

Decision 87 11 027

NOV 13 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MICHAEL LYONS and SHEILA LYONS,)

Complainants,)

vs.)

SAN DIEGO GAS & ELECTRIC)
COMPANY,)

Defendant.)

ORIGINAL

Case 86-10-077
(Filed October 20, 1986)

Jonathan M. Slipp, Attorney at Law, for Michael
Lyons and Sheila Lyons, complainants.
Michael R. Weinstein, Attorney at Law, for
San Diego Gas & Electric Company, defendant.

OPINION

On July 15, 1986, San Diego Gas & Electric Company (SDG&E) backbilled complainants for \$5,793.34 for unauthorized use of electricity from July 2, 1980 through January 6, 1986 (later this amount was reduced to \$5,052.42). In August 1986, SDG&E billed complainants for electric service during the period July 3, 1986 to August 4, 1986 in the amount of \$134.23. Complainants disputed the backbilling and the August 1986 billing. They have deposited \$965 of the disputed backbill and \$134.23 of the August 1986 bill with the Commission. Complainants brought this complaint to have the backbill canceled, the August 1986 bill adjusted, and for attorney fees and costs. For ease of understanding, we will present SDG&E's evidence first.

SDG&E's Evidence

Complainants reside and have continuously resided at 26561 Morena Drive in Mission Viejo, Orange County, since February 1979.

May 1971. Electric meter number (e/m #) 484080, the meter of record (the authorized meter), was installed at 26561 Morena Drive.

February 14, 1979. Service was established in the name of Michael J. Lyons. E/m #484080 was still the authorized meter.

October 3, 1985. An SDG&E meter reader found the authorized meter (e/m #484080) in the meter base at complainants' residence. The meter dials read 84858.

November 1, 1985. An SDG&E meter reader found e/m #945301 (the stolen meter) in the meter base at complainants' residence. The meter dials read 37107. Since the meter reader did not see the authorized meter (e/m #484080) at the residence, he reported his findings to the Billing Adjustments Department of SDG&E in accordance with standard practice.

November 19, 1985. An SDG&E employee was sent to complainants' residence to verify the meter number and the meter read. She too found the stolen meter (e/m #945301) in the meter base. The meter dials read 37190. She reported this information to the company.

December 2, 1985. The records of SDG&E's Electric Meter Shop were searched to determine the service history of the stolen meter (e/m #945301). There was no record of the meter ever having been placed in service after its initial purchase by the company on April 9, 1980.

December 3, 1985. A different SDG&E employee went to complainants' residence to again verify the meter number and meter read. He found the authorized meter (e/m #484080) which read 85663. He found the meter seal broken.

December 4, 1985. Because the employee found the authorized meter in the meter base on December 3 after the stolen meter had been seen in the meter base November 19, a case of meter switching was suspected. All the information concerning

complainants' account was sent to SDG&E's Meter Revenue Protection Department for further investigation. When the regular meter reader went to complainants' residence to read the meter on December 4, he too found the authorized meter (e/m #484080) which read 85686.

December 5, 1985. SDG&E's computer files were reviewed to check the status of e/m's 945296 through 945306, which sequentially surround the stolen meter (e/m #945301) found at complainants' residence. It was discovered that all of those meters were set in service in Orange County in June and July of 1980 with the sole exception of the stolen meter itself, which had no record of ever having been placed in service.

December 19, 1985. SDG&E's Meter Revenue Protection Representative Darryl Murry went to complainants' residence to investigate the conditions reported to him. He found the stolen meter (e/m #945301) which read 37695 in the meter base. The meter had been switched since the SDG&E visit of December 4.

Mr. Murry examined the metering installation while he was there. Before he touched anything, he took seven photographs documenting the condition of the installation. He took an eighth photograph documenting the condition of the tampered blue meter seal. Mr. Murry tagged as evidence the tampered blue meter seal, the meter retainer ring, and the stolen meter. Mr. Murry testified about the condition of the meter when he examined it on December 19. He stated that:

- i. There were smudges around the face of the meter, around the meter retainer ring, and on the breaker panel. This indicated the meter had been handled numerous times.
- ii. The blue meter seal had been tampered with-- it had been cut and pushed together so that it appeared sealed when in fact it was not.
- iii. The meter retainer ring was badly scratched, apparently due to removing and replacing the blue meter seal through it numerous times.

- iv. The meter itself was unusually free of dust, indicating it had been recently handled. He said that the manufacturer's cover-to-base seal was not disturbed, indicating that the inner workings of the meter itself had not been tampered with; i.e., while in the meter base the stolen meter accurately recorded usage.
- v. Both the meter stabs and the meter socket base were badly worn (i.e. pitted through the tin plating to the copper). This level of wear is not seen on untampered meters, even meters that have been in the field forty or fifty years. Mr. Murry later performed an experiment whereby he removed and replaced an identical meter in a similar meter socket 150 times (without load). The resulting wear was minimal compared to the condition of the stolen meter.

Mr. Murry testified that the stolen meter had been handled extensively, and had been removed and replaced in the meter base numerous times. In addition, the read of 37695 kWh on the stolen meter, which would have been set at 00000 when received from the manufacturer, indicated the meter had been in a socket base recording electricity for an extensive period of time.

While Mr. Murry was examining the metering installation at complainant's residence, Michael Lyons returned home. Mr. Murry asked Mr. Lyons about the tampering with the meter, and about meters and metering equipment in general. Mr. Lyons responded that he did not know about any tampering with his electric meter and that he did not know anything about electric meters. Mr. Murry then removed the stolen meter (e/m #945301) and installed e/m #668654, which read 00000, in its place.

June 10, 1986. Mr. Murry issued his formal Energy Theft Report in which he concluded that unauthorized use occurred beginning July 1980 and continued until December 19, 1985.

July 15, 1986. SDG&E sent a letter to Michael Lyons reflecting an additional billing it had prepared in the amount of

\$5,793.34 for unauthorized use from July 2, 1980 through December 19, 1985. In preparing the billing SDG&E used all the consumption data it had at the time. This included recorded consumption between February 14, 1979 and July 2, 1980 (prior consumption), and the period after December 19, 1985 through June of 1986 (subsequent consumption). Daily averages for each of those months were computed and grouped into three-month seasons to develop seasonal daily averages which were used as estimates of the daily average consumption during the period of unauthorized use. The applicable tariffs from the respective time periods were applied to those daily averages to compute the estimate billing. In a review of the estimated bill, errors were discovered. As a result of the correction for those errors, the estimated billing for unmetered usage was revised to \$5,052.42 for the period between July 2, 1980 through December 19, 1985.

After the backbilling, SDG&E employee Tom McKray visited the Lyons' residence. Mr. McKray had become friends with Mr. Lyons when he worked at SDG&E. While Mr. McKray was at the Lyons residence, Sheila Lyons told him that SDG&E had caught them stealing energy. Mr. McKray understood this to mean that the Lyons had in fact been stealing energy.

The meter installed on December 19, 1985, was accurate when tested by SDG&E's testing department on August 5, 1986. SDG&E presented Exhibit 54 showing the electric consumption of 15 neighbors of the Lyons.

The Lyons' Evidence

The evidence presented by the Lyons sought to prove:

- o The Lyons did not, at any time, steal or divert electric power;
- o The Lyons did not, at any time, consume electric power for which they were not billed;

- o During the period of alleged theft, SDG&E billed the Lyons for the amount of electric power which they could be reasonably expected to have consumed;
- o The estimated billing prepared by SDG&E was based upon erroneous and false assumptions and is, thus, inherently unreasonable and unreliable;
- o The electric power meter installed by SDG&E on or about December 19, 1985, was operating inordinately fast, which resulted in charges for electric power not consumed by the Lyons from January 1985 through August 1986 (overcharges).

Michael Lyons testified that his current job is that of a journeyman lineman working in the electrical department of the City of Anaheim. He started on April 7, 1980. His previous employment had been with SDG&E since 1969, which he left in late March 1980. While at SDG&E, he started as a laborer and after training became a journeyman electric lineman in 1971. He was trained in the setting and removal of electric meters. At times he was a troubleshooter, setting and removing meters; hundreds over his career. He said that he would get supplies from SDG&E by going into the storeroom or on the loading dock and taking what he needed. Any employee could take electric meters, as could others who came on the property. There was no security and no requirement to sign for equipment.

Mr. Lyons testified that he did not steal a meter from SDG&E; did not know an unauthorized meter was on his premises; did not switch meters; did not tamper with the SDG&E-installed meter at his home; and did not steal electricity from SDG&E. He said he had no knowledge whatsoever concerning unmetered power consumption or energy diversion at his home. His wife, Sheila Lyons, denied tampering with the meter; denied stealing power; and denied all knowledge of meter switching. Their daughter testified that she

had never seen any electric meter at the house other than the one attached to the side of the house.

