

ORIGINAL

Decision No. 89457 OCT 3 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RICHARD STYVAERT,

Complainant,

vs.

SAN DIEGO GAS & ELECTRIC COMPANY,

Defendant.

Case No. 10448
(Filed October 20, 1977)

N. James Richardson, Attorney at Law,
for complainant.

Randall W. Childress, Attorney at Law,
for defendant.

O P I N I O N

Complainant alleges that he is the owner of both a 95-unit apartment complex and a 24-unit apartment complex and that since the construction of the 95-unit complex, defendant has charged him for more electrical energy than he actually received by reason of the fact that the meters which record his consumption of electrical energy are inaccurate, misread, and inaccurately reported. In addition, complainant contends that defendant has applied inaccurate rates to his electrical energy consumption, causing him to be overcharged for that amount he did consume. He alleges the same for the 24-unit apartment. Complainant seeks herein to have defendant pay reparation for the total amount overcharged for electric energy not consumed and for inaccurate rates charged for electric energy he did consume.

Defendant denies that the meters reflecting complainant's electrical energy consumption are inaccurate. Defendant acknowledges that prior to May 1977 a dispute existed between the

complainant and defendant with respect to the amount due complainant in refund for an alleged application of inaccurate rates. However, defendant contends that on or about May 12, 1977 complainant and defendant entered into an accord by the terms of which defendant agreed to pay, and the complainant agreed to accept, a refund check in full satisfaction and discharge of any and all obligation alleged in the complaint as overcharges resulting from the application of inaccurate rates. Defendant further contends that on or about May 12, 1977 defendant issued a refund check to complainant to cover any alleged overcharges due to inaccurate rate application, and that complainant's acceptance of such check constitutes a waiver of any claim regarding the application of inaccurate rates by defendant as alleged in the complaint.

Defendant filed a motion to dismiss the complaint on various grounds, among which it is contended that the complaint is vague and ambiguous, and fails in its specificity with respect to dates, account numbers, specific locations, or specific actions of defendant which would grant defendant a reasonable basis for understanding the subject complaint. In addition, defendant contends that the complaint contains only broad nonspecific allegations which lack any facts to support such allegations. Defendant further seeks dismissal of the complaint on the basis that it does not set forth the pleading requirements of Section 1702 of the Public Utilities Code in that complainant, by way of his formal complaint, has failed to allege or make a showing of any law, order, or rule of the Commission allegedly violated by the defendant.

Complainant has refused to pay the defendant since May 1977 and has since deposited payment for all billings as they occur with the Commission.

A public hearing was held in San Diego on May 30, 1978 before Administrative Law Judge William A. Turkish and the matter was submitted upon the filing of the transcript of the hearing. Richard Styvaert, testified on his own behalf. Michael Clifford and Jack Harrelson, employees of the defendant, testified on behalf of the defendant.

A motion to strike the answer of defendant and a request for a summary judgment was made by complainant during the hearing on the basis that the answer was not timely filed in accordance with Rule 13 of the Commission's Rules of Practice and Procedure. Upon proper showing by defendant that leave to file a late answer by defendant was granted by the Commission's Assistant Chief Administrative Law Judge, the motion was and is denied. A motion seeking a 60-day continuance by complainant was made in order to allow for late discovery. Good cause not being presented for such continuance, the motion was and is denied.

Complainant testified that he requested defendant to notify him and that he be present when any meter tests were performed by the defendant. He further testified that he was not notified and was not present when defendant tested its meters serving his 95-apartment complex on or about November 29, 1977. This brief testimony along with the submission of a document purporting to be a memorandum of assignment between complainant and H & M Investment (Exhibit 1) constituted the entire case in chief after which the complainant rested.

Defendant's customer service supervisor testified on behalf of the defendant as follows: Complainant signed up for electric service on January 21, 1977. In response to a protest note from complainant dated May 5, 1977, a customer representative visited the complainant on May 12, 1977. During this meeting complainant protested the high billings received from defendant. An agreement was reached wherein defendant would test the three meters registering the highest consumption. It was noted that as many as three or four apartment units were served by one meter and further noted and explained to complainant that the electric water heaters were set as high as 150 degrees and that this caused an unusually high consumption of electric energy. Another cause was determined to be the variance in individual apartment consumption. On May 27, 1977 they agreed upon the three meters to be tested. These were tested and each tested satisfactorily and well within the 2 percent deviation tolerance permitted by the Commission (Exhibit 5).

During the meeting of May 12, it was discovered by defendant that complainant was being billed at an incorrect electric rate since new rates, more advantageous to the complainant, had gone into effect on January 1, 1977. Defendant rebilled the complainant at the more advantageous rate from his turn-on service date of January 21, 1977 and computed a \$27.56 refund check to complainant on May 27, 1977 which was cashed on June 2, 1977 by complainant. Complainant has been billed at the correct rates since that time. On November 29, 1977 defendant, on its own initiative, tested the remaining 23 meters at the complainant's apartment complex and all were found to be registering accurately, within the 2 percent limit permitted by the Commission.

With respect to the Franklin Street 24-unit apartment complex, the protested meter readings were verified by defendant on May 17, 1977 and the three meters were tested for accuracy on June 22, 1977. Each tested accurately and within the permitted 2 percent accuracy limit.

Another of defendant's witnesses denied that complainant ever requested of him that complainant be notified and allowed to be present during the meter testing as alleged by complainant.

Discussion

Complainant's very brief testimony and document submitted into evidence fail totally to support any of the allegations contained in the complaint as originally filed and as amended. He has failed to meet his burden of proof. Although defendant need not have done so, it presented sufficient evidence to support its contention that complainant has been issued a refund for the overcharge resulting from the inaccurate rate that complainant had been billed for approximately three months and that complainant has since been billed at the accurate rate. In addition, the evidence is sufficient to conclude that the meters servicing the complainant's apartment complexes accurately measured and reflected the electric energy consumed.

Findings

1. Complainant owns a 95-unit apartment complex and previously owned a 24-unit apartment complex. As many as three or four apartment units were served by one meter and complainant paid for the electrical consumption of the apartment residents.

2. Defendant admitted billing complainant at an incorrect rate from January 21, 1977 to May 1977, and forwarded a refund check in the amount of \$27.56 on May 27, 1977 to complainant, in full satisfaction and discharge of any claim for such incorrect billing.

3. Complainant accepted and cashed such refund check on June 2, 1977.

4. On or about May 27, 1977 defendant tested three of complainant's 95-unit complex electric meters, registering the highest amount of consumption, and each tested well within the 2 percent accuracy permitted by the Commission.

5. On November 29, 1977 complainant's remaining 23 meters at the 95-unit complex were tested and found to be accurate.

6. On June 22, 1977 the three meters of the 24-unit apartment complex were tested and found to be accurate.

7. Complainant failed to show that defendant violated any statute, law, rule, or order of the Commission.

8. Other than the incorrect billing between January and May 1977 for which complainant received reimbursement, defendant has complied with all of its applicable tariff provisions.

Conclusion

Complainant has failed to prove a violation of any law, tariff, or order of the Commission by defendant; therefore, complainant's request for relief should be denied.

O R D E R

IT IS ORDERED that:

1. The relief requested is denied.
2. The sum of \$17,471, or any amounts heretofore or hereafter deposited with the Commission by complainant in connection with this matter, shall be remitted to defendant.

3. Complainant shall pay all future bills directly to defendant.

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 Bateman
President
William J. ...
...
...
...
Commissioners