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ORIGINAL

Decision No. 84998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VERNESTINE NATION,

Complainant,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY,

Defendant.

Case No. 9896
(Filed April 4, 1975)

Richard A. Weisz and Toby J. Rothschild, Attorneys at Law, for Vernestine Nation, complainant.
William T. Elston, Attorney at Law, for Southern California Edison Company, defendant.

O P I N I O N

Statement of Facts

Complainant, after prior currently paid domestic electricity service at Anaheim Street, Long Beach, on or about November 13, 1972 under the account name of Vern Nation, arranged by telephone with defendant for domestic electric service at 2052 Olive Avenue, Apt. D, Long Beach. The Olive Street account number was 23-46-041-0212-03-477.

Defendant's policy on deposits is to not require one where the customer has had prior service over at least a two-year period with not in excess of two overdue billings. Complainant at the Anaheim Street service had a $20 deposit. She "believes" the deposit was transferred to the Olive Avenue service. Defendant can locate no record of an Olive Avenue deposit transaction, signifying to it that in compliance with defendant's policy, the Anaheim Street deposit was applied against the final Anaheim bill. Because of defendant's current paid service at the Anaheim address no deposit would have been required at the successor Olive Avenue service.

Defendant bills bimonthly. The initial reading of complainant's meter for the November 13, 1972 - December 1, 1972 period of service was overread by 10,000 kwh's, resulting in a debit to her account in the amount of $156.47. The second reading of complainant's meter for the December 1, 1972 - February 1, 1973 period of service was again overread and a debit of $1,360.93 was recorded into defendant's billing computer. When added to the initial debit, the computer indicated a charge in the total amount of $1,517.40 for the November 13, 1972 - February 1, 1973 service period. All amounts include 5 percent city tax.

At this point a bookkeeper discovered the error and introduced corrective data after analysis of the billing. Consequently, the computer prepared a correct initial billing for the November 13, 1972 - February 1, 1973 service period in the amount of $39.69. This initial bill was mailed to and received by complainant.[1/]

The following day after the first bookkeeper had corrected the computer, a second bookkeeper, unaware that the first bookkeeper had corrected the error, prepared a second correctional credit of $1,517.40 for the computer. The computer, accepting this second credit, applied it against the validly outstanding balance of $39.69, to reflect a credit net balance of $1,477.71. The computer next issued a "CORRECTED BILL" for the November 13, 1972 - February 1, 1973 service period and mailed it to the complainant. This "CORRECTED BILL" showed complainant's actual consumption of energy for the period and its cost of $39.69; the spurious "CREDIT BALANCE" of $1,477.71; and under the "Amount now due" box, a print out of: "CREDIT BALANCE - DO NOT PAY". This "CORRECTED BILL" was also received by complainant.[2/]

1/ See Exhibit No. 3 - first page.

2/ Id.

Thereafter, over the next 22 months, the next 10 bi-monthly billings by the computer to complainant reflected and separately stated both the actual electric energy consumption and its actual cost to complainant including city tax, and a diminishing but spurious "CREDIT BALANCE".[3] This spurious "CREDIT BALANCE" was then computer applied to that service period's actual billing to result in a final "Amount now due" box item reading "CREDIT BALANCE - DO NOT PAY". And complainant did not pay.

These successive billings ended after 22 months when complainant, having paid nothing for the electric service over the period, telephoned November 20, 1974 to defendant requesting discontinuance of service at the Olive Avenue address, and arranged service for her new residence at 1431 Locust Street, Apt. 11, Long Beach, under the same account name of Vern Nation. The last bill bearing the "CREDIT BALANCE - DO NOT PAY" legend covered the period August 1, 1974 to October 1, 1974, and was mailed to complainant October 4, 1974. Complainant retained this envelope.[4]

On January 13, 1975 defendant, finally having ascertained that the "CREDIT BALANCE" listed for the account by the computer was in error, and that complainant had paid nothing in over two years for the service she enjoyed, telephoned complainant to inform her of the accumulated unpaid balance of $401.41 on the Olive Avenue service. A personal visit by a field service representative was also made about this time. Having achieved nothing in payment, on February 28, 1975 defendant wrote complainant requesting she arrange to clear the past due account.[5] Complainant engaged the assistance of Legal Aid Foundation of Long Beach. Legal Aid entered into discussions and correspondence with defendant, taking

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3/ Id. all four pages.

4/ See Exhibit No. 8.

5/ See Exhibit No. 4.

the initial position that it appeared that defendant, having advised complainant repeatedly by successive billings, albeit erroneously, that she had a credit balance, had induced complainant to her detriment to rely, and therefore was not entitled to the $401.41. Defendant refused to waive payment and informed Legal Aid that unless satisfactory arrangements for payment were made it would proceed under Rule 11, Section B.2[6/] of its tariff to discontinue service. In further discussions defendant offered to accept a payment arrangement in the minimum amount of $25 per month. Complainant, under protest, finally offered to pay the $401.41 at the rate of $5.00 per month. Nothing has been paid.

At a duly noticed public hearing held on July 21, 1975 in Los Angeles before Examiner Weiss, complainant testified she twice telephoned defendant about the $1,477.71 "CREDIT BALANCE"; first when she received the February 1, 1973 billing, and again two months later when she received the April 1, 1973 billing. She did not again try to rectify the obvious error. She testified she assumed a "CREDIT BALANCE" was feasible because of some blown fuse problems incurred when she first moved into the Olive Street apartment. Allegedly

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6/ See Exhibit No. 3 - page 9 of Southern California Edison tariff:

"Rule No. 11 - Discontinuance and Restoration of Service

"Section B. Nonpayment of Bills:

"2. A customer's service may be discontinued for nonpayment of a bill for service previously rendered him at any location served by the utility provided such bill is not paid within 5 days after presentation of a notice that present service will be discontinued for non-payment of such bill for prior service, but in no case will service be discontinued for nonpayment of such bill within 15 days after establishment of service at the new location. However, domestic service will not be discontinued because of nonpayment of bills for other classes of service."

this problem had resulted from some wires having been hooked up to the next door apartment. Her landlord had immediately corrected the problem.

When she called defendant the first time she stated she talked to a lady, identity unknown, and asked what "CREDIT BALANCE" meant. After identifying herself she testified she was told the account had a credit balance and she need not pay. The second time, again to an unknown representative, she assertedly was again told she had a "CREDIT BALANCE" and "You don't have to worry about it." So, she did not.

Defendant testified its normal procedure would be for the service representative receiving such a call to pull the "microfish" (an electronic readout on the account from the computer) and verify any credit balance. However, any credit balance of the magnitude of $1,400 on a domestic service would require sending bookkeeping a written "service request" to research the account. Defendant testified it had no record of any such request or of any call from complainant.

Complainant asserts defendant is estopped from claiming any balance due on the Olive Avenue service; that defendant's tariff Rule 11, Section B.2 is unjust and unreasonable rendering it void and unenforceable; and that defendant's threatened discontinuance of service in this instance is precluded by the three-month limitation under defendant's tariff Rule 11, Section B.4.7/

7/ See Exhibit No. 3 - page 9 of Southern California Edison tariff:

"Rule No. 11 - Discontinuance and Restoration of Service

"Section B. Nonpayment of Bills:

"4. Under no circumstances may service be discontinued for nonpayment of a bill to correct previously billed incorrect charges for a period in excess of the preceding three months, unless such incorrect charges have resulted from the customer not abiding by the filed rules."

By Decision No. 84336 dated April 15, 1975 the Commission issued a cease and desist order prohibiting defendant from discontinuing domestic electric service to complainant pending resolution of the issues.

Discussion

Defendant is not estopped from claiming or collecting the $401.41 due on the accumulated unpaid account for the Olive Avenue address service. It is a well-established principle of public utility law that a utility "cannot directly or indirectly change its tariff provisions by contract, conduct, estoppel or waiver...." (Mendence v P.T.&T.Co. (1971) 72 CPUC 563, 565; Johnson v P.T.&T. Co. (1969) 69 CPUC 290, 295-96; Transmix Corp. v So. Pac. Co. (1960) 187 CA 2d 257, 264-66; and Pittsburgh C.C. & St. L.R. Co. v Fink (1919) 250 US 577.) This basic principle and its rationale was recently restated in Empire West v So. Cal. Gas Co. (1974) 12 C 3d 805, 809-10.[8/]

