

Decision 83 06 032 JUN 29 1983

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CLEANCRAFT, INCORPORATED,  
a California corporation,

Complainant,

vs.

SAN DIEGO GAS & ELECTRIC  
COMPANY,

Defendant.

Case 82-02-02  
(Filed February 5, 1982)

McLean & McLean, by Donald F. McLean, Jr.,  
Attorney at Law, for complainant.  
Maya Sanchez, Attorney at Law, for  
defendant.

O P I N I O N

Background and Issues  
Presented

Cleancraft, Incorporated (Cleancraft) is a San Diego-based commercial linen supply and laundry primarily serving hospitals and convalescent homes. Cleancraft moved into its present facilities in November 1979. At the time it moved in, electrical service from San Diego Gas & Electric Company (SDG&E) had already been installed. SDG&E began billing Cleancraft based on a meter read date of December 10, 1979, having previously tested the meter for accuracy.

Nearly two years later, in September 1981, SDG&E inspected Cleancraft's meter and concluded that it was miswired in a manner that caused it to underregister Cleancraft's electrical consumption. SDG&E claimed that the miswiring occurred in November 1979. Based on this claim and its contention that the meter was "only recording 30 to 50 percent of the energy consumed" (see Exhibit 1), from November 7, 1979 until its personnel rewired the meter on September 9, 1981, SDG&E recomputed Cleancraft's bills for this period by increasing them by 50% and delivered to Cleancraft on about December 14, 1981 an additional billing of \$99,283.59 along with an analysis of the billing and an offer to either reduce the bill by 10% if payment was made within 19 days or to accept full payment in six equal monthly installments of \$16,547.27. Initially SDG&E attributed the miswiring to tampering taking place after its November 1979 meter test. However, at a time after this December 14 billing was delivered SDG&E decided that the miswiring was done by its own installer on October 16, 1979.

After receiving a letter in early January 1982 stating the additional bill was past due and failure to pay by January 11 would subject it to disconnection of electrical service and after some attempts at resolution, Cleancraft filed a complaint with the Commission on February 5, 1982, alleging that in issuing the additional billing and in claiming that Cleancraft would be "subject to disconnect" if payment were not made by January 11, 1982, SDG&E violated its tariff Rule 18.B.3. in that SDG&E:

1. Did not definitely determine the actual period, if any, of meter underregistration of Cleancraft's electrical consumption; and

2. Did not receive Commission approval of the bill as required where, as here, a bill covers a period of more than three months.

Rule 18.B.3. states:

"If a meter for commercial service, upon test as herein provided, is found to register more than 2% slow, the utility may render a bill for electric energy consumed but not covered by bills previously rendered for a period not to exceed three months, subject to review by the Public Utilities Commission, provided that if the actual period of error exceeds three months, and same can be definitely determined, the correction to be made, as herein provided, may cover such actual period, subject to the approval of the Public Utilities Commission." (emphasis added)

Rule 18.B.4. distinguishes the way underregistration may be dealt with in cases where fraud is involved, by permitting additional billing based on estimated usage rather than requiring determination of actual usage.

Cleancraft urges an interpretation of Rule 18.B.3. which distinguishes the terms "subject to review" and "subject to...approval". Cleancraft's distinction would mean that the former term permits the business being billed to request Commission review of a back bill covering a period not exceeding three months, while the latter term restricts the issuance of back bills for over three months to cases where the Commission has reviewed the proposed correction and approved it, prior to its taking effect.

While it is not necessary for this Commission to determine the merits of the above argument in this case, we feel that Cleancraft has pointed out an ambiguity in Rule 18.B.3. that could lead to an unjust result. As Cleancraft stated in its opening brief (page 9):

"Cleancraft would ask that the Commission interpret Rule 18 and its phrase 'subject to approval' to require the utility to first tender its bill to the Commission for approval when it seeks to back bill for more than three months and no fraud is alleged. This would provide the consumer with an opportunity to have a forum to contest the claim rather than to be subjected to the trauma of a shut-off notice and the hiring of legal counsel before he has any opportunity to contest the bill. The utilities of this state have a monopoly and the only protection for the consumer from its [sic] acts lies with the Commission. We ask that the Commission provide the necessary protection."

