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ALJ/PAB/rmn

Decision 96-10-028 October 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Sharon J. Courtney, Complainant, vs. Pacific Gas and Electric Company, Defendant.	Case 95-10-005 (Filed October 5, 1995)

Dan W. Lacy, Attorney at Law, for Sharon J. Courtney, complainant.
Stephen L. Garber, Attorney at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

Sharon J. Courtney (complainant) seeks to recover from Pacific Gas and Electric Company (PG&E) $1,965.37 for alleged overcharges in electric service between 1987 and November 1994.

Defendant, PG&E, denies that complainant qualified for optional time-of-use (TOU) rates from 1987 to 1992 and alleges complainant failed to select noticed TOU rates offered between 1992 and 1994.

An evidentiary hearing was held before an administrative law judge on November 15 and 16, 1995 in San Francisco, California. The parties filed concurrent post-hearing Opening and Closing Briefs on May 3 and May 17, 1996, respectively.

Based upon the evidence and argument in this proceeding, we conclude that the complaint must be denied; and that a witness not authorized as complainant's representative is ineligible to file a notice of intent to receive compensation.

PG&E asserts that Rule 12 prohibits a credit adjustment to a customer who fails to take advantage of noticed rate options as they become available. In addition, PG&E argues that Rule 17.1.B.1 prohibits refunds based upon overcharges that were collected three or more years earlier.

Complainant alleges that PG&E should have known she would benefit by changing to TOU rates in 1987 because PG&E knew she was indigent and could not pay her bill. Complainant believes PG&E has the burden to recommend cheaper rates to indigent customers and that PG&E failed to do so during the two telephone conversations regarding her bill. She opposes PG&E's position that it is the customer's responsibility to seek information about cheaper rates. She cites Grihstead vs. PG&E, D.94-07-065, in support of her position.

PG&E, on the other hand, claims that in 1987, when complainant called PG&E, the TOU program had become nonexperimental effective in January 1987, making it available to more customers. However, even though residential customers were included in the program in 1987-88, PG&E's authorized focus was on making the program available to agricultural customers rather than commercial or residential customers. The witness indicated that under the terms of prior rate cases, target volumes of customers for TOU conversion were set based upon the number of TOU meters available. The number of meters was held fairly constant at 20,000-30,000 meters per year. Thus, in any given year, this was the limit of converted customers out of a total customer base of roughly 4 million. The witness further testified that as a particular customer class became saturated, PG&E, within its discretion, expanded an existing targeted customer class or added an additional class of customers. PG&E's intent was to make the program available to customers who had unusually heavy energy usage as evidenced by minimum annual usage of 11,000 kWh.

CORRECTION !!

THE PREVIOUS DOCUMENT(S) MAY HAVE BEEN FILMED INCORRECTLY .....

RESHOOT FOLLOWS

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Position of Parties

At the hearing, complainant testified that she lived on $20,000 per year, an amount she contends is insufficient to pay current utility bills. In 1987, she complained of a high bill and made arrangements for installment payments on an overdue balance. In 1993, she requested from PG&E ways to conserve energy as a means of reducing her bill. In neither of these conversations did PG&E inform Courtney of the availability of TOU rates. Courtney does not recall receiving bill inserts explaining TOU rates prior to requesting the rates in 1994. She contends that she learned of these rates sometime in 1994 from Milton Grinstead. She requested TOU rates in October 1994 and received a TOU meter on November 26, 1994.

Courtney contends she is entitled to a rate differential from the time she complained of high bills to the time she received a TOU meter. However, Mary Camby, PG&E's tariff analyst, calculated the savings of TOU rates over flat rates as $895.67 from November 1991 to November 1993, using the years during which Courtney's usage met the minimum TOU standard of 11,000 kilowatt-hour (kWh) per year.

PG&E contends it notified complainant of possible cheaper rate options beginning in August 1982 on the front or back of every monthly bill. From 1987 to 1992, PG&E notified selected customers of TOU rates. PG&E did not notify all consumers of TOU rates, due to the limited nature of this experimental program and the priority given to agricultural customers. In addition, PG&E contends in February and August 1994, it sent to all residential customers a bill insert specifically describing TOU rates. PG&E argues that complainant did not respond to these notices. Milton Grinstead testified that he is in the same PG&E mailing category as Courtney and did not receive the bill insert sent in May 1994. However, Camby explained that this insert was not sent to Grinstead because he was already receiving TOU rates.

PG&E asserts that Rule 12 prohibits a credit adjustment to a customer who fails to take advantage of noticed rate options as they become available. In addition, PG&E argues that Rule 17.1.B.1 prohibits refunds based upon overcharges that were collected three or more years earlier.

Complainant alleges that PG&E should have known she would benefit by changing to TOU rates in 1987 because PG&E knew she was indigent and could not pay her bill. Complainant believes PG&E has the burden to recommend cheaper rates to indigent customers and that PG&E failed to do so during the two telephone conversations regarding her bill. She opposes PG&E's position that it is the customer's responsibility to seek information about cheaper rates. She cites Grinstead vs. PG&E, D.94-07-065, in support of her position.

PG&E, on the other hand, claims that in 1987, when complainant called PG&E, the TOU program had become nonexperimental effective in January 1987, making it available to more customers. However, even though residential customers were included in the program in 1987-88, PG&E's authorized focus was on making the program available to agricultural customers rather than commercial or residential customers. The witness indicated that under the terms of prior rate cases, target volumes of customers for TOU conversion were set based upon the number of TOU meters available. The number of meters was held fairly constant at 20,000-30,000 meters per year. Thus, in any given year, this was the limit of converted customers out of a total customer base of roughly 4 million. The witness further testified that as a particular customer class became saturated, PG&E, within its discretion, expanded an existing targeted customer class or added an additional class of customers. PG&E's intent was to make the program available to customers who had unusually heavy energy usage as evidenced by minimum annual usage of 11,000 kWh.

