

Decision 23-11-085 November 30, 2023

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

Mei Gu,

Complainant,

vs.

Southern California Gas Company (U39E),

Defendant.

Case 23-01-003

**DECISION DISMISSING COMPLAINT AND DENYING RELIEF**

## **Summary**

Mei Gu, Complainant, filed the instant complaint against Southern California Gas Company (SoCalGas), Defendant, the utility providing natural gas services to Complainant's property in West Covina, California, challenging SoCal Gas' threatened termination of gas service after Complainant denied SoCalGas access to conduct preventative maintenance work. Complainant's assertions of fact are insufficient to support the causes of action alleged and have not demonstrated violation of any applicable Commission rule, law or mandated tariff, therefore the relief requested cannot be granted. Further, the Complainant failed to appear at the prehearing conference in this matter.

The complaint is dismissed.

The requested relief is denied.

This proceeding is closed.

## **1. Procedural and Factual Background**

The Complainant filed a formal complaint pursuant the Rule 4.2 of the Commission's Rules of Practice and Procedure.<sup>1</sup> The complaint included a statement of facts (Section F), four proposed issues to be considered in the proceeding (Section G), and four requested orders (Section H). Complainant identified the Law Office of Dann L. Duncan as Complainant's representative (Section K.)

### **1.1. Complainant's Factual Assertions**

Complainant's factual assertions are (verbatim):

On 3/31/2022, SoCalGAS (SCG) re-noticed "preventative maintenance work", DRIP coring, set for 4/6/2022, citing RULE 25, Ingress & Egress rights for

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<sup>1</sup> Subsequent references to a particular rule number are to the Commission's Rules of Practice and Procedure unless stated otherwise.

entry over my objection, absent a showing of reasonable connection with the furnishing of gas, including determination of priority assignments, and exercise of any and all rights, secured by law. SCG responded citing 49CFR 192.1007(d), "Identify and implement measures to address risks.", to which I requested information so as to confirm a claimed legal right of entry:

1. Sources used to determine the 1985 installed anodeless riser possess a risk or threat of gas leak (annual report required by §191.11.
2. For the Ponderosa Development neighborhood, number of riser leaks & non-hazardous Code 3 Steel leaks detected.
3. The rated importance of, and estimate of the rank the risks posed to the current riser.
4. Whether the riser had been inspected, by remote, non-invasive means, for corrosion/damage/leakage (e.g., before re-coring)? SCG indicated my risers potential contact with earth and water was the criteria. NOTE: my riser is embedded in concrete, under eaves, proper concrete runoff slope, with no evidence of rusting at the riser, the meter is properly installed per 49 CFR Sec. 192.353. Other similar situated homeowners in my development report no such required coring.

My response was the information provided lacked specific answers to my inquiries, any legal right to enter, (e.g., 4th. and 5th Amendments), & did not support a "safety" obligation". SCG then noticed termination of services, 10/18, which initiated a timely CPUC Informal Complaint (568261), denied 10/12/2022, based on no CPUC violation of rules/ regulations, prompting this timely Formal Complaint. As neither SCG nor CPUC addressed my 4th. Amendment rights, from unwarranted/unnecessary intrusion, this Complaint is justified.

(Complaint, Section F.)

## **1.2. Complainant's Proposed Issues To Be Considered**

Complainant asserts the following as the issues to be resolved by the appeal (verbatim):

1. SCG duty to possessors of real property is limited to "ordinary care".
2. SCG has not, but should, make a showing of the potential safety threat resulting in riser leakage & need for re-coring, potentially or actually resulting in an unnecessary increased cost of gas delivery. CPU's statutory mandate is to "obtain the lowest possible rate for service". CPUC should be compelled to address my specific concerns listed above, ensuring SCG is not gaining an economic advantage.
3. The CPU/SCG regulations, municipality ROW over private property, right to entry, constitutes a "physical taking", which absent a clear health and safety issue should not be allowed. The 5th. A's taking requires compensation, that without is a trespass, and termination of service should be prohibited.
4. The 4th. Amendment prohibition of "unreasonable government (Third Party Doctrine), physical intrusion, into a constitutionally protected area constitutes a search.", which requires a "probable cause" warrant. Absent SCG's justification of its' "safety" obligation, intrusion under Rule 25, *et.al.*, is improper, and should be denied.