8/ "Section 532 forbids any utility from refunding 'directly or indirectly, in any manner or by any device' the scheduled charges for its services. In addition, a public utility 'cannot by contract, conduct, estoppel, waiver, directly or indirectly increase or decrease the rate as published in the tariff...' (Transmix Corp. v Southern Pac. Co., 187 Cal. App. 2d 257, 264 [9 Cal. Rptr. 714]; accord South Tahoe Gas Co. v Hofmann Land Improvement Co., 25 Cal. App. 3d 750, 760 [102 Cal. Rptr. 286].) Scheduled rates must be inflexibly enforced in order to maintain equality for all customers and to prevent collusion which otherwise might be easily and effectively disguised. (R.E. Tharp, Inc. v Miller Hay Co., 261 Cal. App. 2d 81 [67 Cal. Rptr. 854]; People ex rel. Public Util. Com. v Ryerson, 241 Cal. App. 2d 115, 120-21 [50 Cal. Rptr. 246].) Therefore, as a general rule, utility customers cannot recover damages which are tantamount to a preferential rate reduction even though the utility may have intentionally misquoted the applicable rate. (See Transmix Corp. v Southern Pacific Co., supra, p. 265; Annot. 88 A.L.R. 2d 1,375, 1,387; 13 Am. Jur. 2d, Carriers, § 108, p. 650; United States v Associated Air Transport, Inc. 275 F 2d 827, 833.)

(Continued on next page)

Section 532 of the Code requires defendant to collect its charges for services rendered.[9] Since the law requires defendant to collect

8/ (Continued)

"These principles are most commonly applied in cases which involve mistaken rate quotations whereby the customer is quoted a lower rate than set forth in the published tariff. Upon discovery of the error, the utility may initiate an action against the customer to recover the full legal charges for the service, as filed and published in rate schedules. (See, e.g., Gardner v Basich Bros. Construction Co., 44 Cal. 2d 191 [281 P. 2d 521]; R. E. Tharp, Inc. v Miller Hay Co., supra, 261 Cal. App. 2d 81.) In granting recovery to the utility, the courts usually rely upon the fact that the rates have been filed and published and have thereby become part of the contract between the utility and the customer. (Gardner v Basich Bros. Construction Co., supra, p. 193; Transmix Corp. v Southern Pac. Co., supra, 187 Cal. App. 2d 257, 265.) Under these circumstances the customer is charged with knowledge of the contents of the published rate schedules and, therefore, may not justifiably rely on misrepresentations regarding rates for utility service. (See Transmix Corp. v Southern Pac. Co., supra, p. 265; 13 Am. Jur. 2d, supra, § 108, p. 649; Annot. 88 A.L.R. 2d, supra, 1375.)"

9/ Public Utilities Code, Section 532:

"Except as in this article otherwise provided, no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time, nor shall any public utility engaged in furnishing or rendering more than one product, commodity, or service, charge, demand, collect, or receive a different compensation for the collective, combined, or contemporaneous furnishing or rendition of two or more of such products, commodities, or services, than the aggregate of the rates, tolls, rentals, or charges specified in its schedules on file and in effect at the time, applicable to each such product, commodity, or service when separately furnished or rendered, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals, and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons. The Commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility.

its bills, defendant's billing of complainant to correct a mistake, when that computer error is discovered, cannot be unreasonable under Section 451[10] or unlawful under Section 2106,[11] much less "unfair competition" under Civil Code Section 3369.[12]

10/ Public Utilities Code, Section 451:

"All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

"Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

"All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

11/ Public Utilities Code, Section 2106:

"Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was wilful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

"No recovery as provided in this section shall in any manner affect a recovery by the State of the penalties provided in this part or the exercise by the commission of its power to punish for contempt."

12/ Civil Code Section 3369 provides in pertinent part:

"2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction...."

