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MAIL DATE
6/16/97

Decision 97-06-069 June 11, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Precision Die Cutting, Inc. Complainant, vs. Pacific Gas and Electric Company Defendant	Case 96-08-032 (Filed August 15, 1996)

DECISION DENYING REHEARING OF DECISION 97-02-029

I. SUMMARY

In Decision (D.) 97-02-029 we found in favor of complainant Precision Die Cutting, Inc. (Precision) and ordered that Precision pay $252.78 of the $2,527.84 billed by Pacific Gas and Electric Company (PG&E) for electric service.

On March 21, 1997, PG&E filed an application for rehearing of our decision. PG&E contends that the Commission committed legal error in construing PG&E's Tariff Rule 3 as providing for a rebuttable presumption of joint and several liability for usage of electricity in shared premises. PG&E argues that Rule 3 instead requires a mandatory imposition of joint and several liability. PG&E also contends the Commission committed legal error in concluding that California Civil Code Section 1940.9 (Section 1940.9) provides remedies for tenants with shared meters only if the tenant is a customer of record. Finally PG&E claims that our decision is based on a factual error regarding the question whether Precision shared office space, a factual question relevant to PG&E's assertion of Precision's joint and several liability for the charges registered by Meter C.

We find, as discussed below, that PG&E's claims of legal and factual error are without merit. Although we may have imprecisely stated our interpretation of Tariff Rule 3 and Section 1940.9, the semantic errors did not and do not affect the decision which was nonetheless reasonably based on material, factual evidence in this case. Moreover, as discussed below, our review of these provisions confirms our determination that neither Tariff Rule 3 nor Section 1940.9 are applicable to the circumstances of this case.

II. FACTUAL BACKGROUND

Precision was one of three tenants who rented commercial space in a building located at 4901 E. 12th Street, Oakland (the "premises"). Precision's tenancy extended from approximately 1989 to January 4, 1995. The record indicates the landlord was Mr. George Yamas, who also owned and operated American Metal Coatings (AMC).[1] In 1993, Mr. Yamas had separate electric meters installed for the tenants.[2]

Precision was assigned Meters J and D and was billed for service to those meters in its name and on its own account with PG&E. However, because of the building's wiring and the meter installation design, a small part of the premises rented by Precision, used for a small office, was lighted through Meter C. Another tenant, Bay Area Metal Coatings was responsible for the predominate portion of the space serviced through Meter C until July 1994. Mr. Cliff Keddie, owner of Bay Area Metal Coatings, testified that he agreed in a private arrangement with Precision to have Precision pay him approximately 10 percent of the total charge for Meter C. Mr. Keddie explained that because the space

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[1] The record of this case indicates that the formal owner of the building was a partnership. See Attachment A to PG&E's Answer to Complaint. However, when witnesses referred in their testimony to both Advanced Metal Coatings and George Yamas as the "landlord," there were no objections or clarifications offered. Also, Attachment A to Exhibit 2 of the record is a PG&E "Meter Prove Up Request" dated May 3, 1996 showing Mr. Yamas as owner of the premises and available at the space occupied by Advanced Metal Coating.

[2] Attachment C to Exhibit 2 is a letter dated February 1, 1994 to all tenants from G. Yamas. In the letter, Mr. Yamas states that Meters C, H, and E were assigned to B.A.M.C., i.e. Bay Area Metal Coatings, Meters J and D were assigned to P.D.C., i.e. Precision, and Meters K,F,G, and I were assigned to a third tenant A.T.A. AMC, Mr. Yamas' company, took over the space of Bay Area Metal Coating approximately in July 1994.

lighted for Precision's separate office area through Meter C was so small that he arranged for the payment of Precision's share through an exchange of services. Tr. 21:20-28 to 22:1-22; Tr. 23:28 to 24:1-6.

PG&E does not refute this testimony of Mr. Keddie, who also explained that after July 1994, AMC took over the premises previously occupied by Bay Area Metal Coatings and operated the same equipment that Bay Area Metal Coatings had operated in the same space. Tr. 23:1-25. Consistent with AMC taking over the space previously rented by Bay Area Metal Coatings, from August 23, 1994 to January 4, 1995, PG&E billed AMC and AMC paid for electric service to Meter C, as well as to Meters H and E.

