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Decision 92-03-041 March 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern Californian Gas Company (U 904 G) for authority to increase rates charged for gas service based on test year 1990 and to include an attrition allowance for 1991 and 1992.	ORIGINAL Application 88-12-047 (Filed December 27, 1988)
And Related Matter.	I.89-03-032 (Filed March 22, 1989)

(See D.90-01-016 for List of Appearances.)

Additional Appearance

John McDonald, for Utility Audit Company, interested party.

OPINION

Summary

This decision reviews nine meter accounts for alleged failure by Southern California Gas Company (SoCalGas) to assign the correct baseline allowance to a variety of multi-family dwellings.

The Commission grants relief to complainant J. Patrick Costello (Costello) in three cases involving multi-family housing for self sufficient elderly which have individual electric cooking facilities and optional central cooking and dining facilities. In granting the relief the Commission finds that the questions asked by SoCalGas in taking applications for service were not sufficient to make an informed rate assignment.

The Commission denies relief in the remaining six cases because the complainant failed to meet his burden of proof.

Procedural History

On May 8, 1989 Costello filed a complaint in SoCalGas' general rate case (A.88-12-047) alleging that the utility had failed to assign the correct rate schedule and/or provide correct baseline allowances to a variety of multi-family dwellings. This complaint was severed from the rate case and set for separate hearing by the presiding Administrative Law Judge (ALJ). Due to the large number of individual customers Costello represented (approximately 230), SoCalGas sought by motion filed on March 12, 1990 to bifurcate the hearing and consider common questions of law prior to hearing the facts of each individual case. The ALJ ruled on May 4, 1990 that the hearing on Costello's complaint would be limited to a review of nine representative accounts. Both parties agreed to the conduct of the hearing in such manner and submitted written testimony.

Hearing on the nine representative accounts was held before the presiding ALJ on June 28, 1990 in Los Angeles. Opening briefs were filed by Costello and SoCalGas on August 15, 1990. SoCalGas filed a closing brief on October 12, 1990.

Background

In 1976, the Commission established lifeline quantities of electricity and gas necessary to supply the minimum energy needs of average residential users for the end uses specified in the Miller-Warren Energy Lifeline Act (1975). (D.86087, affirmed by D.88651.)

In 1980, the Commission concluded that when a "central facility"[1] provides space heating, water heating, or cooking services to a multi-family complex with individually metered dwelling units, the lifeline allowance for these services should be shifted from the meter serving the dwelling units to the meter serving the central facility (D.92498).[2]

In 1985, the Commission replaced lifeline rates with baseline rates (D.84-12-066). Essentially, baseline rates are a simplification of lifeline rates. Lifeline is end-use oriented. Baseline is not. Baseline is concerned only with the number of dwelling units. It merely requires the application of the authorized baseline allowance per dwelling unit. For purposes of this discussion, it may be assumed that lifeline and baseline are the same.

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1 Central facilities are broadly defined by SoCalGas as gas service through a single meter supplying water heating or space heating or both to two or more living units which also have separate meters. Or central facilities may also serve, or only serve, laundry rooms, pools, saunas, recreation buildings/rooms, etc., used by the tenants of a multi-unit complex.

2 The Commission did not address master metered dwelling units in D.92498.

Gas billed at baseline rates currently costs 48 cents per therm, and at non-baseline rates costs 80 cents per therm. Therefore, it is important to the multi-family complex customer that each meter account be billed its correct baseline allowance.

Discussion

The Commission has issued decisions in two SoCalGas multi-family baseline billing error cases: D.89-08-008 in Frank Eck v. SoCalGas; and, D.89-09-101, as modified by D.89-12-055, in V.J. Schrader v. SoCalGas. We will summarize the holdings since both parties in this proceeding contend that those decisions support their respective positions.

In Eck, the Commission recognized that a complainant whose own mistake results in his failure to take advantage of a favorable rate under Schedule GM is not eligible for a refund because the utility has billed such a customer in complete accordance with its tariff. And, in denying the complaint, the Commission stated:

> "Under SoCalGas' tariff, the central facilities baseline allocation was to operate only prospectively from the date the central facilities customer provided the necessary information to SoCalGas. The notice and customer response requirements embodied in SoCalGas' tariff have been approved by the Commission. Therefore, we cannot require SoCalGas to retroactively adjust complainant's rates and refund him the overcharges resulting from his error." (D.89-08-008, p. 10.)

In Schrader, the customer presented evidence that showed he had provided accurate customer information to SoCalGas albeit years before lifeline was instituted. The Commission made it clear in Schrader that the customer has the duty to show either he had provided accurate information to SoCalGas or that SoCalGas had erred. In finding for Schrader, the Commission, in its order modifying D.89-08-101, stated:

> "The preponderance of the little evidence we have in this case leads us to infer that SoCal

> was notified of the correct number of units but for some reason used a lesser number in calculating the baseline allowance. We, therefore, find that there was a billing error. Tariff Rule 16, which governs the adjustment of SoCal's bills, provides that the utility shall issue a refund or credit to a customer for the result of an overcharge where the utility overcharges a customer as the result of a billing error. Schrader has satisfied his burden of proof in his complaint seeking refunds by demonstrating that a billing error occurred. The complainant does not have the burden of explaining how SoCal's error occurred." (D.89-12-055.)