The Commission agrees with Cleancraft that a customer facing the threat of termination in circumstances such as these should not be required to file a complaint in order to obtain a hearing forum. Rather, the rule should be clarified to indicate that the utility must initiate a proceeding before this Commission to determine the existence or extent of any underregistration of over three months in length. The customer has the right to a Commission decision prior to the issuance of a back bill in such an instance. We will instruct SDG&E to initiate a tariff revision, in the form of an advice letter filing, to clarify this point. Since other gas and electric utilities have similar rules, we will require that this decision be served on them and will require that they make similar advice letter filings.

As the rule stands, we read it to affect the usual burden of proof. The rule permits an affected party to request that the Commission review the propriety of the additional billing. As the rule stands, our complaint procedure was the only viable route for Cleancraft to follow in bringing this matter before the Commission. However,

since the utility is presumably in possession of all the relevant data leading to extra billing in a nonfraud situation, and since this rule makes such billing subject to Commission review or approval, it is clearly the intent of the rule to shift the burden of proof onto SDG&E once the allegation of impropriety has been made. However, absent a request for review by the affected party, the additional billing will have the same effect as any other billing.

Further, we read Rule 18.B.3. to require SDG&E to establish the following in nonfraud situations:

1. That the meter was registering more than 2% slow for the period in question, and
2. What the actual amount of energy consumed was for the entire period in question, if it was less than three months,

or

what the actual amount of energy consumed was for three months, if it can be proven that the underregistration was at least three months in duration.

If SDG&E wishes to claim amounts owing for more than three months it must, in addition to establishing the actual amount of energy consumed, establish the actual period during which underregistration occurred. ✓

Having thus construed the tariff in question, we now address the evidence presented to determine whether SDG&E has met its burden of establishing:

1. An underregistration of more than 2% on the Cleancraft meter,
2. The amount of electricity actually consumed by Cleancraft during this period but not billed to it, and ✓
3. The actual period in which such underregistration occurred.

The hearing in this matter was held in Los Angeles before Administrative Law Judge Colgan on November 15, 16, and 30, 1982 and January 27, 1983, when it was submitted pending the filing of concurrent briefs by February 22, 1983.

As we describe below, the methods SDG&E claims to have used to calculate the amount by which Cleancraft's meter under-registered, and to definitely determine the period of under-registration, might be sufficient to comply with the requirements of its Rule 18.B.3., if they had been established by competent evidence. However, we cannot conclude that its claims are sustainable in this matter because SDG&E's case rests almost entirely on unsubstantiated hearsay testimony of persons who had no firsthand knowledge of the facts to which they testified and on documents which were either unsubstantiated hearsay, or for which there was insufficient foundation to determine whether or not they were records kept in the ordinary course of business.

Witness Testimony

Fitch

In support of its contention that SDG&E failed to ascertain the actual period of meter underregistration, if any, Cleancraft's president, Thomas Fitch, testified that his first contact with SDG&E regarding this dispute was a meeting with three people from SDG&E: P. J. Dewes, customer service supervisor; Lynn Von Gietzen, Cleancraft's account representative; and a woman from SDG&E's "security division", the division which, Fitch believed, deals with suspected fraud against the utility. Though Fitch was uncertain about the date of this meeting, it appears from Exhibits 1, 12, and 16 that it was in late November or early December 1981.

Fitch testified that he was told by Dewes at this meeting that SDG&E suspected someone at Cleancraft had tampered with the meter, that Cleancraft owed around \$224,000, and that SDG&E's own personnel had not been in the plant during the time involved. Fitch stated that he, his plant manager, and the three others then went to look at the meter and the SDG&E people claimed that they could tell the meter seals had been tampered with.

Fitch testified these same people returned again, perhaps in a couple weeks, told him they were unclear as to how to arrive at the amount owed by Cleancraft, and said they were willing to reduce the original amount claimed by one-half. Fitch said he believed the figure then stated was \$112,000.

