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ORIGINAL

Decision No. 89447 OCT 3 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ziad Shehabi,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case No. 10455
(Filed October 27, 1977)

Ziad Shehabi, for himself, complainant.
Malcolm H. Furbush and Harry W. Long, Jr.,
Attorneys at Law, for Pacific Gas and
Electric Company, defendant.

O P I N I O N

By this complaint, Ziad Shehabi requests an adjustment in the monthly electric billings he has been receiving from Pacific Gas and Electric Company for his grocery business, known as Country Corner, at 22015 East Adams Street, Reedley. Complainant has been depositing with the Commission the amounts of money billed to him for electric service by defendant. In its answer to the complaint filed November 25, 1977, defendant asserts that its billings to complainant are correct and requests that the complaint be denied.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in Fresno on March 3, 1978. The transcript in the matter was filed on April 24, 1978, and it is now ready for decision.

Background

Complainant has been in the grocery business since coming to this country in 1966. He had operated a store in San Pablo, and in early 1977, he decided to relocate and buy a business in northern or central California. He had been considering a store in Santa Rosa, but when defendant's office there informed him that the average monthly electric bill for the store was \$450 per month rather than the \$250

per month the seller had told him, he ceased further negotiations. He then located the Country Corner store in Reedley, which was for sale. The owner informed him that most of the business is in the summer when there are workers in the nearby fields. He stated that there are three electric meters for the store, and that the total monthly electric bill for the store averages about \$200. Complainant made a number of trips to Reedley before actually purchasing the store. During those trips, he questioned the owner of the business and the landlord who owned the property regarding various expenses of the business. The landlord informed him that he was going to replace the refrigeration equipment in the store with a new walk-in refrigeration box to be installed by the Foremost Dairy Company (Foremost) in some old living quarters in the building which were no longer used for residential purposes. At the time, there was an old, inefficient refrigeration trailer, part inside and part behind the back of the store, and in the store there were six other refrigeration units of various sizes, some of which were in poor condition, and a rented Pepsi-Cola machine. The agent of Foremost informed him that the compressors for the equipment to be replaced totaled approximately 9 horsepower; that a 5-horsepower compressor would operate the new box; and that there would be a resulting energy savings.

Complainant telephoned defendant's Reedley office twice during the preliminary negotiation period for the store to verify the information furnished to him by the seller regarding the average monthly electric bills for the store and, on both occasions, was told that this information was accurate. During the second call, he told the woman to whom he spoke that he expected future electric bills to be somewhat less because the old, inefficient refrigeration equipment would be replaced with a new, modern unit to be installed where there had been some old living quarters. She did not comment on this but asked him some questions about his nationality and origin, which he considered personal and resented. She stated that these questions were prompted by her curiosity because of his accent. The conversation ended there. Complainant was not informed by her that prior operators

of the store were billed on a residential rate schedule for one of the three meters. It was, therefore, complainant's understanding that all electric energy for the store was and had been billed at commercial rates. With this understanding, complainant purchased the business on May 16, 1977 from the prior operator and entered a four-year renewable lease agreement with the owner of the property. The purchase price for the business was \$2,000 plus \$500 for equipment the seller had. The lease for the property provided for a \$400-per-month rent plus a payment by complainant of \$2,400 towards the cost of the new walk-in refrigeration box. Except for occasions when complainant and his brother stayed in the store overnight when it could not be securely closed and locked because of construction work for the new refrigeration box and other repairs, no one has slept at the store. Complainant and his wife have their home elsewhere.

The building in issue was constructed a number of years ago and is approximately 45 by 50 feet. Originally there was a three-room residential unit in the rear of the store, and three electric meters were installed for the premises. At that time, the living quarters were being used, and there was a special rate schedule for a meter that registered electric energy used for commercial refrigeration and other electrical power equipment only. Therefore, one meter was on a domestic rate schedule for the living quarters, another was on the special commercial rate schedule for power equipment, and the third was on the commercial rate schedule for the lighting used for the business. The special commercial equipment schedule was canceled sometime ago, and since then, this meter has been on the same commercial schedule as the meter for the business lights. Due to local health department regulations, the living quarters have not been used for this purpose for a substantial period of time; however, defendant did not change the rates for the meter installed to serve them from Domestic Service Schedule D-5 to Commercial General Service Schedule A-5 until complainant took over the business.

The building now includes the general merchandise grocery store, the new walk-in refrigeration box, a kitchen, a storeroom, another small room and a bathroom. There are two gas pumps in front.

