

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 8, 2004

Agenda ID #4049
Adjudicatory

TO: PARTIES OF RECORD IN CASE 04-07-029

This is the draft decision of Administrative Law Judge (ALJ) Walker. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ WALKER** (Mailed 11/8/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ronald Swepston,

Complainant,

vs.

California-American Water Company,

Defendant.

Case 04-07-029
(Filed July 12, 2004)

OPINION DENYING COMPLAINT

Ronald Swepston (Complainant) filed this complaint against California-American Water Company (Cal-Am) seeking \$13,991 in damages and refunds for Cal-Am's alleged breach of contract in establishing water service to Complainant's home in Isleton, California.

Cal-Am filed an answer to the complaint, setting forth the changes made in the requested water service and the number of billing disputes that occurred between August 5, 2003, and June 15, 2004. Cal-Am represents that it received final payment for its work on June 15, 2004, and that water service that had been discontinued was restored on that date.

By ruling dated August 31, 2004, Complainant was directed to state (1) any disagreement he had with Cal-Am's statement of facts; (2) whether, in his view, Cal-Am had violated any provision of law or any order or rule of the Commission; and (3) what specific contract provisions Cal-Am is alleged to have

breached. In his response, Complainant does not take issue in any material respect with Cal-Am's statement of facts, does not state any law, order or rule alleged to have been violated by Cal-Am, and does not specify further the breach of contract alleged in the complaint.

Pub. Util. Code § 1702 provides, in relevant part, that a complaint against a public utility must establish a cause of action by "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."

Since Complainant states no violation of law, order or rule, the complaint must be dismissed. (*See, e.g., Rodriguez v. Pacific Gas and Electric Company*, Decision (D.) 04-03-010.) As to the alleged breach of contract, this Commission generally does not adjudicate contract disputes between a consumer and a utility. Since the Commission has no jurisdiction to award damages, the courts have held that complaints alleging breach of contract should be brought in civil courts. (*See, Crystal River Oil and Gas v. Pacific Gas & Electric Co.*, D.00-10-005; *see also, Hempy v. Public Utilities Commission* (1961) 56 Cal.2d 214.)

Because the complaint fails to state a cause of action for which relief can be granted and seeks remedies that this Commission is not authorized to provide, the complaint is denied and this case is dismissed. Complainant may pursue his remedies in civil court.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (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. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding and Other Procedural Matters

Michael R. Peevey is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

In the Instructions to Answer notice dated July 27, 2004, this proceeding was deemed adjudicatory, and a hearing was deemed necessary. As explained above, a hearing became unnecessary because the parties' written submissions provided sufficient information to determine that the complaint alleged breach of contract and sought an award of damages, a remedy outside the jurisdiction of this Commission.

Findings of Fact

1. Complainant is a water customer of Cal-Am taking service at 200-204 First Street, Isleton, California.
2. On or about August 13, 2003, Complainant contracted with Cal-Am to install a service line and provide service to his structure.
3. In this complaint, and by letter dated May 6, 2004, Complainant alleged that Cal-Am had breached its contract to implement water service and demanded damages and refunds totaling \$13,991.

Conclusions of Law

1. The complaint fails to state a cause of action for which relief can be granted.
2. The Commission lacks jurisdiction to resolve a cause of action for breach of contract and award of damages.

O R D E R

IT IS ORDERED that:

1. The complaint is denied.
2. An evidentiary hearing is not required.
3. Case 04-07-029 is closed.

This order is effective today.

Dated _____, at San Francisco, California.