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Decision 96-03-003 March 13, 1996

H O I H I O

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Northern California
Presbyterian Homes, Inc.

Complainant,

vs.

Pacific Gas & Electric Company,

Defendant.

ORIGINAL

Case 94-09-037

(Filed September 15, 1994)

Brian Hines, Yoniko Westland, and Jane Diephuis,
for Northern California Presbyterian Homes,
Inc., Complainant,
Terrie L. Robinson, Mark R. Huffman, Harry W.
Long, Attorneys at Law, for Pacific Gas &
Electric Company, defendant.

In compliance with Decision (D.) 92-04-003, and before
the one-year implementation period for processing account changes
had expired, PGE changed NCH's Account No. 94-02-2902 from
general service commercial rate schedule A-10 to residential rate
Schedule R1R. This change was effective April 5, 1993.

Account No. 94-02-2902 is for polyphase service for
residential end use. The service is to the common area of the
apartment complex.

In PGE's 1992 Rate Design Window Proceeding D.92-04-003, the
Commission authorized, among other things, making polyphase service
applicable to residential rates. As a result, customers receiving
polyphase service and having residential end uses were to be placed
on residential rate schedules instead of the general service
commercial rate schedules some were formerly on. The Commission
allowed a one-year implementation period ending May 1, 1993 for
PGE to identify customers eligible for residential service under
this revised tariff and complete processing of account changes.
See D.92-04-003, 44 CENC2d pp. 168-171. As a result of
D.92-04-003, Eastern Park Apartments was ineligible to continue on
general service commercial rate Schedule A-10.

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OPINION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Summary

Northern California Presbyterian Homes, Inc. (NCPH) seeks a refund of \$13,203.71 from Pacific Gas and Electric Company (PG&E) for service provided to Eastern Park Apartments, a nonprofit senior housing project. NCPH alleges that it was not notified by PG&E of a rate schedule change and thus was not given an opportunity to select the lowest cost rate schedule. The request for a refund is denied.

Procedural Schedule

An evidentiary hearing was held on March 22, 1995, in San Francisco. Opening briefs were filed on April 25, 1995. Reply briefs were filed on May 19, 1995.

Facts

In compliance with Decision (D.) 92-04-063, and before the one-year implementation period for processing account changes had expired, PG&E changed NCPH's Account No. NRG-02-59302¹ from general service commercial rate Schedule A-10 to residential rate Schedule EITB. This change was effective April 5, 1993.

¹ Account No. NRG-02-59302 is for polyphase service for residential end use. The service is to the common areas of the apartment complex.

In PG&E's 1992 Rate Design Window Proceeding D.92-04-063, the Commission authorized, among other things, making polyphase service applicable to residential rates. As a result, customers receiving polyphase service and having residential end uses were to be placed on residential rate schedules instead of the general service commercial rate schedules some were formerly on. The Commission allowed a one-year implementation period ending May 1, 1993 for PG&E to identify customers eligible for residential service under this revised tariff and complete processing of account changes. See D.92-04-063, 44 CPUC2d pp. 168-171. As a result of D.92-04-063, Eastern Park Apartments was ineligible to continue on general service commercial rate Schedule A-10.

The refund requested by NCPH reflects the difference between Schedule E1TB and Schedule E-8 for the period April 15, 1993 to March 17, 1994. NCPH contends that had PG&E adequately informed it of available rate options, NCPH would have selected Schedule E-8 and not remained on Schedule E1TB, the schedule that PG&E placed on the account on

PG&E states that NCPH was sent a letter dated May 10, 1993 and a rate analysis for Account No. NRG-02-59302. The analysis was a comparison of NCPH's bills under its then-current residential rate schedule E1TB, to other residential rate schedules, including rate schedule E-8. The rate analysis shows that the account was then on rate schedule E1TB. The letter states that if NCPH wanted to be changed to a different residential rate schedule, NCPH was to sign the letter and return it to PG&E. PG&E did not receive a response from NCPH, and Brian Hines, the energy consultant for NCPH, testified that during an annual review of utility bills, he noted a 28% increase in the account compared to the previous year. He sent a letter dated February 8, 1994 to PG&E requesting information. PG&E responded with a copy of its May 10, 1993 letter to NCPH and rate analysis stating: "Since we did not receive a response from NCPH requesting to go to the optimal E7 or E8 rate, we were obligated to put them on the basic E1TB rate."²

