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Decision 88 03 076 MAR 23 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Land Corporation, Complainant, vs. Pacific Gas and Electric Company, Defendant.	Case 86-04-022 (Filed April 10, 1986)

Thomas Yin and Linda L. Kelly, Attorneys at Law, for Pacific Land Corporation, complainant.
Lindsay How-downing, Attorney at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

Introduction

Rule 77.1 of the Commission's Rules of Practice and Procedure provides that in complaint cases a proposed decision of the assigned administrative law judge may be issued should the Commission find that such a procedure would be in the public interest. Although customer complaints are not ordinarily subject to this procedure, because of the nature of this case we believe the interest of the public would be well served with the issuance of a proposed decision. As provided in Rule 77.2, comments may be filed within 20 days after the date of mailing.

Background

Pacific Land Corporation (complainant) seeks a refund of $20,853.84, plus interest, for money it alleges was erroneously

paid to Pacific Gas and Electric Company (PG&E) for electric service.

Complainant is a corporation engaged in agricultural management of farmland in the San Joaquin Valley. The complainant alleged that complainant unknowingly and mistakenly paid the PG&E bill (account YTX 93-14509-5) for the operation of a 150-horsepower irrigation pump located at SW NW SW 36 26 26, McCombs 120, McFarland, California, from October 1984 through August 1985. It further alleged that at the time in question it did not have any direct or indirect interest in the operation of the subject pump and therefore was not responsible for the resultant charges for the electricity consumed.

PG&E denied that complainant was entitled to any relief and, citing its Electric Rule No. 1, requested that the complaint be dismissed for failure to state a cause of action. PG&E averred that the complainant was made the customer of record for its account YTX 93-14509-5 on September 6, 1984 pursuant to a telephone request to its Wasco office to place service in complainant's name to be effective that date. PG&E asserted that complainant was billed for all energy usage charged to that account from September 6, 1984 to September 16, 1985, at which time complainant informed PG&E by telephone that it would no longer be responsible for service charged to account YTX 93-14509-5.

Public hearing was held on July 11, 1986 in San Francisco at which time the matter was submitted subject to the filing of briefs.

By Decision (D.) 87-05-075 dated May 29, 1987 we determined that there was no negligence, mistake, or error in billing for the service on the part of PG&E and that in large measure complainant was the victim of its own careless accounting and business practice. Notwithstanding the fact that PG&E did not err in applying its Electric Rule 1, we ordered:

> "1. This proceeding shall be reopened for the following purposes:

"a. Receipt of further evidence regarding (1) the identity of the person who owned or controlled, and presumably received benefits from the use of, the agricultural pump serviced through PG&E account YXT 93-14509-5 during the period complainant paid the bills for that account; (2) the existence of any agreement between that person and another person whereby that other person assumed financial responsibility for bills for electric service rendered through the pump during the period complainant paid the bills; and (3) the existence of any other evidence that might negate the presumption that the person who received the benefits of, but did not pay for, service through account YTX 93-14509-5 did not intend to compensate PG&E fully for services rendered.

"2. If the evidence received upon further hearing indicates that the customer now receiving service to the pump represented by PG&E account YTX 93-14509-5 received service during the period complainant paid for service but did not intend to compensate PG&E fully for such service and did not have an agreement with another person whereby that other person would compensate PG&E for such service, then PG&E shall, under its tariff Electric Rule 11 A.6., commence proceedings to discontinue service to that customer if appropriate payment for services rendered to that customer cannot be obtained.

"3. If, during any proceedings commenced under PGE's Electric Rule 11 A.6., the customer billed for services which it received but which were paid for by complainant disputes its liability for those services and provides PG&E with convincing evidence showing an agreement between that customer and another person whereby that other person agreed to compensate PG&E for such service or in some other fashion negating the presumption that the customer intended to deny PG&E full compensation for services rendered, then PG&E shall cease any efforts to discontinue service to that customer and shall notify the Commission so that further

appropriate action can be taken to resolve this proceeding.

"4. If PG&E receives any compensation from any person for services already paid for by complainant, PG&E shall refund to complainant a similar amount, without interest.

"5. Within ninety days after the next hearing in this proceeding, PG&E shall report to the Commission regarding the status of any efforts taken to recover from any customer compensation for services rendered to that customer but paid for by complainant.

"6. A copy of this interim opinion, and notice of any further hearings held in this proceeding, shall be sent by certified mail to the customer who requested service at the pump represented by PG&E account number YXT 93-14509-5 after complainant terminated service at that location."

The Record on Further Hearing

Further hearing was held November 5, 1987 in San Francisco at which time the matter was submitted subject to the filing of briefs 14 days after the receipt of the transcript. Briefs were filed December 15, 1987.

Testifying for complainant was its vice president, Alvin Long, who introduced Exhibits 3 and 4. Exhibit 3 is a grant deed dated November 28, 1979 wherein Lester M. Saslow and Carole I. Rubinoff (Saslow), as joint tenants, took title to the land served by PG&E account YXT 93-14509-5. Exhibit 4 is a copy of the title as recorded in the Kern County Assessor's Office for the years 1984 and 1985 and carries the same legal description as that contained in Exhibit 3 also showing Saslow the owner.

Testifying for PG&E was Robert Stump, regional credit manager for the San Joaquin valley region. He stated that complainant became the customer of record for PG&E's Account No. YTX 9314509 on September 6, 1984, that the customer of record prior to complainant was California Ranch Management, and that except for

the last bill issued September 19, 1985 in the amount of $6,667.72, all bills from the date complainant became customer of record were paid by complainant. He stated that complainant was removed as customer of record for the account in question on September 19, 1985. He also stated he was unaware of any other party responsible for the account while complainant paid for the service. On cross-examination he stated, "The customer of record after Pacific Land Corporation was and still is Lester M. Saslow".

Complainant argues that because title to the property described in the grant deed (Exhibit 3) and the assessor's records (Exhibit 4) at the time of the service was in the name of Lester M. Saslow and Carol I. Rubinoff, the inference can be made that Saslow owned the irrigation pump and received the beneficial use thereof. The complainant states that after termination of service in the name of Pacific Land Corporation, service was restored in the name of Saslow and remains in that name at the present time. Complainant states that these facts indicate that the pump was owned by Saslow and used to irrigate property owned by Saslow and that because there was no agreement between Saslow and any other person it must be assumed that Saslow had no intent to compensate PG&E for service during the time in question. Based on this assumption complainant argues that PG&E should be authorized to discontinue electric service to Saslow's irrigation pump pursuant to PG&E's Electric Rule 11A.6. until Saslow pays for service received between September 6, 1984 and September 19, 1985.

PG&E states that complainant was established as the customer of record on September 6, 1984 pursuant to telephone call to its Wasco office and that the person requesting the change properly identified the account, billing name, billing address, and service location. It states complainant had set up by telephone two other accounts in the same area the week prior to the receipt of the disputed call.

PG&E argues that there is insufficient evidence to

establish the identity of the entity which controlled the pump or whether any individual intended to receive energy without paying for it. PG&E asserts that the evidence introduced may show ownership, but mere ownership does not imply control over a utility account. It states that agricultural land is often managed by an entity other than the land owner, and that this entity assumes responsibility, including financial responsibility, for farming the land. Similarly, according to PG&E, ownership of the land on which an apartment building is located does not imply control over the utility bills of the tenants.

PG&E states that the evidence complainant introduced identified several entities, including itself, who were connected with the land in question in one manner or another, but that no evidence was introduced supporting the inference that any entity other than complainant had assumed responsibility for the account or intended to deny PG&E compensation for energy used. It states that only complainant appeared at the hearing or testified.

PG&E states that D.87-05-075 recognized that (i) complainant is a customer of record under Electric Rule No.1 and responsible for bills issued in its name, (ii) complainant regularly paid these bills; and (iii) PG&E fully complied with its tariffs in billing complainant. As a public utility PG&E maintains it is not an insurer of customers bad business practices and where, as in this instance, it has complied with all statutes and filed tariffs, it should not be at risk for apparent wrongs suffered by a customer.

PG&E states further that it recognizes the Commission's desire to ascertain the true facts in this matter; but it believes that desire improperly interjected the Commission and PG&E into complainant's private dispute with a third party. PG&E asserts that its obligations ceased once the Commission found that complainant was the customer of record pursuant to Rule 1, and it now has no obligation to ascertain whether some other entity

besides the customer of record should be responsible for payment or to attempt to collect amounts already paid by the customer from that other entity. It states that to require a utility to determine who is equitably responsible for a customer's bill could have unintended and far reaching consequences.

PG&E also states that to require it to ascertain the "equitable" customer constitutes an inequitable burden, and raises the spectre of prolonged continuing proceedings despite the finding that complainant is the customer of record and responsible for the account. PG&E states that the evidence introduced by complainant shows that a third party, California Ranch Management, managed the property where the pump is located during the time in question and that complainant was a packer and marketer with a harvesting contract on the very land where the pump is located. Complainant also introduced evidence that prior to the time complainant became customer of record, California Ranch Management was the customer of record.

If, upon discovery of the responsible entity, it institutes termination proceedings, PG&E believes the alleged responsible entity will probably file a complaint, thereby prolonging resolution of the matter. Further, since it must notify the Commission if some other entity appears to be equitably responsible for the account and report on the status of efforts to recover the amounts to be repaid complainant, PG&E believes there may be further future difficulties if complainant asserts that PG&E's collection efforts are insufficient, thereby embroiling the Commission in the controvery over what constitutes sufficient action against a third party.

PG&E states that it is not its obligation as a utility to pursue complainant's remedies nor one in which the Commission need involve itself once a finding has been made that complainant was the customer of record (Finding 5 of D.87-05-075). It states that Conclusion of Law No. 9 of D.87-05-075 provides that if the record

in the reopened proceeding suggests that the complainant has been the victim of a fraudulent effort to have electric service paid for by complainant, complainant may initiate appropriate civil or criminal action in a proper forum. PG&E states that if complainant believes it was the victim of fraud, its remedies are against the perpetrator of the fraud and not PG&E and that no further record at the Commission is necessary for complainant to proceed against such other entity.

Finally, PG&E asserts there is an outstanding balance of $6,667.72 on complainant's account and that if any additional reimbursement is received, it should be applied to the outstanding balance of complainant's account, since other ratepayers should not be asked to absorb this amount.

Discussion

The undisputed facts herein are that an unidentified person requested PG&E to place account YTX 93-14509-5 in complainant's name,[1] that complainant paid the tendered bills for service to that account for eleven months before discovering it was not managing the area where the account was located, and that PG&E refused to refund the payments made citing Electric Rule No. 1.

The evidence introduced by complainant at the hearing held November 5, 1987 was that Saslow is the owner of the land where the agricultural pump served by the account at issue is located; that Saslow owns California Ranch Management; that California Ranch Management was the customer of record for the agricultural pump at issue before and that Saslow was the customer of record after the period during which complainant paid the bills; that California Ranch Management managed the property during the

1 In requesting that the service be placed in complainant's name, the caller correctly identified the account, the billing name, billing address, and service location.

period in question; and that complainant was a packer and marketer with a harvesting contract on the land. Complainant's witness testified that Bob Denny, the executive vice president of California Ranch Management, told him that Lester Saslow was the owner of California Ranch Mangement. The witness also testified that he had observed California Ranch Management foreman Greg Galloway and his crew irrigating the McCombs 120 property in September, 1984, and that there was never any agreement between complainant and the person who either owned or controlled McCombs 120 that complainant agreed to assume any financial responsibility for the pump in question.

There was no evidence that California Ranch Management or its owner Lester Saslow ever indicated any intention to stop being the customer of record for this account during the disputed billing period, or that complainant ever agreed with Saslow to become responsible for that account. While the evidence shows that complainant may have had a packing or harvesting agreement covering the land served by the pump, there is no evidence that it ever agreed to be responsible for electric bills for the pump serving that land. Indeed, the evidence in this case is wholly to the contrary. The only evidence that could in any way support a finding that complainant agreed to be responsible for the account is the fact that it paid the bills for the account for some time. From this, defendant infers that complainant agreed to be responsible.

What we have here is in a sense a battle of inferences. On the one hand, PG&E infers that complainant accepted responsibility for the account because it unwisely paid the bills for account # YTX 93-14509-5, bills it initiallly had no obligation to pay. This position is not an unreasonable one, and is consistent with PG&E's Electric Rule 1.

On the other hand, complainant notes that a different inference can just as easily be drawn from the facts of this case.

PG&E's Electric Rule 11 A.6. permits a utility to threaten disconnection of service pending payment of the bill in situations where there is evidence that a customer does not intend to compensate PG&E fully for services rendered. The facts that Saslow was the owner of California Ranch Management, the customer of record before the period during which complainant mistakenly paid the bills and that Saslow became the direct customer of record after that period; the absence of any evidence that California Ranch Management or its owner Saslow ever indicated to PG&E any desire to cease being the customer of record during the disputed billing period; the absence of any evidence of any agreement between Saslow and complainant whereby complainant agreed to assume responsibility for the account in question; the fact that complainant vigorously denies such an agreement, and the fact that any inference of complainant's responsibility for the account is based solely on its careless bill payment practices strongly support the inference that Saslow had no reason to believe someone else had agreed to pay his bills, and having no reason to expect free electricity from PG&E, must have intended to deny PG&E full compensation for services rendered. Under Electric Rule 11 A.6., PG&E has the right to threaten disconnection of Saslow's service based on the above evidence which supports the reasonable inference that Saslow did not intend to compensate it fully.

The question the Commission is faced with is whether PG&E should be required to apply Electric Rule A.6. based on the evidence supporting the inference that Saslow did not intend to compensate it fully for services rendered, or whether the matter should end with the simple determination that complainant was a customer of record as defined by Electric Rule 1 and is therefore stuck with the bills it unnecessarily paid. If the later determination is made, the Commission must then decide whether to require PG&E to amend Electric Rule 1 to state that there is only a rebuttable, and not a conclusive, presumption that a person

regularly paying the bills is a customer of record. This case certainly points out how the present tariff can lead to inequitable results.

Two tariff rules are potentially applicable to the facts before us. The decision before us is not whether to hold PG&E harmless from complainant's request for a refund because its actions are consistent with one tariff rule or to go outside our legitimate jurisdiction to fashion a remedy for a perceived inequity. Rather, the question is whether in this case we should require PG&E to exercise its option under Electric Rule 11 A.6. instead of resting our result on the fact that Electric Rule 1 could be applied. We are faced with deciding which tariff rule is most appropriately applied in this case.

While we fully acknowledge that we are not a court of general jurisdiction that can or should fashion equitable remedies for all wrongs perceived by the parties before us, we do not believe we are constrained from taking simple equity into account when interpreting these rules. There is rarely a single correct way to resolve the issues and disputes before us. While in some cases the proper interpretation of the constitution, laws, regulations, and tariffs we are responsible for enforcing is so straightforward as to leave litle discretion in our resolution of the issues, in many more there is simply no single appropriate way to determine the outcome. In these cases, the Commission's discretion and sense of fairness quite properly play a large role in the outcome.

For example, in utility general rate cases it is the Commission's responsibility to ensure that rates are "just and reasonable." In these cases, the Commission must decide how to allocate costs and set rates for various customer classes. A great number of different cost allocation and ratemaking formulae may be used with equal legitimacy. Sometimes the cost allocation or ratemaking formula we find most intellectually satisfying may

result in rate impacts we are uncomfortable imposing on certain customer classes. In such cases, we have been known to impose rate caps or limiters simply because our collective heart, or internal sense of justice, tells us that to do otherwise would in some way be unfair. These actions are in now way wrong; they represent a perfectly appropriate exercise of our broad ratemaking discretion. Our ratemaking determinations will be upheld so long as they fall within a broad "zone of reasonableness."

