

Decision 20-05-057

May 28, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Thomas B. Prescott,

Complainant,

vs.

Southern California Edison Company
(U338E),

Defendant.

(ECP)
Case 18-08-006

ORDER DENYING REHEARING OF DECISION 19-01-031

I. INTRODUCTION

On March 7, 2019, Thomas B. Prescott filed a timely application for rehearing of Decision (D.) 19-01-031.¹ In D.19-01-031 (Decision), the Commission granted in part and denied in part Prescott’s expedited complaint challenging the deficiency bill Southern California Edison Company (SCE) assessed for a commercial line extension. The Decision reduces the \$3,527 deficiency bill by \$1,500 but otherwise denies the complaint, concluding that Prescott “failed to meet his burden of proof to show error in SCE’s deficiency billing.” (D.19-01-013, at p. 1.)

In his application for rehearing, Prescott makes two main allegations of error: (1) the Commission failed to address Prescott’s contention that there was no failure to take service as required in the Contract in order to generate a deficiency bill; and (2) the Commission failed to meet the time requirements of Public Utilities Code section

¹ The official pdf versions of all Commission decisions, orders, and resolutions since 2000 are available on the Commission’s website www.cpuc.ca.gov at <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

1701.2.² Prescott also requests that the Commission more closely examine SCE's contract language for the future.

We have carefully considered the arguments presented by Prescott, and are of the opinion that grounds for rehearing have not been demonstrated. Accordingly, we deny Prescott's application for rehearing.

II. SECTION 3.8 INTERPRETATION

Prescott argues that he fulfilled the condition specified in section 3.8 of the Contract because he took and used the contracted-for service, as required. (App. Rhrg., at p. 3.) In addition, Prescott contends that the Decision fails to address that point, which was the main point of the Complaint. (*Ibid.*) These arguments lack merit.

Section 3.8 of the Contract is titled, "Payment Adjustments," and reads in relevant part:

Contract Compliance. If, after six (6) months following the date SCE is first ready to serve residential loads for which allowances were granted, one (1) year for non-residential loads, Applicant fails to take service, or fails to use the service contracted for, Applicant shall pay to SCE an additional contribution, based on the allowances for the loads actually served.

SCE's Line Extension contracts are governed by its tariff, SCE Rule 15. Since tariffs filed with the Commission are administrative regulations, they are subject to the same rules that govern the interpretation of statutes. (See *Zacky & Sons Poultry v. Southern California Edison* (1993) 52 Cal.P.U.C.2d 128 [D.93-11-064].) Accordingly, we follow the rule that "[i]f the statutory language is clear and unambiguous our inquiry ends. If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103.) "Where the statutory language is ambiguous or permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy." (*Joyce v. Ford*

² All subsequent section references are to the Public Utilities Code unless otherwise stated.

Motor Co. (2011) 198 Cal.App.4th 1478, 1490.) “In reading statutes, we are mindful that words are to be given their plain and commonsense meaning.” (*Murphy*, at p. 1103.) Additionally, words and sentences are not to be viewed in isolation, but rather read “with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.” (*Smith v. Super. Ct.* (2006) 39 Cal.4th 77, 83.)

Prescott’s main issue is his interpretation of “If ... Applicant fails to take service, or fails to use the service contracted for....” Prescott maintains that because he took and used “the requested voltage and amperage requested within the timeframe outlined in his Contract,” he fulfilled the contractual obligations and should not have received a deficiency bill. He does not dispute the conclusions that the extension line did not generate the anticipated revenue. Rather, according to Prescott, pursuant to the contract, the taking of the service should have sufficed to avoid the additional obligations. Therefore, he claims SCE erred in providing any type of deficiency bill. (App. Rhrgr., at p. 3.) Prescott’s interpretation reflects a misunderstanding of how that contract provision works.

As interpreted by SCE, and confirmed in the Decision, “fail[ing] to use the service contracted for” requires more than simply starting service. According to SCE, an applicant fails to take the service contracted for when the extension does not produce the projected revenue for which the customer had received an allowance. (D.19-01-031, at p. 8.) This is the interpretation that most closely comports with the plain language of the tariff. After the phrase, “Applicant fails to take service,” it would serve no purpose to add “or use the service contracted for” if it only meant, as Prescott suggests, to take the offered service. It is clear that the tariff is requiring that an applicant not only take service, but also to take the full amount of the contracted service, in order to avoid a deficiency bill.

As SCE explained, “In this case, the Complainant was provided an Allowance of \$12,622 yet has only generated revenue as of October 2017 of \$6,932; thus he was billed a deficiency bill in the amount of \$3,527 [after adjustments made pursuant to the Contract].” (SCE Answer, at p. 3.) This has been SCE’s consistent practice when

using Rule 15 contracts. Prescott does not dispute SCE's calculation. (App. Rhrgr., at p. 2.) Moreover, SCE explained this to Prescott months before the bill.

Also, contrary to Prescott's assertion, the Decision does not "fail[] to address" this main point of Prescott's complaint. (App. Rhrgr., at p. 3.) In short, we concluded that contrary to Prescott's assumption, the phrase "contracted for" in the Contract means for the amount of revenue in that was projected in the Contract, and not simply taking service. As the Decision holds:

Prescott's contractual obligation in a line extension is not simply to bring the project on line, but to generate sufficient revenue to offset the cost of the project so that other ratepayers are not paying the cost of Prescott's line extension.

(D.19-01-031, at p. 8.) Here it is undisputed that the line did not generate the projected revenue, and, accordingly, SCE billed Prescott for the shortfall. Prescott's contention that SCE was wrong to present him with a deficiency bill is incorrect.

For the above reasons, the Decision correctly concludes that Prescott failed to meet his burden of showing that SCE erred in billing Prescott for the deficiency amount. Moreover, we adequately explained that taking the service "contracted for" means the amount of service and revenue contracted for, and not simply taking service.

III. PUBLIC UTILITIES CODE SECTION 1701.2 DEADLINES

Prescott contends that we erred because we did not issue the Decision until 113 days after the matter was submitted. (App. Rhrgr., at p. 4.) According to Prescott, section 1701.2 requires the Commission to issue a decision in a complaint proceeding within 60 days. Prescott also points out that the Administrative Law Judge (ALJ) had promised to issue the decision within 30 days of the submittal and did not. Prescott fails to demonstrate legal error because (1) section 1701.2 is not controlling in Expedited Complaint Proceedings (ECPs), and (2) a Commission delay in issuing a decision is not grounds for rehearing.

In his argument, Prescott relies on the provisions of section 1701.2 (d) which specify certain requirements for complaint proceedings. That section further states that complaint decisions must be issued "not later than 60 days after the matter has been

submitted for decision....” (§ 1701.2 (d).) However, because this is an ECP, rather than a traditional complaint proceeding, it is governed by section 1702.1 and not section 1701.2. Section 1702.1 allows the ECP process, a streamlined process for smaller dollar amount controversies. An ECP is not subject to the section 1701.2 requirements that apply to traditional complaints. (Cal. Code Regs., tit. 20 (Commission Rules), § 4.6 (e), (f).)

Prescott does not identify any authority imposing a time limit for ECPs. Neither the statute (§ 1702.1) nor the Commission Rule applying to ECPs contain any time deadline for ECP decisions. (See Commission Rule 4.6.) The fact that the Decision was not issued for 113 days after it was submitted is not a legal error.

Moreover, although the ALJ may have hoped to have the Decision earlier, it is not legal error for her to miss her own deadline. Although we strive to resolve disputes quickly, delays can occur due to workload and staffing constraints.

IV. SCE CONTRACT LANGUAGE

Prescott argues that our “failure to address language” in the Contract, “provides an environment of uncertainty” for SCE agricultural customers.” (App. Rhrg., at p. 2.) For that reason, Prescott recommends that SCE follow Pacific Gas & Electric Company’s (PG&E’s) contract language that allows a three-year, as opposed to one-year period. Prescott’s suggestion does not identify error in the Decision.

The purpose of an application for rehearing is to identify legal error. (Commission Rules § 16.1.) As such, Prescott’s current filing is not an appropriate vehicle for making suggestions about utility practice. Such suggestions would need to be made during the underlying proceeding.³

V. CONCLUSION

For the reasons discussed above, we deny Prescott’s application for rehearing of D.19-01-013.

³ Moreover, a streamlined ECP is primarily intended to settle small monetary amounts.

THEREFORE, IT IS ORDERED:

1. Rehearing of Decision 19-01-013 is denied.
2. ECP C.18-08-006 is closed.

Dated May 28, 2020, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners