ALJ/JBW/pc

Decision 89 10 013 OCT 1 2 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mark A. Goodman, Complainant, vs. Pacific Gas and Electric Company, Defendant. (U39M)	(ECP) Case 89-06-060 (Filed June 30, 1989)

Mark A. Goodman, for himself, complainant.
Mike Weaver, for Pacific Gas and Electric Company, defendant.
Jane Viltman, for herself, interested party and landlord.

O P I N I O N

Statement of Facts

Pacific Gas and Electric Company (PG&E) since October 10, 1905 has been an operating public utility corporation organized under the laws of the State of California. PG&E is engaged principally in the business of furnishing electric and gas service in California. As such, it is a public utility within the jurisdiction of this Commission.

PG&E furnishes gas and electric service to the single family home at 1779 25th Avenue in San Francisco. From 1965 until early in 1988 this property was owned by Jane Santrizos who resided there until March 21, 1988. Early in 1988 the property was purchased by Peter and Jane Viltman who reside at 2167 48th Avenue in San Francisco. Unbeknownst to PG&E, the supposed single family residence contained an illegal "mother-in-law" basement conversion. Gas and electricity were supplied to the 1779 25th Avenue residence premises through respective service meters under single family

residential schedules G1T and E1TB respectively. When Santrizos vacated the property March 21, 1988 the meters were read, and both gas and electric services remained "on".

The new owners, the Viltmans, sought to rent out their new acquisition. On or about April 1, 1988 Jane Viltman rented the illegal basement conversion to Mary Jane Lopez. Lopez resided therein with her three daughters until forced to vacate at the end of January 1989 after the City's Bureau of Building Inspection caught up with use of the illegal conversion. The Viltmans turned the residence property over to Raskin Realty Company who rented the property at 1779 25th Avenue to Mark and Sharon Goodman. Goodman, a PhD, signed a lease on April 20, 1988 providing a one-year term May 1, 1988 through April 30, 1989, with month-to-month tenancy thereafter. The lease, a Residential Lease-Rental agreement contained two provisions of interest here:

> Paragraph 4. "Utilities: Tenant shall be responsible for the payment of all utilities and services, except...NONE..., which shall be paid by owner."
>
> Paragraph 23. "Tenant shall be responsible for payment of their scavenger bill, PG&E, and water. Lower Tenant shall re-imburse [sic] Tenant for 50% of water bill, and 40% of PG&E monthly."

The lease specifically states the rent to be $950 per month from the tenant.

Between April 1, 1988 and October 27, 1988 gas and electricity were furnished through the gas meter and the electric meter at the 1779 25th Avenue residence, which, under single-family residential schedules G1T and E1TB, would be billed in the total amount of $754.84. When Goodman was eventually in February 1989 actually billed for this amount he refused payment. Subsequently Goodman contended that since there were two residential units on

one meter, and that the landlord was charging each tenant a percentage of the gas and electric bill, this was a violation of PG&E's Rule 18 so that he was not responsible for the bill; but it was the responsibility of the landlord.

By March 1989 the combined service charges had grown substantially. When PG&E threatened disconnection, Goodman sought the assistance of the Consumer Affairs Branch of the Commission. Unsuccessful there, Goodman on June 30, 1989 filed the present complaint under provisions of the Commission's Expedited Complaint Procedure.

On August 31, 1989 a duly noticed hearing was held in San Francisco before Administrative Law Judge (ALJ) John B. Weiss. The complainant, a representative of PG&E, and the landlady appeared and presented testimony and evidence before the matter was submitted for decision.

Goodman's Evidence

Goodman testified he moved into 1779 25th Avenue on May 23, 1988 and that Mrs. Lopez and her daughters were already in the basement unit. He stated he had not been given a choice by Raskin Realty whether the PG&E utility was to be in his name or his landlady's name; that the service was to remain in the landlady's name; that Mrs. Viltman confirmed this in a May 1988 telephone conversation. From this Goodman concluded that since the service was in her name, she was the customer; that it was her obligation to either furnish separate meters or to have the cost of utilities absorbed into the rent. Since the landlady did neither he contends he is not responsible for any of the cost of the PG&E utilities during the period the Lopez family were in residence (May 1988 through January 1989); that PG&E's Rule 18 supercedes the terms of his lease.

Goodman states that in late May 1988 his wife called PG&E to inquire about Rule 18, and he submitted a May 31, 1988 letter from PG&E's Lisa Kinimaka stating that, as Kinimaka had been unable

to reach Mrs. Goodman, she was sending a copy of Rule 18. Goodman asserts that his wife was later told that their lease violated Rule 18; that the Goodmans were not responsible for the PG&E bills; and that Mrs. Viltman would be so notified.

In February 1989 Goodman was billed for back service and learned that the account had been changed to his name. He believes Mrs. Viltman told PG&E the Goodmans were responsible for the account, after she showed the lease to PG&E. PG&E refused to switch the account back to Viltman. Goodman states he again contacted PG&E's Kinimaka who asked for a copy of his lease. He asserts that subsequently Kinimaka told him by telephone that the lease violated PG&E's Rule 18. Kinimaka was transferred about this time and her replacement, Amy Fitzgerald, assertedly notified the Goodmans that she did not agree with Kinimaka, leaving the Goodmans responsible for the account. Goodman thereupon went to Consumer Affairs.

In addition to objecting to being billed for the month of April 1988 when he was not yet a tenant, Goodman asks for abatement of the entire $1,488.40 billed for the service from April 1, 1988 to January 31, 1989.

During the hearing Goodman admitted he had, pursuant to the provisions of his lease, collected Mrs. Lopez's share of the water utility charges monthly during her residence in the building.

Weaver's Evidence for PG&E

Weaver testified, based on PG&E's records, that after Mrs. Santrizos vacated the 1779 25th Avenue residence late in March of 1988, and her closing meter readings were made March 21, 1998, it was assumed, since no new service request had been received, that the residence was vacant. Weaver stated that some time later consumption was detected. When PG&E was unable to contact anyone at that address, a "Broken Lock Investigation" was instigated (used where usage is indicated after a final closing reading has been made, there is no customer of record, and access either cannot be

gained or there is actually a broken lock on the meter). Weaver stated that Mrs. Santrizos was reached and thus the utility learned of the sale to the Viltmans. Later it was learned that the Goodmans were the resident tenants. Still with no service request, PG&E continued to attempt to reach the Goodmans who at that time had no telephone at the residence.

PG&E records indicate that on November 30, 1988, at 3:45 p.m., by telephone call from 681-2807, Mrs. Sharon Goodman placed a service order to have the gas and electric account, retroactive to April 1, 1988, activated in the name of Jane Viltman at the 1779 25th Avenue address. Based on the Goodman order, PG&E sent Mrs. Viltman a bill for gas and electric service April 1, 1988 to December 29, 1988 in the total amount of $1,175.04.

Weaver states that after Mrs. Viltman received the PG&E bills she immediately discussed the matter with PG&E, revealing the terms of her lease with Goodman. Weaver noted that the explicit terms of the lease stated: "Tenant shall be responsible for payment of their Scavenger bill, PG&E, and water." PG&E contends that as the utility costs are not absorbed in the $950 monthly rent, there is no separate identifiable charge by the landlord to the tenant for the utilities, and the monthly rent does not vary with utility consumption, PG&E Rule 18 is not applicable.

Subsequent PG&E's investigation confirmed the existence of two units at 1779 25th Avenue served by a single gas and a single electric meter between April 1, 1988 and the end of January 1989. Goodman was subsequently notified that PG&E was retroactively changing the rate schedules from single service G1T and E1TB to multiple rate schedules GM1T-2 and EM1TB-2, resulting in a reduction of $301.30 for the period through March 29, 1989. At the hearing PG&E also accepted that a further $75 reduction was in order to relieve Goodman of responsibility for service provided during April 1988--before his tenancy.

