ALJ/FJO/vdl

Mailed

JAN 25 1991

Decision 91-01-026 January 25, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rocky Sanchez, Complainant, vs. Pacific Gas and Electric Company (U 39 E), Defendant.	Case 90-04-002 (Filed April 2, 1990)

Rocky Sanchez, for himself, complainant.
Jefferson C. Bagby, Attorney at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

This complaint was filed as a result of a bill sent to Rocky Sanchez by Pacific Gas and Electric Company (PG&E) in the amount of $10,347.41 for unmetered electrical energy used by, but not previously billed to, complainant due to alleged meter tampering. The bill covers the period August 11, 1980 to May 17, 1989.

A public hearing was held before Administrative Law Judge O'Leary on June 27, 1990 at Fresno. The matter was submitted with the filing of the transcript on July 18, 1990.

Evidence on behalf of complainant was presented by himself. Evidence on behalf of defendant was presented through three witnesses.

The evidence discloses that on May 16, 1989, John Chagoya, a revenue protection representative employed by PG&E, received a telephone call wherein he was advised that there may be a meter bypass at Sanchez's residence located at 5445 N. Poinsettia Street in Clovis. On May 17, 1989 Chagoya proceeded to the Sanchez

residence to investigate whether there in fact was a bypass. When Chagoya and an associate removed the meter, two metal jumpers were dislodged and fell from the panel jaws into which the meter prongs are inserted. On that date, the meter was taken by PG&E and a new meter was installed at the Sanchez residence.

Metzler, another revenue protection representative employed by PG&E, testified that when he returned from vacation Chagoya informed him of the investigation at the Sanchez residence and the finding of the metal jumpers.

Metzler also testified that he normally would have conducted the investigation. However, because he was on vacation it was conducted by Chagoya. Upon receiving the information from Chagoya, Metzler then assumed responsibility for the remainder of the investigation.

Metzler conducted a review of metered electricity usage at the Sanchez residence from June 1980 to December 1989 through the use of a "usage worksheet" which is contained in Exhibit 1. Review of the usage worksheet led Metzler to the conclusion that the jumpers were installed during the period August to September 1980.

The "usage worksheet" disclosed usage of 2,040 kilowatt-hours (kWh) during the period July to August 1980 and usage of 925 kWh during the period August to September 1980. Metzler testified that such a reduction is not normal because the temperature during that period in the valley is very hot and most people use air-conditioning both day and night.

In addition to the usage worksheet, Exhibit 1 contains copies of an adjustment order wherein PG&E estimated the amount owed by complainant for unmetered energy usage; a bill for retroactive charges in the amount of $10,347.41 from the period August 1980 to May 1989; various pieces of correspondence from PG&E to complainant; two field investigation forms for electric meters/equipment; and an agreement signed under protest by Sanchez

to pay $150 per month commencing January 3, 1990 to and including March 1990 and $300 each month thereafter until the $10,347.71 is paid in full. Pursuant to that agreement complainant paid a total of $100.00.

Metzler also testified that in his opinion, based upon his experience, the two metal jumpers that were dislodged from complainant's meter would cause a 50% reduction in the amount of current registered by the meter.

Metzler further testified that the meter removed from complainant's residence and the replacement meter were tested for accuracy and both were found to be within the prescribed limits for accuracy.

Table 1 sets forth recorded monthly usage and the associated charges and PG&E's estimated useage and associated charges.

Table 1

Year	Reading Date	kWh Recorded	Charge	kWh Estimated	Charge
1980	9/11	925	$ 48.79	1,850	$127.72
	10/10	641	28.90	1,282	71.45
	11/10	889	47.76	1,778	117.83
	12/11	927	61.27	1,854	136.84
1981	1/12	1,007	67.79	2,014	149.89
	2/10	892	58.36	1,784	131.14
	3/12	938	61.45	1,876	137.47
	4/10	947	62.21	1,894	138.98
	5/12	819	46.55	1,638	111.00
	6/11	725	32.23	1,450	84.01
	7/13	1,364	83.91	2,728	204.00
	8/12	1,252	76.39	2,504	190.25
	9/11	1,235	74.83	2,470	187.16
	10/12	844	44.19	1,688	116.04
	11/10	788	53.58	1,576	131.53
	12/11	938	87.43	1,876	195.19
1982	1/12	1,153	116.89	2,306	255.49
	2/10	1,038	110.00	2,076	243.97
	3/12	935	95.17	1,870	213.72
	4/13	1,035	107.35	2,070	238.17

Year	Reading Date	kWh Recorded	Charge	kWh Estimated	Charge
	5/12	960	86.58	1,920	201.63
	6/11	801	52.32	1,602	135.35
	7/13	905	61.53	1,810	157.38
	8/12	1,602	135.35	3,204	305.01
	9/13	1,943	167.48	3,886	268.11
	10/12	903	59.25	1,806	151.65
	11/10	895	63.31	1,790	154.73
	12/13	1,532	137.77	3,064	294.53
1983	1/12	1,602	139.73	3,204	296.99
	2/10	1,316	105.60	2,632	226.62
	3/14	1,468	119.39	2,936	254.12
	4/12	1,339	107.57	2,678	230.60
	5/12	1,347	103.77	2,694	227.48
	6/13	1,075	71.91	2,150	170.63
	7/13	568	29.98	1,136	73.29
	8/12	995	61.06	1,990	147.38
	9/13	1,032	64.74	2,064	155.13
	10/12	637	34.88	1,274	85.98
	11/09	897	56.58	1,794	131.68
	12/12	897	56.58	1,794	142.61
1984	1/12	1,247	94.67	2,494	203.95
	2/10	1,113	85.09	2,226	192.61
	3/13	1,189	95.62	2,378	206.83
	4/11	630	43.34	1,260	102.26
	5/11	581	36.71	1,162	88.66
	6/12	807	49.13	1,614	120.99
	7/12	1,209	83.78	2,418	194.91
	8/10	1,270	89.41	2,540	206.23
	9/11	1,220	97.56	2,440	227.50
	10/11	829	58.40	1,658	144.84
	11/09	454	28.78	908	64.91
	12/11	837	68.39	1,674	158.57
1985	1/11	886	75.08	1,772	172.26
	2/08	694	55.91	1,388	134.49
	3/12	806	68.59	1,612	159.85
	4/11	829	72.42	1,658	167.90
	5/13	810	73.00	1,620	169.97
	6/12	602	44.43	1,204	107.73
	7/12	1,074	92.17	2,148	220.75
	8/12	896	71.52	1,792	178.13
	9/11	1,007	82.49	2,014	200.66
	10/10	710	51.45	1,420	126.39
	11/08	1,001	78.93	2,002	192.31
	12/11	1,193	112.44	2,386	247.56

Year	Reading Date	kWh Recorded	Charge	kWh Estimated	Charge
1986	1/11	1,194	114.26	2,388	251.54
	2/10	958	89.48	1,916	202.61
	3/12	738	63.51	1,476	150.66
	4/11	616	49.09	1,232	121.85
	5/13	548	42.48	1,096	105.78
	6/12	439	30.51	878	68.46
	7/14	930	70.23	1,860	174.57
	8/12	888	66.34	1,776	165.15
	9/11	982	75.79	1,964	185.57
	10/10	840	60.87	1,680	151.07
	11/12	1,329	112.53	2,658	258.44
	12/11	976	85.18	1,952	192.33
1987	1/13	1,011	89.43	2,002	197.51
	2/10	885	77.16	1,770	167.85
	3/12	789	67.32	1,578	148.18
	4/13	741	63.00	1,482	139.67
	5/12	494	36.25	988	87.41
	6/11	705	55.78	1,410	128.79
	7/14	1,154	100.80	2,308	220.61
	8/12	1,176	105.74	2,352	228.23
	9/11	1,134	100.78	2,268	218.90
	10/12	864	72.08	1,728	162.08
	11/12	829	69.85	1,658	156.20
	12/11	1,003	91.13	2,006	195.61
1988	1/12	1,148	109.13	2,296	234.55
	2/10	778	74.46	1,556	166.05
	3/11	754	71.04	1,508	159.81
	4/12	709	64.55	1,418	148.03
	5/11	537	44.37	1,074	107.45
	6/10	536	41.76	1,072	106.04
	7/12	1,050	102.40	2,100	228.94
	8/10	1,254	129.25	2,508	280.38
	9/12	1,256	126.47	2,512	277.84
	10/11	622	53.07	1,244	128.04
	11/08	453	34.86	906	89.05
	12/10	1,137	116.19	2,274	249.66
1989	1/11	1,182	125.67	2,364	268.62
	2/09	1,036	116.65	2,072	248.97
	3/13	1,008	111.45	2,016	240.20
	4/12	612	61.95	1,224	140.12
	5/11	503	47.02	1,006	111.24

