

Decision 87 10 067

OCT 28 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bruce S. Smith and Dianne C.  
Smith,

Complainants,

vs.

Southern California Gas Company,

Defendant.

(ECP)

Case 86-08-030

(Filed August 18, 1986)

Bruce S. Smith and Dianne Smith, Attorney  
at Law, for themselves, complainants.  
Robert B. Puckett, for defendant.

### OPINION

#### Summary of Complaint

The complaint alleges that defendant Southern California Gas Company (SoCal) overcharged complainants for their residential gas consumption in the amount of \$211.90 in violation of §§ 451 and 453 of the Public Utilities (PU) Code.<sup>1</sup>

#### Answer to Complaint

SoCal denies all material allegations in the complaint. It specifically denies that:

1. It overbilled complainants for \$211.90 or any other amount.
2. It failed to notify complainants of where and when their gas meter would be tested. Complainants were notified by letter and by telephone of the scheduled test date, but they failed to appear. Their meter was tested on December 5, 1984 and found to be accurate. Complainants were notified of

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<sup>1</sup> All sections referred to in this decision are in the PU Code.

the test results by letters dated  
December 28, 1984 and March 18, 1985.

SoCal requests that the complaint be dismissed and that the funds placed on deposit with the Commission by complainants be forwarded to it.

Hearing

After notice, a hearing was held in Los Angeles before an administrative law judge. The matter was submitted subject to receipt of late-filed exhibits which have been received.<sup>2</sup>

Testimony was presented by Diane C. Smith and Bruce Smith for complainants and by Marjorie Durke and Robert B. Puckett for SoCal.

Complainants' Testimony

Diane Smith testified as follows:

1. In its initial investigation, a SoCal serviceman checked for leaks and checked out their gas appliances. They had a central heating unit with a pilot light, a hot water heater with a pilot light, a gas stove with electronic ignition, and a above-ground swimming pool heater with a pilot light. The pool heater was not in use. SoCal's serviceman said that the pool temperature was about 60 degrees Farenheit.
2. An October meter test date had originally been set up, but her husband, Bruce Smith, could not make that date. He requested a rescheduling of the test. SoCal never notified them of the new test date; it notified them of the test after it had been completed. SoCal's letter of December 28, 1984 to Bruce Smith states that the meter proved to be registering within the limits of accuracy allowed by the Commission. SoCal's letter of March 18, 1985 gave the specific test results. She was advised that it was no longer possible to retest that meter.

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<sup>2</sup> The portion of late-filed Exhibit 39 objected to by complainants has been deleted from that exhibit.

3. Their monthly winter gas use never came close to the 261 therms reflected in the bill of \$211.90 for the period ending July 9, 1984 of \$211.90. A SoCal representative stated that their appliance pilot lights would have used more than the 4 therms reflected in their prior bill of \$5.09.
4. A March 18, 1986 letter from CAB to Mr. Smith confirms that SoCal had adjusted complainants' bill in the amount of \$19.36 by shifting therms reflected in the July 1984 billing to the June 1984 billing. SoCal agreed to further reduce the bill by another \$27.85 for consumption of 34 therms, representing one-half of the excess consumption between June 1984 and June 1985. CAB stated it was not recommending any further adjustment of complainants' account; it advised SoCal there was no basis for it to carry the amount in dispute without some payment for the gas; SoCal was instructed to follow its prescribed collection policies, since the disputed amount was not deposited with the Commission, following the method outlined on the back of SoCal's bills.
5. Their pool heater was used in 1983. Exhibit 12 is a summary of complainants' 1983 and 1984 bills and therms used. In January 1985, complainants purchased a gas dryer and their usage increased considerably, but their maximum monthly use never exceeded 150 therms.
6. After further discussions with several SoCal representatives, she was told her original bill would be reduced by \$40.
7. She made a settlement offer of \$86 for payment of the bill in dispute. She confirmed her offer with an \$86 check (Exhibit 13) on May 29, 1986, along with a letter stating the \$86 is being submitted as a full and complete settlement of the July 1984 billing dispute. The \$86 was twice complainants' average monthly gas bill for the preceding year. Her letter

states that the settlement was not an admission of liability, which complainants still questioned.

8. But SoCal continued to send notices threatening to terminate their service. She sent a letter to SoCal containing a copy of her settlement note, and confirmed that her \$86 check had cleared. She claimed there was no basis for SoCal's continued threats to terminate their service.
9. SoCal disconnected complainants' gas service. On July 29, 1986, complainants sent a letter and attachments summarizing the dispute and a check for \$202.62 to CAB dated July 30, 1986 to restore service. CAB advised her that SoCal would reconnect their service; if a formal complaint was not timely filed, CAB would forward the funds on deposit with the Commission to SoCal to conclude the matter. The original \$86 check states "(settlement of 7/84 billing dispute)" on its front and "Settlement of 7/84 Billing Dispute (Full and Final)" on its back.

Complainants seek return of the \$202.62 deposited with the Commission plus any expenses they incurred in the processing of the complaint.

#### SoCal's Position and Testimony

SoCal avers that normally it does not deposit checks with the type of notation put on them by complainants for partial bill payments; but that practice was not followed in processing the \$86 check.

Mrs. Durke testified as follows:

1. The July 9, 1984 meter reading indicated a usage out of complainants' normal usage pattern. SoCal initiated investigation to

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3 SoCal withdrew its objection to receipt of a copy of Exhibit 13 after examining the original of the check.

verify the meter reading before mailing the bill. The meter was reread on July 18, 1985. The verification reading was 1,900 cubic feet above the regular reading, indicating that the regular reading was correct. Therefore, the bill was mailed.

2. SoCal's subsequent high bill investigation showed the following appliance ratings:

- a. Range - 70,000 British Thermal Units (Btu).
- b. Water heater - 38,000 Btu.
- c. Central heating - 88,000 Btu.
- d. Pool heater - 100,000 Btu (estimated).

The appliance ratings show that complainants could have used the quantity of gas billed for in the disputed bill. The serviceman found no cause for a bill adjustment.

3. The meter was removed for testing and a replacement meter installed. The meter was wrapped in a red bag to indicate a special testing with the customer present. On October 10, SoCal left a message on complainants' telephone answering machine, asking them to call back to schedule the meter test. But they did not respond. On November 27 SoCal called again and a test was arranged for December 4, 1984 at 1 a.m. with Mr. Smith present at the test. He did not appear for the test. But the meter was tested as scheduled. The meter test showed that at a test flow of 50 cubic feet per hour (cfh) there was a +0.5% deviation between the measured flow and the actual flow; at a test flow of 175 cfh there was no deviation between the measured flow and the actual flow. The test results were read into complainants' answering machine two days after the test. Since complainants had indicated that they wanted to witness the test, SoCal offered to reschedule the test if they wanted to be

there. There was no response. By letter dated December 28 complainants were informed that the meter test indicated that the meter was registering within the limits of accuracy allowed by the Commission.

4. On January 16, 1985, Mr. Smith called and asked for further explanation on the test results. He stated that he still wanted to witness the test of the meter. SoCal informed him that it was possible that the meter might have been released from the shop and put back into circulation. If so, it would be necessary to utilize the meter test results of December 4, 1984. On March 18, 1985, SoCal advised complainants in writing of the deviations from actual readings on the December 4, 1984 meter test. The meter had been installed at another location and could not be retested.
5. Subsequently, complainants used the Commission's informal complaint procedure to resolve the dispute. SoCal responded that on its further review of the billing, it felt that the June 1984 reading had been misread. The June and July 1984 bills were canceled and rebilled in July 1985 with a net credit to complainants' account of \$10.86. About July 15, 1985, CAB notified SoCal that it closed its file on the informal complaint. On October 15, 1985, SoCal mailed a correction of the earlier adjustment caused by a mathematical error, which increased the total adjustment of \$19.36.
6. SoCal submitted a three-year use history at complainants' residence; complainants used 950 therms in 1983, 846 therms in 1984, and 856 therms in 1985.

Puckett testified that SoCal offered a \$40 bill adjustment to complainants as a settlement in lieu of further litigation. When complainants said the \$40 was insufficient, SoCal withdrew its offer. He submitted late-filed Exhibit 37, a partial

microfiche record of complainants' account, to show that on July 5, 1985 SoCal applied a correction to complainants' account.

Rebuttal and Argument

Complainants challenge SoCal's assertion that late-filed Exhibit 37 showed that an adjustment had been credited to their account. They ask the Commission to add the additional credit to the relief otherwise found appropriate. Complainants submitted late-filed Exhibit 38 containing copies of their July 1984 bill and certain 1985 bills to demonstrate that SoCal had not credited their account with an adjustment.

SoCal responded that its microfiche showed the adjustment separately; the adjustment was not shown separately on complainants' bill; it was rolled into the unpaid bill balance.

Complainants challenge receipt of SoCal's Exhibits 24, 27, 19, and 33 for lack of foundation. SoCal responded that it was permitted to submit company records kept in the ordinary course of business into evidence.

