

Decision 01-07-011 July 12, 2001

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

Central Coast Processing, Inc.,  
  
Complainant,  
  
vs.  
  
GST Telecommunications, Inc.,  
  
Defendant.

Case 00-12-044  
(Filed December 20, 2000)

**O P I N I O N**

The Commission dismisses this Complaint without prejudice. We deem Complainant's request that we return its deposit a request to withdraw the Complaint in light of Defendant's failure to answer the Complaint.

**Background**

Complainant alleges that Defendant overcharged Complainant from August 14, 1998, when Complainant and Defendant entered into a Term Agreement, until the filing of the Complaint. Complainant alleges the overcharges occurred because Defendant used incorrect rates and misrepresented the effective rates due to Defendant's rounding method. Complainant requests that the Commission order Defendant to return \$24,000 in overcharges and stop all monthly charges for two T1 circuits without termination penalties.

Defendant did not file an answer. Instead, Timothy Barnes of the law firm of Latham & Watkins sent a letter to the administrative law judge on March 12, 2001. In that letter, Barnes states that Defendant's Chapter 11 bankruptcy case, commenced by a petition for relief filed May 17, 2000, precludes Defendant from answering the Complaint. Barnes notes that § 362 of the Bankruptcy Code operates as an automatic stay of administrative actions against Defendant. On March 15, 2001, the administrative law judge directed Defendant to serve the March 12 letter on Complainant.

On May 15, 2001, Richard Moore, the President of Central Coast Processing, Inc., sent a letter to the administrative law judge. Moore disagrees with Barnes' position that the automatic stay provisions prevent GST from answering the Complaint. Moore states the Complaint alleging overcharges falls within the police or regulatory power exception to the automatic stay provision. Moore requests return of the \$24,000 Complainant has on deposit with the Commission. On May 18, 2001, the administrative law judge directed Moore to serve this letter on Defendant.

### **Discussion**

We dismiss this Complaint without prejudice, because we deem Complainant's request that we return its \$24,000 deposit a request to withdraw the Complaint. Defendant declines to answer the Complaint in light of its Chapter 11 bankruptcy case.

We confirm this case as an adjudication. Because we dismiss this Complaint without prejudice, we change the Instructions to Answer's determination that this proceeding requires a hearing and make a final determination that no hearing is necessary. (Rule 6.6 of the Commission's Rules of Practice and Procedure.)

The draft decision of the administrative law judge was mailed to the parties in accordance with Public Utilities Code Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were received.

**Findings of Fact**

1. Complainant requests the return of the \$24,000 Central Coast Processing, Inc. has on deposit with the Commission.
2. Defendant did not answer the Complaint.

**Conclusions of Law**

1. The Commission should dismiss this Complaint without prejudice.
2. The Commission should return the \$24,000 deposit to Complainant.

**O R D E R**

**IT IS ORDERED** that this Complaint is dismissed without prejudice, the \$24,000 deposit shall be returned to Complainant, and this proceeding is closed.

This order is effective today.

Dated July 12, 2001, San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners