

ORIGINAL

Decision 90 01 008 JAN 9 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

St. Joseph's Oak Park Hospital,)
 Complainant,)
 vs.)
 Pacific Gas and Electric Company,)
 Defendant.)

Case 89-04-047
(Filed April 20, 1989)

Gary L. Spaugh, for St. Joseph's Oak Park Hospital, complainant.
Barbara S. Benson, Attorney at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

Summary of Complaint

On April 20, 1989, St. Joseph's Oak Park Hospital (complainant) filed this complaint against Pacific Gas and Electric Company (defendant) to protest a \$11,414.18 bill that complainant received from defendant for unbilled energy during the period March 22, 1982 through March 19, 1985. Complainant seeks an order requiring defendant to credit complainant's account with the total disputed amount and refund a \$4,071.71 payment made towards the disputed bill. Complainant also disputes an allegation that complainant tampered with the meter registering its energy use.

Answer to the Complaint

On May 25, 1989, defendant filed its answer to the complaint. Defendant denies that it alleged that complainant tampered with its meter. However, defendant does represent that complainant's meter read energy usage inaccurately because of a

bypass clip located on one of the three current transformers¹ inside the electrical meter panel. The clip was discovered on March 18, 1985.

Defendant asserts that it back-billed complainant for three years of unregistered energy because complainant is responsible for the payment of energy that passes through complainant's meter undetected, pursuant to defendant's Rule 17. Hearing

An evidentiary hearing was held on August 21, 1989 in Stockton before Administrative Law Judge (ALJ) Galvin. The ALJ informed all parties of their right to be represented by an attorney. Complainant was represented by Gary Spough (Spough), complainant's administrator. Spough also testified for complainant. Defendant was represented by an attorney. Jerald Parker (Parker), Frank Riggs (Riggs), and Byron Peters (Peters), testified for defendant. Parker is a senior meter man, Riggs an electrical meter foreman, and Peters a revenue protection representative.

Spough stated that he had no knowledge of the clip. He believes that defendant's back bill for three years of unbilled energy is excessive, particularly since he has no way of determining how long the clip was on the transformer. Aside from determining how long the clip was on the transformer, Spough disputes the method defendant used to calculate the back charge and questions whether defendant's volume of unbilled energy reflects reduced energy use while part of the hospital was closed for remodeling.

Parker discovered the clip when he went to complainant's premise to test the meter on March 18, 1985. The clip was located

¹ Current transformers are used when the energy being metered is a quantity that is too large to accommodate a standard kilowatt hour meter.

on a transformer behind the panel, not accessible to a meter reader. Defendant's meter seal, routinely placed on meters, was properly crimped. Parker found no evidence to indicate meter tampering.

Riggs explained that the clip is a small device placed, temporarily, between two terminals on the transformer so that the transformer can be installed safely without interrupting energized service. Since electricity seeks the path of least resistance, a portion of energy passes through the clip and bypasses the meter as unbilled energy.

Riggs also testified that defendant's meter records indicate that the transformer was installed in 1977 by defendant's meterman and that the meterman inadvertently left the clip on the transformer during installation.

Defendant's test of complainant's meter showed that the meter accurately measured the energy that passed through the meter. Defendant also conducted a running load test to determine the quantity of unmetered energy used by complainant. Such a test compared the difference between meter readings with the clip on and with the clip off.

Peters conducted two running load tests. In the first test, conducted on March 19, 1985, unmetered energy equalled 25% of metered energy; in the second test, conducted on January 15, 1986, unmetered energy equalled 20% of the metered energy. Peters waited approximately 10 months for the second test to compare after-the-fact usage to consider seasonal usage. He derived a 21.5% correction factor by averaging the two test results and reduced the average by 0.01% to obtain a conservative estimate. This correction factor, applied to defendant's recorded energy usage for the three-year period March 22, 1982 through March 19, 1985 results in a \$11,414.18 undercharge. Complainant was billed for the undercharge on February 25, 1986. Exhibit 6 shows that complainant

still owes defendant \$8,720.67, of which \$657.53 is held on deposit with the Commission.

Discussion

Although the complaint states that complainant is alleged to have tampered with the meter, defendant's witness testified that the meter seal showed no tamper signs and that defendant's own meterman left the clip on the transformer. The question of who tampered with the meter is not the issue and should not be addressed further. The issue is whether complainant received energy it did not pay for and if so whether the backbilling was reasonable.

Parker's and Riggs' testimony discussed previously, substantiates that complainant received unbilled energy from 1977 to March 18, 1985. Complainant directly benefited from the use of unbilled energy for approximately five years.² Having established the time period of unbilled energy, we now consider whether defendant has authority to back bill complainant.

Defendant represents that it back billed complainant in accordance with its Rule 17. This rule allows defendant to adjust complainant's bill whenever a meter is found to be incorrectly registering energy use. The Rule also allows defendant to back bill for up to three years of unbilled energy whenever a nonresidential meter, such as complainant's, registers more than 2% (percent) slow. Because Peters' running load tests show that complainant's meter ran 20% to 25% slow, well above the 2% benchmark, there is no doubt that defendant may back bill complainant.