The evidentiary problem in most multi-family baseline billing error cases is that, due to the utility's document retention policies, the original documents related to the meter accounts are no longer available.

Costello argues that Schrader amounts to a precedent establishing that the burden of proof in determining who is responsible for a billing error lies with the defendant utility, once a customer demonstrates that an error has occurred. As support for his position, Costello notes that the Commission states: "[The complainant] has satisfied his burden of proof in his complaint seeking refunds by demonstrating that a billing error occurred. The complainant does not have the burden of explaining how SoCal's error occurred." (D.89-12-055, p. 2, emphasis added.)

We believe that Costello misconstrues Schrader. In that case the complainant offered a hypothesis as to how SoCalGas made the error at issue. The Commission merely states that it is not necessary for the complainant to offer such hypotheses because the complainant did meet his burden of proof by offering into evidence a main and service construction document which shows that the utility made an error.

Also, Costello argues that in a situation such as the instant case, "where it is established that the customer was not

billed according to the Tariff," the burden simply must be placed on the utility to explain how the error occurred. If SoCalGas can prove that the customer affirmatively caused the error (such as by submitting incorrect appliance information to the utility), a refund should not be issued to the customer. However, according to Costello, if there is no proof as to how the original incorrect baseline allowance was assigned, the utility, as the stronger of the parties to the contract (tariff), must be held to the higher standard and ordered to pay refunds to the affected customer.

First, we believe that Costello appears to be under the erroneous impression that simply because a customer did not receive all applicable baseline allowances, "it is established that the customer was not billed according to the Tariff." This is not so. The mere fact that the customer did not receive all applicable baseline allowances does not ipso facto establish that the customer was not billed in accordance with the Tariff. As we discuss later, the customer has the responsibility to provide the utility with all necessary information so that the utility can correctly bill the customer.

Second, as we understand Costello's argument, the utility would be required to indefinitely retain all customer records; and, if the utility failed to produce any documents when called upon to do so, then it must pay refunds if the customer did not receive the correct baseline allocation. We are not persuaded that a utility should be required to retain customer records indefinitely simply for purposes of refuting possible customer claims. In this instance, SoCalGas' record retention period is reasonable.

Third, in a complaint case the burden of proof rests with the complainant. Costello's proposal amounts to holding the utility absolutely liable. We believe that a finding for the complainant, based on absolute liability of the utility, is not consistent with the legislative intent underlying Schedule GM and is not equitable to all ratepayers since they pay such refunds.

Further, Public Utilities (PU) Code § 1702 requires that the complaint "[set] forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission."

Rate Schedule GM was a response to Assembly Bill (AB) 167 passed by the Legislature at its 1975-76 regular session, which added Section 739 to the PU Code. The legislative intent underlying AB 167 and PU Code § 739 was analyzed in the Commission decisions that established Lifeline Quantities of Electricity and Lifeline Volumes of Gas, 80 CPUC 182, D.86087 (1979). In D.86087, this Commission recognized the legislative intent underlying AB 167 and PU Code § 739 as follows:

> "Presumably the Legislature thought that lower lifeline rates would be passed on to the ultimate utility users through lower rents." (Emphasis added.) 80 CPUC at page 189.

In the billing disputes now before us, any refund ordered by the Commission would be borne by other ratepayers through the balancing account;[3] and, the property owner or manager complainant would receive a windfall which is not likely to flow through to the utility users (tenants) through lower rents. Such a result would be contrary to the intent of AB 167.

Further, we believe that professionals in the business of apartment building management have a duty to review bills for accuracy. Aside from the various letters and notifications sent to multi-family complex customers by SoCalGas since the inception of

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3 In Schrader, while balancing the equities, we erroneously assumed that SoCalGas stockholders would be the beneficiaries. This error is not sufficient to require reversal of Schrader (D.89-09-101, p. 4).

lifeline and baseline, customers' bills for Schedule GM have the number of dwelling units receiving baseline allowances clearly printed across the bill. Thus, multi-family complex customers do receive reasonable notice on a monthly basis. On balancing the equities, we are not persuaded that the negligence or oversight of apartment owners or managers should be overlooked to the detriment of all ratepayers.

In summary, complainant has the burden of proving that SoCalGas failed to comply with the provisions of its tariff in rendering its bills and that the alleged overbillings resulted from errors committed by SoCalGas as opposed to those committed by complainant. Stiles v. Pacific Bell, et al., CPUC Decision 87-12-036, 1987 Cal. CPUC Lexis 80 (1987); Southern California Gas Company Tariff Rule 16; Eck v. Southern California Gas Company, CPUC Decision 89-08-008 (August 1989).

We now turn to the nine representative cases on which evidence was received.

Case I 19-4325-903-269-18
1244 Valley View
Glendale

This is a gas meter account for a separately metered central facility that provides hot water to 31 multi-family dwelling units. Each dwelling unit has an individual meter.

Since September 1986, SoCalGas used 30 multi-family units to determine the daily baseline allowance to the central facility. In April 1988, Costello notified SoCalGas that this account should be billed using 31 multi-family units. SoCalGas verified the claim and billed accordingly as of the following meter reading date.

Costello contends that the account should be backbilled for three years prior to the notification because SoCalGas erred in not billing the correct baseline allocation.

