

L/dp

Decision 92-05-035      May 8, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Raymond Harris,	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No. 91-09-045
	)	(Filed September 23, 1991)
Pacific Gas & Electric Company,	)	
	)	
Defendant.	)	

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ORDER DENYING REHEARING

RAYMOND P. HARRIS (Harris) has filed an application for rehearing of Decision (D.) 92-02-063. We have considered all the allegations of error in the application and are of the opinion that good cause for rehearing has not been shown.

The matter at issue in the complaint was the amount of backbilling made by PG&E after the discovery that two meters, for both of which Harris was customer of record, had been tampered with so that usage was undermetered. Harris denied knowledge of tampering or of unmetered usage, and stated that his brother and his ex-wife were the primary beneficiaries of the mismetering during the period of undermetering. We found that Harris, as customer of record, was responsible for paying the utility, but reduced PG&E's proposed backbill amount because it was inaccurate and unfair.

The application alleged error on two grounds: First, that the entry of PG&E's meter readers and investigator on the premises violated Harris' constitution rights; and, second, that we should have averaged the undermetered period, rather than other periods, to find the "true average" bill on which to base our calculation of the proper amount to be paid PG&E in

compensation for the energy used but not paid for during the period of undermetering.

#### The Constitutional Claim.

Harris' application claims that PG&E's entry on his property to read and test the meter, without a warrant, was a violation of the Fourth Amendment's prohibition against unreasonable search and seizure. At the hearing, however, the Administrative Law Judge (ALJ) told Harris that "the only purpose of the hearing was to determine the process itself of the mathematical [calculation] of the alleged [unmetered] electric usage, [and] that any other [evidence] that was [inconsistent] with this theme was [irrelevant]." Application, p. 1.

"Although," comments Harris, "I can see by reading the opinion of the Commission I was incorrectly advised." Ibid. The application does not point to anything in the decision supporting this comment. Presumably, therefore, Harris believes that our decision requiring him to pay the backbill is founded on some conclusion of guilt.

This is not the case, however. We did find that Harris is responsible for the unmetered usage, but we did so on the basis that Harris was the customer of record during the period of undermetering. D.92-02-063, p. 2. Our decision made no finding that Harris himself had tampered with the meter, that he knew about the tampering, or that he benefitted from the usage. In such cases, it is the customer of record who is responsible to the utility for payment of the underbillings; by requesting the service he represents his ability and willingness to pay for it, and if he chooses to allow others to use his account, he bears the responsibility for their payment to the utility.

We lack jurisdiction to make findings of guilt or innocence, and thus we have consistently refused to do so in energy diversion cases. Re Retroactive Billing by Gas and Electric Utilities to Correct Alleged Meter Underbillings Due to

Meter Error and Meter Fraud, D.86-06-035, 21 Cal.PUC 2d 270, 1986 Cal.PUC LEXIS 888; see also Lawrence Folts v. Pacific Gas & Electric Company, D.89-09-090, 32 Cal.PUC 2d 477 (caption only); full text 1989 Cal.PUC LEXIS 446. In Retroactive Billing, after an extensive investigation, we said:

The only questions that the Commission needs to answer to resolve these complaints, however, are "Was energy used by the customer but not paid for?" and "What is a reasonable estimate of the value of that energy under the applicable tariffs?" ... [T]he customer is responsible for paying the value of any unmetered energy, regardless of whether the metering discrepancy resulted from tampering by the customer, tampering by a stranger, mechanical failure of the meter, or any other reason. ... [W]e have no special competence to deal with the questions of guilt, innocence, or intent that are associated with allegations of tampering by the customer. Our only concern is that a customer who has received energy should pay what the applicable tariffs prescribe for that energy.

Retroactive Billing, 21 Cal.PUC 2d at 273-274. (Emphasis added.)

Our resolution of Harris' complaint in D.92-02-063 found that energy was used and not paid for. We made no findings of guilt or innocence, but only of that responsibility which Harris willingly assumed when he became customer of record at those two addresses. That is the limit of our jurisdiction and authority in mismetering cases.

Nor is Harris without a remedy if he was not the actual beneficiary of the unbilled energy. If, as he has said, family members other than himself were living on the property and getting the benefit of the usage, he may seek reimbursement from them on a friendly basis or in small claims court.

**The Accuracy of the Calculations**

Harris' application alleges that it was improper to calculate the amount due on the basis of years in which no undermetering was found. Instead, he urges, we should have averaged the usage in 1989, the year in which the meter problem was discovered. As we said in D.92-02-063, it would obviously skew the results to use the years of unmetered usage to calculate what usage would have been reflected by an accurate meter.

As we recognized that the amount due is large, we ordered PG&E to enter a payment arrangement with Harris to avoid undue hardship to him. We expect that PG&E will be flexible to the extent of including any actual beneficiaries Harris may bring to the negotiations who are willing to contribute their fair share to the repayment process.

However, the application has not shown good grounds for rehearing.

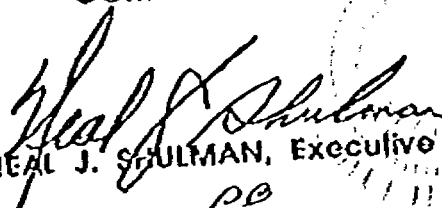
**THEREFORE, IT IS ORDERED** that rehearing of D.92-02-063 is hereby denied.

This order is effective today.

Dated May 8, 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. STULMAN, Executive Director