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Decision 82 04 008 APR 6 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Marilyn M. Boswell,
Complainant,
vs.
Pacific Gas & Electric Company,
Defendant.

Case 11035
(Filed October 5, 1981)

Ann M. Anderson, for complainant.
Daniel E. Gibson and Bernard J. Della Santa,
Attorneys at Law, for defendant.

O P I N I O N

Complainant Marilyn M. Boswell alleges that defendant Pacific Gas and Electric Company (PG&E) is applying the wrong rate for natural gas service to the "common areas" of two apartment complexes located in Walnut Creek and Sacramento.

Public hearing was held before Administrative Law Judge O'Leary at San Francisco on January 18, 1982. The matter was submitted upon the filing of the reporter's transcript on January 27, 1982.

Complainant is president and trustee of Boswell Alliance Construction Co., which owns and operates the two apartment complexes, namely Walnut Creek Manor and Sacramento Manor, both of which are **administered under Department of Housing and Urban Development (HUD) 23 Regulations, and restricted to tenancy by elderly residents.**

In addition to the apartments (260 at Sacramento Manor and 418 at Walnut Creek Manor) each complex contains very extensive common facilities to serve the large number of residents. At both

complexes, the common facilities include clubhouse buildings (which contain meeting rooms and administrative offices), spas, and swimming pools. Natural gas is used to heat the clubhouses, spas, swimming pools, and for the air-conditioning of the clubhouse at the Sacramento Manor clubhouse. PG&E bills for this gas service under Schedule G-M at the GR-1XN rate of $0.55793 per therm for all usage (effective January 1, 1982). PG&E's tariff states that Schedule G-M is:

> "Applicable to natural gas service for cooking, water heating, space heating and other residential usages, including service to common central facilities, supplied to multi-family accommodations on a single premises in accordance with Rule No. 18. Closed to new installations in mobilehome parks and to new single meter installations where individual dwelling units contain appliances which require venting."

Complainant believes that natural gas usage for the common areas should be assessed at the Schedule G-2 rate of $0.49516 per therm for all usage (effective January 1, 1982), which is $0.06277 per therm less than the Schedule G-M rate.[1/] Complainant argues that the common areas do not fit the definition of residential as set forth in Re Investigation of Lifeline Quantities (1976) 80 CPUC 182 at 188 as follows:

1/ Prior to January 1, 1982, the applicable rates were G-M $0.58202 and G-2 $0.46012 per therm, a difference of $0.12192 per therm.

> "The most appropriate of Webster's definitions of 'residential' is 'used, serving, or designed as a residence or for occupation by residents.' In turn, Webster defines 'residence' as 'a temporary or permanent dwelling place, abode, or habitation to which one intends to return, as distinguished from a place of temporary sojourn or transient visit.' We take this to mean single family houses, townhouses, and the dwelling units of apartments, condominiums, and mobile homes. Living units in governmental sponsored or operated housing projects and military family housing meet the definition..."

Complainant also points out that Section 739(e) provides:

> "As used in this section, the term 'residential' means domestic human needs end use and excludes industrial, commercial, and every other category of end use other than wholesale."

Complainant contends that the residents of the complex do not occupy the clubhouses, the clubhouses are not dwellings to which they return, and the clubhouse is a place of temporary sojourn or transient visit.

At both complexes swimming lessons were given not only to residents of the complexes but also to nearby residents even though use of the swimming pools and spas is limited to residents and their guests. At Walnut Creek Manor the local community college has used the facilities for the purpose of giving classes which were open to anyone in the college district. No compensation was received for the use of the facilities for swimming lessons and the community college courses.

In its answer filed November 6, 1981, PG&E raised two affirmative defenses as follows:

1. "The common use areas of the two apartment complexes known as Sacramento Manor and Walnut Creek Manor are properly billed by PGandE on Schedule No. GR1XN, the non-lifeline residential rate. Schedule No. G-2 (non-residential natural gas service) is applicable to natural gas service to non-residential uses classified in Rule No. 21 as priorities P1, P2-A or P2-B. Rule No. 21 defines residential use as 'Service to customers which consists of natural gas use in serving a residential dwelling or multi-unit dwelling for space heating, air conditioning, cooking, water heating, and other residential uses, except for central heating plants serving a combination of residential and commercial uses where the commercial portion of the use is in excess of 100 Mcf per day or is more than 15% of the total natural gas requirements. (Emphasis added.)

"Sacramento Manor and Walnut Creek Manor are multi-unit dwellings and, as such, constitute a residential use. Defendant's gas tariffs do not provide that the common use areas of such dwellings should be treated separately in applying the appropriate rate schedule.

2. "Complainant quotes certain language from Decision No. 80687, dated July 13, 1976, in support of her allegation that the common use areas of Sacramento Manor and Walnut Creek Manor should not be classified as residential use. In defining the term 'residential' in Decision No. 86087, the Commission was attempting to implement the Legislature's directive that it designate a lifeline volume for the '. . . minimum energy needs of the average residential user . . .'. As the Commission stated, 'The statute itself tells us that "residential" means domestic human needs end use and excludes industrial, commercial, and every other category of end use other than wholesale.' (80 CPUC 182, 188 (1976).)

> The language quoted in the complaint was taken out of context. The Commission was not excluding the common areas of government sponsored or operated housing projects from the definition of 'residential' in determining the applicability of PGandE's rate schedules but rather clarifying that such uses do not qualify for a lifeline allowance."

Discussion

Complainant's view that only the individual apartments within each complex constitute residential use is a very narrow interpretation under the circumstances. Complainant in her opening statement, stated:

> "These extensive common areas are part of the commercial package which is provided to prospective renters at the facility." (RT, page 3, lines 15 to 17.)

In her closing statement, complainant stated:

> "We are dealing with the common areas in the account that is for them, and it is important to realize the needs of these elderly residents for that common area, that the pools are really for their health needs, and the meeting rooms are also for their ability to have complete lives in their very small apartments." (RT, page 31, lines 19 to 24.)

It is apparent that all residents of both complexes are entitled to use the common areas, the only charge being the payment of the monthly rental. The common areas are in effect an extension of each resident's apartment and thus a place of residence or residential facility.

Findings of Fact

1. Walnut Creek Manor and Sacramento **Manor are apartment complexes administered under HUD regulations and restricted to tenancy by elderly residents.**

2. Walnut Creek Manor and Sacramento Manor contain 418 and 260 apartments, respectively.

3. In addition to the apartments each complex contains a clubhouse facility consisting of meeting rooms, administrative offices, spa, and swimming pool.

4. Natural gas is furnished by PG&E for heating the clubhouses, spas, swimming pools, at both facilities, and for air-conditioning of the clubhouse at Sacramento Manor.

5. The clubhouse facilities are separately metered.

6. PG&E assesses the GR-1XN rate from Schedule G-M for the natural gas usage at the clubhouse facilities at both Walnut Creek Manor and Sacramento Manor.

7. Complainant believes the rate for natural gas usage of the common facilities should be the Schedule G-2 rate, which rate is $0.06277 per therm less than the GR-1XN rate.

8. Residents at both Walnut Creek Manor and Sacramento Manor are entitled to use the common facilities at no additional charge over and above their monthly rent.

9. PG&E's Schedule G-M states that it is:

> "Applicable to natural gas service for cooking, water heating, space heating and other residential usages, including service to common central facilities, supplied to multi-family accommodations on a single premises in accordance with Rule No. 18. Closed to new installations in mobilehome parks and to new single meter installations where individual dwelling units contain appliances which require venting." (Emphasis added.)

Conclusions of Law

1. PG&E's assessment of the GR-1XN rate from its Schedule G-M in its tariff is the proper rate for the natural gas usage at the common facilities located at Walnut Creek Manor and Sacramento Manor.

2. The relief sought should be denied.

O R D E R

IT IS ORDERED that the relief sought in Case 11035 is denied. This order becomes effective 30 days from today.

Dated APR 6 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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

Joseph E. Bodovitz, Executive Director