

Decision 82 06 069 JUN 15 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

John M. Barrier, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 Pacific Gas and Electric )  
 Company, )  
 )  
 Defendant. )

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Case 11011  
(Filed July 27, 1981)

John M. Barrier, for himself, complainant.  
Robert E. McLennan, Attorney at Law, for Pacific  
 Gas and Electric Company, defendant.

O P I N I O N

In this case complainant John M. Barrier accuses defendant Pacific Gas and Electric Company of (1) failure to read his residential gas and electric meters between November 1978 and March 1979 inclusive, which resulted in his being overcharged a total of \$434.20 for gas and electric service for that period; (2) making an effort to cover up its failure to read his meters by removing or altering his meters; and (3) violating his right to due process in terminating his service for approximately three weeks in February-March 1980. Complainant asks the Commission to find that the alleged overcharges are excessive and that the Commission award him damages against defendant in the amount of \$500,000 for pain and suffering, loss of food in his freezer and refrigerator, extra expenditures for outside lodging and food, and for the extra cost of maintaining a household without utility service. Defendant denies the material allegations in the complaint and contends that the Commission does

not have jurisdiction to award the requested damages. The case came to hearing in San Francisco on October 28, 1981, before Administrative Law Judge Pilling and was submitted on February 9, 1982 upon the filing of concurrent briefs.

The \$434.20 in dispute is the total amount billed complainant for gas and electric service (\$270.57 for gas and \$163.63 for electricity) for the five-month period November 1978 through March 1979. While he paid for services for the three-month period November 1978 through January 1979 (but not for February and March 1979) he subsequently deducted such payments from billings he received for service after March 1979. He wants the billings for the five-month period canceled and his payments for the three-month period applied against service he received subsequent to March 1979.

Complainant has been a customer of defendant at his rented family house, occupied by himself, his wife, and his three children, since September 1, 1978. His utility-serviced appliances are all electric except a gas space heater and a gas water heater. (Appendix A sets forth his billed commodity usage by month from and including September 1978 through February 1980.) Complainant's electric and gas meters are located along the same side of his house, the gas meter located just inside the front gate and the electric meter toward the rear of the house. Access to the meter is through a gate at the rear of his front yard which leads to a narrow side yard where the meters are located. A fence separates complainant's side yard from his neighbor's side yard. His neighbor's side yard gate is always kept locked because of a dog on the premises.

Complainant stated he did not know how to read his utility meters. He also stated he was unfamiliar with his utility service period. (His utility bills (Exhibits 12, 13, and 14) showed his monthly service period started between the first and fifth day of the month and ended between the first and fifth day of the succeeding month.)

Complainant stated that in early December 1978, after he received his utility bill for service for November 1978, which showed a substantial increase in his product usage over the previous months' billings, he suspected defendant had ceased to read his meters and was estimating his usage, a practice known as "curbing". He stated his suspicion was fortified by the presence of a five-foot high pile of brush he had placed in his side yard in October or November 1978, which, he claimed, blocked access to his side yard and his meters. In December 1979, to confirm his suspicion that his meters were not being read he climbed over and through the pile of brush in the side yard and placed a single 3- or 4-inch long narrow opaque tape on the glass face over the dials of each meter. He claimed the tape prevented anyone from reading the meter without first peeling back the tape. He removed the tapes some time in March or April 1979, at which time he stated the tapes appeared to him not to have been disturbed. He removed the pile of brush either in April 1979, or the summer of 1979.

Complainant stated he did not see a meter reader come to his house between and including December 1979 and April 1979. He stated he would have seen the meter reader if one had come because after his nighttime employment he worked during the day in an office in his garage from which vantage point he could see the meters.

On March 29, 1979, complainant telephoned defendant and complained that as a result of his meters not being read he was being overcharged for service and threatened to file a complaint with the Commission over the matter. On March 30, 1979, defendant sent a man out to verify the readings on complainant's meters.

On March 31, 1979, complainant's gas water heater exploded and on April 1, 1979, his landlord replaced it with a new gas water heater.

On April 4, 1979, defendant notified complainant by letter that the man it sent out on March 30, 1979, to verify the meter readings had verified the accuracy of the readings.

On or about April 23, 1979, complainant filed an informal complaint with the Commission regarding defendant's alleged failure to read his meters and resulting overcharges.

On April 27, 1979, the Commission's Consumer Affairs Branch called defendant about the informal complaint.

Complainant testified that he returned home on May 4, 1979, to find two of defendant's employees at his door who stated to him that they had removed the gas meter for testing and had replaced it with another gas meter. On May 8, 1979, the results of the meter test--the meter was allegedly found to be operating properly--were conveyed to complainant.

