

**ORIGINAL**

Decision No. 90147 APR 10 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARVIN T. HARMATZ, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 SOUTHERN CALIFORNIA EDISON )  
 COMPANY, )  
 )  
 Defendant. )

Case No. 10566  
(Filed May 11, 1978;  
amended November 13, 1978)

Marvin T. Harmatz, Attorney at Law,  
 for himself, complainant; and  
Varda M. Ullman, for complainant.  
William T. Elston, Attorney at Law,  
 for defendant.

O P I N I O N

In his complaint the complainant alleges that since January 3, 1978 the defendant has billed him incorrectly, inconsistently, and unfairly; has unlawfully and unreasonably refused his request that his meter be read and tested in his presence; and has denied that he be given reasonable access to the meter.

The complainant further alleges that on or about April 7, 1978 the defendant discontinued his service in retaliation for his lawful questioning of his bill and for his depositing payment for his bill in escrow with the Commission. The complainant sought an order requiring the defendant to bill him correctly; to make meters accessible to all customers so that they may verify the usage for which they are charged; upon a customer's request, to check and test meters in the presence of the defendant's customers, including the complainant; to offer a suitable and logical explanation to customers, including the complainant, for inconsistently high bills; and to pay the complainant \$500 in damages for inconvenience and humiliation the defendant has caused the complainant by reason of its unlawful and unreasonable acts.

The defendant denies that it has billed the complainant incorrectly, inconsistently, or unfairly, and alleges that all its billings to the complainant have been based on actual meter readings and have been accurately computed in accordance with

the defendant's applicable tariff, Cal. P.U.C. Sheet No. 5035-E, Schedule No. D-1. The defendant denies that it has unlawfully or unreasonably refused the complainant's request that the meter serving the complainant's apartment be read and tested in his presence. The defendant alleges that its representative arranged for the meter to be tested in the complainant's presence on Saturday, March 18, 1978 at 10:00 a.m.; that the complainant failed to appear at that time and place; and that the meter was tested, reading 5213, and found to be registering within the limits of accuracy prescribed by the defendant's tariff, Cal. P.U.C. Sheet No. 2754-E, Rule No. 17 (Rule 17). The defendant further alleges that the owner of the complainant's apartment complex has provided the defendant with keys to locked meter compartments on each floor of the building for meter reading and inspection purposes only, and that the defendant is precluded from providing the complainant with access to the meter. The defendant denies that it unlawfully or discriminatorily discontinued the complainant's service in retaliation for the complainant's lawful questioning of his bill or for depositing payment with the Commission.

The defendant alleges that the complaint does not state facts sufficient to constitute a cause of action, does not set forth any act or thing done or omitted to be done by the defendant, including any rule or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission, as required by Rule No. 9 of the Commission's Rules of Practice and Procedure. The defendant requests that the complaint be dismissed and that no relief be granted to the complainant.

3/30/79

By his amended complaint, the complainant restates the allegations in his original complaint and further alleges that on April 7, 1978 the defendant notified the complainant that he would have to deposit \$60 in order to have his service restored; that on June 2, 1978 the defendant threatened the complainant with disconnection of his service unless the complainant paid his account in full, and the complainant was given only three days to make the payment in full, although the only sum due the defendant by the complainant had theretofore been deposited with the Commission by the complainant; and that on November 6, 1978 the defendant again threatened to disconnect the service of the complainant unless and until the complainant's bill was paid, and the complainant was given one day to make the payment. The complainant seeks the same orders sought in his original complaint and also requests an order requiring the defendant to pay him the sum of \$10,000 for the inconvenience, humiliation, and discomfort it has caused the complainant by virtue of its violations of the complainant's rights.

A hearing was held, pursuant to the Commission's regular complaint procedure, before an assigned Administrative Law Judge on December 11, 1978 in Los Angeles, and the matter was submitted on that date.

On December 20, 1978, after the conclusion of the hearing, the complainant filed a "Petition to Set Aside Submission" and a "Petition for Proposed Report". Each petition contained a statement of facts but was not verified. The Petition to Set Aside Submission did not contain a statement of proposed additional evidence as required by the Commission's Rules. On December 27, 1978, the defendant filed an answer in

objection to both petitions. On December 29, 1978 the complainant filed a motion to strike the answer in objection. The complainant's motion is denied. After careful consideration of each and every allegation therein, the Petition for Proposed Report and the Petition to Set Aside Submission are denied.

