

Decision No. 63847

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WALTER EDSSEL WHITE,  
 Complainant,  
 vs.  
 SOUTHERN CALIFORNIA EDISON COMPANY,  
 a corporation,  
 Defendant.

Case No. 7224  
(Filed November 3, 1961)

Walter Edsel White, in propria persona,  
complainant.  
Woodbury, Sturges & Tinker, by H. Clinton  
Tinker, for defendant.

O P I N I O N

Public hearing on the above complaint was held before Examiner Stewart C. Warner on January 3, 1962, at Los Angeles. The matter was submitted for decision on said date.

Complaint

The material allegations of the complaint herein are that defendant "overcharged" complainant for electrical service in the amount of \$435.71 for the period from November 27, 1951 until September 3, 1959; that defendant admitted such overcharge by letter; that defendant mailed checks to complainant in the amount of \$435.71 in payment for such overcharge; and that defendant has refused to pay interest on the overcharge although requested by complainant to do so. The prayer is for interest. Complainant cited Public Utilities Code Sections 494, 532 and 734 in support of his complaint.

Answer

Defendant denied that it had overcharged complainant for the period specified in the complaint but admitted that as a result of an investigation of complainant's service installation it had "recomputed" complainant's account from November 27, 1951 until September 3, 1959 and refunded to complainant the amount of \$435.71. Defendant further admitted that it had refused to pay interest on the amount of the refund and denied that it had charged complainant an unreasonable, excessive or discriminatory amount for electric service.

Hearing

At the hearing complainant relied on a showing that he was entitled to a domestic rate for electric service at his dwelling, 14009 San Antonio Drive, Norwalk; that defendant had billed him at a commercial rate; that he had discovered the possibility of an overcharge through inadvertence; that after negotiation with defendant they had agreed to the reasonableness of the charge as adjusted, but disagreed as to his right to interest; that the charges made by defendant had been excessive and that he was therefore entitled to interest under Section 734 of the Public Utilities Code.

Defendant's showing was that complainant had a nondomestic connected load of 235 watts at the premises in question (Exhibit No. 4); that defendant could not find complainant's application for service and hence had given him the benefit of any doubt concerning such application, recomputed his account as domestic and made him a refund of \$435.71. It was the import of defendant's showing and part of its argument that under its service rules, when there is a nondomestic connected load of less than 300 watts on a domestic

connection, it is discretionary with the utility whether or not such domestic load shall be served through the domestic meter; that Public Utilities Code Section 734 does not provide for reparation where there has been a mistake in the rate but only where the charge has been unreasonable, excessive or discriminatory; that in any event Public Utilities Code Section 735, with its two year period of limitation, bars any relief to complainant herein.

Discussion

Defendant's interpretation of its service rule for Domestic Service, Rule No. 1, is not sound. The portion of the rule upon which defendant relies provides, "Any service for other than residential use at a dwelling premises may be served through the domestic meter only where such nondomestic connected load does not exceed 300 watts for lighting or 2hp for power." To follow the reasoning of defendant would be to place the utility in a position of discretion that might well result in many cases of discrimination among its customers. A more reasonable interpretation of the quoted language is that it defines the limits of electric usage, above which the billing shall be on a commercial basis.

Defendant, in support of its contention that the matter does not come within Public Utilities Code Section 734, cites our decision in 14 CRC 666, with particular reference to the statement therein that if there is "...misunderstanding or misquotation of a rate, such mistake cannot be urged as a basis for reparation...." In that case, however, the mistake was that of a shipper in contracting with a third party. Here the mistake was on the part of the utility in billing a customer at an improper rate. Section 532 provides that no utility shall charge or receive a "different"

compensation from that specified in its tariffs. To the extent the rate applied by defendant was different from and in excess of the rate properly applicable to complainant, it was excessive and hence within the scope of the jurisdiction conferred upon the Commission by Section 734.