There is no foundation in reasonable fact or fantasy for complainant's assertion she believed she owed nothing on the Olive Avenue account. Complainant for over two years used electrical service for which she paid nothing. Each bimonthly period she received a billing which stated in readily identifiable fashion her consumption of electricity and its cost. She carefully retained and preserved each bill over the two-year period (see Exhibit No. 3). The vague, and remarkably convenient, testimony as to a crossed wire problem cleared up the first month of her tenancy by the landlord does not provide a basis for believing she somehow was suddenly enriched by in excess of $1,400! That she was fully aware a mistake had been made by the utility is abundantly clear from the fact that she did telephone the utility about the "CREDIT BALANCE' - not "numerous" times as set forth in her verified complaint, but twice according to her testimony at the hearing. After the first two months, there was silent acceptance of benefits derived from the obvious mistake for two years. Even when she closed the Olive Avenue service after those two years she did not again mention the "CREDIT BALANCE". When considering the reasonableness of her inaction one is led to speculation as to what would have been her course had the mistake been the other way around - one favorable to the utility? Regretfully, while she so thoroughly preserved the bills, she did not lay aside the money each bimonthly period against the inevitable day when having received the benefit she must pay the piper.

As to complainant's second contention, that defendant's tariff Rule 11, Section B.2[13] is unjust and unreasonable, and therefore void and unenforceable, we are unable to agree.

The general rule is that a public utility distributing or furnishing electric, gas, or telephone service has the right to cut off such service to customers for nonpayment of just service bills,[14] and may adopt and enforce, as reasonable, rules and regulations that provide for such cutoff.[15]

13/ Rule 11, Section B.2 of Southern California Edison Company's tariff schedule, filed with and approved by the Commission, and incorporated into Southern California Edison's contract with complainant, provides as follows:

"A customer's service may be discontinued for nonpayment of a bill for service previously rendered him at any location served by the utility provided such bill is not paid within 5 days after presentation of a notice that present service will be discontinued for nonpayment of such bill for prior service, but in no case will service be discontinued for nonpayment of such bill within 15 days after establishment of service at the new location. However, domestic service will not be discontinued because of nonpayment of bills for other classes of service."

14/ See Steele v Clinton Electric Light & P. Co. (1937) 123 Conn. 180, 193 A. 613; Annot. 112 A.L.R. 237. It should also be clearly noted that complainant's past-due account is not an "unjust" bill. There is no bona fide dispute over the amount or that it was incurred for her service. Complainant just does not feel she should have to pay it. At no time were the meter readings and resultant charges challenged in any substantive way. Therefore, in no way has it been demonstrated that the charges for the electric service were unjust or unreasonable.

15/ See Annot. 112 A.L.R. 237, supra.

An exception to this general rule exists where there is a bona fide dispute either as to liability of that particular customer, or as to the correctness of the delinquent account.[16/] The reason for the exception being that as long as the customer agrees to and does pay current charges, it would be unjust to allow the utility to discontinue service so as to coerce the customer into paying an unjust disputed bill for past service.

It is also necessary to recognize that there exists a separate, distinctly different rule generally applicable to a public utility supplying water; a rule conceived and born in an earlier agrarian era and rooted deeply in the viewpoint that water is an element vitally necessary to the very existence of life itself. In California, a typical case following this rule is Crow v San Joaquin K. R. Irr. Co. (1900) 130 C 309. In Crow, a turn of the century water irrigation case from the agricultural heartland of the State, the California Supreme Court, against a constitutional backdrop of special status and protections for water, recognized that water, appropriated from the rivers of this State for irrigation and other purposes, is held by a water company as a public trust. In a 3-2 decision, the Court held that water companies have a fundamental duty to furnish water upon tender of the established rate, and that no other contractual duty - such as conditioning delivery of future water upon a requirement of payment of prior accounts - can lawfully be imposed. No such complete constitutional appropriation and distinction has as yet been impressed or held applicable to electrical energy by either the people of California or their Legislature. Electrical energy, generated or otherwise produced or procured by the utilities from a variety of sources both within and without the State is transmitted and sold as a commodity, albeit subject to regulation. It remains the private property of the private

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16/ See Annot. 112 A.L.R. at 241, supra.

or public enterprise producing or purchasing it for distribution. In view of these material distinctions we do not regard Crow as authority supporting the proposition argued for by complainant.17/

17/ Complainant also cites a 1921 Commission decision, Bay Cities Sales and Adv. Co. v Pac. Tel. and Tel. (1921) 20 CRC 286, as authority for her contention that to maintain electric service a customer need only pay his current bills. We do not agree. In Bay Cities, a decision devoid of any discussion, rationale, or reference on this issue, the Commission merely stated:

