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SEP 9 1991

Decision 91-09-008 September 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

ANGELO MARKOULIS, individually and dba AMERICAN INDUSTRIAL CENTER by his attorney-in-fact, STEVE MARKOULIS, AND GREGORY MARKOULIS,

Complainants,

v.

PACIFIC GAS AND ELECTRIC CO. (U-39-E),

Defendant.

Case 89-02-012
(Filed February 3, 1989)

Messrs. Armour, Goodin, Schlotz & MacBride by John L. Clark, Attorney at Law, for Angelo Markoulis, dba American Industrial Center, Steve Markoulis, and Gregory Markoulis, complainants.

Harry W. Long, Jr., Attorney at Law, for Pacific Gas and Electric Company, defendant.

OPINION

Summary of Decision

The decision denies the complaint and orders complainants to pay their past due bills to Pacific Gas and Electric Company (PG&E).

Background

Complainant Angelo Markoulis owns the American Industrial Complex (AIC) which consists of two large buildings located at 2325-2495 Third Street (North Building) and 2501-2585 Third Street (South Building), respectively, in San Francisco. The buildings were the American Can Company's manufacturing plant.

Markoulis purchased North Building from the American Can Company in 1975 for $700,000 and the South Building in 1977 for $950,000.

When Markoulis purchased AIC, PG&E was serving the complex through single master meters located in each building. PG&E served AIC at 480 volts. Markoulis continued to receive service from PG&E through the master meters for each building. Markoulis is the customer of record for AIC.

Markoulis subdivided AIC into approximately 300 separate units which he leases to commercial and industrial tenants. Markoulis subdivided AIC without installing separate electric meters for individual tenants. He provided electric service to his tenants at different voltages and charged them on an estimated basis. Markoulis' tenants filed several complaints with the Commission about Markoulis' billing practice. The Commission staff informed Markoulis that he was violating Rule 18 of PG&E's tariffs by directly charging his nonresidential tenants for electricity.

After learning that his billing practices were improper, Markoulis investigated the procedure to modify AIC to serve each tenant through a separate meter. Markoulis learned that Rule 16 of PG&E's tariff requires that all meters for a multi-occupancy building be installed at a central location near PG&E's point of service to the building; and that this type of meter installation would require a complete rewiring of AIC at a cost of approximately $40,000 to $50,000 per unit (or $12 million to $15 million). Markoulis did not want to spend the capital needed to make such modifications. Markoulis asked PG&E to find another more economical way to separately meter each tenant.

After examining the electrical systems in AIC, PG&E determined that meter installations could be clustered at the various large panels in the buildings from which the individual tenant was being served. PG&E proposed such metering arrangement to Markoulis in the form of a "letter agreement" (Agreement) dated March 18, 1982. Markoulis signed the Agreement on March 22, 1982.

Upon execution of the Agreement, Markoulis modified the electric facilities in AIC[1] to permit direct metering of the services provided to tenants. PG&E installed the meters and began billing tenants directly.

The Agreement requires PG&E to continue to read the master meters and the individual meters for each tenant. The Agreement includes a subtractive billing procedure which provides that the difference in usage between that registered on the master meter and the total of the individual meters in each building will be billed to Markoulis on the applicable tariff schedule. Essentially, the subtractive billing procedure requires Markoulis to pay for electric use in the common areas in AIC.

Markoulis believed that his electric bills under the subtractive billing procedure were too high for the amount of electricity being used in the common areas. To determine the electricity being used in the common areas, Markoulis isolated what he considered to be other house and common electric loads in the buildings. Markoulis requested PG&E to install additional meters to record electric use in the common areas. PG&E installed the additional meters and started billing Markoulis for electric use registered on the additional meters using the subtractive billing procedure.

