

ORIGINAL

Decision 84 05 054

MAY 16 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bruce Duncan,

Complainant,

vs.

Southern California Edison Co.,

Defendant.

(ECP)
Case 83-09-04
(Filed September 13, 1983)

Bruce Duncan, for himself, complainant.
Linda L. Carpenter, for defendant.

O P I N I O N

Introduction

This matter arose as a result of Southern California Edison Company's (SCE) discovery of evidence of electric meter tampering at the home of complainant Bruce Duncan. On February 3, 1983 an SCE meter reader found that electric meter was partially out of its socket and there was no seal on it. The meter reader believes complainant's meter had been inverted to underrecord electric consumption at that location.

One of SCE's field service representatives (FSR) made a followup investigation on February 24, 1983. He confirmed the meter reader's observations. To prevent further tampering he installed a special meter lock ring, read the meter, and resealed it on that date. SCE reread the meter after another 20 days. Based on its analysis of complainant's billing records SCE concluded that meter tampering had occurred between July 26, 1982

and February 24, 1983. SCE rebilled complainant for an additional \$483.84 for this period based upon the average use per day recorded for the 20-day period following installation of the special meter lock ring.

Complainant denies that the electric meter serving him was not registering properly during this period or that he tampered with the meter. On April 28, 1983 he filed an informal complaint and deposited the disputed billing amount of \$483.84 with the Commission. After review, the Commission's Consumer Affairs Branch (CAB) advised Duncan that SCE's billing adjustment was correct and equitable. At Duncan's request, CAB further reviewed the matter. CAB stated that complainant benefited from use of unmetered energy and those energy costs should not burden other ratepayers. Consequently, CAB sent the disputed amount of \$483.84 to SCE.

Subsequently complainant filed this complaint under the Expedited Complaint Procedure (ECP) under Rule 13.2 of the Rules of Practice and Procedure and Public Utilities (PU) Code Section 1702.1. He requested a refund of the \$483.84.

A hearing was held in Los Angeles on November 15, 1983. The matter was submitted the same day.^{1/}

Position of Complainant

Complainant testified about the exchange of his correspondence with SCE and with CAB. He submitted copies of such correspondence, bills, checks, a bill summary, SCE's Rule 17 (titled "Meter Tests and Adjustment of Bills for Meter Error") in Exhibits 1, 2, and 3. He testified that:

^{1/} Complainant has attempted to unilaterally reargue his position by subsequent letter-brief. His communication was not considered in this decision.

- a. SCE improperly relied on its Rule 17 to make its billing adjustment.
- b. His electric use was being properly recorded even if SCE's contention that the meter was not fully in its socket was correct.
- c. In making its billing adjustment, SCE adopted a base period to calculate a daily average kilowatt-hour (kWh) consumption in its billing adjustment. This base period from February 24, 1983 to March 16, 1983 did not correspond to SCE's billing service period.
- d. SCE refused or delayed in providing him with a written explanation of the basis of its billing adjustment based on alleged meter tampering.
- e. Wear on the prongs connecting the electric meter to his service box and the broken electric seal could be expected on an old meter. He had occupied his residence for over 20 years. He believed the meter might be over 35 years old.
- f. The electric meter is in an enclosed porch used as a children's playroom. The meter was subject to damage or mishandling by his children or a destructive friend of his child.
- g. The drop in energy use at his home resulted from drastic conservation efforts undertaken by his family to reduce electric bills from \$203.30 (the highest billing he received (for the month ending January 26, 1982) to less than \$100. These measures included turning off lights, turning off four television sets, cutting his residential electric heating use to one hour per day, emptying and unplugging an electric

freezer in his garage, turning off the electric filter pump on his large outdoor fish ponds, and discontinuing use of electric hair dryers.

- h. His electric consumption increased after occupancy in his home increased and he reversed his conservation activities to eliminate discomfort to his family caused by his conservation activities.

Complainant's Electrical Uses

Complainant testified he uses electricity for: heating his 4,000-square-foot home; home air-conditioning; operating a large 15-year old Amana refrigerator and very large commercial refrigerators; two 30-cubic-foot capacity freezers; water heating; a commercial-sized electric stove; a bar; an ice maker; swimming pool equipment; fish pond equipment; 30 floodlights; lighting; television; and small appliances.

SCE's Testimony

Testimony on behalf of SCE was elicited through direct examination and cross-examination of four of its employees which is summarized below.

Joseph Tusso, a division test supervisor, whose duties include coordination of SCE's residential energy diversion program, testified that:

- a. SCE's records show that it purchased and installed a new meter at complainant's residence in 1970 and it had no record of removing or reinstalling the meter (see Exhibits 4 and 5). The four prongs, which connect complainant's meter to its socket jaws, should only have been inserted into the socket once in the 13 years since it was installed. Wear on meter prongs is indicative of unusual

in-and-out movements which scratch the surface tin on prongs and expose the underlying copper. Such wear will not prevent a meter from functioning.

- b. A meter seal is compressed in place with a special tool. The materials used in the seal and the copper wire connecting the seal to the meter housing are made of materials designed to resist corrosion. These materials are very durable and last at least 20-40 years.
- c. Methods for diverting energy are openly described in certain publications.
- d. When a residential meter is turned upside down and reinstalled, the disk used in measuring consumption either stops or rotates backward. In the latter situation energy use is subtracted from the meter reading.
- e. Corrosion on a meter seal tends to stabilize. Such corrosion will not cause the seal to fall off. Force must be applied to remove a meter seal.

Bill Kutsenberg is the FSR who made the followup meter-tampering investigation at complainant's residence on February 24, 1983. He testified that:

- a. In addition to observing the missing meter seal and partially pulled-out meter, he noted wear on the electric meter prongs (the underlying copper was showing) and a loosely hanging aluminum snap-type meter seal ring. This observation demonstrated meter tampering had occurred.
- b. A meter ring can be snapped closed and hold the meter housing without a meter seal. But a meter ring cannot be removed unless the meter seal is broken.

- c. The meter is located in an enclosed patio. It cannot be seen from the street. A stray basketball would not break a meter seal.
- d. There is an 8-foot high block wall and an electric gate blocking access to the meter. Someone in the house must let SCE's meter readers in to read the meter.
- e. SCE's billing adjustment is based on an average daily use of 62.9 kWh measured at complainant's residence for the 20-day period between February 24 and March 16, 1983. This daily use rate is reasonable. It is lower than complainant's average daily use of 73.6 kWh between July 24, 1983 and July 26, 1982. Average daily consumption for the estimated meter-tampering period between July 26, 1982 and February 24, 1983 was 37.1 kWh. After the lock ring was installed complainant's average daily use increased to 74.7 kWh between February 24, 1983 and October 23, 1983. 2/

Jess Arellanez, Jr. is a FSR. He testified that:

- a. He worked on the informal complaint filed with the Commission by complainant. In connection with his investigation he wrote to complainant and visited his home to verify SCE's information on the dispute, and to discuss the matter with complainant's wife and with complainant. 3/

2/ This interval includes a 102-day billing period between February 24, 1983 and June 6, 1983.

3/ Complainant alleges he never saw Arellanez.

- b. He sought information from complainant's wife on their residential electric loads. However, complainant objected to furnishing the information. Complainant claimed he was being harassed. Complainant refused to discuss the dispute further at that time and at a later time. Complainant has large residential electric requirements.
- c. As a regular part of his job, he explained the reason for the adjustment by letter to complainant. He denied complainant's contention that he or his supervisor ever refused to put an explanation for the adjustment in writing.
- d. He did not test the meter because complainant said there was nothing wrong with the meter.
- e. In addition to the locked fence, complainant has a dog. When an SCE meter reader cannot get in to read the meter, the reader leaves a green hanger with a request for a call to make arrangements for a followup call.

Linda Carpenter is a senior rate specialist in SCE's revenue requirement division. She testified that:

- a. SCE based its rebilling of complainant on PU Code Sections 453 and 532 which preclude it from granting preferential rates to any person, from maintaining unreasonable differences between rates, and require that it charge for its service at the rates contained in its tariff schedules.
- b. Since SCE's meter has been tampered with, complainant's recorded bills are not based on proper meter measurements. It is fair to complainant and to its other ratepayers for SCE to backbill for a reasonable period of time.

- c. Decision (D.) 83-11-018 acknowledges the applicability of PU Code Sections 453 and 532 for making bill adjustments based on meter tampering.
- d. SCE's Rule 17 pertains to meter errors in the registration of the meter. The meter tampering improperly changed the registration of the meter serving complainant.
- e. Complainant's meter tampering violated Sections A.l.e. and D. of SCE's Rule 16.4/
- f. D.88936 notes that while the actual date a meter has been tampered with cannot be ascertained with certainty, some starting point must be designated from which to determine the estimated amount of electric energy consumed but not accurately measured because of that complainant's tampering of the meter. Based on its billing records for this complainant, SCE reasonably established such a starting point.
- g. The March 16, 1983 recording data was used to calculate an average consumption for backbilling during the period the meter was being tampered with. That average

4/ Rule 16.A.l.e. states:

"e. Sealing of Meters. All Company meters will be sealed by the Company, and no such seal shall be tampered with or broken except by a representative of the Company authorized to do so."

Rule 16.D. states, in part:

". . . The customer shall exercise reasonable care to prevent the facilities of the utility upon said premises from being damaged or destroyed, and shall refrain from relocating or otherwise interfering with same, and, in case any defect therein shall be discovered, shall promptly notify the utility thereof."

use is reasonably consistent with complainant's use prior to the meter-tampering period (73.6 kWh between July 24, 1981 and July 26, 1982, and 67.4 kWh between September 24, 1981 and July 26, 1982).

- h. The 102-day billing period between February 16, 1983 and June 6, 1983 was due to SCE's meter readers' access problems and/or time problems in getting in to read the meter. SCE makes use of estimates, postcard meter read information furnished by complainant, and actual readings in billing complainant.
- i. It is not possible for complainant to hold his consumption to an average of 37.6 kWh/day with the electrical load in his home.

Complainant's Closing Argument

Complainant argues that SCE's actions are arbitrary and capricious, and constitute malicious persecution. He contends SCE's claims are false, SCE manufactured testimony to justify its conclusions on his use of electricity. He requests a refund of the disputed \$483.84 plus interest at 15%.

Discussion

SCE conclusively established that the meter used to serve complainant had been tampered with. It did so through its testimony on the discovery of a missing meter seal, a loose meter ring, the positioning of a meter partially pulled out of its housing, and wear on the meter prongs of a meter it had never moved after the original installation. This tampering resulted in a substantial decline in recorded electrical consumption and of billings to complainant.

The Law

PU Code Section 532 requires each public utility to charge its customers according to the rates on file with the Commission. Further, it prohibits the utility from extending any privilege to one customer which is not extended to all others. Thus, if the utility discovers that it has--inadvertently or otherwise--extended the "privilege" of free electricity to a customer, that utility is obligated to collect the value of that free electricity, as set forth in the utility's tariffs, from the customer.

PU Code Section 453(a) also prohibits the utility from granting anyone an advantage as to charges or service. On the other hand, this section also prohibits the utility from subjecting the customer to any prejudice or disadvantage. It would clearly be prejudicial to charge complainant for more electricity than he used.

SCE's only tariff rule to address backbilling a customer for meter error is Rule 17. Subsections B.2, 3, and 4 of that rule read:

"B. Adjustment of Bills for Meter Error."

* * *

"2. Slow Meters. When, upon test, any meter for domestic service is found to be registering more than 25% slow, or any meter for other class of service is found to be registering more than 27% slow, the Company may bill the customer for the amount of the undercharge based on corrected meter readings for the preceding three months, subject to the provisions of paragraph 4 hereof.

- "3. Nonregistering Meters. When, upon test, any meter is found to be nonregistering, the Company may bill the customer for the estimate of electricity consumed but not registered for a period of three months, subject to the provisions of paragraph 4 hereof.

"Bills for this purpose will be estimated from the customer's prior use, the customer's subsequent use correctly metered, the Company's experience with other customers of the same class, and the general characteristics of the customer's operations.

- "4. General. When it is found that the error in a meter is due to causes, the date of which can be reliably established, the overcharge or the undercharge will be computed back to but not beyond that date, provided, however, that in no case will a bill for undercharge on domestic service schedules be rendered for a period exceeding three months."

This rule restricts such a billing to "a period not to exceed three months." Thus, SCE apparently found this tariff restriction inapplicable when it attempted to collect for seven months of undercollection. We believe SCE was not bound by the three-month restriction of Rule 17.B.2, 3, and 4 in dealing with the matter before us. This is so because it is apparent that Rule 17.B. is aimed at defective equipment, not at errors caused by fraudulent acts of customers or other persons having access to the meters. In this case, it is clear that a fraudulent act occurred.

Though the record does not unequivocally indicate which person actually turned over the meter serving complainant, it is clear that the meter was inverted. Whether it was the customer's own hand that inverted the meter is not the central issue. What is significant here is that the meter was in a location under the sole control of complainant and his family. The meter is located in an enclosed porch. Access to the meter requires entry through a locked gate, past a dog, into a backyard bounded by a block wall. Under such circumstances, PU Code Sections 453(a) and 532 require SCE to hold complainant accountable for whatever tampering occurred.

Reasonableness of SCE's Adjustment

We recognize that estimates of amounts unmeasured electricity resulting from meter tampering are necessarily imprecise because there is no way to know precisely when the meter was inverted or for how long. However, we find that the \$483.84 adjustment calculated by SCE is reasonable and that complainant is not entitled to any modification of that adjustment. For each billing period, SCE calculated consumption based on the product of 62.9 kWh per day times the number of days in

the period, recalculated the bill giving consideration to then existing rate levels and complainant's lifeline allowances, and subtracted the amount previously billed from the revised billing. The summary of those incremental revenues totaled \$483.84.

The basis of SCE's kWh adjustment is shown on Chart B (received in evidence as Exhibit 6) attached to this decision. This compilation shows an average daily use of 73.6 kWh from July 24, 1981 to July 26, 1982 and a drop in average daily use between July 26, 1982 and February 24, 1983 of 37.1 kWh. In the eight months following installation of the lock ring, complainant's daily use averaged 74.7 kWh. We have considered SCE expert witnesses' testimony that complainant's recorded daily consumption of 37.1 kWh was insufficient for the uses enumerated by complainant. Complainant correctly noted that the metered consumption recorded for the period ending July 26, 1982 was an estimated reading. But that does not invalidate the adjustment. The average daily use during that estimated period was 61 kWh based on the prior billing pattern, which is less than the 62.9 kWh per day used for backbilling. The billing adjustment would have been larger if SCE went back to the billing period ending June 16, 1982. Use of the 62.9 kWh per day figure for the billing adjustment period incorporates conservation compared to prior periods.

Other Matters

The record is not clear as to whether complainant has been uncooperative in making arrangements with SCE meter readers to provide entry to them for reading the meter. If that is the

case SCE's Rule 16.A.1.a., quoted below provides a remedy for that situation.

"a. Location. All meters installed by the Company shall be installed at some convenient place, approved by the Company, upon the customer's premises and so placed as to be at all times accessible for inspection, reading, and testing.

"The customer shall, at his own expense, provide a new and approved location for the meter or meters in order to comply with the foregoing whenever the existing meter or meters become inaccessible for inspecting, reading, or testing."

O R D E R

IT IS ORDERED that:

The relief sought in Case 83-09-04 is denied.

This order becomes effective 30 days from today.

Dated MAY 16 1984, at San Francisco,

California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL

Commissioners

Commissioner William T. Bagley being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS.

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Joseph E. Bodovitz
Joseph E. Bodovitz, Executive Director

SOUTHERN CALIFORNIA EDISON COMPANY

BASIS FOR KWH

REBILLED TO MR. BRUCE DUNCAN

Line No.	Meter Read Date (1)	No. Days (2)	Originally Billed kwh (3)	Average Daily kwh (4)	Estimated Usage kwh * (5)	Rebilled kwh ** (6)
1	07/24/81	30	2,689	89.6	-	-
2	08/24/81	31	2,778	89.6	-	-
3	09/24/81	31	3,178	102.5	-	-
4	10/24/81	30	2,592	86.4	-	-
5	11/24/81	31	2,435	78.5	-	-
6	12/24/81	30	2,397	79.9	-	-
7	01/26/82	33	2,448	74.1	-	-
8	02/25/82	30	2,005	66.8	-	-
9	03/26/82	29	1,765	60.8	-	-
10	04/26/82	31	1,600	51.6	-	-
11	06/16/82	51	2,873	56.3	-	-
12	07/26/82	<u>40</u>	<u>2,440</u>	61.0	-	-
13	Total	397	29,200	73.6	-	-
14	09/23/82	59	2,220	37.6	3,711	1,491
15	10/25/82	32	1,073	33.5	2,013	940
16	11/23/82	29	1,119	38.6	1,824	705
17	12/23/82	30	1,182	39.4	1,887	705
18	02/03/83	42	1,573	37.5	2,642	1,069
19	02/24/83	<u>21</u>	<u>739</u>	35.1	<u>1,321</u>	<u>582</u>
20	Total	213	7,906	37.1	13,398	5,492
21	06/06/83	102	7,061	69.2	-	-
22	06/23/83	17	1,103	64.9	-	-
23	07/25/83	32	2,507	78.3	-	-
24	08/23/83	29	2,271	78.3	-	-
25	09/22/83	30	2,844	94.8	-	-
26	10/23/83	<u>31</u>	<u>2,214</u>	71.4	-	-
27	Total	241	18,000	74.7	-	-

* Number of Days (Column 3) times 62.9 kWh (average daily kWh between 02/24/83 to 03/16/83).

** Estimated usage kWh (Column 5) less billed kWh (Column 3).