Further, Costello argues that SoCalGas' efforts to ensure that customers are allocated the correct rate and baseline

allowance are inadequate. He points out that a central facility meter and the individual meters in a multi-family complex are given related account numbers; therefore, SoCalGas has the ability to cross check the number of dwelling units. Since SoCalGas does not do so, Costello submits that SoCalGas must be held responsible for not assigning the correct number of dwelling units to this central facility.

Costello asserts that aside from mass mailings made in December 1980 and September 1984 when lifeline was implemented, SoCalGas made no additional mass mailings of baseline allowance eligibility questionnaires. Also, SoCalGas employed no follow-up measures with customers who did not return completed forms in 1980 and 1984.

This customer initiated service on October 10, 1975, before lifeline was in effect. The turn-on application, which would show how the customer planned to use gas, is not available. Due to SoCalGas' document retention policy, this type of order is held only five years. There are no other orders on file (i.e., Central Facilities Verification Form, New Business Service Order) that indicate that the customer did not provide the information that caused SoCalGas to assign the account 30 dwelling units instead of 31.

In response to Costello's assertions, SoCalGas states that it attempted to notify all possible customers who may have been affected by lifeline or baseline rate implementation and changes.

In November 1975, SoCalGas sent a letter to all potential master-metered customers, based on premises code and/or billing qualifier (i.e., laundry room, central water heater, etc.) advising customers of the probability of a new multi-family rate becoming effective upon the Commission's decision to be issued later. The letter stated that the new rate schedule may result in a lower cost

per dwelling unit, and the customer was requested to provide information regarding the number of dwelling units served.

In early 1976, SoCalGas sent a second letter to the previously identified customers who did not respond to the November 1975 letter. This second letter asked for a response by August 1976.

In early 1976, SoCalGas sent a letter to those customers who had responded to one of the prior letters. This letter asked for more extensive information by August 1976.

Next, SoCalGas had two mailings in December 1980. In the first mailing, letters and questionnaires were sent to 50,000 probable central facility customers requesting information needed to code their accounts properly. In the second, business reply postcards were mailed as bill inserts to 1,100,000 possible central facility accounts. Bill messages appeared at the same time addressing the issue.

When a postcard was returned, SoCalGas mailed a central facility questionnaire to the responding customer to provide SoCalGas with the information necessary to properly code the account.

In March 1981, SoCalGas mailed bill inserts to individually metered tenants explaining the possible reduction of lifeline allowances with the next bill.

In April 1981, SoCalGas printed a reduction of lifeline allowance message on affected tenants' bills. The message continued until all lifeline allowance reductions had occurred.

During July and August 1984, SoCalGas conducted an "in-house" premises code survey. The survey attempted to identify each premises as Individually Metered Residential, Master Metered Residential, or Non-residential. Corrections to rates were made where applicable and central facility accounts identified during the survey were coded and rebilled.

SoCalGas initiated another mass mailing of central facility questionnaires, the same as those mailed in 1980, in September 1984.

Starting in August 1987 and thereafter, all first bills of newly active accounts show a message explaining under which rate that account is billed.

Beginning in 1988, on an annual basis, bill messages appear on all GR (Residential), GMC (Multi-family, non-essential common facility), GME (Multi-family, essential common facility), and GN10 (commercial) accounts explaining the rate at which the accounts are billed. GS (submetered) accounts receive an annual bill insert.

In addition, since lifeline went into effect, each bill has shown the number of master-metered dwelling units and/or central facility units receiving the multiple baseline allowance clearly printed in large block letters on the face of each monthly bill. Therefore, SoCalGas contends that this customer received notification, for 20 months, that the baseline credit was for 30 dwelling units, not 31 units.

SoCalGas' argues that there is no evidence of utility error; therefore, there should be no backbilling.

We conclude that complainant has not established that the utility made a billing error. Simply because a billing error has occurred, that does not ipso facto constitute "utility billing error". Further, we are not persuaded by the complainant's argument that the utility has a duty to crosscheck all the accounts in a multi-family complex. That would shift the responsibility to the utility.

Under SoCalGas Tariff Schedule GM Special Condition 3, baseline allowances are available to qualified customers after they notify the utility of the number of dwelling units. Schedule GM Special Condition 4 requires the customer to notify the utility of any change in the number of units.

Further, we believe that SoCalGas has made a reasonable effort to notify multi-family complex customers of the availability of baseline allowances. The tariff is clear that it is the customers' responsibility to notify the utility regarding the correct number of dwelling units. Therefore, we conclude that a complainant whose own mistake or oversight results in his failure to take advantage of a favorable rate is not eligible for a refund. The utility has billed the customer in accordance with its tariff. The complainant has not met his burden of proof; therefore, we deny complainant's request for backbilling.

Case II 10-3296-747-22
349 S. Arroyo
San Gabriel

This is an account for a separately metered central facility that provides hot water to 12 multi-family dwelling units which receive gas for cooking and space heating from another master meter.

In July 1981, based on a form completed by the customer, SoCalGas assigned the account to Rate Schedule GM-C (non-baseline) on the basis that the meter only provided swimming pool heating and laundry room services, which do not qualify for baseline allowances. According to the completed form, this central facility did not provide water heating to the multi-family units; therefore, the central facility meter did not receive a baseline allowance. Instead, the full baseline allowance was applied to the master meter serving the 12 multi-family units. As a result, the meter serving the central facility was billed a large amount of expensive non-baseline therms for water heating, while the master meter that serves cooking and space heating needs was assigned an "unusable" baseline allowance.

Costello notified SoCalGas in July 1988, that this account qualified for the baseline allowance since it was a central facility providing hot water to 12 multi-family dwelling units.

SoCalGas verified the notification and the meter account was billed accordingly as of the following meter reading date. The baseline allowance of the master meter serving the 12 dwelling units was reduced to reflect the shift of the baseline allowance to the central facility.

Costello does not contest SoCalGas' refusal to backbill in this instance. He agrees that in a similar situation, where it was shown that the customer provided incorrect information, the Commission ruled against the customer (Eck v. SoCalGas, D.89-08-008). However, Costello believes that this account is not typical. He asserts that in 300 or more claims, SoCalGas has produced evidence of incorrect information submitted by the customer in 6 instances only.

SoCalGas submits that the error was clearly the customer's and, as such, it is not considered a billing error under its Rule 16.C.

As conceded by complainant, we agree that there should be no backbilling.

Case III 05-2434-727-600-17
7215 S. Bright Ave.
Whittier

This is an account for a central facility that provides hot water and serves central cooking and dining room facilities to a 155-unit residential facility housing self-sufficient elderly on a permanent basis. The dwelling units are self-contained and each is equipped with individual electric cooking facilities. The building has electric space heating. Service was initiated in 1973. The turn-on application is no longer available.

Prior to 1984 this account was on Schedule GM and did receive a lifeline allowance for providing gas water heating to a multi-family complex.

SoCalGas inspected the facilities in December 1983 and concluded that this was a retirement home and that meals were

included in the rent. Therefore, based on its Tariff Rule 1, Definitions, Family Dwelling Unit, SoCalGas concluded that this was a business use of gas and reassigned the account to Schedule GN1, which does not have a baseline allowance.

This rate assignment was not disputed until an informal complaint was filed with the Commission staff on April 24, 1986 by a Thomas Hobbs. The investigation sustained what had been determined in 1984 and the Commission staff closed its file on the complaint in June 1986.

Costello notified SoCalGas in March 1988 that he believed this account should be billed under Rate Schedule GM and receive a baseline allowance. Based on the previous investigation, SoCalGas denied the request. Due to Costello's insistence, SoCalGas performed another field inspection on December 18, 1989. Based on that inspection, the account was assigned the GM rate and rebilled from May 1986 (when the informal complaint was filed with the staff) to January 1990.

SoCalGas' explanation for the different conclusion is that the December 1989 inspection determined that the costs for the central dining facilities are not included in the tenants' rent. The residents pay only for the residential apartment use and, therefore, should receive a baseline allowance. Nevertheless, based on the original information provided by the customer in 1983-84, SoCalGas believes there was no error on the utility's part.

Costello disagrees. First, Costello argues that the SoCalGas form used in 1983-84 does not ask the right questions so that the utility can make an informed rate assignment (Exhibit 257, Attachment 14). The form does not ask if the dwelling units are self-contained, whether there are individual cooking facilities in each unit or whether there are individual electric appliances (of any kind) in the dwelling units. Costello, believes that this information is crucial, since without individual cooking

facilities, this establishment would not meet the Tariff Rule 1 definition of Family Dwelling Unit and, consequently, would be assigned to Rate Schedule GN, instead of the much more favorable baseline Rate Schedule GM.

Secondly, according to Costello, SoCalGas has consistently misinterpreted Tariff Rule 1 in rate assignments for Housing and Urban Development subsidized housing establishments for the elderly that are equipped with both optional central cooking facilities and individual electric cooking facilities. SoCalGas was classifying such buildings as "rest homes". It was not until Costello clarified the discrepancy between SoCalGas' rate assignments for these types of establishments and residential hotels that this account was placed on the correct rate.

Therefore, Costello argues that the account should be backbilled 3 years from May 1986, when the informal complaint was filed.

We agree with Costello that SoCalGas has a responsibility to provide and use forms that request all the necessary information so that the utility may make an informed rate assignment. Failure to do so is utility billing error.

Also, we believe that in 1983, SoCalGas' standard questions for taking applications from such customers resulted in routine disqualification from baseline allowances. One of the first questions asked by the utility representative is, "Will this be business or residential service?" If told by the applicant that "it will be business", the applicant had little likelihood of receiving a baseline allowance because SoCalGas was routinely denying baseline benefits to such establishments "because gas was used for business purposes."

Further, this customer was correctly on the GM schedule prior to 1984 before SoCalGas, following its inspection, reassigned the account to a non-lifeline rate schedule. Apparently, SoCalGas was unduly influenced by the presence of commercial cooking

equipment and central dining facilities; therefore, it overlooked the individual electric cooking facilities.

In summary, we believe that SoCalGas' 1983 questionnaire for signing up new customers did not adequately address the intent of lifeline/baseline legislation that each self-contained residential dwelling unit receive a lifeline/baseline allowance (D.86087, affirmed by D.88651).

We conclude that complainant has met his burden of proof; therefore, complainant's request for backbilling is granted.

Case IV 06-2803-381-290-28 (F4)
8600 Denver Ave.
Los Angeles

This account is one of 15 meters at an apartment complex known as Sonya Gardens.

Costello reviewed the gas bills for this complex and determined that the meters serving the central water heaters were not receiving the appropriate master meter baseline allowance for the dwelling units served. According to Costello, the 15 accounts were receiving baseline allowances for only 52 dwelling units instead of 60 dwelling units.

On January 26, 1988, Costello requested backbilling on the meter accounts with central water heaters. Also, he requested that all consumption on the 15 meters be combined for future billings because "no one has been able to pinpoint which units and which appliances are serviced by each meter."

Costello argues that SoCalGas must be held responsible for knowing that the gas plumbing configuration at this complex is not specifically addressed by its tariff. The tariff does not specifically address a situation where a central water heater connected to a master meter serving a block of dwelling units supplies hot water to another block of dwelling units that have their separate master meter. As a result, the customer is billed

at higher non-baseline rates for therms used for hot water heating which should be billed at baseline rates.

SoCalGas denied Costello's request for backbilling and future combined meter reading for billing.

SoCalGas states that this particular account is comprised of eight family dwelling units served by one meter. According to SoCalGas, the account is billed appropriately under Rate Schedule GM.

Of the other 14 accounts in the same apartment complex, SoCalGas contends that all are also appropriately billed under Rate Schedule GM. Three of the 14 accounts are comprised of multi-family dwelling structures, with each structure served by a single meter. The groups respectively serve two, four, and nine dwelling units.

Five other accounts in the complex are billed according to Special Condition 3 of Rate Schedule GM. These five accounts consist of four individually metered dwelling units each with its own cooking and heating. The fifth meter serves a combination of the central water heater for the four individually metered accounts plus cooking, heating, and water heating for one unit on the same meter.

The last six accounts are comprised of two groups of three family dwelling units. Each of these groups is served by a single meter. Each meter receives its daily baseline allowance times the number of dwelling units on its meter, in accordance with Rate Schedule GM. There is, however, only one water heater for each group of three.

SoCalGas acknowledges that the customer's piping configuration is not specifically covered in its current tariff. However, SoCalGas contends that the accounts are billed in accordance with its filed Tariff Rate Schedule GM, there is no billing error by the utility and, therefore, backbilling is not justified.

As we stated with regard to Case I above, it is the customer's responsibility to notify the utility of the correct appliances connected to each meter in a multi-family complex. This responsibility was recognized by the Commission in the lifeline decision (D.86087, p. 57). Also SoCalGas' Tariff Rule 19 states:

> "Customers may be eligible for service under new and optional schedules or rates subsequent to notification by the customer and verification by the Utility of such eligibility". (Tariff Rule 19, emphasis added.)

Further, we conclude that the lack of a tariff option that allows this customer to take full advantage of all baseline allowances in conjunction with his particular gas piping configuration does not constitute utility billing error. It is the customer's responsibility to install all piping necessary to take advantage of available utility tariffs.

Complainant has failed to sustain his burden of proof to establish that SoCalGas did not bill in accordance with its filed tariff; therefore, we deny complainant's request for backbilling.

Case V 05-7370-460-532-54
474 S. Hartford
Los Angeles

In December 1987, Costello notified SoCalGas that this central facility master meter account should receive 24 baseline billing units instead of 20. SoCalGas verified the request, made the change, and billed the account accordingly as of the following meter reading date.

Service was initiated in 1974, before lifeline was in effect. Due to SoCalGas' records retention policy, the turn-on application is not available. There are no other orders on file that indicate the customer did not provide the information which caused SoCalGas to assign the 20 units. Based on the billing code, SoCalGas contends that it would have sent the customer the letters discussed previously requesting information on appliances and central facilities. Costello contends that such letters were not received by the customer.

The customer's bills from at least December 5, 1980 through December 1987 displayed, "Multiplied For 20 Central Facility Units". (The same message appears currently with 24 as the number of units served.) Therefore, SoCalGas argues that the customer received monthly notification, at least 85 times that it was given credit for 20 units, not 24.

SoCalGas contends that there is no utility error; therefore, backbilling is not justified.

We do not find Costello's argument persuasive. First, we believe that SoCalGas' tariff is clear; the customer is entitled to receive service under new or optional rates "subsequent to notification by the customer" (Tariff Rule 19).

Second, we are not persuaded by complainant's assertions that the customer did not receive the letters sent by SoCalGas notifying the customer regarding the availability of lifeline/baseline allowances. Regardless, the customer certainly received notification on his bill of the number of dwelling units used for billing purposes each month. We believe that apartment owners and managers should be held to a duty of due care to scrutinize their bills carefully. In weighing the equities, we are not persuaded that the ratepayers should be expected to bear the financial burden of negligence or oversight on the part of apartment owners or managers.

Complainant has failed in his burden of proof to establish that there is utility billing error; therefore, we deny complainant's request for backbilling.

Case VI 14-4322-845-472-12
1256 Boynton
Glendale

Since the introduction of lifeline in 1976, this central facility account was not allocated the correct number of baseline units. After being notified, SoCalGas verified the request and corrected the account from Schedule GR (single unit master meter)

to Schedule GM with a water heating baseline allowance for 20 units. The correction was made in October 1987.

The 20 dwelling units, which are individually metered, each received a full baseline allowance before the correction. Thereafter, the baseline component for water heating was shifted to the central facility.

Costello points out that the central facility was erroneously assigned to Schedule GR. For such accounts, the billing assumptions were not printed on the bill. It was not until 1988 that SoCalGas began printing an annual bill message to inform the (GR) customer about the schedule he was on. Costello argues that the customer did not contribute to the error or fail to read his bills carefully; therefore, he requests backbilling.

Service was established in 1965, before lifeline was in effect. Because of SoCalGas' document retention policy, the turn-on document is not available.

SoCalGas asserts that based on the customer's billing code, the customer would have been sent the letters discussed previously, which explained lifeline and requested information on the customer's appliances and central facilities. SoCalGas points out that the second letter requests a response by August 27, 1976, and it states "...without this information we must assume each meter serves one dwelling unit and, in accordance with the California Public Utilities Commission order, can only assign one 'lifeline' allowance." Therefore, when this customer did not respond to either mailing in 1975 or 1976, SoCalGas assigned the account to Schedule GR which provides only one lifeline allowance.

SoCalGas contends that there is no utility error; therefore, there should be no rebilling.

We are not persuaded by complainant's argument that because the meter account was "erroneously" on Schedule GR, and since meter accounts on that rate schedule did not have the same monthly notice as for Schedule GM, the responsibility for informing

the utility regarding the customer's plant equipment should be overlooked. As we stated with regard to Case I and Case IV above, it is the customer's responsibility to notify the utility (Tariff Rule 19).

Complainant has failed in his burden of proof to establish that SoCalGas did not bill in accordance with its filed tariff; therefore, we deny complainant's request for backbilling.

Case VII 06-2104-714-100-18 (E1)
600-12 N. Broadway
Los Angeles

The establishment is a 270-unit residential facility housing self-sufficient elderly on a permanent basis. The units are self-contained, and each is equipped with individual electric cooking facilities. This meter provides gas to both central water heating and central heating/cooling appliances. Also, the establishment has a central cooking facility which receives gas through a different meter.

Service was initiated in December 1984. The turn-on application indicates that gas will be used to serve senior citizen housing that has six commercial ranges, three steam tables, eight dryers, two boilers, and two furnaces. Based on the commercial appliance information on the application, SoCalGas concluded that the account did not qualify for a residential rate. SoCalGas billed it under Schedule GN-1 which is a commercial rate that is not allocated a baseline allowance.

In November 1987, Costello informed SoCalGas that the account was billed under the wrong rate schedule. SoCalGas verified the information and changed the account to Schedule GM (with 270 master meter baseline units) as of the following meter reading date.

Costello requests backbilling to the date of turn-on. He states that since the 1984 turn-on date, there has been no change in the nature or character of service at this establishment. This

account has met all requirements for assignment to Schedule GM with a master meter baseline allowance for 270 units.

Costello argues that a primary cause of the error was the inadequacy of the form used by SoCalGas to collect rate eligibility information concerning this type of establishment. As discussed with regard to Case III, the form does not ask if the dwelling units are self-contained and have individual electric cooking appliances.

As we concluded in Case III above, it is the responsibility of the utility to provide and use forms that request all the necessary information so that the utility may make an informed rate assignment. Such failure is utility billing error. As in Case III, SoCalGas appears to have been unduly influenced by the presence of commercial cooking equipment, and overlooked the individual electric cooking facilities.

We conclude that complainant has met his burden of proof; therefore, complainant's request for backbilling is granted.

Case VIII 05-2434-727-6001-7
7215 S. Bright Ave.
Whittier

This is the same establishment discussed under Case III above; therefore, the facts will not be repeated.

As we decided in Case III, this account should be backbilled because the SoCalGas questionnaire did not ask the right questions so that an informed rate assignment could be made. The complainant has met his burden of proof.

Case IX 01-2622-931-464-32
725 Garnet Street
Torrance

This establishment is a residential apartment building with four master meters. There are 61 dwelling units on the premises. Each unit receives gas for cooking and space heating from one of the four master meters, as well as hot water from one of two central gas water heaters on the premises.

- Meter (A) 01-2622-931-4603-6 provides gas for cooking and space heating to 21 units.
- Meter (B) 01-2622-931-462-34 provides gas to a central water heater serving 14 units. This meter also supplies gas directly to the 14 units for cooking and space heating.
- Meter (C) 01-2622-931-464-32 provides gas to a central water heater serving 47 units. This meter also supplies gas directly to 11 of the 47 units for cooking and space heating.
- Meter (D) 01-2622-931-466-30 provides gas to 15 units for cooking and space heating. (Exhibit 257, pp. 37 and 38.)

Prior to July 1987, SoCalGas billed each meter separately and assigned: Meter (A) a 21-unit master meter baseline allowance, Meter (B) a 14-unit master meter baseline allowance, Meter (C) an 11-unit master meter baseline allowance, and Meter (D) a 15-unit master meter baseline allowance. The cumulative baseline allowance assigned to the four accounts totaled 61 master meter baseline units, which corresponds exactly to the total number of dwelling units and overall appliance configuration at the building (all 61 dwelling units do receive gas for cooking and space heating as well as hot water from central gas hot water heaters).

However, Costello argues that in reality, the baseline allowance assigned to the complex was in error because three of the four meters were assigned incorrect individual baseline allowances. Meters (A) and (D) received a baseline allowance for cooking, space heating, and water heating, although they are only providing gas for cooking and space heating. Thus, the customer was allocated baseline allowance on the two meters that he rarely, if ever, used. Meter (C) represents the opposite situation. This meter received a baseline allowance for serving only 11 units with gas for cooking, space heating, and water heating. Actually, this meter served an additional 36 dwelling units with water heating. As a result, the

customer was always billed for a large amount of expensive non-baseline therms on Meter (C), while he was assigned an excessive unusable baseline allowance on Meters (A) and (D). The net result was that the customer was significantly overcharged for gas used at the complex.

