ALJ/vdl

Decision 84 09 026 SEP 6 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Edgar L. Shiffrin, Complainant, vs Citizens Utility Company of California, Respondents.	(ECP) Case 84-02-02 (Filed February 10, 1984)

Edgar L. Shiffrin, for himself, complainant.
W. B. Stradley, for Citizens Utilities Company of California, respondent.

O P I N I O N

Complainant Edgar L. Shiffrin receives water service in respondent Citizens Utilities Company of California's Montara/Moss Beach district. The major element of his complaint involves his July-September 1983 bill. According to respondent's meter records, consumption for this period was 188 Ccf, producing a bill for $532.85. Complainant's normal summertime usage is in the range of 40 Ccf per billing period. The complaint also alleged that there was a pattern of faulty meter reading practices in the district. The complaint asked for a refund of the difference between complainant's normal bill readings and the amount actually billed. During the informal complaint process, complainant deposited the full amount of the bill with the Commission. Respondent subsequently authorized the Commission to release the sum of $209.35 to complainant and reduced his bill by that amount. This effectively satisfied part of the complaint; $209.35 is one-half of the difference between the actual bill and the previous year's average bill.

The answer generally denied the allegations of the complaint. It also alleged that complainant possessed an elaborate irrigation system for 60 fruit trees, that the meter was tested and found to be accurate, and that complainant's system was tested for leaks and that none were found. Since the amount remaining in dispute appeared to approximate $200, this matter was heard under the Commission's expedited complaint procedure (ECP) (Public Utilities (PU) Code § 1702.1, Rule 13.2 of Rules of Practice and Procedure). Informal hearing was held before Administrative Law Judge Gilman on May 10, 1984 in San Francisco. Both appearances testified and presented exhibits. Both parties filed written arguments and the matter was taken under submission as of June 8, 1984.

Discussion

Respondent offered a written statement from one of its employees which was intended to prove that at least some of applicant's irrigation system was in place during the period of the high bill. This testimony was objected to as hearsay and excluded. Respondent did not request an opportunity to call the witness in person. No other evidence was offered which would explain the extraordinarily high bill.

Ordinarily, we do not award reparations without evidence to support a finding that a customer has been overcharged. Since neither party has presented any plausible explanation of the disputed portion of this bill, this rule would normally require a decision that complainant is not entitled to any adjustment of his bill.

Complainant contends, however, that it is unfair to saddle him with the burden of proving a negative, i.e., that he did not consume the water he was billed for. Instead, he argues, we should create a new burden of proof rule which would require the utility to prove that any unusually high bill was not the product of misconduct by its employees or of some other cause within the utility's control.

In our opinion, it would be equally inequitable to require a utility to prove that a customer actually consumed the amounts shown by an unusually high meter reading. We could not expect a utility to possess evidence about changes in a customer's lifestyle which would affect consumption. If it attempted to gather such information, it would frequently be charged with invasion of privacy or harassment.

This is not an appropriate proceeding in which to consider and adopt such a novel and far-reaching precedent.[1] However, even if it were, we could not find it equitable to require a utility to absorb more of than half of the cost of unexplained consumption. In that way, neither party would be disproportionately injured or benefitted by an inability to explain the inexplicable.

In any event, respondent has rendered this question moot by unilaterally forgiving half of the allegedly excessive portion of the bill. Since complainant could not recover more than he already has if the proposed rule were adopted, we need not decide whether such a rule would be either lawful or desirable.

While complainant's next argument is not entirely clear, he appears to be seeking cancellation or refund of all charges, including the readiness to serve charges, for certain billing periods, because of improper meter reading and billing practices. In effect he claims that he should be retroactively awarded free service for those periods. Respondent concedes that it failed to replace complainant's meter for an extended period after it ceased registering. It claims that its employees reasonably believed that complainant's house was temporarily unoccupied and that the meter was correctly registering zero consumption. However, the meter records show three entries that the meter was "stuck" or "dead" between March 1980 and March 1981. Nevertheless, the meter was apparently not

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[1] Under Rule 13.2, a decision in an ECP matter is not precedent.

replaced until May. During this period complainant was not charged for any consumption.

As set forth in the findings and conclusions, this conduct violated both PU Code § 770(d) and General Order (GO) 103, Paragraph VI 3 c. However, under the GO provisions, complainant would be entitled to reparations only if he had paid estimated consumption charges for more than three months. Since he paid only the readiness to serve charge during those months, respondent has actually collected less than it was entitled to.

The only sanctions for violations of PU Code § 770(d) are provided in §§ 2100 et seq. Those sections do not authorize the imposition of penal damages or reparations. PU Code § 734 is the statute which authorizes us to award customers credits or refunds as reparations; such relief is only available as a remedy for overcharges. Any attempt to award penal reparations, i.e. reparations in amount greater than the actual overcharges, would be in excess of our jurisdiction. Consequently, complainant cannot receive any reparations for the violations of GO 103 or of PU Code § 770(d).

