

Decision 12-04-023 April 19, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Arthur Alan Wolk,

Complainant,

vs.

San Diego Gas & Electric Company (U902E),

Defendant.

Case 11-07-007
(Filed July 12, 2011)

DECISION DISMISSING COMPLAINT WITHOUT PREJUDICE

Summary

This decision dismisses without prejudice the above-captioned complaint. No evidentiary hearings have been held in this proceeding.

As a result of our dismissing the Complaint without prejudice, Complainant is free to file his complaint against San Diego Gas & Electric Company (SDG&E) again in the future. However, Complainant must reference this Complaint and decision, if Complainant files a complaint with the Commission against SDG&E in connection with electric service at 1678 Marisima Way, La Jolla, California.

1. Background

The Complaint alleges that San Diego Gas & Electric Company (SDG&E) overcharged Complainant in the amount of \$17,183.34 for electric service at 1678 Marisima Way, La Jolla, California, a residence that Complainant purchased in 2005. The Complaint asserts that SDG&E owes Complainant half of the

monthly charges from May 30, 2005, through January 2011, when a new meter was installed. The Complaint further alleges that SDG&E has committed fraud and theft of money, and that SDG&E's complaint handling process is a sham designed to hinder and delay resolving complaints.

A prehearing conference (PHC) in this matter was held on August 19, 2011 (August 19 PHC). However, the Complainant failed to appear at the August 19 PHC. On August 25, 2011, Complainant sent a letter to the Administrative Law Judge (ALJ) asserting the Complainant did not receive notice of the August 19 PHC at a location where he could receive it, and requesting the PHC be rescheduled (August 25 Letter).

On August 26, 2011, SDG&E filed (1) its Answer to the Complaint and (2) a Motion for Summary Judgment. The Answer denies the allegations and states that the Complaint should be summarily dismissed because Complainant fails to show that SDG&E has violated a tariff, law, order, or rule of the Commission. The Motion for Summary Judgment argues that the Complaint should be dismissed because, according to SDG&E, there are no triable issues of material fact.

On September 8, 2011, the Complainant filed a Response opposing the Motion for Summary Judgment.¹ On September 21, 2011, the ALJ granted SDG&E's request for permission to reply to the Response, and on September 22, 2011, SDG&E filed a Reply.

¹ The Response was accompanied by (1) a Brief in Support of Opposition to the Motion, (2) an Affidavit Contra Summary Judgment, and (3) a Separate Statement of Complainant.

On September 15, 2011, the ALJ informed parties via electronic mail (e-mail) that a second PHC would be scheduled. On September 23, 2011, the Commission served notice that a telephonic PHC would be held on October 6, 2011.

On September 29, 2011, the ALJ issued a ruling denying the Motion for Summary Judgment (September 29 Ruling).² On September 30, 2011, Complainant sent the ALJ an e-mail message with an attachment containing a cover letter requesting permission to respond to SDG&E's September 21 Reply, and a pleading entitled, "Complainant's Sur-Response to San Diego Gas and Electric Company Motion for Summary Judgment."³

On September 30, 2011, the ALJ issued an e-mail ruling (September 30 E-mail Ruling) denying Complainant's request to respond to SDG&E's September 22, 2011 Reply because the ALJ had already ruled on and denied

² The September 29 Ruling found that the accuracy of the meter serving 1678 Marisima Way during the period of alleged overcharging was a triable issue of fact.

³ The request and pleading were not filed with the Commission, and there is no evidence that the pleading was served on SDG&E.

SDG&E's Motion for Summary Judgment.⁴ On October 3, 2011, the ALJ issued a ruling confirming the September 30 Email Ruling.⁵

A second PHC in this matter was held telephonically on October 6, 2011 (October 6 PHC). However, the October 6 PHC was adjourned at Complainant's request before concluding the discussion concerning the scope of the proceeding.⁶

On October 7, 2011, the ALJ became aware that Complainant attempted to file a motion to compel discovery (Motion to Compel) on September 29, 2011,⁷ after Complainant served but did not file a "Correct Exhibit C" to the Motion to Compel (Correct Exhibit C).⁸

⁴ The September 30 E-mail Ruling noted that Complainant's request and pleadings were not filed with the Commission's Docket Office or served on parties, as required by Rule 11.1(c) of the Commission's Rules of Practice and Procedure (Rules). The September 30 E-mail Ruling noted that, because the pleadings were not filed or served, they appeared to constitute a prohibited *ex parte* communication. The September 30 E-mail Ruling included the material attached to Complainant's September 30 e-mail request to the ALJ to ensure parties were aware of it.

