting Chevron judgment against Equilon “as a matter of law”); D.07-01-004 (granting Cox Telecom judgment against Global NAPs of California); D.02-04-051 (granting summary adjudication of a claim by County Sanitation District against Southern California Edison Company).

party to show a material issue of fact or an affirmative defense.<sup>15</sup> As the Commission stated in D.06-08-006:

Under the summary judgment procedure, the moving party has the burden of showing that there are no disputed facts by means of "affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken." The opposition to the motion must state which facts are still in dispute. The motion shall be granted if all the papers show that there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. If the parties' filings disclose the existence of a disputed issue of material fact, the motion must be denied.<sup>16</sup>

In Application (A.) 99-04-010, we reviewed our standards for dismissing complaints and applications:

On a motion to dismiss a complaint, the legal standard against which the sufficiency of the complaint is measured is whether, taking the well-pleaded factual allegations of the complaint as true, the defendant is entitled to prevail as a matter of law.<sup>17</sup>

In evaluating the sufficiency of a complainant's allegations, we are guided by the standards set forth in Public Utilities Code Section 1702 which provides that the complainant must (a) allege that a regulated utility has engaged in an act or failed to perform an act; and (b) in violation of any law or commission order or rule:

---

<sup>15</sup> C.C.P. §§ 437c(c), (f), (p).

<sup>16</sup> *Westcom Long Distance, supra*, 54 CPUC2d at 249, quoted in D.06-08-006 *Qwest Communications v. Pacific Bell*.

<sup>17</sup> *E.g.*, *MCI Telecommunications Corp. v. Pacific Bell*, D.95-05-020, 59 Cal.P.U.C.2d 665, 1995 Cal.P.U.C. LEXIS 458, at \*29-\*30, citing *Burke v. Yellow Cab Co.* (1973) 76 Cal.P.U.C. 166.

Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or anybody politic or municipal corporation, by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.

The Commission will dismiss a complaint that fails to meet this two-pronged standard.<sup>18</sup> In addition, Commission Rule 4.2(a) requires that complaints be drafted with specificity so that the defendant and the Commission know precisely the nature of the wrong that defendant has allegedly committed, the injury, and the relief requested:

The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired.

With these standards in mind, we now examine the parties' responses to the scoping memo in order to determine if the Complainant has raised a legal question or any issue of material fact that demonstrates that the Defendant has engaged in an act or failed to perform an act in violation of any law or

---

<sup>18</sup> See *Monkarsh v. Southern California Gas Company*, D.09-11-017, at 3 (November 24, 2009); *Pacific Continental Textiles, Inc. vs. Southern California Edison Company*, D.06-06-011 at 4 (June 15, 2006); *Watkins v. MCI-Metro Access Transmission Services*, D.05-03-007 at 4 (March 17, 2005); *Rodriquez v. Pacific Gas and Electric Company*, D.04-03-010 at 3-4 (March 16, 2004); *AC Farms Sheerwood v. Southern California Edison Company*, D.02-11-003 (November 7, 2002); and *Crain v. Southern California Gas Company*, D.00-07-045 (July 20, 2000).

Commission order or rule. If not, then the Defendant is entitled to a judgment, dismissing the complaint, as a matter of law.

### **5. Parties' Responses to Scoping Memo Issues**

As previously noted, the Scoping Memo determined that there were four primary issues to be addressed in this proceeding. We will now address the parties' responses to those four issues:

1. Were the circumstances and repercussions of the shut off of the Complainant's gas service fully litigated in C.10-11-026?

PG&E argues that the Complainant has already raised the issue of reparations for the cut-off of her gas service in C.10-11-026. Specifically, PG&E states that the issue was raised in the Complainant's amended complaint and pre-trial Brief.<sup>19</sup> PG&E asserts that the Complainant had the opportunity, during four days of evidentiary hearings (EH), to present evidence and argue in support of her claim for reparations and that she chose not to do so. It is PG&E's contention that Complainant's amended complaint in C.10-02-026 raised identical allegations relating to precisely the same time periods as the instant complaint.<sup>20</sup> PG&E asserts that Complainant was aware of the facts and circumstances that (allegedly) supported her claims for meal allowances at the time of the EH in C.10-02-026 and failed to raise them.<sup>21</sup> PG&E concludes that Complainant should be barred from re-litigating issues from C.10-02-026 in the instant complaint.

