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ORIGINAL

Decision No. 89715 DEC 12 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALLEN MANSFIELD,

Complainant,

vs.

SOUTHERN CALIFORNIA  
GAS COMPANY,

Defendant.

Case No. 10593  
(Filed June 9, 1978)

Allen Mansfield, for himself,  
complainant.  
Douglas Porter, Attorney at Law,  
for defendant.

O P I N I O N

The complainant alleges that the defendant has failed to maintain an accurate and properly functioning gas meter serving his residence for at least three years and that, as a result, he has been overcharged each month from May 1974 through April 1977 by 145 percent for gas not actually delivered by the defendant or consumed by him. He seeks an adjustment of all bills rendered by the defendant and paid by him prior to April 27, 1977, the date on which the defendant installed a new meter at his residence, so as to eliminate a 145 percent monthly overcharge. He further seeks the sum of \$1,000 for punitive and exemplary damages.

The defendant denies that the meter serving the complainant's residence prior to the meter change on April 27, 1977 was registering inaccurately; that the complainant was overcharged for any gas used by the complainant, or that the complainant was charged for gas not delivered. The defendant alleges that the

complaint fails to state a cause of action and further alleges that each and every action taken by the defendant with respect to complainant has been lawful and proper.

A public hearing was held in Los Angeles on September 18, 1978 before Administrative Law Judge William A. Turkish pursuant to Section 1702 of the Public Utilities Code, and the matter was submitted.

The complainant testified on his own behalf. Mrs. Beverley Smith, the defendant's special investigation representative, and Mr. Richard A. Price, the defendant's supervisor of measurement, technical services, testified on its behalf.

The complainant testified that his problems with the defendant began several years ago when a new meter was installed at his residence by defendant and he noticed that his gas bills seemed high compared to what they had previously been. In April 1977 he wrote a letter to the defendant which resulted in the defendant removing and replacing the complainant's meter. The complainant testified that the crew removing the old meter acknowledged to him that that particular model had been a terrible meter and one with which the defendant had experienced problems which resulted in the defendant taking those meters out and replacing them. The complainant further testified that the crewman with whom he spoke told him that the meter was faulty and that it was undoubtedly bad. Complainant also alleges he was told that the meter was stuck and that the defendant had been estimating usage. After the new meter was installed, the complainant stated his subsequent bills were only 40 percent of his previous bills. According to the complainant, gas is used in his residence for space heating, hot water heating, and swimming pool heating. He testified that with rare exceptions, the swimming pool heater is turned on sometime just

prior to May 1 of each year and is turned off around the end of September and that there was no variation from this for ten years. The occupants of the residence consist of the complainant, his four children, and a maid. Prior to employing the maid, the complainant's spouse resided with him so that the total number of occupants during the periods involved remained the same.

Mrs. Beverley A. Smith testified that she was familiar with and handled the complainant's complaint. As a result of the complainant's letter of January 1977 she initiated a high bill investigation, which found the two thermostatically controlled forced air heating units, water heater, and swimming pool heater operating in good condition with an approximate Btu usage of over 600,000 Btu's. As part of the investigation, complainant's meter was removed, tested, and found to be within the limits of accuracy prescribed by the Commission. The witness denied that the complainant's gas bills were estimated at any time and testified that all of the complainant's bills were based on actual meter readings. According to the witness, the complainant's usage, billing, and cycle degree-days (the number of degrees below 65° F. each day to which the temperature falls) for the years 1974-1978 were compiled, analyzed, and found to be erratic as indicated in Exhibit 3. The witness testified that in her experience, swimming pool heaters generally account for erratic consumption patterns. The witness testified with respect to the serviceman's report of investigation dated December 3, 1975 (Exhibit 4) that the clock test indicated no gas leak present and found the pool heater on four hours per day; that the April 20, 1977 investigation (Exhibit 5) indicates no gas leaks found; and that the December 7, 1977 investigation (Exhibit 6) found the pool heater on. According to the witness and the report, no gas leak clock

test was conducted on this date because the serviceman was not permitted into the house to check for and turn off any gas appliances.

Mr. Richard Price testified that the testing of the complainant's meter was conducted under his supervision and found to be plus .05 percent accurate at a low flow rate and minus .05 percent accurate at a little higher flow rate. There were no apparent mechanical problems found with the complainant's meter although he acknowledges that in the past problems were encountered with meters from the same manufacturer and that as a result a large number of similar meters were pulled out of service. The problems encountered related to severe wear in the components and a tendency of the bellows to develop holes which, after a certain point, would bypass gas and just cease to register. However, he added, this type of problem would make the meter register lower usage rather than higher. The witness further testified that based upon his experience of over 20 years, it was his opinion, based on the test conducted, that the meter would not have produced the readings alleged by the complainant to be inaccurate. He stated that normally clock tests are performed anytime a meter is installed and are 100 percent tested before leaving the shop and that such clock tests will catch very minute leaks.