Precision then left the premises in January 1995. In April 1995, however, based on representations made over the telephone by Mr. Yamas, PG&E refunded the payments previously made for Meter C to AMC, and without the authority or agreement of Precision, reassigned total and sole responsibility for usage at Meter C from August 23, 1994 to January 4, 1995, to Precision.

In D.97-02-029, at page 3, we determined that PG&E had never entered into an agreement with Precision for service to Meter C and had instead maintained an account for Precision's liability only for usage registered by Meters J and D. See Tr. 38:12-14. By the time of the unilateral billing switch by PG&E, therefore, Precision had moved and had already paid its PG&E bill to close its account as of January 1995.

Nonetheless, based on the assertions made on the telephone by AMC (presumably by Mr. Yamas) to a PG&E employee, PG&E billed, after the fact, the amount refunded to AMC, $2,527.84, to Precision. Precision then filed its formal complaint with the Commission on August 15, 1996 claiming PG&E had improperly billed it for the amount in question. Precision stated during the course of the Commission's consideration of the complaint that it was prepared to pay its 10% of the billings in question, or $252.78. Tr. 18:23-28 to 19:5-13; Tr.39:11-22.

III. ANALYSIS

First we will address PG&E's claim of factual error in D.97-02-029. In its application (at pages 6-7), PG&E quotes from the transcript of the hearing where the president of Precision, Mr. Aronson states: "The front office was Bay Area Metal

Coatings and Precision Die Cutting, but Meter C was paid for by Bay Area Metal Coatings." Tr. 6:8-10. PG&E uses this short statement, out of context, to support its assertion that Precision shared space with another tenant, first Bay Area Metal Coatings and then AMC and, therefore, should be considered a "roommate" of the landlord's business, AMC. This assertion in turn is made presumably to support PG&E contention that Precision is liable for the entire bill under a joint and several liability theory based on Tariff Rule 3.

We take particular note, however, that PG&E attempts to make its argument by choosing not to quote the follow-up questions and answers which demonstrate that Precision did not rent and occupy shared space. In the following exchange, the person answering is Mr. Aronson, president of Precision.

> "Q. Okay. How much of the area – if need be, I'll show you the exhibits here. How much of the area of – that's covered by Meter C was used by Precision Die Cutting?"
>
> "A. Oh, maybe 800 to 1,000 square feet of office space."
>
> "Q. Do you know how much area Meter C actually covered?"
>
> "A. 30,000 – let me see. 20 ---20-30,000 square feet. It was used by Bay Area Metal Coatings."
>
> "Q. Of that 800 to 1,000 square feet of the 30,000 or whatever it is that you used – "you" being Precision Die Cutting – what form of electric power was used?"
>
> "A. 12 fluorescent four-foot fixtures."
>
> "Q. Anything else?"
>
> "A. No."
>
> "Q. Heavy machinery?"
>
> "A. No. Maybe a computer, but no heavy -- all heavy machinery was billed us under J." Tr. 6:13-28 to 7:1-4.

The testimony of Mr. Aronson is corroborated by that of Mr. Keddie of Bay Area Metal Coatings who testified as follows:

> "I occupied the absolute majority of it. He [Precision] took just a tiny, little office space, so I just – it was so small compared to what I was using, I hardly ever even really charged him for use of the space." Tr. 22:7-11.

In addition to this testimony showing the separate use of space, the map of the premises, which is provided in Attachment A to its Exhibit 2, and the testimony of Mr. Aronson establish that but for a section used to keep old cars and other miscellaneous things, the balance of the space on the first floor, where the offices were located, was "just open space." Tr. 20:10-13.

PG&E's implicit argument is that the entire commercial space was rented by all tenants jointly and each tenant had the right to use all of the space in common. This argument is not, however, supported by the record. There is no evidence that Precision used the same rented space with either Bay Area Metal Coatings or any other tenant. Furthermore, there is absolutely nothing in the record to suggest that the landlord, Mr. Yamas, permitted its tenant, Precision, or any other tenant, to occupy or use the space he used for AMC.

We find, therefore, that PG&E's selective use of the transcript in its application for rehearing is misleading and does not establish factual error in our decision.

Second, PG&E defends its undocumented service arrangements and billing procedures by claiming Precision is jointly and severally liable for charges to Meter C pursuant to its Tariff Rule 3.[3] In our decision we stated that joint and several liability is a rebuttable presumption. It would have been more accurate perhaps to have stated that applicability of joint and several liability under Tariff Rule 3 depends on the circumstances of the case. In this case, it does not apply to hold Precision responsible for the payments PG&E refunded to Mr. Yamas.