There are no other structures on the premises. The new refrigeration box is approximately 15 by 20 feet and 7 or 8 feet high. A 5-horsepower electric motor operates the compressor, and there are eight 1/4-horsepower fans in the interior. There is also the following electrical equipment on the premises: two, 1/4-horsepower soft drink standing boxes; a 1/3-horsepower freezer for ice cream; a 1/2-horsepower freezer for ice; a 1/4-horsepower freezer in the back of the store that is used only during three months of the summer for ice; a microwave oven for sandwiches which is occasionally used; 1/2- and 1/3-horsepower motors for the gas pumps; a 1/2-horsepower water pump; and an air cooler which is used only in the summer. Fluorescent lighting is used in the store, there is an electric advertising sign in the window, and outside there are two 175-watt, mercury vapor floodlights. In addition to the above, complainant has recently replaced a leaky gas heater with a small electric heater and has added another soft drink refrigerator box. There are also two refrigerators in back of the store that are not used. Much of the new refrigeration equipment, including the large walk-in refrigeration box, has been connected to the meter that was installed for the old living quarters and which, as stated above, was changed from the domestic to a commercial rate schedule when complainant took over the business on May 16, 1977. Some of the old equipment that was replaced had also been connected to this meter.

The first full-month electric billing received by complainant was approximately double what the average monthly billing had been during the prior 12-month period. Complainant called defendant when he received this billing to inquire why there had been such a substantial increase in charges and was informed by it that the one meter had been changed from a residential to a commercial rate schedule. The subsequent monthly billings to complainant have likewise been higher than those rendered by defendant to the prior operators of the business during the past year. As shown in Exhibit 4, the average total monthly electric usage by the prior operators of the business from June 24, 1976 to January 25, 1977 was 4,119.5 kilowatt-hours, and the average monthly electric usage by complainant during the identical 1977-78 period, which begins with the first full monthly billing to him, was 5,532.5 kilowatt-hours. This shows that, on the average, complainant was

using 34.3 percent more electric energy per month than the prior operators of the business during the similar periods. According to this exhibit the average monthly billing to the prior operators and to complainant for the same periods were \$181.95 and \$379.58, respectively. This is an average monthly increase of 108.6 percent in the billings to complainant.

Defendant tested one of the three electric meters serving complainant on August 5, 1977 and tested the other two on November 10, 1977. The results of the tests are set forth in Exhibits 1, 2, and 3. According to the three tests, all of the meters were operating within the limits of accuracy prescribed by the Commission.

Complainant's Position

Complainant is of the opinion that defendant misrepresented the information it furnished to him regarding average monthly electric bills for the business and that it discriminated against him. It is his position that, for these reasons, he should be billed on the basis of the domestic rate schedule for all electric energy registered by the meter which was changed to the commercial schedule for as long as he operates the store and that all past billings he has received from defendant should be adjusted accordingly.

In support of his allegation of misrepresentation, complainant relied primarily on the failure of the party to whom he spoke during each of his two initial telephone calls to defendant's Reedley office to inform him that the electric meter originally installed for the old living quarters was billed to the prior operators of the business at domestic and not higher commercial rates. He asserted that his business cannot afford the substantially higher amounts defendant is charging him.

Complainant based his allegation of discrimination on the questions asked by defendant's employee regarding his nationality and origin during his second telephone call to the Reedley office, and the fact that defendant did not change the rate schedule for the meter in issue until he purchased the business. In this connection, he asserted that through the past years, there have been at least four different

operators of the store, and defendant must have visited the premises when there were changes of ownership and been aware that the old living quarters were no longer being used for this purpose for a substantial period of time; that irrespective of this, defendant did not change the rate schedule for the meter in issue from domestic to commercial rates for any of the prior owners; and that since the rate schedule for the meter was not changed for them and was changed as soon as he took over the business, it is evident that defendant is discriminating against him.

Defendant's Position

It is the position of the defendant that its tariffs have been properly applied, the billings it has rendered to complainant are correct, and that the complaint should be dismissed.

In support of its position, defendant asserted as follows: When its employees informed complainant, prior to his purchasing the business, of the average monthly electric charges for the building during the prior 12-month period, he was given the exact information he requested, and there was no misrepresentation. He was not told that the one meter was billed on the domestic rate schedule because he did not ask about rate schedules. Defendant was not aware that the former living quarters were no longer used for residential purposes until complainant took over the store. Upon becoming aware of this, it immediately changed the rate schedule for the meter serving this part of the building from domestic to commercial. When complainant questioned the billings he was receiving, defendant's representatives met with him at his place of business and have had other meetings with him during which they reviewed with him the electric appliances in the store and the applicable rate schedules. They explained to him that since all of the building is used for business purposes, the commercial schedule is applicable to all three meters. The information given to complainant that the new refrigeration equipment would reduce the store's electric usage was not from a representative of defendant. In this connection the summation of monthly billings in

Exhibit 4 shows that for the comparable period, complainant's average monthly electric usage was higher than that of the former operators of the business, and the results of the meter tests in Exhibits 1, 2, and 3 show that all three electric meters are operating within the required limits of accuracy. The defendant states that the complainant is not correct in his opinion that the questions defendant's employee asked him about his origin and nationality during the second telephone conversation prior to his buying the business caused defendant to apply higher rates to him than would be applied to another customer under like conditions.

The witness for defendant pointed out that the provisions of Schedule D-5 provides that this schedule is applicable to "domestic lighting, heating, cooking, and single-phase domestic power service in single-family dwellings and in flats and apartments separately metered by the the Utility; to single-phase service used in common for residential purposes by tenants in multi-family dwellings; and to all single-phase farm service on the premises operated by the person whose residence is supplied through the same meter." He also pointed out that the provisions of Schedule A-5 provide that this schedule is applicable to "single-phase or polyphase alternating current service, or to a combination thereof, except that this schedule is not applicable to service for which Schedule No. A-17 is applicable." The witness explained that the Schedule A-5 applies to commercial service of the type furnished to complainant and that Schedule A-17 applies to time-metered service which is not involved herein.

As to complainant's allegations regarding misrepresentation, defendant's attorney stated that, although in his opinion there had been no misrepresentation, such an allegation is a cause of action based on a theory of tortious conduct and, as such, would not be a matter within the Commission's jurisdiction.

Discussion

We are of the opinion that the relief requested by the complainant should be denied and that all monies deposited with the Commission by complainant for past electric bills should be remitted to defendant.

The evidence clearly establishes that the entire building has been used by complainant for commercial purposes since he took over the building on May 16, 1977. As stated above, Schedule D-5 rates apply to residential and certain farm service only. In the circumstances, the applicable rate schedule for all electric energy used by complainant at this location is Schedule A-5 which defendant has applied to all three meters.

We are mindful of complainant's concern over the amount of his electric bills. As he pointed out, this is a significant item in his overall expense of doing business. However, complainant is, according to Exhibit 4, using approximately 34.3 percent more electric energy than the prior operators of the business. Also, the electric rates for commercial property have in the past year been subject to upward adjustments, and it is unlikely, because of the energy crisis with which we are faced, that this trend will be dramatically reversed in the foreseeable future. These last two factors have accounted for at least some of the increases in issue. Furthermore, as shown in Exhibits 1, 2, and 3, each of the three meters are operating well within the limits of accuracy established by the Commission.

Defendant's failure to change the billing for the meter that served the old living quarters to the Schedule A-5 rates in the past when they were no longer used for such purpose was an error on its part. However, as asserted by defendant, it had not looked into this matter before and, therefore, was not aware of this change until complainant took over the business. Other than complainant's statement that defendant should have known of this when there were changes of ownership of the store in the past, there is nothing in the evidence to refute this assertion by defendant. The fact that

defendant had charged lower than applicable rates to former operators and has been assessing the correct level of rates since complainant took over the business does not establish a discriminatory intent on its part towards complainant. If anything, it shows negligence on its part in not discovering this error sooner and correcting it. Furthermore, filed and published tariff rates are the lawful rates from which there can be no deviation. (See Section 532, Public Utilities Code, also Sloane v Union Term Warehouse (1933) 38 CRC 752.) Additionally, Section 453(a) of the Public Utilities Code provides that no public utility shall, as to rates, grant any preference or advantage to any person. To allow complainant the advantage of lower domestic rates for commercial service certainly would discriminate against all other commercial users who are required to pay the higher commercial rates.

With respect to complainant's allegation of misrepresentation by defendant's employee in not informing him prior to his purchasing the business and entering the lease for the building that one meter was being billed at domestic rates, this allegation is, as pointed out by defendant, based on a theory of tortious conduct, and as such is not within the Commission's jurisdiction to award damage.

Findings

1. At all times subsequent to complainant's taking over the business in issue, all electric energy registered by the electric meter that was originally installed for the old living quarters has been used for commercial purposes and the applicable rates are those set forth in defendant's Schedule A-5.

2. Defendant has correctly applied its Schedule A-5 to all electric energy it has furnished to complainant at his business location.

3. Defendant's billing department was not aware, prior to complainant's taking over the business in question, that prior operators of the business had ceased using the living quarters in

the building for such purpose and that the use made of them was business connected.

4. The fact that complainant and his brother slept in the store for security reasons when it could not be closed and locked during renovation and repairs does not change the character of the store during such periods from commercial to domestic for the purposes of applying electric rates.

5. Complainant was not discriminated against by defendant by its changing the rate schedule for the meter in issue from Schedule D-5 to Schedule A-5. All electric energy registered by this meter is used by complainant for commercial purposes. Section 532 of the Public Utilities Code requires defendant to assess its applicable rates for the service provided, which in this instance are commercial rates for commercial service.

6. The Commission does not have jurisdiction to award damage on a cause of action based on negligent misrepresentation.

Conclusion

1. The complaint should be denied.
2. All sums deposited with the Commission by complainant in conjunction with this complaint should be released to defendant.

O R D E R

IT IS ORDERED that:

1. Ziad Shehabi is denied the relief requested in his complaint.

2. All sums deposited with the Commission by Ziad Shehabi in conjunction with this complaint shall be released to Pacific Gas and Electric Company.

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

Dated at San Francisco, California, this 3rd day of OCTOBER, 1978.

Robert Babcock
President
William J. Brown
Leonard J. G. ...
Charles A. ...
Clair D. ...
Commissioners