

Decision 87 10 064

OCT 28 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Charles E. Evans,

Complainant,

vs.

Southern California Gas  
Company,

Defendant.

Case 86-10-056  
(Filed October 17, 1986)

Mattie B. Evans, for complainant.  
Peter Osborn, Attorney at Law, for Southern  
California Gas Company, defendant.

OPINION

Charles E. Evans (complainant) seeks an order finding that the charges for natural gas service by Southern California Gas Co. (SoCal) in the amount of \$2,122.42 are illegal and without force and that he be absolved of any liability for such charges. Complainant also requests that SoCal be ordered to not add any charges of others to his bill.

Hearing was scheduled for February 9, 1987. At the request of complainant, the matter was taken off calendar and reset for March 9, 1987. At the request of complainant, the matter was again removed from the calendar and reset for June 1, 1987. Hearing was held June 1, 1987 in Los Angeles at which time the matter was to be submitted on receipt of the transcript. The transcript was received July 20, 1987.

The complaint states that on March 24, 1986, complainant applied to SoCal for gas service at 1075 North Pine Street, Rialto, CA and on April 4, 1987 was billed \$6.75. It states the bill for May was \$57.48 with additional charges of \$1,638.86 for "Previous Address Balances".

The complaint alleges complainant has no outstanding balance due SoCal and that he has tried, without success, to resolve the matter with SoCal through the Commission's Consumer Affairs Branch.

It states that from 1976 through March 1986, there were periods of time when complainant's spouse, Mrs. Mattie Evans, and complainant were separated and living apart, that Mrs. Evans has owned realty as her separate property in addition to owning and operating several separate business ventures. It states that during the periods of separation Mrs. Evans lived in her own property and received gas service from defendant in her own name.

The complaint states that at no time has complainant requested service at the addresses listed by SoCal as having outstanding balances due.

With respect to specific locations, the complaint alleges as follows:

1. 606 E. Shamrock Avenue, Rialto, CA. The premises were purchased by Mrs. Evans and occupied by her adult relatives and the charges for gas service were paid by the occupants but never deducted by SoCal. Complainant and Mattie Evans never resided at this address.
2. 2748 W. 9th Street, Rialto, CA. These premises were occupied by adult relatives of Mrs. Evans for which complainant did not contract for nor approve gas service for the occupants.
3. 2894 Etiwanda Avenue, Rialto, CA. This is rental property which at all times was occupied by tenants. Complainant and/or Mattie Evans were never residents at this address.

SoCal denies that it added charges to complainant's bill for which he is not liable. SoCal alleges that complainant and Mrs. Evans are married and are jointly and severely liable for the billed services.

SoCal admits that it assigned to complainant's account at 1075 North Pine Avenue, Rialto, charges for service incurred at other addresses under the name of complainant's wife. Addresses other than 1075 North Pine Avenue for which SoCal assigned to complainant are:

1. 2338 N. Sycamore Avenue, Rialto
2. 2748 W. 9th Street, Rialto
3. 606 E. Shamrock Avenue, Rialto
4. 2894 E. Etiwanda, Rialto
5. 797 N. Pepper, Rialto

SoCal states that the dwellings where the gas charges were incurred were at all times under the dominion and control of complainant and his wife. It further alleges that all of the billed services for were opened by Mrs. Mattie Evans, complainant's wife, that the dwellings were at all times under the dominion and control of complainant and/or his wife, and that the charges are community obligations.

SoCal alleges complainant is liable for past bills in the amount of \$2,122.42 which are summarized as follows:

Summary of Account  
Account #03 4105 478 875 8

Charles E. Evans  
1075 N. Pine Ave.  
Rialto, CA 92376

M/A: P. O. 750  
Los Angeles, CA 90053

Billing Date	Amount	Previous Balance	Total Due	Amount Paid	Date Paid	Unpaid Balance
08/26/86	\$ 117.90*					\$2122.42
08/04/86	17.60	\$2004.52	\$2022.12	\$17.60	8/20	2004.52
07/03/86	16.08	2004.52	2020.60	16.08	7/15	2004.52
06/04/86	38.61	2004.52	2043.13	38.61	6/17	2004.52
05/30/86	365.66**	1696.34	2062.00	57.48	5/13	2004.52
05/05/86	57.48	1638.86	1696.34			1696.34
04/24/86	1366.70***	272.16	1638.86			1638.86
04/24/86	272.16****		272.16			272.16
03/24/86	6.75	0.00	6.75	6.75	4/17	0.00
03/24/86	Turn-on Customer #8					