Donald L. Milligan, a representative of the defendant, and Gloria M. Sinn, supervisor of the Santa Monica business office of the defendant, testified at the request of the complainant relating to a subpoena duces tecum that had previously been issued and served at the request of the complainant. The complainant testified for himself. The supervisor of the defendant's Santa Monica office, the supervisor of its field meter test department, and its budget and services manager for the Santa Monica District testified for the defendant.

The Commission records show that the complainant's check in the sum of \$28.19 was received at the Commission's Los Angeles office April 3, 1978, and the Trust Account Receipt MI No. 8616, dated May 8, 1978, shows that \$28.19 has been deposited by the complainant pending the conclusion of this case.

The complainant testified that he moved into his present one-bedroom apartment on January 3, 1978 and upon receiving his January bill in the sum of \$26.31, he talked to the residents of other one-bedroom apartments in the building in which he lived and found that their bills for the same period were substantially lower than his, so he concluded that his bill was higher than it should have been. He testified that he had a conversation with a representative of the defendant and stated that he desired to have his meter tested at a time when he was present. He stated that notwithstanding his request the meter was checked when he was not home and he had no advance notice of the time and place of the testing of the meter.

The complainant testified that he lives in a large apartment building and the defendant's meters for the tenants living on each floor in the apartment building are in a place which is kept locked and is inaccessible to the complainant or to the other tenants. He testified that he asked a representative of the defendant to permit him to have access to the area where the meters are located. The defendant's representative replied that the defendant has no authority to grant him access to such place and that only the owner or manager of the building would be able to permit him to have the access he requested.

The complainant testified that after he received an urgent notice to pay to avoid disconnection (Exhibit 5), showing the amount due to be \$28.19, he sent his check dated March 29, 1978 in the amount of \$28.19 to the Commission (Exhibit 4) which was in payment of his bill for the period January 24 to February 24, 1978 (Exhibit 3). He stated that on April 7, 1978, after he had received the notice to pay promptly to avoid disconnection, his electric service was shut off when he returned home from work about 6:00 p.m. and that the notice that service had been disconnected (Exhibit 6) was on his front door causing him embarrassment. He communicated with a representative of the defendant and the electric service was reinstated at approximately 8:30 p.m. on the same evening, two and one-half hours after it had been disconnected. He stated that when he sent his check in the amount of \$28.19 to the Commission, he did not write a letter accompanying the check, nor did he notify the defendant that he was making the deposit with the Commission.

The complainant further testified that in late May or June he received another notice similar to Exhibit 5, an urgent notice to pay to avoid disconnection. He stated that on November 6, 1978 he received a "final call" notice to pay within one day or his service would be disconnected (Exhibit 7), which was attached to his front door. His electric service, however, was not discontinued thereafter. He stated that since he filed a complaint in this case on May 11, 1978, his electric bills have been approximately one-half as much as they were prior to that time.

The complainant testified that in a conversation with the defendant's manager of its Santa Monica office, the manager stated that she did not know the money had been paid in escrow to the Commission. He testified that he was never required to pay any charge for reconnection of his service and was not required to deposit the \$60 requested by Exhibit 6. He stated that when he found Exhibit 7 on his front door indicating that his service would be disconnected unless he paid his bill, which was overdue, he then paid \$50.03 to the defendant.

The defendant's supervisor of its field meter test division testified that a meter test report (Exhibit 9) was made as a result of a meter test made by an employee of the defendant at the request of the complainant, and that the meter tested within the limits of accuracy prescribed by the defendant's Rule 17.

The manager of the defendant's Santa Monica office testified that as a result of a telephone call and request by the complainant, she went to the complainant's residence on April 10, 1978. She stated that she took the complainant to the place where his meter was situated, showed it to him, and

showed him that only his apartment was on that meter. She stated that the complainant has the connected load as set forth on Exhibit 8 for identification consisting of a refrigerator, range, garbage disposal, dishwasher, video recorder, two television sets, water heater, three 250-watt bath heaters, and space heating by electricity. She stated that, in her opinion, the appliances in the complainant's apartment are capable of consuming the electricity for which he has been charged.

The budget and services manager for the defendant's Santa Monica District stated that in a conversation with the complainant he told the complainant that he would have his meter tested at 10:00 a.m. on March 18, 1978 at which time the complainant said he would be present; the test was made at that time, but the complainant was not present. He testified that on April 7, after the complainant's electric service was disconnected, he ordered that it be reconnected. He further testified that on November 6, 1978 when there was an amount overdue by the complainant to the defendant for electric service provided, he thought that the complaint herein had been dismissed, but had been mistaken. He stated that the one-day notice (Exhibit 7) was given pursuant to his order, but the notice should have been for a longer period than one day.

Discussion

There is no evidence to indicate that the defendant had knowledge of the fact that the complainant had deposited the payment with the Commission of an amount equal to the bill for the period January 24 to February 24, 1978 when the defendant disconnected the complainant's service on April 7 for two and one-half hours, from 6:00 p.m. to 8:30 p.m. It is reasonable



to conclude that the defendant did not have such knowledge and that its disconnecting the service under such circumstances was inadvertent. In addition, the evidence shows that the other conduct of the defendant which is complained of by the complainant was not intended for the purpose of harassing the complainant.

The complainant's request that his meter be accessible to him is not within the power of the defendant to grant, and the defendant has no duty to grant such a request; therefore, the request should be denied. Complainant should have access to his meter to be able to check the meter readings but arrangements for such access must be made with the landlord and not the utility.

The defendant has tested the complainant's meter at a time and date when the complainant stated he would be present, but was not present.

The electrical equipment at the premises of the complainant is sufficient to use the electric energy for which he has been billed. There were no abnormal conditions which would cause waste of electric energy billed to the complainant. It appears the complainant was charged for electric energy provided by the defendant in accordance with the defendant's filed tariffs, and the meter registering the complainant's consumption of electric energy was tested and found accurate.

Since the hearing the Chief Administrative Law Judge has received a letter from defendant dated January 8, 1979 stating that: (1) it has no objection to the amount of \$28.19 which complainant deposited with the Commission being returned to the complainant pursuant to an order of the Commission, (2) the requirement of a deposit by the complainant has been waived, and (3) it is the policy of the complainant's landlord not to allow keys or access to the meter box in the apartment building, and it is beyond the authority of the defendant to force the landlord to provide keys to his tenants. Also, defendant sent a letter of apology to the complainant for any inconvenience he may have

experienced. The letter from the defendant to the Chief Administrative Law Judge dated January 8, 1979 and the letter attached thereto from defendant to complainant also dated January 8, 1979 have been received in evidence as Exhibit 10.

When a complainant asks for damages other than a return of monies paid to the defendant, it seeks a remedy not within the power of the Commission to accord. Money damages are a matter for the courts. (Packard v Pacific Tel. & Tel. Co. (1972) 73 PUC 307.)

Findings

1. The complainant has, since January 3, 1978, resided in a one-bedroom apartment, Apartment No. 823, 2700 Neilson Way, Santa Monica, California 90405, and is provided electric service by the defendant.

2. The electric equipment at the premises of the complainant is sufficient to use the electric energy for which he has been billed. There were no abnormal conditions which would cause waste of electric energy billed to the complainant. The meter measuring the electricity provided the complainant was shown to be accurate and was tested by the defendant on a date and at a time when the complainant was notified and had an opportunity to be present.

3. The defendant has advised the Commission that it does not object to the payment to the complainant of the sum of \$28.19 heretofore deposited by complainant and impounded by the Commission on May 8, 1978 by Trust Account Receipt MI No. 8616.

4. The defendant has not refused the complainant's request that the meter be read and tested in the complainant's presence, and does not have the authority to grant the complainant access to the meter in question.

Conclusions

1. Complainant is entitled to reparation in the sum of \$28.19.
2. The sum of \$28.19 heretofore deposited by complainant with the Commission should be disbursed to complainant.
3. Defendant's records should be revised to show that such sum is not due and owing by complainant to defendant.
4. The Commission does not have the jurisdiction to award monetary damages for inconvenience, humiliation, or discomfort.

O R D E R

IT IS ORDERED that:

1. The deposit made by complainant with the Commission in the sum of \$28.19 with respect to this complaint shall be disbursed to complainant Marvin T. Harmatz.
2. Defendant Southern California Edison Company shall promptly revise its accounts receivable records to show that the sum of \$28.19 which is the subject of this complaint is not due and owing by complainant to defendant.

3. In all other respects the relief requested by complainant is denied.

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

Dated at San Francisco, California, this 10<sup>th</sup> day of APRIL, 1979.

John E. Byrne  
President  
Richard D. Ferguson  
Richard W. Howell  
Alvin T. Smith  
James M. Smith  
Commissioners