

ORIGINAL

Decision No. 70445

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WM. N. ROBIRDS and
MARGARET M. ROBIRDS,
Complainants,

vs.

SAN DIEGO GAS & ELECTRIC
COMPANY,

Defendant.

Case No. 8069
(Filed December 1, 1964)

Wm. N. Robirds, for complainants.
Chickering and Gregory by Sherman Chickering,
and C. Hayden Ames and Stanley Jewell, for
defendant.
Arch Main, for the Commission staff.

O P I N I O N

Public hearing on this matter was held, and it was submitted, before Examiner Patterson in San Diego on May 7, 1965.

Wm. N. Robirds and Margaret M. Robirds, husband and wife, allege that as customers of San Diego Gas & Electric Company, taking utility service at 2635 San Diego Avenue, San Diego, from May 1953 to August 28, 1961, they are entitled to a refund of \$132 as their portion of the total refund made by defendant for service at that address for the period January 1, 1958 through October 31, 1963.

The refund in dispute is a portion of the amount, arising out of settlement of the El Paso Natural Gas Company rate cases, which defendant was ordered to refund to its customers by Decision No. 66737, dated February 4, 1964, in Application No. 35742, Re San Diego G. & E. Co., 62 Cal. P.U.C. 302.

Defendant alleges that pursuant to said Decision No. 66737, and the refund plan attached thereto, it refunded on or about March 26, 1964, \$201.85 to "Maytag Self Service Laundry by Henry C. Robert", and that no amount is due complainants from defendant.

The record shows that gas and electric service was established at 2635 San Diego Avenue in May 1953 in the name of "Self Service Laundry", a business owned by complainants; that bills for gas and electric utility service were paid by Wm. N. Robirds from May 1953 to August 28, 1961; that on or about the latter date the Robirds sold the laundry equipment and transferred the business to Royce E. Gibbs and his wife, who paid the gas and electric utility bills until on or about February 28, 1963, when the business was sold or transferred to Frank Robert or Henry C. Robert; that service has been in the name of "Maytag Self Service Laundry by Henry C. Robert" since February 28, 1963; that a refund of \$201.85 was issued by defendant to "Maytag Self Service Laundry by Henry C. Robert" on or about March 26, 1964; and that defendant has refused to issue any refund to complainants for utility service at said address. The record also shows that complainants still own the real property at 2635 San Diego Avenue and hold a chattel mortgage on the laundry equipment.

The issue in this proceeding is whether or not any portion of the \$201.85 refund issued by defendant to Henry C. Robert should have been issued or now should be issued by defendant to complainants.

The refund plan authorized by Decision No. 66737 as applicable to small business accounts required that refunds be made

to each customer who was an active customer in the November 1963 period. The refund to Henry C. Robert was made pursuant to that plan.

Provision is made under Section 12 of the refund plan whereby under certain circumstances refunds may be made to former "General Service and Space Heating Customers" who establish that they were customers during a portion of the refund period. Defendant's practice and policy has been not to make such refunds on business or commercial accounts where there has been a change in ownership but no change in the name of the account as carried on defendant's books for billing purposes. This policy, assertedly based on Section 1084 of the Civil Code^{1/}, considers a potential refund to be an asset included in the sale of a business unless specifically excluded under the terms of the sale. Since complainants could not establish that in the sale of their laundry business any express reservations had been made with respect to the gas refund, defendant in accordance with its policy refused to make a refund to complainants when inquiry was made under Section 12 of the refund plan.

The record shows that refunds were often made under Section 12 to former residential customers, the witness explaining that residential accounts were viewed differently than commercial accounts and that in most cases changes in residential customers required changes in the accounts as carried on the utility's books.

^{1/} "Sec. 1084, Incidents. The transfer of a thing transfers also all its incidents, unless expressly excepted;...."

In considering the policy established by defendant for making refunds upon inquiry under Section 12 of the refund plan, we are not persuaded that small business or commercial accounts should be treated in a different manner from residential accounts by reason of Section 1084 of the Civil Code. (See Millner v. Lankershim Packing Co. (1936), 13 Cal. App. 2d 315, 320; cf. Owsley v. Hamner (1951), 36 Cal. 2d 710, 716-717). Furthermore, the evidence produced by defendant, Exhibit 4, does not establish that there was no change in the name of the account as carried on defendant's books, but on the contrary, shows the account was carried as "Self Service Laundry", then "Royce E. Gibbs", and finally as "Maytag S. S. Laundry by Henry Robert". Defendant stipulated that during the initial period, the period in dispute herein, the bills were paid by checks signed by the Robirds, not by checks in the name of "Self Service Laundry".

After consideration of the entire record, we find that complainants were former "General Service and Space Heating Customers", within the meaning of Section 12 of the refund plan and are entitled to the portion of the refund due for the period from approximately January 1, 1958 to August 28, 1961, in the amount of \$132.

Based upon the above finding, we conclude that defendant should be ordered to issue to complainants a refund of \$132.

O R D E R

IT IS ORDERED that San Diego Gas & Electric Company shall issue to Wm. N. Robirds and Margaret M. Robirds a refund of \$132.

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

Dated at San Francisco, California, this 15th day of MARCH, 1966.

Fredrick B. Hildehoff
President

George J. Crow

Augusta

William L. Bennett
Commissioners