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

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April 22, 2022

TO PARTIES OF RECORD IN CASE 21-09-011:

This proceeding was filed on September 24, 2021 and is assigned to Commissioner Alice Reynolds and Administrative Law Judge (ALJ) Kelly. This is the decision of the Presiding Officer, ALJ Kelly.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (*i.e.*, the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (*See*, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:mph

Attachment

Decision **PRESIDING OFFICER'S DECISION** **(Mailed 4/22/2022)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Edita Capuzzi, Complainant, vs. San Diego Gas & Electric Company (U902E), Defendant.	Case 21-09-011

Edita Capuzzi, Complainant nonappearance at Prehearing Conference.

Rebecca Hansson, Attorneys at Law, San Diego Gas & Electric Company, Defendant.

DECISION DISMISSING COMPLAINT

Summary

This decision dismisses the complaint of Edita Capuzzi against San Diego Gas & Electric Company, with prejudice for failure to prosecute.

Case 21-09-011 is closed.

1. Factual and Procedural Background

On September 24, 2021, Edita Capuzzi (Capuzzi or Complainant) filed an Expedited Complaint or ECP against San Diego Gas & Electric Company (SDG&E or Defendant), alleging SDG&E: 1) refused to provide her with an Analog meter after being requested to do so; 2) that as an opt out customer SDG&E refuses to inform the Complainant of the exact day that they will read

her meter; and 3) that SDG&E is violating the opt out decision of May 12, 2012 of Amy Yip-Kikugawa.[1] Through her complaint, Capuzzi sought a Commission Order directing SDG&E to install an analog meter and tell her the exact day that SDG&E would read the meter.[2]

On October 11, 2021, the *Instruction to Answer* (ITA) was issued. The ITA disclosed that the assigned Administrative Law Judge (ALJ) for the instant proceeding is Gerald F. Kelly. The ITA also set the Expedited Complaint hearing for December 3, 2021.

On October 23, 2021, the Complainant sent an email to the Commission staff member who issued the ITA. This email indicated she wished to have someone act as her formal representative. This staff member forwarded the email to the Commission's Public Advisor's Office. On October 25, 2021, the Commission's Public Advisor's Office sent an email to the Complainant and advised her that the Commission's Rules of Practice and Procedure (Rules) govern proceedings before the Commission. The Public Advisor's Office noted that Rule 4.6 governs Expedited Complaints. Rule 4.6(b) states: "No attorney at law shall represent any party other than himself under the Expedited Complaint

[1] Capuzzi failed to offer any information as to the specific Application (A.) or Decision (D.) she was referring to. It is possible that Capuzzi is referring to D.12-04-019, which modified D.-07-04-043 and was issued as a final decision by the Commission on April 24, 2012.

[2] In her ECP, the Complainant listed the Utility Consumers' Action Network (UCAN) as a representative in this matter. UCAN is a professional advocacy group who frequently litigates complex matters before the Commission on a regular basis. (*See*, http://www.ucan.org). UCAN typically does not represent individuals in ECPs. It is also noted for the record that D.12-04-019 came about as a result of A.11-03-015 which was an Application filed by UCAN titled "The Application of Utility Consumers' Action Network for Modification of Decision 07-04-043 so as to Not Force Residential Customers to Use Smart Meters."

Procedure." The Complainant was also informed that for her to have a non-attorney formally represent her, she would need the approval of the ALJ.[3]

The Complainant replied to the email on October 25, 2021, indicating that she would like to have a non-attorney formally represent her at the hearing. On November 1, 2021, the Public Advisor's Office informed the Complainant by email that if she was seeking to have UCAN act on her behalf as a formal representative at the hearing, that the assigned ALJ would not allow UCAN to do so in an Expedited Complaint as it is consistently his policy not to allow formal representatives in the Expedited Complaint process.

On November 2, 2021, the Public Advisor's Office sent an email to the Complainant to clarify that the assigned ALJ stated that anyone she wanted could listen to the remote hearing, but they could not act on her behalf during the hearing. At no point during her communications with the Public Advisor's Office did the Complainant indicate that there were any special circumstances that would warrant her requiring special assistance at the Expedited Complainant hearing.

On November 1, 2021, SDG&E filed its Answer. In its Answer, SDG&E asserts that the Complainant failed to meet the burden of proof to establish that SDG&E violated Commission rules, decisions, or any of its Tariffs.[4] SDG&E also states that consistent with Tariff Schedule E-SMOP that they removed the Complainant's Smart Meter and installed a digital meter in its place.[5]

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[3] The Commission's ECP process is like Small Claims actions conducted in Superior Court.

[4] Answer at 5.

[5] *Id*. at 3.

