

Decision 89 05 012 MAY 10 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Tut Hayes,)
)
 Complainant,)
)
 vs.)
)
 Southern California Edison Company,)
 (U 338-E))
)
 Defendant.)

Case 88-10-057
(Filed October 28, 1988)

Tut Hayes, for himself, complainant.
Philip Walsh, for Southern California Edison
Company, defendant.

O P I N I O N

Complainant Tut Hayes (Hayes) seeks to have defendant Southern California Edison Company's (Edison) electric bill to Hayes of \$789.63 cancelled on the ground that he was not a customer of Edison during the period covered by the bill. Public hearing was held before Administrative Law Judge Robert Barnett on March 8, 1989.

Hayes testified that he occupies the premises at 6706 South Central Avenue as his residence. He first occupied the premises on October 16, 1985 and applied for residential gas and telephone service. The electricity was on when he moved in. He did not apply for electric service because he believed it was included in his rent, just as his water service is. The premises are his residence; he does not conduct a business on the premises. On February 10, 1988 an Edison employee came to his residence and inquired about the electric service. The employee said that he would have to apply for service, which he did. He did not get a bill for five months, when he received a bill for electric service

from October 16, 1985 to February 10, 1988 (\$789.63 for 7,672 kwh) plus the five months from February 11. All service was billed at the commercial rate.

He refused to pay the bill for service prior to February 11 on the ground that he was not liable for the use, and for service after February 10 he asked for a billing at the residential rate. After attempts to negotiate a settlement failed, Edison disconnected his electric service on September 28, 1988, but reconnected on September 30. He said that in disconnecting his service Edison failed to follow its tariff rules. He had not paid any bill for electric service as of the date of the hearing, but he has deposited \$150 with the Commission. He said that he is willing to pay for all service after February 10, 1988 at the residential rate.

An Edison meter reader supervisor testified that on February 10 he went to the premises to gain access to the meter. Edison had not read the meter since prior to August 22, 1984 because it was considered an "idle meter" by Edison, the prior user having ordered a disconnect on August 27, 1984. He met Mr. Hayes who told him that he had moved into the premises on October 16, 1985 and had never applied for electric service. He told Mr. Hayes that he would have to pay for electric use since October 16, 1985. Mr. Hayes refused.

A field service representative of Edison testified that on July 5, 1988 he met with Mr. Hayes at the premises and informed him that he was responsible for electrical consumption used during the time he occupied the premises. Mr. Hayes denied responsibility because he had not contracted with Edison for service prior to February 11, 1988. On September 25 he again contacted Mr. Hayes and informed him that \$1,011.71 was owing on his account, including the pre-1988 bills, and that he would have to pay \$222.08 for the billing period February 11 to July 5, 1988 to assure continuance of service. Mr. Hayes paid nothing.

The witness testified that on September 26 Edison's standard 48-hour notice was given; on September 28 electric service was disconnected; and on September 30, at the request of the Commission staff, electric service was reconnected. The witness said that he believed Mr. Hayes conducted a storage business on the premises.

A customer service supervisor for Edison testified that Mr. Hayes's bill is at the commercial rate. He said that the prior user on the premises was a restaurant--a commercial customer--and the building is a commercial building. He introduced photographs of the building. He said that the meter for 6706 South Central Avenue is located inside the premises. It is Edison's practice to read meters every month, regardless of its status as an idle meter, to determine if the meter is being misused or if someone is using electricity without Edison's knowledge. He said that between September 1984 and February 1988 Edison representatives could not obtain access to the premises to read the meter because the entrances were padlocked and the premises appeared unoccupied. Edison did, however, leave a "notice of call" after each attempted meter-read.

Discussion

1. Liability for Service Prior to February 11, 1988

Edison asserts that one who uses electricity is liable regardless of whether or not he formally requested service.

Edison's Tariff Rule No. 1 defines customers as:

"The person in whose name service is rendered as evidenced by the signature on the application, contract, or agreement for that service, or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in his name regardless of the identity of the actual user of the service."

Hayes argues that since he did not apply for service nor pay a bill prior to February 11, 1988 he was not a customer and not

liable for service prior to February 11. Further, Edison's Tariff Rule No. 17, which covers unauthorized use states:

"Unauthorized Use is the use of energy in noncompliance with the Company's tariffs or applicable law. It includes, but is not limited to, meter tampering, unauthorized connection or reconnection, theft, fraud, intentional or unintentional use of energy whereby the Company is denied full compensation for electric service provided.

"Where the Company determines that there has been Unauthorized Use of electric service, the Company may bill the customer for the Company's estimate of such unauthorized use. However, such estimated bill shall indicate unauthorized use for the most recent three years and, separately, unauthorized use beyond the three-year period of collection as provided by law.

"Nothing in this Rule shall be interpreted as limiting the Company's rights under any provisions of any applicable law."

Hayes argues that by its terms the company "may bill the customer" and he was not the customer. However, Hayes overlooks the last sentence of Rule No. 17(4) "Nothing in this Rule shall be interpreted as limiting the Company's rights under any provisions of any applicable law." There are numerous provisions of applicable law that hold Hayes liable. PU Code § 453 states, in part: "No public utility shall, as to rates...make or grant any preference or advantage to any...person...." To permit Hayes to obtain electricity without payment is clearly a preference. The Commission has affirmed this principle in numerous cases. In D.86-06-035 we said "Our only concern is that a customer who has received energy should pay what the applicable tariffs prescribe for that energy." (At sheet 4.) In D.87-05-075 we said "No customer could reasonably expect PG&E to provide electric service for free." (At sheet 12.) It is the receipt of service without payment which creates liability; whether or not the recipient is a

customer is irrelevant. One of the earliest cases decided by this Commission held that furnishing free service is discriminatory and a violation of § 453 (Sutter-Butte Land Co. (1912) 1 C.R.C. 803).

Hayes's argument that he thought the electricity was included in his rent is not persuasive. He did not produce a copy of his lease nor any writing to substantiate this, nor did he call his landlord as a witness, and most pertinent, he immediately applied for service in his own name when requested to do so by the utility.

2. Is Hayes a Commercial Customer or a Residential Customer?

Hayes says he should be billed as a residential customer because he lives on the premises and does not conduct a business on or from the premises. Edison billed Hayes as a commercial customer because the prior customer was a commercial customer, the building is a commercial building, and it appears the premises are used as a warehouse.

We find that Hayes is a residential customer, but caution Hayes that this finding is based on the evidence adduced at the hearing. Should Edison discover persuasive evidence that the premises are being used for a commercial purpose Edison may charge the commercial rate. Edison will be ordered to recompute Hayes's bills under its domestic schedule.

3. The Disconnect

Edison's tariffs provide for notice to be mailed 5 days prior to termination of a nondomestic account and 15 days prior to termination of a domestic account. At the time of termination Hayes had been receiving service as a customer for about 9 months, after having applied for domestic service in February. We find that Edison did not give the 15 days' notice and that it terminated service to Hayes in violation of its tariff rules. As we have no jurisdiction to award damages for an unlawful termination, any remedy for Hayes is in small claims court. Any reparations for a

two-day disconnection are de minimus and we will not attempt to quantify them.

Findings of Fact

1. Hayes moved into the premises at 6706 South Central Avenue on October 16, 1985. Electric service was operating when he moved in.

2. The premises are used by Hayes as his residence, and the service he used should be billed at the domestic rate.

3. Hayes is liable for all electric service rendered to the premise since October 16, 1985, at the domestic rate.

4. Hayes's electric service was disconnected on September 28, 1988 and reconnected on September 30, 1988. Edison did not follow its tariff procedure for disconnect of residential service.

5. Edison shall recompute Hayes's bill at the domestic rate.

6. The Executive Director shall pay to Edison Hayes's \$150 deposit which shall be credited against Hayes's bill.

Conclusion of Law

The Commission concludes the Edison should change its records to show that Hayes is a residential customer and should recompute Hayes's electric bills from October 16, 1985 at the domestic rate.

ORDER

IT IS ORDERED that:

1. Southern California Edison Company (Edison) shall change its records to show that Tut Hayes is a residential customer at 6706 South Central Avenue, Los Angeles and shall recompute the electric bills reflecting service at that address at the domestic rate from October 16, 1985 to the date the change of status is effective. Edison shall grant Mr. Hayes the opportunity to pay off the recomputed balance in 12 monthly installments, so long as he pays all other bills for service on a timely basis.

2. Should the use of the premises change from residential to commercial Edison may bill under its appropriate schedule.

3. Edison shall credit Hayes's bill with the \$150 deposit when received from the Commission.

4. The Executive Director is directed to pay to Edison the \$150 deposit of Hayes.

This order is effective today.

Dated May 10, 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


Victor Weisler, Executive Director

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Commissioners

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COMMISSIONERS TODAY.



Victor Weisser, Executive Director