

Decision 89-09-101 September 27, 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

V. J. Schrader,)
)
 Complainant,)
)
 vs.)
)
 Southern California Gas)
 Company (U-904-G),)
)
 Defendant.)

ORIGINAL
 Case 88-06-017
 (Filed June 13, 1988)

Armour, St. John, Wilcox, Goodin & Schlotz,
 by John Clark, Attorney at Law, for
 V. J. Schrader, complainant.
 Thomas Brill, Attorney at Law, for Southern
 California Gas Company, defendant.

OPINION

Summary

This decision finds that Southern California Gas Company (SoCal) improperly billed complainant V. J. Schrader (Schrader). SoCal is ordered to refund the net overcharges from April 12, 1985 to April 12, 1988 with interest.

Background

Schrader filed this complaint seeking refunds from SoCal for gas billing overcharges at an apartment complex. The complex, located at 2458 Nutwood Avenue in Fullerton, was completed around 1975. It contains a total of 248 units in 12 separate buildings. Each building contains between 9 and 63 units and is served from a separate gas master meter.

Schrader alleges that SoCal calculated a baseline allowance for the apartment complex based on only 144 units, rather than 248. Schrader alleges that SoCal has overcharged the complex by \$75,630.26 for the period April 12, 1985 to April 12, 1988,

including interest to December 31, 1988. Schrader also requests that interest accrue after that date until the refunds are made.

Although Schrader manages the complex through Yoder Schrader Management, Heloise Powers was the owner and customer of record during the period in dispute. A Special Power of Attorney was filed wherein Heloise Powers appointed Schrader as her attorney-in-fact to act in her place in this matter and authorized him to receive any resulting refunds.

At the hearing on January 4, 1989 Schrader presented the testimony of witnesses Schrader and J. R. McDonald (McDonald). McDonald is employed by Automated Energy Systems, Inc. as a utility auditor. Schrader hired Automated Energy Systems, Inc. to audit the energy charges at the complex.

Schrader's testimony may be summarized as follows:

1. Yoder Schrader Management has managed the complex since it was built in the 1970's. A secretary tabulates and pays the utility bills monthly.

2. Yoder Schrader Management has managed other apartment complexes and paid the utility bills for them. Neither Schrader nor the secretary understands how baseline allowances are calculated; neither is trained in analyzing utility bills to verify the accuracy of those allowances.

3. Although he cannot recollect the exact details, Schrader believes that he or his representative informed SoCal of the number of units in the complex.

4. The tariffs require SoCal to refund the amount of overcharges at the complex that resulted from use of the incorrect number of units.

McDonald's testimony may be summarized as follows:

1. After Automated Energy Systems was retained by Schrader to review the utility bills for the complex, McDonald discovered that SoCal gave the complex baseline allowances for 144 instead of 248 units.

2. Since the non-baseline rates are much higher than baseline, SoCal significantly overcharged the complex.

3. McDonald has audited the utility bills of many apartment complexes for both owners and management companies. None of these customers understand how to calculate baseline allowances and rates.

SoCal presented the testimony of Robert B. Puckett, a tariff administration analyst, whose testimony may be summarized as follows:

1. Under Schedule GM Special Condition 3, baseline allowances are available to qualified customers after they notify the utility of the number of units.

2. Schedule GM Special Condition 4 requires the customer to notify the utility of any change in the number of units.

3. SoCal has properly notified customers of the availability of baseline allowances.

4. SoCal notifies customers of the number of units it uses for baseline allowances on each monthly bill.

5. SoCal did not make a billing error in rendering bills to the complex; therefore, refunds are not allowed under the tariffs.

Discussion

The undisputed facts in this proceeding are:

1. The complex has 248 units eligible for baseline allowance.

2. SoCal bills for this apartment complex between April 12, 1985 and April 12, 1988 provide a baseline allowance for 144 units.

3. SoCal regularly notified the customer on each month's bill that the baseline allowance was calculated based on 144 units.

SoCal denies that it made a billing error. However, the bill was clearly in error. Since there are 248 units in the complex, if the customer properly informed SoCal of 248 units, the customer would be entitled to a baseline allowance based upon 248 units. However, in this case neither the customer nor SoCal is

able to produce a copy of the record in which the customer designated the number of units eligible for a baseline allowance.

Schrader suggests a possible explanation for the error in number of units. SoCal could have incorrectly recorded the number of units through a clerical shortcut, wherein the clerk looked at several of Schrader's responses which were for buildings with 12 units each, and assumed that all 12 buildings have 12 units, for a total of 144 units. Five of the 12 buildings have 12 units each; the other seven contain from nine to 63 units.

SoCal denies that this could have occurred since the clerk is required to look at each document separately. However, SoCal cannot be sure that its employee did not take that shortcut. The fact that SoCal used 144 total units, based on 12 units in each building, suggests that possibility.

Next, we consider the responsibility of Schrader and of SoCal to detect the error. Each bill provided to Schrader by SoCal indicates the number of units upon which the baseline allowance is calculated. Schrader stresses that these bills were tabulated and paid by a secretary and that neither he nor the secretary understand how to calculate baseline allowances.