Since these violations did not result in any injury to complainant or to other customers, and since this is apparently only an isolated instance, no remedial order appears to be necessary. We expect that respondent in the future will take reasonable steps to replace broken meters when they are reported. We should also take this opportunity to place respondent on notice that its billing practices may be reviewed in its next rate case; if there are significant numbers of similar violations, the Commission may impute lost revenues.

Complainant argues that this proceeding should be treated as a class action so that our order could affect the rights of other customers. We reject this proposal. The complainant did not give adequate notice of intent to act on behalf of other customers. If he

had, this matter would not have been conducted under our ECP rules; that procedure can be used only by a customer who acts solely on his or her own behalf.

Complainant argues that respondent should be required to record and notify customers of both the old and new meter reading whenever it replaces a meter. Complainant also argues that the notice should also state the reason for the change. Exhibits 16, 17, and 18 tend to show that respondent in fact does record the readings; furthermore, it regularly notifies customers when their bills are based on estimates. There is no evidence which indicates that customers need any additional information about meter changes, or that they cannot obtain it by a telephone call. Complainant contends that similar information should be disclosed whenever a utility employee resets a meter in the field. It does not appear that this is a common enough occurrence to require the adoption of a special rule. Consequently there appears to be no need for an order on this issue.

Complainant argues that in other similar instances, respondent has been willing to forgive all of the disputed portion of a large bill. The evidence shows only one instance in which respondent forgave all of the disputed portion of a bill. However, this incident is not comparable, since the excessive consumption was explained. (A third party, the local fire district, had used the questioned quantity of water.) In the only reported instance where excessive consumption was unexplained, respondent forgave half of the disputed portion of the bill. We have therefore found that forgiving only half of the disputed portion of complainant's bill is not discriminatory.

Complainant also seeks relief from harrassment and an order to improve water quality. He produced no evidence on either topic, and no order will be made on either.

This matter was filed under our Expedited Complaint Procedures and therefore no separately stated findings of fact or conclusions of law will be made.

O R D E R

IT IS ORDERED that respondent shall not receive any additional reparations and that no other orders shall issue.

This order becomes effective 30 days from today.

Dated September 6, 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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

Joseph E. Bodovitz, Executive Director

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Findings of Fact

1. There is no evidence of harassment or of poor water quality.

2. There were no leaks in complainant's pipes.

3. Complainant's irrigation system has not been shown to have been in use in July through September 1983.

4. Complainant's meter was accurate.

5. There is no explanation in the record for the extraordinarily large consumption recorded for July through September 1983.

6. Respondent has unilaterally given reparations in the amount of one-half of the difference between the disputed bill and the average bill.

7. It would not be equitable to require a utility pay more than half of the charges for an unexplained high bill.

8. There is no evidence that respondent has ever absorbed more than one-half of an unexplained high bill.

9. Respondent records the last reading of a removed meter and the beginning reading on a replacement meter. It notifies customers whenever a bill is estimated because of a meter change or for any other reason. There is no evidence that customers cannot receive any needed information about an estimated bill by calling the utility.

10. There is no evidence that respondent's employees ever reset a meter in the field except when testing a meter.

11. Respondent, after being informed that complainant's meter was "stuck," failed to repair or replace it and continued to estimate consumption for several consecutive billing periods.

12. The consumption estimates were unreasonably low.

13. Respondent should be relieved of the obligation to backbill complainant.

Conclusions of Law

1. It is not necessary to determine whether the Commission can or should adopt an "equitable" burden of proof for high bill cases; under such a rule, complainant could not recover more than one-half of the unexplained excessive consumption.

2. A water utility, once it discovers that a meter is not working, must take reasonable steps to repair or replace the meter to minimize the number of estimated bills rendered to the affected customer. Respondent has violated PU Code § 770(d) in this regard.

3. When a meter has not been registering for three or more months, the utility is obligated to bill for three months' consumption using reasonable consumption estimates. Respondent has violated GO 103 in this regard. If no discrimination will result, the Commission has authority to retroactively relieve a utility of that obligation.

4. It was not discriminatory for respondent to forgo collection of one-half of the disputed portion of complainant's September bill.

5. The Commission has no power to award reparations for violations of PU Code § 770(d). It can award reparations for violations of GO 103 only to the extent that those violations resulted in overcharges, credit or a cash refund, or return a deposit, but only in an amount necessary to correct the overbilling.

6. The ECP is only for use by a customer who represents himself.

7. Complainant is not entitled to reparations in excess of $209.35. No other orders are justified by the record.

O R D E R

IT IS ORDERED that respondent shall not receive any additional reparations and that no other orders shall issue.

This order becomes effective 30 days from today.

Dated SEP 6 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
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