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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE WOODS, CHERRY AVENUE DEVELOPMENT CO., ARCADIA MANAGEMENT SERVICES CO. and ARCADIA DEVELOPMENT CO., Complainants, vs. PACIFIC GAS and ELECTRIC CO., Defendant.	ORIGINAL Case 87-12-005 (Filed December 2, 1987)

Martin S. Snitow Law Corporation, by Martin S. Snitow, for complainants.
Susan L. Rockwell, Attorney at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

Summary

This decision denies the request for a refund by complainants, The Woods and Cherry Avenue Development Co. (Woods-Cherry). We find that Pacific Gas and Electric Company (PG&E) did not make any error in billing complainants' master meters serving gas for central hot water heating.

Request

Complainants consist of The Woods, Cherry Avenue Development Co., Arcadia Management Services Co., and Arcadia Development Co.

The Woods owns three residential apartment complexes located at 3970, 4100, and 4200 The Woods Drive in San Jose.

Cherry Avenue Development Co. owns two residential apartment complexes located at 4950 and 4951 Cherry Avenue in San Jose.

Arcadia Management Services Co. operates the five complexes indicated above; it assigns its rights in this matter to The Woods or to Cherry Avenue Development Co.

Arcadia Development Co. alleges to have been billed improperly for some of the reasons at issue in the complaint; it assigns its rights in this matter to The Woods or to Cherry Avenue Development Co.

Complainants seek refunds from PG&E for alleged gas overbilling. The complainants contend that PG&E used incorrect tariffs and/or improper lifeline and baseline allowances for master metered gas used for central hot water that is served to individual dwelling units. Complainants' master meters have been billed under various rate schedules including single-family and commercial schedules.

Complainants argue that the applicable tariff is GM-1X, which grants master meters a full baseline allowance for each unit served by the master meter. Complainants believe that refunds for past overcharges should go back to the beginning of lifeline rates, or the beginning of service, whichever is later, and that interest on the refunds should be awarded.

Hearing

A duly noticed hearing was held in the Commission Courtroom in San Francisco on August 23, 1988. The matter was submitted on receipt of concurrent briefs on October 31, 1988.

At the hearing on August 23, 1988 complainants presented the testimony of witnesses Eli Reinhard (Reinhard) and James N. Boylson (Boylson). Reinhard is a general partner in Woods-Cherry. Boylson is an energy management consultant in his own business, Energy Management/Marketing Consultants.

Reinhard's testimony may be summarized as follows:

1. The Woods-Cherry complexes were completed before lifeline allowances took effect.

2. The dwelling units are individually metered by PG&E for electric but not for gas.

3. He was not aware until 1987 that Woods-Cherry was eligible for lifeline or baseline allowances.

4. Billing notices and inserts were normally ignored.

Boylson's testimony may be summarized as follows:

1. In 1986, while reviewing files dealing with the feasibility of solar installations for complainants' properties, he discovered evidence of billing problems.

2. He contacted complainants, who authorized him to contact PG&E about the problems.

3. PG&E reviewed the problem and made refunds to complainants based on applying tariff GM-1XW for the three-year period prior to the discovery of the problem.

4. An additional refund of $28,025.29 is due based on full baseline allowances for the three-year period. This is appropriate since PG&E grants full baseline allowances to similar properties.

PG&E presented the testimony of Eugene Simonetti (Simonetti), Director of the Commercial Department of the Department of Marketing and Customer Services, whose testimony may be summarized as follows:

1. PG&E must rely on information furnished by the customer regarding the number of units at multiple unit apartment complexes.

2. PG&E developed a lifeline adjustment plan in 1981 to insure that customers were aware of the availability of lifeline rates, and to refund any overcharges that may have resulted from the use of improper lifeline allowances. The plan, approved by the Commission, was very successful with thousands of customers responding.

3. Refunds for billing errors may go back only three years under the tariff rules.

4. GM-1XW is the applicable tariff schedule for master metered gas customers who furnish central hot water to units that

are individually metered for either gas or electric service by PG&E. Suffix W indicates a baseline allowance for hot water heating only.

5. If the customers above were not individually metered by PG&E for either gas or electric, they would be eligible for full baseline allowances under GM-1X.

Discussion

There is no dispute that certain billing errors have occurred. PG&E overbilled some of complainants' master meters. PG&E has refunded the overcharges to complainants back three years based on schedule GM-1XW.