Fitch went on to state that he believed there was a third meeting at which time he was presented with the bill for \$99,283.59 along with an oral offer to reduce the bill if paid within a certain period of time. This offer is set out in Exhibit 1, a letter with attachments from Dewes dated December 14, 1981 which was received by Fitch. The letter claims that Cleancraft's "consumption pattern suggests that the wiring was disturbed shortly after the meter test of November 5, 1979". The letter goes on to explain that the amount of additional billing is from November 7, 1979 (apparently the beginning of a new billing cycle) to September 9, 1981, the date on which, according to the letter, the miswiring was discovered.

In addition to Fitch, the other witnesses appearing on behalf of Cleancraft were Walter E. Klein, an electrical engineer who was called as a rebuttal witness, as were Wilmer Rockhill, chief engineer for Cleancraft's energy plant, and Dannie Torres, Cleancraft's plant manager.

Rockhill

Rockhill testified that he observed SDG&E personnel at the panel where the meter in question was located, with the panel cover removed on two occasions, once in late May or early June 1980 and once at the end of September or beginning of October 1980. The billing analysis attached to Exhibit 1, interestingly enough, shows a reduction in kilowatt-hour consumption between September 1980 and October 1980 of nearly 33%. We will come back to this later.



Torres

Torres also testified to observing SDG&E personnel at the plant on at least two occasions when he was called to the plant's reception area to direct these people to the plant's distribution room (where the meter was located) because they apparently did not know they could use access doors to the room from the parking lot. He also stated that when the front panels of the box housing the meters are removed the connections that were miswired would be visible; however, the panel covering the circuit breakers can be opened without exposing all the wiring.

Torres further testified that he is in charge of every aspect of plant operation but sales. He then described the operation, stating that startup at the San Diego facility was accomplished over several months' time with significant equipment increases over the first year to year and one-half. He stated that the primary business at the plant shifted from hotel and restaurant to hospital work during this time and that the shift resulted in significantly greater electric dryer usage and thus greater electricity consumption.

Klein's testimony will be related below.

As we stated above, Rule 18.B.3. shifts the burden of proof to SDG&E once the adversely affected customer alleges, as Cleancraft did, that SDG&E acted improperly in applying this rule. In order to prove the propriety of its claim SDG&E relied upon the testimony of three people:

Smith

Richard Smith testified that he was the foreman of the electric meter shop at relevant times. The shop is where instrument transformers are tested. Don Hann was his supervisor. Smith stated that, among other things, he reviewed installation test data sheets, including the one for Cleancraft which was prepared by P. Augustine and dated November 5, 1979 (Exhibit 6). He also prepared all company statements about the extent of metering error in the last 10 years. Smith testified that, at Hann's request, he ran accuracy tests on current transformers (CTs) "of like manufacture and type" to those at Cleancraft, which he miswired in a manner duplicative to the wiring of the three CTs he was informed existed at Cleancraft. Then, he testified, by vector analysis he determined the meter for these CTs was only registering about 50% of actual electrical consumption. Smith also conducted a second set of similar tests in the presence of Hann and Walter Klein, Cleancraft's expert witness. He stated that in the tests three CTs were present, but the third one was not wired in for the test because he could only test two at a time. He added, however, that since only two of the three CTs at Cleancraft were miswired, this fact had no adverse effect on the accuracy of his conclusions. Exhibit 4 is the report of the first testing which Smith prepared for Hann. (The calculations on pages 3 through 5 of Exhibit 4, however, were done by Hann.)

Scott

Walter J. Scott testified that he was a residential energy supervisor, who at relevant times dealt with the billing aspects of metering errors involving commercial customers, including Cleancraft. His job was to review consumption data

before and after a correction where available, arrive at estimates of undercharges, and then check the feasibility of these figures with technicians and with any background information available about the case.

Scott testified that Exhibit 14 is his comparison of estimated Cleancraft usage with actual usage for like months during a period after the error was corrected. He stated that he copied the usage figures from microfiche records kept by SDG&E. He explained that Exhibit 14 comparisons begin with May 1980 rather than with the commencement of electrical service in November 1979 because he interpreted the usage pattern as indicating that Cleancraft was not in full operation until May or June 1980. Scott also testified that his comparisons indicate a 58% underregistration. The comparison is an estimate which assumes that Cleancraft's usage was relatively similar for the compared months (e.g. usage for December 1980 was about the same as usage for December 1981). Scott stated that because the figures are an estimate, and to be fair, it was his opinion that 50% was the proper amount of underregistration to charge for.

Hann

Don Hann testified that he was the meter test supervisor at all relevant times. He supervised the calibration laboratory and the meter testers, electricians, and instrument technicians who installed meters and did wiring on current transformer installations. Hann, a registered professional engineer, with a master's degree in electrical engineering and 9½ years experience with SDG&E, was that company's primary witness. Hann described the electrical installation at Cleancraft as a "3-phase 120/208 volt wye transformer station" which is

schematically portrayed by Exhibit 2. Ideally the user has a "balanced load", meaning that a similar electrical load is placed on each phase. Some equipment is 3-phase and draws electricity from each of the three transformers.

Hann testified to two basic facts. First, that, in his opinion, the meter at Cleancraft was miswired during its initial installation on October 16, 1979; and, second, that tests conducted in SDG&E's meter shop by him or under his direction conclusively showed that the miswiring caused an underregistration of 50% during the period when it existed (thereby substantiating Scott's estimates).

Hann testified that he based his claim that the meter was miswired on October 16, 1979 on five things:

1. An admission made to him in early 1982 by Forrest Olson, whom Hann stated was the electrician who wired the installation at Cleancraft. Olson did not testify.
2. The appearance of the wiring as he saw it in January 1982 after it had been corrected. Hann stated that installers are instructed to cut the wires so they are neat and uniform in length. One of the wires he observed was inappropriately long, another inappropriately short. He stated that swapping these two wires would produce the miswiring which had been described to him (he did not see it himself) and would also produce a neat and uniform wiring appearance.
3. A statement made by Paul Augustine who, according to an SDG&E business record (Exhibit 6), tested the installation for accuracy on November 5, 1979 and found it to be correctly

installed. Hann testified that Augustine admitted to someone else (not to Hann) that he had not tested Cleancraft's meter properly in 1979. (Richard Smith testified that Augustine made such an admission to him about two years after the fact.) Augustine did not testify.

4. Hann's belief that the meter seals were intact when the wiring error was found by Stuart Hinkle on September 9, 1981. Hinkle's documentation (Exhibit 7) only mentioned broken meter panel door seals and not a broken seal on the meter itself. Hann testified that a meter tester would, as a matter of established procedure, mention all broken seals he found. Based on this, Hann concluded that the meter seal must still have been intact when Hinkle found it. Hinkle did not testify.
5. Hann's interpretation of the kilowatt consumption data for the entire billing history of Cleancraft at this facility (Exhibit 1) through September 1981. Hann testified that the wiring error could not have occurred at any time during the 23 months shown because there would have been a large drop in usage the month after the rewiring occurred. Hann admitted that the amount of the drop would depend on Cleancraft's usage. He stated:  
"If they were adding more load, then it would not have dropped quite in half, but it would have been a substantial amount of drop." (RT 438.) As we noted above, there was what appears to be a "substantial amount of drop"--just under 33%--between the tenth and eleventh billing periods, a time which coincides with a visit from SDG&E personnel to which Rockhill testified.

With respect to testing, Hann testified that two sets of electrical shop tests were done to simulate conditions at Cleancraft. The first tests were done by Richard Smith at Hann's request. The second were two tests conducted by Smith in the presence of Hann, Cleancraft's expert witness, Walter Klein, and some other people.