Mrs. Lyons testified that on occasion she had told people that SDG&E had caught the Lyons' stealing electricity, but those statements were always made in a joking manner and were understood to be facetious statements. Those neighbors who testified on the point said that Mrs. Lyons' statement regarding stealing electricity was made in a joking manner.

The Lyons' presented the testimony of friends and neighbors to the effect that they had never seen an electric meter in the Lyons' home or garage other than the one attached to the residence.

The Lyons' presented the opinion evidence of five friends and neighbors to the effect that the reputation of Mr. & Mrs. Lyons for truth, honesty, and integrity was high. A few of the comments were "I can't speak highly enough of them."; "They are extremely honest and conscientious about keeping up integrity."; and "I think they are very straightforward, honest people."

The Lyons argue that they did not consume the electric power for which they were backbilled. They testified that they first moved into their residence in February 1979. During the first year in their new home they became involved in extensive reconstruction and remodelling of the exterior of their home, landscaping, and retaining walls. This remodelling involved substantial use of electric equipment, drawing power from the Lyons' residence.

During this same period of time, Mrs. Lyons babysat children in her home, which required all windows to be shut and the air conditioner to be operated to avoid the dust/dirt of the construction being deposited in their home. Undoubtedly, closing the windows and constantly running the air conditioner increased the electric power consumption throughout the construction period. Additionally, Mr. Lyons prepared all interior walls of the house

for wallpapering by using an electric sander, including kitchen and bathroom walls. All of this consumption preceded the period of alleged theft. To base an estimate of consumption on that extraordinary use would distort the estimate substantially.

A witness testified that the Lyons' home is the "smallest home in the tract and it's about 1,490 square feet, according to the builder's records." The home does not have a swimming pool or spa, or a microwave oven. Mr. & Mrs. Lyons have lived in the home with their daughter from February 1979 to the present.

Mrs. Lyons circulated a detailed questionnaire throughout her neighborhood, seeking information concerning the size of each home, the number and age of persons living in the home, and the type of electric equipment used by the household. Mrs. Lyons reduced the questionnaire to a comparison of similarly situated neighbors to that of the Lyons family. That survey showed that the Lyons' home used electric power, as shown in SDG&E's monthly bills during the period of the alleged theft, as much and often times more than similarly situated homes (Exhibit 68).

The Lyons contend that on cross-examination of SDG&E's billing witness, they brought out that the witness did not make comparisons of the bills of similarly situated neighbors; did not determine if electric power usage as billed was consistent with the size of the Lyons' household; did not adjust for the construction at the residence during the comparison period in 1979 which overstated normal electric use; did not check her computer for additional errors after finding a \$741 error. The Lyons argue that because of these errors and omissions, the backbill is inherently unreasonable and should be disregarded in its entirety.

Finally, the Lyons assert that the electric power meter installed by SDG&E on or about December 19, 1985, was operating inordinately fast, which resulted in charges for electric power not consumed by the Lyons from January 1985 through August 1986 (over-charges). They said that immediately after installation of the

meter, their power consumption skyrocketed despite the fact that no one was living in the home from October 1, 1985 until mid-February 1986. During the last part of February 1986 and the first part of March 1986, they prepared for and conducted a yard sale of belongings from the estate of Mr. Lyons' parents. Thus, they argue it is entirely reasonable that their power consumption for these two months would have been higher than the last months of 1985, when they were not living at home. However, their electric power consumption as recorded with the new meter remained consistently above their prior consumption pattern and substantially higher than similarly situated neighbors.

The Lyons testified that during 1986 they were experiencing tremendous emotional strain because of deaths in the family, and they did not notice the unusually high electric bills in the first half of 1986 until after they received SDG&E's letter in mid-June 1986, advising them of the investigation. Subsequently, they received a bill of \$134.23 for the month of July 1986, representing charges for 1,052 kWh which, they assert, is unjustifiably high.

Beginning in mid-July 1986 and throughout August 1986, the Lyons said they began taking extreme measures to avoid consumption of electricity in their home. At that time, they had not yet determined what was causing the increase in electric power consumption, and were reacting out of anxiety and anger. Such extreme measures included the use of battery powered lights, laundromats, and eating all meals in restaurants. At the end of August 1986, they resumed their normal lifestyle, including the use of the electric lights, washing machine, clothes dryer, dishwasher, stove, and other normal electrical appliances. Thus, the electric bill dropped from 1,052 kWh in July 1986 to 379 kWh in August 1986. The remainder of the year also showed low usage as did early 1987.