² Since complainant purchased St. Joseph's Hospital in April 1980, complainant's predecessor benefited from the use of unbilled energy from 1977 to April 1980, or approximately three years.

Complainant also questions the appropriateness of defendant selecting the maximum back billing time period. In response, Peters states that the maximum period is not mandatory, but in this particular case he believes it is applicable.

We disagree. Although complainant did receive and did benefit from five years of unbilled energy, such benefit resulted from defendant's apparent negligence. Defendant failed to discover the bypass clip that its employee left on the meter within a reasonable period of time and therefore, should not be made whole to the maximum three-year time period allowed by its tariff. To do so would reward defendant for its apparent negligence and diminish any incentive to provide quality service.

To balance defendant's incentive to provide quality service and complainant's use of unbilled energy, we will treat defendant and complainant as equal partners in this situation. The maximum three-year billing period should be used to calculate the total amount of unbilled energy. Of this amount, defendant should bill its partner, complainant, half.

The final issue is the method defendant used to back bill complainant. Although complainant believes that defendant should have divided the running load time difference between the meter reading with the clip on and with the clip off into the time it takes the meter to make a complete revolution with the clip, complainant presented no evidence to show that defendant's method was wrong. Peters testified that the result could be confirmed by dividing the test time period with the clip removed into the test time period with the clip in place. Both methods result in a 25% error rate in the first test and a 20% error rate in the second test, as shown in Appendix A.

Complainant's remaining calculation issue is whether defendant's volume of unbilled energy reflects reduced energy use while part of the hospital was closed for remodeling. Again complainant presented no evidence. Because defendant's correction

factor was applied to complainant's actual meter readings including the period when remodeling occurred, this issue is moot.

For the reasons discussed above complainant is responsible for paying defendant \$5,707.09, half of the \$11,414.18 unbilled energy. Of this amount, complainant has deposited with the Commission \$657.53 and has paid defendant \$2,693.51 towards the disputed bill, as shown in Exhibit 6. Complainant owes defendant a balance of \$2,356.05.

Complainant has alleged that it will incur a financial hardship if it is required to pay for three years' backbilling because it has not been given an opportunity to book adequate reserves to cover the charge. While we have determined the appropriateness of the three-year backbilling, complainant should not be required to incur this immediate hardship, caused solely by defendant's failure to remove the clip after installation.

Complainant should be given a reasonable period of time to budget for the back bill and to reimburse defendant. Absent a payment agreement between complainant and defendant, the maximum monthly payment plan should be 1/12th of the \$2,356.05 balance, or \$196.34 per month, until paid in full. Complainant and defendant may accelerate the monthly payment upon mutual agreement.

Findings of Fact

1. Complainant protests a \$11,414.18 bill for prior years' unbilled energy.
2. Complainant disputes an allegation that complainant tampered with its meter.
3. Defendant back billed complainant for three years use of unbilled energy.
4. Complainant had no knowledge of the bypass clip located on one of the three current transformers inside the electrical meter panel on its premises.
5. Defendant discovered the clip on March 18, 1985.

6. Complainant is responsible for the payment of energy that passes through its meter undetected.

7. Defendant found no evidence of meter tampering.

8. Defendant's meter seal was properly crimped.

9. The clip enables some energy to bypass the meter.

10. Defendant inadvertently left the clip on the transformer in 1977 during installation.

11. Complainant received and benefited from unmetered energy from 1977 to March 19, 1985, when the bypass clip was discovered by defendant.

12. Complainant's meter accurately reads energy that passes through the meter.

13. A running load test showed that the difference between meter readings with the clip on and with the clip off equalled 25% in the first test and 20% in the second test.

14. Defendant derived a 21.5% correction factor by averaging the results of the two tests and reducing the average by a 0.01% conservative factor.

15. Defendant owes \$8,720.67, of which \$657.53 is on deposit with the Commission.

16. Complainant received unbilled energy from 1977 to March 18, 1985.

17. Rule 17 allows defendant to back bill for up to three years when a nonresidential meter is found to register more than 2% slow.

18. Defendant substantiated its 21.5% meter correction factor.

19. Defendant applied the meter correction factor to complainant's actual recorded meter reading for back billing period.

20. Complainant will incur a financial hardship unless it is allowed a reasonable period of time to budget for the backbill and reimburse defendant.

Conclusion of Law

Complainant should be required to pay defendant for half of the unbilled energy that it received during the three year period March 22, 1982 through March 19, 1985.

O R D E R

IT IS ORDERED that:

1. St. Joseph's Oak Park Hospital (complainant) shall be responsible for paying Pacific Gas and Electric Company (defendant) \$5,707.09, of which \$657.53 is on deposit with the Commission.
2. Complainant's \$657.53 deposit with the Commission shall be disbursed to defendant on the effective date of this order.
3. Complainant shall pay defendant \$2,356.05 (\$5,707.09 less \$2,693.51 partial payment and less \$657.53 deposit with the Commission) as final settlement towards the complaint in this case. Complainant shall not be charged any interest on the unpaid balance.
4. Complainant shall pay defendant a minimum of \$196.34 per month against the \$2,356.05 amount due to defendant, until paid in full. Upon mutual agreement between complainant and defendant the monthly payment may be accelerated without the requirement to notify the Commission or obtain its approval.

This order becomes effective 30 days from today.

Dated JAN 9 1990, at San Francisco, California.

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

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

Commissioner Stanley W. Hulett,
being necessarily absent, did
not participate.

Exhibit 4
CPUC Proceeding C.89-04047
Sponsor/Witness <i>Galvin</i>
Date Cont. 8/21/87 Recd. 8/31/87
Michael J. Galvin Administrative Law Judge

METHOD USED TO DETERMINE CHARGES
FOR UNMETERED ENERGY USAGE

Account Number VXT 07 3851

On March 19, 1985 a current bypass clip was discovered on one of the transformers serving St. Joseph's Oak Park Hospital (account VXT 07 3851). This clip caused unmetered energy usage.

To determine the quantity of unmetered usage, a running load test was conducted on March 19. The test results were as follows:

I. With Bypass Clip in Place 8:25 a.m.
1 disk revolution every
14 seconds

With Bypass Clip Removed 8:35 a.m.
1 disk revolution every
11.2 seconds

(14 seconds) - (11.2 seconds) = 2.8 seconds difference

2.8 seconds divided by 11.2 seconds = 0.25

Unmetered energy lost at a 25% rate

II. A second running load test was conducted ten months later on 1-15-86. The bypass was recreated using the same clip.

The test results are as follows:

With Bypass Clip in Place 8:30 a.m.
6 times at one disk
revolution each

15.8 seconds
16.6 seconds
16.7 seconds
17.6 seconds
16.2 seconds
16.1 seconds
99.0 seconds

99.0 seconds divided by 6 equals an average of 1 disk revolution every 16.5 seconds.

With Bypass Clip Removed

6 times at one disk
revolution each

13.0 seconds
14.7 seconds
14.7 seconds
13.9 seconds
13.5 seconds
12.7 seconds
82.5 seconds

82.5 seconds divided by 6 equals an average of 1 disk revolution every 13.75 seconds

(16.5 seconds) - (13.75 seconds) = 2.75 seconds difference

2.75 seconds divided by 13.75 seconds = 0.20

This shows unmetered energy at a 20 percent rate

An average of the two test results was used as the billing factor.

0.25 Test I
+ 0.20 Test II
0.45 divided by 2 = 0.225, less 0.01 = 0.215

Applying the 21.5% billing factor to monthly electric usage for a three-year period, March 22, 1982 to March 19, 1985, results in additional charges totaling \$11,414.18.

The billing procedure is in compliance with CPUC Rule Number 17.

To clarify the solution to the retroactive billing the calculation may be more easily understood when the percentage of loss is converted to a correction factor (multiplier).

The standard formula to convert the speed of the meter to kW is as follows:

1. Note Kh found on the meter face (A)
2. Select a number of revolutions to be counted (B)
3. Time those revolutions in seconds (C)
4. Note meter constant found on the meter face (D)
5. Apply the following formula:

$$\frac{3.6 \times A \times B \times D}{C}$$

To apply this to the test of 3-19-85, and 1-15-86:

3-19-85:

$$\frac{3.6 \times 1.8 \times 1 \times 80}{14} = 37.028571 \text{ rounded off to } 37.03$$

$$\frac{3.6 \times 1.8 \times 1 \times 80}{11.2} = 46.285714 \text{ rounded off to } 46.29$$

37.03 divided by 46.29 = .79999568 rounded off to .80%
.80% represents the percentage of energy being recorded on the meter

1-15-86:

$$\frac{3.6 \times 1.8 \times 1 \times 80}{16.5} = 31.418182 \text{ rounded off to } 31.42$$

$$\frac{3.6 \times 1.8 \times 1 \times 80}{13.75} = 37.701818 \text{ rounded off to } 37.70$$

31.42 divided by 37.70 = .8334218 rounded off to .83%
.83% represents the percentage of energy being recorded on the meter.

Our correction factors are then calculated:

$$100 \text{ divided by } 80 = 1.25$$

$$100 \text{ divided by } 83 = 1.2048193 \text{ rounded off to } 1.20$$

Our explanation from our prior report then continues as it now applies to the calculated correction factor (multiplier).

The two correction factors were then added together:

$$\begin{array}{r} 1.25 \\ + 1.20 \\ \hline 2.45 \end{array}$$

Then they were divided by two to calculate for average:

$$2.45 \text{ divided by } 2 = 1.225$$

As 1.225 represented the average correction factor to be applied toward prior recorded usage it was decided that the most conservative approach would be applied. Thus .01 was subtracted which reduced the correction factor to 1.215:

$$\begin{array}{r} 1.225 \\ - .01 \\ \hline 1.215 \end{array}$$

The correction factor (multiplier) was then used to increase past recorded usage for a three year period.

(END OF APPENDIX A)