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Decision 92-07-006 July 1, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PHILLIP A. HOWARD, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 PACIFIC GAS AND ELECTRIC COMPANY, )  
 )  
 Defendant. )

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Case 91-12-012  
(Filed December 12, 1991)

O P I N I O N

On December 12, 1991, Phillip A. Howard (complainant) filed a complaint against Pacific Gas and Electric Company (PG&E), the California Public Utilities Commission (CPUC or Commission), and the Electric and Gas Industry Association (EGIA) seeking a rebate of approximately \$800 pursuant to an electrical appliance efficiency program in which PG&E and EGIA participated. The complaint was not accepted by the CPUC Docket Office for filing against the CPUC presumably on the ground that the CPUC was not a party to the program under which the rebate is sought, and was not accepted against EGIA because it is not a utility under the jurisdiction of this Commission. The case was, therefore, prosecuted solely against PG&E.

A noticed evidentiary hearing was held on May 7, 1992, at which complainant appeared pro se and PG&E appeared by counsel, Robert B. McLennan, Esq. Each party was given the opportunity to make an opening statement, call witnesses, offer exhibits, cross-examine witnesses, and make a closing argument. Upon completion of the hearing, no post-hearing briefs were requested or ordered, and the matter was then submitted.

We decline to issue the requested order and dismiss the complaint.

Background

In an effort to encourage the use of energy efficient residential appliances, PG&E, EGIA, and various manufacturers of cooling appliances (air conditioning units) entered into an energy conservation program under the terms of which purchasers of air conditioners having certain specified efficiency ratings would be entitled to a "per unit" rebate upon certain conditions being met. The amount of the rebate was dictated by the size and efficiency rating of the unit purchased. Under the program, one of the qualifying conditions was that the unit(s) had to be installed by an EGIA-approved contractor.

In September or October 1991, complainant decided to purchase a new combination furnace/air conditioner for his residence. After finding a unit in which he was interested, he called PG&E to find out the rebate procedure. PG&E referred him to EGIA, which in turn referred him to the CPUC. It is not clear from the record exactly what complainant was told by any of these entities; however, it is clear that complainant understood that there were conditions which had to be met in order to qualify for the rebate. He then purchased a combination furnace/air conditioner of a size and type which would otherwise qualify for the rebate and personally installed it in his home. After the unit had been installed, it was inspected by inspectors from the City of San Jose's Building Department, and mechanical and electrical approvals were granted by that department. After obtaining the aforesaid inspection approvals, complainant requested the rebate from PG&E, but was refused. He now seeks an order from the Commission directing PG&E to grant the denied rebate.

Discussion

The issue in this proceeding is not whether the furnace/air conditioner, which complainant purchased and personally installed, is safe. Although it appears that the duly appointed officials within the San Jose Building Department have satisfied

themselves on this point, we need not make such a determination. Our obligation is simply to determine whether or not PG&E was justified in refusing the rebate to complainant. We find and conclude that it was.

Complainant's main arguments are: (1) that he was never told that in order to qualify for the rebate, the furnace/air conditioner he had purchased had to be installed by an EGIA contractor, and (2) that since his installation had been approved by the San Jose Building Department, there was no practical reason why his installation was not equivalent to that of an EGIA contractor.

At the hearing before the assigned administrative law judge, PG&E introduced three documents (Exhibits 10, 11, and 12), commonly referred to as "bill inserts" which, according to the testimony of Paul Michael Brodie, who is responsible for PG&E's residential energy conservation programs, were sent to each of PG&E's customers as an enclosure to the customer's March 1991, June 1991, and August 1991 service bills. These exhibits advise the customer of the availability of the air conditioner rebate program, the amount of rebate, and how to obtain more information about the program. Each of these three bill inserts contains the following statement in boldface print: "To qualify, you must be a PG&E residential electric customer and have your air conditioner installed by an EGIA member contractor."

In addition, PG&E introduced a sample of a payment return envelope sent its customers during the time the rebate offer was in effect. This envelope, Exhibit 14, which, according to Mr. Brodie, is known as a "bang tail," contained information about the rebate program and has a detachable information request card by the use of which those interested in the air conditioner rebate offer could obtain the name of, or request to be contacted by, an EGIA contractor. This document contains, in boldface print, the following wording: "To qualify, you must be a PG&E residential

electric customer and have your air conditioner installed by an Electric and Gas Industries Association contractor."

In addition to the foregoing notices, PG&E introduced a copy of the rebate claim form which contains the "Official Rules" of PG&E's central air conditioner rebate program. These rules clearly indicate that the installation must be performed by an EGIA contractor. In fact, a portion of the rebate form is to be completed by the homeowner and a portion is to be completed by the EGIA contractor who made the installation.

While complainant testified that he personally never saw anything that resembled either the "bill inserts" or the "bang tail," he could not state that they were not included in the service bills received at his residence. By his own admission, complainant had knowledge that there were conditions that had to be met in order for him to qualify for the rebate. His failure to determine specifically what those conditions were prior to personally installing the unit in his home cannot be attributed to anyone other than himself. Installation by an EGIA contractor was a requirement under the terms of the rebate program and complainant simply failed to comply with that particular requirement.

