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Decision No. 90576 JUL 17 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KENT C. McKINNEY Complainant, vs. PACIFIC GAS AND ELECTRIC COMPANY, Defendant.	Case No. 10648 (Filed August 15, 1978)

ORDER MODIFYING DECISION NO. 90258
AND DENYING REHEARING

An application for rehearing of Decision No. 90258 has been filed by Kent C. McKinney, the Complainant in this proceeding, (Complainant) and a response thereto has been filed by Pacific Gas and Electric Company (PG&E). We have carefully considered each allegation of error in said application and the response made thereto and are of the opinion that no good cause for granting rehearing has been shown. However it does appear that the Complainant may not fully understand the basis for our denying relief in this proceeding. In this complaint there are allegations of overcharging through improper billing and a request for a refund of such overcharges. This constitutes an action for reparations under Section 734 of the Public Utilities Code (White vs. S.C. Edison Co., (1962) 59 CPUC 740; Chromcraft Corp. vs. Davies Warehouse Co., (1960) 57 CPUC 519, 521).

The allegations in this complaint raise two issues, whether PG&E had in fact improperly calculated the Complainant's bill, and, if so, whether that fact resulted in an overcharge to the complainant which could be refunded as reparations without discriminating against PG&E's other customers.

As we have repeatedly held, in a complaint seeking reparations the burden is on the complainant to show, by affirmative evidence, that an injury in a certain amount has been incurred and that the rate or billing he alleges to be the correct one is both reasonable and nondiscriminatory (Southern Pipe and Casing Co. v. Pacific Elec. Rwy. Co., (1950) 49 CPUC 567; Pillsbury Mills Inc. v. Southern Pacific Company (1946) 46 CRC 564; Richardsen v. Pacific Motor Trucking, (1965) 64 CPUC 398).

As we pointed out in Decision No. 90258, the Complainant here has shown that PG&E did not comply with its own tariff when it prorated his bill rather than prorating his winter lifeline allowance. However, he failed to establish that he had been overcharged as a result of PG&E's method and he also failed to show that his suggested method of prorating lifeline allowances is both reasonable and nondiscriminatory. Therefore, relief was denied.

In determining that the Complainant's suggested method of prorating lifeline allowances is unreasonable, we pointed out that, under that method, "... allowance for space heating can be allocated to the nonspace heating fraction of the transitional billing period. No grounds have been offered to justify this result, which was not contemplated in the Commission's calculation of lifeline allowances ..." (Decision No. 90258, page 4, mimeo). That the Complainant's method worked in that manner was pointed out in the testimony of PG&E's rate expert as follows:

> "... the method you [Complainant] have suggested is a method which always allocates the 80 therms allowance to the winter usage, and to the winter lifeline rates even though that usage may have occured during the summer period ..." (Transcript, page 17)

We also determined that using the Complainant's method would give a "... special advantage to customers with mid-month reading dates." (Decision No. 90258, page 5 mimeo, fn. 1). This special

advantage, which could result in different charges for the same usage merely because of different meter reading dates, is discriminatory. We will clarify our determination on this issue by adding a finding and conclusion to our decision hereinafter.

This discriminatory effect is well established by the evidence. Exhibit No. 3 shows, in a chart form, "... how [using Complainant's method] customers with meter readings near the middle of the month will receive greater lifeline allowances than other customers ..." (Exhibit No. 3, page 1). Exhibit No. 4, shows how such a customer with mid-month meter reading could receive up to seven months of winter lifeline allowance whereas a customer with end-of-month readings receives only a six month allowance. Exhibit No. 5 shows how such an advantage could amount to a considerable difference in charges between the use of one method or another. Exhibit No. 6, the prepared testimony of PG&E's rate expert, explains how the charts and proration comparisons in Exhibits 3, 4 & 5 quantify this special advantage. (Exhibit No. 6, page 2, lines 11-16, page 4, lines 8-12). This is persuasive evidence that using the Complainant's method would be unduly discriminatory. Such discrimination is prohibited by Sections 734 and 453(a) of the Public Utilities Code.

Therefore,

IT IS ORDERED that Decision No. 90258 is hereby modified by adding finding No. 5 and conclusion No. 2a as follows:

Finding 5. Complainant's method of proration gives a special advantage to customers with mid-month meter reading.

Conclusion 2(a). Complainant's method of proration is unduly discriminatory. Sections 734 and 453(a) of the Public Utilities Code prohibit such discrimination.

IT IS FURTHER ORDERED that rehearing of Decision No. 90258, as supplemented and modified herein, is hereby denied.

PG&E shall file the revised tariffs required by Ordering Paragraph 2 of Decision No. 90258 within 60 days from the date hereof.

The effective date of this order is the date hereof.
Dated at San Francisco, California, this 17th day of JULY, 1979.

President

Commissioners