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**ORIGINAL**

Decision 92 10 060

October 21, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Carlos Lopez Magana,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 91-10-066  
(Filed October 24, 1991)

**ORDER MODIFYING DECISION 92-07-047**  
**AND DENYING REHEARING**

Carlos L. Magana (Magana) has filed an application for rehearing of Decision (D.) 92-07-047, in which we denied Magana's complaint that Pacific Gas and Electric Company (PG&E) should refund roughly \$549 in alleged overcharges for service to a former residence and ordered him to pay the \$502.47 still owed for that service.

Magana contends that: 1) the decision's statement that the prior and subsequent occupants of his apartment used less than half Magana's highest usage is misleading, since his total PG&E bills are almost four times as high as his neighbors' bills; 2) the decision should not have relied on PG&E's contention that the meter was working properly when Magana lived in the apartment through May, 1989, since the meter was not tested until December, 1991; and 3) the decision's statement that an apartment using electricity for both space and water heating can use large amounts of electricity is misleading in light of his energy conservation efforts and his awareness that electric ceiling heaters can use a great deal of electricity without being noticed. The essence of Magana's argument appears to be that

D.92-07-047 misrepresents the facts and is based on insufficient evidence.

PG&E did not reply to Magana's application for rehearing.

### Bill Comparisons

Magana's assertion that the decision misrepresents the dollar size of his bills compared to those of his neighbors is incorrect.

D.92-07-047 intentionally rejected Magana's calculation of overbilling based on his neighbors' usage on the grounds that those units are individually metered and that their consumption has no bearing on Magana's usage. (D.92-07-047, p. 2.) D.92-07-47 does not state that Magana's total electric bills while he lived in the apartment were roughly four times as high as his neighbors because such information is irrelevant.

D.92-07-047 found the billing record for the prior and subsequent occupants of Magana's apartment more compelling. The decision compared Magana's electric consumption in kilowatt hours to that of prior and subsequent occupants, and found that the highest monthly usage of either of those occupants was less than half of Magana's highest usage, and the lowest monthly usage for either occupant was less than half Magana's lowest usage. (D.92-07-047, p. 3.) These usage comparisons are supported by Exhibit 5.[1]

If D.92-07-047 had asserted that Magana's neighbors' usage, in either kilowatt hours or dollars, was less than half

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1 D.92-07-047's comparison of Magana's use to that of prior and subsequent occupants contains a minor numerical error which will be corrected. The last sentence of the third full paragraph on page 2 should read "139" instead of "199." [See Exhibit 5, p. 1, entry for June 25, 1991.]

Magana's usage when it was really only one quarter of his usage, the decision might have been misleading. But it is not misleading to say that the prior and subsequent occupants used less than half the kilowatt hours he used in certain months simply because Magana's total bill during his occupancy of the apartment was roughly four times as high as those of his neighbors during that same time period. Magana compares apples to oranges.

We can certainly understand Magana's disbelief that his bills could so greatly exceed those of his neighbors. This does not, however, alter the fact that D.92-07-047 accurately compares Magana's bills with those of the prior and subsequent occupants of his apartment. No legal error has been shown.

#### Meter Accuracy

Magana claims there is insufficient evidence to support PG&E's conclusion that the meter was operating properly when he lived in the apartment because the meter was not tested until December, 1991, two and a half years after he vacated the apartment in May, 1989. Magana states that PG&E's expert witness meter man said that "anything is possible with the operation of a meter." (Application, p. 9.) Magana implies that the possibility that a meter may malfunction means that one should not infer that a meter functioned regularly simply because there is no evidence of a malfunction.

PG&E's witness Hawes asserts that he did not test the meter when Magana moved out because he had no reason to think the meter was inaccurate and Magana did not request a meter check. (TR: 54.) The meter was checked only in response to the filing of Magana's complaint with the Commission. (TR: 53-54.)

Although PG&E's senior meter man Allen did testify that "anything could happen," when asked whether the meter in question was susceptible to "meter creep," he also testified that since the meter read accurately on the date tested he felt that it

would have read accurately during the period Magana resided in the apartment unless it had been vandalized or tampered with. (TR: 73-76, 80.) He testified that there was no evidence of meter tampering. (TR: 80.)

While it would have been helpful if PG&E had tested the meter closer to the time Magana resided in the apartment, the record contains sufficient evidence to support the decision's finding that "PG&E checked the meter readings, tested the meter, and checked for grounding and meter creepage. No problems were found." (D.92-07-047, Finding of Fact 2.) In the absence of any evidence that there was anything wrong with the meter, the Commission did not err in assuming there was nothing wrong. No legal error has been shown.

#### Magnitude of Usage

Magana's main problem with D.92-07-047 appears to be the fact that the decision fails to confirm his belief that he could not possibly have used roughly four times as much electricity as his neighbors. It is, indeed, somewhat difficult to understand how this occurred.

Electric ceiling heaters are extremely inefficient. However, it is unclear how long the ceiling heaters were in use and whether they were the cause of the high electricity use. Magana stated in his application for rehearing that he turned the ceiling heaters on only when absolutely necessary and had the circuit breakers to the heaters turned off the rest of the time. (Application, p. 9.) He did not use the ceiling heater in the upper level of his apartment, but let the heat rise from the lower level. (D.92-07-047, p. 1; see also TR: 16-17, 87-88.) In his closing argument, Magana testified that "I've always been extremely aware of the inefficiency of ceiling heating. And I also during the last three months shut off the circuit breakers." (TR: 87-88; see also 13.) He claims that his bills did not decline significantly in these last months, even though the

weather was warm and the ceiling heater circuits were disconnected.

PG&E's customer billing inquiry dated April 4, 1989, states: "Explanation given customer: Ceiling cable heat - customer will use alternate heating - he will also check for ground - he suspects a ground on one of his heating circuits - usage coming down." (Exhibit 4, p. 1; see also TR: 38-39.) The word "will" suggests that until then the circuit breakers were still on, although the phrase "usage coming down" indicates they may already have been switched off. PG&E witness Hawes confirmed that when he met with Magana in May, 1989 to discuss Magana's high bills, the circuit breakers were switched off.

Regardless of the precise date the circuit breakers were switched off, we have no reason to doubt that Magana believed that he used the ceiling heaters sparingly. Given their inherent inefficiency, however, the ceiling heaters must remain prime suspects.

There is conflicting evidence as to whether Magana had a habit of leaving doors and windows open. PG&E witness Hawes said that during the May, 1989 meeting he asked Magana why he left his doors open and still complained about high electric bills, and that Magana said he needed fresh air. (TR: 40.) Magana states that he didn't say he needed fresh air and that the doors were open because his children sometimes forget to shut them. (TR: 82-83.) He states that he always reminds them to shut the door. (TR: 83.) Obviously, leaving doors and windows open could result in high electric bills. Giving Magana the benefit of the doubt, we find no definitive evidence of any specific personal habits which could account for his high electric usage other than his childrens' occasional failure to shut the doors.

Magana is a responsible single parent of two boys with disabilities who was going through a divorce from an alcoholic when he resided at the apartment in question. It is hard not to be sympathetic with his financial plight. An electric bill

almost four times as high as the neighbors' can be difficult to understand and difficult to pay.

Nonetheless, in complaint proceedings regarding utility bills complainants must show that they could not possibly have used the amounts of energy in dispute. (Lee and Frances Conway v. PG&E (1989) D.89-09-010, pp. 3-4; 32 Cal.PUC 2d 397 (abstract), quoting Grant v. SoCal Gas Company (1981) D.92577, pp. 5-6; 5 Cal.PUC 2d 303 (abstract).) Utilities are not responsible for determining whether a customer actually used the energy registered on his or her meter. (Id.)

In a case with many similarities to Magana's, we denied a customer complaint seeking a water bill reduction where neither the customer nor the utility could establish the reason for the excess consumption at a fish market. (Peninsula Fish and Mart, Inc. v. California-American Water Company (1987) D.87-09-081; 25 Cal.PUC 2d 435 (abstract).) We concluded that "[a] utility is not liable for excess consumption or waste occurring on the customer's side of the meter," and that "[a] utility does not become liable by being unable to explain how the waste or unusual consumption could occur." (Id., Slip Opinion, p. 5, Conclusions of Law 1 and 2.) D.92-07-047 is consistent with the principles set forth in Lee and Frances Conway, supra, and Peninsula Fish and Mart, Inc., supra.

Magana has not met the burden of showing that he did not receive the electricity recorded at his former residence. It is unfortunate that the precise reasons for the high electricity consumption at Magana's apartment are difficult to determine. However, if Magana were excused from responsibility for his bill simply because it is hard to understand why it was so high, PG&E's remaining ratepayers would pick up the tab. This result would not be fair to them.

Although we will require Magana to pay the entire amount of the bill in dispute, we are not an agency without a heart. Our sympathy for the human side of Magana's story compels us to extend to two years the period over which he may pay the

closing balance of his bill. This extension should make it easier for Magana to cope with his difficult financial situation.

Because the Commission committed no legal error in adopting D.92-07-047, Magana's application for rehearing is denied. D.92-07-047 will, however, be modified to correct a minor numerical error and to extend the period over which Magana may pay his bill.

THEREFORE, for good cause appearing,

IT IS HEREBY ORDERED that:

1. Decision (D.) 92-07-047 is modified as follows:

a. The number "199" in the last sentence of the third full paragraph on page 2 is changed to "139."

b. Ordering Paragraph 3 is replaced by the following:

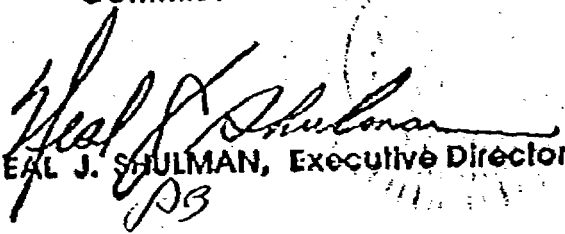
"PG&E shall allow Magana to repay this amount over a period not to exceed two years, with equal installments and without interest."

2. Rehearing of D.92-07-047, as modified herein, is denied. This order is effective today.

Dated October 21, 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