Complainant further argues that his installation has been inspected and approved by inspectors of the San Jose Building Department as is evidenced by electrical and mechanical approval cards, Exhibits 2 and 1, respectively, and that his inspection is therefore safe. He further argues that since his installation has been adjudged safe by the City of San Jose, the requirement of installation by an EGIA contractor should either be waived or deemed satisfied, thus qualifying him for the rebate. This argument is also without merit.

Richard Shaw, Assistant Vice President, Technical Services, Pacific Management Dynamics, who testified on behalf of PG&E, stated that his company was retained under a contract with EGIA to provide quality assurance services for three of EGIA's

rebate programs, one of which was the air conditioner replacement program involved in this dispute.

Mr. Shaw testified that he is the author of a March 3, 1992 letter, Exhibit 7, addressed to Paul Brodie at PG&E, in which he (Mr. Shaw) set forth the reasons owner/builder installations of central air conditioning units should not be eligible for rebate under the then existing quality assurance program. A review of this letter clearly indicates that the reasons non-EGIA contractor installations should be excluded from the rebate program are not primarily to insure safety, but to insure that the unit operates at peak design efficiency with minimum energy consumption, which is the underlying reason for the program's existence. While a safe installation is essential and is to be expected, the primary thrust of the rebate program is to conserve energy through the use of high-efficiency units installed in compliance with EGIA standards which have been drafted to insure peak operating efficiency of the units. Owner-installed units may be in compliance with local electrical and mechanical codes and still not achieve maximum design efficiency because of some deviation from EGIA standards. The possibility of improper, as well as unsafe, installation and/or adjustment which would tend to reduce the efficiency of the unit is minimized through the use of EGIA contractors who are required to adhere to EGIA installation procedures and standards and who must certify that the installation is in accordance with EGIA standards set forth in the EGIA central air conditioner rebate program contractor/salesperson/solicitor letter of agreement (Exhibit 8), and EGIA air conditioner installation manual (Exhibit 9). Once the EGIA contractor installation is completed, it is covered by a warranty and any loss due to faulty installation is covered by EGIA's insurance.

Mr. Shaw further testified that it was not practical for EGIA to inspect and certify an owner installation as meeting the standards necessary to qualify for rebate simply because the cost

of such inspection would, in the usual case, exceed the amount of the rebate. This testimony was not rebutted in any way and we find it credible and persuasive.

It is our opinion that under the facts of this case, the complainant has failed to demonstrate his entitlement to a rebate, and the complaint should be dismissed.

Findings of Fact

1. At all times pertinent to this case, PG&E, EGIA, and certain manufacturers had a rebate program under which purchasers of air conditioning units could obtain a cash rebate upon meeting certain conditions.

2. Among the conditions to be met to qualify for rebate was that installation of the air conditioner had to be performed by an EGIA contractor.

3. Notice of the rebate offer was sent to PG&E subscribers by bill insert in March 1991, June 1991, and August 1991 subscriber bills.

4. Each of the bill inserts contained, in boldface print, notice that to qualify for the rebate, the air conditioner had to be installed by an EGIA contractor.

5. In addition to the bill inserts, PG&E sent a "bang tail" notice of the offer and the installation by an EGIA contractor requirement to its subscribers in 1991.

6. In September or October 1991, complainant purchased and personally installed in his residence an air conditioner which otherwise qualified for the rebate.

7. The installation of the air conditioner was inspected by personnel of the San Jose Building Department, and mechanical and electrical approval cards were issued by that department.

8. After the installation had been inspected and approved by the City of San Jose, complainant requested a rebate in the approximate amount of \$800 from PG&E.

9. Complainant's request for rebate was refused by PG&E on the ground that complainant failed to comply with the stated rebate requirement that installation be performed by an EGIA contractor.

Conclusions of Law

1. PG&E's air conditioner rebate program required, as a condition to rebate, that the air conditioner be installed by an EGIA contractor.

2. Notice of the rebate offer was provided PG&E subscribers by means of bill inserts and through the use of a mailed notice commonly referred to as a "bang tail."

3. Both the bill inserts and the "bang tail" contained a notice in boldface type of the requirement that in order to qualify for the rebate, the air conditioner installation had to be performed by an EGIA contractor.

4. Complainant had, at a minimum, constructive notice of the EGIA contractor installation requirement as a condition of rebate.

5. Inspection and approval by the San Jose Building Department of complainant's personal installation is not the equivalent of, nor does it satisfy, PG&E's EGIA contractor installation requirement.

6. Complainant failed to comply with PG&E's rebate requirements.

7. PG&E's refusal to grant a rebate to complainant was justified.

8. Complainant's complaint is without merit and should be dismissed with prejudice.

ORDER

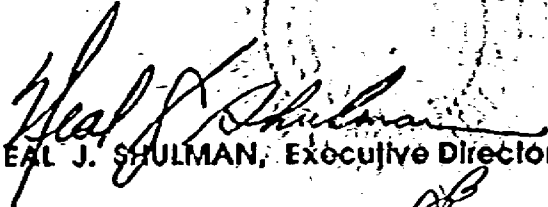
IT IS ORDERED that the complaint of Phillip A. Howard against Pacific Gas and Electric Company in Case 91-12-012 herein is hereby dismissed with prejudice.

This order is effective today.

Dated July 1, 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