Costello contends that SoCalGas made an error because it did not assign the proper master meter baseline allowance to one of the four meter accounts--Meter (C), which should receive 47 baseline units instead of 11.

According to Costello, SoCalGas should know that there are fewer central water heaters on the premises than there are master meters. Therefore, SoCalGas should be held responsible for knowing, from the day the meters were installed, that its Rate Schedule GM did not specifically accommodate such a metering configuration. He requests backbilling for three years from the date of notification.

As an accommodation to the customer, after notification and verification, SoCalGas in October 1987 combined the meter readings of the four master meters in the complex so that the full baseline allowance could be utilized by the central facilities. The accommodation was made because the present Rate Schedule GM does not specifically accommodate central facilities that serve dwelling units served by another master meter.

Service was initiated in August 1974, before lifeline was in effect. Because of SoCalGas' document retention policy, the original turn-on documents are not available. SoCalGas asserts that based on its premises code, this account would have been mailed one or more of the notifications discussed previously, that informed customers of the new Rate Schedule GM and requested information on appliances and meters.

SoCalGas' position is that this account has been billed according to Rate Schedule GM and there has been no billing error by the utility. Therefore, backbilling the account prior to

notification in August 1987 under combined billing is not justified.

Essentially, Costello's argument is that SoCalGas' tariff provides baseline allowances equal to the number of units served from the meter, without regard to service provided by other master meters. On the other hand, SoCalGas' interpretation of its tariff is that there should be no more baseline allowances than there are dwelling units.

In other words, notwithstanding that there are 61 dwelling units in the complex, Costello contends that pursuant to SoCalGas' tariff, the customer should receive 97 baseline allowances; SoCalGas' position is that the customer received 61 baseline allowances, which corresponds with the number of dwelling units in the complex.

For example, taking Costello's argument to its logical conclusion, if an apartment building within a complex receives gas service from three separate master meters for each of these functions: cooking, water heating, and space heating, respectively, the building would receive 3 times more baseline allowances than there are living units. This result is obviously unfair to all SoCalGas' other ratepayers who would subsidize the additional baseline allowances. Also, we are certain that the Legislature did not intend such a result when it enacted lifeline and baseline legislation.

Service to this apartment complex is provided under Schedule GM Multi-family Service - Special Condition 2 applicable to dwelling units that are not separately metered. Special Condition 2 does not contain the statement: "[eligibility] for service under this provision is available subsequent to notification by the customer and verification by Utility." However, Special Condition 3, applicable to dwelling units that are separately metered, does contain this language. However, we are not persuaded that the absence of such language in Special Condition 2 shifts the responsibility to the utility of

ascertaining the customer's own piping configuration so that the utility may allocate baseline allowances.[4]

Also, SoCalGas' Tariff Rule 19 states:

> "... In the event of the adoption by the Utility of new or optional schedules or rates, the Utility will take such measures as may be practicable to advise those of its customers who may be affected that such new or optional rates are effective. Customers may be eligible for service under new and optional schedules or rates subsequent to notification by the customer and verification by the Utility of such eligibility. ..." (Rule 19, effective June 5, 1982, emphasis added.)

We are not persuaded that absence of the "subsequent to notification" language in Special Condition 2 is significant since SoCalGas Rule 19, in effect, governs service taken under Special Condition 2 or 3.

Further, Schedule GM-Special Condition 4 states:

> "It is the responsibility of the customer to advise the Utility within 15 days following any change in the submetering arrangements or the number of dwelling units or mobile home spaces provided gas service." (Special Condition 4, emphasis added.)

There is no reason why Special Condition 4 should not apply to service taken under either Special Condition 2 or 3.

We discussed previously the steps SoCalGas took to advise apartment owners of the availability of lifeline and baseline allowances. We believe that the record in this proceeding fully supports a finding that SoCalGas took reasonable measures to notify building owners, managers, and landlords. One of the many notices states:

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4 Schedule GM-Special Conditions 2 and 3 provide baseline allowances "per residence".

"Attention--Building Owners, Managers, Landlords.

"The California Public Utilities Commission has ordered us to modify our rate schedules for lifeline uses of gas served through one meter to two or more dwelling units. This change provides that the therms allowed in each usage block will be multiplied by the number of qualified dwelling units served by one meter.

"If the gas meter which supplies the service address shown on the enclosed bill provides gas service to two or more dwelling units, please complete and mail this postpaid card now. We will mail a verification form to obtain the additional information required to determine the appropriate rate schedule for this meter. ...." (Exhibit 260, Attachment 4, business reply card (emphasis added).)

Furthermore, Costello does not contend that the customer provided SoCalGas with information on the customer's piping arrangement. Costello simply contends that SoCalGas should have found out regarding the unique piping arrangements. We are not persuaded that a utility is required to look beyond the meter to ascertain the customer's piping arrangements, unless specifically requested to do so by the customer. The record is clear that in October 1987, when Costello notified SoCalGas, it did accommodate the customer after receiving notification.

As we concluded for Case IV, the lack of a tariff option that allows a customer to take full advantage of all baseline allowances in conjunction with his/her particular gas piping configuration is not utility billing error. It is the customer's responsibility to install all piping necessary to take advantage of available utility tariffs and to inform the utility of the piping arrangement.