When complainant received his utility bill for service for April 1979, he found that the gas usage shown on the bill was substantially below the billed gas usage for each of the previous five months. The electricity usage shown on the bill for April 1979 service was higher than for the month of March 1979 (see Appendix A).

Complainant contends that his March 29, 1979, telephone complaint to defendant and his April 23, 1979, informal complaint to the Commission finally moved defendant to stop curbing and read his meters, as witness the marked decrease in his gas billing for service for April 1979, and the months following and his observance thereafter of meter readers in his neighborhood. Complainant initially argued that defendant's employees did not remove his gas meter on May 4, 1979, but in an attempt to cover up the true reading of the meter had merely altered the reading on the meter to conform to the reading on his bill for April 1979 service. Later in the hearing when defendant's witness testified that defendant's records showed that the reading on the replacement meter was lower than on the meter which was taken out, complainant argued that the lower of the two readings was the true reading on his meter which had been left in place.

On October 4, 1979, defendant, after learning that the Commission had closed complainant's informal complaint file, sent complainant a termination notice for failure to pay approximately

\$386.85 in overdue utility bills. Complainant responded by letter with a check enclosed for \$75 and a notation that he was going to attempt to resolve the matter through litigation. Defendant took no further action at that time.

On January 17, 1980, defendant issued another termination notice to complainant for failure to pay \$483.89 in overdue utility bills. At the expiration of the notice on January 28, 1980, complainant's electric service was terminated and later that day complainant went to defendant's office and gave it a check for \$300 and received an extension of time to pay the balance. During that visit defendant offered to let complainant read his own meters and send in the readings to defendant for billing purposes, but complainant refused to do so. That same evening after complainant's electric service was restored, he looked at the meter and noticed that it had a tag on it which read that the meter had a zero reading on it. Next day complainant stopped payment on the \$300 check after notifying defendant of his intent to do so. Complainant argues that when his electric service was turned on defendant altered the meter to reflect a zero reading to wipe out the true reading in an attempted coverup, which was prompted by complainant's threat of October 4, 1979, to take defendant to court over the balance due billings.

On February 20, 1980, defendant sent complainant another seven-day notice of termination for unpaid and owing utility bills and on February 27, 1980, defendant received a letter from complainant enclosing a check for \$51.28, which reduced the amount allegedly owing to \$432, and a note stating that complainant was going to institute court action over the balance due billings.

On February 28, 1980, after receiving no further payment from complainant, defendant sent out a serviceman to disconnect complainant's electric service but complainant would not let the serviceman on his property. Finally, the serviceman, accompanied by a member of the Milpitas police, and over the objection of

complainant, gained access to complainant's front yard and severed the underground cable cutting off his electric service. Complainant claims this invasion violated his constitutional right to due process of law.

Complainant then brought a court action against defendant and secured a court order requiring defendant to reinstitute his electric service. The service was restored March 20, 1980. The court action was eventually dismissed, apparently the court noting that the Commission and not the court had jurisdiction to hear the dispute.

As of the date of this hearing complainant had outstanding against him \$664.52 for past due unpaid billed charges for gas and electric service.

Defendant introduced copies of documents, among others, alleged to be defendant records as follows:

Exhibit 5. Statement of Account. This statement summarizes defendant's records for the period commencing September 1, 1978 through February 1980 showing complainant's monthly account activity.

Exhibit 6. Copies of pages of defendant's meter reader's notation book. The readings set forth in the book concur with those set forth on complainant's bills he submitted as Exhibits 12, 13, and 14.

Exhibit 10. Multipurpose Customer Service Order. The order purports to show complainant's gas and electric meter readings taken at complainant's home on March 30, 1979, by one of defendant's employees who was sent out to verify the meter readings after complainant's March 29, 1979, complaint to defendant. The alleged gas meter reading was 6,222 vs. 5,976 when last read on March 5, 1979, and the electric meter reading was 66,106 vs. 65,478 when last read on March 5, 1979.

Exhibit 9. Gas Meter Shop Intest Record. This record purports to show complainant's gas meter reading taken in defendant's shop on May 4, 1979, the day it was allegedly removed from complainant's premises for testing. The reading was 6,308.

Exhibit 8. Multipurpose Customer Service Order. This record dated January 28, 1980, purports to be an order to the serviceman to reconnect complainant's electric service. Under serviceman's remarks there is handwritten "Change meter Rear Seal Broken" and an "X" placed in the box indicating there was a meter change.

Exhibit 11. Electric Meter Transaction Record. This record purports to show the reading on complainant's electric meter as recorded by a repairman in defendant's shop on February 15, 1980, 15 days after the meter had been allegedly removed from defendant's premises for alleged tampering. The reading was 75,201.