Discussion

The allegations raised by complainant are similar to the allegations raised in the case of Grinstead v. PG&E. In the Grinstead case we stated:

> "While we understand that PG&E's TOU implementation was directed at different classes of users based on the anticipated likelihood of favorable response, we find nothing in the record to indicate that TOU could not be made available to a deserving customer outside the customer class then being targeted. In other words, there is nothing that would have prevented PG&E from making TOU available to complainant or any other impoverished high energy user in 1987, when TOU passed from experimental to operational, had PG&E so desired. We are not unmindful of the fact that availability of TOU to a customer was in PG&E's sole discretion; however, complainant and his situation were known to PG&E's local representative as early as April 1986, when complainant first inquired about the availability of the medical allowance. We further recognize that in April 1986, TOU was experimental, and not fully operational, and therefore not readily available to customers in general.
>
> "At some point, however, PG&E possessed knowledge that: (1) complainant was disabled, (2) complainant had extremely limited income, (3) complainant was having great difficulty keeping current on PG&E's bills, (4) that the energy cost burden on complainant was more than his financial condition could reasonably bear, and (5) TOU was available. We find that those individual bits of knowledge coalesced not later than June 1990, when complainant made written application for the medical allowance. At that time, PG&E is chargeable with all the facts of complainant's plight. We find that at that time, PG&E should have advised complainant of the availability of TOU. Not to have done so under the circumstances then existing was an abuse of PG&E's discretion regarding the availability of TOU. If ever there was a case where TOU was appropriate, this appears to have been it."

Although the complainant's allegation in this case is the same as in the Grinstead case, the facts are not the same. In Grinstead, the complainant was a high energy user who, over a five-year period, had complained to PG&E several times per year about his disability, his financial condition, and his high bills. In contrast, Courtney had only two contacts with the utility in six years. She was not a high energy user, in fact her usage between 1992 and 1994 fell below the minimum 11,000 kWh threshold which qualifies a customer for participation in the TOU program. Therefore, even if complainant's request for energy conservation information in 1993 could be interpreted to be a request for assistance in lowering her energy bills, Courtney's usage did not indicate she would continually benefit from TOU rates. Therefore, PG&E's lack of recommending TOU rates as a means to lower her bill was reasonable.

Based upon complainant's low usage, the fact that she had not applied for other energy assistance programs, and her limited contacts with PG&E, we find that there was no reasonable basis for PG&E to know that the energy cost burden on the complainant was more than she could reasonably bear, nor that the TOU program would benefit complainant from 1987 to 1994.

Beginning in August 1982, PG&E began to notify all residential customers of alternative rate options on the front and back of each bill. In addition, in February and August 1994, PG&E sent to all residential customers who did not have TOU rates a bill insert which specifically described TOU rates. Complainant states that she did not recall receiving these notices. However, we find that PG&E met its obligation to provide reasonable notice to the complainant by mailing these notices in 1992 and 1994. Based upon the plain meaning of PG&E's notices, we disagree with complainant's contention that these notices were ambiguous or misleading.

Finally, we note that Milton Grinstead, a witness called by the complainant in the proceeding, filed a notice of intent to

request compensation. Public Utilities Code Section 1892(b) authorizes a "customer" or a "representative who has been authorized by a customer" to file a request for compensation. Complainant has not designated Grinstead as her authorized representative in this proceeding. Therefore, we find that Grinstead is not eligible to request compensation in this proceeding.

Findings of Fact

1. In 1987 complainant contacted PG&E to complain about a high bill and to make arrangements for installment payments of an overdue balance.

2. In 1993 complainant requested energy conservation information from PG&E.

3. The complainant had only two contacts with the utility over a span of six years; once to complain about a high bill and another to request energy conservation information.

4. Complainant was not a high energy user. Her usage between 1992 and 1994 fell below the minimum 11,000 kWh threshold which qualifies a customer for participation in the TOU program.

5. The TOU program became operational in 1986, and was targeted to agricultural and commercial high usage. Only 20,000 to 30,000 TOU meters were available per year; thus the program expansion was limited by the number of meters available.

6. There was no reasonable basis for PG&E to know that the energy cost burden on the complainant was more than she could reasonably bear nor that the TOU program would have benefitted complainant from 1987 to 1994.

7. Beginning in August 1982, PG&E began to notify all residential customers of alternative rate options on the front and back of each bill. These notices were not ambiguous or misleading.

8. In February and August 1994, PG&E sent to all residential customers who did not have TOU rates a bill insert which

specifically described TOU rates. These notices were not ambiguous or misleading.

9. PG&E's failure to advise complainant of the availability of TOU prior to August 1992 was reasonable since PG&E was not required to notify all residential customers of TOU, complainant was not a high energy user and complainant had contacted PG&E only once, in 1987.

10. Grinstead was not authorized to represent complainant in this proceeding.

Conclusions of Law

1. The complaint should be denied.
2. Grinstead is not eligible for compensation.

O R D E R

IT IS ORDERED that this complaint is denied. Case 95-10-005 is closed.

This order becomes effective 30 days from today.

Dated October 9, 1996, at San Francisco, California.

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