As discussed above, PG&E has not established that Precision paid rent for the same premises occupied first by Bay Area Metal Coatings and then by the landlord, Mr. Yamas, or Mr. Yamas's business, AMC. PG&E argues that Precision should be considered a "roommate" and in that way is subject to joint and several liability under

[3] Tariff Rule 3 provides in pertinent part: "...where two or more adults occupy the same premises, they shall be jointly and severally liable for bills for energy supplied." Since PG&E does not claim Precision and AMC made a joint application for service, the remainder of Tariff 3 is not in question.

Tariff Rule 3.[4] However, it is neither reasonable nor fair to overextend Tariff Rule 3 beyond its intended purpose by likening every tenant arrangement, particularly commercial tenants and their landlords, to that of "roommates." There is no record evidence that Precision was the roommate of the landlord or of AMC. PG&E's contention is, therefore, without merit , and we affirm that PG&E's reliance on Tariff Rule 3 is misplaced in this case.

It is, moreover, rather curious that PG&E invokes the claim of joint and several liability only against Precision for the total charges to Meter C. It is not apparent why upon receiving a telephone call from AMC, presumably, that is, from Mr. Yamas, requesting a refund of payments made by AMC for Meter C, PG&E determined it would be Precision, not Mr. Yamas or AMC, who would be subject to joint and several liability, and thus switched the entire bill from AMC to Precision.

PG&E claims that it had "no written documents" that it could find to show AMC had signed up for service on Meter C. Tr. 36:24-28. That is a problem for PG&E, for it also could not produce any evidence to show that Precision had signed up for service to Meter C. Tr. 38:12-14. With respect to Meter C, therefore, Precision was not the customer of record. There is, moreover, no evidence in the record that PG&E made a determination before it refunded the payments that AMC did not receive service through Meter C. With respect to AMC's use of electricity through Meter C, the PG&E witness could only respond: "I'd have no way of knowing." Tr. 33:27-28 to Tr. 34:1-2. In addition, the witness for PG&E stated that PG&E was unable to find any records to explain the basis for PG&E making the refund to Mr. Yamas and switching the entire past billing for Meter C to Precision based on a telephone call. See Tr. 31:1-28 to Tr. 32:1--19. The best PG&E witnesses were able to state on the question of AMC's responsibility, was: "I don't know." Tr. 34:25-27.; 35:5-23. PG&E was also not able to

[4] See PG&E's application for rehearing at pages 5-6 where it relies on two "roommate" decisions of the Commission, Crabill v PG&E , D.92-03-027, and Escamilla v. Southern California Edison, D.94-10-013. Unlike the circumstances in the case of Precision, in these cited decisions the Commission found that the person held liable did occupy the same residential premises as other roommates.

produce the name of the employee who accepted without verification AMC's allegations that Precision and not AMC had been responsible for all charges to Meter C. Tr. 31:23-28 to Tr. 32:1-4; Tr. 35:10-17. We further note that PG&E did not produce anything from its customer files, or even from a standard operating manual, which would explain the authority on which PG&E relied when it acted on Mr. Yamas' phone call requesting a refund, by refunding the payments previously made by AMC for the period in question, and billing Precision instead without Precision's prior knowledge or agreement. In response to questions from PG&E's attorney, PG&E witness could only explain that the company did not have the resources to check out all the information it received in phone calls regarding customer responsibilities for meter charges. Tr. 38:1-7.[5]

Further, since Meter C was installed on the premises owned by Mr. Yamas, and according to letter of February 1, 1994, Mr. Yamas had arranged for individual meters for the commercial premises (See Attachment C to Exhibit 2), PG&E had failed to justify its assumption that the primary account responsibility for Meter C was not the landlord, Mr. Yamas. PG&E has presented no evidence or legal basis to allow it recourse now to Precision for payment of the money it took upon itself to refund to Mr. Yamas for reasons it cannot explain.

