

ORIGINAL

Decision 89 02 059 FEB 24 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jack and Alex Mendrin,)
)
 Complainants,)
)
 vs.)
)
 Pacific Gas and Electric Company,)
)
 Defendant.)

Mailed
 FEB 27 1989
 Case 88-09-049
 (Filed September 23, 1988)

Jack D. Mendrin, for himself and Alex Mendrin,
 complainants.
Roger J. Peters and Mark R. Huffman,
 Attorneys at Law, for Pacific Gas and
 Electric Company, defendant.

O P I N I O N

In this proceeding Jack Mendrin and Alex Mendrin (complainants) seek a decision finding that almost \$8,000 in charges billed them by Pacific Gas and Electric Company (PG&E) for the use of electricity were improperly assessed.

In its answer to the complaint PG&E denied each material allegation. The defendant admitted that complainants placed several agricultural accounts on Agricultural Rate Schedule AG-6 of PG&E's tariff, and that in June 1988 it billed complainants \$7,864 for amounts due under the minimum bill provisions of the tariff for four of those accounts. PG&E asserts that it has at all times complied with the provisions of its tariffs on file with the Commission, and requests that the complaint be dismissed. The case was heard before Administrative Law Judge (ALJ) John Lemke in Madera on November 22, 1988, and was submitted with the filing of the transcript December 23, 1988.

Evidence

Complainants

Jack Mendrin was the only witness for complainants. He testified that in the spring of 1987 he received information concerning the opportunity to use the lower agricultural rates contained in Schedule AG-6 of PG&E's tariff, inquired about their application to his and his brother's farmland located southwest of Madera, and signed an agreement in May 1987 for assessment of the rates.

The witness stated that he is, first and last, a farmer, and is not adept at reading tariffs. To illustrate his confusion over application of these new rates, Mendrin testified, three of the accounts (pumps) covered by the agreement apply in connection with the watering of trees and vines; usage would have to triple on these three accounts before charges under the AG-6 rates could be cheaper. He did not consider it possible that the minimum bill provisions of the Schedule AG-6 rates could apply to such service.

A copy of the contract covering the subject service is included with the complaint as Exhibit B. It contains a typewritten reference to one account. Five other account numbers were added in pencil to the agreement by Jack Mendrin, he testified. The six accounts represent all the pumps operated as a partnership by Jack and Alex Mendrin, doing business as Mendrin Farms. During three telephone discussions with PG&E representatives, Mendrin stated, concerning the decision on whether to sign up for the AG-6 rates, no mention was made of minimum bills applicable thereunder.

The contract provides that it "shall continue in force for the term of one year from and after May 1987." The spaces in the agreement for the date of execution of the contract, and for the signature of a representative of PG&E, were left blank. The contract is drafted on a PG&E blank form, with the typewritten name "PACIFIC GAS AND ELECTRIC COMPANY" appearing at the bottom of the

conditions. Mendrin testified that he thought there may have been time of use (TOU) meters installed on complainants' premises during the subject billing period. Mendrin asked that if the Commission finds that complainants must pay the amounts billed by PG&E, they be allowed to do so on an instalment basis.

Defendant

Defendant presented its case principally through the testimony of Janet Redmond, currently a program manager for PG&E, and agricultural representative for PG&E's Yosemite Division between February 1987 and May 1988. She testified essentially as follows:

1. The Mendrins were on Schedule PA-1B, a flat rate schedule, immediately prior to their switching to the AG-6 rates in May 1987. Agricultural customers were notified of the new rates in late April 1987.

2. AG-6 rates consist of a customer charge, a demand charge, and an energy charge, and contain a minimum bill provision which applies, in the Mendrins' case, at the rate of \$109 per kilowatt of metered maximum demand under the Schedule AG-6B rates. At the end of the 12-month period, monthly bills under AG-6 rates are totaled and compared with charges applicable under the annual minimum. If total charges are less than the applicable minimum, customers are billed for the difference.

3. Packets of information were sent to customers identified in PG&E's billing system as those who could potentially benefit by using the new rates. These potential beneficiaries were customers billed under PA-1 accounts who in 1986 had usage greater than 1,600 hours, or the average of their usage in 1984, 1985, and 1986 was greater than 1,600 annual hours.

4. The packet sent to the Mendrins contained a contract (Exhibit 1) with only one typewritten account number appearing on it. Other contracts with the remainder of the Mendrins' accounts were not sent to the complainants; rather, the other

account numbers were added in pencil by Jack Mendrin to the contract which had been sent to him. The other account numbers were not included by PG&E because they had not been identified among those which could benefit from use of the new rates.

