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Decision 91-08-008 August 7, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMSTOCK HOMEOWNERS ASSOCIATION,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant. (U 39 E)

ORIGINAL

Case 91-04-008
(Filed April 4, 1991)

O P I N I O N

This is a complaint by Comstock Homeowners Association (complainant) against Pacific Gas and Electric Company (PG&E or defendant). The complainant requests: (1) a waiver of the three-year limitation period which prohibits defendant from issuing a refund for overcharges imposed and collected prior to November 24, 1987; (2) an order requiring that defendant refund all monies overcollected; and (3) verification that the rates currently being charged are correct.

Complainant filed this matter on April 4, 1991. Notice of the filing appeared in the Commission's Daily Calendar on April 10, 1991. On May 9, defendant filed an answer and motion to dismiss the complaint with prejudice. Complainant did not file a response to the motion to dismiss. There was no dispute about the essential facts. Consequently, no hearings were held.

Background

In May 1984, the gas accounts PG&E established under the name of complainant were placed on the incorrect baseline rates when baseline rates went into effect. Once the error was discovered, complainant requested full reimbursement of all overcharges imposed and collected from May 1984 through November 20, 1990. Defendant issued a refund in the amount of \$14,722.93

for overcharges imposed and collected during the period of November 24, 1987 through November 20, 1990. Complainant asks the Commission to order defendant to refund all monies overcollected from May 1984.

Complainant asserts that it is the utilities' responsibility to determine the number of units comprising the consumers' accounts and set the baseline quantities correctly. In this instance, complainant maintains, PG&E was at fault and the entire amount of overpayments should be refunded. In response, defendant admits that it placed complainant on the incorrect baseline rates, but denies that the error was its fault. Finally, complainant states that it has been informed that "the three-year rule is one imposed by the California Public Utilities Commission (CPUC)." Defendant responds that it issued the refund for the three-year period under Rule 17 of its Gas Tariffs.

Discussion

Which party was at fault for the error is not a deciding factor in this case. The material issue presented here is whether the Commission can waive the three-year limitation on refunds for overcharges contained in Rule 17 of PG&E's current Gas Tariffs. We cannot.

Rule 17, specifically subsection (C), states that:
"PG&E shall issue a refund or credit to the customer for the amount of the overcharge, without interest, computed back to the date that PG&E determines the meter error commenced, except that the period of adjustment shall not exceed three years."

The three-year limitation period of Rule 17 was written in accordance with Public Utilities (PU) Code § 736. In fact, in the proceeding in which we adopted Rule 17, we reasoned:

"As for limitations on the period of refunds for overcharges resulting from billing error, we again note that Section 736 limits recovery of overcharges in complaints filed before the Commission to three years. It is appropriate

for the tariffs to carry the same limitation as the statute." Re Retroactive Billing by Gas and Electric Utilities to Correct Alleged Meter Underbillings Due to Meter Error and Meter Fraud, 21 CPUC 2d 270, 278 (1986).

As stated above, section 736 provides that complaints must be filed with the Commission or a court "within three years from the time the cause of action accrues, and not after." We have held that the running of the statute of limitations extinguishes not only the remedy but the right of action and cannot be waived. Request of King Alarm Systems, Inc., 80 CPUC 267, 287 (1976); Johnson v. Pacific Telephone & Telegraph Co., 69 CPUC 290, 294 (1969). Consequently, Rule 17 reflects the policies of section 736, which cannot be waived at our discretion.

Complainant also requests verification that the defendant is currently charging it the correct rates. In response, defendant asserts that complainant is now properly on the GM-W rate pursuant to Schedule GM of PG&E's Rate Schedules currently on file with the Commission. Schedule GM is appropriate for master-metered natural gas service for residential use (including service to common central facilities) in a multifamily accommodation on a single premise where the single-family accommodations are not separately submetered under Rule 18.

Schedule GM provides that the GM-W rate applies if water heating, but not space heating, is supplied from a central source to residential units that are individually metered by PG&E for either gas or electricity. According to defendant, since the complainant's accounts supply water heating, but not space heating, from a central source to the individually metered residential units, the GM-W rate is applicable to these accounts. Complainant has not challenged this response.

Therefore, we find that complainant has been appropriately placed on the GM-W rate.

Findings of Fact

1. In May 1984, the gas accounts that PG&E established under complainant's name were placed on the incorrect baseline rates.

2. Upon discovering the error, complainant sought full reimbursement of all overcharges imposed and collected from May 1984 through November 20, 1990.

3. PG&E issued a refund of \$14,722.93 for overcharges imposed and collected from November 24, 1987 through November 20, 1990.

4. Complainant seeks a waiver of Rule 17 and requests a refund of all overcharges imposed and collected beyond the three-year limitation period.

5. Complainant supplies water heating from a central source to residential units that are individually metered by PG&E for either gas or electricity.

6. Complainant has been appropriately placed on the GM-W rate.

Conclusions of Law

1. Section 736 of the PU Code requires that complaints for recovery of overcharges be filed with the Commission or a court within three years after the cause of action occurs.

2. Rule 17 of PG&E's Gas Tariffs establishes a three-year limitation period on refunds and credits to customers.

3. The time limitation period of Rule 17 was written in accordance with § 736.

4. Schedule GM of PG&E's Rate Schedules specifies that the GM-W rate applies if water heating, but not space heating, is provided from a central source to individually metered residential units.

5. PG&E's motion to dismiss the complaint with prejudice should be granted.

O R D E R

IT IS ORDERED that Case 91-04-008 is dismissed with prejudice.

This order is effective today.

Dated August 7, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President

G. MITCHELL WILK

JOHN B. OHANIAN

NORMAN D. SHUMWAY

Commissioners

Commissioner Daniel Wm. Fessler,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director