Mrs. Viltman's Evidence

The landlady testified that the rental to Goodman had been handled through a realty company and that aside from a telephone conversation in May or June, 1988 about sharing costs on some hardwood floor renovation work in the residence, she had no contact with the Goodmans until year's end when the PG&E issue came up. She stated the lease speaks for itself. It was a tenant-landlord lease where the rent was set and the tenant was responsible to pay for all utilities, and to collect from the lower tenant. Mrs. Viltman categorically denied having collected anything from Mrs. Lopez for the PG&E utilities, or any other utilities, and denies Goodman's statement that at year's end she told him she had collected $600 from Lopez towards the PG&E bills.

Discussion

The issue in this proceeding is who is to pay for the gas and electricity delivered to 1779 25th Avenue between April 1, 1988 and January 31, 1989?

In March of 1988 when Santrizos vacated, PG&E understood that it was supplying gas and electricity to a single family residence. PG&E was unaware of the existence of an illegal conversion unit at that address. Its billings under Schedule G-1TB and E-1TB applied to residential service in single family dwellings.

Basically, and subject to certain exceptions, PG&E will not supply separate premises, even though owned by the same customers, through the same meter. Each individual unit in a multifamily accommodation, is to have its own meter. In multifamily accommodations PG&E operates pursuant to its Rule 18 which provides exceptions to the rule when:

a. The cost of the commodity is absorbed in the rent,

b. There is no separate identifiable charge to tenants for the commodity, and

c. The rent does not vary with commodity consumption.

Goodman negotiated his lease with a realty company representing the landlady, Viltman, not PG&E. The terms of that standard residential lease rental agreement are clear. The fourth paragraph under the "Terms and Conditions" explicitly sets forth that the "Tenant shall be responsible for the payment of all utilities and services". The rent was separately stated as $950 per month. On April 20, 1988, Goodman signed as the "Tenant" and moved in during May 1988.

Although clearly responsible to pay for gas and electricity delivered by PG&E to 1779 25th Avenue, Goodman upon moving in made no move to place a service application with PG&E. Both services were still "on", and Goodman took full advantage of that fact to use both gas and electricity through summer into fall.

Meanwhile, PG&E, unaware it had a new customer at 1779 25th Avenue, made no meter readings until in the summer it discovered usage but could identify no customer as no one was at home. Tracing through Santrizos, in the fall PG&E learned that Goodman was the current resident, and apparently the customer. But as no one was at home during the day and there was no telephone service, PG&E continued trying to contact the Goodmans and continued the service. PG&E's actions during this period appear to be reasonable.

For his part, although continuing to use gas and electricity all through these months, Goodman made no effort to inform the PG&E business office of his responsibility for payment for those services--even when no bills arrived. But he did pay the City water utility bills, and he did, as his lease required, collect Lopez's share of these water bills each month. Not until November 30, 1988 did his wife finally call the business office to place a service application, albeit retroactively, but naming the landlady Viltman as the "customer" of record!

The reason for this strange development only becomes clear later when all the evidence is in.

Early in his tenancy it appears Goodman became acquainted with PG&E's Rule 18. In late May 1988 he had his wife call the Customer Service Office to make inquiry about the Rule. Her call was referred to PG&E's Lisa Kinimaka. But Kinimaka was unable to call Mrs. Goodman back in response and as stated in Kinimaka's May 31, 1988 letter, she merely mailed a copy of Rule 18 to Mrs. Goodman at that time.

From his reading of Rule 18 it appears Goodman perceived a way of possibly paying none of the PG&E bills. If the account were in Mrs. Viltman's name, and given the two residential units at 1779 25th Avenue, it could be argued that service was in violation of Rule 18 since the utility costs were not absorbed in the rent, and there would necessarily be a separate identifiable charge by the landlady to each tenant for the utilities. As Goodman saw it, Rule 18 would then supercede his lease's terms to the contrary, and the landlady would be liable for the utilities.

It is our considered conclusion that it was this line of reasoning that brought about the November 30, 1988 call by Mrs. Goodman to the PG&E business office to assure that service would be in the Viltman name. Goodman insists that Mrs. Viltman "told him" that she wanted the service in her name. Mrs. Viltman flatly denies this and points out that apart from one late May or early June telephone call about a hardwood floor she never met or had any contact with the Goodmans until year's end 1988, that all arrangements were handled through the leasing realty company.

Not only would service in Viltman's name be contrary to her interest, but the lease, expressly naming Goodman as the party responsible for payment of the PG&E account, indicates the opposite intent by the landlady. Furthermore, after PG&E had accepted the Goodman service request at face value and placed the account in Viltman's name, it sent the past due bill to Viltman. Her

reaction was to go immediately to PG&E to object, showing PG&E the lease naming Goodman as the tenant responsible for payment. Changing the account to Goodman on January 9, 1989, PG&E in February specially billed Goodman for the first phase--April 1, 1988 to October 27, 1988--in the amount of $754.84.

In view of Goodman's continued usage all summer and fall, his failure to notify PG&E until the end of November 1988 of that usage, and his actions in deluding PG&E into initially accepting Viltman as the "customer" of record, his complaint that it took PG&E eight months to initially bill is incomprehensible.

Goodman persisted, once the account was established on January 9, 1989 in his name, in trying to avoid payment for service he unquestionably used and by contract was responsible to pay. The record shows that the Lopez family was evicted by the City in January, ending the dual tenancy situation. None the less Goodman telephoned PG&E's Kinimaka (thereafter on February 1, 1989 sending her a copy of his lease), asking her for confirmation that PG&E service to two units at 1779 25th Avenue violated Rule 18, and that Viltman be so notified. Assertedly, Kinimaka agreed there had been a violation.

But this overlooks the fact that until January 9, 1989 PG&E was unaware of the illegal conversion unit. The fact that Goodman and Viltman were parties to a lease agreement that unknown to PG&E would place it in position where Rule 18 would be violated, does not relieve Goodman of responsibility to pay for the gas and electric service furnished. There is no issue that the energy delivered was correctly metered. It is the general rule that a customer must be financially responsible for a commodity delivered to him by a public utility (California Water and Tel. Co. (1950) 49 CPUC 331). Goodman is responsible for payment of the PG&E utility bills except as provided herein.

It must be noted that Goodman's lease began May 1, 1988. Therefore, he had no responsibility for PG&E usage by the Lopez

family in April 1988. At the hearing PG&E computed this usage at $75. This amount will be deducted from the Goodman account and PG&E can look to Lopez (and/or Viltman) for payment.

At the hearing Goodman also expressed concern that should the decision be against him, he had no mechanism to recover from Lopez the 40 percent she was to have paid. That Goodman for reasons of his own did not collect from Lopez (as he did for water) is the result of his own dereliction. This Commission looks only to the customer of record; we have no jurisdiction to enforce lease terms, only the Civil Courts (including Small Claims) have that jurisdiction.

And finally, we note that after its investigation confirmed the existence and use of the illegal conversion unit at 1779 25th Avenue, PG&E applied Rate Schedules GM1TB-2 and EM1TB-2 retroactively, giving Goodman the rate benefits that would have been available through service to a multifamily accommodation through one meter on a single premises where all the units are not separately metered in accordance with Rule 18. As the Lopez family was evicted in January 1989, and use of the second unit ended, this benefit should end with that January service. Rate Schedules G1T and E1TB, the rate schedules applicable to residential service in single family dwellings, should be reapplied beginning with the February 1989 Goodman service. The Goodman account should be adjusted accordingly.

O R D E R

Therefore, IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall continue to hold Dr. Mark A. Goodman as the "customer" for the gas and electric service to 1779 25th Avenue in San Francisco.

2. The abatement of charges requested by Goodman for PG&E gas and electric services from April 1988 through January 1989 is denied except as provided in Ordering Paragraph 3.

3. Goodman's account with PG&E is to be credited with $75 representing service attributed to Lopez in April of 1988 before Goodman's tenancy.

4. Goodman's account since February 1, 1989 is to be recomputed and rebilled on the G1T and E1TB rate schedules applicable for services to individually metered single family premises.

This order is effective today.

Dated OCT 12 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.

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director