

ORIGINAL

Decision No. 88703 APR 18 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NORMAN H. HOVGAARD,

Complainant,

vs

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Case No. 10423
(Filed September 23, 1977)

Norman H. Hovgaard, for himself, complainant.
Joseph Englert, for defendant.

O P I N I O N

The complaint in this case alleges that complainant was charged by defendant for electricity at 14654 San Marino Avenue, San Jose, after he moved out and after he asked defendant to discontinue service at that address in his name.

Pursuant to Public Utilities Code Section 1702.1 and Rule 13.2 of the Commission's Rules of Practice and Procedure, the parties consented to the Expedited Complaint Procedure and waived the presence of a court reporter and findings of fact and conclusions of law. The matter was heard in San Jose before Administrative Law Judge Donald C. Meaney on December 28, 1977.

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At the hearing complainant's testimony showed that he made several unsuccessful attempts to have service in his name terminated at the address in question ^{1/} before he finally succeeded in having such service stopped.

Complainant claimed an overpayment, as a result of failure to turn off the current, of \$93.00, since subsequent tenants had used the service in his name and he was billed in this amount. Checking the defendant's billing records (see Exhibits 1, 2, and 3), it appears that only \$68.35 was for payment for service at this address and of that \$68.35 only \$36.33 was for service provided after the defendant had moved.

Defendant claims the complaint is barred by the statute of limitations (Public Utilities Code, Section 735; two-year time limit). While complainant's testimony is not completely certain on this point, it appears that the acts of defendant and of Commission staff personnel inadvertently caused complainant, who is inexperienced in these matters, to believe he had taken proper action to protect his interests in a timely manner. It would be inequitable to apply the statute of limitations to these facts (cf. Witkin, California Procedure, 2d ed., pp. 1226-1232).

We find that there has been an overpayment of \$36.33, and that such amount should be refunded to complainant, with interest at the lawful rate from the date of payment. We cannot consider complainant's

^{1/} The complaint shows the termination date as 1972. At the hearing it was stipulated that this was an error and the correct year is 1973.

request for payment of consequential damages (lost wages for attending the hearing). (See Waters v Pacific Tel. & Tel. Co. (1974) 12 Cal 3d 1, 114 Cal Rptr 753.)

O R D E R

IT IS ORDERED that defendant shall pay to complainant the sum of \$36.33 plus interest at 7 percent per annum from the date that such sum was collected.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 18th day of APRIL, 1978.

Robert Bateman
President
William Quon Jr.
Veronica L. Sturgeon

Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.