

ORIGINAL

Decision No. 6287

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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WILLIAM HARTIGAN,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COM-
PANY, a public utility cor-
poration,

Defendant.

Case No. 1282.

Geo. D. Collins for complainant.
R. W. Duval, C. P. Catten and Leo H. Susman
for defendant.

DEVLIN, Commissioner.

O P I N I O N .

This case is the outcome of a controversy which has existed between complainant and defendant for many months past. The matter was first referred to the Commission informally, and the Gas and Electric Division made its investigations and recommendations, the results of which, however, proved unsatisfactory to the complainant.

Complainant, on November 29, 1918, filed his formal complaint herein, and the answer of defendant was filed December 30, 1918. The matter was set down for hearing for February 10, 1919, and an adjourned hearing was held thereon on February 13, 1919. Briefs were there-

after filed by both complainant and defendant, complainant's reply brief having been filed February 25, 1919.

The complaint alleges in substance that on October 5, 1917, Pacific Gas and Electric Company, a public utility corporation doing business in the City and County of San Francisco, agreed to furnish complainant, a resident of San Francisco, with gas and electricity at his residence at 880a Haight Street at the regular rates for such service, and that it did supply complainant with gas and electricity, pursuant to said agreement, from October 6, 1917 to April 26, 1918; that complainant did before April 26, 1918 tender defendant in payment of gas and electricity furnished him in the months of January, February, March and April, 1918, the sum of \$11.25, and the defendant refused and still refuses to accept tender, and there now is unpaid for such service for bills rendered during the months of January, February, March and April, 1918, the sum of \$11.25 which amount defendant has refused to accept as payment for such service. Complainant alleges that he has at all times complied with the rules and regulations of defendant and with the rules and regulations of the Railroad Commission. Complainant further alleges that on April 26, 1918, his supply of gas and electricity was wilfully discontinued by defendant without complainant's consent and against his protest, at which time further service was refused, though frequent demand was made therefor, and as a result complainant is and was by act of defendant deprived of the use of gas and electricity at his residence; that ever since April 18, 1918 there has existed a dispute between complainant and defendant relative to the charges for metered gas and electricity supplied during the months of January, February, March and

April, 1918, said dispute being based upon the claim of defendant that the sum of \$18.35 is due defendant from complainant for gas and electricity previously served at said premises during the above named period, and complainant claiming that only \$11.25 is due for such service. That defendant served a notice on complainant on April 18, 1918, demanding payment of \$5.80 for electric service and \$12.55 for gas service and advising that if this amount was not paid or deposited with the Railroad Commission by Saturday noon, April 20, 1918, service would be discontinued; that said notice further advised that if and when said sum was deposited with the Railroad Commission defendant would await such further investigation as the Commission should care to make; that thereafter, on April 26, 1918, service was discontinued; that defendant refused to reconnect service for gas and electricity unless complainant pays \$22.35, an assignment of which latter amount was made by defendant to one L. N. Sachs for collecting, and upon which said assigned claim the said Sachs sued for the recovery of said sum of \$22.35 in the Justice's Court of the City and County of San Francisco, which suit is now pending; that the discontinuance of said service by defendant on April 26, 1918, was in violation of Rule 6 of the Railroad Commission of the State of California, as set forth in Decision No. 2879, which decision prescribes rules and regulations for public utilities, in that complainant's gas and electricity were cut off within eight days after the demand of April 18, 1918.

Complainant prays the Railroad Commission for its order requiring defendant to forthwith furnish complainant at and to his residence at said 880a Haight Street

with sufficient gas and electricity for heating and lighting purposes therein and at the rates legally in force in said City and County, and that it be adjudged and determined by this Commission that complainant is not indebted to defendant for gas and electricity supplied by defendant to complainant in the months of January, February, March and April, 1918, in any sum exceeding \$11.25 and adjudging that the demand of defendant is excessive, exorbitant and extortionate, and for such other, further or different relief as may be appropriate to the case and in conformity with law.

At the hearing complainant admitted that he was then and since the 10th day of December, 1918, had been served with both gas and electricity by defendant.

The substance of defendant's answer is as follows:

Defendant admits that part of complainant's complaint alleging the agreement to furnish gas and electricity at the place and in the manner alleged by complainant, and alleges that in performance of said agreement it did furnish and supply to complainant from the 6th day of October, 1917 to the 22nd day of April, 1918, sufficient metered gas and electricity for lighting and heating purposes at said residence of complainant. Defendant denies that complainant paid to defendant or that defendant did accept or receive from complainant the rates which were then legally in force in said City and County of San Francisco for so much of said gas and electricity as was supplied to complainant by defendant during the months ending November 1st, 1917, December 1st, 1917 and January 1st, 1918; defendant further alleges that it has refused and still refuses to receive or accept and there is now unpaid said defendant for gas and electricity so furnished plaintiff as aforesaid, the rates legally in force

in said City and County of San Francisco for said gas and electricity furnished and supplied plaintiff by defendant during each of the months of January, 1918, February, 1918, March, 1918 and April, 1918".

Counsel for defendant at the hearing declared that the allegation in defendant's answer just quoted, was a typographical error and it was not intended and was not the fact that defendant has refused and still refuses to receive or accept the rates legally in force as in said quoted paragraph set forth. From other allegations and denials in defendant's answer, it is very apparent that such allegation was and is a typographical error.

Defendant, by its answer, admits that it refused to accept \$11.25 in payment of service for January to April, 1918, inclusive, but denies that complainant tendered payment prior to April 26, 1918; denies that complainant paid for service rendered during October, November and December, 1917 and further denies that complainant is not indebted to it in a sum exceeding \$11.25 for gas and electricity supplied during the months of January, February, March and April, 1918. Defendant denies that it wilfully discontinued service on April 26, 1918, but on the contrary alleges that when complainant deposited with the Railroad Commission on December 10, 1918, the sum of \$18.30 for gas and electricity supplied from October 1, 1917 to March 1, 1918, that defendant on December 10, 1918, reconnected and re-established gas and electric service to complainant, and ever since said 10th day of December, 1918, said complainant has been supplied with gas and electricity. Defendant admits the assignment of its said alleged demand for said

sum of \$22.35 to said Sachs and the beginning of suit thereupon in said Justice's Court, as in the complaint alleged. Defendant admits the dispute regarding said bills, but alleges that on March 22, 1918, it served notice on complainant that unless bills were paid to defendant or deposited with the Railroad Commission on or before April 6, 1918, that service would be discontinued on April 8, 1918, which demand complainant failed to comply with, and that on April 8, 1918, said service was discontinued; immediately thereafter service was resumed at the request of the Railroad Commission for the purpose of making an investigation of the supply of gas and electricity at complainant's premises and to permit of the testing of instrumentalities of defendant installed on the premises of complainant; that upon the completion of said investigation and test and the continued failure and refusal of complainant to comply with the request and demand contained in its said letter of March 22, 1918, defendant discontinued gas and electric service to said complainant at said premises on April 22, 1918.

Many witnesses were called by both complainant and defendant, and twenty-two exhibits were introduced at the hearing covering various phases of the controversy.

The evidence introduced shows the following facts:

The premises known as 880 Haight Street in the City and County of San Francisco consists of a middle flat, which flat, for the convenience of the owner, is divided into a front and rear apartment, being designated by the owner "880a" and "880b", but having no designating marks

to identify same. The owner testified that on some occasions for a brief period there had been cards attached to the doors of the respective apartments appropriately designating them by number and letter. The complainant rented the rear apartment, known as "880b", on or about October 1, 1917. The receipt given him for his rent, however, designated his apartment as "880a" Haight Street. The designation of complainant's apartment in his receipt was unquestionably through inadvertance, and unquestionably is the cause of much, if not all, of the controversy which has resulted in these proceedings.

Prior to the occupancy of said premises by complainant, the owner of the premises had furnished to defendant for its convenience the designating letters "a" and "b" of said apartments, being for the front and rear apartment respectively, the gas and electricity served to each apartment being measured separately by the defendant.

When complainant took possession of the said apartment on October 5, 1917, he discovered that electric service was turned on but the gas service had not been connected. Upon notification to the defendant, however, gas service was immediately established. Complainant's stepdaughter had made application at defendant's office for both gas and electric service on or about October 1, 1917, and having in her possession the rent receipt for the premises 880a Haight Street, gave such number and designation to defendant, with the result that defendant placed complainant's account on defendant's books under the address "880a" whereas, in fact, complainant was occupying "880b".

Thereafter defendant rendered complainant bills for gas and electricity for the months of October, November and December, 1917, which bills, as a result of the transposition

of accounts, as hereinabove explained, were based upon the consumption of the meter serving the front instead of the rear apartment which complainant occupied. Complainant paid such incorrect bills, and in January, 1918, the error was discovered through investigation of defendant occasioned by complaint of the tenant of the front apartment of 880 Haight Street of excessive bills, and defendant thereupon rendered corrected bills to complainant for the months of October, November and December, 1917, which corrected bills were based upon the reading of the meters actually supplying the rear apartment, No. 880b Haight Street, which complainant occupied. Complainant took exception to the corrected accounts rendered, and the defendant, after an examination and investigation, informed complainant that the bills were correct and that it would be necessary for him to pay the corrected accounts or have his service discontinued, and subsequently, after repeated attempts to adjust the matter, the service of both gas and electricity was discontinued after due notice given the complainant by defendant.

The meters actually used in supplying the premises occupied by the complainant were known on the Company's records as gas meter No. 125505 and No. 182597 (after December 11, 1917) and electric meter No. 75673, and that the bills based upon the actual registration of such meters for gas and electricity actually supplied to complainant from October to December, 1917, inclusive, were as follows:

		<u>Gas</u>	<u>Electricity</u>
October	1917	\$1.95	\$.65
November	1917	3.40	1.40
December	1917	<u>3.55</u>	<u>1.80</u>
	Total	\$8.80	\$ 3.85

There is nothing in the record to justify the contention that complainant did not actually use the amount registered on said meters which resulted in the bills set forth above. Complainant protested that the amounts charged were excessive, whereupon defendant tested both gas and electric meters and found same to be accurate and likewise tested the service to determine any hidden connections or short circuits or other difficulties that would have permitted either gas or electricity to pass through the respective meters other than that supplied to complainant, and found no such condition.

A new gas meter, No. 182597, was installed on December 11, 1917 in place of meter No. 125505 which was removed.

Complainant offered in evidence receipted bills for gas and electricity of the former occupant of his apartment in support of his contention that the amount of his bills was excessive. Such evidence is of necessity most unsatisfactory as obviously there are so many varying conditions that one tenant's consumption of gas or electricity in an apartment might prove a very poor criterion of what another tenant's might be.

On December 10, 1918, complainant deposited with the Railroad Commission the sum of \$18.30, which amount was claimed by defendant to be due from complainant for gas and electric service rendered up to March 1, 1918. Immediately after such deposit was made, service was reconnected to complainant's apartment, and it was admitted at the hearing that he was then receiving service.

The discontinuance of complainant's gas and electric service was made pursuant to a notice given by defendant as prescribed by the Railroad Commission; that there was a reconnection of service, but such reconnection was not for

the benefit of complainant or to him as a consumer, but was made solely upon the request of the Gas and Electric Division of the Railroad Commission for the purpose of enabling said engineers to observe a test meter, and which said test required actual service conditions; this purpose of resumption of service was made clear by the Company in response to the request of the Commission's Gas and Electric Division.

After the test by the engineers of the Commission, the Company did again on April 18, 1918, serve another notice upon complainant for payment, and after his failure to pay defendant again discontinued service on the 22nd day of April, 1918. It would be improper to construe the resumption of service made upon request of the Commission's engineers into a resumption of service to the complainant so as to revive his right to the full period of time prescribed by the Commission's rules for notice.

The evidence shows that the amount due defendant from complainant for gas and electricity for the months of January, February and March and from April 1st to April 22nd, 1918, is as follows:

<u>Period</u>	<u>G A S</u>		<u>E L E C T R I C</u>	
	<u>Consumption</u> <u>Cu.Ft.</u>	<u>Bill</u>	<u>K.W.H.</u>	<u>Bill</u>
Dec. 31st-Jan. 31st	4000	\$3.40	25	\$1.75
Jan. 31st-Mar. 1st	3400	2.90	23	1.60
Mar. 1st-Apr. 1st	2900	2.45	11	.75
Apr. 1st-Apr. 22nd	900	.75	6	.60
		\$9.50		\$4.70

The total amount of gas and electricity supplied complainant at his said premises from October 6, 1917 to April 22, 1918, is as follows:

G A S

Total amount of gas consumed through meter actually measuring gas served the Hartigan apartment - Oct. 6, 1917 to Apr. 22, 1918	21,600 cu.ft.
Bill for gas at filed rates	\$18.30
Amount paid by complainant	<u>2.35</u>
Amount still due and unpaid	\$15.95

E L E C T R I C

Total amount of electricity used from October 6, 1917 to April 22, 1918	120 K.W.H.
Bill for same under filed schedules	\$8.55
Amount paid by complainant	<u>2.15</u>
Amount still due and unpaid	\$6.40
Total amount due defendant by complainant for gas and electricity - October 6, 1917 to April 22, 1918, and not paid	\$22.35

The amount of \$18.30 demanded by defendant under date of March 22, 1918, consists of the following items:

Gas bills for service to March 1, 1918, unpaid	\$13.25
Electric bills for service to March 1, 1918, unpaid	<u>5.05</u>
	\$18.30

The evidence shows that the bills for gas supplied through the meters serving complainant's apartment to and including March 1, 1918, unpaid on March 22, 1918, amounted to \$12.75 instead of \$13.25, making the amount due and unpaid, on March 22, 1918, \$17.80.