\* \$117.90 transferred from:  
Mattie B. Evans  
2338 N. Sycamore Ave., Rialto

\*\*\* \$1366.70 transferred from:  
Mattie B. Evans  
606 E. Shamrock Ave., Rialto

\*\* \$365.66 transferred from:  
Mattie B. Evans  
2748 W. 9th St., Rialto

\*\*\*\* \$272.16 transferred from  
Mattie B. Evans  
2894 E. Etiwanda, Rialto

Complainant and Mrs. Mattie Evans each testified. In addition to reiterating the allegations in the complaint, complainant stated he made no contribution to the purchase of any of the property in Mattie Evans' name and that such property was never intended to be, nor became, community property.

Mattie Evans testified as follows:

"I'd like to address the charges of the Southern California Gas Company with regards to services provided by persons at various addresses. First, I would like to state that at all times that the gas company has represented that Mrs. Evans charges gas service, there were periods

that the gas was turned on for cleaning and show. It was later turned off and turned on in the names of the persons who rented or resided in those properties with the exception of the address at 797 N. Pepper Street, Rialto, where the room and board services were provided. And part of the time at 2894 Etiwanda Street where there were room and board services provided, after the gas company had shut off the gas at Pepper Street. Secondly, I would like to state that at no time have I ordered services at an address at 2748 W. 9th Street. At the time that I purchased that property, I purchased that property for purposes of opening up a room and board home on that street, and was denied a license at that place, due to the fact that there was a board and care home just down the street. I then at the time rented that property to Sabrina Haywood and James Richett. At all times the services that were used there were used by Sabrina Haywood and James Richett. This information was conveyed to Southern California Gas Company. I first came in contact with the problem when the gas company had turned off the services at 797 N. Pepper, due to the fact that there was an outstanding bill supposedly at 2338 N. Sycamore. I went into the gas company and I advised the representative of the gas company that I had never lived in that property, and at all times the services were on in the name, or should have been in the name of someone else. I was informed by persons in the community, the representatives from the gas company had gone through the community and advised them that they were going to locate all properties that were held in the name of Mattie Evans and remove the meters. With this information, I went to the gas company, I did not speak directly with Mrs. Dodson, but I was put on the telephone with Mrs. Dodson, in effort to try and get this problem cleared up. I told her what the situation was, she did verify that she'd ordered all of the meters from all of the properties in my name to be removed. As of this date I had -- prior to this date in March of 19 -- 1986 I was forced to move in with Mr. Evans because the gas company refused me gas services, and they said they would continue to refuse gas services to me until I agreed to and

had paid an exorbitant sum in the approximate amount of \$3,000. It was over \$3,000. They had at this time put these charges onto my bill at 606 Shamrock Street where I was living. And they had removed a meter from my home."

Testifying for SoCal was Claudia Louise Dodson, Billing Support Supervisor, Inland Division. Witness Dodson related the history of SoCal's service to the properties in question explaining how an application for service is taken and processed. She stated that based on the various applications for service and subsequent investigation that defendant and Mattie B. Evans were husband and wife and thereafter transferred the total amount owing for gas service on the five locations to defendant's account.

The evidence and testimony revealed the following with respect to the various residences.

797 North Pepper Avenue

Service was turned on December 22, 1982 in the name of Mattie B. Evans. It was turned off for nonpayment on January 27, 1986. After receipt of the balance due, service was restored January 28, 1986. The check was received to restore service was returned for insufficient funds and service was again terminated on February 19, 1986. Service was restored in the name of Charles Evans on November 10, 1986. The outstanding amount of \$570.82 was then transferred for collection to Charles Evans' account.

2894 E. Etiwanda Avenue

Service was commenced on November 4, 1985 in the name of Mattie Evans. The application for service indicated a billing address of 797 North Pepper, Rialto. Service was terminated on March 26, 1986 for nonpayment. SoCal transferred the outstanding bills amounting to \$272.16 were to Charles Evans' account.