Finally, defendant relies upon Public Utilities Code Section 735, with its two year period of limitation, as a bar to the right of complainant herein. However, Section 735 is expressly inapplicable to cases based on Section 532, and it is the "different" compensation referred to in Section 532 that concerns us here. Section 736, with its three year period of limitation, is applicable. Although Section 736 was not pleaded by defendant, its provisions are nevertheless binding. (See 9 CRC 80, 83; 15 CRC 618, 624.) Complainant argued at the hearing that his cause of action did not accrue until defendant had turned down his demand, but Section 738 provides that such a cause of action accrues "...upon the furnishing of the commodity ... with respect to which complaint is filed...." This being the case, we can concern ourselves only with overcharges on electricity furnished during the three-year period November 3, 1958, to November 3, 1961, the date the complaint was filed. Since the overcharge was for the period ending September 3, 1959, complainant may claim interest only on the overcharge during the period November 3, 1958 to September 3, 1959.

Section 734 of the Public Utilities Code confers jurisdiction upon the Commission to order the payment of interest from the date of collection of excessive charges. Code of Civil Procedure Section 1915 provides: "Interest is the compensation allowed by law ... for the use, forbearance, or detention of

money." Defendant herein had the use of complainant's money to the extent of the excess over the lawful rate due from him for the period between November 3, 1958 and September 3, 1959. It should pay interest to complainant at the legal rate of 7 percent per annum. (Cal. Const., Art. XX, Sec. 22.)

Findings and Conclusions

The following findings and conclusions are hereby made:

1. Defendant Southern California Edison Company is a public utility electrical corporation under the jurisdiction of this Commission pursuant to the provisions and definitions of the Public Utilities Code of the State of California.

2. Section 736 of the Public Utilities Code, containing a three year period of limitation, is applicable herein, and that portion of complainant's cause of action accruing prior to November 3, 1958 is barred.

3. Defendant charged complainant an excessive amount for electric service for the period from November 3, 1958 until September 3, 1959, in the monthly amounts set forth in Exhibits Nos. 2 and 2A filed at the hearing, and totaling \$68.67.

4. Defendant had the use of the excessive amounts thus collected from complainant for the period from November 3, 1958 to September 3, 1959 and should be directed to pay to complainant interest thereon at the rate of seven percent per annum from the date of collection to the date of refund. Said interest totals \$2.52.

5. No discrimination will result from defendant's paying complainant such interest.

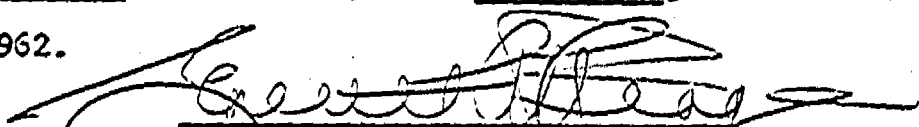
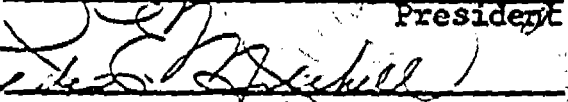
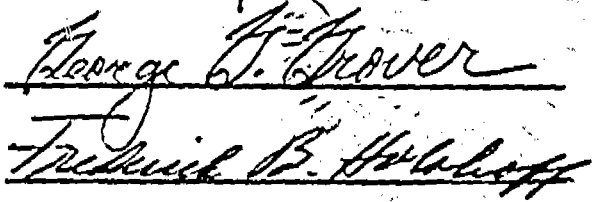
O R D E R

Complaint as above entitled having been filed, a public hearing having been held, the matter having been submitted, and now being ready for decision,

IT IS HEREBY ORDERED that defendant, Southern California Edison Company, a corporation, shall, within ten days after the effective date of this order, pay to complainant, Walter Edsel White, the sum of \$2.52 as interest on the overcharges collected by defendant from complainant for the period from November 3, 1958 until September 3, 1959.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 26th day of JUNE 1, 1962.

  
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President  
  
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George W. Crover  
  
\_\_\_\_\_  
Frederick B. Holshoff

Commissioners

Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.