

Decision No. 84899

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NANCY E. MILLER, And All Others
Similarly Situated,

Complainant,

vs.

SAN DIEGO GAS AND ELECTRIC COMPANY
A California Corporation,

Defendant.

Case No. 9908
(Filed May 2, 1975)

O P I N I O N

Complainant alleges that on April 11, 1975, defendant demanded that she deposit \$150 to re-establish credit or her service would be terminated; that defendant had billed her and been paid an average of \$53.58 per month for the past 12 months; that defendant was not entitled to demand more than \$107.16, a two-month period average, to re-establish credit; and requests an order that \$42.84 (the sum demanded by defendant and deposited by complainant over and above \$107.16) be returned to her as a sum in excess of the amount the defendant was entitled to demand.

In its answer, defendant admits that it demanded a deposit of \$150 based upon a two-month bill total of \$150.33, but states that upon review of the calculation the amount of the deposit requested was reduced to \$110. Defendant asserts that the complainant was personally informed on April 28, 1975; that thereafter, an agent for James Miller (attorney for complainant) presented the defendant with a personal check of Mr. Miller for \$150; that the agent was

informed that only \$110 was due but, nevertheless, left the check for \$150; and that the defendant applied \$110 of the \$150 as the deposit to re-establish credit and the remaining \$40 to the then existing two-month bill for March and April, 1975. Defendant explains that on April 28, 1975 it left a message with the secretary of James Miller informing him of this fact, and on April 29, 1975 two receipts were sent by mail from defendant to complainant indicating a deposit of \$110 and a credit to the utility bill of complainant in the amount of \$40.

Defendant's tariff rules on file with the Commission provide in part:

"6(b)(2). A customer who fails to pay bills before they become past due...and within five days after presentation of a discontinuance of service notice for nonpayment of bills, may be required to pay said bills and re-establish credit by depositing, in cash, the amount provided in Rule 7...."

"7. The amount of deposit required to establish or re-establish credit for electric service will be equal to twice the estimated average monthly bill for that service but not less than \$5 per meter."

Complainant alleges that the average two-month bill for the prior 12 months was \$107.16. Defendant alleges that it was \$109.14. Complainant's January-February, 1975 bill was \$150.33 and her March-April, 1975 bill was \$134. The \$110 demanded by defendant was an amount equal to twice the estimated average monthly bill for that service and was not excessive.

Complainant alleges, in paragraphs 10 and 11 of her complaint, that other ratepayers whose status is similar to complainant's are also being subjected to demands for deposits to reestablish credit which are substantially in excess of the amounts allowed under the tariff, and that the defendant should be required to produce information concerning such cases so that the Commission can determine if the defendant is pursuing a systematic policy of charging excessive deposits to reestablish credit in violation of the tariff of the defendant. Complainant's requesting paragraphs numbered 2 through 6 request that such excessive deposits requested and received be ordered returned to the ratepayer paying the same; that defendant be ordered to establish procedures to prevent such practice in the future; be ordered to perform certain acts with respect to ratepayers whose service had been terminated; and advise ratepayers to consult with their counsel concerning whether they may have grounds for an action for consequential damages.

Defendant made a motion to strike paragraphs 10 and 11 and requesting paragraphs 2 through 6 of the complaint; contending that complainant has no authority to proceed on the complaint in behalf of such other persons, and that complainant seeks to represent or bring an action on behalf of a larger, indefinite body of defendant's customers which is as an attempt to bring a class action contrary to the rules of the Commission.

The Commission advised complainant by letter on June 17, 1975 and complainant's attorney by letter on June 25, that it appeared that the relief requested should be denied and that complainant would not be able to proceed in behalf of persons other than herself, but that no further action would be taken before July 10, 1975. As of July 10, no communication has been received from complainant or her attorney and no further document has been filed.

Findings

1. April 28, 1975 defendant demanded and complainant deposited \$110 to reestablish credit as a condition to defendant continuing to provide service to complainant.
2. The \$110 demand and deposit was equal to twice the estimated average monthly bill of complainant; was reasonable and not excessive; and conformed to defendant's tariff rules on file with the Commission.
3. Complainant is not entitled to have \$42.84 or any sum refunded to her by defendant.
4. Complainant has not stated facts sufficient to consider this a class action.
5. A public hearing is not necessary.

O R D E R

IT IS ORDERED that the relief requested by complainant is denied.

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

Dated at San Francisco, California, this 10th
day of SEPTEMBER, 1975.

~~William L. Stetgen~~
William L. Stetgen President
Leonard R. Rasmussen
Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.