5. A cover letter (Exhibit 2) sent with the information packet informed prospective users of the AG-6 rates that these new rates were specifically designed for customers who operate at least 1,600 clock hours per year; that accounts with 1,600 hours or more would have an average electric power rate competitive with the average cost to operate a diesel engine; and that accounts with 1,600 or more hours of annual operation should see substantial savings over the standard agricultural (PA-1) rates. The letter also advised customers that each account which they planned to operate more than 1,600 hours would require a separate agreement in order to be placed on the AG-6 rate schedule. Finally, the letter stated that a customer's signed agreement must be received "within 10 days of this letter or your accounts will remain on the standard agricultural rate." The letter, sent from PG&E's office in Merced, is undated, as is the Mendrins' signed agreement. However, it was received at PG&E's office on May 11, 1987, indicated by stamp date on the contract. Redmond stated that the letter and packet were sent to customers in late April 1987.

6. The packet also included a two-page graphic rate comparison showing how different usages of the various rate opportunities may benefit customers, depending upon annual use hours, and stating that in most cases customers operating pumps over 1,600 hours would benefit under the AG-6 rates.

7. PG&E's witness sponsored Exhibit 4, a statement comparing charges billed to complainants for service under Account No. STN-37-53402 for the period May 21, 1987 through May 23, 1988 under AG-6B rates, with those which would have applied under regular Schedule PA-1B rates. The calculations show that complainants saved \$1,687.76 on this single account through application of the

AG-6B rates, even though only 1,571 hours of usage were experienced.

8. If inquiries were received at the PG&E office from a customer concerning the new AG-6 rates, the customer would be told that the account number shown on the agreement mailed to him was the one which could potentially benefit from the AG-6 rate. If the customer asked about the possibility of including other accounts under the new rates, it was explained that an agreement was not sent for other accounts because they were not identified as ones which could benefit; that they could benefit, however, if prior operational characteristics of those accounts were to change and operations should approximate 1,600 hours or greater. If a customer asked for additional information or for Redmond's recommendation, she would have examined the billing history of the account for the previous four years. However, the potential benefit under the rate would be dependent upon the operating experience for the next 12 months. If customers indicated that they wished to sign up for an account which historically did not look as though it could benefit under AG-6 rates, she would suggest that they review their operations carefully. Redmond did not recall speaking with Jack Mendrin specifically, since about 800 telephone inquiries were received in the Merced office over a two-month period concerning application of the new rates.

9. Exhibit 5 is a table of annual hours of operation for complainants' accounts, prepared by Redmond. Information pertaining to account usage during 1985, 1986, and for the period May 1987 through May 1988 is shown below:

<u>Account No.</u>	<u>AG-6 Agreement</u>		
	<u>May 1987-May 1988</u>	<u>1986</u>	<u>1985</u>
TTN-37-41601	623	313	1,448
TTN-37-41201	1,189	311	2,226
STN-37-5280	1,932	1,867	1,083
STN-37-53402	1,571	1,473	1,437
TTN-37-42001	944	406	1,440
STN-37-53203	2,595	1,925	1,582

Complainants saved money, Redmond pointed out, by using the AG-6 rates instead of PA-1 rates on three of their different pumping operations: Account Nos. STN-37-5280, STN-37-53402, and STN-37-53203. She emphasized that complainants achieved a savings on Account No. STN-37-53402, where 1,571 actual hours were billed, even though they incurred a small minimum bill. She stated that complainants' situation is not unique in this respect; that other customers experience savings in electricity charges assessed under the AG-6 schedule compared with those applicable under PA-1 rates even when annual hours are somewhat less than 1,600.

Redmond testified that PG&E records showed that, contrary to Mendrin's notion, there had been only regular meters on complainants' premises, rather than TOU meters; that the AG-6B rates were therefore applicable to complainants' operations during the billing period in question. (A provision in Tariff Schedule AG-6 provides that eligibility for service under that schedule would terminate upon installation of TOU metering equipment.)