Klein and Hann

In his rebuttal Klein testified that these tests failed to reconstruct the actual conditions at Cleancraft in several ways, and therefore were valueless for purposes of drawing valid conclusions about how Cleancraft's meter had functioned during the period in question. The differences he noted were:

1. The shop tests used a resistive and constant load whereas the Cleancraft load was fluctuating and partly inductive. He said such difference would not affect CT performance, but would cause the meter readings to be different than they would have been at Cleancraft.
2. Because Cleancraft has many large machines that start and stop continually, this causes the motors to use 8 to 10 times their rated current for a very short time. Such "inrush currents" will affect an already stressed CT making it even more unpredictable. The tests used a constant load.
3. In an overstressed situation the metal box around the miswired CTs would become part of the magnetic field around them and would cause the CTs to behave more erratically. By doing the shop test in open air without a metallic enclosure, SDG&E could not consider the effect that this factor may have contributed to the amount of underregistration.

4. Cleancraft had an unbalanced load and as miswired an unbalanced load could have stressed the CTs making them function erratically. The shop test loads were balanced.
5. The third CT was not wired into the circuit in the shop tests. It was at Cleancraft, so the effect of the magnetic field of the third CT could not be considered by SDG&E in its tests.
6. The test did not use the same CTs. The CTs used for the test had a ratio of 200:5, those at Cleancraft were 800:5.
7. Assuming, as SDG&E claimed, that the CTs at Cleancraft had been stressed for a long period of time, this would adversely affect the predictability of the CTs "secondary output" (what is measured by the meter). Presumably the CTs used in the shop tests had not been so stressed.
8. The shop tests did not use the same type current meter used at Cleancraft. They used a clamp-on ammeter which is not a precise instrument.

Klein concluded that the stress conditions cited above and the miswiring of Cleancraft's CTs made the CT's performance unpredictably erratic. Since it was unpredictable it could not be duplicated in a test, and even if it could be, SDG&E's tests failed to duplicate conditions at Cleancraft. Klein also pointed out that the two tests he observed did not yield identical results and he considered the difference between them significant in showing that they had no value as a means of establishing the historical information about Cleancraft that they purported to establish.

Hann disputed Klein's claims that SDG&E's tests were invalid. He agreed that the test load ("dummy load") was resistive while the load at Cleancraft was inductive or both inductive and resistive, and agreed that this fact would not affect the CT's performance. He did not comment on Klein's claim that the type load would cause the test meter readings to differ from the actual meter readings.

Hann testified that the inrush of current which Klein described "is probably insignificant" in affecting the accuracy of the CTs. He based this opinion on his belief that if it were true it would also adversely affect the CT's normal service and also based his opinion on the opinions of two experts whom he stated he consulted.

Hann disagreed with Klein's claim that the presence of a metallic enclosure would affect the behavior of a miswired CT by changing the magnetic field. In explanation he stated that in his expert opinion the concept "does not make any sense" and if it were true, it would also be true that the magnetic fields of adjacent CTs in a three-phase (such as the one at Cleancraft) installation would affect each other. He further noted that SDG&E has installations of this type CT in locations with metal enclosures and in locations without them, and it has no effect.

Hann did not address Klein's claims that the tests' use of balanced rather than unbalanced loads allowed results different from what would have been true at Cleancraft. Nor did he address Klein's testimony about the tests' invalidity resulting from the failure to wire the third CT into the circuit. Richard Smith, however, did testify that this factor had no effect on the tests' validity.



Hann agreed with Klein that the tests did not duplicate actual conditions in that the CTs used for the tests had different ratios than those at Cleancraft and that the tests did not use the same type meter as the one present at Cleancraft. However, he stated that the tests provided a valid "model or reproduction to give an economic indication of what the error at Cleancraft would be." (RT 410.)

Hann's opinion disputing Klein's claim that the CT's accuracy at Cleancraft would experience unpredictable degradation as a result of the amount of time they were in place was based on the opinions of the same two experts he claimed he contacted regarding inrush currents. These experts did not testify. Based on his own knowledge Hann added that the underregistration error could get worse, i.e. less of the actual usage would be measured, if more burden were added to the miswired CTs.

Whereas Klein testified that the factors he cited combined to produce unpredictability which made it impossible for SDG&E to accurately assess the claimed underregistration, Hann claimed that all these factors were nonexistent or insignificantly minor and that precise duplication of conditions was not necessary to an accurate indication of the behavior of Cleancraft's CTs and their effect on the meter's registration of usage. He claimed that the key to arriving at an accurate determination of how much electricity was actually used at Cleancraft was basically to wire two CTs so that "you were pushing one secondary through the secondary of another CT" (RT 412) and then extrapolate the results assuming a balanced load for a given amount of time. The .02 ampere difference in test results, he said, was so small that it was within the acceptable margin of error of the ammeter

used for the test. Klein stated that the ammeter was too imprecise. Hann said it is the device SDG&E's meter testers routinely use in the field.

Discussion

It is very difficult to sift the significant facts from this record. As the synopsis of testimony above shows, this is at least partially true because so much expert opinion went unexplained and so much of SDG&E's showing was composed of unsubstantiated hearsay. While hearsay evidence is certainly admissible in administrative hearings and may be used to corroborate other evidence, it is not sufficient on its own to establish an essential fact. See Title 20, California Administration Code Section 62 (Rule 62). SDG&E lost track of that basic fact. For example, SDG&E based its entire claim on a purported miswiring on October 16, 1979, yet it relied totally on hearsay statements of Hann and Smith to establish that claim.

We do know that swapped lead wires to the top of the meter socket were discovered and corrected on September 9, 1981. This information is shown on Exhibit 7, a document which Hann established was a copy of an SDG&E business record.

What was not established by competent evidence was the date on which this miswiring occurred--or even a span of time during which the miswiring definitely existed. It is not even clear whether Hann's testimony about the percentage of registration error was based on knowledge reasonably inferred from the face of Exhibit 7 or if it was dependent on hearsay information such as conversations and records not in evidence.

Had relevant business records or competent witness testimony establishing the time of the miswiring been proffered we could carefully weigh the testimony of Smith and Hann against those criticisms of Cleancraft's expert, Klein, regarding testing for establishing the amount of underregistration. However, this record does not permit us to even reach the issue of test accuracy because the length of time the miswiring existed was never established. Certainly no procedural informality could or should permit this claim for nearly \$100,000 to rest on statements of a witness describing the actions of another--actions which the witness did not observe--nor could or should the claim rest on this witness's description of the content of business records which were not available nor the hearsay opinions of unavailable experts. This is especially significant because there was plausible circumstantial evidence, as noted above, to suggest that the miswiring could have occurred on a date different from the one SDG&E claims is correct.

Tariff Rule 18.B.3. requires SDG&E to prove the propriety of its undercharge claim when the affected customer disputes it. So, while SDG&E is certainly correct in asserting that Public Utilities (PU) Code Section 532 requires it to charge every customer the full authorized rates and not to extend any special privilege to any customer, that duty must be viewed in conjunction with the requirement of Rule 18.B.3.--a requirement SDG&E failed to meet.

Conclusion

SDG&E has alleged that miswiring of Cleancraft's electric meter caused underregistration of actual use by a known percentage for a known period of time, resulting in underbilling for which it should be compensated. However, because SDG&E failed to proffer competent evidence to establish either the period of time during which the miswiring existed as required by its tariff Rule 18.B.3. or the percentage of under registration, it has no right to collect the amount it claims is owing and should cease billing Cleancraft for this amount.

Findings of Fact

1. Cleancraft began operations at its present facility in November 1979.
2. SDG&E installed electric service at Cleancraft's facility prior to November 1979.
3. On September 9, 1981 SDG&E discovered that Cleancraft's meter was miswired.
4. SDG&E informed Cleancraft that the miswiring had existed from October 16, 1979 until September 9, 1981.
5. SDG&E informed Cleancraft that the miswiring had resulted in 50% underregistration of Cleancraft's electric meter from November 7, 1979 until September 9, 1981.
6. SDG&E informed Cleancraft that the underregistration resulted in underbilling for \$99,283.59 which SDG&E was required by PU Code Section 532 to collect, adding that Cleancraft's service would be "subject to disconnect" if payment were not promptly made.
7. Cleancraft filed a complaint with the Commission alleging SDG&E violated its tariff Rule 18.B.3. and alleging that Cleancraft owed nothing.

8. Two SDG&E witnesses testified about when the miswiring first occurred and when it was corrected. Neither of these persons was a percipient witness to either event.

9. The date when the miswiring was corrected was established by a properly authenticated business record. No such document or other competent evidence established the date the miswiring first occurred.

10. Unidentified SDG&E personnel were present at the Cleancraft facility on at least two occasions other than the dates of the alleged miswiring and correction.

11. Cleancraft's pattern of electric usage did not remain constant between November 1979 and September 1981. It fluctuated from month to month--once by nearly 33%.

12. The utility should be required to seek a Commission decision as to the nature of the undercollection before billing a customer for underregistrations over a period extending more than three months.

#### Conclusions of Law

1. Tariff Rule 18.B.3. regulates SDG&E's collection of additional payment for meter underregistration where no fraud is involved.

2. Rule 18.B.3. permits the affected party to request that the Commission review the propriety of an additional billing for meter underregistration. This may be done by filing a complaint with the Commission.

3. Though complainant normally has the burden of proof, Rule 18.B.3. places on SDG&E the burden of proof in meter underregistration cases which are challenged by the affected party.

4. The only evidence presented by SDG&E regarding the actual period during which miswiring existed at Cleancraft was unsubstantiated hearsay.

5. Neither Cleancraft's pattern of electrical usage during the period in question nor information available about when SDG&E personnel were present at Cleancraft compel a finding that the alleged dates are valid.

6. SDG&E failed to prove that the actual period of error could be definitely determined as required by Rule 18.B.3.; therefore, it had no basis for issuing an additional billing to Cleancraft.

7. A tariff revision is required to clarify the need for a Commission decision as to the nature of an undercollection before a utility bills a customer for underregistrations occurring over a period of more than three months.

O R D E R

IT IS ORDERED that the complaint of Cleancraft, Incorporated (Cleancraft), Case 82-02-02, is granted to the extent that:

1. San Diego Gas & Electric Company shall cease to bill Cleancraft for additional payment for meter underregistration between November 7, 1979 and September 9, 1981.

2. When this order becomes final, the Commission's Executive Director shall contact the Bank of America, International Banking Office 01263, Post Office Box X1003, San Diego, California 92112, enclosing a certified copy of this order, and inform the bank that the Irrevocable Standby Letter of Credit, credit No. SBSD-11306, for the account of Cleancraft, Incorporated with this Commission as beneficiary, for \$20,300.74, may be terminated.

3. The Executive Director shall serve a copy of this decision on each regulated gas and electric utility in California.

4. Within 30 days, SDG&E and other regulated gas and electric utilities shall file advice letters with this Commission proposing a revision to Rule 18.B.3. which shall indicate that the utility must file an application with this Commission (with notice provided to the affected party) and receive a decision concerning the nature of any undercollection prior to billing a customer for underregistrations occurring over a period of more than three months. Notice of this advice letter filing should be given to any interested consumer groups.

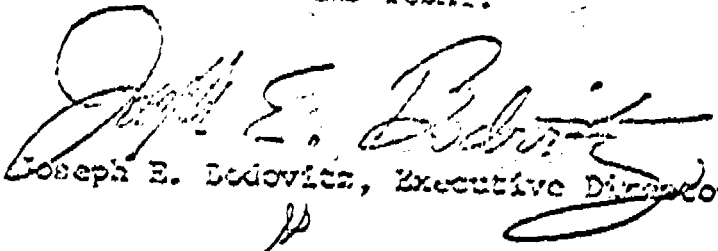
This order becomes effective 30 days from today.

Dated June 29, 1983, at San Francisco, California.

LEONARD J. GRIMES, JR.  
President

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director

While it is not necessary for this Commission to determine the merits of the above argument in this case, we feel that Cleancraft has pointed out an ambiguity in Rule 18.3.3. that could lead to an unjust result. As Cleancraft stated in its opening brief (page 9):

"Cleancraft would ask that the Commission interpret Rule 18 and its phrase 'subject to approval' to require the utility to first tender its bill to the Commission for approval when it seeks to back bill for more than three months and no fraud is alleged. This would provide the consumer with an opportunity to have a forum to contest the claim rather than to be subjected to the trauma of a shut-off notice and the hiring of legal counsel before he has any opportunity to contest the bill. The utilities of this state have a monopoly and the only protection for the consumer from its [sic] acts lies with the Commission. We ask that the Commission provide the necessary protection."

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As the rule stands, we read it to affect the usual burden of proof. The rule permits an affected party to request that the Commission review the propriety of the additional billing. As the rule stands, our complaint procedure was the only viable route for Cleancraft to follow in bringing this matter before the Commission. However,



If SDG&E wishes to claim amounts owing for more than three months it must, in addition to establishing the actual amount of energy consumed, establish the <sup>actual period</sup> ~~precise dates~~ during which underregistration occurred. SS

Having thus construed the tariff in question, we now address the evidence presented to determine whether SDG&E has met its burden of establishing:

1. An underregistration of more than 2% on the Cleancraft meter,
2. The amount of electricity actually consumed by Cleancraft during this period but not billed to it, and
3. The <sup>actual</sup> ~~precise~~ period in which such underregistration occurred. SS

The hearing in this matter was held in Los Angeles before Administrative Law Judge Colgan on November 15, 16, and 30, 1982 and January 27, 1983, when it was submitted pending the filing of concurrent briefs by February 22, 1983.

As we describe below, the methods SDG&E claims to have used to calculate the amount by which Cleancraft's meter under-registered, and to definitely determine the period of under-registration, might be sufficient to comply with the requirements of its Rule 18.B.3., if they had been established by competent evidence. However, we cannot conclude that its claims are sustainable in this matter because SDG&E's case rests almost entirely on unsubstantiated hearsay testimony of persons who had no firsthand knowledge of the facts to which they testified and on documents which were either unsubstantiated hearsay, or for which there was insufficient foundation to determine whether or not they were records kept in the ordinary course of business.

5. Neither Cleancraft's pattern of electrical usage during the period in question nor information available about when SDG&E personnel were present at Cleancraft compel a finding that the alleged dates are valid.

6. SDG&E failed to prove that the actual period of error could be definitely determined as required by Rule 18.B.3.; therefore, it had no basis for issuing an additional billing to Cleancraft.

7. A tariff revision is required to clarify the need for a Commission decision as to the nature of an undercollection before a utility bills a customer for underregistrations occurring over a period of more than three months.

#### O R D E R

IT IS ORDERED that the complaint of Cleancraft, Incorporated (Cleancraft), Case 82-02-02, is granted to the extent that:

1. San Diego Gas & Electric Company shall cease to bill Cleancraft for additional payment for meter underregistration between November 7, 1979 and September 9, 1981.

2. When this order becomes final, the Commission's Executive Director shall contact the Bank of America, International Banking Office 01263, Post Office Box X1003, San Diego, California 92112, enclosing a certified copy of this order, and inform the bank that the Irrevocable Standby Letter of Credit, credit No. SBSB-11306, for the account of Cleancraft, Incorporated with this Commission as beneficiary, for \$20,300.74, may be terminated.

3. Within 90 days, SDG&E shall file an advice letter with this Commission proposing a revision to Rule 18.3.3. which shall indicate that the utility must file an application with this Commission (with notice provided to the affected party) and receive a decision concerning the nature of any undercollection prior to billing a customer for underregistrations occurring over a period of more than three months. Notice of this advice letter filing should be given to all California regulated gas and electric utilities and to any interested consumer groups.

This order becomes effective 30 days from today.

Dated JUN 29 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners