

ORIGINAL

Decision 84 01 006 JAN 5 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bruce Savino,

Complainant,

vs.

Pacific Gas and Electric
Company,

Defendant.

Case 83-04-07
(Filed April 28, 1983)

Edward L. Fanucchi, Attorney at Law,
for complainant.
Robert B. McLennan, Attorney at Law,
for defendant.

O P I N I O N

Complainant Bruce Savino seeks to compel Pacific Gas and Electric Company (PG&E) to cancel \$2,098.48 in back charges for electric service rendered during the period April 8, 1980 to March 5, 1982. A duly noticed hearing was held on this matter before Administrative Law Judge Main in Fresno on August 1, 1983. The matter was submitted upon the receipt of certain exhibits by September 22, 1983.

Position of Complainant

Testimony presented on behalf of complainant indicated that:

- 1.a. Complainant bought the house at 3777 East Gettysburg Avenue, Fresno, in late 1975 and in January 1976, upon moving in, requested the gas and electric service be transferred into the name of Gary J. Savino.

- b. Gary J. Savino is complainant's brother. Complainant does not know why he had the utility service put in his brother's name.
- 2. In January 1976, upon moving in, complainant observed that the outer seal on the electric meter was broken.
- 3. Complainant has not tampered with the electric meter nor does he know anyone who has.
- 4. Complainant's electrical load consists of a hot-water heater, range, refrigerator, 45-gallon aquarium, water bed with heater, TV, lights, and an air-conditioner. The air-conditioner has been inoperative for some time.
- 5.a. In about October 1977, which was shortly after he obtained a large watchdog, complainant was provided with a plastic card for entering meter readings.
- b. For approximately the next 18 months complainant read the meter whenever it was necessary to use the plastic card. Thereafter, he did not read the meter. Instead he would enter on the plastic card a fictitious reading based on whatever he could afford.
- 6. The dropoff in metered usage after July 1977 can be accounted for by changes in the number of people staying in complainant's home and how much of their time was spent there.
- 7. A PG&E meter reader in September 1982 (actually in January 1982) noticed the meter seal was broken and attempted to replace it. In so doing he took off the outer ring and somehow sprung it.
- 8. Complainant did not identify himself to PG&E's revenue protection representative as Gary J. Savino.

Position of PG&E

Testimony on behalf of PG&E, elicited through cross-examination of its revenue protection representative as an adverse witness as well as through his subsequent direct examination, indicated that:

1. Upon occupancy of the house at 3777 East Gettysburg Avenue, Fresno, in January 1976 Bruce Elia Savino, complainant, requested electric service in the name of Gary J. Savino. He assertedly put the electric service in his brother's name because he felt like it.
2. On January 13, 1976 a closeout meter reading was made by PG&E to transfer the service. In making a closeout reading the serviceman has the responsibility to check the metering facility to assure that it is intact. If he finds the outer seal broken or the outer ring not hooked behind the lip of the panel, he is required to remove the electric meter.
3. On January 19, 1982, during the course of obtaining the regular monthly meter reading for this account, PG&E's meter reader observed that the reading on the electric meter was less than the September 1981 reading. The meter reader also noticed that the outer seal had been cut. He reported these irregularities to PG&E's revenue protection representative as an incident involving possible meter tampering and energy diversion.
4. On March 5, 1982 PG&E's revenue protection representative went to complainant's residence to inspect the electric meter. He was met by complainant who said he was Gary J. Savino.
 - a. The revenue protection representative made the following observations:
 - (1) The top of the meter glass was clean toward the front but dirty at the back, which would indicate that the meter glass was being handled.

- (2) The outer seal, which is used to seal the retaining ring, was cut and bent back together.
 - (3) The retaining ring, which is designed to hold the meter in place, was clean, worn, and sprung, all of which were indicative that it had been opened and closed many times.
 - (4) The inner seal, which must be defeated to remove the meter glass and gain access to the internal workings of the meter, had been cut and the holes for the inner seal wire were not aligned on the meter base and meter glass holder.
 - (5) The meter glass came off with little effort because the three clips that hold the glass to the meter base were no longer tight.
 - (6) The four metal prongs protruding from the rear of the meter showed sufficient wear to indicate that the meter had been removed from the panel socket and reinserted a number of times.
- b. The revenue protection representative removed the electric meter for evidence and installed a new one together with a hardened steel security outer ring to secure it to the panel.
5. In October 1977 complainant was provided with a plastic meter reading card because the meter readers could no longer gain entry to his yard to read the meter because of a large watchdog and a gate that was nailed shut.

6. A review of meter sheets disclosed the verified meter reading of 82,480 made in January 1982 was lower than the plastic card readings provided by complainant for December, November, October, or August 1981 as well as lower than the September 1981 reading shown on the meter sheet as having been made by a meter reader.
7. Complainant has testified in this proceeding that the numbers he entered on the plastic card during the last several years of his electric service were based on what he could afford and were not the meter readings.
8. Complainant's electrical load includes a pad-mounted air-conditioner, a 22-cubic-foot refrigerator-freezer, an electric range, a king-size water bed with heater, a 45-gallon fish aquarium, a 30-gallon water heater, a television, and lights. The air-conditioner has not been in working order for some time.
9. The minimal use (i.e., no one at home for an entire month) for operation of a refrigerator-freezer, a king-size water bed with a heater, and an electric hot-water heater is approximately 800 kilowatt-hours (kWh) per month.
10. Since April 1980 usage according to meter readings averaged 423 kWh per month and therefore was consistently lower than the electrical equipment would use whether anyone was at home or not.
11. With the evidence clearly establishing (a) the meter was being tampered with and (b) the patently unrealistic usage according to meter readings since April 1980, the conclusion must be drawn that energy diversion has taken place.

- 12.a. A review of complainant's kWh usage for 67 monthly billing periods indicated that a reasonable pattern existed prior to the September 8, 1977 billing period.
- b. An analysis by computer (Exhibit 4, Percent Deviation From Average Daily Usage Profile) detected the September 8, 1977 billing period as the possible start of meter tampering and energy diversion.
- c. For the billing periods from August 22, 1977 to April 8, 1980 the diversion was intermittent.
- d. For the billing periods from April 8, 1980 to March 5, 1982 the diversion was occurring on a regular basis.
13. PG&E rebilled complainant's account from April 8, 1980 to March 5, 1982 based upon the monthly pattern of actual kWh registered on complainant's meter during the billing periods of July 9, 1976 to July 25, 1977. The bill reflecting these additional charges was mailed to complainant on June 22, 1982. On October 26, 1982 his gas and electric service was terminated for nonpayment. On April 18, 1983 PG&E reconnected complainant's service after receiving notice that complainant had deposited \$2,081.82 with the Commission.

Discussion

There is no question that meter tampering occurred. The dispute in that regard is when. Complainant contends that the tampering occurred prior to his January 1976 occupancy of the house. He also contends that the dropoff in metered usage starting in August 1977 can be accounted for by changes in the number of people staying in his home and how much of their time was spent there.

When weighed against the preponderance of the evidence, we are not persuaded by complainant's testimony. At the time of the closeout meter reading in January 1976, the PG&E serviceman had the responsibility under the established standard practice to inspect the meter to assure that it was intact. The condition of the electric meter when it was inspected on March 5, 1982 showed that it had been tampered with repeatedly. Complainant's metered usage in averaging 423 kWh per month since April 1980 was at a level lower than his electrical equipment would use whether anyone was home or not. It thus appears that there has to have been energy diversion (i.e., unmetered usage). However, there is no accurate way to determine the actual amount of such diversion.