PG&E's explanation as to why it did not automatically transfer the account to Schedule E-8 is that rate Schedule E-8 is a seasonal rate schedule. PG&E only changes customers to this rate schedule with their permission, as only the customer is able to determine whether future usage patterns will remain the same and

² It can be seen from PG&E's rate analysis that, based on 12 months of prior recorded usage, Schedule E-8 is the least costly. However, PG&E's analysis does not flag any schedule as being the "best" schedule for the customer.

make the seasonal schedule a more economical rate schedule. A customer may change seasonal usage patterns by changing appliances or usage habits. If so, rate schedule E-8 may prove to be more costly than rate schedule BITB. According to PG&E, only the customer can make that determination since only the customer can determine whether its future usage patterns would make this rate schedule the most economical.

NCPH does not contend that PG&E should have automatically placed the account on schedule E-8. NCPH knows that the tariff rules do not require PG&E to do so. However, NCPH argues that it should have been given adequate notice and opportunity to select the lowest cost rate schedule.

NCPH contends that it did not receive PG&E's May 10, 1993 letter and rate analysis. NCPH's witnesses, Yumiko Westland, Director of Facilities, and Jane Diephuis, Manager of Eastern Park Apartments, testified that as a matter of practice, when a letter concerning "unclear" energy issues is received at the facility, it is forwarded by the Manager to the Director of Facilities, who in turn forwards it to the Energy Consultant. Thus, if the notice had been received, there would be a copy in all three files. Their files do not contain this notice. According to NCPH's witnesses, it is their practice to handle correspondence from PG&E in this manner.³

NCPH submits that it is difficult to prove that one did not receive something in the mail; however, NCPH believes that its past responses to other PG&E correspondence should be considered evidence that NCPH would have responded to PG&E's May 10, 1993 letter and rate analysis had it been received.

³ PG&E points out that NCPH, while asserting that it did handle correspondence from PG&E in this manner, did not during the hearing introduce evidence of this practice.

Further, NCPH points out that PG&E's May 10, 1993 letter contains statements that a lay person would find confusing:

"PG&E periodically reviews customer accounts to ensure that service is being provided under the most economical rate schedule. We have reviewed your electric account to determine if you are on the most favorable rate. If your current rate is indicated as best, you are on the lowest rate available to you and no rate change is needed." (PG&E letter dated May 10, 1993.)

NCPH contends that the letter, even if received, would give the impression that PG&E had selected the lowest cost rate.

In response to NCPH's assertions that it did not receive adequate notice of the rate schedule change, Mary Camby, a PG&E tariff analyst, testified that in addition to the May 10, 1993 letter and analysis, for the period of time in question, April 1993 to March 1994, PG&E sent the following bill envelope inserts and bill messages to its customers:

"A. September 1992 Residential Customer Billing Insert

In its September 1992 billing insert to inform customers whose accounts would be changed to residential rates pursuant to D.92-04-063, PG&E provided examples of residential polyphase equipment and residential second meters that would trigger a change to residential rates. The billing insert stated instructions on how to find out if this change to residential rates applied to the customer. The customer was instructed to contact PG&E if the description of residential polyphase equipment for which the customer would be receiving polyphase service or residential second meters applied to the customer. The insert also provided the address, telephone number, and toll-free number for calling the local PG&E office for more information.

B. Monthly Back of Bill Message Beginning August 1992.

Since August of 1992, PG&E has included a monthly statement on its bills which included the following: Rates and Optional Rates. Rate schedules and rules are available at PG&E customer services offices during their regular business hours, Monday through Friday. Optional rates are available to many customers and may lower your PG&E bills. To find out if you have options available, call your PG&E office at the number shown on the front of this bill.

C. Semi Annual Front of Bill Message Beginning October 1992

Beginning in October of 1992 and continuing every March and September thereafter, PG&E has included a semi-annual statement on the front of its bills that tells customers that there may be more economical rate options available to them. The bill message states the following:

Optional rates are available to many customers and may lower your PG&E bills. To find out if you have options available, call your PG&E office at the number shown on this bill. The back of the bill has other important messages.

D. Quarterly Bill Inserts Beginning January 1994

PG&E also began sending quarterly inserts since January of 1994 informing residential customers that they may save money by selecting a different electric rate schedule, describing the different residential electric rate schedules and LIRA option, and telling customers to call the local PG&E office for more information."