Under cross-examination, the witness acknowledged that all meters eventually become inaccurate as they get older and that the typical service life of a meter is 18 years. He further testified that every Rockwell meter earlier than 1970 has been removed from service and that the complainant's Rockwell meter which was replaced on April 27, 1977 was a 1970 model. He also testified that a bad meter would not account for erratic consumption but would result in either high or low billings in a

consistent manner. In addition, the witness stated that the gas flow through the meter is low pressure and that there is no danger of surges in pressure occurring which could cause erratic registration of the meter because of a pressure regulator installed ahead of the meter.

Discussion

Attempts to draw any specific conclusions from a comparative analysis of the complainant's gas usage, billing, and cycle degree-days for the period January 1974 through August 1978 are virtually impossible because of the erratic usage pattern.

Looking only at a comparison of the four-month billing period (June-September) which is set forth in the complaint to illustrate that the complainant's bills decreased in 1977 compared to the same months of 1976, it is seen that the billing is indeed lower. However, to compare only the billing without considering other factors such as comparative registered usage, cycle degree-days, or other periods, tends to give a distorted picture. Looking at the four and one-half years, we note no consistency in either gas usage viewed alone or when attempting to relate such usage to cycle degree-days of each month.

Normally, we could expect to find a consistent pattern of usage each year for space and water heating for a given size household and fairly consistent weather patterns from year to year. In the complainant's account we find no such patterns. In some of the same months of the different years, we find higher consumption with fewer cycle degree-days and lower consumption in some months with more cycle degree-days -- exactly opposite than that which one would expect to find. In other months we find the expected increase in consumption with a rise in the number of cycle degree-days.

We find no evidence to support the complainant's allegation that his meter was faulty and registering incorrectly for a period of three years prior to the removal of his meter on April 27, 1977 and replaced with a new meter. The inconsistent patterns mentioned above are found both before and after the meter change. The removed meter was tested and found to be registering accurately and this fact casts some doubt as to the veracity of the statements attributed to defendant's serviceman by the complainant with respect to his being told by the serviceman that the meter was stuck and not registering.

The defendant's supervisor of measurement, technical services, testified that there was no apparent mechanical problem with the complainant's meter and certainly, if the meter had been stuck as alleged, it would have been very apparent and it would not have registered the test results for accuracy.

The complainant implied in his testimony that a leak at the meter connections might account for his higher gas bills prior to the meter change. We do not give this much credence because the clock tests indicated no leaks and, furthermore, had there been a gas leak at the meter connections, it would have resulted in consistently high bills when in fact, as we pointed out above, the consumption was erratic. Although we are unable to specifically designate the cause of the erratic consumption, we suspect the pool heater may have been a contributing factor. The complainant testified that the pool heater was turned on consistently for ten years just prior to May 1 and off no later than the end of September, yet the serviceman's report of December 7, 1977 indicates that he found the pool heater on. For these reasons we are unable to find sufficient evidence to support a finding in favor of the complainant.

In his complaint, the complainant seeks punitive and exemplary damages in the sum of \$1,000. Although the defendant moved to have this stricken from the complaint, we can dispose of it simply by pointing out that legally the Commission does not have jurisdiction with respect to monetary damages which may have accrued to a complainant because of billing. (See Sonnenfeld v General Telephone Co. (1971) 72 CPUC 419.) We reiterated this again in Packard v Pacific Tel. & Tel. (1972) 73 CPUC 307 when we held that a complaint which asks for damages other than a return of moneys paid to the defendants seeks a remedy not within the power of the Commission to accord. Thus, that portion of the complaint seeking punitive and exemplary damages should be dismissed.

Findings

1. Complainant is a resident of Los Angeles and is a consumer of gas energy furnished by defendant since at least 1974.
2. Complainant's gas consumption and corresponding billing has fluctuated in an erratic manner since 1974 on a comparative month by comparable month comparison as well as a year-by-year comparison.
3. The complainant's meter was removed and tested in April 1977 and found to be operating accurately and within the acceptable limits permitted by the Commission.
4. Complainant has failed to show that defendant violated any statute, law, rule, or order of the Commission.
5. The defendant has complied with all its applicable tariff provisions.
6. There were no gas leaks at the complainant's meter connections.
7. The defendant delivered all gas energy for which complainant was properly billed.

8. The complainant consumed all gas energy furnished by the defendant from 1974 through April 27, 1977.

Conclusions

1. The relief requested for adjustment of billings should be denied.

2. The complainant's request for punitive and exemplary damages should be dismissed.

O R D E R

IT IS ORDERED that:

1. The relief requested for adjustment of complainant's gas billing is denied.

2. The request for exemplary and punitive damages is dismissed.

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

Dated at San Francisco, California,  
this 12<sup>th</sup> day of DECEMBER, 1978.

Robert B. Brown  
President

William J. Jones Jr.

Verizon L. Sturgeon

Robert D. Hall

Clair L. DeLoach  
Commissioners