

ALJ/ECL/cac

Decision 89 07 011 JUL 6 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Randy A. Brewer and Cheryl A. Brewer,)
Complainants,)
v.)
Southern California Gas Company,)
Defendant.)

Mailed
JUL 6 1989

(ECP)
Case 88-12-017
(Filed December 8, 1988)

Randy A. Brewer, for himself, complainant.
Connie Christensen and George G. Hannah, for
Southern California Gas Company, defendant.

OPINION

On December 8, 1988, complainants Randy A. Brewer and Cheryl A. Brewer (complainants) filed a complaint against defendant Southern California Gas Company (defendant or SoCalGas) under the Commission's Expedited Complaint Procedure. The complainants alleged that the defendant gas utility had overcharged them for gas service at their residence located at 6842 Langdon Avenue, Van Nuys. This was allegedly due to a faulty meter as evidenced by the fact that recorded usage dropped when the meter was replaced. The replaced meter was allegedly destroyed by the utility, and as a result the meter's accuracy could not be tested. The complainants deposited \$605.00 with the Commission. Their attempts to resolve the matter informally through the Commission's Consumer Affairs Branch were unsuccessful. Complainants then filed their complaint seeking a refund of \$375.01, which they believe represents the amount by which they were overcharged.

In its January 12, 1989 response, defendant denied the allegations in the complaint. Evidentiary hearing was held in Los Angeles on February 7, 1989. Complainants were represented by

Randy Brewer. Defendant was represented by Connie Christensen and George Hannah.

Mr. Brewer testified that the complainants had purchased their three-bedroom ranch-style single family dwelling in Van Nuys in December, 1987. Only 15 days of the billing cycle were billed on the complainants' first gas bill. The bill was for \$161.77. This prompted the complainants to request SoCalGas to inspect the premises for gas leaks or other malfunctions. Mr. Brewer recalled a visit on February 9, 1988 and thought that SoCalGas might have come out one time before that visit. At that time, the SoCalGas serviceman found no gas leaks and recommended that the gas heater filter be changed. The filter was changed.

Mr. Brewer testified that the second bill covered a regular billing period and totaled \$393.24. Complainants suspected the high bill might have been due to a defect in their meter and demanded that SoCalGas replace the meter, since the company had previously stated that the same meter had been in use at the premises since 1959. SoCalGas did replace the meter, but it could not confirm whether the meter was in fact faulty or not. Mr. Brewer subsequently received a letter from SoCalGas explaining that the meter had been damaged. The complainants are dissatisfied with this outcome of the high bill investigation which they had requested. The complainants state that they were overbilled from the time of initial service to the time the meter was replaced. They believe that \$375.01 should be refunded of the amounts billed from the date of initial service to the time the meter was replaced, although Mr. Brewer could not describe the means by which this figure was derived.

SoCalGas presented the testimony of three witnesses. The first was Gary Wills, an appliance service representative of seven year's experience. On January 16, 1988, he visited the premises and learned that during the initial 15-day billing period, the gas wall heater was set at 70-75 degrees when people were present and

the interior of the house was being painted. He suggested that complainants change the furnace filter and close the vents of their ceiling-mounted swamp cooler to prevent heat loss. Wills had no methodology for estimating the loss of heat through the open cooler vents.

Mrs. Steinkraus, a SoCalGas Customer Service Representative of ten years' experience, then testified how SoCalGas scheduled and performed its high bill investigation. The meter was read at least five times during the course of the investigation. This indicates to the utility that the meter is registering usage, but does not indicate the accuracy of the meter. A "clock test" was performed, indicating that with no appliances operating and all pilot lights extinguished, no house line leakage was occurring. Through Steinkraus, SoCalGas offered explanations of how volumes of up to twenty therms a day could be consumed at the complainants' residence. Her records noted that the gas heater could not be turned off and that the lowest thermostat setting is 55-60 degrees. This meant that the heater would operate at this minimum setting even when the occupants believed they had shut the heater off, particularly when the outdoor temperature is below 55 degrees. An inventory of the Brewers' appliances showed a maximum hourly consumption of 139,500 Btu's. High, vaulted ceilings were noted.

Through Steinkraus, the defendant also presented consumption figures for customers residing in comparably-sized dwellings in the vicinity of the Brewer's residence. These dwellings were selected based on square footage assessed by the city tax assessor. These comparisons were intended to demonstrate how the Brewer's usage fluctuates with the increase and decrease of external temperatures as did other comparable homes in the area. The charts indicated that the Brewer's measured consumption was higher than the other comparable homes through January 1989.

SoCalGas also introduced daily high/low temperature readings for the high bill period.

Steinkraus testified that SoCalGas offered to change the complainants' meter because they were not satisfied with the bill investigation. Pursuant to SoCalGas's filed tariff, the utility offered the complainants the option to observe the meter test. The complainants declined. When the meter was removed on February 16, the meter was not visibly damaged.

Defendants introduced a letter dated February 29, 1988 whereby its Customer Services Department advised the complainants that the utility had completed its gas inspection on February 9, 1988. The letter stated, "The meter was replaced in order to perform an accuracy test, however the meter was damaged and unable to be tested." In response to the complainant's letter questioning this conclusion, on March 9, 1988, the Customer Services Department representative wrote, "...unfortunately the gas meter stopped registering for some reason at some point after it was removed from your address." The letter concluded that all the gas billed for was used, and was not someone else's usage or billing. It suggested the complainants seek relief through the Commission.

SoCalGas then presented the testimony of Jack Carsten, lead meter prover, who was the foreman of the shop which tests and calibrates all meters for SoCalGas. He has had 27 years' experience on the job. He indicated that the work orders showed that the meter was functioning at the time it was removed on February 16, 1988. This was evidenced by the fact that the meter had registered usage since the time of the last meter reading and that there was no visible sign of damage to the meter. The meter arrived at Carsten's meter shop on February 18. A test was attempted on February 19. Carsten testified that when a high bill complaint is received, the accuracy of the meter is tested at two volumes, 50 cubic feet of gas per hour (CFH) and 175 CFH. If the meter is accurate at these levels, then the meter is accurate at

any speed. However, Carsten noted that the meter test report indicates that the meter did not record the throughput of any gas at all. That is, even though gas was flowing through the meter, the needles on the dial which registers usage did not move.

Carsten's shop did not inspect the cause of the meter malfunction. He testified that the company's tariff prohibits the utility from opening up a meter unless the customer is present. The meter shop personnel did not advise the Customer Service Department that the meter was not registering. Thus, the complainant was not given an opportunity to observe the SoCalGas meter inspection after it was learned that the meter was broken. The defendant pointed out that its tariff does not mandate a second notification if it is determined that the meter is broken.

Carsten did not know what subsequently became of the meter. It was presumably sent to the repair shop and may have been returned to service. SoCalGas did not maintain any record of what became of that particular meter. Carsten did express the opinion that there was no way that the registering of flows at higher than actual volumes could have resulted in meter failure. He did not have any idea how the index stopped showing the flow of gas.

Discussion

In a complaint proceeding such as this, the complainant bears the burden of proof. The ratepayers must come forward with evidence that supports their claim for relief from utility billings. The complainants' request for a refund of \$375.01 is based on the theory that the gas meter was not properly recording the volumes of gas used. Evidence of the accuracy of the meter is necessary to prove the ratepayer's claim.

It appears that the ratepayers did all they could to substantiate their theory. They requested the defendant to replace the suspect meter. The defendant noted on a work order dated February 16, "Rule 15 Declined". This refers to the tariff filed by SoCalGas to govern meter tests.

Section 772 of the Public Utilities Code provides, "any consumer or user of any product, commodity, or service of a public utility may have any appliance used in the measurement thereof tested upon paying the fees fixed by the commission. The commission shall establish and fix reasonable fees to be paid for testing such appliances at the request of the consumer or user."

Rule No. 15, Meter Tests, states:

- "(a) Any consumer may, upon not less than 5 days notice, require the Company to test his gas meter. No deposit or payment will be required from the consumer for such test except (in certain cases where the consumer's average monthly bill for gas service is less than \$50.00)."

* * *

- "(d) A customer shall have the right to require the utility to conduct the test on his meter in his presence, or if he so desires, in the presence of an expert or other representative appointed by him.

- "(e) A report giving the name of the customer requesting the test, the date of the request, the location of the premises where the meter was installed, the meter statement at time of removal, the date tested, and the result of the test, the type, make, size and number of the meter and date removal (sic) and deductions drawn therefrom shall be supplied to such customer within a reasonable time after completion of the test and a duplicate of such report shall be filed with the Commission."