2338 Sycamore Avenue

Service commenced October 19, 1985 in the name of Mattie Evans and terminated February 21, 1986 for nonpayment. The turn-on notice (application for service) lists 797 North Pepper, Rialto as

a previous address and indicates active service at that address. No payments were received for this address and service was terminated February 21, 1986. SoCal transferred the \$427 outstanding balance to Charles Evans' account.

606 Shamrock Avenue

Service at this address commenced November 11, 1986 in the name of Mattie Evans and terminated for nonpayment on March 26, 1986. A check for payment on the account in the amount of \$276.25 and signed by Mattie B. Evans was returned for insufficient funds. SoCal transferred the outstanding balance of \$486.78 to Charles Evans.

2748 W. 9th Street

Service commenced January 4, 1986 in the name of Mattie Evans and terminated April 24, 1986 for nonpayment. SoCal transferred the outstanding balance of \$365.66 to the account of Charles Evans.

1075 North Pine Street

Service commenced on March 24, 1986 in the name of Charles E. Evans and terminated November 12, 1986. The billing address on the application for service was P.O. Box 750, Los Angeles, CA. The application shows Belinda (sic) as defendant's spouse. Service at this address was terminated after the outstanding balance (\$2,122.42) from the other accounts was transferred to Charles Evans.

The facts are not in dispute. Complainant and Mattie his spouse experienced several separations during the time in question. Service was provided by SoCal at the request of and in the name of Mattie Evans at the various addresses as noted above. Service was also provided in one complainant's name at 1075 North Pine Street. Some of the property and the bed and board business was in Mattie's name. Based on these facts, complainant argues that he cannot be held responsible for gas service contracted for by his estranged spouse nor can liability for such obligations be assigned to him.

SoCal argues that pursuant to Civil Code Section 5120.010 et seq., the community is liable for the debts incurred by either spouse before or during marriage and therefore complainant is liable for the outstanding obligations that have been assigned to complainant.

Section 5120.110 of the Civil Code provides:

- "(a) Except as otherwise provided by statute, the community property is liable for a debt incurred by either spouse before or during marriage, regardless which spouse has the management and control of the property and regardless whether one or both spouses are parties to the debt or to a judgment for the debt.
- "(b) The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are uncommingled with other community property, except property insignificant in amount. As used in this subdivision, 'deposit account' has the meaning prescribed in Section 9105 of the Commercial Code, and 'earnings' means compensation for personal services performed, whether as an employee or otherwise."

Section 5120.130 provides:

- "(a) The separate property of a married person is liable for a debt incurred by the person before or during marriage.
- "(b) Except as otherwise provided by statute:
  - "(1) The separate property of a married person is not liable for debt incurred by the person's spouse before or during marriage.
  - "(2) The joinder or consent of a married person to an encumbrance of community



property to secure payment of a debt incurred by the person's spouse does not subject the person's separate property to liability for the debt unless the person also incurred the debt."

The above quoted sections of the Civil Code are clear. Except as noted in Section 5120.110(b), the community is liable for a debt incurred by either spouse before or during marriage regardless of its underlying character (separate/community property) except the separate property of a spouse is not liable for a debt incurred by the person's spouse before or during marriage. At all relevant times, the complainant was married, despite occasional separations, to Mattie.

If parties were in civil court, the arguments with respect to responsibility for the debt under the Civil Code would be germane. However, in disputes before this Commission, we look to the utility's tariff rules governing service.

The applicable tariff is defendant's Rule 3(a) Application for Service, which provides:

"(a) The Utility may require each applicant for service to sign an application, except when the applicant has on file with the Utility a previous application, which is satisfactory to the Utility. Application will normally be made in writing at an office of the Utility or with a duly authorized agent or employee. Application for service will normally include the following items:

- (1) Name of applicant.
- (2) Location of premises.
- (3) Date applicant will be ready for service.
- (4) Whether the premises have been heretofore supplied.