The complainants allege that PG&E's refund is insufficient for three reasons: (1) PG&E should have based the refunds on Schedule GM-1X, (2) the refunds should be for the entire period of the overbilling, and (3) the refunds should include interest.

1. The Baseline Schedules

The complainants are master-metered gas customers who supply central water heating to apartment units. The individual apartment units are individually metered for electricity by PG&E.

There are two baseline allowances for master-metered gas customers. These allowances are reflected in GM-1X and GM-1XW. Schedule GM-1X provides a "full" baseline allowance to master-metered customers which provide both space-heating and water-heating to individual dwelling units. Schedule GM-1XW provides a lesser allowance to master-metered customers who supply water heating only to individual dwelling units.

Complainants supply water heating only, yet they assert that they are entitled to the full allowance under Schedule GM-1X. Complainants contend that the question of which tariff to apply should not consider whether the master-metered customer provides full (space and water) or partial (water) service to the individual units. Instead, complainants suggest that the applicable tariff

should be determined based upon whether the individual units receive individually metered gas service from the same utility. If they do, under complainants' reasoning, then the master-metered customer would receive the partial allowance under GM-1X; if they do not, the master-metered customer should receive the full baseline allowance.

We cannot accept complainants' interpretation of the schedules. The full baseline allowance for master-metered customers, as embodied in Schedule GM-1X, was developed and calculated on the premise that such customers would provide both space and water heating. The baseline allowance in Schedule GM-1XW was expressly developed for master-metered customers who provide water heating only, hence the designation of "W". To give the full allowance to a customer which provides central water heating only would provide an unwarranted windfall. Whenever a customer receives a higher baseline allowance than is actually needed or fairly earned, other customers must pay higher rates to subsidize the difference.

Under the current tariff, as complainants note, if a master-metered customer provides water heating only but if the individual units are not directly served by the utility (such as when PG&E provides gas to the master-meter and SMUD supplies electricity to the individual units), the master-metered customer will receive the full allowance. Complainants reason that it is discriminatory for some mastered customers who provide water heating only (such as those in the SMUD service territory) to receive the full allowance, while those such as the complainants would receive the lesser allowance.

We agree that the tariff presently contains a "loophole" which provides an unearned windfall to certain master-metered customers, but this inequity does not justify broadening the loophole to a larger number of master-metered customers. Since it is unfair for any master-metered customer to receive a full

allowance if they do not provide central space heating, we will initiate an investigation to consider eliminating the windfall for those master-metered gas customers whose tenants are served by a municipal electric utility.

2. The Refund Period

PG&E has provided a three-year refund. Complainants argue that refunds should be made back to the beginning of lifeline in 1976 for four reasons.

First, complainants contend that the PG&E lifeline adjustment plan does not have an expiration date, and has not been terminated by Rule 17.

In response, PG&E argues that the refund period was reduced to three years in 1984 by Rule 17D. PG&E believes that the Commission intended that Rule 17D cancel the open-ended refund period available under the lifeline adjustment plan, since it was not intended to continue indefinitely.

We note that PG&E implemented the program in 1981 after Commission authorization by Resolution E-2571. The intention of the plan was to identify and notify those customers who were not receiving proper lifeline allowances, to correct future billing, and to grant refunds for overcharges from the beginning of lifeline in 1976. The plan was intended as a one-time effort, and was not intended to still be in effect seven years after it was implemented.

Second, complainants argue that they are entitled to refunds from the beginning of the lifeline program, because a PG&E internal document entitled "The Commercial Guide" provides:

> "8. When a customer has been overbilled for a period exceeding three years, and requests an adjustment beyond the three year period, the regional manager may approve it, provided the total amount of adjustment (for the entire period) does not exceed $20,000."

Complainants argue that unless they receive refunds beyond three years, they would be denied the same treatment that PG&E apparently accords other customers. Complainants believe such treatment would be discriminatory and unlawful.

We disagree. The Commission has approved three years as the normal period for both refunds and for backbilling. Although PG&E may grant refunds beyond three years, we normally have not required it to do so unless extenuating circumstances apply, such as a clear indication that PG&E was severely negligent and the complainant was blameless. That is not true in this case. PG&E did attempt to identify and eliminate billing errors of this type. Complainants contributed to the problem through apparent negligence or carelessness in reviewing bill inserts and notices that could have corrected the overbilling problem much earlier. We expect complainants, as owners/managers of large apartment complexes, to be sophisticated enough to be aware of the availability of lifeline and baseline allowances and to take appropriate actions if necessary to receive it.