Discussion

The evidence is clear and convincing that complainants knowingly used electricity through a stolen meter which they routinely switched with the authorized meter. On November 1, 1985, the regular SDG&E meter reader saw the stolen meter attached to complainants' home. On November 19, 1985, a different SDG&E employee saw the stolen meter attached to complainants' home. On December 3, 1985, a third SDG&E employee saw the authorized meter attached to complainants' home. On December 19, 1985, SDG&E Meter Revenue Protection Representative Murry saw the stolen meter attached to complainants' home and removed the meter. While there, Mr. Lyons told Mr. Murry that he (Lyons) did not know anything about electric meters. In fact, Mr. Lyons was an expert in setting and removing meters. Mr. Murry observed that the stolen meter was worn in a way which showed continuous setting and removing over a long period of time.

Complainants' explanation of the variance in their power usage is not credible. A review of their bills from February 1979 through July 1986 shows that when the authorized meter was installed prior to, and after, the period in question, they used substantially more power, on monthly average, than during the period in question. Comparisons with neighbors' bills have little probative value--there are too many variables in electric load and lifestyle. Both the comparison presented by complainants and that

presented by SDG&E could support almost any amount of usage.¹ What is significant is that SDG&E's method of estimating bills² over the period in question reached a usage that was strikingly near that which showed on the stolen meter. The backbill was for 38709 kWh; the stolen meter showed 37695 kWh. We are not surprised that the total of authorized and unauthorized use is more than complainants say they would normally use. When you do not pay for electricity, you tend not to conserve.

In D.86-06-035, we established a three-year limitation for energy backbilling in complaints brought before us. At the hearing both parties, with knowledge of the three-year statute of limitations, requested that the Commission determine the Lyons' liability, or lack of liability, for the entire period of time beginning July 2, 1980, as requested in the complaint. The parties having waived the three-year statute of limitations, we will determine liability from July 2, 1980.

1 SDG&E's Exhibit 54 shows that some neighbors recorded usage comparable to the level of usage at which the Lyons were additionally billed (Nos. 2, 10, 11, 12, and 16), many had usage above that level (Nos. 3, 4, 7, 9, 13, 14, and 15), and some had usage at a lower level (Nos. 5, 6, and 8). The exhibit does demonstrate that the usage behavior of all the neighbors, except the Lyons, is consistent and seasonally repetitive. Only the Lyons consumption is erratic. The Lyons consumption pattern shows significantly lower usage during the entire period for which they are being additionally billed, with significant consumption both prior to and immediately after this period.

2 SDG&E's Tariff Rule 18a covers estimated usage. It reads: Estimated Usage: When regular, accurate meter readings are not available or the electric usage has not been accurately measured, the utility may estimate the customer's energy usage for billing purposes on the basis of information including, but not limited to, the physical condition of the metering equipment, available meter readings, records of historical use, and the general characteristics of the customer's load and operation.

Findings of Fact

1. Complainants Michael and Sheila Lyons have resided at 26561 Morena Drive, Mission Viejo, California, since February 1979, and at all times pertinent to this complaint.

2. On May 1971, electric meter number (e/m #) 484080, the meter of record (the authorized meter), was installed at 26561 Morena Drive.

3. On February 14, 1979, service was established in the name of Michael J. Lyons. E/m #484080 was still the authorized meter.

4. On November 1, 1985, an SDG&E meter reader found e/m #945301 (the stolen meter) in the meter base at complainants' residence. The meter dials read 37107.

5. On November 19, 1985, an SDG&E employee found the stolen meter (e/m #945301) in the meter base at complainants' residence. The meter dials read 37190.

6. On December 2, 1985, the records of SDG&E's Electric Meter Shop were searched to determine the service history of the stolen meter (e/m #945301). There was no record of the meter ever having been placed in service after its initial purchase by the company on April 9, 1980.

7. On December 3, 1985, an SDG&E employee found the authorized meter (e/m #484080) which read 85663 in the meter base at complainants' residence. He found the meter seal broken.

8. On December 4, 1985, the regular meter reader found the authorized meter (e/m #484080) which read 85686 in the meter base at complainants' residence.

9. On December 5, 1985, SDG&E's computer files were reviewed to check the status of e/m's 945296 through 945306, which sequentially surround the stolen meter (e/m #945301) found at complainants' residence. It was discovered that all of those meters were set in service in Orange County in June and July of

1980 with the sole exception of the stolen meter itself, which had no record of ever having been placed in service.