⁵ The October 3, 2011 ruling directed Complainant to ensure that Complainant's future communications with the Commission comply with the Rules, and provided a link to the Rules.

⁶ During the October 6 PHC, Complainant stated his intention to withdraw the Complaint and instead file a lawsuit in federal court.

⁷ The Motion to Compel was not served on the service list or the ALJ. The Docket Office rejected the Motion to Compel because it contained procedural defects.

⁸ Correct Exhibit C was not filed, as required by Rule 11.1(c). In addition, on October 7, 2011, SDG&E informed the ALJ and Complainant via e-mail that Complainant had not served the Motion to Compel on SDG&E.

On October 11, 2011, Complainant filed a pleading entitled, "Withdrawal of Complaint", and a corrected Motion to Compel. Complainant's pleading will be treated as a motion to dismiss Complaint without prejudice (Motion to Dismiss Complaint).

The Motion to Dismiss Complaint states that Complainant withdraws the Complaint without prejudice because, among other things, (1) "It is clearly impossible for a consumer to obtain relief from the CPUC"; (2) "It is clear that the Electric Company has a free ride in the CPUC"; (3) "It is obvious to Complainant that no due process can be obtained in a State agency that is a patron of the utilities it's supposed to regulate"; (4) "This preliminary proceeding [i.e., the October 6 PHC] was so devoid of any fairness, so abusive and heavy handed, so one sided and obviously biased, Complainant sees no point in being abused any further in a place which by design and operation is a voice only of utility companies and long ago forgot that the 'public' such as Complainant is who they were supposed to protect from the Utilities who overcharge them"; and (6) "Since Complainant clearly can get no justice here, and since the best place to test both the CPUC's conduct and that of SDG&E for the commission of fraud is in a court of law, Complainant withdraws his Complaint without prejudice as there is no hope for a fair and impartial judgment in a place owned by the utilities."

Complainant's Motion to Compel states that, on September 16, 2011, Complainant requested via email that SDG&E meet and confer but that SDG&E

has ignored Complainant's request.⁹ The Motion to Compel requests that SDG&E be compelled to respond to Complainant's discovery requests.

On October 24, 2011, SDG&E filed a response to the Motion to Dismiss Complaint and a response in opposition to the Motion to Compel. SDG&E's response to the Motion to Dismiss Complaint states that SDG&E does not oppose Complainant's request to withdraw the Complaint but disagrees with certain negative assertions in the Motion to Dismiss Complaint.

According to SDG&E, the October 6 PHC transcript demonstrates that Complainant's negative assertions against the ALJ are nonsense, and that, not only was Complainant uncivilized toward the ALJ throughout the October 6 PHC in a manner unfit for an attorney such as himself, but Complainant was completely unprepared for the October 6 PHC, flouted the Rules of the Commission despite previous warnings, and unlawfully attempted to shift Complainant's burden to SDG&E.

SDG&E states that the Commission is the best-suited forum to hear Complainant's claims against SDG&E, and requests that the Complaint be dismissed without prejudice. According to SDG&E, dismissing the Complaint with prejudice at this time might allow the Complainant to re-file the Complaint in federal court without the Commission having reached the merits of Complainant's claims.

SDG&E's response to the Motion to Compel states that the Motion to Compel should be denied because the Motion to Compel is moot as a result of Complainant's concurrently-filed Motion to Dismiss Complaint. According to

⁹ Exhibit C to the Motion to Compel indicates the Complainant's e-mail request to meet and confer was sent on September 22, 2011.

SDG&E, the Motion to Compel is premature because parties have not met and conferred prior to the filing of the Motion to Compel, as required by Rule 11.3(a). SDG&E asserts that it has not refused to meet and confer with Complainant but instead recommended that a meet and confer be deferred until after a PHC is held and issuance of a scoping memo identifying the issues to be considered in this proceeding.

2. Discussion

2.1 Motion to Dismiss Complaint

Complainant's request that the Complaint be dismissed without prejudice is granted.¹⁰ No scoping memo has been issued in this matter and no evidentiary hearings have been held.

The Commission has expended considerable time and effort processing the Complaint. Much of this time and effort has been expended as a result of Complainant's inability or unwillingness to comply with the Commission's Rules.

As discussed above, the Complainant failed to appear at the August 19 PHC. Complainant's failure to appear at the August 19 PHC wasted Commission resources. Complainant asserts without merit that he did not receive notice of the August 19 PHC.

