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Decision 91-05-040 May 22, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Wilbert Thorne and Daria Mack,

Complainants,

vs.

Pacific Gas and Electric Company,

Defendant.

Sheila Standley,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

**ORIGINAL**

Case 85-08-071  
(Filed August 30, 1985)

Case 87-04-004  
(Filed April 6, 1987)

ORDER CLOSING PROCEEDINGS

Summary of Decision

This decision concludes that Pacific Gas and Electric Company (PG&E) has introduced reasonable procedures to address the problem of a tenant unknowingly having to pay for utility service that is diverted to another. No further action in the proceedings is necessary and the proceedings should be closed.

Background

Wilbert Thorne, Daria Mack, and Sheila Standley (complainants) filed complaints, Case (C.) 85-08-071 and C.87-04-004, alleging that they were victims of what is known as utility "diversion" or theft of service. Diversion of the type complained about occurs when a utility user's meter registers not only that user's service but also the service provided to others. The users in whose name the meter is registered are usually unaware

that utility service to someone else is being registered on their meters and do not realize they are paying for gas or electricity used by others.

Complainants requested an order enjoining defendant PG&E from denying them gas and electric service. Because of their failure to pay for past diverted services, PG&E required them to provide extra security deposits. Complainants argue that they should not be required to furnish advance payments for future gas and/or electric service. According to complainants, PG&E should not place a heavier burden on them than is placed on customers with good credit standing. Complainants also requested a refund for payments made to PG&E for energy not used by them.

On December 19, 1988, the Commission issued Decision (D.) 88-12-080 in these consolidated proceedings, denying relief except for removing credit restrictions on complainants, but directing the Legal Division to prepare an Order Instituting Investigation (OII) into the energy diversion question.

D.88-12-080 stated the following regarding the need for an OII:

" . . . New approaches must be devised to ensure that customers are not required to pay for common usage or diverted energy under the threat of termination of service and negative credit ratings. That will be the purpose of the OII." (D.88-12-080, p. 18.)

On January 20, 1989, complainants applied for rehearing of D.88-12-080, alleging legal error because the Commission had not found that PG&E's conduct had not been unjust and unreasonable within the meaning of Public Utilities (PU) Code § 451. On August 3, 1989, the Commission issued D.89-08-043 denying complainants' request for rehearing. Preparation of the OII was suspended during consideration of the application for rehearing.

Subsequently, Senator Alquist sponsored Senate Bill (SB) 696. On September 25, 1989, the Governor approved SB 696 adding § 1940.9 to the Civil Code which requires a landlord to

disclose and make specific arrangements with a tenant over payment for gas and/or electric service provided through a tenant's meter to areas outside the tenant's dwelling unit. The new law also authorizes the tenant to bring a civil action against the landlord if the landlord fails to comply with the new law.

Following the approval of SB 696, PG&E filed a petition to modify D.88-12-080 to delete the requirement of an OII. In its petition, PG&E asserted that it will implement new procedures to provide the type of customer protections identified in D.88-12-080. According to the new procedures (included in Exhibit B to the petition), PG&E will:

1. Investigate suspected energy commingling situations;
2. Where energy commingling is discovered, provide the affected customer with a statement that such usage is occurring along with an estimate of the customer's own usage and, if possible, where the energy was being diverted; and
3. Suspend collection action on past due accounts and agree not to take any action that would negatively affect the customer's credit rating regarding prior bills reflecting commingled energy usage.

In its petition, PG&E contended that the new law and its procedures outlined above would afford the customer protections the Commission envisioned in D.88-12-080 and will address the stated purpose of the OII to "ensure that customers not [be] required to pay for common usage or diverted energy under the threat of termination of service and negative credit ratings." PG&E asserted that further investigation through the OII would be unnecessary.

In response to PG&E's petition to modify D.88-12-080, the Commission issued D.90-03-041, on March 14, 1990, which granted PG&E's request to remove the requirement of an OII dealing with mismetering problems and ordered PG&E to implement its new

procedures while working closely with community groups and the Commission staff for the next six months. D.90-03-041 also ordered PG&E to prepare and file a report on the operation of the new procedures for the six-month duration and serve a copy of the report on all parties to the proceedings.