Year	Reading Date	kWh Recorded	Charge	kWh Estimated	Charge
	5/17			162	
	6/12	708	68.59	624	78.55
	Totals	100,406	8,078.21	200,182	18,425.62
	Amount Billed			-100,406	- 8,078.21
	Amount Due			99,776	10,347.41
	Amount Due	May 1980 to May 1986			6,754.54
		May 1986 to May 1989			3,574.00
		Energy Comm. Tax			18.96

Exhibit 2 is the declaration of Robert Hills, complainant's ex-brother-in-law, who was subpoenaed by PG&E and testified that complainant informed him of the installation of the meter bypass at his residence and also at a neighbor's residence shortly after complainant moved into his house in mid-1980. As a result of the information concerning the meter bypass by complainant, Hills slowed his meter down by drilling a hole in the glass. Hills also testified that he settled his meter tampering case with PG&E.

PG&E argues that it is appropriate in this instance to backbill for the entire ten-year period because complainant not only installed the bypass on his own meter but he installed a bypass on the meter at his neighbor's across the street as well. PG&E contends that installing the bypass for your neighbors as well is particularly egregious conduct.

Discussion

The evidence is convincing that the meter at complainant's residence has been tampered with. In 1984, we instituted an investigation concerning the establishment of procedures by energy utilities to correct alleged undercharges. Decision (D.) 86-06-035 (21 CPUC 2d 270) sets forth the procedures utilities are to follow in this type of instance.

In that decision, we required the utilities to file tariff rules as follows:

"Adjustment of Bills for Unauthorized Use

"Where the utility determines that there has been unauthorized use of electric/gas service, the utility may bill the customer for the utility's estimate of up to three years of such unauthorized use." (D.86-06-035, p. 12, Appendix A.)

It is Commission policy to limit such recovery under the utilities' tariff to three years, and the Commission has interpreted Public Utilities Code § 737 requiring such limitation. However, we should note that the Commission also stated:

"We recognize that the utilities have recourse before the courts to causes of action other than the one created in Section 737, such as fraud, meter tampering or energy diversion under Civil Code Section 182, breach of contract, etc., and that many of these other causes of action are governed by longer statutes of limitation that will permit the utility to claim and collect for undercharges going back more than three years. It is not our intent in any way to limit collections related to such actions, and because the issues in such actions are only infrequently encountered by the Commission in the exercise of its jurisdiction, we prefer to leave the resolution of such claims to the greater familiarity and competence of the courts...

"In establishing a three-year limitation for energy backbilling in complaints brought before us, we do not intend to limit in any manner a utility's ability to proceed with whatever civil and criminal remedies for unauthorized energy use it may possess. We encourage and expect the vigorous prosecution of such remedies without regard to the three-year backbill limit." (D.86-06-035, pp. 9 and 10a.)

This decision does not prohibit PG&E from pursuing the other remedies it has at its disposal as set forth above.

Findings of Fact

1. Metal jumpers were installed at complainant's electric meter which caused it to run slowly and not record all electricity passing through the meter.

2. Complainant received the benefit of unmetered electricity from mid-1980 until May 17, 1990.

3. PG&E's estimate of the unmetered electricity is reasonable.

Conclusions of Law

1. The Commission has established a three-year policy limitation for unmetered energy backbilling under a utility's tariff. The Commission also endorses recovery for unmetered energy use, recognizing that such unmetered energy use may occur for extended periods prior to the three-year limit. The Commission's policy encourages utilities to pursue recovery through other civil and criminal remedies.

2. The backbilling to complainant for the 36-month period ending May 1989 in the amount of $3,580.52 less the $100.00 previously paid is the amount this Commission authorizes for recovery by this decision.

3. Recovery of the remaining amount, representing unmetered energy use, may be sought pursuant to other civil and criminal remedies.

O R D E R

IT IS ORDERED that Pacific Gas and Electric Company bill complainant consistent with this decision.

This order becomes effective 30 days from today.

Dated January 25, 1991, at San Francisco, California.

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

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

NEAL J. SHULMAN, Executive Director

pb