- (5) Purpose for which service is to be used with description of appliances.
- (6) Addresses to which bills will be mailed or delivered.
- (7) Whether applicant is owner, agent or tenant of the premises.
- (8) Such other information as the Utility may reasonably require.

and Section (d) provides:

- (d) The Utility may disconnect or refuse to provide service to the applicant if the acts of the applicant or the conditions upon the premises indicate that false, incomplete, or inaccurate information was provided to the Utility. The Utility shall provide the applicant for the reason for such refusal.

The application for service elicits the information set out in the above tariff but does not provide who is or should be responsible for payment of the service. It must be presumed that the person requesting service is the one responsible for payment of tendered bills.

In the instant case, as noted above, Mattie Evans applied for service at every location except for 1074 N. Pine Avenue. In each instance, the application noted "separated" or "none" for the name of spouse. Thus, it must be inferred that Mattie Evans and not complainant, was to be responsible for the service at those locations. The assignment of Mattie's obligations to complainant is not proper. Though complainant did not provide dates of separation from Mattie, from the evidence presented it can be assumed that the separations were of such a character that the service was intended for Mattie's separate property, for her account, and that she was solely responsible for their payment.

Because the applicable tariffs are unclear as to the spousal responsibility for service during periods of separation, we

believe that bills for such service were improperly assigned to Charles Evans. If SoCal wishes to amend its tariff to eliminate this ambiguity for the future, it is, of course, free to do so. However, at present, any tariff ambiguity must be resolved against SoCal.

Findings of Fact

1. Charles E. Evans (complainant) receives gas service from Southern California Gas Company (SoCal).
2. Complainant is married to one Mattie B. Evans (Mattie).
3. From December 1982 through December 1986, complainant and Mattie experienced several separations.
4. The separations experienced by complainant and Mattie were volitional.
5. While separated from complainant, Mattie Evans applied for and received gas service in her name from SoCal at:
  - a. 797 N. Pepper, Rialto CA on December 22, 1982. Service was terminated for nonpayment on January 27, 1986. Service was restored in complainant's name on November 10, 1986.
  - b. 2894 Etiwanda Avenue, Rialto, CA on November 4, 1985. Service was terminated for nonpayment on March 26, 1986. The outstanding balance transferred to complainant.
  - c. 2338 Sycamore Avenue, Rialto, CA on October 19, 1985. Service was terminated for nonpayment on February 21, 1986. The outstanding balance of \$427 was transferred to complainant.
  - d. 606 Shamrock Avenue, Rialto, CA on November 11, 1985. Service was terminated for nonpayment on March 26, 1986. The outstanding balance of \$486.78 was transferred to complainant.

- e. 2748 W. 9th Street, Rialto, CA on January 4, 1986. Service was terminated for nonpayment on April 24, 1986. The outstanding balance of \$365.66 was transferred to complainant.

6. Complainant applied for gas service on March 24, 1986 at 1075 N. Pine Street, Rialto, CA.

7. The premises where Mattie Evans requested service were occupied by her adult children.

8. Complainant applied for service at 1075 N. Pine Street, Rialto, CA on March 24, 1986 and service was terminated on April 24, 1986 for nonpayment after SoCal transferred the outstanding balances to complainant's amount.

9. Section 5120.110 of the Civil Code provide:

"(a) Except as otherwise provided by statute, the community property is liable for a debt incurred by either spouse before or during marriage, regardless which spouse has the management and control of the property and regardless whether one or both spouses are parties to the debt or to a judgment for the debt.

(b) The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are uncommingled with other community property, except property insignificant in amount. As used in this subdivision, "deposit account" has the meaning prescribed in Section 9105 of the Commercial Code, and "earnings" means compensation for personal services performed, whether as an employee or otherwise."

10. Mattie Evans was responsible for gas service at the locations for which she requested service.

11. Complainant should not be responsible for gas service where the application was in Mattie Evans' name.

Conclusions of Law

1. Given the particular facts of this situation, and the ambiguity in SoCal's tariff over who should be responsible for payment of service, Charles Evans is not liable for the obligations for gas service.

2. The complaint should be granted.

ORDER

IT IS ORDERED that Southern California Gas Company shall remove from Charles E. Evans' account the charges for gas service transferred from Mattie Evans.

This order becomes effective 30 days from today.

Dated OCT 28 1987, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

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



Victor Weiss, Executive Director

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