We might expect greater vigilance by Schrader in reviewing his bills, as he is a professional in the business of managing apartment buildings. We nevertheless believe that it is inequitable for SoCal to benefit from a windfall due to Schrader's failure to read his bill more carefully.

Schrader testified that he did inform SoCal of the correct number of units when service commenced. SoCal presented no evidence that the complainant had ever supplied incorrect information concerning the number of units, nor did SoCal explain how it came to use only 144 units for billing purposes. The only evidence on this point is a New Business Service Order from June 1975 (before completion of the complex). This order showed the complainant planned 248 units, which is the correct number. While

this order does not qualify as a "notification" for purposes of commencing service, SoCal did not produce the actual notification, or any other document supplied by the complainant, that would justify SoCal's use of 144 units for billing purposes.

The preponderance of the little evidence we have in this case leads us to infer that SoCal was notified of the correct number of units but for some reason used a lesser number in calculating the baseline allowance. SoCal failed to justify its use of the lesser number. The complainant does not have the burden of explaining how SoCal's error occurred.

In conclusion, we find that there was a billing error. We do not know whether it was caused by Schrader or SoCal. We further find that the erroneous information was printed on each monthly bill but Schrader did not understand the bill or detect the error. The initial error resulted in both overpayments and underpayments by Schrader, depending on whether the actual number of units in the building was more or less than 12. We will order SoCal to refund the net overpayment between April 12, 1985 and April 12, 1988, including interest.

Findings of Fact

1. Schrader filed a complaint seeking refunds from SoCal for gas overbilling at the complex due to SoCal's use of an incorrect number of units for baseline allowances.
2. The complex consists of 12 buildings, each building contains from 9 to 63 units, for a total of 248 units.
3. Schrader, through Yoder Schrader Management, manages the complex for the owner, Heloise Powers, who has appointed Schrader as her attorney-in-fact to represent her in this matter.
4. Baseline allowances for multi-family complexes served from a central meter are available to qualified customers after notification by the customer and verification by the utility.
5. Records of the actual notification of the number of units by Schrader for billing purposes are not available.

6. The number of units used for billing purposes is indicated on the monthly bills.
7. Billing errors occurred at the complex for at least the three-year period ended April 12, 1988.
8. SoCal has overbilled five, and underbilled two of the buildings at the complex, due to using the incorrect number of units.
9. Rule 16.C requires that refunds be made for overcharges due to billing errors.
10. Refunds under Rule 16.C are not retroactive ratemaking.
11. PU Code § 734 provides that the Commission may order interest on reparations for excessive rates.

Conclusions of Law

1. SoCal should be ordered to compute the amount of overcharges and of undercharges paid by Schrader for the three-year period ended April 12, 1988 at the complex.
2. SoCal should be ordered to refund to Schrader the net amount of overcharge including interest to the effective date of this decision.
3. Except to the extent granted, the complaint should be denied.

ORDER

IT IS ORDERED that:

1. Southern California Gas Company (SoCal) shall compute the net amount of overcharges and undercharges paid by V. J. Schrader (Schrader) or his representative for the Nutwood Apartments complex between April 12, 1985 and April 12, 1988.
2. SoCal shall compute interest on the refund at the rate of 7% per annum compounded monthly. Interest shall accrue from the actual date of bill payments if available, or, if not, from the

last day of the billing month, to the effective date of this decision.

3. SoCal shall refund to Schrader the sum of the amounts determined in Ordering Paragraphs 1 and 2 within 10 days of the effective date of this decision.

4. Except to the extent granted, the complaint in Case 88-06-017 is denied.

This order becomes effective 30 days from today.

Dated SEP 27 1989, at San Francisco, California.

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

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

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

ps

Decision 89 09 101 SEP 27 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

V. J. Schrader,)
)
 Complainant,)
)
 vs.)
)
 Southern California Gas)
 Company (U-904-G),)
)
 Defendant.)

ORIGINAL

Case 88-06-017
(Filed June 13, 1988)

Armour, St. John, Wilcox, Goodin & Schlotz,
 by John Clark, Attorney at Law, for
 V. J. Schrader, complainant.
Thomas Brill, Attorney at Law, for Southern
 California Gas Company, defendant.

OPINION

Summary

This decision finds that Southern California Gas Company (SoCal) improperly billed complainant V. J. Schrader (Schrader). SoCal is ordered to refund the net overcharges from April 12, 1985 to April 12, 1988 with interest.

Background

Schrader filed this complaint seeking refunds from SoCal for gas billing overcharges at the complex. The complex, located at 2458 Nutwood Avenue in Fullerton, was completed around 1975. It contains a total of 248 units in 12 separate buildings. Each building contains between 9 and 63 units and is served from a separate gas master meter.

Schrader alleges that SoCal calculated a baseline allowance for the apartment complex based on only 144 units, rather than 248. Schrader alleges that SoCal has overcharged the complex by \$75,630.26 for the period April 12, 1985 to April 12, 1988,