10. On December 19, 1985, SDG&E's Meter Revenue Protection Representative Darryl Murry went to complainants' residence to investigate the conditions reported to him. He found the stolen meter (e/m #945301) which read 37695 in the meter base at complainants' residence. The meter had been switched since the SDG&E visit of December 4.

11. An examination of the stolen meter (e/m #945301) showed:

- i. There were smudges around the face of meter, around the meter retainer ring, and on the breaker panel. This indicated the meter had been handled numerous times.
- ii. The blue meter seal had been tampered with-- it had been cut and pushed together so that it appeared sealed when in fact it was not.
- iii. The meter retainer ring was badly scratched, apparently due to removing and replacing the blue meter seal through it numerous times.
- iv. The meter itself was unusually free of dust, indicating it had been recently handled. The manufacturer's cover-to-base seal was not disturbed, indicating that the inner workings of the meter itself had not been tampered with; i.e., while in the meter base the meter accurately recorded usage.
- v. Both the meter stabs and the meter socket base were badly worn (i.e. pitted through the tin plating to the copper). This level of wear is not seen on untampered meters, even meters that have been in the field forty or fifty years. He performed an experiment whereby he removed and replaced an identical meter in a similar meter socket 150 times (without load). The resulting wear was minimal compared to the condition of the stolen meter.

12. The stolen meter (e/m #945301) had been handled extensively, and had been removed and replaced in the meter base numerous times. In addition, the read of 37695 kWh on the stolen meter, which would have been set at 00000 when received from the manufacturer, indicated the meter had been in a socket base recording electricity for an extensive period of time.

13. Mr. Murry asked Mr. Lyons about the tampering with the meter, and about meters and metering equipment in general. Mr. Lyons responded that he did not know about any tampering with his electric meter and that he did not know anything about electric meters. Mr. Murry then removed the stolen meter (e/m #945301) and installed e/m #668654, which read 00000, in its place.

14. Mr. Michael Lyons is, and was during the period in question, a journeyman electric lineman expert in the setting and removing of electric meters.

15. Unauthorized use of electricity occurred at 26561 Morena Drive, Mission Viejo, beginning July 1980 and continued until December 19, 1985, and was not paid for.

16. On July 15, 1986, SDG&E sent a letter to Michael Lyons reflecting an additional billing it had prepared in the amount of \$5,793.34 for unauthorized use from July 2, 1980 through December 19, 1985, based on an estimated unauthorized use of 38709 kWh. In preparing the billing SDG&E used all the consumption data it had at the time. This included recorded consumption between February 14, 1979 and July 2, 1980 (prior consumption), and the period after December 19, 1985 through June of 1986 (subsequent consumption). Daily averages for each of those months were computed and grouped into three-month seasons to develop seasonal daily averages which were used as estimates of the daily average consumption during the period of unauthorized use. The applicable tariffs from the respective time periods were applied to those daily averages to compute the estimated billing. In a review of the estimated bill, errors were discovered. As a result of the

correction for those errors, the estimated billing for unmetered usage was revised to \$5,052.42 for the period between July 2, 1980 through December 19, 1985.

17. A reasonable estimate of the value of the energy used, through December 19, 1985, but not paid for, under the applicable tariffs is \$4,920.07 (37695 kWh ÷ 38709 kWh x \$5,052.42).

18. The meter installed on December 19, 1985, was accurate.

19. The bill of \$134.23 rendered in August 1986 is reasonable.

20. Complainants and defendant have waived the three-year statute of limitations for energy backbilling complaints established in D.86-06-035.

Conclusions of law

1. The relief requested in the complaint be denied.
2. SDG&E should be ordered to collect from complainants \$5,054.30 (\$4,920.07 + \$134.23) for electric service rendered.

ORDER

IT IS ORDERED that:

1. The relief requested in the complaint is denied.
2. San Diego Gas & Electric Company shall collect from complainants \$5,054.30 and may discontinue electric service to complainants within two weeks from the effective date of this order unless the bill due and owing in the amount of \$5,054.30, less amounts on deposit with the Commission, is paid in full.

3. The Executive Director is directed to pay to SDG&E all sums deposited by complainants in this case.

This order becomes effective 30 days from today.

Dated NOV 13 1987, at San Francisco, California.

STANLEY W. RULETT
President
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OZANIAN
Commissioners

Commissioner Donald Vial, being necessarily absent, did not participate.

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


Victor Weisser, Executive Director