> "The telephone company, in its answer, assigned as a reason for refusal [of service] that plaintiff had failed to pay for past service and that the new applications were made in an attempt to reestablish service which had been discontinued because of such delinquency. This position is not wholly tenable. The fact of nonpayment for a prior service does not justify the refusal of future service for which installation charges are tendered and proper guarantees are offered to insure the payment of future bills. It is clear, therefore, that the company should accept plaintiff's application for new service, but in doing so is entitled to require a guarantee sufficient to insure the payment of future bills to be incurred under such service. The question therefore resolves itself into what is the proper guarantee for the service in question."

Absent any rationale or discernible source for this baldly stated proposition, it cannot very well be engrafted into an entirely separate and distinguishable industry, even though that industry may also be subject to regulation. Bay Cities did not involve any such tariff rule as is disputed here, involved different classes of service, and predated Commission approval in 1956 of the Southern California Edison Co. tariff which adopted Rule 11, Section B.2 (see Decision No. 53993 dated October 30, 1956 in Application No. 37417).

The rule as to the right of a gas, electric, or telephone utility, barring a bona fide dispute over the bill, to shut off service to customers for nonpayment of past bills for services rendered at another address, is not so settled in other jurisdictions. In some instances the utilities' right has been sustained, and in some instances it has been denied.[18/] Almost all the cases cited by complainant may be differentiated from the case at bar and arose out of conditions different from those now prevailing. Perhaps the best reasoned of the more recent cases is that of De Pass v Broad River Power Company (1934) 173 S.C. 387, where a gas and electric company's right to discontinue service for failure by the customer to pay a bill for service at another address was upheld by the Supreme Court of South Carolina in a unanimous decision. In De Pass the appellant utility had contended:

> "...that a public utility service company should have the legal right to discontinue or deny service to a patron who refuses to pay a past due, undisputed bill for service given him by the company, whether such debt of the patron was incurred by him for service rendered at one address or another; that this is the only plan by which such bills can be collected, as resort to legal process to enforce their collection would be prohibitive because of the cost, especially as to the great number of small claims; and that the rule contended for is not in conflict with the decisions of this court, is both fair and reasonable, and rests upon the necessity of the company's collecting its revenues to insure its own existence, and further, should be allowed in justice to paying patrons."

The South Carolina Supreme Court, after considering the utilities' contention, and reviewing a number of cases pro and con (including several of those advanced by complainant here as authority), concluded with these words:

18/ See Annot. 95 A.L.R. 558.

"It is true that a public service utility company, in the exercise of the franchises granted it, has certain rights and privileges not enjoyed by private enterprises. But it must be remembered that, as such utility, it is required to properly serve the public, and this duty and obligation it can neither neglect nor avoid. Nor can it choose its own customers, but must serve all who comply with its reasonable rules and regulations...it will not be permitted, should it be so minded, to exploit the public it serves, or to coerce its patrons, by any method or plan devised by it, into paying past-due bills about which there is a bona-fide dispute. However, it is admittedly entitled, the same as a conservative private business which is subject to similar risks and uncertainties, to a fair return on the value of its property used and useful in the service of its customers; and, as is its duty, the rate-making body named by the Legislature for that purpose fixes such rates upon a full consideration of all the relevant facts and elements entering into its determination of the matter, as will insure such a return, but no more. Hence, it follows that such a company cannot properly render the public service required of it, if it is unable to collect, by some inexpensive plan or method, just and undisputed bills owing it by its patrons.

"Considering broadly, therefore, the question before us, we think, and so hold, that the position of the appellant [utility] should be sustained. Unquestionably, the rule contended for by it is consonant with reason and fair dealing. Paying patrons will not object to it, and others should not. It is not to be in conflict with any rule laid down in the decisions above cited, or with the additional holding in this case, that the company cannot, except at its own peril, discontinue or deny service to a patron who refuses to pay a just undisputed bill which the utility has allowed to grow old or stale by practically abandoning its collection. As already indicated, the rule is intended only to prevent the loss of revenues justly due the company - the collection of which by legal process, in many cases, would be practically prohibitive because of the cost, with the consequent result of injustice being done to paying customers in the fixing of rates."