PG&E agrees that its May 10, 1992 letter and analysis⁴ was "potentially confusing." However, PG&E contends that at no point in the letter does PG&E indicate that it has selected the most favorable rate for the customer. And, PG&E points out that in any event the letter instructs the customer to contact PG&E if more information is needed regarding the analysis. Lastly, NCPH alleges that PG&E has been discriminatory with regard to a refund in the case of Eastern Park Apartments. According to NCPH, other PG&E customers have had similar difficulties receiving notification letters; there are customers who have not received the notice until after they contacted PG&E months after the rate schedule change; there are customers who have received the notice six months after the rate schedule change; there are customers who have not received the notice at all and were not switched from the commercial to the residential rate schedule during the implementation period; and there are customers who have been switched from one commercial rate to a different commercial rate then to a residential rate schedule they did not request, before finally being switched to the schedule they did request. Three customers in these circumstances have received refunds from PG&E.

According to NCPH, in all these cases, the E-8 rate schedule was the best for these facilities, which are similar to Eastern Park Apartments. Therefore, NCPH contends that there is no

4 The analysis is potentially confusing because the most favorable rate schedule is not flagged as "best." However, a careful comparison of the bottom line totals shows that Schedule E-8 has the least cost based on 12 months prior recorded usage. Hines, the energy consultant for NCPH, testified that he was able to understand the analysis.

5 A fourth account in dispute had not been settled at the time of the hearing.

basis for PG&B's claim that these types of multi-family facilities might expect "future usage patterns" to change making E-1 less costly than the seasonal E-8 schedule. According to NCPH, electric usage patterns in multi-family facilities such as these are very consistent. Therefore, NCPH argues there is no basis for not giving these types of facilities adequate notice and the opportunity to select the lowest cost rate schedule before they are transferred to a much more expensive rate schedule.

PG&B's explanation for providing refunds in the three instances cited by NCPH is as follows:

6 Sacramento Street (Pacific Heights Towers) complex was changed from rate Schedule A-1 to E-1 for the period of 12/14/92 to 3/22/93 and to rate Schedule E-8 on 3/22/93 at the customer's request. A rate analysis was not provided until February 17, 1993, and a credit of \$10,132.67 was provided for the period from 11/19/92 to 3/22/93. This is consistent with PG&B's policy that, for customers for whom rate analyses were not performed promptly after the change to residential rates AND who responded to the rate analyses once sent, an account adjustment would be in order.

California Street Apartments, (Cathedral Hill or Cathedral Apartments) were changed from A-10 to E-1 for the period of 12/23/92-6/16/93 and did not receive a rate analysis until May 20, 1993. A credit of \$2,868.78 was provided for the difference between E-1 and E-8 during this period.

Again, this is a consistent application of PG&B's policy. Because the rate analysis was not provided in a timely manner, AND Cathedral Hill responded to the rate analysis that was sent, a refund was in order.

o Marin Apartments had five commercial accounts that were not changed to a residential rate by May, 1993, and were placed on E-8 at the customer's request on March 22, 1994. A credit of \$1,815.79 was

provided for the period from May 1993 to March, 1994. Consistent with PG&E's policy AND its position in Park Regency Apartments, a refund dating back to the closing date of the one-year implementation period was provided."

According to PG&E, Eastern Park Apartments is not in any way similarly situated to these customers. First, Account No. NRG-02-59302 was changed to a residential rate within the one-year implementation period. Second, a rate analysis for this account was performed within a month's time of this account being changed to residential rates. Third, no response to the rate analysis sent to NCPH was received. PG&E contends that because it is not similarly situated, Eastern Park Apartments has not been treated in a manner that is colorably discriminatory.

According to witness Mary Camby, PG&E attempted to perform rate analyses for customers who were changed to residential rates as a result of D.92-04-063 soon after they were changed to residential rates, so that they could choose the most economical rate. For those customers who were sent rate analyses after a substantial period of time had passed since their rate change to residential rates, and who responded promptly to these analyses once received, PG&E's policy has been to provide account adjustments. And based on this policy, since the NCPH rate analysis was sent out within a month of the time that the account was changed to a residential rate, and NCPH did not respond to it, NCPH would not be entitled to an adjustment.

6 In its reply brief, to which PG&E did not have an opportunity to respond, NCPH contends that PG&E is mistaken with regard to the circumstances for the refund to Marin Apartments. Since Marin Apartments is not at issue in this proceeding, and the issue was not timely raised, it will not be addressed herein.

Further, PG&E states that it is important that the Commission take into consideration the fact that the one-year implementation period granted in D:92-04-063 was sought by PG&E precisely because of the difficulty PG&E knew it would encounter in trying to identify eligible customers to be changed to residential rates pursuant to the decision. Specifically, the Commission noted:

"We likewise adopt PG&E's proposal for an implementation period to identify and process relevant customer accounts eligible for residential polyphase service. PG&E cautions that it is extremely difficult to identify which customers currently on polyphase non-residential rate schedules have residential end uses."

Discussion

The issue is whether PG&E made a reasonable effort to advise NCPH of the rate schedule change ordered by D:92-04-063.

We conclude that even if NCPH did not receive PG&E's May 10, 1993 letter and analysis, NCPH did receive sufficient notice of the impending rate schedule change. We believe that PG&E took reasonable steps to inform NCPH of the impending rate schedule change especially through the September, 1992 bill envelope insert which stated:

"RESIDENTIAL RATES ARE NOW MANDATORY FOR RESIDENTIAL POLYPHASE SERVICE AND FOR RESIDENTIAL SECOND METERS"

"The California Public Utilities Commission (CPUC) has approved two changes to PG&E's residential rate schedules that will affect some customers currently billed under nonresidential rates.

In its reply brief, to which IGS did not have an opportunity to respond, NCPH contends that IGS is mistaken with regard to the circumstances for the refund to Marin Apartments. Since Marin Apartments is not at issue in this proceeding, and the issue was not timely raised, it will not be addressed herein.

RESIDENTIAL POLYPHASE SERVICE

"All residential polyphase service will now be billed under a residential rate. Prior to this change, all electricity to polyphase equipment and/or motors was billed at a nonresidential rate.

"Examples of residential polyphase equipment and/or motors are elevators, heavy-duty air conditioners, domestic well pumps and pressure systems. These are often used in a single-family residence or multifamily complex (apartment house, condominium complex and mobile home parks).

RESIDENTIAL SECOND METERS

"Electricity supplied to a residence through a second meter will now be billed under a residential rate. Prior to this change, electricity supplied to the residence's primary electric meter was billed at a residential rate, and electricity supplied to the secondary (additional) electric meter was billed at a nonresidential rate. Now, residential rates apply to both meters.

"Examples of a residence with more than one electric meter would be (1) a residence where the house uses one meter and the domestic water (well pumping) system uses another meter and (2) a single residence converted from an upper flat and a lower flat where each level still has its own electric meter.

HOW TO FIND OUT IF THESE CHANGES APPLY TO YOU

"If you believe the above descriptions apply to your service and you are billed on one of the following residential rates (you can locate the Rate Schedule on the left hand portion of your Energy Statement), please contact your local PG&E office:

- A1, A6, A10, A11, A19, or B20

"PG&E is reviewing accounts billed on these rate schedules to determine if these accounts meet the new criteria and must be converted to an applicable residential rate schedule."

At the time the bill envelope insert was mailed, Account No. NRG 02 59302 was on schedule A-10. Therefore, the above notice was applicable to Eastern Park Apartments. And it was mailed

before the rate change occurred and contained instructions on how the customer could find out if the change to residential rates applied to the customer. Therefore, we conclude that the September, 1992 bill envelope insert constituted reasonable notice and PG&E has met its Rule 12 obligations. NCPH's request for a refund should be denied.

We do not believe that the utility is required to provide a customer with individualized notification (such as the May 10, 1992 letter and analysis) or to remind the customer when the customer does not respond to such notification. To do so would place an unreasonable burden on the utility.

Furthermore, NCPH's argument that PG&E's analysis was "potentially confusing, even if received, is not germane to the issue before us. In any event, the letter provided a telephone number if the customer needed more information.

Lastly, NCPH raised the issue of discriminatory treatment with regard to payment of refunds by PG&E to other complexes affected by the rate schedule change.

We believe that PG&E's policy regarding refunds to customers adversely affected by the change from general service commercial rates to residential rates is fair. (1) accounts that were not changed to residential rates until after the one-year implementation period ended are to be provided refunds dating back to the last day of the implementation period; see e.g., Park Regency Apartments v. PG&E, D194-11-036, mimeo, at 8 (November 22, 1994); application for rehearing, filed, December 19, 1994;

7 PG&E's Rule 12 states:

"D. NOTIFYING CUSTOMERS OF NEW RATE SCHEDULES

Where PG&E establishes new rate schedules, PG&E shall take such measures as may be practical to advise affected customers of the availability of the new rate schedules."

(2) accounts for which a rate analysis was not performed in a timely manner relative to the change from general service and commercial rates to residential rates, and for which PG&E received a response to the rate analysis/are to be provided account adjustments.

We agree with PG&E that Eastern Park Apartments is not similarly situated to the customers that would receive a refund under the above policy. First, Account No. NRG-02-59302 was changed to a residential rate within the one-year implementation period. Second, a rate analysis for this account was performed within a month's time of this account being changed to residential rates. Third, no response to the rate analysis went to NCPH and was received. Therefore, we conclude that NCPH's claim of a change in discriminatory treatment in violation of PUC Code § 453 is without merit.

Findings of Fact

1. Prior to issuance of D.92-04-0637 Account No. NRG-02-59302 was on rate Schedule A-10, a general service commercial schedule and residential rate schedule.

2. The Commission in D.92-04-0637 directed that residential second meters on commercial schedules should be changed to residential schedules. PG&E was given a 12-month implementation period until May 1, 1993 to make this change.

3. Account No. NRG-02-59302 was changed by PG&E from a commercial Schedule A-10 to Residential Schedule EITB effective April 5, 1993, prior to conclusion of the 12-month implementation period.

4. PG&E sent a letter dated May 10, 1993 and a rate analysis to NCPH regarding the rate schedule change in the standard rate in the code.

5. NCPH states it did not receive PG&E's May 10, 1993 letter and rate analysis.

PG&E's policy for payment of refunds to customers subject to the rate schedule change is reasonable, where: (1) accounts

6. Effective April 5, 1993 at the request of NCPH, PG&E (S) placed the account on Schedule E-8, a less costly schedule than Schedule EITB.

7. NCPH contends that PG&E did not give NCPH adequate notice of the rate schedule change and the opportunity to select the lowest cost rate schedule on Schedule E-8, and PG&E automatically placed NCPH on a higher cost schedule, Schedule EITB.

8. NCPH seeks a refund of \$13,203.71 being the difference in cost of the rate schedules EITB and E-8 for service between May 1993 and March 1994.

9. PG&E asserts that its May 10, 1993 letter and rate analysis provided NCPH with actual and timely notice of the rate change. Also PG&E asserts that NCPH has been on constructive notice since August, 1992 that other rate options were available to Eastern Park Apartments.

10. In September, 1992, PG&E sent a bill envelope insert to all customers affected by the D.92-04-063 rate schedule change. The insert placed customers on notice that accounts currently on commercial rate schedules with residential end uses would be changed to residential rates. NCPH has not denied receiving this notice.

Conclusions of Law

1. PG&E's September, 1992 bill envelope insert provided NCPH with sufficient notice of the impending rate schedule change.

2. PG&E's efforts to inform NCPH of the mandatory change to residential rates and the fact that other rate options were available to Eastern Park Apartments were timely and reasonable.

3. PG&E's current policy of placing customers on a default standard rate in the event that the customer does not choose is fair and treats all similarly situated customers equally. (PU Code S 453.)

4. PG&E's policy for payment of refunds to customers subject to the rate schedule change is reasonable, where: (1) accounts

that were not changed to residential rates until after the one-year implementation period ended are to be provided refunds dating back to the last day of the implementation period; see e.g., Park Regency Apartments v. PG&E, D.94-11-036, mimeo. at 8 (November 22, 1994); application for rehearing filed, December 19, 1994; (2) accounts for which a rate analysis was not performed in a timely manner relative to the change from general service commercial rates to residential rates, and for which PG&E received a response to the rate analysis; are to be provided account adjustments.

5. NCPH's request for a refund on the basis that it did not receive adequate notice of its rate schedule change should be denied.

O R D E R

IT IS ORDERED that the complaint of Northern California Presbyterian Homes, Inc., against Pacific Gas and Electric Company, is dismissed.

This order is effective today.

Dated March 13, 1996, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners