

ORIGINAL

Decision S2 11 050 NOV 17 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San B. Murray)
 Verna L. Murray,)
)
 Complainants,)
)
 vs.)
)
 San Diego Gas and Electric)
 Co.,)
)
 Defendant.)
 _____)

Case 82-03-08
(Filed March 22, 1982)

Verna L. Murray, for herself, complainant.
Maya Sanchez, Attorney at Law, for defendant.

O P I N I O N

Complainants allege that their electric meter was faulty causing them to incur a high bill of \$1,882.27.^{1/} As further indication of a faulty meter, they allege their December 1981 bill was only \$399.69. Complainants request an order that defendant reduce the billing for October and November 1981 to \$233.59 per month, which is an average of the previous three months' billing which complainants believe is fair and reasonable.

^{1/} Complainants were billed \$1,878.60 for 18,325 kilowatt-hours (kWh) of consumption from October 2, 1981 to December 4, 1981 plus \$3.67 State surcharge tax.

In its answer, defendant denies each and every allegation contained in the complaint and alleges the following affirmative defenses:

1. The complaint fails to meet the requirements of California Public Utilities (PU) Code Section 1702 and Rule 9 of the Commission's Rules of Practice and Procedure since it does not allege any breach of any legal duty by defendant nor does it point out any provision of law or Commission order or rule which defendant has violated.
2. PU Code Section 532 requires that defendant collect and recover from complainants the full legal rate as published in its applicable rate schedules, and all actions taken by defendant in connection with the subject matter of this complaint have been in keeping with defendant's rules and tariffs.
3. The remedy requested by complainants is not supported by defendant's tariffs and would, in fact, work contrary to such tariffs in that it would grant a preferential reduction to complainants and allow complainants to be unjustly enriched by receiving utility service at reduced, nominal, or no cost in violation of law. Defendant requests that the complaint be dismissed and that complainants take nothing by this action.

Following notice, public hearing was held in San Diego before Administrative Law Judge (ALJ) William A. Turkish on July 9, 12, and 13, 1982, and the matter was submitted on that date.

Five witnesses testified on behalf of complainants, including complainants, their two sons, and Frederick Yeiser, a civilian maintenance supervisor employed by the U.S. Navy. Testifying on behalf of defendant were nine employees and Elizabeth Noble, owner of the Murrays' residence.

Following is a summary of the testimony presented by complainants' witnesses:

Complainants reside in a rented, two-story, single-family residence containing approximately 2,700 square feet of living area. Electric service was established for complainants on May 22, 1981. Complainants reside with their two minor children and on occasion, Sam Murray, Jr. resides at the residence. In November 1981 the owner of the Murray residence informed Mr. Murray that she was requesting an energy audit of the residence by defendant and although Mr. Murray felt that Mrs. Noble was causing unwarranted trouble by doing so, gave his permission for the audit. The audit was conducted while the Murrays were away on vacation, but Sam Murray, Jr. was present at the time.

On or about December 2, 1981, when the Murrays returned from vacation, Mrs. Murray contacted defendant and informed them that she had not received a bill for the month of October. She was informed that she had not received a bill because the usage had been so much lower than their normal monthly usage that the computer had rejected the reading pending an investigation. Mrs. Murray was told that the October bill was \$28.01. On December 4, 1981 Mrs. Murray visited defendant's local office and asked for a copy of the October bill but was refused. She made a payment of \$28.01 which she had been told over the phone was the amount of the bill and received a receipt for that amount. Sometime around December 10, 1981 complainants received a bill for the period from October 2 to December 4 in the amount of \$1,878.60 for energy usage of 18,325 kWh in that period.

Complainants believe that employees of defendant had "tampered" with their meter sometime prior to October 1981 for some unknown reason.

Complainants began taking a reading of their electric meter on an almost daily basis beginning December 2, 1981 and recording those readings (Exhibit 1). On December 17 they noted that the meter reading was 12082. On the following day the meter reading was 11202. Complainants allege that this obviously proves that the meter was faulty because the reading on the 18th was lower than the reading of December 17. The meter readings taken for the remainder of December show progressively higher readings on each successive read.

A new meter was installed by defendant on January 8, 1982 and complainants continued to take meter readings in January and February. The meter readings during this period appeared to be normal readings.

During the month of December, when complainants began taking meter readings, one of two refrigerators on the premises was disconnected and the electric space heating unit was shut off. The children were moved into the parents' bedroom and only one turbo-type space heater of approximately 1,140 to 1,500 watts was used during the night. The bedroom doors were closed with the heater on for approximately seven hours. During this period of time wood was burned in the fireplace to try to keep the house warm. As a result of these and other conservation measures taken during the month of December, complainants' electric bill came to \$399.69. Since a new meter was installed by defendant in January 1982 and a new propane heater was installed to replace the electric space heater previously used by complainants, their electric bills have been averaging between \$160 and \$180 a month.

Cross-examination elicited the following from complainants' witnesses:

1. Although Mrs. Murray testified she learned to read an electric meter from a card provided by defendant and from one of defendant's meter readers years earlier, she was not aware that the numeral 1 is assumed to precede all of the readable dials on the meter. Complainants believe they took correct meter readings at all times.
2. Although complainants allege that their meter was tampered with, they do not use the term "tampered with" to mean with fraudulent intent.
3. Mrs. Murray admitted that on two occasions defendant explained to her that the reason she did not receive a bill for \$28.01 was because the \$28.01 bill was incorrect; that there was a larger amount owing which had to be recalculated, which would be presented to her later. She admitted that defendant's employees came to her residence on December 10 and presented her with a bill in the amount of \$1,878.60 for the months of October and November.
4. Complainants are aware that the meter was tested on December 3, 1981 and again on January 8, 1982 and found to be functioning correctly, but they believe their meter was subject to periodic malfunctioning which did not show up during the testing.

Following is a summary of the relevant evidence presented by defendant's witnesses:

A residential energy audit was conducted at complainants' residence on November 24, 1981. During the audit the heating thermostat was observed to be set at 76 degrees. The thermostat was checked and verified as being accurate by the auditor. The audit revealed two refrigerators and a large freezer in use with

very little food in them, a five-ton air-conditioning unit (not in use at the time), a water bed with an electric heater set at the highest temperature available, and a 25 kW electric furnace for space heating. The auditor experienced discomfort in the house due to the high temperature. The auditor explained to complainants' son that the refrigerator and freezer were each using approximately 200 to 250 kWh per month. He also informed complainants' son that the 25 kW furnace was costing approximately \$2.50 per hour of use. When he asked the son what they did when the house got too warm, he was told that they open the windows and he believes he observed windows open at the time. ✓

When the auditor observed the electric meter, he was unable to make a determination of the load on the meter. The meter disc was revolving so fast that he was unable to time how long it took to make one revolution. The speed of the meter disc indicated a large load on the meter. The auditor took a reading of the meter to verify the previous meter reading of November 3, 1981. Because the reading was so much higher than the previous meter reading, he rechecked the reading four times and noticed that it was cumulatively higher each time, indicating a tremendous load on the meter. The auditor discussed his observations with complainants' son and informed him that according to the meter reading, it indicated the family was using close to \$1,000 of electrical energy per month. The audit revealed that the appliances in the home and the energy practices of complainants were quite capable of causing the high consumption reflected in the October-November bill. ✓

Complainants' residence has a solar hot-water heater as well as a conventional electric water heater. On October 29, 1981 the owner of the residence hooked the solar hot-water heater up to electricity. This was to permit the solar hot-water heater to operate by electricity on sunless days along with the conventional electric hot-water heater. Thus, after October 29 both water heaters were used at the same time. A propane gas heating system was installed on or around the 7th of January 1982 to replace the 25 kW furnace. ✓

Exhibit 6, which is a computer-generated monthly meter document for recording meter readings, indicates parameters of 92820 and 93733 within which complainants' meter reading should have registered on November 3, 1981. Complainants' meter registered 01239 which is outside the parameters. The meter document also indicates that the reading of 01239 was rechecked and verified because it was outside the parameters stated on the document.

When meter readers are unable to get a closeup reading of the meter because of inaccessibility, they carry an optical device which enables them to read meters easily from distances of 40 feet from the meter. There was no difficulty experienced by the reader in reading complainants' meter from a distance of approximately 17½ feet. It is unlikely that the meterman made an error in reading complainants' meter because the meter was 100% visible at all times and the meter reader rechecks and verifies his readings at all times. The meter reader remembers very clearly the reading taken on complainants' meter in the month of November because it was one of the highest readings he had taken in all the years that he has been reading meters. Because of this fact, he rechecked the meter reading at least four times.

The meter reading of November 3, 1981 established that 10,351 kWh of energy had been used in the preceding 32-day period. Because complainants' previous energy use had been approximately 2,400 kWh per month, defendant's customer accounting section requested the meter be reread for further verification of the extensive usage. However, the order to reread the meter was not returned in time to render proper billing on the account on the usual billing date. On November 23, 1981 an employee in customer accounting changed the meter reading to reduce consumption from 10,351 kWh to 351 kWh (this is 10,000 kWh less than the meter readings actually indicated) predicated on the possibility of a meter reading error, and erroneously created a billing in the amount of \$28.01. Realizing that the consumption as changed by the customer accounting employee was far too low as compared to normal use, the printed billing was given to a residential energy representative to deliver to the customer if the meter reading was verified, or to return it to accounting for correction if the meter reading was not verified as correct. As part of the audit conducted on November 25, 1981, the electric meter was again read. This recheck established that the original meter reading of November 3, 1981 was correct and that 10,351 kWh of energy had actually been used during the October billing period.

On December 2, 1981 Mrs. Murray telephoned defendant's customer information section and stated that she had not received a bill for the month of October. She also requested that a duplicate of the erroneous \$28.01 estimated bill be mailed to her. On December 3, 1981 a residential energy representative accompanied by an electric meterman went to complainants' home and in the presence of complainants reread the electric meter and tested the meter for accuracy. The meter reading was again

verified as being correct and the meter was found to be operating well within the requirements of the Public Utilities Commission. Defendant's representative discussed the operating costs of the major appliances in the home with complainants and in particular, the cost of operating the central heating unit. The electric meterman demonstrated by the use of an ampere probe that the central heating unit was consuming energy at the rate of 25.92 kW per hour and was costing approximately \$3 for each operational hour. It was further explained to complainants that the meter readings taken November 3, the subsequent readings taken on November 25, and the present reading of December 3 indicated the central heating unit had been operational approximately 10 hours each day.

It is not possible for an electric meter to periodically run fast and then run normally at other times because the only thing that could cause a meter to run fast would be a loss of strength in a retarding magnet which, if once lost, cannot regain its strength to run normally again since it is a permanent magnet. The only other thing that would cause a meter to go suddenly from a reading of 12082 on one day to 11202 on the following day would be a misread by whoever was reading the meter or by the customer consuming more than 10,000 kWh within that 24-hour period which is most unlikely.

On January 8, 1982 complainants' meter was again tested and again found to be well within the Commission's permitted percentage of error. Complainants' meter was then removed and impounded and a new meter installed. At the time the new meter was installed, it was noticed that a propane heating system had been installed replacing the electric central heating furnace which had previously been used by complainants during the period in issue.

Discussion

The complaint alleges that complainants have irrefutable evidence that the electric meter installed in their residence during October-November 1981 was faulty, and that as a result of this faulty meter they were billed \$1,878.60. However, the preponderance of evidence presented at the hearing does not support complainants' contention of a faulty meter.

The evidence presented by complainants consisted of testimony by complainants that they took almost daily readings of their meter and that the reading on December 18, 1981 was a lower reading than the reading they took the day before. Other evidence in support of complainants was testimony by their son that during a visit to complainants' residence he saw one of the indicators on the meter "jump" while looking at it. Complainants also testified that before and after the periods in issue, their monthly electric energy consumption was far lower than the periods in issue in this proceeding.

The evidence presented by complainants' witnesses effectively refutes the contention of complainants. On the one hand, complainants argue that the meter was faulty because the meter reading was lower on one day than it had been the previous day, indicating that the meter was running backwards and, on the other hand, complainants argue that the meter registered the very high amount of consumption in October and November because something was causing it to run too fast. In the first instance, there are only two possibilities for the meter to register a lower reading on one day than the previous day's reading. This could only occur if the meter had been reversed or the person reading the meter incorrectly read the meter. There was no suggestion or evidence to indicate meter tampering by complainants.

Thus, it must be concluded that the readings taken on December 17 and 18 by complainants were incorrect. This conclusion is further supported by cross-examination of complainants on their meter reading knowledge and ability and defendant's demonstrative and testimonial evidence which clearly showed complainants' meter reading ability to be faulty.

As to complainants' contention that the meter was faulty thus causing it to register at an exceedingly fast rate to account for their high energy consumption, it likewise is not supported by any credible evidence. The type of meter which registered complainants' energy consumption is one which uses a permanent magnet and it is not possible for this type of meter to malfunction only periodically. Only one thing, other than actual usage, would cause such meter to run as fast as complainants' ran, and that would be loss of strength in the retarding permanent magnet contained in the meter. However, if that magnet lost its strength, there is nothing which would cause it to regain its strength and then permit it to operate normally thereafter. Complainants' meter was tested at least three times and was again tested following the hearing at the direction of the ALJ. The tests in each case showed the meter to be operating normally and well within the percentage of error permitted by the Commission. The testimony of complainants' witness that he saw one of the dials on the meter jump while looking at it is not convincing in the face of evidence from defendant's expert witnesses who pointed out that the gear mechanism behind each dial indicator would prevent the indicator from jumping unless some gear teeth were broken. However, if there had been some gear teeth broken, it would have caused the particular indicator attached to that gear to jump each time it made a revolution. This testimony is not borne out by subsequent inspection of the meter and subsequent behavior of the indicator dials on the meter. This evidence,

coupled with evidence pertaining to the energy audit conducted by defendant at complainants' residence, complainants' energy practices, and the energy rating of the appliances used in their residence is sufficient to enable us to conclude that complainants did indeed consume the amount of electrical energy for which they were billed for the months of October and November 1981.

In these types of high bill complaints, the burden of proof is always imposed upon complainant to prove that he or she did not or could not have consumed the amount of energy for which they were billed. The evidence presented by complainants in this matter was insufficient to overcome the rebuttable presumption that the amount of electrical energy registered by the meter was in fact used.

Although we have concluded that complainants actually consumed the amount of electrical energy for which they were billed, equity compels us to make an adjustment in the amount of their bill. It is highly likely that had they been billed properly for the month of October 1981 and noticed the high amount of consumption for that month, resulting mostly from the use of the electrical central air heating unit, they would have been sufficiently alerted to institute stringent conservation measures to lower subsequent bills.

According to the regular and accurate monthly meter reading of November 3, 1981, complainants consumed 10,351 kWh which, according to the rate schedules in effect at the time, should have produced a bill of \$1,078.57. Since complainants would not have been alerted to the high bill until the bill was actually rendered to them in early November and since the amount of kWh consumed by complainants in the month of October

was actually consumed, there can be no adjustment made in what would have been their regular bill of \$1,078.57 for the month of October. However, had they received that bill and been alerted to their high consumption, it is reasonable to assume that they would have reevaluated their energy practices and made a conscientious effort to reduce their consumption. Complainants were notified of their high bill (\$1,878.60 for October and November) in the early part of December 1981. After they began their conservation practices, their December bill was \$398.89 for 4,015 kWh and then dropped in January 1982 to \$190.19. This last bill was due in large part to the replacement of the 25 kW central heating furnace with a propane heater early in January 1982. Assuming that complainants would have started their conservation efforts immediately upon receiving a high bill for the month of October, it is reasonable to assume that they would have reduced their November consumption considerably. The amount of reduction is, of course, speculative. Had they been billed separately for the month of November 1981, they would have been billed \$800.03 for 7,974 kWh actually consumed in that month. We believe a reduction of 60% in consumption could have been achieved by complainants. A 60% reduction from the November bill of \$800.03 would produce a bill of \$320.02. This is less than complainants' December bill of \$398.89 which they incurred after being informed of their high bill for October and November. Therefore, we believe the reduction of the November bill to be reasonable. Accordingly, the October-November bill of \$1,878.60 should be reduced to \$1,398.59. Complainants should receive a refund of \$480.01 based on equitable considerations.

Findings of Fact

1. The electric energy bill in dispute in this matter totals \$1,878.60 for the period from October 2 to December 4, 1981.
2. Complainants' electric meter reading was verified several times and the meter was tested on at least three occasions and found to be registering within acceptable limits of accuracy.
3. The energy audit conducted on the premises of complainants, their energy use practices, and the ratings of their electrical appliances are capable of producing the total consumption registered on their meter for the period in issue.
4. The apparent discrepancy in the meter readings taken by complainants on December 17 and December 18, 1981 was due to complainants' incorrect meter reading.
5. Defendant did not tamper with complainants' meter to make it malfunction or cause it to register erroneous readings.
6. Complainants did consume the amount of electrical energy for which they were billed by defendant for the period from October 2 to December 4, 1981.
7. Complainants' electric meter was operating properly during the period from October 2 to December 4, 1981.
8. Defendant's meter readers correctly read complainants' meter during the period from October 2 to December 4, 1981.

Conclusions of Law

1. Complainants have failed to meet their burden of proof in establishing that their electric meter was faulty or that it was incorrectly read by defendant.
2. Complainants were properly billed by defendant for their electric consumption during that period.
3. An adjustment of 60% of complainants' November consumption is reasonable since we presume that had they received a timely bill in early November, they would have taken immediate steps to conserve energy.
4. In all other respects the complaint should be denied.

O R D E R

IT IS ORDERED that:

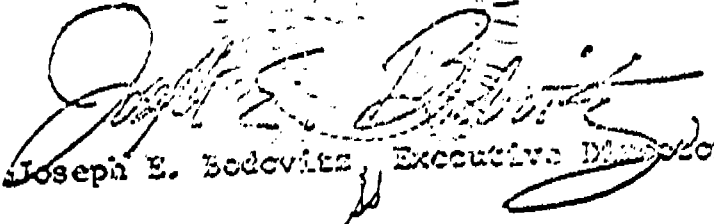
1. Defendant San Diego Gas & Electric Company shall reimburse complainants Sam B. and Verna L. Murray the amount of \$480.01 for the month of November 1981.
2. In all other respects the complaint is denied.

This order becomes effective 30 days from today.

Dated NOV 17 1982, at San Francisco, California.

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

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


Joseph E. Bedovitz, Executive Director

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