Defendant's witness testified that when gas meters are changed, the replacement meter is installed with a reading on it as it comes off of the truck. In many cases the replacement gas meter is a used meter which has been repaired since it is cheaper to repair a gas meter in most instances than it is to purchase a new one. Hence, most replacement gas meters have a reading on their dials. The witness stated this would account for complainant's replacement gas meter having a reading on it. He stated the reading on complainant's replacement gas meter was lower than the reading on the meter it replaced as evidenced by the meter reader's notation book. Electric meters, however, are more expensive to repair than to purchase; hence most replacement electric meters are new meters which have a zero reading on them.

Defendant's witness was of the opinion that the higher level of complainant's gas and electricity usage as reflected by the bills covering service for November 1978 through March 1979 as compared to the previous two months could be attributed to the fact that the five-month period is the cold weather period of the year and to the defect in complainant's water heater (which eventually caused it to explode) which may have been long-lasting and caused it to consume excessive quantities of gas. He stated that the drop in gas consumption in April 1979 could be attributed to the installation of a new and more efficient water heater on April 1, 1979, and to the advent of warmer weather.

On brief, complainant objected, for the first time, to the admission into evidence of all of defendant's exhibits on the ground that they did not contain the certification set forth in Rule 69(b) and were not legible as required in Rule 70 of the Commission's Rules of Practice and Procedure.

Complainant has no moneys deposited with the Commission.

#### Discussion

Complainant alleges the brush he piled in his side yard prevented the meter reader from gaining access to his meters. If indeed the pile did prevent access, he was acting improperly in preventing his meters from being read. When he stacked the brush in his side yard in October or November 1978, he may have been unaware of its effect in preventing access to the meters, but in December 1978 when he suspected that the pile may have been preventing access to his meters, he did nothing to the pile, not even making a pathway through it for the meter reader. Rather, he placed an additional impediment in the way of having his meters read by taping the meters. For his claimed success in keeping defendant from reading his meters for a five-month period, he believes he is entitled to gas and electric service free of charge for that period. We do not agree. If indeed the pile and tape prevented his meters from being read, complainant should not be allowed to profit by his own improper conduct to obtain free gas and electric service.

But we are not convinced that the pile of brush prevented the meter reader from getting close enough to the meters to read them. Complainant on one occasion and perhaps on two occasions--when he affixed the tapes to the meters and again when he removed the tapes--got close enough to the meters to touch them despite the presence of the pile of brush. If complainant could surmount the pile and get that close to the meters, we do not see why a meter reader, who was probably accustomed to circumventing obstacles in yards and driveways, could not get that close also. And having come that close, it is reasonable to assume that the meter reader would not be deterred by a piece of stickum tape on the meters from taking readings.



The failure of complainant to see anyone read his meters during the five-month period (149 days) affords no basis for concluding his meters were not read. Readings would have taken place on only five days out of the 149 days, leaving 144 days on which the meter reader would not otherwise be seen. Complainant stated he was unfamiliar with his utility service period, so that he did not know which days of the month to be especially watchful for the meter reader. It would not be improbable that his random lookouts during that 149-day period did not net him a view of the meter reader, whose readings would have taken only a few minutes on each of the five days. As stated in defendant's brief, "...because most people do not want to be disturbed, a good meter reader should be like a good garbageman - you only know he has been there because your garbage disappears every week."

Complainant's charge that defendant violated his right to due process of law when defendant came upon his property accompanied by a policeman and disconnected his electric service for alleged nonpayment of his electric bill is also without merit. In his brief complainant states, as sole legal support for his charge, that:

"Said constitutional question of law was resolved by the State Supreme Court, to wit: Summary Termination of telephone service upon police request violates due process of law. Sokol v. Pub. Utilities Commission (1976) (sic)."

The disconnection of complainant's electric service was not done by or at the request of the police, but solely by defendant in the exercise of its rights under its tariff to disconnect service for nonpayment of bills. (See, e.g. Blincoe v PT&T (1963) 60 CPUC 434.)

Complainant objects for the first time on brief that all of defendant's exhibits are inadmissible because of the operation of Rules 69(b) and 70 of the Commission's Rules of Practice and Procedure. Complainant had ample opportunity at the hearing to state these objections to each of defendant's exhibits, but he did not do

so. Having failed to give voice to these objections at the hearing, during which defendant may have been able to cure any defect raised by the objections, complainant waived his objections and may not open the issue for the first time on brief.

Complainant's argument of a coverup is without merit. Defendant left in place the electric meter with the telltale evidence (if such existed) on the meter's face at the time it allegedly removed the gas meter. Not only was the electric meter left in place after the gas meter was allegedly removed, but the electric meter remained in place with the telltale evidence on its face for some eight months afterwards. We fail to see any pattern in defendant's actions which would point to an attempted coverup.