Even after the placement of additional meters, Markoulis believed that his electric bills of approximately $6,250 per month under the subtractive billing procedure were too high. Markoulis unilaterally terminated the Agreement, and requested PG&E to remove the master meters, contending that since all electric use in AIC

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1 The Agreement includes the North Building only. Although no formal agreement was signed for the South Building, Markoulis modified the electric facilities in that building also to permit direct metering of service provided to tenants. PG&E installed the meters and started billing tenants of the South Building directly.

has been metered, his bills under the subtractive billing procedure consist of charges for transformer and line losses.

PG&E informed Markoulis that the Agreement will remain in effect because the transformer and line losses occurring on AIC's internal wiring are to be paid for by Markoulis. PG&E also informed Markoulis that PG&E cannot prudently police the several miles of wiring in the two buildings for intentional or unintentional illegal connections of loads. PG&E insisted that the only alternative to the Agreement was a complete rewiring of the two buildings in accordance with Rule 16 of PG&E's tariff.

Markoulis did not like PG&E's proposal and he stopped paying his bills. While he refused to pay his bill, Markoulis did not deposit the disputed amount with the Commission.

PG&E could not shut off power to AIC because that would result in shutting off power to AIC's tenants. Therefore, PG&E had to continue to serve AIC without receiving any payment for electric usage registered on the master meters.

In July 1985, AIC personnel (including Markoulis), met with PG&E representatives and the Commission staff. In a follow-up letter, Dorothy Taylor of the Commission's Consumer Affairs Branch informed Markoulis that PG&E's actions were proper and in accordance with PG&E's tariffs. Taylor also informed Markoulis that unless the buildings were rewired in accordance with Rule 16 of PG&E's tariffs, he should honor the Agreement and continue to pay his bills.

Markoulis still refused to pay his bills.

On March 10, 1986, PG&E filed a complaint for breach of contract, Case No. 854303, in the Superior Court of the State of California in and for the City and County of San Francisco. PG&E named AIC, Angelo Markoulis and his son Gregory Markoulis as defendants. In its lawsuit, PG&E seeks to recover the amount owed to it for electric service provided to AIC pursuant to the Agreement.

Subsequently, Markoulis and PG&E entered into a stipulation in the Superior Court case agreeing to an Order for Stipulated Judgment and Vacating of Trial Date. In the stipulation, Markoulis and PG&E agreed to have the issues raised in a complaint resolved by the Commission. The Superior Court issued an order which required Markoulis to file a complaint with the Commission within 60 days. According to the Superior Court order, the Commission's decision, when final, shall be entered as part of the final judgment of the Superior Court and be binding on both parties.

As directed by the court, Angelo Markoulis, individually and doing business as AIC through his attorney-in-fact, Steve Markoulis and Gregory Markoulis (complainants), filed this complaint Case (C.) 89-02-012 on February 3, 1989.

Complainants request a Commission order requiring PG&E to cease charging them for any electric use not registered on meters of individual tenant and house meters and to cease attempting to collect past due bills. Complainants also request that PG&E be ordered to contribute to the cost of converting the electrical systems in AIC in accordance with Rule 16 of PG&E tariffs. According to complainants, PG&E's contribution should be the cost savings enjoyed by PG&E as a result of conservation induced by such direct metering plus the additional revenues enjoyed by PG&E as a result of its billing directly metered services in accordance with rate schedules that are higher than the rate schedule that would have been applied had all electricity been measured solely by the master meters.

Hearings

Hearings in the case were held on March 19th and 20th, 1991 before Administrative Law Judge Garde. The matter was submitted on May 10, 1991 upon receipt of reply briefs.

Complainants' Position

Complainants contend that the Agreement is not effective because it contains terms and conditions for service, specifically the subtractive billing procedure, that are different from those contained in PG&E's tariffs. According to complainants, General Order (GO) 96-A requires that any contract to furnish utility service under terms that deviate from the terms contained in a utility's tariffs must be approved by the Commission. Complainants assert that since PG&E neither requested nor received the Commission's approval of the Agreement, the Agreement is unlawful and unenforceable and its use by PG&E is a violation of Public Utilities Code § 532.

