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Decision 91-11-009 November 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Johnny Gonzales and Minerva Gonzales, )  
Complainants, )

vs. )

Pacific Gas and Electric Company, )  
Defendant. )

**ORIGINAL**

(ECP)

Case 91-06-054  
(Filed June 26, 1991)

Johnny Gonzales and Minerva Gonzales, for themselves, complainants.  
Mike Weaver, for Pacific Gas and Electric Company, defendant.

OPINION

1. Introduction

Pacific Gas and Electric Company (PG&E) has backbilled customer Minerva Gonzales<sup>1</sup> for \$743.85 for alleged unauthorized use of electric energy. Gonzales denies this use. For the reasons set forth below, we determine that Gonzales benefited from unmetered energy. However, we also determine that PG&E should recompute certain estimated charges on the backbill consistent with this decision.

2. Statement of Facts

Johnny and Minerva Gonzales filed this case on June 26, 1991, complaining of a backbill of \$743.85 which PG&E sent Ms. Gonzales for alleged use of unmetered energy from February 5,

1 Although both Johnny and Minerva Gonzales, husband and wife, are complainants in this case and testified at the hearing, the PG&E bill is in the name of Minerva Gonzales only.

1988 to August 28, 1990. The January 25, 1991, letter accompanying the bill from PG&E stated that "...this bill accurately represents energy used but not recorded or previously billed." In the complaint, the Gonzaleses state that they did not use the electricity for which PG&E is charging them. They further state that they pay their bill every month, and object to a backbill which estimates the amount of electricity allegedly used.

On July 23, 1991, PG&E timely filed an answer to the complaint, which denied the allegations of the complaint, and stated that although the bill is an estimate, it is in accordance with PG&E Electric Tariff Rule 17, Section D, in that PG&E calculated the bill "based on the physical evidence of the electric meter(s) and a review of complainants' own recorded electric usage."

This case is an Expedited Complaint and is subject to Rule 13.2 of this Commission's Rules of Practice and Procedure. Accordingly, we noticed an evidentiary hearing in Fresno, California, on August 16, 1991, within 30 days of the filing of the answer.

The Gonzaleses initially did not appear at the hearing. After waiting approximately one-half hour, and upon the agreement of PG&E, the assigned administrative law judge (ALJ) contacted the Gonzaleses by telephone at their home. They did not offer an excuse as to why they did not appear at the hearing, but advised the ALJ that they would immediately come to the hearing. Shortly thereafter, the Gonzaleses arrived at the hearing which then commenced.

Johnny and Minerva Gonzales both testified. They stated they did not benefit from the energy for which PG&E is now attempting to bill them. They stated that they have lived at their residence in Fresno, California for ten years and have never had a discrepancy in their bill until now. The Gonzaleses further stated that they have paid each of their monthly bills in full, and they

do not feel they owe the \$743.85 for which PG&E has billed Ms. Gonzales. Mr. Gonzales also stated that there are not, nor have there been, "stolen" meters at their residence and that the only meters there are the meters which PG&E installed.

R.H. Metzler, a Revenue Protection Representative for PG&E in Fresno, California, testified on behalf of PG&E. Metzler related a chronology of how PG&E initially determined it necessary to investigate the Gonzales account, and how PG&E determined the backbill sent to Ms. Gonzales for alleged use of unauthorized energy.

Metzler stated that this investigation began as a result of a Field Investigation Request which the meter reader for the Gonzales residence issued after reading the Gonzaleses' meter on or about August 6, 1990. Metzler stated that the Gonzaleses' assigned meter is meter number 3H1417. Yet this Field Investigation Request states that the meter reader observed meter number 396084 upside down in the socket. The Field Investigation Request characterizes this meter as "stolen." The meter reader did not testify at the hearing.

Metzler stated that he went to the Gonzales house to observe the meter on August 17, 1990. He noticed that the correct meter, number 3H1417, was in the socket. He also observed that the meter glass was clean while the panel top was dirty, that there was no outer seal on the meter, that the outer ring was open, and that there was "lots of wear" in the side area of the ring, and that the inside of the ring was clean and void of loose dirt, instead of being filled with dust, which is usually the case. Metzler contemporaneously recorded these observations in written notes. Metzler stated that his observations lead him to believe that this was a situation where someone was handling a meter on a regular basis.

Metzler then ran a meter history check on electric meter number 396084, the meter which Metzler testified that the meter

reader observed upside down at the Gonzales residence. According to Metzler's investigation, PG&E's Electric Meter History indicated that meter number 396084 was reported missing on April 4, 1988, and was last seen at a residence several blocks from the Gonzales residence.

Metzler stated that it was his intention to continue to observe the meter at the Gonzales residence in hopes of detecting meter number 396084 in use. However, unbeknownst to him, another department at PG&E ordered that the Gonzaleses' meter be replaced because the "old one [was] stolen," and PG&E replaced meter number 3H1417 on August 28, 1990. Metzler tried to stop this meter replacement, but was too late. However, he did go to the Fresno Yard on August 28 to retrieve meter number 3H1417. Metzler produced this meter at the hearing.

On August 28, 1990, Metzler wrote notes recording his observations that the meter glass on meter number 3H1417 was clean and that there was a very light film of dust on the back side of the meter. Metzler indicated that a meter which is left alone is dirtier. He also observed that wear and copper were showing on the tips of all four meter prongs, which indicated that the meter had been in and out of the panel many times.

On October 24, 1990, Metzler sent a letter to Ms. Gonzales stating that a "tampered" meter was found on her premises and inviting her to discuss this matter. Metzler stated that he never received a response to this letter.

Metzler introduced into evidence a "Revenue Protection Program Metered Consumption Summary" for the Gonzales account which indicated the amount in kilowatt-hours (kWh) for which the Gonzaleses have been billed since October, 1986. This document was admitted into evidence as Exhibit 7. Metzler testified that, based on Exhibit 7, he believed that all of the Gonzaleses' electric usage was not being recorded on the meter from at least February 1988 (shortly before meter number 396084 was reported missing) and

through August 1990 when PG&E replaced the Gonzaleses' meter. For example, Metzler stated that at the Gonzales home he saw a side-by-side frost-free refrigerator which alone uses about 225 kWh/month. Yet there are many months from 1988 through 1990 where the entire monthly usage is below 225 kWh/month. Thus, Metzler found some of the Gonzaleses' usages indicated in Exhibit 7 very low and "almost impossible."

Metzler computed the Gonzales backbill by developing an "Estimated Average Base Year Calculation Sheet" (Exhibit 8A) using daily average usage by the month. Metzler developed Exhibit 8A by using the Gonzaleses' own recorded usage during periods when Metzler believed that no meter tampering was occurring. He used the 1987 daily average for the months of January, February, April, and July of 19.09, 18.64, 15.37, and 17.00 kWh/day, respectively. Metzler determined that the March 1987 reading appeared low, so he instead used the February 1987 figure of 18.64 kWh/day for March. Metzler believed that according to the readings, it appeared that no tampering occurred during May and June 1990, since the figures appeared reasonable, so he utilized the May and June 1990 figures of 15.59 and 16.76 kWh/day, respectively, to determine the backbill. Metzler stated that he did not have an August or September billing which appeared reasonable, because this is generally the time of high electric usage. Therefore, he utilized the July figure of 17.00 kWh/day and added 2 kWh/day for a total of 19 kWh/day for both August and September. He believed that this was reasonable because the Gonzaleses' actual billed consumption for August 1991 (which occurred after the backbill was sent out) was 18.80 kWh/day. For October, Metzler used the October 1986 daily average of 18.53 kWh/day. For November and December, Metzler used the actual usages on the Gonzaleses' new meter during 1990 of 16.68 and 18.60 kWh/day, respectively. Metzler explained that he did not use the actual billings for 1991, because they were not available at the time he computed the backbill.

On January 25, 1991, Metzler sent the backbill to Ms. Gonzales. He met with the Gonzaleses in February and explained the history of the case to them. Mr. Gonzales wanted the meter which PG&E removed, as well as the new meter installed in his premises, tested for accuracy. PG&E tested both meters which were found to be within the limits of accuracy.

In rebuttal, the Gonzaleses again denied that they used more energy than they were billed for. They also questioned how Metzler came into their backyard to observe the meter, and stated that he could not have entered from the side of the house because there was not enough space between the camper situated on the side of the house and the house for a man to squeeze through. The Gonzaleses stated that the PG&E meter reader usually uses binoculars while looking over the fence to read their meter. Metzler stated that he was able to squeeze through this area.

The Gonzaleses also made much about the fact that no one from PG&E was able to physically produce the meter which PG&E alleges is "stolen." They also objected to the method in which Metzler computed the backbilling, generally stating that the figures Metzler used were arbitrary and too high. Ms. Gonzales stated that they should not have been charged more for August and September, because their cooler has been broken since 1988.

The Gonzaleses stated that they used the following appliances throughout the disputed billing period and are presently using them: side-by-side refrigerator, electric stove, lights, television, stereo, cooler (when it is not broken), and a washer/drier.

### 3. Discussion

The two issues before us in this case are whether the Gonzaleses used energy but did not pay for it and, if so, what is the reasonable estimate of the value of the energy under applicable tariffs?

In Decision (D.) 86-06-035, we set forth the parties' respective burdens of proof in backbilling cases.

"The complainant (customer), then, has the burden of proof to establish that the backbill is unfounded and incorrect. This may entail no more than testimony denying any tampering, energy diversion, or unauthorized use of energy.... Thereafter, the burden of producing evidence shifts to the utility to support the basis for the backbilling to the customer and to support the reasonableness of its estimate of the amount billed." (21 CPUC 2d 270, 274.)

Significantly, we noted in D.86-06-035 that the issue of whether the customer performed tampering or energy diversion is not the issue. The issue we are concerned with is "whether the customer benefited from unmetered energy regardless of whether or not there was meter tampering or energy diversion and regardless of who performed any tampering or energy diversion." (Id.)

In this case, the Gonzaleses denied that they tampered with the meter, and denied their unauthorized use of energy. Pursuant to D.86-06-035, the burden then shifts to PG&E to support the basis of the backbilling to the customer and to support the reasonableness of its estimate of the amount billed.

PG&E demonstrated that it initiated the investigation of the Gonzales account because of the report from the meter reader regarding an allegedly "stolen" meter at the Gonzales residence. Metzler then stated that he personally observed that the meter assigned to the Gonzaleses showed evidence that it had been handled and removed frequently. These observations occurred both at the

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2 Because PG&E did not produce the meter reader, the Field Investigation Worksheet (Exhibit 1) is hearsay in so far as it is offered to prove the truth of the allegation that the Gonzaleses had a "stolen" meter on their premises. However, Exhibit 1 is admissible to demonstrate the state of mind of PG&E, i.e., why PG&E began an investigation of the Gonzales account.

Gonzales residence and after the meter was removed from their residence and was taken to the Fresno Yard. PG&E also produced this meter at the hearing, and it evidenced the signs of wear which Metzler described.

PG&E also demonstrated that the allegedly "stolen" meter which the meter reader observed at the Gonzales household had in fact been reported missing from a residence several blocks from the Gonzales residence, shortly after the time that the monthly usage of recorded energy at the Gonzales residence had decreased significantly from the prior year.

PG&E also produced a Revenue Protection Program, Meter Consumption Survey (Exhibit 7). The survey showed that the Gonzaleses' average monthly usage of energy was significantly lower from February 1988 through August 1990, than it was before or after. For example, in April 1987 and April 1991, the average monthly usage in kWh was 492 and 462, respectively. However, during the period in which PG&E claims that the Gonzaleses were benefiting from unmetered energy (i.e., 1988, 1989, and 1990) the average April usage was 73, 188, and 285 kWh, respectively. Exhibit 7 reflects a similar pattern of usage for the majority (but not all) of the months in consideration.

The record also established that the energy load of the Gonzaleses' appliances did not change significantly before or after the backbilling period at issue. The Gonzaleses testified that their appliances have remained generally the same since 1987, except that the electric cooler has been broken since about 1988. The fact that the cooler was broken may be probative of whether or not the estimate of the backbill was reasonable. However, that fact does not support the argument that the Gonzaleses did not benefit from unused energy, since the discrepancy in usage outlined above occurred in nearly all months, not just the summer months.

The Gonzaleses argued that Metzler could never have entered their yard to view the meter because the passageway to the



yard was too narrow for anyone to squeeze through. Metzler described in detail how he entered, and had handwritten and contemporaneous notes of his observation. On balance, we believe Metzler's testimony to be more persuasive. However, even if we do not give this evidence any weight, Metzler's observations of the condition of the meter after it was removed from the Gonzales residence, in addition to the Gonzaleses' energy usage recorded in Exhibit 7, leads us to conclude that the Gonzaleses have benefited from unmetered energy from February 5, 1988 to August 28, 1990.

We must now determine whether PG&E's estimate of the amount billed in the backbill (\$743.85) is reasonable. The Gonzaleses make much of the fact that they have paid their bills every month. They therefore contend that it is unfair for PG&E to now backbill them for energy used in the past and to estimate the amount of the backbill. However, PG&E's Electric Tariff No. 17, Section D, permits this procedure.<sup>3</sup>

<sup>3</sup> Rule 17, Section D, states in pertinent part:

**"ADJUSTMENT OF BILLS FOR UNAUTHORIZED USE**

- "1. Where PG&E determines that there has been unauthorized use of electric service, PG&E may bill the customer for PG&E's estimate of such unauthorized use....

**"a. ESTIMATED USE**

"When regular, accurate meter readings are not available or the electric usage has not been accurately measured, PG&E may estimate the customer's energy usage for billing purposes on the basis of information including but not limited to the physical condition of the metering equipment, available meter readings, records of historical use, and the general characteristics of the customer's load of operation."

Metzler testified that he used the Gonzaleses' "daily" base average use by month during months when the Gonzaleses' usage appeared reasonable in order to determine their backbill.<sup>4</sup> For example, Metzler used the Gonzaleses' 1987 daily average use by month to calculate the estimated average monthly billings for January, February, April, and July, yet he used other monthly averages, some which even occurred during the period of backbilling, to calculate some of the other months. (See Section 2 above, for a more detailed description of Metzler's method of calculation.) For November and December, Metzler used the monthly averages for November and December 1990, which resulted from the usages recorded on the new meter. Metzler testified that he did not base the backbill on the Gonzaleses' usage during 1991, because these records were not available at the time Metzler prepared the backbilling. However, Metzler did present a record of the Gonzaleses' 1991 usage at the hearing.

Since we now have before us the Gonzaleses' 1990 and 1991 usage which was incurred after the new meter was installed, we believe that it is reasonable to estimate the backbill based on this information rather than on estimates from various time periods, including the time period in which the Gonzaleses benefited from unmetered energy. Specifically, we direct PG&E to recompute the backbill based on the following daily average usages by month.

4 These figures were set forth in Exhibit 8, entitled "Estimated Average Base Year Calculation Sheet Using Tampering Customers Own Recorded Usage."

<u>MONTH</u>	<u>KILOWATT HOURS</u>	<u>DAYS</u>	<u>DAILY AVERAGE USE BY MONTH</u>
January	611	32	19.09
February	522	28	18.64
March	500	30	16.66
April	492	32	15.37
May	449	31	14.48
June	397	30	13.23
July	466	30	15.53
August	583	31	19.00
September	583	31	19.00
October	463	29	15.96
November	484	29	16.68
December	614	33	18.60

We thus approve the estimates which PG&E used to determine the daily average use by month for the months of January, February, April, August, September, November, and December. Although PG&E used figures from the Gonzaleses' 1987 billings to determine the daily average use by month for January, February, and April, these figures were so close to the 1991 averages as to not merit any changes. Similarly, although PG&E estimated the August and September usage of 19.00 kWh/day, this usage was so close to the actual August 1991 usage of 18.80 kWh/day as to not merit any changes. Since we do not have a record for a September 1991 usage, it is reasonable to also use the August usage for September. Finally, PG&E used the Gonzaleses' actual usage for November and December 1990 in order to determine the backbill. We believe that this method is reasonable because it is based on recorded usage with the new meter.

This decision indicates changes from the numbers used by PG&E for the months of March, May, June, July, and October. These changes are based on the Gonzaleses' actual billing incurred with the new meter during 1990 and 1991. We realize that PG&E did not use these

new figures because they were not available to PG&E when it estimated the bill. However, because these figures are before us, we believe that it is more reasonable to determine the backbill based on consistent usage on a new meter during a consistent time frame, rather than utilizing figures from 1987 for some months, from 1986 for others, and from the period of time for which the Gonzaleses are being backbilled for yet others.

ORDER

IT IS ORDERED that the complaint in (ECP) Case 91-06-054 is denied, except insofar as Pacific Gas and Electric Company is ordered to recalculate Ms. Gonzales' backbill consistent with this decision.

This order becomes effective 30 days from today.

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

PATRICIA M. ECKERT  
President

JOHN B. OHANIAN

DANIEL Wm. FESSLER

NORMAN D. SHUMWAY

Commissioners

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

  
NEAL J. SHULMAN, Executive Director

DG