



FILED

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

William J. Wu,

Complainant,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 09-06-010
(Filed June 16, 2009)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING
PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO ABATE
THE COMPLAINT OF WILLIAM J. WU, OR TO DISMISS
WITHOUT PREJUDICE**

Defendant Pacific Gas and Electric Company (PG&E) seeks, by motion filed concurrently with its answer, to have Complaint (C.) 09-06-010 abated or, alternatively, dismissed without prejudice, because of the pendency of a lawsuit filed in Superior Court in which the same issues are being litigated.¹ PG&E contends that allowing this matter to go forward would lead to substantial wasted effort and the possibility of inconsistent results.

Complainant William J. Wu (Wu) filed this complaint to seek relief from a bill from PG&E for \$116,145.31 that resulted from the bypassing of a meter on premises owned by Wu and rented to a third party tenant. Although he rented out the premises, the PG&E account remained (and still remains) in Wu's name,

¹ There appears to be no dispute that the Commission and the Superior Court have concurrent jurisdiction over the subject matter.

and it appears to be assumed by both parties that he is responsible under PG&E's tariffs for the cost of electric service provided during the period in question.

During his tenancy, the tenant used the premises solely for the purpose of growing marijuana indoors. This activity utilized electric power to run growing lights and other apparatus. Inasmuch as the meter was disconnected, PG&E based its billed charges upon the assumption that the equipment was being operated 12 hours per day, 7 days per week, from July 1, 2005, through August 9, 2007. The growing operation was eventually discovered and discontinued by the San Bruno police, and the tenant's whereabouts are unknown.

In *Re Retroactive Billing by Gas and Electric Utilities to Correct Alleged Meter Underbillings Due to Meter Error and Meter Fraud*, (1986) 21CPUC2d 270, the Commission adopted rules for addressing alleged backbilling due to meter tampering and other causes. The decision in that proceeding identifies the questions that the Commission must answer to resolve a customer's backbilling complaint as, "Was energy used by the customer but not paid for?" and, "What is the reasonable estimate of the value of that energy under the applicable tariffs?" *Id.* at 273. Consequently, a customer complaint for alleged overcharging, such as Wu's, in part requires the Commission to estimate the energy used in light of the evidence. See, e.g., *Brixey v. Southern California Edison Company*, (1993) 49 CPUC2d 159.

On the day that Wu filed his complaint against PG&E, PG&E's assignee filed a collection action, *Snow v. Wu* (Case No, CGC 09 486086), in the Superior Court for the State of California, County of San Francisco. The complaint in that action seeks \$116,145.31 in estimated charges for Wu's

unpaid electric bill, plus interest at the legal rate.² The damages sought in that action are based upon the same underlying facts alleged in the complaint Wu filed with the Commission. PG&E argues that the complaint before the Commission should be abated or dismissed, because the judicial action was filed a few hours earlier, and is thus first in time.

As the state administrative agency charged with responsibility to regulate investor-owned utilities, this Commission is equipped to interpret and apply the tariffs upon which PG&E relies in its claim that Wu owes \$116,145.31 in backbilled charges. Such cases come before the Commission with some regularity, and the decisions result in liquidation of the estimated tariff charges at issue. See *Brixey, supra*. The pendency of a parallel court action, whether earlier or later filed, does not compel the Commission to abate (i.e., stay) or dismiss an administrative complaint concerning the same subject matter under the authority cited by PG&E in support of its motion, and there is no reason that the Superior Court would be a preferable forum for resolving the underlying factual issues.

² The Superior Court complaint alleges that these charges may be billed and recovered pursuant to Tariff 9C, Tariff 9E, and Tariff 1, along with Tariff 17.2 and Civil Code section 1882.3, subdivisions (a) and (b).

The Commission can hear and resolve Wu's complaint within 90 to 120 days. Liquidating the amount of tariff charges owed to PG&E is not inconsistent with its assignee's effort to obtain a Superior Court judgment for the unpaid debt. We deny PG&E's motion to hold this proceeding in abeyance or dismiss Wu's complaint.

IT IS SO RULED.

Dated December 9, 2009, at San Francisco, California.

/s/ VICTOR D. RYERSON

Victor D. Ryerson
Administrative Law Judge