In addition, complainants maintain that the difference between the usage recorded on the master meter and the sum of the usages recorded on all other meters, for each building, consists of transformer and/or line losses and that complainants should not be required to pay for such losses.

Alternatively, complainants recommend that, should the Commission find the subtractive billing agreement to be reasonable, the procedure should be modified to:

1. Credit complainants for the energy losses PG&E would ordinarily incur if it had the same load under different circumstances;

2. Ensure that complainants are given proper credit for maintaining secondary distribution facilities used by PG&E to provide service to the individually metered account;

3. Provide demand constants that more accurately reflect actual common area and tenant demands; and

4. Ensure that proper consideration is given for the substantial revenue enhancement and other benefits resulting from the conversion to direct metering.

PG&E's Position

PG&E disagrees with complainants' interpretation of GO 96-A. PG&E asserts that the Agreement does not contain rate or other tariff deviations so it was not necessary to seek the Commission's approval of the Agreement. According to PG&E, the Commission does not require special approval of billing agreements or contracts between a utility and its customers unless they violate the utility's tariffs.

PG&E maintains that Rule 9 of its tariff permits it to install and use several meters on a customer's premises for making charges when necessary. PG&E opines that in AIC's case, installation of multiple meters was necessary to accommodate complainants' request to have each tenant individually metered. PG&E believes that provisions of Rule 9 permit the use of the subtractive billing procedure included in the Agreement.

Further, PG&E maintains that it is entitled to charge complainants for line and transformer losses and/or other unaccounted for usage occurring on complainants' side of the meter. According to PG&E, complainants were responsible for wiring AIC for individual metering of their tenants and are responsible for any line or transformer losses occurring in the buildings.

PG&E also disagrees with complainants' request that PG&E be required to pay for the cost of rewiring the buildings. PG&E contends that it is under no obligation to pay for such costs. PG&E contends that AIC does not qualify for incentive payments of $25 to $50 per unit which were made to certain landlords to encourage master meter conversion to promote conservation. PG&E opines that even if it makes incentive payments of $50 per tenant unit to AIC, AIC would be entitled to receive only $15,000 which would not cover the cost of converting a single unit.

PG&E requests that complainants should be ordered to pay the past due bills for AIC and to continue to pay AIC's bill in accordance with the Agreement. According to PG&E, the past due

amount owed to PG&E as of February 8, 1991 was $361,398.41. PG&E also requests that the past due amounts to PG&E should be paid with interest. PG&E requests the interest rate contained in Rule 7c[2] of its tariffs be applied to the outstanding amount.

Finally, PG&E requests that if the Agreement is found to be unenforceable, PG&E should be allowed to revert to billing complainants for the two master meters as it did before the installation of submeters.

<u>Discussion</u>

The key issue we need to address is whether the terms of the Agreement require PG&E to deviate from its tariffs. If so, mandates of GO 96-A would require the Commission's approval of the Agreement. The record shows that PG&E's charges for master meters as well as individual tenants' meters are in accordance with its tariffs. The question remains if the subtractive billing procedure is permissible under PG&E's tariffs.

Rule 9 of PG&E's tariffs authorizes it to combine the readings of several meters for billing a customer. Complainants

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2 Rule 7c of PG&E's tariffs provides, in relevant part, as follows:

"C. INTEREST ON DEPOSIT

"1. PG&E will pay interest on deposits, except as provided below, calculated on a daily basis, and compounded at the end of each calendar month, from the date fully paid to the date of refund by check or credit to the customer's account. The interest rate applicable in each calendar month may vary and shall be equal to the interest rate on commercial paper (prime, 3 months) for the previous month as reported in the Federal Reserve Statistical Release, G.13, or its successor publication; except that when a refund is made within the first fifteen days of a calendar month the interest rate applicable in the previous month shall be applied for the elapsed portion of the month in which the refund is made."

assert that while Rule 9 authorizes the use of "combination of meter reading," it does not authorize "the subtractive billing procedure."

