

ORIGINAL

Decision No. 92355 OCT 22 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Barney Feldman, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 Southern California Gas )  
 Company, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

(ECP)  
 Case No. 10857  
 (Filed May 2, 1980)

O P I N I O N

Barney Feldman (complainant) owns property at 2646, 2648, and 2656 Aberdeen Avenue, Los Angeles. The property consists of three residential units in a single structure and is served gas by Southern California Gas Company (SoCal) through a common meter.

Complainant describes his property as follows:

- 2646 Aberdeen - 800 sq.ft. (apartment over 3-car garage)
- 2648 Aberdeen - 2,200 sq.ft. (2 story unit)
- 2656 Aberdeen - 2,300 sq.ft. (2 story unit)

Until 1980, SoCal had billed complainant as if his property were a single-family dwelling. As a consequence, complainant had been deprived of the three lifeline allowances available to him under SoCal's Schedule No. GM (Multi-Family Service). Instead he had been billed under Schedule No. GR (Residential Service) and had been allowed only a single lifeline allowance.

When he called this situation to the attention of SoCal's district office, SoCal recomputed his bills back to October 22, 1976, and granted him a credit of \$203.20.

SoCal has thus resolved the first of complainant's grievances. Complainant also alleges that his 3-unit dwelling is entitled to the same lifeline allowances as 3 single-family residences would receive. The following table contrasts the lifeline allowances provided by SoCal's tariff sheets to single-family residences and residential units in multiple dwellings for the climate zone applicable to complainant:

<u>End-Use</u>	<u>Monthly Therm Allowances</u>	
	<u>Per Residential Unit</u> <u>(Schedule No. GM)</u>	<u>Per Residence</u> <u>(Schedule No. GR)</u>
<u>Space Heating</u>		
Summer (May 1 through October 31)	0	0
Winter (November 1 through April 30)	33	55
Basic Allowance	21	26
<u>Basic Plus Space Heating</u>		
Summer (May 1 through October 31)	21	26
Winter (November 1 through April 30)	54	81

Thus, complainant asserts that he should receive winter lifeline allowances of 243 therms (3 x 81) instead of the allowances of 162 therms (3 x 54) he is entitled to receive under Schedule No. GM and with which SoCal has now credited him. In support of his contention he cites Public Utilities Code Sections 451, 453(a), and 739(a) and (c). Suffice it to say that the lifeline allowances indicated above are those required by the Commission in Decision No. 86087, dated July 13, 1976, in Case No. 9988. (80 CPUC 182.) Although Section 739 does not specifically authorize the Commission to distinguish between individually metered residential users and unmetered residential users, such a distinction is consistent with the purposes of the statute, is within our general rate setting powers, and is otherwise reasonable. When we dealt with this issue in Case No. 9988 we said:

"Earlier we commented on the rule of statutory construction that requires that a statute be given a reasonable and common sense interpretation, one that is practical rather than technical, and will lead to a wise policy rather than to mischief or absurdity. The lifeline statute requires the Commission to designate a lifeline volume of gas and quantity of electricity for the average residential user. In the preamble to the statute the Legislature declared that it enacted the act 'in order to encourage conservation of scarce energy resources and to provide a basic necessary amount of gas and electricity for residential heating and lighting at a cost which is fair to small users'. Many residential units of multi-unit complexes are not individually metered. The residents of such unmetered units have no direct monetary incentive to be conservative in their use of utility services. Allowing the same volumes and quantities for such unmetered units could negate the expressed purpose of the act by encouraging wasteful use of energy."  
(80 CPUC at 190.)

This interpretation was issued more than four years ago and the Legislature has not seen fit to overrule it. We reaffirm our interpretation and hold that it was and is a reasonable construction of the statute.

For an affirmative defense to the complaint, SoCal cites Section 1702 of the Public Utilities Code, which states:

". . . No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas...corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city...within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas...service."

It requests that the complaint be dismissed for failure to comply with Section 1702. Complainant filed a response on October 9, 1980. ✓

Since we have held that the lifeline allowances set in Case No. 9988 were based on a lawful interpretation of Section 739, it follows that complainant's grievance is only as to the reasonableness of the rates derived from those allowances. Section 1702 prevents us from entertaining complaints challenging the reasonableness of rates, except in circumstances not existing here. We have no choice but to dismiss the complaint as SoCal requests.

Findings of Fact

1. SoCal has recalculated complainant's bills back to October 22, 1976, and has reduced his account by \$203.20. This amount reflects the appropriate lifeline allowances for his residential units under SoCal's Schedule No. GM (Multi-Family Service).

2. Complainant has deposited with the Commission checks for \$152.20 and \$36.52 pursuant to the disputed billing rule.

Conclusions of Law

1. SoCal has settled the disputed bill. This issue is now moot.

2. Complainant's funds on deposit with the Commission should be disbursed to SoCal.

3. The Commission may, under Section 739, lawfully distinguish between individually metered residential users and unmetered residential users in multiple dwellings when establishing lifeline allowances.

4. The general rule is that in all collateral actions or proceedings, the orders and decisions of the Commission which have become final shall be conclusive. (Section 1709.)

5. Decision No. 86087 is a final rate decision of the Commission.

6. The Legislature has provided for collateral attack by complaint of final rate decisions only in the limited circumstances described in Section 1702.

7. Complainant's pleading attacking the reasonableness of the lifeline allowances established by Decision No. 86087 does not qualify to be entertained under Section 1702.

8. Under Section 1702 we may not entertain such a complaint unless it is signed by 25 actual or prospective gas purchasers or by certain designated officers.

9. Since the complaint is not signed in the manner required by Section 1702, we must dismiss the complaint.

O R D E R

IT IS ORDERED that:

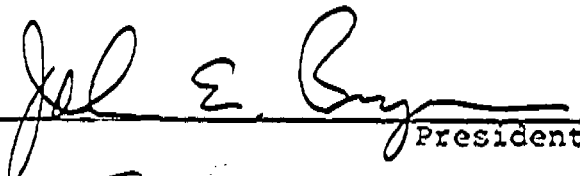
1. Case No. 10857 is dismissed.

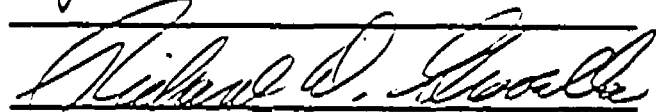
2. Complainant's deposits totaling \$188.72 as of today's date, together with any other deposits made by complainant in connection with this proceeding, shall be disbursed to Southern California Gas Company.

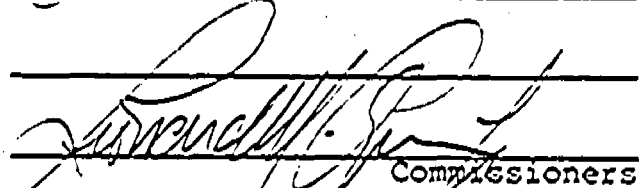
The effective date of this order shall be thirty days after the date hereof.

Dated OCT 22 1980, at San Francisco, California.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

  
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President

  
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Commissioners

Commissioner Claire T. Dadrick, being necessarily absent, did not participate in the disposition of this proceeding.