Under the circumstances PG&E's reliance on complainant's usage pattern prior to the meter tampering and energy diversion for backbilling and its limiting the backbilling to the period from April 8, 1980 to March 5, 1982 are reasonable. The effect of changes that probably occurred from time to time in the number of people staying in complainant's home and how much time they spent there tends to be offset by PG&E's not backbilling for the period from August 22, 1977 to April 8, 1980 when the energy diversion was intermittent.

Findings of Fact

1. In January 1976 Bruce Elia Savino, complainant, requested electric service at 3777 East Gettysburg Avenue, Fresno, in the name of Gary J. Savino.
2. On January 13, 1976 a closeout meter reading was made to transfer the service.

3. In conjunction with making a closeout meter reading the serviceman has the responsibility to check the meter facility to assure that it is intact.

4. In making complainant's January 19, 1982 meter reading, the meter reader noticed that reading was less than the September 1981 reading and that the meter seal was broken.

5. On March 5, 1982 PG&E's revenue protection representative inspected complainant's electric meter. He found both the outer and inner seals to be broken, together with indications the meter had been tampered with repeatedly.

6. A review of PG&E's meter sheets for complainant's account disclosed that the meter reading taken on January 19, 1982 was not only lower than the September 1981 reading but lower than the December, November, October, or August 1981 reading as well. The September 1981 reading was shown on the meter sheets as having been made by a meter reader. The others were plastic card readings provided by complainant.

7. Complainant testified that during the last several years the numbers he entered on the plastic card as meter readings were based on what he could afford and were not the meter readings.

8. Complainant's electrical load includes a 22-cubic-foot refrigerator-freezer, an electric range, a 30-gallon water heater, a 45-gallon aquarium, a water bed with heater, and a pad-mounted air-conditioner. The air-conditioner has not been in working order for some time.

9. The number of people staying in complainant's home and the amount of their time spent there varied from time to time. It is likely that there was less occupancy of complainant's home in the last several years.

10. Since April 1980, meter readings indicated average usage of 423 kWh per month. The usage so indicated is approximately one-half of the requirements of the connected electrical load without people being at home.

11.a. An analysis by computer detected the billing period ending September 8, 1977 as the possible start of energy diversion.

b. For the billing periods from August 22, 1977 to April 8, 1980 the diversion was intermittent.

c. For the billing periods from April 8, 1980 to March 5, 1982 the diversion was occurring on a regular basis.

12. PG&E rebilled complainant's account from April 8, 1980 to March 5, 1982 based upon the monthly pattern of actual kWh registered on complainant's meter during the billing periods of July 9, 1976 to July 25, 1977. The bill reflecting these additional charges was mailed to complainant on June 22, 1982.

13. On October 26, 1982 PG&E terminated complainant's gas and electric service for nonpayment. On April 18, 1983 PG&E reconnected complainant's service after receiving notice that complainant had deposited \$2,081.82 with the Commission.

14.a. Complainant is responsible for the energy diversion which took place on his premises.

b. There is no accurate way to determine the actual amount of energy that was diverted.

c. The effect of changes that probably occurred from time to time in the number of people staying in complainant's home and the amount of time they spent there tends to be offset by PG&E's not backbilling for the period from August 22, 1977 to April 8, 1980 when the energy diversion was intermittent.

d. PG&E's reliance on complainant's usage pattern prior to the meter tampering and energy diversion for backbilling and its limiting the backbilling to the period from April 8, 1980 to March 5, 1982 are reasonable.

Conclusions of Law

1. Under the circumstances the backbilling rendered by PG&E to complainant for diverted energy is reasonable.

2. The relief requested should be denied and the \$2,081.82 on deposit with the Commission should be remitted to PG&E.

O R D E R

IT IS ORDERED that:

1. The relief requested in Case 83-04-07 is denied.
2. Complainant's deposit of \$2,081.82 shall be disbursed to Pacific Gas and Electric Company.

This order becomes effective 30 days from today.

Dated JAN 5 1984, at San Francisco, California.

LEONARD M. 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