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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

C & N Properties, Complainant, vs. Pacific Gas and Electric Company, Defendant.	Case 87-11-027 (Filed November 23, 1987)

O P I N I O N

Complainant C & N Properties (C&N) requests that the Commission order defendant Pacific Gas and Electric Company (PG&E) to pay C & N $1,440 in additional rebates for conservation measures installed under a PG&E conservation rebate program (program). In November 1985 C & N requested PG&E to perform an energy audit on an apartment building (building) it had recently purchased, located at 3845 Harrison Street in Oakland. At that time the Cashback program for residential customers was in effect, and the 1986 Direct Rebate (Direct) program for commercial customers was to be available shortly. Apartment buildings are unique in that they are eligible for rebates under either program since they are considered both commercial and residential. The customer could select either program but not both for the same conservation measures.

PG&E performed the audit and provided an informational package by letter of December 5, 1985 from Thomas Hunter (Hunter) to Timonthy Canty (Canty) with an attached Energy Management report. That package furnished information about the types of conservation measures that qualify for rebates and included forms to be used in applying for rebates under the Cashback program. Early in 1986 C & N proceeded to install the conservation measures, consisting primarily of the conversion of lighting fixtures

from incandescent to fluorescent. Since the Cashback program had already terminated, C & N filed forms with PG&E in August of 1986 requesting the rebates under the Direct program. PG&E informed Canty that the fixture conversions qualified for only $5 per unit rebates rather than $20 as applied for, and by letter of January 9, 1987 provided a rebate check to C & N in the amount of $900, based in part on $5 each for the 96 fixtures converted. The balance of the $900 was due to other conservation measures installed by C & N, that are not a part of the dispute.

At the hearing on March 14, 1988, C & N was represented by Canty, managing general partner for C & N. PG&E presented the testimony of two witnesses, Hunter, a conservation representative for PG&E, and Mr. Russell N. Penrose (Penrose), who was an energy management representative for PG&E in November 1985 when C & N initiated the contact with PG&E on conservation rebates.

Canty testified that he had prior experience with PG&E programs and knew that in addition to the rebates, significant electricity savings would result from converting the fixtures in the building. He contacted PG&E to arrange a meeting, met Hunter at the building on November 26, 1985, discussed his plans and needs and received information and advice. Hunter told him that the Cashback program would be ending soon but that the Direct program would be available and might offer some advantages.

The complaint relates to fixtures that Canty thought qualified for a $20 rebate but PG&E determined were eligible for only $5 each. The $1,440 C & N is requesting is based on 96 fixtures converted times an additional $15 per fixture, the difference between the $20 requested and $5 received.

The complaint focuses on interpretation of the Direct program category D5 (D5), incandescent to fluorescent fixture conversion. Screw-in fluorescent fixtures or their hardwire equivalents do not qualify under D5. Hardwire equivalents are fixtures that are wired to the circuit wiring rather than being

screwed into a lighting receptacle. Canty believes that, based on the illustrations of fixtures in the program, the C & N conversions are not hardwire equivalents and therefore qualify for $20 rebates under D5.

In his testimony Canty addressed two additional questions. Was the information provided by Hunter misleading or inaccurate? If it was, should Canty have realized it and sought further information?

Regarding the first question Canty believes that confusion over what qualified under D5 resulted in PG&E later issuing an East Bay Region Fact Sheet on the Direct program that provided more detailed information on eligibility of fixtures under D5. That document states that minifluorescent lamps or fixtures are not eligible even if hardwired. However, the document was apparently not available to Canty in time to assist in this case. Finally, Canty believes that C & N's installations are saving electricity.

Hunter testified that his contact with Canty dealt almost totally with the Cashback program and that he would only have mentioned the existence of the Direct program rather than the details of it. Since the Direct program was a commercial program Hunter stated that he would not have had detailed knowledge of it. He made it clear to Canty that he was a residential representative as indicated on his business card. Hunter further testified that he would not necessarily suggest to a customer such as Canty that he contact another PG&E representative for details on a commercial program, even if he mentioned the existence of it.

The rebates allowed for some of the fixtures installed by C & N were greater under the Cashback than the Direct program. To qualify before phase out of the Cashback program customers were required to have a completed application filed with PG&E by January 20, 1986 and complete the installation by April 20, 1986.

Penrose testified that PG&E's Direct program was set up to rebate approximately 30 to 40% of the cost, not including installation, of the qualifying fixtures. D5 category fixtures are long tube fluorescents that cost $60 to $120 each. The small wattage fluorescents of the type installed at the building cost in the range of less than $10 to $40, so the $5 rebate would be slightly lower than the usual 30-40%, assuming average costs of $20 to $40. Since the actual costs of C & N's conversions range from $23.93 to $34.34 per unit, plus tax, excluding installation costs, $20 rebates would be far above the 30-40% level.

Discussion

We will first address the adequacy of PG&E's dealings with Canty about the programs and whether they misled or inadequately informed him, i.e., should he have been able to make an informed decision based on the information provided? We will then determine whether the rebates PG&E paid for C & N's fixture conversions are reasonable.

We conclude that the misunderstanding between Canty and Hunter could have been avoided if PG&E had given Canty more complete information. For example, although Hunter sent Canty a letter with an energy management report and Cashback program information attached, he furnished no information on deadlines for participation in or phase out of that program. He sent no information on the Direct program. Canty apparently obtained the forms for the Direct program after a later contact with PG&E. Although Hunter did mention to Canty that the Cashback program would end soon, he left Canty with the understanding that the Direct program would be at least as advantageous for rebates.