SDG&E contends that installing the digital meter is consistent with Special Condition 1 of Schedule E-SMOP, which states that "a meter without wireless communications ability, will be used in place of the wireless meter to provide electric service for residential customers who elect this option."[6] The Answer also notes that the Complainant is a Net Energy Metering (NEM) customer which precludes her from having an analog meter given the measurement intervals required for usage and billing purposes.[7]

The Answer goes on to state that Schedule NEM-ST addresses metering requirements needed for a NEM customer. Specifically, Special Condition 1, Section f, states the following:

> Nonbypassable Charges: Pursuant to D. 16-01-044 are defined as Public Purpose Program (PPP) charges, Nuclear Decommissioning (ND) charges, the Competition Transition Charge (CTC), the Department of Water Resources Bond Charge (DWR-BC) and the Wildfire Fund NonBypassable Charge (WF-NBC). These shall be based upon the kWhs consumed in each metered interval net of exports, over the course of each monthly billing period.[8]

As it relates to the Complainant's allegations that SDG&E will not accommodate her schedule for meter reads, SDG&E notes in its Answer that consistent with Tariff Schedule E-SMOP, SDG&E provides an estimated meter reading timeframe and because she is a NEM customer, her meter reads are in fact done monthly.[9] Finally, the Answer notes that pursuant to General Section

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[6] *Ibid*.

[7] *Ibid*.

[8] *Id*. at 4.

[9] *Ibid*.

11, Access to Applicant's Premises of Electric Rule 16, SDG&E at all times shall have access to Complainant's premises.[10]

On November 18, 2021, the Complainant emailed a *Motion for Reconsideration and Replacement of Administrative Law Judge* (Motion) to the Service List. This Motion does not appear to have been properly filed. It appears that it was only emailed to the Service List in this proceeding. In the emailed Motion, the Complainant states the following:

> I am requesting a change of judge because the judge is denying a representative and/or non-representative to assist me and/or participate with me at the December 3, 2021, hearing for my formal complaint … The judge's actions appear to be against the law. I believe the judge is showing bias/prejudice by not allowing persons with legal interest in the proceeding including a lawyer if I choose, to attend. I request a change of judge and the ruling.

The emailed Motion then goes on to cite California Code of Judicial Ethics Canon 3(7), and states "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the full right to be heard according to law."

The Complainant also asserted that the assigned ALJ was not allowing persons with legal interest in the proceeding to attend. The assigned ALJ noted that the only persons with a legal interest in the original complaint are the Complainant and SDG&E. UCAN does not have a legal interest in this matter. If there is another person who has a legal interest in this matter, then they should have joined this proceeding as Complainants. Page one of the complaint Section

[10] In the complaint, Capuzzi asserts that she does not want SDG&E showing up at her house unannounced because she does not trust SDG&E's employees around her children. In an email dated January 23, 2022, she asserts that she wants to know when SDG&E will come to her house because she has a busy schedule and will unlikely be at home to provide access to her meter.

D states: *Provide name, address and phone number for each complainant.* The Complainant only listed herself in Section D as a Complainant.

On December 6, 2021, the assigned ALJ issued an email ruling to change the matter from an ECP to a Regular Complaint. This was done to accommodate the Complainant's request to have an attorney represent her. The December 6, 2021, email ruling notes in pertinent part the following:

> To accommodate the Complainant's desire to have an attorney represent her in this matter, pursuant to Rule 4.6(g), this Expedited Complaint is being reclassified to a Regular Complaint under the Commission's Regular Complaint procedure.
>
> The Complainant shall notify the Commission's Process Office at alj_process@cpuc.ca.gov within 10 days of this email ruling with the contact information for her attorney or other representative so that the official Service List in this proceeding can be updated to include her representative.
>
> The Defendant in this matter shall also notify the Commission's Process Office within 10 days of this email ruling of the contact information for the attorney from SDG&E who will represent the defendant in this matter.
>
> Once the Service List is updated, the ALJ will set a Prehearing Conference (PHC) and this complaint will proceed under the Regular Complaint process rather than the Expedited Complaint process.

The December 6, 2021, email ruling did not address the Complainant's emailed Motion for replacement of the ALJ and noted that the Motion was not properly filed and that the Motion failed to comply with Commission Rules 9.2 and 9.4.

On December 8, 2021, the assigned ALJ issued an email ruling setting a Prehearing Conference for January 27, 2022.

On January 23, 2022, the Complainant sent an email to the assigned ALJ, President Alice Reynolds, and various elected officials. Among other things she stated: "… I am not willing to be participating in hearings to re-argue the decision- it's time-consuming and unnecessary as the decision already exists."[11] She also acknowledges in this email that she was told to "please attend the hearing." She goes on in her email to state the following:

> I expect CPUC to enforce their own ruling with SDG&E and do the following:
>
> -direct SDG&E to remove the digital meter they installed without my consent and install an analog meter, as requested (enforcing the above CPUC decision).
>
> -direct SDG&E to show up on an every-other-month, scheduled basis and stop the harassment to switch back to the smart meter. My electric meter has not been read on a scheduled date for 9 months in a row, SDG&E just shows up when they please, and in some cases they catch me at home, however in most cases I am not home as I have a very busy schedule, and the yard is gated, which leads to incorrect billing due to SDG&E's failure to show up on a scheduled date.
>
> CPUC has the power to correct the situation as SDG&E is not acting in accordance with CPUC's own decision. Dragging me into unnecessary hearings while forbidding me to have non-attorney counsel or advocacy during the initial expedited hearing scheduled for 12/4/2021 (CPUC's own rule 4.6 (b) only states that attorneys may not be present, however does not exclude advocates or other informal counsel, which I requested several times and got denied), yet SDG&E can have representation. Delaying the enforcement of

[11] The assumption is that she is referring to D.12-04-019. As noted in SDG&E's Answer, the Complainant is a NEM customer and as set forth in the Answer, SDG&E asserts its tariffs do not allow NEM customers to have analog meters and that digital meters are consistent with Tariff Schedule E-SMOP.

> CPUC's own decision is very punitive to me, and shows favoritism forwards utilities. It is my understanding that CPUC is in place to protect the consumer, not the utility companies.
>
> I expect ALJ Kelly and CPUC to reconsider and correct the situation.[12]

On January 26, 2022, the assigned ALJ sent the following email to the official Service List in this proceeding, which the Complainant is on. The ALJ's email stated:

> I am in receipt of your email. As you may recall this matter was originally filed as an Expedited Complaint (ECP). You previously asserted via email that you had a right to have an attorney/advocate represent you during the ECP process. In order to accommodate your request to have an attorney/advocate act on your behalf during this proceeding, this matter was changed from an ECP to a Regular Complaint.
>
> Part of the Regular Complaint process is that there will be a Prehearing Conference (PHC). The PHC is not an evidentiary hearing, but a prehearing conference. The PHC is used to set the path forward for the matter. The PHC is set for January 27, 2022, at 11:00 AM. It was also my understanding that Mr. Whitworth from UCAN would be assisting you in this matter. Mr. Whitworth and I had a telephone conversation on December 17, 2021, where he and I discussed procedural matters and I explained to him the process for logging into the PHC hearing.[13]
>
> Finally, I would like to draw your attention to the Article 8 of the Commission's Rules pertaining to ex parte communications. I realize that you did not intentional mean

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[12] As noted below, the assigned ALJ treated this email as an ex parte communication.

[13] During the telephone conversation with Mr. Whitworth, Mr. Whitworth stated that neither he nor UCAN were acting as official representatives of the Complainant. However, he indicated that he was simply assisting her in this matter. The assigned ALJ decided that although Mr. Whitworth was not Capuzzi's official representative, he could assist her in this matter.

> to create an ex parte discussion, but because your email discussed a desired outcome of this proceeding, it could be classified as an ex parte discussion. Out of an abundance of caution, I will be doing an ex parte notice of this communication shortly. Additionally, I am forwarding your communication to the service list in this proceeding.
>
> Below is the link to the Commission's Rules. In the future, please do not include myself on any email where you are having a discussion about the specific issues or outcome of your case. If you have basic questions about how the procedure will go forward you may send those questions to me and the entire service list.
>
> Please let me know if you have any questions.

On January 27, 2022, the assigned ALJ started the PHC. Attorney for SDG&E appeared. Mr. Whitworth was also present at the PHC. The Complainant failed to appear. Mr. Whitworth indicated on the record that the Complainant informed him that she would not be attending the PHC. Mr. Whitworth indicated that the Complainant stated she wished to proceed, but stated she refused to attend any hearings or participate in this matter. It was explained to Mr. Whitworth that for the matter to proceed, the Complainant had to attend. It was also made clear that if the Complainant refused to participate in the process that SDG&E could file a motion to dismiss the matter for failure to prosecute.

Mr. Whitworth requested that he be allowed to call the Complainant and relay this information to her. The assigned ALJ approved Mr. Whitworth's request, but informed Mr. Whitworth that he needed to clearly inform the Complainant that if she failed to participate the matter would be dismissed. Approximately 15 minutes after the scheduled start time of the PHC, Mr. Whitworth indicated on the record that the Complainant still declined to participate in the proceeding. It was confirmed with him on the record that he

explained the consequences of her refusal to participate in her complaint. Mr. Whitworth confirmed he relayed that information to her. Mr. Whitworth also confirmed on the record that neither he nor UCAN were acting as her official representative and that he was just assisting her with her complaint.

On February 1, 2022, the assigned ALJ in this matter received a telephone call from Dan Whitworth.[14] As noted previously, Mr. Whitworth is not the Complainant's formal representative. Rather, he is a Consumer Advocate at UCAN and is simply assisting her in this matter. Mr. Whitworth indicated during this telephone call that the Complainant still refused to participate in this matter but inquired whether the complainant could receive a decision on the merits without participating and whether the Complainant could file a claim for Intervenor Compensation for her time she spent on this matter. Mr. Whitworth was advised that as the Complainant, Ms. Capuzzi had the burden of proof in this matter to prove that SDG&E violated Commission Rules, Decisions, or their own tariffs and it was again reiterated that her outright refusal to actively participate in this matter would result in the dismissal of her complaint. He was also informed that she could not file an Intervenor Compensation claim in her own adjudicatory proceeding.

On February 3, 2022, the Defendant filed a Motion to Dismiss. In the Motion to Dismiss, SDG&E argued that the Complainant's failure to appear at the scheduled PHC indicates that the Complainant is no longer pursuing her claim. SDG&E also argued that the complaint should be dismissed because the

[14] The assigned ALJ issued an email ruling which was served on the Service List for this proceeding to advise of the telephone call.

Complainant cannot prove any violation of law or Commission Order or Rule on the part of the Defendant. The Complainant filed no response to the Motion.

2. Discussion

The instant complaint is being dismissed for lack of prosecution. The dismissal of this complaint does not render a judgment on the merits of the case. However, based upon SDG&E's Answer, it appears that the Complainant would be unable to establish that SDG&E violated any of its tariffs because as a NEM customer the Complainant cannot have an analog meter given the measurement intervals required for usage and billing purposes. Additionally, as a NEM customer meter reads are in fact done monthly. Based on her current pleadings, the Complainant has failed to establish that SDG&E violated any Commission rules or decisions.

The matter is being dismissed with prejudice because the Complainant has willfully refused to participate in this proceeding. She was informed prior to the PHC that her attendance/participation she needed to attend. She admits and acknowledges on January 23, 2022, that she was told to "please attend the hearing." She was also notified by Mr. Whitworth on the day of the PHC that the assigned ALJ advised him that her willful refusal to participate would result in her complaint being dismissed. Mr. Whitworth confirmed to the ALJ and SDG&E that the Complainant was informed that she was required to participate and that her refusal to do so meant that her complaint would be dismissed. He stated that despite being advised this she refused to participate.

Here, the Complainant has chosen to willfully disrespect the adjudicatory process set forth by the Commission. She was advised on multiple occasions that she was required to attend the hearings for the Complaint that she filed. The Complainant was informed that her outright refusal to engage in the

adjudicatory process would result in the Complaint being dismissed. Despite being advised numerous times that there would be consequences for her outright refusal to participate in the proceeding she deliberately refused to participate. Accordingly, it is appropriate to dismiss this matter with prejudice.

3. Assignment of Proceeding

President Alice Reynold is the assigned Commissioner and Gerald F. Kelly is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On September 24, 2021, Edita Capuzzi, Complainant, filed an Expedited Complaint or ECP against San Diego Gas & Electric Company
2. On December 6, 2021, the assigned ALJ issued an email ruling to change the matter from an ECP to a Regular Complaint
3. Notice of the PHC scheduled for January 27, 2022, in the instant proceeding, was provided to the Service List on December 8, 2021.
4. On January 23, 2022, the Complainant acknowledges that she was told to attend the PHC. However, she stated that she refused to attend any hearings in this matter.
5. On January 26, 2022, the Assigned ALJ sent an email to the Service List addressed to the Complainant informing the Complainant that the PHC was the procedural method for setting the path forward for the proceeding. The email also advised the Complainant that Mr. Dan Whitworth would be allowed to assist her at the PHC.
6. On January 27, 2022, Mr. Whitworth stated that the Complainant informed him that she refused to attend any hearing.
7. The Complainant refused to attend the PHC on January 27, 2022.

8. Complainant was informed, by telephone during the hearing, that her attendance was required and that her complaint would be dismissed if she refused to attend.

9. On February 1, 2022, Complainant indicated that she still refused to participate in this matter and was again informed that her complaint would be dismissed with prejudice for failure to prosecute.

10. On February 3, 2022, the Defendant filed a Motion to Dismiss Complaint with prejudice.

11. The Complainant did not file a response to the Defendant's Motion to Dismiss.

Conclusions of Law

1. This proceeding should be dismissed with prejudice for failure to prosecute.

2. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The complaint of Edita Capuzzi against San Diego Gas & Electric Company is dismissed with prejudice.

2. Case 21-09-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.