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Decision No. 91375 MAR 4 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KENT C. McKINNEY, an individual, TOWARD UTILITY RATE NORMALIZATION, a non-profit organization, Complainants, v. PACIFIC GAS AND ELECTRIC COMPANY, a California corporation; SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation; SOUTHERN CALIFORNIA GAS COMPANY, a California corporation; and SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation; Defendants.	Case No. 10737 (Filed April 30, 1979)

ORDER OF DISMISSAL

Kent C. McKinney (McKinney), an individual, and Toward Utility Rate Normalization (TURN), a nonprofit organization representing consumer interests (complainants), allege in their complaint that Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCal Gas), and Southern California Edison Company (Edison), which operate as public utility gas and electric companies (defendants), have violated their tariffs filed with the Commission with respect to the manner in which bills are prorated for partial monthly usage of monthly gas and electric lifeline allotments.

TURN also requests that Ann Murphy, an attorney at law in the employment of TURN, be appointed as special counsel. TURN alleges that it represents the interests of all of the people of the State; that representation of the public by the Commission staff ~~counsel~~ in a prior proceeding (McKinney v PG&E, Case No. 10648) was inadequate; and that TURN has insufficient funds to pay Ann Murphy any counsel fees in the instant proceeding.

Defendants deny the material allegations of the complaint and move for dismissal of the complaint and for the appointment of special counsel. denial of the request

Background

Case No. 10648 (McKinney v PG&E) initially raised the question of an appropriate method of prorating gas bills. McKinney alleged that PG&E had improperly prorated his gas bill and thereby had overcharged him. As a basis for his overcharge allegation, McKinney had developed a proration method that he claimed was correct under the then applicable provisions of PG&E's gas tariff. Decision No. 90258, issued May 8, 1979, denied relief on the basis that, while PG&E had in fact used a method which did not agree with its tariff, no overcharge had resulted. McKinney's method was found to be unreasonable and discriminatory. PG&E was ordered to amend its gas tariff to apply in the manner which the decision found reasonable.

McKinney's petition for rehearing of Decision No. 90258 was denied by Decision No. 90576. McKinney's petition for a writ of review and/or mandate (S.F. 24057) was denied by the California Supreme Court on November 29, 1979. (That order was final December 29, 1979.)

Advice Letter No. 1052-G was filed by PG&E in compliance with the order in Decision No. 90258 to put into effect the method of prorating gas lifeline allowances found reasonable in that decision. The advice letter was suspended in order to review the protest filed by TURN alleging that the new proration method constituted a rate increase. Resolution No. G-2312 found the protest to be without merit and allowed the tariff revision to go into effect.

On November 21, 1979 TURN and McKinney filed a petition for rehearing and suspension of Resolution No. G-2312. By Decision No. 91224 dated January 8, 1980 in Application No. 59294, the Commission denied the request for rehearing or suspension of Resolution No. G-2312.

Issues in Case No. 10737

The complaint alleges that PG&E improperly prorated lifeline allowances for space heating in the period since the inception of lifeline rates on or about July 12, 1976 through January 5, 1979. Complainants assert that PG&E's schedules prorated dollar amounts according to the number of summer and winter days in the billing period, whereas the schedule provided for computation based on usage. Complainants assert that PG&E's method of computation produced higher customer charges than the method of lifeline allowance proration specified in the filed tariffs.

Those allegations are essentially the same as those made by McKinney in Case No. 10648. At the time Case No. 10737 was filed, McKinney's earlier complaint had not been decided.

Other defendants are alleged to have computed gas and electric bills in a similar manner as PG&E which, assertedly, are violations of their tariffs resulting in overcollections.

Discussion

The issues raised in Case No. 10737 with respect to the methods employed by PG&E in prorating lifeline amounts in connection with billing for gas usage were decided in Case No. 10648.

Decision No. 90576 in Case No. 10648, which modified Decision No. 90258 and denied rehearing of that decision, stated as follows:

> "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).
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> "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 therm allowance to the winter usage, and to the winter lifeline rates even though that usage may have occurred during the summer period...' (Transcript, page 17)

"We also determined that using 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, and 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."

Decision No. 90258 was modified by Decision No. 90576 by adding Finding 5 and Conclusion 2(a) 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.

Defendants ~~PG&E, SoCal Gas, and Edison~~ assert that Decisions Nos. 90258 and 90576 are dispositive of all allegations raised against them in Case No. 10737. They argue that, even assuming that they should have prorated transitional bills in a different manner, complainants' method of prorating such bills has been found to be unreasonable, and the Commission has demonstrated that prorating bills in the manner found reasonable produces a result which is virtually identical to the result which complainants allege defendants have been using. Moreover, defendants assert that the Commission has found that the method used by defendants produced no unlawful charges.

Decisions Nos. 90258 and 90576 directed PG&E to change its tariff provision so that its method of prorating transitional bills and its tariff provision are consistent. PG&E filed Advice Letter No. 1052-G, in response to that directive, which was approved by Resolution No. G-2312 (supra). On October 19, 1978 SoCal Gas filed Advice Letter No. 1154 in which it changed its tariff to allow proration of the bill itself as opposed to the lifeline allowance. SoCal Gas asserts that its tariff is consistent with the method of prorating used in its bill compilation. Similarly, Edison asserts that its tariff is consistent with its method of prorating transitional bills.

We have carefully considered all of the pleadings in Case No. 10737 and conclude that the complaint should be dismissed. Defendants' methods of prorating lifeline allowances in transitional bills are in conformance with their tariffs; the method of computing such bills in the period covered in the complaint was found reasonable in

Decisions Nos. 90258 and 90576; those decisions found that no unlawful charges resulted from the billing methods employed by PG&E, which are similar to methods employed by other defendants in the period covered by the complaint; therefore, the complaint in Case No. 10737 presents no unresolved issues not decided in principle in Decisions Nos. 90258 and 90756,

Findings of Fact

1. Defendants' methods of computing charges involving lifeline allowances in transitional billing periods between July 12, 1976 through January 5, 1979 were found reasonable with respect to PG&E in Decisions Nos. 90258 and 90576 in Case No. 10648.

2. Decision No. 90576 found that complainant McKinney's method of proration gives a special advantage to customers with mid-month meter readings and concluded that complainant McKinney's method of proration is unduly discriminatory.

3. Decision No. 90258 directed PG&E to refile its tariff in order to make its tariff conform to its method of bill proration found reasonable in that decision. PG&E has complied with that directive by filing Advice Letter No. 1052-G.

4. Other defendants' tariffs contain provisions which are in conformance with their methods of prorating transitional bills.

5. On November 29, 1979 the California Supreme Court (in S.F. 24057 McKinney et al. v PUC, PG&E real party in interest) denied complainants' request for a writ of review or writ of mandate with respect to Decisions Nos. 90258 and 90576.

6. This Commission on January 8, 1980 denied complainants' petition for rehearing or reconsideration of Resolution No. G-2312 which allowed Advice Letter 1052-G to go into effect (Decision No. 91224 in Application No. 59274).

Conclusions of Law

1. The issues raised by complainants in Case No. 10737 were decided in Decisions Nos. 90258 and 90576 in Case No. 10648.

2. The issues raised in the complaint with respect to other defendants were decided in principle in Decisions Nos. 90258 and 90576.

3. The complaint in Case No. 10737 should be dismissed.

4. The request for appointment of special counsel is moot and should be denied.

IT IS ORDERED that:

1. The complaint in Case No. 10737 is dismissed.

2. The request for appointment of special counsel in Case No. 10737 is denied.

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

Dated MAR 4 1980, at San Francisco, California.

President

Commissioners