In a complaint case such as the present, where there are two tariffs that could be applied to the facts, the Commission is perfectly within its rights to require the application of the tariff it determines will lead to the most equitable result. While it is frequently simpler to go with a tariff provision that tidly wraps up a case with no loose ends than to apply a tariff provision that requires a greater resource commitment on the part of the Commission, it is not always the most satisfactory way to resolve a case.

As an administrative agency, the Commission's duty is to administer those constitutional provisions, statutes, general orders, rules and regulations, and tariffs that govern the relationship between a public utility and its customers.

The Commission is not limited in the exercise of its expertise and statutory authority by the solutions proposed by litigants. (Market Street R. Co. v. Railroad Commission of California, 324 U.S. 548, 560-61; City of Visalia (1969) 69 CPUC 311, 319; Farrington v. Citizens Utilities of California (1988) D.88-01-050 (January 28, 1988), ___CPUC 2d___, Slip Opinion at 18.) The Commission may fashion its own solutions to controversies before it as necessary to carry out its regulatory responsibilities.

In this case, we find it necessary to require PG&E to apply Electric Rule 11 A.6. to the facts of this case and to submit a bill to Lester Saslow under threat of disconnection since we

believe the evidence of the actions of Mr. Saslow and the conditions on his premises supports the inference that Mr. Saslow did not intend to compensate PG&E fully for services rendered during the period complainant was paying the bills for Account YTX 93-14509-5. Under PG&E's Electric Rule 11 A.6., the utility "may discontinue service if the acts of the customer or the conditions upon his/her premises indicate an intent to deny the Utility full compensation for services rendered, including, but not limited to, tampering or unauthorized use."

The evidence presented at the further hearing shows that Lester Saslow, the customer who requested service for the pump in question after complainant terminated service, owned or controlled the pump through his corporate alter ego, California Ranch Management, and benefited from the service provided to the pump throughout the period complainant paid the bills. Saslow could not reasonably expect PG&E to provide electric service for free. Since there is no evidence of any agreement between Saslow and another person whereby that other person agreed to pay for service to the pump, we conclude that Saslow did not intend to compensate PG&E fully for services rendered and will direct PG&E to commence proceedings under its Electric Rule 11 A.6. to discontinue service to Saslow if full compensation cannot be obtained.

Ownership of land is not conclusive of responsibility for utility services to that land, but land ownership, when coupled with ownership of a farm management company farming the land, with the fact that the farmer management company was a customer of record before a disputed billing period, with the absence of any evidence that the farm management company or its owner ever indicated to PG&E a desire to cease being the customer of record during that disputed billing period, with the fact that the land owner himself became the customer of record after the disputed billing period, and with the absence of any evidence that the party disputing the billing during that period ever agreed to assume

responsibility for the account in question, strongly suggests that the land owner may be responsible for utility services during the disputed billing period.

All that is required before PG&E can proceed under Electric Rule 11 A.6. is that the acts of the customer or conditions upon his or her premises indicate an intent to deny PG&E full compensation for services rendered. In the absence of further explanation, the receipt of electric service for roughly one year, without the payment of any bills for that service, indicates intent to deny the utility full compensation for services rendered.

Electric Rule 11 A.6. is a tariff provision necessary to allow PG&E to ensure that it is fully compensated for services rendered. This rule is commonly used when PG&E has evidence that someone has tampered with an electric meter or in some other fashion obtained without authorization the benefits of electric service from the utility. Before service is terminated under Electric Rule 11 A.6., the customer is presented with an estimated bill for electric service rendered by PG&E but not paid for by the customer. If the customer pays the bill, the matter ends there. If the customer disputes the bill, he or she may request an explanation from the utility or file a complaint with the Commission.

Once PG&E bills Saslow for the service rendered through account number YTX 93-14509-5, Saslow will have two basic options. Saslow can pay the bill, in which case PG&E can refund to complainant the money it paid on this account, or Saslow can dispute the bill through the procedures outlined above. If Saslow provides PG&E with convincing evidence of an agreement between Saslow and another person whereby that other person agreed to compensate PG&E for service rendered to Saslow at the disputed pump location, and thus rebuts the evidence indicating a lack of intention to compensate PG&E fully, then an effort to discontinue service to Saslow under Electric Rule 11 A.6. would no longer be

appropriate. If, on the other hand, Saslow provides no evidence to dispell the presumption that he did not in fact intend to compensate PG&E fully for services rendered, then the utility should continue to seek compensation from Saslow under Electric Rule 11 A.6. In any event, Saslow could retain, or regain, service by paying for past services received and for any reconnection charges that may be appropriate under Electric Rule 11 B. Under Electric Rule B.2., PG&E can also collect any unusual costs incident to the discontinuance or restoration of service which may have resulted from the customer's action or negligence.

Lest PG&E worry about potential civil liability arising from any action taken under Electric Rule A.6., we note that Electric Rule 11 A.9. provides that:"If the Utility shall refuse or discontinue service to a person or customer for any of the reasons...specified in Subsection A.2. through A.8., it shall incur no liability whatsoever to said person or customer...."

We feel the need to restate our earlier position that if complainant believes it has been defrauded by Mr. Saslow or any other person with regard to the billing for the PG&E account in question, it should initiate a civil or criminal action in the an appropriate forum. We are here requiring PG&E to take action under a tariff other than the tariff the utility feels is most applicable to the facts of this case out of our desire to reach the most equitable resolution of the dispute before us. We could have resolved the matter by accepting PG&E's argument that its responsibility ends with the collection of the bill from one who fits the Electric Rule 1 definition of a "customer, and that complainant's losses here are the result of its own poor business practices. We nonetheless felt it was necessary to make this one final effort to seek payment from the person we believe is the most probable benficiary of the energy paid for by complainant. Whether or not our efforts result in PG&E recovering money from another which can be used to reimburse complainant for the bills it

unnecessarily paid, we feel we have the right to expect Complainant to exert on its own behalf the effort needed to ensure that any person who may have defrauded it is properly dealt with.

As we stated in D.87-05-075, complainant is still a "customer" under Electric Rule 1, and thus continues to be responsible for the bills it already paid. If PG&E ultimately recovers money from someone else for the service paid for by complainant, we will order PG&E to refund to complainant a similar sum. If PG&E fails to recover any money for that service, then complainant will continue to bear the cost of its carelessness. We will not require PG&E to pay complainant interest on the disputed sum, which would not have accrued if complainant had maintained an adequate accounting procedure.

We wish to make clear that this is close to the final step we will require PG&E to take before bringing this matter to a close. The final step will be to report to the Commission within 90 days on the progress made in billing Mr. Saslow pursuant to Electric Rule 11 A 6. We anticipate issuing a final order in this case once that report is in.

Findings of Fact

1. Complainant is a corporation engaged in agricultural farmland management in the San Joaquin Valley.

2. Complainant paid PG&E $20,853.84 (PG&E account YTX 93-14509) for electricity to operate an irrigation pump from September 6, 1984 through the billing period ending August 1985 on property it was not managing and had no other direct or indirect interest in.

3. PG&E has billed complainant an additional $6,667.72, which represents the outstanding balance accrued on complainant's account; complainant refused to pay this balance after it realized it had no direct or indirect interest in the property served by the irrigation pump and notified PG&E that it would no longer be responsible for the disputed account.

4. PG&E account YTX 93-14509-5, previously in the name of California Ranch Management Associates, was listed in complainant's name effective September 6, 1984 after a telephone request to PG&E's Wasco office on that date from a person identified only as "Rich or Richard."

5. The monthly bill for service from September 6, 1984 through the billing period ending in August 1985 clearly identified the account number and the pump location. The bills submitted for the account were approved by complainant's vice-president and paid without comment.

6. Title to the land on which PG&E account YXT 93-14509-5 is located is in the name of Lester M. Saslow and Carole I. Rubinoff, as joint tenants.

7. The present customer of record for PG&E account YXT 93-14509-5 is Lester M. Saslow.

8. It would be preferable, from the standpoint of simple equity, to require a person who received benefits from the use of the electricity complainant paid for to compensate PG&E for that electricity so that PG&E could refund to complainant the bills it carelessly paid.

9. It is apparent from the present record that Lester M. Saslow, the customer who requested service for the agricultural pump represented by account YTX 93-14509-5 after complainant terminated service, is the same person who, either personally or through his farm management corporation California Ranch Management, owned or controlled, and presumably received benefits from the use of, the agricultural pump during the period complainant paid the bills for that service.

10. Complainant's witness testified that Bob Denny, the executive vice president of California Ranch Management, told him that Lester Saslow was the owner of California Ranch Mangement.

11. California Ranch Management foreman Greg Galloway and his crew were observed irrigating the McCombs 120 property in

September, 1984.

12. There was never any agreement between complainant and the person who either owned or controlled McCombs 120 that complainant would assume any financial responsibility for the pump in question.

13. There is no evidence that California Ranch Management or Lester Saslow ever indicated any intention to stop being the customer of record for PG&E account YTX 14509-5 during the disputed billing period.

14. There is no evidence that complainant ever agreed with Saslow or anyone else to become responsible for PG&E account YTX 14509-5.

15. While complainant may have had a packing or harvesting agreement covering the land served by the pump, there is no evidence that it ever agreed to be responsible for electric bills for the pump serving that land.

16. The only evidence that could in any way support a finding that complainant agreed to be responsible for the account is the fact that it paid the bills for the account for some time. From this, defendant infers that complainant agreed to be responsible.

17. It is not clear from the present record whether Lester M. Saslow had an agreement with another person which could have lead to a reasonable belief that the other person was paying the bills during the period complainant actually paid them; it is clear that if such an agreement existed it was not with complainant.

18. No customer could reasonably expect PG&E to provide electric service for free. If a customer receives, but does not pay for, electricity for roughly one year, then, in the absence of any evidence that another person agreed to be responsible for the cost of that electricity, it is reasonable to assume that the customer did not intend to compensate PG&E fully for services rendered.

19. The record in this proceeding does not reveal the existence of any evidence that might negate the presumption that

Lester M. Saslow, the person who appears to have received the benefits of, but did not pay for, service through account YTX 93-14509-5 did not intend to compensate PG&E fully for services rendered.

20. If the actions of a customer or the conditions upon his or her premises indicate an intent to deny PG&E full compensation for services rendered, PG&E may take action under PG&E's tariff Electric Rule 11 A.6. to discontinue service to that customer.

21. The evidence presented supports an inference that complainant may have been the victim of duplicity on the part of a party intending to receive energy without payment or to deny PG&E full compensation for services rendered.

Conclusions of Law

1. PG&E complied with all constitutional provisions, statutes, general orders, rules and regulations, and filed tariffs in its dealings with complainant.

2. Under its tariff Electric Rule 1, PG&E was justified in assuming that complainant was responsible for the account. There are, however, other PG&E tariffs which can legitimately be applied to the facts of this case which may lead to a more equitable result.

3. The Commission may properly determine which of two or more potentially applicable tariffs should be applied to the facts of a particular case.

4. Ownership of land is not conclusive of responsibility for utility services to that land, but land ownership, when coupled with ownership of a farm management company farming the land, with the fact that the farmer management company was a customer of record before a disputed billing period, with the absence of any evidence that the farm management company or its owner ever indicated to PG&E a desire to cease being the customer of record during that disputed billing period, with the fact that the land

owner himself became the customer of record after the disputed billing period, and with the absence of any evidence that the party disputing the billing during that period ever agreed to assume responsibility for the account in question, strongly suggests that the land owner may be responsible for utility services during the disputed billing period.

5. The record herein supports the inference that Lester M. Saslow, either personally or through his farm management corporation California Ranch Management, received utility service from PG&E to operate an irrigation pump served by PG&E account YTX 93-14509-5 from September 6, 1984 through the billing period ending August 1985, with the intent to deny PG&E full payment for that service.

6. PG&E should apply Electric Rule 11 A.6. to the account of its customer, Lester M. Saslow, and seek to recover from Lester Saslow and/or his farm management corporation California Ranch Management $27,521.56 for electricity to operate an irrigation pump served by PG&E account YTX 93-14509-5 on property he owned and/or controlled from September 6, 1984 through the billing period ending August 1985 because the record in this proceeding supports the inference that Saslow did not intend to compensate PG&E fully for these services rendered.

7. Under PG&E's tariff Electric Rule 11 A.9., PG&E is not liable to any person or customer for discontinuing electric service to a customer pursuant to Electric Rule 11 A.6.

8. If a customer whose service is subject to discontinuance under PG&E's tariff Electric Rule A.6. because of a lack of intent to compensate PG&E fully for services rendered does in fact compensate PG&E fully for such services, then it would be reasonable for PG&E to continue providing electric service to that customer or to re-institute electric service to that customer, depending on the status of that customer's service at the time such compensation is paid.

9. If PG&E recovers money from another person for services carelessly paid for by complainant, PG&E should refund to complainant a similar sum.

10. PG&E should not pay interest on any money refunded to complainant, in light of the fact that the substantial sum paid by complainant would not have accrued if complainant had followed reasonably diligent accounting procedures; PG&E and its customers should not be required to pay interest on a sum at issue largely because of complainant's carelessness.

11. If complainant has evidence that someone transferred the billing for account YTX 93-14509-5 to complainant with the intent to defraud complainant into paying that person's bills, then complainant should initiate appropriate civil or criminal litigation in a proper forum.

O R D E R

IT IS ORDERED that:

1. Since the evidence received upon further hearing indicates that, Lester M. Saslow, the customer now receiving service to the pump represented by PG&E account YTX 93-14509-5 received service during the period complainant paid for service but did not intend to compensate PG&E fully for such service and did not have an agreement with another person whereby that other person would compensate PG&E for such service, PG&E shall, under its tariff Electric Rule 11 A.6., commence proceedings to discontinue service to that customer if appropriate payment for services rendered to that customer cannot be obtained.

2. If, during any proceedings commenced under PGE's Electric Rule 11 A.6., the customer billed for services which it received but which were paid for by complainant disputes its liability for those services and provides convincing evidence showing an

compensation for services rendered to that customer but paid for by complainant.

5. A copy of this interim opinion shall be sent by certified mail to Lester M. Saslow, the customer who requested service at the pump represented by PG&E account number YTX 93-14509-5 after complainant terminated service at that location.

This order becomes effective 30 days from today.

Dated March 23, 1988, at San Francisco, California.

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

I dissent.

/s/ STANLEY W. HULETT
Commissioner

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

Victor Weisser, Executive Director

agreement between that customer and another person whereby that other person agreed to compensate PG&E for such service or in some other fashion negating the presumption that the customer intended to deny PG&E full compensation for services rendered, then PG&E shall cease any efforts to discontinue service to that customer and shall notify the Commission so that further appropriate action can be taken to resolve this proceeding.

3. If PG&E receives any compensation from any person for services already paid for by complainant, PG&E shall refund to complainant a similar amount, without interest.

4. Within ninety days after the effective date of this interim opinion, PG&E shall report to the Commission regarding the status of any efforts taken to recover from any customer compensation for services rendered to that customer but paid for by complainant.

5. A copy of this interim opinion shall be sent by certified mail to, Lester M. Saslow, the customer who requested service at the pump represented by PG&E account number YTX 93-14509-5 after complainant terminated service at that location.

This order becomes effective 30 days from today.
Dated MAR 23 1988, at San Francisco, California.

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

I will file a written dissent.

STANLEY W. HULETT
Commissioner