Both complainants testified that they never saw SoCal's letter to them dated July 8, 1985 (Exhibit 32); they never received a call from SoCal on the meter test.

Mr. Smith testified that he called SoCal to reschedule an earlier meter test date. But he was not notified about the rescheduled test date of December 4, 1985; he had shown the serviceman checking their appliances a solar swimming pool cover.

SoCal contends that Decision 82-02-011 on the complaint of Shadow Run Ranch v San Diego Gas & Electric Company deals with issues about knowledge of meter testing and following normal business routines; its testing complied with the Commission's General Order 58-A for accuracy of meter testing; it was not responsible for complainant's use of gas.

Discussion

The SoCal meter test was received in evidence. It showed that the meter met the limits of accuracy set by the Commission.

There is no evidence submitted by complainants which would indicate that the tests were invalid or should be disregarded.

Complainants' contention that they did not receive notice of the test is contradicted by SoCal's business records. Those records show that SoCal made arrangements for Mr. Smith to be present at the meter test; he was not present for the test; SoCal gave the test results to complainants two days after the test; Mr. Smith did not timely respond to SoCal's inquiry to be present at another test of that meter.

Complainants are incorrect in alleging that SoCal cut off their service while an informal complaint was pending.

We are confronted with a classic problem of the burden of proof imposed upon complainants in a complaint proceeding. In such proceedings, we require complainants to show that they could not have used the amounts of energy in dispute or that some other error occurred. If a meter is tested and proven to be accurate within acceptable limits, if no gas leaks are discovered in equipment or appliances, and if the customer's potential gas demand exceeds the amounts of energy usage in dispute, a presumption exists that the customer, in one way or another, used the gas as shown on the meter.

SoCal's evidence establishes such a presumption in this case. Complainants testified that they did not use their pool heater. We have no way of evaluating whether or not they did so before the high bill investigation.

SoCal confirmed that its July 1984 reading was correct, but it did not acknowledge an underreading in June 1984 during its high bill investigation. It acknowledged that possibility a year later during its processing of an informal complaint inquiry. It spread 123 therms of consumption billed in July to June which resulted in transferring a portion of the consumption from an \$0.8181 per therm rate block to \$0.46484 and \$0.71810 per therm



rate blocks. SoCal apparently prorated therms between the two billings based on days in the two billing periods.

If SoCal had properly read the meter in June, complainants would have been put on notice of their relatively high consumption and they could have attempted to reduce their gas use and gas bill for July. SoCal's explanation of its billing adjustments to complainants was in summary form. It did not show the consumption charges by block and customer charges. A more detailed explanation was warranted in light of complainants' persistent efforts to obtain a satisfactory explanation of the adjustments.

Furthermore, SoCal's microfiche record purportedly contained July 5, 1985 adjustments reducing complainants' disputed bill by \$10.83. But complainants' subsequent gas bills do not reflect a reduction being rolled into the previous balance amount. Complainants' June 1985 bill showed a total amount due of \$244.17; SoCal shows receipt of the current portion of that bill after it sent out its subsequent bill. But its July 1985 bill showed a previous balance of \$251.88, an increase of \$7.71 rather than the \$10.83 decrease alleged by SoCal. The subsequent August and September bills do not show any change in the previous balance amounts except to reflect receipt of the current portion of its billings.

We conclude that a billing adjustment of \$18.54 should be made to provide for the \$10.83 credit and to reverse the \$7.71 addition to the previous balance on SoCal's July 1985 bill. Furthermore, SoCal will be required to provide the detail of its subsequent adjustments of \$8.53 and \$27.85 to complainants and to the Commission. If any further adjustment is warranted, SoCal should indicate that it is crediting complainants' account in that amount.

Complainants presented no testimony that SoCal billed them at other than its tariff rates. Thus there is no proof that

SoCal was in violation of §§ 451 or 453. At issue are the appropriate adjustments to complainants' bills due to a meter underreading.

ORDER

IT IS ORDERED that:

1. The \$202.62 impounded with the Commission in Case 86-08-030 shall be disbursed when this order becomes effective as follows:
  - a. \$18.54 to complainants, Bruce S. Smith and Dianne C. Smith.
  - b. \$184.08 to defendant, Southern California Gas Company (SoCal).
2. SoCal shall provide detailed calculations to complainants and to the Commission's Evaluation and Compliance Division showing that the further correction adjustment of \$8.53 and the \$27.85 credit offered on March 18, 1986 were made. If not, SoCal shall further credit complainants' account.
3. In all other respects, the complaint is denied.  
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.

*[Signature]*  
Vance Weisser, Executive Director

*JB*