Discussion

The AG-6 rates were designed for high-use accounts, specifically for those customers who had the option of operating diesel engines as an alternative to electricity. Mendrin acknowledges that, on behalf of the partnership, he signed and returned the contract which he received from PG&E after adding five account numbers to the one already shown on the contract. His action in this respect was a counteroffer by complainants to defendant's offer. "Each (partner) is the agent of the partnership for the handling of partnership business." (Christian v. California Bank (1947) 30 Cal 2d 421.) PG&E accepted this counteroffer by providing service at the rates named in their Tariff Schedule AG-6B. The resultant contractual arrangement was performed under the provisions of the contract and the Schedule AG-6B rates attached to the contract. This acceptance and performance bound the parties notwithstanding Mendrin's failure to

understand the terms and conditions of the rules set forth in the tariff schedule surrounding application of the rates. Mendrin concedes he did not read, or at least understand, the tariff provisions attached to the contract and, therefore, was not aware of the annual minimum bill provisions of the schedule.

"A...misunderstanding of a rate does not relieve parties from assessing and paying tariff rates, as the law charges all parties with knowledge of the proper rates..." (Sunny Sally, Inc. v. Lom Thompson (1958) 56 CPUC 552.)

Tariff provisions must be strictly applied. They have the force of law, and must be assessed without discrimination. Ignorance of a party using a tariff cannot excuse the strict application of the rates by the utility.

We can sympathize with complainants. Tariff provisions are technical and often complex. However, in the circumstances of the case before us PG&E had also sent complainants a letter (Exhibit 2) advising them, in clear language, that the subject rates would benefit those customers with accounts approximating 1,600 hours or greater of annual usage. Furthermore, Redmond testified that in cases where customers questioned PG&E about the inclusion of other accounts in addition to those shown on the contract which PG&E offered, they were cautioned to be sure of their prospective use of electricity because of the 1,600 hour guaranteed annual minimum condition associated with application of the AG-6 rates.

Complainants' request is for an order directing PG&E "to drop all minimum payments charged against Mendrin Farms." There is no theory under which their specific request may be granted. Either the AG-6 rates were applicable to the service, or other, higher rates were applicable. Complainants are not requesting any action in connection with the accounts on which they experienced reductions in charges compared with those applicable under

Schedule PA-1 of the tariff; they wish only to have the minimum bill charges waived.

In the circumstances, the Mendrins' complaint will be denied. Their request to pay any amounts found due and payable on an installment schedule is reasonable and will be granted.

Findings of Fact

1. In late April 1987 PG&E offered complainants the opportunity to be served under PG&E's new Schedule AG-6 rates during the period May 1987 to May 1988. The offer was tendered in the form of a contract, which advised complainants that the contract would continue in force for one year, and which had attached to it a copy of the applicable AG-6 rates and rules surrounding those rates. Only one account number was shown at the bottom of the contract--Account No. TTN-43-25003.

2. Complainants counteroffered to PG&E with a proposal including five additional accounts to be served under the AG-6 rates. PG&E accepted complainants' counteroffer by providing electric service to them at the AG-6B rates for the contract term of one year. The charges were billed on a monthly basis. At the end of the year, PG&E calculated minimum bill charges due, and billed complainants in the amount of \$7,864, as specified and required under its Tariff Schedule AG-6B.

3. Complainants have incurred lower total charges under Schedule AG-6 rates on three of their six accounts than would apply under the PA-1 rates, even though on one of those three accounts less than 1,600 hours were clocked.

4. PG&E records indicate that complainants did not have TOU meters installed on their premises between May 1987 and May 1988.

5. There is no basis for waiving collection by PG&E of the amounts due under the minimum bill provisions of its Schedule AG-6B tariff rates.

Conclusions of Law

1. The charges billed complainants between May 1987 and May 1988 by PG&E, including the minimum bill charges, are correct and payable under the utility's Tariff Schedule AG-6B.
2. The complaint of Jack and Alex Mendrin against PG&E should be denied.
3. Complainants should be afforded opportunity by PG&E to remit the balance of charges found due and payable in this decision over a reasonable installment schedule.

ORDER

IT IS ORDERED that:

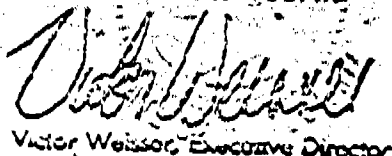
1. Pacific Gas and Electric Company shall collect from Jack and Alex Mendrin (complainants) the amount of undercollections found in this decision to be due and payable under its Tariff Schedule AG-6B rates for service provided complainants during the period May 1987 to May 1988, and shall allow payment thereof over a reasonable installment schedule.
2. Except as provided in Ordering Paragraph 1, the complaint in Case 88-09-049 is denied.

This order becomes effective 30 days from today.

Dated FEB 24 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OGANIAN
Commissioners

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


Victor Weisner, Executive Director