Complainant claims that as a result of defendant's conduct his family and property has been damaged in the sum of \$500,000 and requests that the Commission award him that sum. The Commission does not have authority to award such damages.

"Insofar as Complainant asks for damages other than a return of moneys paid to the Defendants, it seeks a remedy not within the power of this Commission to accord. Money damages are a matter for the courts."  
(Packard v Pacific Tel. & Tel. Co.  
(1972) 73 CPUC 307.)

#### Findings of Fact

1. Complainant on one, and perhaps two, occasions got close enough to his meters to touch the glass face of the meters despite the pile of brush in his side yard.
2. Complainant's meters at all times pertinent were accessible to be read by defendant's meter readers.
3. The purported meter readings appearing on complainant's utility bills from which defendant determined complainant's monthly commodity usages were not shown to have been obtained by the procedure known as "curbing".

4. Defendant was not shown to have failed to read complainant's meters.

5. Complainant's product usages as shown on his utility bills were not shown to be other than his commodity usages as shown by his meters.

6. Complainant's failure to see his meters being read affords no basis for finding his meters were not read.

7. Defendant informed complainant each month of his meter readings by way of its utility billings.

8. Complainant had ample time to verify or have verified by an independent source the meter readings shown on his utility billings.

9. Defendant did not attempt to keep complainant's meter readings a secret from him or from anyone else.

10. When complainant's electric service was terminated on February 28, 1980, defendant was in arrears in the payment of his electric bills.

11. Defendant gave complainant proper notice of termination before it entered on complainant's property and terminated his electric service on February 28, 1980.

#### Conclusions of Law

1. Defendant did not falsely bill complainant for utility services.

2. Complainant was not overcharged for his utility services.

3. Defendant did not violate complainant's right to due process in terminating his utility service.

4. Defendant did not attempt to cover up the actual readings on complainant's meters.

5. The Commission has no jurisdiction to award damages of the sort requested by complainant.

6. The complaint should be denied.

O R D E R

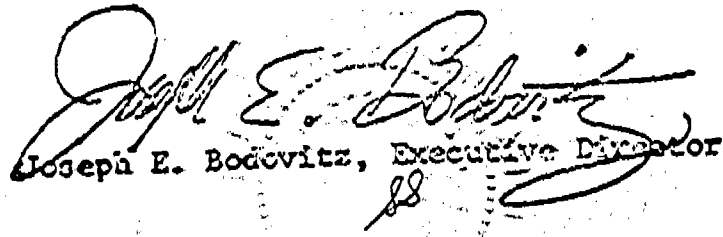
IT IS ORDERED that Case 11011 is denied.

This order become effective 30 days from today.

Dated JUN 15 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

## APPENDIX A

Complainant's Billed Commodity  
Usage by Month from and  
Including September 1978 through February 1980

| <u>1978</u>     | <u>Therms - Gas</u> | <u>kWh - Electricity</u> |
|-----------------|---------------------|--------------------------|
| September       | 34                  | 668                      |
| October         | 58                  | 768                      |
| November        | 161                 | 961                      |
| December        | 244                 | 910                      |
| <br><u>1979</u> |                     |                          |
| January         | 264                 | 810                      |
| February        | 268                 | 897                      |
| March           | 269                 | 766                      |
| April           | 74                  | 850                      |
| May             | 41                  | 885                      |
| June            | 27                  | 786                      |
| July            | 22                  | 817                      |
| August          | 26                  | 861                      |
| September       | 28                  | 857                      |
| October         | 29                  | 910                      |
| November        | 106                 | 1,117                    |
| December        | 71                  | 1,027                    |
| <br><u>1980</u> |                     |                          |
| January         | 87                  |                          |
| February        | 72                  | 1,780                    |

(END OF APPENDIX A)

not have jurisdiction to award the requested damages. The case came to hearing in San Francisco on October 28, 1981, before Administrative Law Judge Pilling and was submitted on February 9, 1982 upon the filing of concurrent briefs.

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Complainant stated he did not know how to read his utility meters. He also stated he was unfamiliar with his utility service periods. (His utility bills (Exhibits 112, 113, and 114) showed his monthly service period started between the first and fifth day of the month and ended between the first and fifth day of the succeeding month.) There is a defect in complainant's water heater (which eventually caused a gas leak) which may have been long-lasting and caused it to consume an undue quantity of gas. He stated that the drop in gas consumption in April 1979 could be attributed to the installation of a more efficient water heater on April 1, 1979, and to the onset of warmer weather.

## APPENDIX A

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