Third, complainants state that the Rule 17 limit of three years for backbilling does not apply to fraud. Complainants allege that PG&E committed fraud by keeping customers from obtaining proper lifeline (and later baseline) allowances by not adequately identifying and notifying customers of the availability of those allowances, despite its lifeline adjustment plan.

We find that complainants have failed to support their allegations of fraud with actual evidence of fraud or fraudulent intent by PG&E.

Fourth, complainants contend that Rule 17B provides for refunds beyond three years since the billing error was due to an "other appliance", namely PG&E's computer.

This final argument is also incorrect. The Rule 17B exceptions apply to "Meters Other Than Displacement Gas Meters". Complainants' meters are displacement gas meters, which measure gas

flow by means of a bellows. Even if the Rule 17B exceptions applied, the "other appliance" refers to a measuring or computing device used to measure gas flow. PG&E's computer that renders gas bills is not such a device.

We conclude that complainants' claims do not justify requiring PG&E to provide refunds beyond the three years provided for billing errors.

3. Interest

The final issue we must address is interest on refunds. Complainants argue that interest is required and appropriate since the lifeline adjustment program refunded overcharges with 7% interest. Complainants also argue that interest higher than 7% is appropriate due to the long period involved, and that refunds should be considered deposits, which accrue interest at a higher rate.

PG&E argues that Rule 17D does not provide for interest on refunds due to billing errors.

The Commission may order interest on refunds pursuant to Public Utilities Code § 734, which states that when "the public utility has charged an unreasonable, excessive, or discriminatory amount...the commission may order that the public utility make due reparation to the complainant therefor, with interest...if no discrimination will result...."

We have ordered interest to be applied in cases where the utility clearly erred and the complainant was not a contributor to the error. For example, in Decision (D.) 87-03-056 we ordered PG&E to pay interest on the refund to complainant The Mark Hopkins Intercontinental Hotel (Mark Hopkins). In that case PG&E had left both an old and a new electric meter recording electric usage. In this case, in contrast, PG&E attempted to correct the problems through its lifeline adjustment plan. Complainants' testimony clearly demonstrates that it did not devote much, if any, effort to reviewing and understanding the bills from PG&E. Bill inserts and

notices were typically ignored. We must therefore conclude that complainants contributed to the billing errors.

We find that the billing errors are not unreasonable, excessive, or discriminatory. We conclude that it is not reasonable to require PG&E to grant interest on the refunds.

Findings of Fact

1. Complainants seek refunds from 1976 with interest from PG&E for gas overcharges to master-metered accounts for central hot water heating at five residential apartment complexes in San Jose.

2. Complainants consist of parties who either own, manage, or otherwise have an interest in the complexes.

3. D.93198 implemented a lifeline allowance for master-metered central hot water heating that serves tenants. It ordered a lifeline allowance for central hot water heating, while concurrently reducing the lifeline allowance by the same amount to tenants who were served individually metered PG&E gas.

4. PG&E implemented a lifeline adjustment plan in 1981, with Commission authorization, to attempt to identify customers most likely to not be receiving proper lifeline allowances. The plan offered refunds with interest back to the beginning of lifeline in 1976.

5. Complainants discovered in 1987 that billing errors had occurred since 1976.

6. After being made aware of the billing errors, PG&E granted refunds to complainants for three years, based on Schedule GM-1XW which is for master-metered central hot water that serves dwelling units that are individually metered by PG&E.

7. Complainants provide master-metered central hot water to various apartment units.

8. Complainants contributed to the billing errors through their negligence or carelessness in handling billing inserts and notices.

9. PG&E's authorization to its regional manager to approve refunds for overbilling beyond three years is discretionary and does not imply that similar refunds must be made in this case to avoid discrimination.

10. Complainants failed to substantiate their allegations of fraud by PG&E regarding the billing errors.

11. Complainants' master meters are displacement type meters and are not exceptions to Rule 17B. PG&E's billing computers are not "other appliances" within the meaning of Rule 17B.

Conclusions of Law

1. The proper schedule for master-metered central hot water served to dwelling units, whether or not such units are individually metered by PG&E for gas, is GM-1XW.

2. It is not reasonable to order PG&E to grant complainants refunds beyond three years prior to discovery of the billing errors.

3. It is not reasonable to order PG&E to pay interest on the refunds.

O R D E R

IT IS ORDERED that the complaint in Case 87-12-005 is denied.

This order becomes effective 30 days from today.

Dated MAR 14 1990, 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

NEAL J. SHULMAN, Executive Director