

Decision **DRAFT DECISION OF ALJ VIETH** (Mailed 10/30/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Alex Gee,

Complainant,

vs.

Southern California Edison Company,

Defendant.

Case 02-06-020
(Filed June 13, 2002)

**OPINION DISMISSING COMPLAINT
FOR FAILURE TO STATE A CAUSE OF ACTION**

Summary

We dismiss the complaint of Alex Gee (Gee) against Southern California Edison Company (Edison) for failure to state a cause of action upon which relief may be granted. Gee is being billed for service under Edison’s Schedule GS-1, a small commercial rate tariff. Gee would prefer to be billed under Schedule GS-SP, a commercial rate schedule that was discontinued in 1992 by Decision (D.) 92-06-020.

Procedural Background

A September 10 ruling of the Administrative Law Judge (ALJ) set a prehearing conference (PHC) and directed the parties to meet and confer

beforehand and if they were unable to reach an informal resolution of the dispute, to file PHC statements.¹ A PHC was held, by telephone, on October 11.

This complaint is an adjudicatory proceeding. Though the Instructions to Answer indicated that a hearing might be necessary, we find that the matter can be decided on the pleadings and that no hearing is required, as further discussed below.

Discussion

Gee alleges that Edison has violated its Schedule GS-SP agreement with him because, since May 2001, Edison has billed him for electric service to his building in Fontana, California under Schedule GS-1. The complaint states that Gee rewired his building as part of the Schedule GS-SP agreement. The complaint requests the following relief: reimbursement of the cost of the rewiring; refund of the alleged overcharges since May 2001; and triple damages for civil rights violations.

In fact, as Edison's answer contends, Schedule GS-SP no longer exists. The Commission discontinued Schedule GS-SP and replaced it with Schedule GS-1 following Edison's 1992 general rate case. (See D.92-06-020 Finding of Fact 54(a).) The PHC statements help to provide context for the parties' dispute by clarifying the chronology of service to the building over the last decade. Gee did have commercial service at the building under Schedule GS-SP for some period

¹ Edison filed its PHC statement on October 4, 2002. The ALJ obtained, by FAX, copies of two documents that Gee prepared in response to her ruling. The first, dated October 2, 2002 is entitled *Confer with Southern California Edison on September 25, 2002*, and the second, dated October 7, 2002, is entitled *Reply to Defendant's Prehearing Statement of November [sic] 11, 2002*. At the PHC, the ALJ directed Gee to file both documents with the Commission's Docket Office.

of time up until September 12, 1991. Thereafter and until May 15, 2001, the building was served under a residential account in Gee's name part of the time and the rest of the time service was provided under an account in another name. On May 15, 2001, Gee sought to establish commercial service at the building again.

The PHC statements, which report on the unsuccessful meet and confer, also clarify that Gee believes Edison has improperly calculated the GS-1 rate. At the PHC, Gee explained that in his view, the rate is "manipulated" and misapplies the Commission-established formula for a fair rate of return because "it's not 3.3 times the energy costs that is a reasonable rate for Southern California Edison." (Tr. at 9.)

Pub. Util. Code § 1702 prohibits complaints that challenge the reasonableness of a rate unless the complaint is signed by the Mayor, other specified elected officials, or at least 25 customers. In this case, the complaint is signed only by Gee. Moreover, again contrary to § 1702, the complaint does not allege any violation of law by Edison because Edison actually is complying with the Commission's order in declining to provide service under an eliminated schedule. Accordingly, we must dismiss the complaint. It fails to state a cause of action for which we may award relief since (1) the Schedule GS-SP rate no longer exists, (2) we may not entertain Gee's sole challenge to the reasonableness of the Schedule GS-1 rate in this forum, and (3) civil rights abuses are beyond the jurisdiction of this Commission. The PHC transcript shows that the ALJ advised Gee that Edison has a general rate case pending, Application 02-05-004, where the reasonableness of rates is an issue, and informed him of several October 2002 public participation hearings in Southern California. Gee asked the ALJ to

forward to the general rate case docket his September 25, 2002 letter to Edison, which is attached to his initial PHC statement, and she agreed to do so.

Edison's PHC statement reports that it has offered Gee an energy audit to assess whether electric usage at his building can be made more efficient. It is unclear whether Gee has accepted the offer. We urge Gee to contact Edison to schedule an energy audit, as that is a viable option for lowering his electricity costs.

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)(1) and Rule 77.7 of the Rules of Practice and Procedure. Edison filed comments in support of the draft decision. Gee separately filed two documents, which we have accepted as comments and reply comments, respectively. In these filings, Gee reasserts his contention that Edison's electric rates are unreasonable and argues, unpersuasively, that the draft decision erroneously dismisses his complaint.

Assignment of Proceeding

Henry Duque is the Assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Finding of Fact

The Commission discontinued commercial Schedule GS-SP and replaced it with Schedule GS-1 following Edison's 1992 general rate case.

Conclusions of Law

1. Pub. Util. Code § 1702 prohibits a complaint by an individual customer to challenge the reasonableness of a rate and requires that a complaint allege a violation of law by the utility.

2. Civil rights abuses are beyond the jurisdiction of this Commission.
3. The complaint should be dismissed for failure to state a cause of action for which relief may be granted.
4. No hearings are necessary.
5. In order to provide certainty to the parties regarding their business dealings, this decision should be effective immediately.

O R D E R

1. The complaint of Alex Gee against Southern California Edison Company is dismissed.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.