

Decision 82 07 015 July 7, 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WENDELL D. BUNDY,

Complainant,

vs.

SOUTHERN CALIFORNIA GAS COMPANY,

Defendant.

Case 11051  
(Filed December 11, 1981)

Wendell D. Bundy, for himself, complainant.  
David J. Gilmore, Attorney at Law, for  
Southern California Gas Company,  
defendant.

O P I N I O N

Complainant Wendell D. Bundy is a customer of defendant Southern California Gas Company (SoCal). Bundy claims that SoCal's method of prorating lifeline allowances for the May and November billing periods is incorrect.

In his complaint, Bundy alleged that SoCal's method of calculating his May and November bills does not comply with the utility's filed tariffs. However, at hearing, Bundy emphasized that he actually was contesting certain language in McKinney v PG&E (1979) 1 CPUC 2d 311 as modified by Decision (D.) 90576, 2 CPUC 2d 56.

In the McKinney case, we found that PG&E's billing practices did not comply with its tariffs. We ordered PG&E to revise its billing practices so they are consistent with its tariffs. We also stated on page 5 of the decision that:

"Given the uncertainties of weather and usage, a fair assumption would be that his [the customer's] consumption is constant throughout the billing period. . . ."

Bundy argues that the above assumption is inconsistent with the authorized summer and winter lifeline allowances. He maintains that the customer's usage over a billing period cannot be presumed constant when the lifeline allowances for that period vary, implying that the customer's energy needs and usage are changing.

The complaint, as clarified by the complainant at hearing, does not state a cause of action under Public Utilities (PU) Code § 1702. Bundy is challenging a prior Commission decision which interprets a tariff provision. He is not accusing SoCal of deviating from its tariffs or of violating a law or any order or rule of the Commission. Bundy's complaint really is directed at the Commission. Thus, this complaint filed against SoCal should be dismissed.

The McKinney decision was appealed to the California Supreme Court. (McKinney v Public Utilities Commission, S.F. No. 24057, petition for writ of review, denied on 11/29/79.) Thus, the McKinney decision was subject to judicial review and is now final; it is not properly subject to a collateral attack through this complaint case.

However, since Bundy has brought this matter to our attention, we will discuss the substance of his complaint even though it does not state a cause of action and could be dismissed without further comment.

SoCal's tariff, Cal P.U.C. Sheet No. 15851-G, provides that:

"Seasonal Rate Changes: Bills reflecting lifeline allowances for space heating and/or gas air conditioning will be prorated in the May and November billing periods based on the number of billing days such respective seasonal lifeline allowances are applicable to the total number of days in the billing period."

SoCal maintains that its billing method complies with the above language as interpreted in the McKinney decision. SoCal assumes that usage is constant over the billing period and prorates the total usage over the number of billing days. For example, under this assumption, a customer's use of 60 therms in a 30-day billing period prorates to two therms per day.

SoCal then prorates the lifeline allowances based on the number of billing days in the period. The summer lifeline allowance is 26 therms while the winter allowance is 81 therms. If the 30-day billing period contains 10 summer days and 20 winter days, then proration results in a summer allowance of 8.6 therms and a winter allowance of 54 therms. Since usage is prorated at two therms per day, consumption in the summer portion is assumed to be 20 therms, and in the winter portion it is 40 therms. As a result, the summer consumption is above the prorated 8.6-therm summer lifeline allowance, and the winter consumption is below the prorated 54-therm winter lifeline allowance. 11.4 therms will be charged at a nonlifeline rate even though there is an additional 14-therm winter lifeline allowance which is not used.

Bundy argues that prorating usage over the billing period and then calculating separate summer and winter bills is wrong. He contends that the prorated summer and winter lifeline allowances should be combined and credited against consumption over the entire billing period. In this example, the total lifeline allowance would be 62.6 therms, which would cover the entire 60 therms consumed. Thus, under Bundy's method, the customer in this example would pay for all gas at the lifeline rate.

Bundy's method presumes that a customer's consumption is not constant over the billing period and increases in proportion to the authorized lifeline allowances. He argues that this presumption is logical and consistent with the Commission's adoption of different lifeline allowances for the summer and winter months.

The Commission's decision in McKinney and SoCal's reliance on it. This decision is not necessary for 3-3-3-3 disposition of Bundy's complaint since the complaint was resolved on other grounds.

Findings of Fact

1. Bundy does not contend that SoCal has violated a law or any order or rule of the Commission.
2. Bundy agrees that SoCal's method of calculating seasonal bills complies with its tariff schedules.
3. Bundy contests a prior Commission decision, McKinney v PG&E, which endorses an assumption of constant usage by a customer in a billing period.
4. The McKinney decision is a final decision which was appealed to the California Supreme Court.
5. Use of Bundy's method to calculate seasonal bills would allow some customers to apply winter lifeline allowances to summer gas consumption.

Conclusion of Law

Bundy's complaint, as clarified at hearing, fails to state a cause of action under PU Code § 1702.

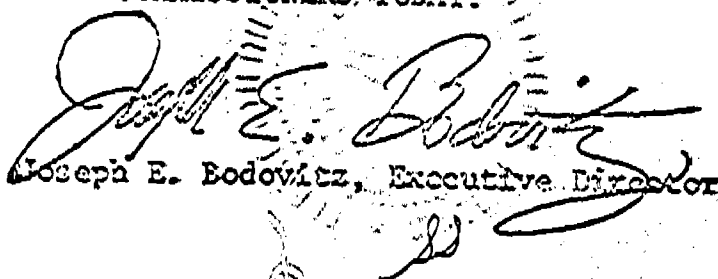
O R D E R

IT IS ORDERED that the complaint in Case 11051 is dismissed.  
This order becomes effective 30 days from today.  
Dated JUL 7 1982, at San Francisco, California.

RICHARD D. GRAVELLE  
LEONARD M. GRIMES JR.  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

Commissioner John E. Bryson,  
being necessarily absent, did  
not participate.

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

  
Joseph E. Bodovitz, Executive Director

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