During the month of March, the gas meter serving complainant's apartment registered a total consumption of 2900 cubic feet, and the electric meter registered 11 K.W.H. The bills for this service for the month of March, at the regular schedules, were \$2.45 for gas and 75 cents for elec-

tricity. From the 1st to the 22nd of april, complainant's consumption of gas and electricity resulted in bills of 75 cents and 60 cents, respectively. The total unpaid amount rendered to April 22, 1918 for gas and electric service/remaining unpaid at the present time and due from complainant is, therefore, as follows:

	<u>Gas</u>	<u>Electric</u>	<u>Total</u>
Bills for service to March 1, 1918	\$12.75	\$5.05	\$17.80
Bills for service-March 1st to April 1st, 1918	2.45	.75	3.20
Bills for service-April 1st to April 22nd, 1918	.75	.60	<u>1.35</u>
Total amount due			\$22.35

Complainant urges, however, that the receipts given him by defendant for the service constitute a satisfaction of the claim for those months, and that a receipt in writing is conclusive unless fraud or mistake is present. That there was a mistake is to me perfectly clear, as hereinabove set forth. In my opinion, however, this Commission is not limited in its determination of questions similar to this to the strict rule urged by complainant, as set forth in the Civil Code. Public utilities could, in the absence of the power of regulatory bodies, easily circumvent the control contemplated by regulatory bodies through the delivery of a receipt and forever close the door to an inquiry as to whether or not there has been preferential rates or discriminations forbidden by law.

It further appears from the evidence that complainant did not comply with the request of defendant as made on March 22, 1918 to deposit the amount in dispute with the Commission, and that defendant discontinued service on April 22, 1918, in accordance with Rule 6 of the Railroad Commission as set forth in Decision No. 2879.

I deem it unnecessary to review in detail all of the evidence which was introduced, there being a great deal of time devoted to cross-examination concerning consumption by former tenants of complainant's apartment, bills for service that was claimed to be similar, details concerning the methods by which the meters were tested, the accounts transposed, as hereinbefore set forth, and touching other unimportant facts.

Summarized, however, I am of the opinion that the cause of the trouble was the erroneous designation of complainant's apartment, as set forth on his receipt, and it may well be that complainant by reason of the small amount charged to him for gas and electricity during the first months was more extravagant in the use thereof than he would be had his bills been computed upon his actual consumption. It reduces itself, in my opinion, merely to a situation where complainant was being actually served through one meter for each service and being charged through others which were not attached to his premises.

I recommend the following form of order:

O R D E R .

WILLIAM HARTIGAN having filed his complaint against PACIFIC GAS AND ELECTRIC COMPANY, and a hearing having been held thereon, the matter being submitted and now ready for decision,

THE RAILROAD COMMISSION HEREBY FINDS AS A FACT that the amount due Pacific Gas and Electric Company from complainant for electric and gas service delivered to complainant's apartment at 880 Haight Street, in the City and County of

San Francisco, during the months of January, February, March and April, 1918, is the sum of \$14.20.

THE COMMISSION HEREBY FURTHER FINDS AS A FACT that the amount due Pacific Gas and Electric Company from complainant for gas and electric service delivered to complainant's said apartment from October 5, 1917 to April 22, 1918, is the sum of \$22.35.

THE COMMISSION HEREBY FURTHER FINDS AS A FACT that the action of Pacific Gas and Electric Company in discontinuing the gas and electric service to complainant on April 22, 1918, was in accord with the rules and Regulations of the Railroad Commission of the State of California established in its Decision No. 2879.

Basing its order upon the foregoing findings of fact and upon the further findings of fact set forth in the opinion preceding this order,

IT IS HEREBY ORDERED that the complaint herein be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of April, 1919.

Edwin C. Edgerton
H. J. ...
Walter R. ...
H. W. ...
Dwight Mattie
Commissioners.