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Decision 90-12-056 December 19, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

R. Ricks Sawyer and Sue N. Sawyer,)
Complainants,)
vs.)
Pacific Gas and Electric Company,)
Defendant.)

ORIGINAL

(ECP)
Case 90-06-029
(Filed June 13, 1990)

O P I N I O N

In this Expedited Complaint Proceeding (ECP) we find that complainants were improperly billed for electric service between December 1989 and February 1990.

Complainants are R. Ricks and Sue N. Sawyer. At all times relevant to this proceeding, complainants resided in Redding, California and received residential electric utility service from defendant Pacific Gas and Electric Company (PG&E). Complainants say that they were overcharged in the amount of \$217.77 as the result of a malfunctioning electric meter.

The complaint was filed with this Commission on June 13, 1990. Defendant filed its answer on July 18, 1990 denying that it overcharged the complainants. Hearing was held on September 13, 1990 in Redding, California before Administrative Law Judge (ALJ) Wilson. Complainants appeared for themselves, and PG&E was represented by Mike Weaver, PG&E customer service representative, and Mr. Smith, an employee of the division of PG&E which provided electric service to the complainants.

In their complaint and testimony, complainants alleged the following facts. Complainants received monthly bills for the

period December 1989 through February 1990 for electric use and charges as shown below:

<u>Monthly Use Period</u>	<u>Days</u>	<u>Kilowatt Hours</u>	<u>Charge</u>
December 1989	32	1184	\$134.63
January 1990	29	1474	183.88
February 1990	32	1156	139.19

Upon receiving their bill for the month of December 1989, complainants noted that it appeared substantially higher than all their prior bills. Complainants paid their bills for December and January and made several requests that defendant check their meter. On February 20, 1990, a PG&E field employee (name not known) visited the Sawyers' residence and tested the electric meter.

Complainants state that the defendant's employee told them that the meter was defective. Mrs. Sawyer testified at the hearing that the representative told her that he had found the problem, that the meter was "surging." The meter was removed and a new meter installed on that day.

The Sawyers testified that their electric use and charges both before and after the period of December 1989 to March 1990 had remained fairly constant at about 700-800 kWh per month. From February 1989 through November 1989 their usage pattern ranged between a low in November of 708 kWh to a high of 835 kWh in July. The average use during this period was 753 kWh.

The Sawyers' electric consumption for the period March 1990 through May 1990, following the installation of the new meter on February 20, 1990, returned to its former pattern, averaging 717 kWh.

In their complaint, the Sawyers described their residence as being 1,187 square feet in size and occupied by two adults and children ages 15, 13, and 9. Most of their major appliances, consisting of a water heater, stove, clothes dryer, and furnace, are operated on propane gas. The propane furnace is not used; the Sawyers heat their home in winter by burning wood in their

fireplace. They also use a refrigerator, clothes washer, and a microwave oven powered by electricity.⁷ Their remaining electrical load consists of small appliances, indoor lighting, and two small waterbeds in use since April 1988. Mr. Sawyer testified that during the week the house is typically unoccupied between 8 a.m. and 5 p.m. since both parents work and all three children attend school. He stated that there were no other residents or guests staying in the Sawyer home during the period in question.

PG&E's representative Weaver offered to introduce a document entitled Field Investigation Form for Electric Meters/Equipment. The form contains the results of the field test of the Sawyers' meter conducted on February 20, 1990. The form is signed by H. Iness as the person performing the test and a notation states that Mr. Sawyer was present when the test was conducted. The form indicates that the meter ran approximately 4.3% slow under a light load and somewhat less slow under a heavy load.

PG&E's witness Smith offered a second field test form showing the results of a second test which was undertaken in PG&E's shop on July 16, 1990. Smith explained that second test was performed as a check on the earlier field test. The second form indicates that during this test, the meter ran about half as slow as in the earlier test. Smith explained that under PG&E's Tariff Rule 17, a meter must be replaced when it is determined that it operates more than 2% fast or slow. Under cross-examination by Mr. Sawyer, Smith stated that the tests were conducted over a period lasting "just a minute."

Smith stated that he believed that the PG&E representative who had spoken with Mrs. Sawyer on February 20, 1990 and who had told her that the meter was surging had actually meant to say that the meter surged when exposed to a sudden increase in load. Smith further explained that it is common for meters to surge or "spin" in this manner and that this type of surging does not result in inaccurate meter readings. On questioning by the

ALJ, Mrs. Sawyer stated that the representative did not tell her at that time that her meter was running slow and did not show her the field inspection form.

The ALJ asked if there had been any unusual or severe weather during the period of the disputed billing. Smith replied that there had been snowfalls in both December and January in the Redding area. Smith stated that it is common for families with wood burning fireplaces to also use small electric space heaters in bedrooms during colder periods. Mrs. Sawyer denied that her family had or used such appliances.

On questioning by the ALJ, Weaver and Smith calculated that the Sawyers' monthly electric use during November 1988 to March 1989 was 781, 917, 724, and 724 kWh. The monthly average use for the period December 1988 through February 1989 was 788 kWh. The ALJ then asked Smith whether it was possible for meters to run slow at certain times and fast at other times. Smith replied that he had also asked that question of his meter department and had been told that they were unaware of any condition that would cause a meter to operate in such a manner. Smith added that he could not explain the sudden apparent increase in the Sawyers' electric consumption during December, January, and February of 1989-90 but believed that the meter was running slow, rather than fast during the period.

Discussion

In resolving this case, we must decide whether a residential household with a consistent pattern of electric consumption and a relatively low electric load suddenly and significantly increased its electric consumption over a three-month period in the winter, or whether an electric meter malfunctioned and operated 50 to 100% fast.

In the absence of evidence tending to show that complainants' meter was functioning properly, evidence of complainants' historical pattern of electric consumption would be

sufficient to support the inference that complainants' actual consumption over the disputed period was similar to that over the corresponding months in the prior year.

That complainants' high bills ceased at the close of the billing period in which complainants' meter was removed and replaced is strong circumstantial evidence tending to support complainants' claim that the meter was running fast.

Mrs. Sawyer's testimony concerning the statements made to her by the PG&E representative at the time of the February 20, 1990 test of her meter are hearsay, but need not be excluded on that basis. In considering this evidence, we need only be concerned that the parties' substantial rights be preserved (Rule 64). PG&E was apprised in the Sawyers' complaint that the Sawyers were basing their claim at least in part on the alleged statements. PG&E could have, but did not object to the testimony, nor did it produce the employee who performed the test as a witness, nor it deny that the statements were made. PG&E's only challenge to this testimony was its speculation as to what the representative meant. This speculation must be accorded little weight. It seems unlikely that the representative would have said that he had found the problem if he were referring to the type of surging which Smith described. By Smith's own testimony, surging that occurs as the result of sudden increases in load does not result in excessive meter readings and would hardly have been said to be the problem.

PG&E's primary defense is that its tests of the Sawyers' meter undertaken by PG&E on February 20, 1990 and on July 16, 1990 showed that the meter was running slow rather than fast. In support of this argument, PG&E offered documentary evidence consisting of two printed report forms filled in by hand. Neither witness at the hearing claimed to have been present when the tests were made.

PG&E did not produce the persons who prepared the test forms, nor did the person who prepared them or who was responsible

for their preparation certify them as being true and correct under penalty of perjury. This omission violates the Commission's Rule 69(b), and, therefore, the reports may not be admitted as evidence in this proceeding. Rule 69(b) exists to ensure that documentary evidence over which a public utility has virtually complete control and which may be inaccessible or even incomprehensible to the public is accurate. All that is required by the Rule is that the utility properly certify to that effect. This requirement is one of many that helps ensure that the Commission's proceedings are fair and open, and for that reason, it is a rule which neither the Commission nor any public utility may overlook. Rule 69(b) is applicable in an ECP under Rule 13.2(f).

PG&E's testimony in response to the ALJ's question as to whether unusual weather occurred and its speculation about the use of portable electric heaters is not persuasive. The Sawyers testified that they do not own or use any electric space heating, so even if the period in question were colder than usual, there were no electric heating devices in the house which would account for the alleged 50 to 100% increase in consumption.

PG&E's testimony in response to the ALJ's question as to whether an electric meter might run alternately fast and slow due to some malfunction is likewise not persuasive. Mr. Sawyer testified that the unidentified shop personnel with whom he discussed that question prior to the hearing replied only that the person did not know of any malfunction that would cause such a result.

Based on the evidence presented in this matter we must conclude that the Sawyers did not consume the energy which was registered on their meter during the period in dispute. We further conclude that the Sawyers' meter was defective and that the best indication of the Sawyers' actual electric use during the period is the amount of electricity they consumed during the corresponding months of the prior year.

Accordingly, we find that the Sawyers should have been billed only for 2,365 kWh over the period December 1989 through February 1990 rather than for the 3,814 kWh actually billed. PG&E must compute the amount to be refunded to the Sawyers applying the residential electric rate in effect during each month in the disputed period in proportion to the metered use for each corresponding month in the corresponding period in the prior year and immediately refund that total to the Sawyers.

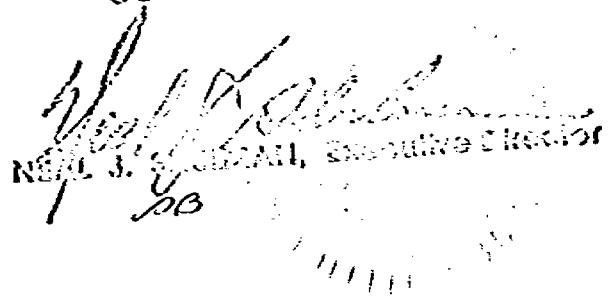
IT IS ORDERED that Pacific Gas and Electric Company shall compute the amount by which the Sawyers were overcharged for the billing periods of December 1989, January 1990, and February 1990 and shall immediately refund that amount to the Sawyers.

This order becomes effective 30 days from today.

Dated December 19, 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


NEIL J. S. [unclear], Executive Director