With this expression of the South Carolina Supreme Court we are in accord.

The tariff language in Rule 11, Section B.2 here under attack has been in effect since 1956, and was adopted pursuant to authority granted by the Commission in Decision No. 53993 dated October 30, 1956 in Application No. 37417. It is consonant with the rule followed by virtually all the major electric utilities regulated by this Commission.[19] It has not been designed, as complainant would have us believe, to hold current service as ransom for "alleged" past-due bills. Rather it was designed as the only convenient, practical, inexpensive, and reasonable method by which undisputed past-due bills readily can be collected. To hold otherwise would force defendant, and other public utilities, to resort to expensive and time consuming processes to collect their just charges.[20] The considerable additional expense of such legal processes would necessarily have to be passed on and paid for by all other ratepayers who do pay their bills - many no less limited in means than complainant. For these reasons we cannot find that defendant's tariff Rule 11, Section B.2 is unjust or unreasonable.

As to complainant's final contention that defendant's threatened discontinuance of service under tariff Rule 11, Section B.2 is precluded by the three months' limitation provided in tariff Rule 11, Section B.4;[21] we concur. Defendant's last billing listing the

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19/ See:

Rule 11, Section B.2 of Pacific Gas & Electric Co. tariff.
Rule 11, Section B.2 of California-Pacific Utilities Co. tariff.
Rule 11, Section B.2 of The California Oregon Power Co. tariff.
Rule 11, Section B.2 of Sierra Pacific Power Co. tariff.
Rule 9, Section (a) of San Diego Gas & Electric Co. tariff.

20/ Southwestern Telegraph & Telephone Co. v Danaher (1915) 238 US 482, 489-90.

21/ Rule 11, Section B.4 of Southern California Edison Company's tariff schedule, filed with and approved by the Commission, and incorporated into Southern California Edison's contract with complainant, provides as follows:

"Under no circumstances may service be discontinued for nonpayment of a bill to correct previously billed incorrect charges for a period in excess of the preceding three months, unless such incorrect charges have resulted from the customer not abiding by the filed rules."

spurious "CREDIT BALANCE" was postmarked October 4, 1974. Apart from the mid-January field visit and telephone solicitations, it was not until February 28, 1975 that defendant presented notice that service would be discontinued for nonpayment of the $401.41 bill for prior service. The lapse of time was more than three months, and there is no question but that the complainant had abided by the filed rules of defendant.

Rule 11, Section B.4 operates much like a statute of limitations in curtailing the drastic remedy of discontinuance. The utility has three months from the date of an incorrect bill to correct its error and demand payment under pain of discontinuance. Here, defendant's threatened discontinuance is barred by Rule 11, Section B.4.

Both at hearing and on brief defendant agreed that the language in Rule 11, Section B.4 is a limitation on defendant's right to apply Rule 11, Section B.2, and that accordingly defendant wrongfully threatened complainant with discontinuance of service over the amount disputed.

Defendant's remedies for collection of the $401.41 due it, as a consequence of the time lapse embraced by Rule 11, Section B.4, are limited to those available to it as a creditor in a court of competent jurisdiction.

Findings

1. Complainant customer of defendant utility moved within defendant's service area, and arranged with defendant for electric service at the new Olive Avenue location.

2. No service deposit was requested or received, it being defendant's policy not to require deposits on domestic service where the customer has had prior service with not in excess of two overdue billings in two years.

3. Defendant's computerized billing section billed complainant $39.16 for the initial approximate two months' service.

4. At this point, as a consequence of error in defendant's bookkeeping section, an initial spurious "CREDIT BALANCE" in the amount of $1,517.40 was created in the computer.

5. Defendant's computer thereupon issued a "CORRECTED BILL" for the initial two months' service showing actual usage and charge of $39.16, the spurious "CREDIT BALANCE", and under the "amount now due" box, a print out of "CREDIT BALANCE - DO NOT PAY".

6. Thereafter, over the next 22 months, at bimonthly intervals, complainant received (and carefully retained) bills showing usage and charges for each bimonthly period, a diminishing spurious "CREDIT BALANCE", and a print out in the "amount now due" box of the words "CREDIT BALANCE - DO NOT PAY".

7. Complainant, upon receipt of the first two "CREDIT BALANCE" billings, telephoned defendant's service office asking what "CREDIT BALANCE" meant; was told her account reflected a "CREDIT BALANCE" and that she need not pay; and that "You don't have to worry about it".

8. Defendant has no record of any such calls. Its normal procedure where a "CREDIT BALANCE" of such magnitude on a domestic service is called to its attention would be to require a written service request internally to verify such a large and disproportionate balance. Defendant has no record of any such written service request.

9. Following those initial two telephone calls, complainant did not again call, or in any way raise the "CREDIT BALANCE" matter with defendant, although for 24 months she received electric service.

10. During the entire two years at the Olive Avenue location, complainant did not pay anything of the $401.41 aggregate of the bimonthly billings.

11. There is no reasonable basis in fact for complainant's assertion she "believed" she owed nothing for this service.

12. There is no bona fide dispute over the amount of complainant's past-due account. Complainant merely asserts she believed she had a "CREDIT BALANCE", is poor, and should not now have to pay the past-due account.

13. After two years at the Olive Avenue location, complainant moved to another location within defendant's service area, and arranged for domestic service at the new location. She is current in payment at this location.

14. When complainant arranged for this last service, she made no mention of the "CREDIT BALANCE" at the Olive Avenue location.

15. In checking the Olive Avenue service close out, defendant discovered the computer error and audited the account, thereby discovering the $401.41 unpaid balance. Defendant unsuccessfully in mid-January 1975 attempted by phone and personal visit to collect the past-due account.

16. On February 28, 1975 defendant formally made demand under tariff Rule 11, Section B.2 for collection under threat of disconnection for failure to pay.

17. Complainant initially refused any payment. Subsequently, through Legal Aid she offered $5.00 per month. Defendant demanded $25.00 per month toward liquidation of the past-due account.

18. Complainant's efforts to clear up the "CREDIT BALANCE" error were minimal, and her silence after the initial two phone calls was not reasonable, considering that she continued to accept electrical service without payment for 22 months longer.

19. Defendant's tariff Rule 11, Sections B.2 and B.4 are just and reasonable, being designed to prevent loss of revenue justly due defendant - the collection of which by legal processes would, in a practical sense, be prohibitively expensive, and result in unfair imposition of this additional and unnecessary expense upon all those other ratepayers, including the poor who do pay their bills.

20. Defendant's tariff Rule 11, Section B.4 serves in effect as a statute of limitations upon defendant's exercise of tariff Rule 11, Section B.2 to obtain collection on stale past-due accounts.

21. Complainant has abided by defendant's tariff rules.

Conclusions

1. Defendant is not estopped from claiming the $401.41 past-due balance on the Olive Avenue service from complainant.

2. Defendant's tariff Rule 11, Section B.2 is not unjust and unreasonable, thus it is not void and unenforceable.

3. In this instance, however, defendant's threatened discontinuance of service for nonpayment of prior service under tariff Rule 11, Section B.2 is precluded by the three-month limitation contained in defendant's tariff Rule 11, Section B.4.

O R D E R

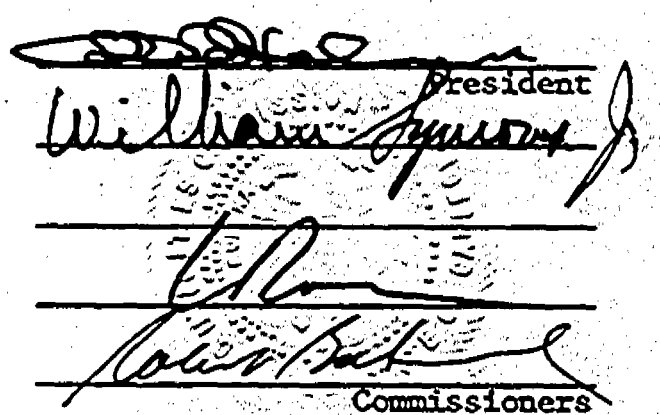
IT IS ORDERED that:

1. Southern California Edison Company shall cease and desist from discontinuing domestic electric service to Vernestine Nation because of nonpayment of the $401.41 past-due account for the Olive Avenue service.

2. In all other respects, the complaint is denied.

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

Dated at San Francisco, California, this 15th day of OCTOBER, 1975.



Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.