We disagree with the complainants' claim. It is not feasible for PG&E to include every possible metering situation in its tariffs. The subtractive billing procedure, though not specifically provided for in Rule 9, follows the general guidelines of Rule 9. GO 96-A requires the Commission's approval of contracts that deviate from a utility's tariffs to ensure that other ratepayers are not disadvantaged by the contract. Clearly, the subtractive billing procedure does not disadvantage other ratepayers. In fact, complainants' refusal to pay their bills would require other ratepayers to make up the revenue deficiency.

PG&E proposed the subtractive billing procedure as a convenience to complainants. PG&E saved the complainants a considerable amount of money by not requiring them to locate all meters in one location at street level. By complainants' own estimates, the cost of rewiring 300 tenant units would be $12 million to $15 million. Complainants' bills under the subtractive billing procedure are approximately $75,000 per year for the two buildings. In terms of time value of money, the $75,000 annual payment represents an interest of less than 1% on $12 million. Based on the facts, we conclude that complainants are avoiding paying their bills in accordance with the Agreement by alleging a technical violation of PG&E's tariffs.

Complainants claim that the difference between the usage recorded on master meters and the sum of the usage recorded on tenants' meters consists of transformer and line losses. Complainants contend that had PG&E provided service to AIC at multiple voltages, the transformer losses would have occurred on PG&E's system and complainants would not have paid for the losses.

However, we note that complainants bought the two buildings which were American Can Company's manufacturing plant.

The electrical systems in the buildings were designed for manufacturing. Complainants subdivided the buildings to create tenant units and used the building's existing electrical system to provide electric service to their tenants. Complainants also added a few new transformers to the system. Therefore, the AIC buildings had numerous transformers at various locations at the time complainants requested PG&E to provide meters for individual tenants. Accordingly, complainants were experiencing and paying for the transformer and losses before they signed the Agreement with PG&E. We conclude that complainants' claim regarding transformer and line losses is another attempt to avoid paying the bills for which they are responsible.

In summary, we believe that complainants are benefiting from the Agreement. They should pay all the past due bills with interest to PG&E. Complainants should either continue to pay their bills in accordance with the Agreement or rewire AIC at their own expense in accordance with Rule 16 of PG&E's tariff and place all meters in one location, at street level, for each building. PG&E could then provide service to each meter directly from its system.

Finally, we will consider if annual electric bills of $75,000 would pose undue financial burden on complainants. Complainants received $4 million in rent from AIC's tenants in 1990. A $75,000 charge for electric service would constitute less than 2% in operating expenses for AIC. We believe that the charge would not pose a hardship on complainants.

Deposits by Complainants
<u>Since Completion of Hearings</u>

At the conclusion of hearings, PG&E requested that complainants be ordered to deposit the disputed amount with the Commission. While the administrative law judge denied PG&E's request, he ordered complainants to pay their future bills to PG&E or deposit the billed amount with the Commission. Complainants

opted to deposit the billed amount with the Commission. As of June 1991, complainants have deposited $4,637.56 with the Commission.

Since we have determined that PG&E's billing practices were proper, the amount deposited with the Commission should be disbursed to PG&E.

Findings of Fact

1. Markoulis owns AIC which was the American Can Company's manufacturing plant.

2. Markoulis subdivided AIC into 300 separate units which he leases to commercial and industrial tenants.

3. Markoulis subdivided AIC without installing an electric meter for each tenant.

4. Markoulis charged his tenants directly for electricity.

5. Rule 18 of PG&E's tariffs does not allow a landlord to charge nonresidential tenants for electricity.

6. Markoulis investigated the procedure to modify AIC to serve each tenant through a separate meter.

7. Rule 16 of PG&E's tariffs requires that all meters in multi-occupancy buildings be installed in a central location near PG&E's point of service to the building.

8. It would cost Markoulis between $12 million to $15 million to install meters for individual tenants in AIC in accordance with Rule 16 of PG&E's tariffs.

9. Markoulis requested PG&E find a more economical method than required by Rule 16 to separately meter each tenant.

10. PG&E proposed to locate meters in clusters at various large parcels in the building from which individual tenants were being served.

11. Markoulis accepted PG&E's proposal and signed the Agreement with PG&E which allows for meters to be installed in clusters located throughout AIC.

12. The Agreement requires PG&E to continue to read the master meters and the individual meters for each tenant.

13. The Agreement includes a subtractive billing procedure which provides that the difference in usage between that registered on the master meter and the total of individual meters in each building will be billed to Markoulis on the applicable tariff schedule.

14. After all tenants in AIC were metered, PG&E started billing each tenant and Markoulis in accordance with the subtractive billing procedure.

15. Markoulis believed that his electric bills under the subtractive billing procedure were too high.

16. Markoulis had additional meters installed to record electric use in common areas.

17. Even after installing additional meters to record electric use in common areas, Markoulis believed that his bills under the subtractive billing agreement were too high.

18. Markoulis unilaterally terminated the Agreement contending that since all electric use in AIC has been metered, his bills under the subtractive billing procedure consist of charges for transformer and line losses.

19. PG&E informed Markoulis that the Agreement will remain in effect and that he was responsible for any losses occurring on his side of the master meters.

20. Markoulis did not like PG&E's proposal and stopped paying his bills.

21. Markoulis did not deposit the disputed amount with the Commission.

22. PG&E could not shut off power to AIC because that would result in shutting power off to AIC's tenants also.

23. PG&E filed a complaint for breach of contract, Case No. 854303 in the Superior Court in San Francisco naming AIC, Angelo Markoulis and Gregory Markoulis as defendants.

24. Markoulis and PG&E agreed to have the Commission resolve the issues raised in the Superior Count complaint.

25. On February 3, 1989, Angelo Markoulis, individually and doing business as AIC through his attorney-in-fact, Steve Markoulis and Gregory Markoulis (complainants) filed this complaint.

26. PG&E's charges for the master meter as well as individual tenants' meters are in accordance with its tariffs.

27. As of February 8, 1991, complainants owed PG&E $361,398.41 for past due bills.

28. The subtractive billing procedure does not deviate from PG&E's tariffs.

29. Complainants are liable for transformer and line losses occurring on their side of the master meters.

30. Complainants are liable for past due bills with interest.

31. If complainants do not want to receive service under the Agreement, they can rewire AIC at their own expense, in accordance with Rule 16 and receive service under PG&E's standard tariff.

Conclusions of Law

1. Complainants should continue to pay the electric bill for AIC in accordance with the Agreement.

2. Complainants should pay PG&E all past due bills with interest at a rate provided in Rule 7c of PG&E's tariff.

3. If complainants do not want to continue receiving service under the Agreement, they should rewire AIC at their own expense, in accordance with Rule 16 of PG&E's tariffs.

ORDER

IT IS ORDERED that:

1. Angelo Markoulis, individually and doing business as American Industrial Complex (AIC) through his attorney-in-fact, Steve Markoulis and Gregory Markoulis (complainants) shall continue to pay their electric bills for AIC in accordance with the letter agreement (Agreement) Angelo Markoulis signed with Pacific Gas and Electric Company (PG&E) on March 22, 1982.

2. Complainants shall pay PG&E all past due electric bills for AIC to PG&E with interest at a rate provided in Rule 7c of PG&E's tariffs.

3. Complainants' deposit of $4,637.56, and any other deposits made by complainants in connection with this complaint, shall be disbursed to PG&E on the effective date of this order.

4. Since all outstanding issues in this proceeding are resolved, Case 89-02-012 is closed.

This order becomes effective 30 days from today.

Dated September 6, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I abstain.

/s/ G. MITCHELL WILK
Commissioner

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

NEAL J. SHULMAN, Executive Director