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ORIGINAL

Decision 93482 SEP 1 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Arno S. Krakauer, Complainant, vs. Pacific Gas and Electric Company, Defendant.	Case 10941 (Filed January 15, 1981)

Arno S. Krakauer, for himself, complainant.
Daniel E. Gibson and Bernard J. Della Santa, Attorneys at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

Complainant alleges that lifeline allowances are unfairly assigned in the Pacific Gas and Electric Company (PG&E) service area in contrast to the allowances authorized in other utilities' service territories.

Specifically, complainant owns a 12-unit multifamily complex in San Jose, California. Each unit of this complex receives separately metered gas service from PG&E. In addition, there is a separate gas meter for a common hot water heater. The individual units use gas only for space heating. Complainant notes that his apartment complex, through a central facility, provides hot water to tenants in his multifamily unit. In situations where the hot water heating is centrally metered but the space heating is individually metered, as is the case with complainant's apartment complex, PG&E

is not authorized to grant a lifeline allowance to the central meter while it is authorized to provide lifeline allowances, including an allocation for hot water heating, to each individual meter.

Complainant contends that this failure to fairly assign lifeline allowances to the provider of service, i.e., the landlord providing central facility water heating, causes major differences between complexes in total bills for the same services depending on how each service is metered. Secondly, complainant argues that this unfair penalty imposed upon central hot water installations promotes the use of less efficient individual heaters. Finally, complainant maintains that the authorization of blanket hot water heating allowances for tenants with a nonexistent need encourages energy waste for other services actually used by such individuals. Complainant also notes that by Decision (D.) 92498 issued December 5, 1980, Southern California Gas Company was ordered to modify its tariff provisions applicable to the lifeline allowance for central facilities to grant the party providing the service the allowance.

Complainant seeks the following relief:

1. That PG&E tariff provisions applicable to the lifeline allowances for central facilities be modified in accordance with Commission staff recommendations contained in (PG&E) Application (A.) 59695, to allocate lifeline allowances and rates to the party providing the service.
2. That PG&E recalculate complainant's gas bill retroactive to February 1, 1978, for complainant's apartment complex at 1070 Oakmont Drive, San Jose, using the modified lifeline allowances requested by complainant, and that the excess moneys received by PG&E be refunded to complainant forthwith. Complainant estimates that this refund will amount to approximately $1,000-$1,500, depending on the effective date of a ruling on this complaint.

By D.93198 issued June 16, 1981, in A.60263, the Commission, among other things, and in response to recommendations of the staff and intervenor Krakauer, directed PG&E to modify its tariffs applicable to central facilities to allocate lifeline allowances and rates to the party providing the service. As a consequence of the Commission's action, complainant's request for a tariff modification has been granted; and any similar issue raised by the instant complaint has been rendered moot. Therefore, the sole remaining issue before us involves complainant's request for recalculation of his bill retroactive to February 1, 1978.

Public hearing was held in the matter on May 20, 1981. Complainant appeared on behalf of himself and basically requested some form of remuneration for his time expended in getting PG&E to modify its tariffs to more equitably provide allowances for central facilities. Complainant argues that his request for compensation was prompted by PG&E's excessive delay in responding to his complaint which was brought to its attention as early as February 1978. Complainant contends that the Commission should direct PG&E to compensate him in some form for his time and trouble as the only means by which it can insure that PG&E will not employ delaying tactics to wear out complainants who have meritorious claims.

Counsel for PG&E argues that complainant was served under PG&E's tariffs, duly filed pursuant to Commission authorization. PG&E contends that any refund covering a period of time prior to the effective date (June 16, 1981) of revised tariffs applicable to central facilities lifeline allowances authorized by D.93198 would constitute retroactive ratemaking and would be illegal. While PG&E sympathizes with the time and effort expended by complainant, they maintain that there is simply no provision in the Commission's rules which would allow him to be compensated.

Proposed #6

While complainant is to be commended for his diligent effort to establish a more equitable allocation of lifeline allowances for central facilities, there is no basis in law or equity for granting the requested remuneration. From a legal perspective, recalculation of complainant's bill from February 1978, using tariffs which became effective on June 16, 1981, would clearly constitute retroactive ratemaking. Furthermore, it has long been established that this Commission cannot grant attorney's fees or compensation for litigants, except in very limited situations covered by provisions of the Public Utility Regulatory Policies Act (PURPA) or by precedents established in CLAM & TURN v PUC (1979) 24 Cal 3d 891. Complainant does not allege that he is entitled to attorney's fees based on either of these exceptions.

From an equitable perspective, complainant might be entitled to some reparation or rebate on his bill if it could be demonstrated that PG&E had deliberately ignored the clear and manifest intent of a particular tariff provision. While we acknowledged in D.93198 that failure to authorize PG&E to provide a lifeline allowance for central facilities was an oversight on our part, and while complainant might argue that since February 1978, PG&E has ignored the clear equities of the situation, both PG&E and Toward Utility Rate Normalization (TURN) raised arguments in A.60263 in opposition to the proposal eliminating the hot water allowance in tenants' lifeline amounts while providing the landlord a hot water lifeline allowance for his central facility.

PG&E was opposed to decreasing the tenants' allowance because to do so would break down a blanketed allowance currently given to all individually metered single-residential units using gas. Once a blanketed allowance is imposed, PG&E contended that its availability should not be changed in a Gas Adjustment Clause (GAC) case to depend on conditions behind the meter. For instance, the

basic gas and electric allowances both include cooking, although the vast majority of single-family residential customers will only have one or the other. With the blanketed allowance, however, each combined electric and gas ratepayer gets an allowance for both. In that respect, the hot water allowance for the tenant in a multifamily unit is no different from the cooking allowances. Since the allowance has been blanketed, PG&E argued that the Commission should not begin to condition it in a GAC case upon the specific circumstances surrounding individual customers. TURN argued that no change should be made until all affected consumers have been provided notice and an opportunity for a hearing. Also, TURN was concerned that lowered rates for landlords might take away some incentive to convert to solar.

In view of its opposition to complainant's tariff modification proposal, and given the colorable arguments presented in support of its opposition, PG&E was under no equitable compulsion to accede to complainant's request prior to a Commission directive ordering the tariff change. Therefore, based upon all of the foregoing, we will deny complainant's request for compensation and Case (C.) 10941 will be denied.

Findings of Fact

1. Complainant owns a 12-unit multifamily complex.

2. Each unit receives separately metered gas service from PG&E; the individual units use gas only for space heating.

3. The complex has a separate gas meter for a central hot water heater.

4. Complainant seeks compensation for time and effort expended in getting PG&E to modify tariff provisions applicable to lifeline facilities for central facilities.

5. Complainant did not base his request for compensation on precedents established in the CLAM case.

Conclusions of Law

1. Recalculation of complainant's bill from February 1978, using tariffs which became effective on July 16, 1981, constitutes retroactive ratemaking and is precluded by law.

2. The provisions of PURPA respecting intervenor fees are not applicable to the instant complaint.

3. Complainant's request for compensation should be denied.

O R D E R

IT IS ORDERED that the complaint in C.10941 is denied. dl

This order becomes effective 30 days from today.

Dated SEP 1 1981, at San Francisco, California.

John E. Bryson
President

Commissioners