On August 9, 2011, parties were served notice of the August 19 PHC via United States (U.S.) Mail and e-mail, pursuant to Rules 1.9, 1.10, and 13.1(a) of

¹⁰ In light of Complainant's disparaging statements about the Commission and its staff, including Complainant's belief that the Commission is unable to render a fair and impartial judgment in this matter, it is not clear why Complainant wishes to preserve his opportunity to bring the Complaint before the Commission again in the future.

the Commission's Rules. Complainant asserts that he did not receive notice of the August 19 PHC because the notice served via U.S. Mail was sent to Complainant's La Jolla address and not his Pennsylvania address. However, the Commission also served notice of the August 19 PHC via e-mail, pursuant to the Rules.

Rule 1.10(a) states:

By providing an electronic mail (e-mail) address for the official service list in a proceeding, a person consents to e-mail service of documents in the proceeding, and may use e-mail to serve documents on persons who have provided an e-mail address for the official service list in the proceeding.

Complainant provided the e-mail address arthurwolk@airlaw.com in Section I of the Complaint.¹¹ The service list for this proceeding includes this e-mail address for Complainant. Pursuant to Rule 1.10(a), Complainant consented to e-mail service by providing an email address for the official service list in the proceeding.

Rule 1.10(c) states, in part:

E-mail service shall be made by sending the document, a link to the filed version of the document, or the Notice of Availability (see Rule 1.9(c)), as an attachment to an e-mail message to all e-mail addresses shown on the official service list on the date of service.

¹¹ Section I of the of the Commission's Formal Complaint Form states:

I/we would like to receive the answer and other filings of the defendant(s) and information and notices from the Commission by electronic mail (e-mail). My/our e-mail address(es) is/are:

Commission records show that Complainant was served notice of the August 19 PHC via email on August 9, 2011.¹² Attachment 1.

Rule 1.9(c) states:

Service of a document may be effected by personally delivering a copy of the document to the person or leaving it in a place where the person may reasonably be expected to obtain actual and timely receipt, mailing a copy of the document by first-class mail, or electronically mailing the document as provided in Rule 1.10. Service by first-class mail is complete when the document is deposited in the mail. Service by e-mail is complete when the e-mail message is transmitted, subject to Rule 1.10(e). The Administrative Law Judge may direct or any party may consent to service by other means not listed in this rule (e.g., facsimile transmission). Emphasis added.

Pursuant to Rule 1.9(c), Complainant was properly and timely served notice of the August 19 PHC when the August 9, 2011 email notice of the August 19 PHC was transmitted.

Despite the provisions of Rules 1.9 and 1.10 and documentation clearly demonstrating that Complainant was properly served notice of the August 19 PHC via email, Complainant continues to assert that he did not receive proper notice and that he is being unfairly criticized for what Complainant contends is the Commission's error.

As noted above, Complainant has been unwilling or unable to comply with the Rules in numerous instances. In addition, as summarized above,

¹² The Commission's Process Office confirms that the August 9, 2011 e-mail notice of PHC sent to Complainant at arthurwolk@airlaw.com did not result in an undeliverable message (i.e., a "bounceback").

Complainant's Motion to Dismiss Complaint repeatedly denigrates the ALJ and the Commission.¹³

Some leniency may be warranted for failing to comply with the Commission's Rules when complainants are utility consumers that are inexperienced with administrative or legal proceedings or the Commission's Rules. In this case, Complainant purports to be a licensed attorney with 44 years of law practice and litigation experience all over the country, including California.¹⁴ As such, Complainant should, at a minimum, be able to follow the Commission's Rules and to maintain the respect due to the Commission and its ALJs.¹⁵

Complainant has repeatedly expressed his dissatisfaction with the ALJ assigned to this matter, and stated his intention to seek reassignment of the proceeding to another ALJ.¹⁶ Although Complainant alleges prejudice and bias

¹³ Rule 1.1 states: "Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law."

¹⁴ Separate Statement of Complainant, dated September 8, 2011, at 1. TR22:25-27, 43:21-22.

¹⁵ A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office. (American Bar Association's Model Rules of Professional Conduct, Rule 8.2.)

¹⁶ TR 43:18 - 44:9. *See also*, Motion to Withdraw Complaint, Exhibit D.

on the part of the assigned ALJ, Complainant has not sought reassignment pursuant to Rule 9.4.¹⁷

Because we dismiss the Complaint without prejudice, Complainant is free to file with the Commission a complaint against SDG&E in connection with electric service at 1678 Marisima Way, La Jolla. However, if Complainant files a complaint against SDG&E in connection with electric service at 1678 Marisima Way, La Jolla, the Commissioner and ALJ assigned to that complaint should have the record of this proceeding before them. Therefore, any future complaint filed with the Commission by Complainant against SDG&E in connection with electric service at 1678 Marisima Way, La Jolla, must reference this Complaint and this decision.

2.2 Motion to Compel

The Motion to Compel is denied. Because the Motion to Dismiss Complaint is granted, the Motion to Compel is moot.

3. Proceeding Category and Need for Hearing

The Instruction to Answer filed on July 27, 2011, categorized this complaint as adjudicatory as defined in Rule 1.3(a) and anticipated that this proceeding would require evidentiary hearings. As discussed above, before evidentiary hearings could be held, Complainant filed the Motion to Dismiss Complaint.

¹⁷ Rule 9.4 permits a party to any proceeding to file a motion for reassignment of that proceeding to another ALJ for cause, including bias or prejudice.

Because we grant the Motion to Dismiss Complaint, the evidentiary hearing determination is changed to state that no evidentiary hearings are necessary.

4. Comments on Draft Decision

The draft decision of the 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. No comments were received.

5. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Richard Smith is the assigned ALJ in this proceeding.

Findings of Fact

1. Complainant provided the email address arthurwolk@airlaw.com in Section I of the Complaint. The service list for this proceeding includes the email address arthurwolk@airlaw.com for Complainant.

2. On August 9, 2011, parties were served notice of a PHC to be held in this matter on August 19, 2011. Notice of the August 19, 2011 PHC was provided via U.S. Mail and e-mail, pursuant to Rules 1.9, 1.10, and 13.1(a) of the Commission's Rules.

3. Notice of the August 9, 2011 PHC that was sent via e-mail to Complainant at arthurwolk@airlaw.com did not result in an undeliverable message (i.e., a "bounceback").

4. Complainant failed to appear at the August 19 PHC.

5. A second PHC in this matter was held telephonically on October 6, 2011.

6. The October 6 PHC was adjourned at Complainant's request.

7. On October 11, 2011, Complainant requested that the Complaint be dismissed without prejudice.

8. No scoping memo has been issued in this matter and no evidentiary hearings have been held.

Conclusions of Law

1. Complainant consented to e-mail service of documents by providing an e-mail address for the official service list in the proceeding, pursuant to Rule 1.10(a).

2. Complainant was properly and timely served notice of the August 19 PHC when the August 9, 2011 e-mail notice of the August 19 PHC was transmitted, pursuant to Rule 1.9(c).

3. Complainant's assertion that he did not receive notice of the August 19 PHC lacks merit.

4. Complainant's October 11, 2011 pleading entitled, "Withdrawal of Complaint" should be treated as a motion to dismiss Complaint without prejudice (Motion to Dismiss Complaint).

5. The Motion to Dismiss Complaint should be granted.

6. Because the Motion to Dismiss Complaint should be granted, the Motion to Compel is moot and should be denied.

7. Because the Complaint is dismissed without prejudice, Complainant is free to file with the Commission a complaint against SDG&E in connection with electric service at 1678 Marisima Way, La Jolla, California.

8. If Complainant files a complaint against San Diego Gas & Electric Company in connection with electric service at 1678 Marisima Way, La Jolla, California. Complainant should be required to reference the Complaint and this decision.

O R D E R

IT IS ORDERED that:

1. Complainant's motion to dismiss complaint without prejudice is granted.
2. Complainant's motion to compel discovery is denied.
3. Any complaint filed in the future by Complainant with the Commission against San Diego Gas & Electric Company in connection with electric service at 1678 Marisima Way, La Jolla, must reference the Complaint and this decision.
4. The evidentiary hearings determination is changed to no hearings necessary.
5. Case 11-07-007 is closed.

This order is effective today.

Dated April 19, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

Attachment 1

Smith, Richard

From: Toy, Anna
Sent: Tuesday, August 09, 2011 1:20 PM
To: Hoang, Ann T.; Fitch, Julie A.; Econome, Janet A.; Miller, Karen; Stanghellini, Lynn; Florio, Michel Peter; Smith, Richard; Tyrrell, Denise; 'arthurwolk@airlaw.com'; 'mcaulson@SempraUtilities.com'
Subject: Courtesy E-mail Notification in C.11-07-007--Chief ALJ Notice of PHC

As a courtesy, the Commission notifies you that the text of Chief ALJ Notice was made available at:

<http://www.cpuc.ca.gov/EFILE/NOTICE/140979.htm>

This notice has been served by mail on all persons on the service list.

In case of problems with this e-mail or the internet link, please contact Ann Hoang at (415) 703-1203, e-mail ahg@cpuc.ca.gov.

<End of Attachment 1>