---

<sup>19</sup> PG&E Issue Brief at 2 footnote 1.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> PG&E Issue Brief at 3-4.

Ms. Lawrence contends that the circumstances and repercussions of the shut-off of her gas service were not fully litigated in C.10-02-026. She contends that there was no evidence or testimony presented on these issues. She does not address the Defendant's contentions that these issues were raised in her amended complaint and pre-trial brief filed in C.10-02-026. Nor does she address Defendant's contention that she had the opportunity, during four days of EH, to present evidence and argue in support of her claim for reparations.

2. If not, did Defendant act reasonably when it shut-off gas service to Complainant when she began construction on her garage but prior to a roof being placed on the structure?

PG&E argues that it acted reasonably, based on the surrounding circumstances, when it shut off Complainant's gas service during construction of her workshop/garage. PG&E states that Complainant was fully aware of the presence of electric and gas service lines on her property.<sup>22</sup> It points out that in March 2005 Complainant dug in to the gas service line while constructing the garage workshop.<sup>23</sup> PG&E alleges that the Complainant's contractor had failed to contact the Underground Service Alert to mark and locate subsurface facilities on the property prior to excavating the foundation of the structure, as required under the statutory scheme established in Government Code Section 4216.<sup>24</sup> PG&E argues that these "mark and locate" rules were established to ensure safety while working near pipelines.<sup>25</sup> PG&E asserts that by proceeding with

---

<sup>22</sup> *Id.* at 5.

<sup>23</sup> *Id.*

<sup>24</sup> PG&E Issue Brief at 5.

<sup>25</sup> *Id.*

construction on the foundation of the garage/workshop over the gas service line, Complainant was intentionally or negligently reckless.

PG&E says that it requested Complainant to suspend construction on the structure until it could relocate the gas line and that she refused.<sup>26</sup> PG&E states it assumed that the garage/workshop would be an occupied structure. PG&E asserts that pursuant to its Gas Rule 11 it may discontinue service if it determines that a premise's gas lines or natural gas equipment or the use of either is unsafe, endangers PG&E's service facilities or if the customer threatens to create a hazardous condition.<sup>27</sup> PG&E points out that its Gas Rule 16.F.3 addresses impaired access and hazardous conditions related to gas lines, and allows it to discontinue service if corrective measures are not taken.<sup>28</sup>

PG&E asserts that the Complainant was building over a gas line and it could not persuade her to suspend construction in order for the line to be moved. PG&E states that it concluded that the temporary shut-off of the Complainant's gas service, together with a sustained and concerted effort to relocate the gas line would minimize the safety risk posed by the overbuild.<sup>29</sup>

Ms. Lawrence contends that the PG&E did not follow procedures, act reasonably or give notice that the gas was going to be shut off. She states that PG&E should have acted only when the roof to the structure was completed.<sup>30</sup> She states that PG&E should have sent her "Complaint Notification" letters after

---

<sup>26</sup> *Id* at 6.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> PG&E Issue Brief at 8.