While D.90-03-041 removed the requirement of an OII, it left open the possibility of instituting a rulemaking proceeding with the following statement:

"Today we will grant PG&E's petition to modify D.88-12-080 so as to remove the requirement of an OII into mismetering situations. If, after the six-month trial period is over, we find that the procedures are insufficient to protect the ratepayer, we will issue an Order Instituting Rulemaking (OIR) rather than an OII, to consider what rules should apply to the mismetering situations in order to protect the ratepayers and the utilities fairly."  
(D.90-03-041, p. 3.)

As directed by the Commission, PG&E filed its report on September 19, 1990 and served a copy of the report on all parties to the proceeding. PG&E has instituted the procedures described in its report.

After reviewing PG&E's report, we conclude that PG&E's procedures along with the provisions of SB 696 provide adequate safeguards against requiring customers to pay for common usage or diverted energy under the threat of termination of service and negative credit ratings. In addition, the six-month study shows that the volume of commingling cases is not significant<sup>1</sup> enough to warrant incorporating these procedures in tariffs. We believe

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1 During the six-month period beginning March 1, 1990, PG&E investigated 49,871 billing inquiries. Of these, there were 32 cases where the possibility of commingling existed.

that there is no need to issue an OIR for dealing with mismetering problems.

Findings of Fact

1. Complainants filed C.85-08-071 and C.87-04-004 alleging that they were victims of utility diversion.

2. The Commission issued D.88-12-088 in the consolidated proceedings which denied relief except for removal of credit restrictions on complainants.

3. D.88-12-088 directed the Legal Division staff to prepare an OII to address the problem of commingling of energy on the customer's side of the meter.

4. In September 1989, the Governor approved SB 696 adding § 1940.9 to the Civil Code which requires a landlord to disclose such commingling and to make specific arrangements with a tenant over payment for gas and/or electric service provided through a tenant's meter to areas outside of the tenant's dwelling unit.

5. Section 1940.9 of the Civil Code also authorizes the tenant to bring a civil action against the landlord if the landlord fails to comply with the code's provisions.

6. PG&E has instituted new procedures to provide customer protection against energy theft.

7. PG&E filed a petition to modify D.88-12-080 to delete the requirement of an OII contending that its new procedures, along with the provisions of § 1940.9 of the Civil Code, will provide the necessary customer protection against energy theft.

8. In response to PG&E's petition to modify D.88-12-080, the Commission issued D.90-03-041 which granted PG&E's request to delete the requirement of an OII to address the problems of energy diversion on the customer's side of the meter.

9. D.90-03-041 left open the possibility of instituting an OIR to consider what rules should apply to energy diversion problems.

10. D.90-03-041 ordered PG&E to implement its new procedures for the next six months and to prepare a report on the operation of the new procedure for the six months duration.

11. PG&E filed its report on the implementation of the new procedures and served a copy of it to all parties in the proceedings.

12. No party has filed a protest or commented on PG&E's report.

13. PG&E's new procedures along with the provisions of § 1940.9 of the Civil Code are sufficient to prevent energy diversion problems.

Conclusions of Law

1. An OIR to address the problem of energy diversion should not be issued at this time.

2. These proceedings should be closed.

IT IS ORDERED that proceedings in Case (C.) 85-08-071 and C.87-04-004 are closed.

This order becomes effective 30 days from today.

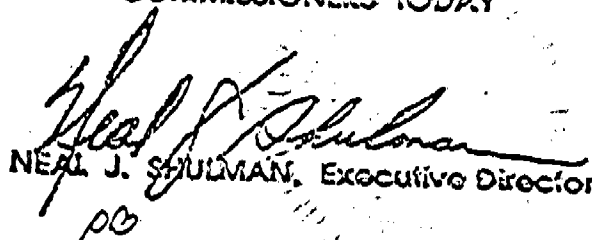
Dated May 22, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

Commissioner John B. Ohanian,  
being necessarily absent, did not  
participate.

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

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NEAL J. SHULMAN, Executive Director  
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