Complainant has failed in his burden of proof to establish that SoCalGas did not bill in accordance with its filed tariff; therefore, we deny complainant's request for backbilling.

Findings of Fact

1. The meter accounts reviewed in this decision involve complaints of alleged failure by SoCalGas to assign the correct baseline allowance to central facilities which provide hot water to a variety of multi-family dwellings.

2. Complainant, in effect, argues that SoCalGas is absolutely responsible for correctly applying baseline allowances to each of its multi-family complex customers' particular circumstances.

3. SoCalGas' Tariff Rule 19 states:

> "Customers maybe eligible for service under new and optional or rates subsequent to notification by the customer and verification by the utility of such eligibility." (Rule 19, effective 1982, emphasis added.)

4. Under SoCalGas Tariff Schedule GM Special Condition 3, baseline allowances are available to qualified customers after they notify the utility of the number of dwelling units. Schedule GM Special Condition 4 requires the customer to notify the utility of any change in the number of units. Special Condition 2 does not contain the "notification" language.

5. In Eck and Schrader, the Commission affirmed that where a customer has failed to notify SoCalGas of the proper number of dwelling units served, there will be no backbilling to adjust for the customer's error or failure to notify the utility.

6. Complainant alleges that SoCalGas has not properly communicated the availability of lifeline/baseline allowances to multi-family complex customers.

7. SoCalGas has provided a detailed summary of its efforts to communicate the availability of lifeline/baseline allowances to multi-family complex customers (Exhibit 259).

8. Since lifeline went into effect, each month, customer bills for Schedule GM multi-family service have this sentence in

block letters across the bill: "MULTIPLIED FOR -- MASTER METER LIVING UNITS".

Conclusions of Law

1. SoCalGas' efforts since 1975 to communicate the availability of lifeline/baseline allowances to multi-family complex customers are reasonable.

2. In 1983, the forms used by SoCalGas to make rate assignments for residential facility housing for self-sufficient elderly were not adequate to allow informed decisions to be made on lifeline/baseline eligibility.

3. It is the customer's responsibility to advise the utility of the correct number of living units in an apartment complex and to notify the utility of piping arrangements involving special facilities.

4. SoCalGas' customer records retention period is reasonable.

5. Simply because a multi-family customer does not receive all baseline allowances, that ipso facto is not utility billing error.

6. The failure of a multi-family customer to take advantage of a rate or condition of service is not utility billing error.

7. The lack of a tariff option that enables a customer to take maximum advantage of available baseline allowances in conjunction with the customer's particular piping configuration is not utility billing error. It is the customer's responsibility to install all piping necessary to take advantage of available utility tariffs.

8. SoCalGas' Tariff Schedule GM, in conjunction with Rule 19, requires the customer to inform the utility of the correct number of dwelling units, or any change in the number, to receive the proper baseline allowance.

9. The customer obligations contained in SoCalGas Schedule GM in Rule 19 are reasonable. Since it is the owner or manager of

a multi-family complex who is in the best position to ascertain the number of dwelling units on his property, it is reasonable to place the burden on such customers to accurately notify SoCalGas as to the number of units attached to each master meter.

10. The burden of proof is on the complainant to show that the utility has not billed in accordance with its filed tariff.

11. In weighing the equities, it is not reasonable to overlook the negligence or oversight of apartment owners or managers in scrutinizing their bills, since any refunds are charged to all ratepayers.

12. Complainant has met his burden of proof in Case III, Case VII, and Case VIII (which is the same establishment as in Case III). Failure of the utility to use adequate forms, so that an informed rate assignment can be made, is utility billing error.

13. In Case III, SoCalGas should backbill up to 3 years from the date of notification, which is May 1986 when the informal complaint was filed.

14. In Case VII, SoCalGas should backbill for 3 years from the date of notification which is November 1987.

15. Since Case VIII involves the same facility as Case III, the backbilling for Case VIII should be in conjunction with the backbilling for Case III.

16. Complainant has not met his burden of proof with respect to Case I, Case II, Case IV, Case V, Case VI, and Case IX. There should be no backbilling in these cases.

17. The nine cases in which evidence was received are representative of approximately 230 cases pending by Costello. SoCalGas should settle those cases on the basis of the Commission's findings in this decision.

18. All refunds should reflect the time value of money and should be made with interest at the three-month commercial paper rate up to the date of refund.

O R D E R

IT IS ORDERED that:

1. With respect to Case III, Case VII, and Case VIII, Southern California Gas Company (SoCalGas) shall backbill these accounts up to 3 years from the date of notification that the account was entitled to a baseline allowance. The refund shall be made with interest up to the date of refund.

2. SoCalGas shall backbill and make refunds with interest, on all accounts that are similar to Case III and Case VII.

3. With respect to Case I, Case II, Case IV, Case V, Case VI, and Case IX, there shall be no backbilling on these cases and other similar cases.

4. Consistent with the Commission's findings in the nine cases reviewed, SoCalGas shall expeditiously backbill where appropriate and inform Costello with regard to the disposition of the pending cases, within 60 days of the date of this decision.

5. All refunds shall be made with interest at the 3-month commercial paper rate published by the Federal Reserve Bank (G-13).

This order is effective today.

Dated March 11, 1992, at San Francisco, California.

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

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

NEAL J. SHULMAN, Executive Director