There is no prohibition against "opening up" or otherwise inspecting and determining the cause of defective meter performance if the customer is absent, so long as the customer has been informed of his right to observe and has declined the opportunity. The work order indicated that the customer had so declined.

When the defendant was requested to remove the meter and responded by offering to check the meter for accuracy, its conduct was subject to the provisions of Tariff Rule No. 15. When the defendant advised the complainants by letter dated February 29, 1989 that the meter "had been replaced in order to perform an accuracy test, however the meter was damaged and unable to be tested," the complainant understandably questioned that representation. The defendant was not forthcoming with an explanation, and in its letter dated March 9, 1988 suggested that the complainant seek relief through the Commission. The complainant has done so.

Clearly, the defendant did not provide a report to complainants as required by Subsection (e) of Rule No. 15. The reason is that the defendant failed to properly conduct a test of the meter and could not provide "the deductions drawn therefrom". Whenever a utility undertakes to act, it must do so in a reasonable manner. Its compliance with its filed tariffs must be reasonable as well. Here, the defendant observed the notification requirement but, once the customer had declined to attend the meter inspection, appeared to act as if it was no longer accountable to the customer.

The company was well aware that the ratepayers doubted the accuracy of the meter, to the extent that the work order issued on February 1, 1988 and completed on February 9, 1988 contained the notation, "not sat (sic) May go to PUC - 2/10". Four work orders directing SoCalGas personnel to audit the Brewer's energy use and otherwise assist in lowering gas consumption and verifying meter operation were introduced at the hearing.

SoCalGas's disposal of the meter is disingenuous. It knew or should have known how crucial the operation of the meter was to the complainant's pending claim for relief from high bills. It had custody and control of the evidence. It should have acted reasonably to preserve evidence of the meter's accuracy. Instead, by failing to investigate the cause of the meter's nonregistration

and losing track of the subsequent whereabouts of the meter, it has made it impossible for the complainants to prove their case.

SoCalGas has not observed either the letter or the spirit of the tariff rule. In fact, it has misinterpreted the tariff to justify its failure to investigate the cause of the alleged meter malfunction, and its subsequent disposal of the meter.

The utility, of course, has no duty to prove the plaintiff's case, that is, establish that the meter was not functioning properly while installed at the customer's premises. However, it had undertaken to test the meter and, under the circumstances, should have determined the reason why the meter failed to register. The fact that the meter had failed while in SoCalGas's possession, and SoCalGas did nothing to determine the cause of failure undermines the general presumption that the meter had been functioning properly and the customer was being billed for actual usage.

The utility introduced evidence intended to show the possibility that the complainants had actually consumed all the gas they were billed for. Since it never completed its meter test, it cannot argue that the meter was accurate. Thus, it is possible that the complainants' recorded usage was consistently higher than their actual consumption. The fact that registered usage reflected variations in air temperature and was a relatively constant percentage of neighbors' usage does not prove the accuracy of the meter. It may show that the meter was measuring volumes consistently, but not that the volumes were being measured at an accurate rate.

The monthly consumption at the Brewers' premises was introduced by the utility. The monthly average for the twelve months before the meter was replaced was 89.75 therms. After the meter was replaced, the monthly average consumption fell by 20%, or to 72.16 therms. This discrepancy suggests that the meter was not registering properly before it was replaced. In light of the 20%

decrease experienced after replacement, it is reasonable to adjust complainants' bill by 20%. Moreover, the defendant has not treated the ratepayer fairly. Equity compels us to award some relief to the ratepayer. The complainants had deposited \$605 with the Commission. That sum was the amount billed for the first month-and-a-half of service, that is, from the commencement of service until the meter was replaced.

Complainants should be refunded \$121 of the \$605 on deposit. While the sum of \$121 is relatively insignificant to a utility with several billion dollars of annual revenues, this outcome should encourage the utility to observe its duties under its tariffs more carefully, especially where a ratepayer's right to challenge utility billings is protected by the tariff.

ORDER

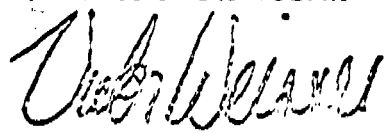
Therefore, IT IS ORDERED that \$121 will be refunded to complainants Randy A. Brewer and Cheryl A. Brewer from the \$605 complainants have deposited with the Commission. The remainder of the funds on deposit will be disbursed to defendant Southern California Gas Company.

This order becomes effective 30 days from today.

Dated JUL 6 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 Weissor, Executive Director

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