(Complaint, Section G.4.)

## **1.3. Complainant's Requested Orders**

Complainant request's that the Commission issue orders as follows (verbatim):

1. SCG make a showing the potential safety threat resulting in riser leakage & need for re-coring.

2. CPUC should be compelled to address my specific concerns listed in (F), #1-4, above.
3. Termination of service prohibited pending resolution of this matter.
4. Absent SCG's justification of its' "safety" obligation, intrusion under Rule 25, et.al, is improper, and should be denied.

(Complaint, Section H.)

#### **1.4. SoCalGas Answer to the Complaint**

On March 1, 2023, SoCalGas filed an answer to the complaint. The answer generally denied all of the allegations in the complaint, in part because SoCalGas lacked sufficient knowledge or information to admit or deny the allegation. SoCalGas noted that a shut-off of gas service to Complainant's home has been threatened but has not occurred. The answer also asserted that hearings were not required. SoCalGas also asserted 11 affirmative defenses.

#### **1.5. Prehearing Conference**

On June 5, 2023, notice was given to the parties of a telephonic prehearing conference scheduled for June 22, 2023 at 11:15 a.m. The notice was provided to Counsel for the Complainant and the Complainant at the email addresses each provided in the complaint. Neither responded when the hearing was called to order, nor did they appear prior 11:28 a.m. when the telephone line was closed. The Commission has not received communication from the Complainant explaining the absence or requesting a continuance.

### **2. The Requested Relief Is Not Supported By the Factual Allegations**

Complainant's requested orders are not supported by the factual allegations. The provision of residential gas service is inherently dangerous. It is unnecessary to recount the tragic history of incidents arising from poorly

installed and or maintained gas service equipment. Information describing the Commission jurisdiction and authority is available on our website, however, the Commission is under no obligation to directly explain the law, regulations, or other policy considerations to the Complainant. It is noted that the Constitution protects individuals from unreasonable search and seizure by the government. Safe monitoring, inspection, and maintenance of gas equipment by a private corporation is neither an unreasonable intrusion nor a government action. Complainant's demand that the Commission order continued gas service while delaying and/or prohibiting inspections is untenable.<sup>2</sup>

### **3. Appeal and Review of Presiding Officers' Decision**

Pursuant to Rule 14.4 (Commission's Rules of Practice and Procedure), any party may file an appeal of the Presiding Officers' decision within 30 days of the date the decision is served. In addition, any Commissioner may request review of the Presiding Officers' decision by filing a request for review within 30 days of the date the decision is served. Appeals and requests for the review shall set forth specifically the grounds on which the appellant or requestor believes the Presiding Officers' decision to be unlawful or erroneous. Vague assertions as to the record or the law, without citation, may be accorded little weight.

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<sup>2</sup> The complaint is signed by counsel and the complainant. It does not explain whether the document was prepared by counsel or the complainant. We caution counsel to heed Commission's Rules of Practice and Procedure, specifically Rule 1.1. Counsel is subject to the rules by virtue of entering an appearance in this proceeding. Accordingly, counsel is expected to maintain the respect due to the Commission, its members, and its Administrative Law Judges. The complaint in this proceeding fails to demonstrate that respect-it is poorly written, confusing, largely unsupported by legal citation, and fatally lacking in comprehensible factual allegations. It is inconsistent with the requirements of the California Rules of Professional Conduct. The Commission expects better.

#### **4. Gu's Appeal of Presiding Officer's Decision**

On July 27, 2023, a Presiding Officer's Decision was mailed in this proceeding. On July 28, 2023, counsel for Gu submitted an appeal challenging the decision. On August 11, 2023 SoCalGas filed a response to the appeal. The appeal challenges both grounds for dismissal-failure to prosecute and the failure to state a claim upon which relief may be granted.

##### **4.1 Failure to Prosecute**

Counsel for Gu acknowledges that he and his client received notice of the June 22, 2023 PHC. The appeal then claims, without factual support, that counsel "is unable and unwilling to appear telephonically." (Gu Appeal at p. 3). The appeal cites the California Rules of Court and the California Administrative Procedure Act's Administrative Adjudication Procedures (APA) (Gov. Code §§14000 et seq.) as support for the conclusion that telephonic appearance is discretionary. In response we note that the Commission is not a court and not subject to the procedural rules adopted by the California Supreme Court and the California Judicial Council to govern the state's judicial branch. The legislature has exempted the Commission from the APA. (Pub. Util. Code § 1701(b).)<sup>3</sup> The appeal does not address Rule 7.2, which establishes the presumption that PHCs will be held remotely.

Counsel claims that "an ADA request was made for notification to the Commission..." It is unclear exactly what a "request for notification" is, nor is there any supporting documentation of when, how, or to whom at the Commission the request was submitted. What is clear is that counsel is an attorney licensed in multiple jurisdictions, including California, where he has

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<sup>3</sup> With the exception of the Administrative Adjudication Code of Ethics (Gov. Code §§ 11475 et seq.)

been licensed since 1991. Counsel has clearly demonstrated that he is capable of filing and properly serving pleadings in Commission proceedings. Counsel proposed a PHC date in the complaint. Counsel signed the complaint, which authorized service of all notices from the Commission by email. Indeed, Counsel has proven efficient at responding to the Commission when motivated. The appeal was filed the day after the Presiding Officer's Decision was mailed.

Parties appearing before the Commission are expected to review the rules, to understand the governing law, and to act with appropriate diligence and competence.<sup>4</sup> In the present case, appellant was aware of the date and time for the hearing and elected not to appear. Such conduct is not consistent with an effort to diligently prosecute the complaint and dismissal is appropriate.

#### **4.2 Failure to State A Claim Upon Which Relief May Be Based**

The appeal continues the complaint's trend of confusing, contradictory, and incorrect statements of law and fact. For example, it argues that the Commission should review the propriety of the subject gas line inspection on 4<sup>th</sup> and 5<sup>th</sup> Amendment grounds, then asserts that the Constitutional question is one

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<sup>4</sup> The California State Bar Rules of Professional Conduct impose several duties which the Commission recognizes set the minimum standard of behavior for lawyers appearing before it.

Rule 1.1 requires that lawyers shall not "intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence," including the requirement to "keep abreast of the changes in the law and its practice..."

Rule 1.3 prohibits a lawyer from "intentionally, repeatedly, recklessly, or with gross negligence fail[ing] to act with reasonable diligence."

In his representation in this matter, counsel demonstrates that he was unaware of the applicable procedural laws and rules applicable to Commission proceedings. He further indicates that he chose not to appear at a hearing without communicating with the assigned Administrative Law Judge that he would not appear, based upon his belief that he could unilaterally determine not to appear. Reasonable diligence requires that counsel make every effort to contact the Commission regarding any accommodation issue and to ensure that an attorney appeared on behalf of his client.



for higher courts to decide. Reading through the myriad of defects, the appeal, like the initial complaint, seems to assert that an individual customer of a privately owned gas utility has a right to deny the utility access to inspect gas equipment on the customer's property. Appellant is wrong. SoCalGas has the authority to cease providing gas service when it cannot confirm that doing so can be done in a safe manner.

### **5. Assignment of Proceeding**

Darcie L. Houck is the assigned Commissioner and Jacob L. Rambo is the assigned Administrative Law Judge and Presiding Officer in this proceeding.

### **Findings of Fact**

1. Notice of the Prehearing Conference scheduled for June 22, 2023, was provided to the Complainant on June 5, 2023.
2. The Complainant failed to request a continuance of the Prehearing Conference and failed to appear on June 22, 2023.
3. There are inherent risks to life and property associated with the delivery of residential gas service. Safety inspection of the lines and equipment utilized to provide such service is a necessary, mandatory duty of utility corporations.
4. The complaint fails to state a factual basis upon which any relief, including the requested orders, can be based.

### **Conclusion of Law**

1. This proceeding should be dismissed for failure to prosecute.
2. The complaint fails to request relief that may be granted based upon the facts alleged.
3. The proceeding should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. The complaint is dismissed.
2. The requested relief is denied.
3. The proceeding is closed.

This order is effective today.

Dated November 30, 2023, at Sacramento, California.

ALICE REYNOLDS  
President  
GENEVIEVE SHIROMA  
DARCIE L. HOUCK  
JOHN REYNOLDS  
KAREN DOUGLAS  
Commissioners