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MAY 20 1992

Decision 92-05-055 May 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Fred F. Waters,
Complainant,
vs.
Southern California Edison Company,
Defendant.

ORIGINAL

Case 91-07-038
(Filed July 29, 1991)

Lewis Notrica, Attorney at Law, for Fred F. Waters, complainant.
Margaret L. Sommers, Attorney at Law, for Southern California Edison Company, defendant.

O P I N I O N

Complainant, Fred F. Waters (Waters), disputes a bill in the amount of \$5,748.75 rendered by Southern California Edison Company (Edison) for alleged energy diversion.

A duly noticed public hearing was held before Administrative Law Judge (ALJ) Orville I. Wright in Lancaster on October 23, 1991, at which time Waters appeared in his own behalf. Edison was represented by legal counsel at the hearing.

Pursuant to ruling by the ALJ, Edison filed a brief in the case, and complainant then obtained legal counsel who requested and was given time to file an opposing brief. The matter was submitted on February 17, 1992.

Facts

This case involves two of Edison's electric service meters on the adjacent premises at 44542 and 44530 North Sierra Highway, Lancaster. The premises accommodated at least two used

car dealerships; 44542 was occupied by Bill Liske (Liske), dba B. & B. Auto Sales, and 44530 was occupied by Thomas M. Wiggins (Wiggins), dba Trader Tom Used Cars.

In March 1988, service to Liske was shut off for non-payment of his energy bill. The record is unclear as to when Liske quit the premises.

On September 28, 1990, an Edison crew discovered that a switch to the meter serving 44542 was open so that electricity was flowing to that address but not registering on the meter. It was also determined that the current passing through the open switch served to illuminate the overhead lights to the car lots.

Edison's revenue protection investigator visited the premises on October 16, 1990, found Wiggins and Waters in the office there, and, after discussion, thought that he had secured their joint agreement to pay for unbilled energy.

Wiggins made application for service at 44542, and Edison thereupon sent him its estimate of unbilled electricity in the amount of \$5,748.75 for the period from March 22, 1988 to September 28, 1990. Edison may bill the customer for its estimate of unauthorized use where it determines that there has been unauthorized use of electric service. (Edison's Tariff Rule 17 "Adjustment of Bills for Unauthorized Use", Section A.4.) Wiggins did not pay the bill and, soon thereafter, filed bankruptcy and departed California.

Waters next applied for service on behalf of Charlotte R. Woods (Woods), dba Blessed Auto Sales, stating that he would be responsible, together with Woods, for payment of future bills. Edison responded by substituting Water's name for that of Wiggins's as the person liable for the disputed billing.

Waters then filed this complaint, seeking an order that he is not legally responsible for debts of Wiggins, dba Trader Tom Used Cars.

Hearing

At the hearing, Waters testified that he, at all times, has been and remains only a car salesman or car manager, first for Wiggins and lately for Woods. He stated that he has no ownership interest in any of the businesses which occupied either 44542 or 44530 North Sierra Highway, Lancaster.

In support of his oral testimony, Waters produced his State of California vehicle salesperson license, explaining that, by virtue of this license, he was not authorized to act as a principal.

Complainant also placed into evidence the California State Board of Equalization Seller's Permit showing Charlotte R. Woods, dba Blessed Auto Sales.

Waters additionally produced Department of Motor Vehicles documentation showing Thomas M. Wiggins, dba Trader Tom Used Cars at 44530 together with California Sales and Use Tax forms showing Wiggins as owner at that address.

Edison, for its part, largely relies upon an oral promise to pay, which promise is denied by Waters. It produced computer notes taken at the time of Waters' application for service which seem to indicate that complainant claimed an ownership interest in one or both of the car businesses. The veracity of these notes is adamantly denied by Waters.

Other bits of hearsay exist, but the weight of the direct evidence in this case supports the proposition that complainant was not a principal in the entity or entities benefiting from use of the unmetered energy and, thus, should not be held liable to pay for it.

Findings of Fact

1. Edison discovered that unmetered energy had been consumed at premises located at 44542 and 44530 North Sierra Highway, Lancaster, between March 1988 and September 1990.

2. The premises at 44542 and 44530 were occupied by Bill Liske, dba B. & B. Auto Sales; Thomas M. Wiggins, dba Trader Tom Used Cars; and Charlotte R. Woods, dba Blessed Auto Sales; and by others.

3. Waters was an employee holding no ownership interest in any of the occupying entities during the time energy was allegedly diverted.

Conclusion of Law

Waters is not liable for the alleged energy diversion.

O R D E R

IT IS ORDERED that:

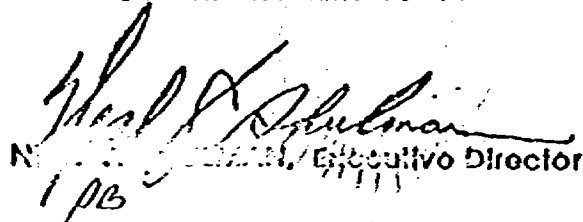
1. The relief sought in the complaint of Fred F. Waters against Southern California Edison Company in Case 91-07-038 is granted.
2. Southern California Edison Company shall not hold Fred F. Waters responsible for \$5,748.75 for alleged energy diversion at 44530 and 44542 North Sierra Highway, Lancaster, for the period March 1988 to September 1990.
3. The docket is closed.

This order becomes effective 30 days from today.
Dated May 20, 1992, at San Francisco, California.

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

Commissioner Patricia M. Eckert,
being necessarily absent, did not
participate.

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


Executive Director