<sup>30</sup> Brief of Maria Lawrence at 13.

the roof was placed on the structure and let her decide whether to remove the roof or have the gas shut off.<sup>31</sup>

3. What is the legal and factual basis for the amount of reparations that the Complainant is seeking from the Defendant?

PG&E states that the Complainant's claim for reparations falls in two categories: 1) a daily meal allowance of \$49 during the shut-off of gas service and 2) a spoiled food allowance of \$150 for each day electric service was discontinued in May, 2010 and February 2011.<sup>32</sup> PG&E states that the first claim for reparations for the gas shut-off relates to suspension of service because of Complainant's construction of a workshop/garage over the gas line. The second claim related to gas shut-off between July 7 and July 9, 2010. This shut-off was related to the relocation of the gas lines on the Complainant's property. PG&E asserts that the Complainant's service would have been restored after the gas lines were relocated on July 7, 2009 but that she refused to let a qualified Gas Service Representative relight the pilot light, insisting instead that the relight be performed with a PG&E electric estimator present,<sup>33</sup> resulting in a two-day delay. PG&E argues that it was the Complainant's unreasonable actions that were the proximate cause of both gas shut-offs and that she is not entitled to any reparations or meal allowance.

PG&E states that the Complainant's claim for food allowance relates to the discontinuance of her electric service on two dates, May 26, 2010 and February 2, 2011. PG&E states that both disconnections were based on non-payment and that

---

<sup>31</sup> *Id.*

<sup>32</sup> PG&E Issue Brief at 9.

<sup>33</sup> PG&E Issue Brief at 11.

proper notifications concerning the disconnections were sent to the Complainant. PG&E asserts that its Commission approved tariff Rule 11 provides that if PG&E terminates service for non-payment it incurs no liability from the customer.<sup>34</sup>

Ms. Lawrence states that her stove is gas and that the claim for meal allowance is based on IRS guidelines and that PG&E's willful misconduct and unjust denial of service should be the basis for a substantial fine.<sup>35</sup>

4. Was the Complainant's electrical service terminated for non-payment of her bill and was she given proper notice of the shut-off in conformance with Commission rules and mandated procedures under the applicable tariff?

PG&E states that the Complainant's electric service was disconnected on two occasions, May 26, 2010 and February 2, 2011.<sup>36</sup> PG&E contends that on both occasions electric service was discontinued for lack of payment. PG&E states that on each occasion it provided all required notices to Complainant in accordance with applicable tariff rules.<sup>37</sup> PG&E specifically states that termination of electric service is governed by its Electric Rule 11. Rule 11 provides that electric bills are past due if payment is not received within 19 days of mailing.<sup>38</sup> PG&E states that when a bill is past due service may be terminated after: 1) Written notice of discontinuance of service for non-payment of bills has been issued in accordance with PG&E's Rule 8; 2) The bill has not been paid within 15 days of presentation of the discontinuance of service notice; 3) PG&E has made a good faith effort to

---

<sup>34</sup> *Id.*

<sup>35</sup> Brief of Maria Lawrence at 13.

<sup>36</sup> PG&E Prepared Testimony of Kelly Villalobos, 2:16-30, 3:1:20.

<sup>37</sup> *Id.* 3:19-30.

<sup>38</sup> PG&E Issue Brief at 13.

personally give the customer advance notice at least 24 hours before the date of discontinuance.<sup>39</sup> PG&E asserts that its Rule 11.M.1 authorizes the collection of a deposit on accounts that have been terminated due to non-payment. PG&E contends that the record demonstrates its actions meet the requirements of its tariff and Public Utilities Code (Pub. Util. Code) with respect to termination of service for non-payment.<sup>40</sup>

Without referencing any documents, citing any specific fact, tariff or Commission rule, Ms. Lawrence contends that she was paying her electric bill and that the termination was wrongful and without cause. She also contends that reconnection fees and deposits collected by PG&E violate tariff rules.<sup>41</sup>

## 6. Discussion

The Complainant uses the majority of her issue brief to address and re-argue issues that were presented in C.10-02-026. The Defendant has filed a motion to strike portions of the Complainant's issue brief as raising issues outside of the scope of the instant proceeding.<sup>42</sup> We decline to strike portions of the Complainant's brief and deny the Defendant's motion; however, Defendant's point is well taken. The majority of the Complainant's brief is outside of the scope of the proceeding and/or non-responsive. We will accord the Complainant's extemporaneous responses contained in her brief the weight they deserve.

---

<sup>39</sup> *Id.* at 14.

<sup>40</sup> *Id.*

<sup>41</sup> Brief of Maria Lawrence at 14.

<sup>42</sup> PG&E Motion to Strike Portions of Complainant's Issue Brief.

The Complainant has failed to adequately address the issues set forth in the Scoping Memo. Her responses to the Scoping Memo issues, set forth in Section III of her brief, are idiosyncratic and self-serving. They provide no specific citation to the California Public Utilities Code, applicable Commission Decisions, case law and reference to the record in proceeding C.10-11-026, as required by the Scoping Memo.<sup>43</sup>

There is some dispute on whether the circumstances and repercussions of the shut-off of the Complainant's gas service were fully litigated in C.10-11-026. It is uncontested that Complainant was building her garage/workshop over an active gas line and did not wait for the line to be moved. Complainant's contention that PG&E should have sent her "Complaint Notification" letters after the roof was placed on the structure and let her decide whether to remove the roof or have the gas shut off is not reasonable or rational. The plain language of the applicable, Commission approved, PG&E tariffs, allows the Defendant to shut off service if unsafe conditions exist. A gas line under a structure is, *per se*, an unsafe condition.

It is uncontested that the second shut-off was to allow the gas lines to be moved. Once the gas lines were relocated the Complainant refused to let a qualified Gas Service Representative relight the pilot light, insisting instead that the relight be performed with a PG&E electric estimator present. Complainant's unreasonable insistence that the relight be performed by the estimator was the direct cause of the additional delay in the resumption of her gas service.

Complainant has not provided any citation to the record or provided any specific facts that support her contention that her electric service was wrongly

---

<sup>43</sup> Scoping Memo at 5.

disconnected. PG&E has made specific reference to its Commission-approved tariffs, as well as specific facts, in justifying its disconnection (on two separate occasions) of the Complainant's electric service, for non-payment of her bill. A utility is under a duty to strictly adhere to its lawfully published tariffs. *Temescal Water Co. v. West Riverside Canal Co.* (1935) 39 Cal RRC 398. Tariffed provisions and rates must be inflexibly enforced to maintain equity and equality for all customers with no preferential treatment afforded to some. *Empire W. v. Southern Cal. Gas. Co.* (1974) 38 Cal App 3d 38, 112 Cal Rptr. 925. The issue of remote shut off and restoration of electrical service, by the use of a SmartMeter, is outside of the scope of the instant complaint.

## **7. Conclusion**

The Complainant has failed to demonstrate that the Defendant has engaged in any activity or violated any applicable rule, law or tariff of the Commission. The Complainant has failed to state a claim upon which relief can be granted. There is no disputed or triable issue of material fact before and/or under the Commission's jurisdiction in this proceeding. The Complainant's request for relief is denied and the case is dismissed. This proceeding is closed.

## **8. Categorization and Need for Hearing**

This decision confirms the categorization of C.11-04-019 as adjudicatory, as defined in Rule 1.3(a). It was anticipated that this proceeding would require EH. Because there is no disputed or triable issue of material fact before and/or under the Commission's jurisdiction in this proceeding, this complaint must be dismissed. The evidentiary determination is changed to state that no EH is necessary.

**9. Comments on Proposed Decision**

The proposed decision (PD) of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on March 4, 2013 by Ms. Lawrence, and reply comments were filed on March 11, 2013 by PG&E.

In her comments Ms. Lawrence contends that the assigned ALJ erred in concluding that "there is not a dispute or triable issue of material fact and/or (law) under the Commission's jurisdiction in this proceeding."<sup>44</sup> Specifically Ms. Lawrence argues that: 1) There is a dispute over the shut off of electricity service for non-payment of bills, 2) Tariff rules have been interpreted incorrectly and 3) There was not an unsafe condition when gas service was shutoff. PG&E contends that the issues raised by Ms. Lawrence have been directly addressed in the PD and that Ms. Lawrence has failed to meet the standard set in Rule 14.3(c) that comments on Proposed Decision's must focus on factual, legal or technical errors with specific reference to the record or applicable law.

We agree with PG&E's contention and find that Ms. Lawrence's comments are factually and technically inadequate and deficient and in accordance with Rule 14.3 will be accorded no weight. Non-Substantive changes have been made to the PD.

**10. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and W. Anthony Colbert is the assigned ALJ.

**Findings of Fact**

1. Complainant owns and resides at 138 Virginia Court, Alamo, California and is a customer of PG&E.
2. Defendant is a provider of electricity and natural gas service and is an investor-owned public utility under the jurisdiction of the Commission.
3. Complainant's home was developed as part of a new subdivision in the latter part of the 1970s.
4. In early 2005 Complainant planned to build a freestanding garage and workshop structure south of her home.
5. The contractor failed to locate the underground gas and electric lines before excavating in preparation to install the new structure and dug into and damaged the gas line.
6. In March 2005 Ms. Lawrence submitted an application to PG&E to relocate her utility lines and paid PG&E an advance of \$1,000 required for engineering the job.
7. Ms. Lawrence cancelled the contract with PG&E for relocation of its utility lines and deferred the project.
8. In 2009 Ms. Lawrence renewed her plans to build the workshop/garage.
9. Construction began on the structure in mid-2009 prior to the gas lines being relocated. When PG&E learned of the construction it shut off the gas.
10. Service was resumed when the parties agreed that no roof would be placed on the structure until the gas line was moved.
11. Complainant's gas was shut off, a second time, between July 7 and July 9, 2010.

---

<sup>44</sup> Comments of Maria V. Lawrence to the PD at 1.

12. The second shut-off was related to the relocation of the gas lines on the Complainant's property.

13. Complainant's electrical service was disconnected on May 26, 2010 and February 2, 2011. PG&E contends the Complainant failed to pay her electricity bill resulting in the service termination.

14. PG&E asserts that the issue of remote shut-off and restoration of electrical service, by the use of a SmartMeter, is outside of the scope of the instant complaint

15. Complainant demands that: Defendant pay \$49 per day meal allowance for each day her gas service was turned; pay \$150 for each day that electric service was turned off; refund \$713.14 for a bill and \$143 for a deposit; be required to turn off service manually, not remotely, and turn the service back on when "it is safe" and that Defendant pay a substantial fine for causing hardship to Complainant and putting her health and welfare in jeopardy when it turned off her gas service.

16. PG&E asserts that it has not violated any law or rule of the Commission and that the complaint fails to state a claim upon which relief can be granted.

17. PG&E requests that the Commission deny the relief sought by Ms. Lawrence and dismiss the Complaint.

18. There is no disputed or triable issue of material fact within the Commission's jurisdiction in this proceeding.

### **Conclusions of Law**

1. The applicable tariffs governing the gas line safety and shut-off are PG&E's Commission-approved tariffs, Gas Rule 11 and Gas Rule 16.F.3.

2. The applicable tariffs governing the disconnection of electric service are PG&E's Commission-approved tariffs, Electric Rule 8 and Electric Rule 11.

3. PG&E must strictly adhere to its lawfully published tariffs.
4. Complainant must prove a violation of a specific standard contained in a statute, rule, or order of the Commission, or a tariff which has been approved by the Commission.
5. Defendant's request to dismiss the Complaint will be treated as a Motion to Dismiss.
6. Complainant has not stated a claim upon which relief can be granted.
7. Complainant has not demonstrated that there is a disputed or triable issue of material fact before and/or under the Commission's jurisdiction in this proceeding.
8. The hearing determination should be changed to no hearings necessary.
9. The Complainant's request for relief should be denied. The complaint should be dismissed.

**O R D E R**

**IT IS ORDERED** that:

1. Maria V. Lawrence's request for relief is denied.
2. The complaint of Maria V. Lawrence against Pacific Gas and Electric Company is dismissed.
3. The hearing determination is changed to no hearings necessary.
4. All Motions not previously ruled on are denied.
5. Case 11-04-019 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Diego, California.