We also find that Hunter's testimony regarding his recollection of his conversation with Canty about the Direct Rebate program was vague. We are particularly troubled with Hunter's testimony regarding his area of responsibility (Tr. p. 20), "I made it clear I was a residential conservation representative. It says

so on my business card." Yet his business card produced at the hearing and his letter of December 5, 1985 to Canty identify him only as a Conservation Representative. Therefore, we believe that Canty was reasonable in assuming that Hunter represented PG&E's programs generally, not just residential programs.

Next, we consider whether Canty should have sought more information on the Direct program since he knew that the Cashback program was terminating soon and that his installation might not be within the eligible period for that program. Canty did contact PG&E to obtain forms to apply for rebates under the Direct program. Based on the illustrations, he believed that his fixtures were eligible for $20 rebates. The information furnished was ambiguous in that regard and certainly could have been interpreted to include C & N's fixtures under D5. Furthermore, this interpretation seemed to be consistent with information he received from Hunter, that the Direct program might offer some advantages, in this case $20 instead of $14 rebates under the Cashback program. Also, when Canty decided to proceed with the conservation measures, he did not have the East Bay Fact Sheet which explained that C & N's lighting conversions would not qualify for the $20 rebate.

Considering the evidence, we conclude that Canty acted in good faith and reasonably under the circumstances. Hunter, by mentioning the Direct program to Canty assumed the responsibility for assuring that he had adequate information on both programs, including the required timing of completion, on which to make an informed decision.

Finally, we consider the proper level of rebates due C & N. We agree with PG&E that C & N's fixtures do not qualify for $20 rebates under D5 based on the Fact Sheet. That document clearly identifies the types of fluorescent fixtures that are eligible, and excludes the types installed by C & N. However, in our view, the earlier information furnished to Canty by Hunter did not make that clear distinction and contributed to his

misunderstanding. The Fact Sheet was furnished to Canty after the post-installation audit.

Additionally, the Cashback program offered higher percentage of cost rebates than the Direct program rebates testified to by Penrose. For example, the $14 rebate available on fixtures of the type C & N installed indicates a rebate of about 60%. The Cashback guidelines also state that if the cost of a measure is less than the rebate amount, the lesser amount would be rebated, indicating that rebates up to 100% were allowed. We conclude that the 30 to 40% rebate relates only to the Direct program and not to the Cashback program.

We conclude that PG&E did not adequately inform Canty regarding the two programs available in late 1985 and early 1986. It was PG&E's responsibility to inform Canty about the termination date of the Cashback program, and to timely provide the information contained in the Fact Sheet regarding nonqualifying fixtures under D5 of the Direct program. We conclude that C & N should not be penalized for its good faith efforts that were hampered by inadequate information from PG&E. However, C & N should not profit by receiving $20 rebates that are greater than the amount allowed under either program for the fixtures converted. C & N should receive the $14 per unit rebates that were available under the Cashback program at the time Canty discussed C & N's needs with Hunter. It is reasonable to waive compliance with the termination date of the Cashback program in this instance. Accordingly, we will order PG&E to increase C & N's rebates by $9 per unit, the difference between $14 and the $5 already rebated, for a total increase of $864 for the 96 fixtures.

Findings of Fact

1. C & N filed a complaint seeking an additional rebate of $1,440 based on $20 per unit for fixture conversions under PG&E's Direct program, instead of the $5 per unit allowed by PG&E.

2. In November, 1985 C & N requested an energy audit from PG&E at a building it owns at 3845 Harrison Street in Oakland.

3. PG&E had two conservation rebate programs in effect at that time or shortly thereafter, the Cashback program for residential customers and the Direct program for commercial customers.

4. Apartment buildings are eligible under either program since they are considered both commercial and residential.

5. Hunter met with Canty at the building, discussed conservation measures, and later furnished Cashback forms and an energy management report on the building.

6. Hunter's responsibility at PG&E involved residential conservation programs only, although his title was Conservation Representative.

7. Hunter mentioned the existence of the Direct program to Canty.

8. PG&E did not inform Canty of the phase out schedule and deadline for filing for rebates under the Cashback program.

9. In early 1986 C & N installed conservation devices eligible for rebate under PG&E's programs.

10. C & N filed forms with PG&E in August, 1986 under the Direct program requesting rebates of $20 per fixture under category D5 for lighting conversions. The Cashback program had terminated by that time.

11. PG&E audited the installation and later determined that the lighting conversions did not qualify for $20 per unit under category D5 but rather qualified for $5 per unit under category D3, screw-in fluorescent lamps.

12. The actual costs of C & N's lighting conversions ranged from $23.93 to $34.34 per unit, plus tax and excluding installation costs.

Conclusions of Law

1. PG&E inadequately informed Canty regarding the two programs available in late 1985 and early 1986 for residential and commercial customers.

2. It was PG&E's responsibility to inform Canty about the termination date of Cashback program and to timely provide the information contained in the Fact Sheet regarding fixtures that qualify under D5 of the Direct program.

3. C & N's fixtures do not qualify for $20 per unit rebates under the Direct program.

4. C & N acted in good faith and should be justly compensated for installing qualified conservation measures.

5. Since C & N's fixtures were installed based on the information known to Canty at that time regarding the Cashback program, it is reasonable to waive compliance with the termination date of the program and base C & N's compensation on the rebate applicable under the Cashback program.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company shall provide to C & N Properties additional rebates of $9 per unit for total rebates of $14 per unit for the 96 lighting fixture conversions installed in 1986 by C & N Properties at the apartment building it owns at 3845 Harrison Street in Oakland. The total amount of the additional rebates is $864 which shall be paid 15 days after the effective date of this decision.

2. Except to the extent granted, the complaint in Case 87-11-027 is denied.

This order becomes effective 30 days from today.

Dated JUL 8 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

Commissioner Frederick R. Duda being necessarily absent, did not participate.

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

Victor Weisser, Executive Director