Third, with respect to Section 1940.9 of the California Civil Code, PG&E faults our statement in the next to last paragraph on page 3 of D. 97-02-029: "However PDC [Precision] was never lawfully the customer of record; therefore, Civil Code §1040.9 [i.e.§1940.9] does not apply." PG&E argues in its application that this statement is erroneous and therefore constitutes legal error. While we did not fully explain our interpretation of the statute in the quoted statement, this error does not constitute a legal error requiring rehearing of our decision. We agree that pursuant to the terms of the statute it would appear a tenant may file suit against a landlord regarding utility charges

[5] We note here that in this exchange regarding limited investigatory abilities, the attorney for PG&E described the situation involving "internally split wiring." We are not convinced this phrase clearly describes the circumstances in which the landlord used commercial space drawing at least 90% of the energy delivered through a particular meter, and rented space using approximately 10% of the service through the same meter.

even if the tenant is not the customer of record for the meter in question. However, our statement meant to convey our finding that Section 1940.9 was not intended to be a means for PG&E to deflect onto a tenant the consequences of the utility's peremptory refunding of payments to a landlord, payments which had been voluntarily made for current billings.

In the first instance, this statutory provision expressly applies to a "tenant's dwelling unit." (Both the legislative counsel's digest description of the statute and the terms of the statute are provided in Attachment B of PG&E's Exhibit 2.) The term "dwelling unit" is an uncomplicated term meaning a person's abode, where one lives.[6] Its meaning is as common and as distinctive as "commercial space." The term "dwelling unit" is used repeatedly in Section1940.9, but we see no inclusion of the term "commercial space" in the statute.

We find nothing in the record which indicates the premises in question were used as anyone's home or residence, or that a person could use the premises as a sleeping place in accordance with local zoning ordinances. On the contrary, the activities described in the record are consistent with commercial endeavors and light industry. Without any evidentiary record of the premises being used for a "dwelling unit," therefore, we find Section 1940.9 inapplicable to the issues in this case. This finding is sufficient to reject PG&E's arguments for rehearing based on Section 1940.9.

Moreover, even if we assumed the statute could be applied to landlords and tenants of commercial premises, we nonetheless find it would be irrational and inequitable to apply it against Precision and thereby excuse PG&E for its actions in peremptorily switching billing liability from AMC to Precision.

The statute's primary intent is to require that landlords differentiate meter responsibilities among tenants through mutual written agreements. It imposes on landlords the obligation to assure that metering of electric and gas service to a tenant's dwelling unit is individualized as much as possible and that the tenant pays only for the

[6] "Dwelling unit" is defined in Civil Code Section 1940(c) as a structure or part of a structure that is used as a home residence, or sleeping place...."

energy service used for the dwelling unit. The statute secondarily provides for a tenant to seek redress in the courts for a landlord's failure to comply with the mandate of this law.

The statute also makes significant recommendations which impose the primary responsibility for problems arising from meters not being individually assigned to tenants. For example, the statute provides that the written agreements required of the landlord may include the landlord becoming the customer of record for the meter. This solution is also recommended as a remedy for the court to apply if a tenant is ultimately placed in a position of having to bring a court action against the landlord.

We read Section 1940.9, therefore, as placing the principal responsibility for tenant metering and for payment of disputed bills on the landlord when written agreements do not accurately specify the customer liable for metered usage. PG&E and AMC, it would appear, had it right to begin with when PG&E billed and the landlord's company, AMC, paid for Meter C from August 23, 1994 to January 4, 1995. If indeed Mr. Yamas later discovered that he had a legitimate claim against his tenant Precision for service received through Meter C, he could have pursued it himself, with the assistance of mediation or through the courts, and relied on his commercial rental agreements with Precision. Although Section 1940.9 does not apply to commercial cases, this method of resolving a commercial problem would be consistent with the mandate of Section 1940.9 which requires that the landlord enter into written agreements regarding meter liability.

Conversely, we do not read Section 1940.9 as requiring that a tenant assume the cost and time of a court action whenever a public utility takes it upon itself to peremptorily resolve a landlord/tenant dispute by switching the entire meter liability from the landlord to the tenant, particularly when the public utility has no records and no explanation for its action, and when the landlord had already paid the charges. We do not understand Section 1940.9 as having been designed to place the burden of pursuing a landlord through the courts on a tenant when both the landlord and the public utility fail to make the proper written agreements for metering, meter accounting, and payment responsibility for metered usage. In short, PG&E improperly attempts to use Section 1940.9 to deflect onto Precision the consequences of PG&E's unjustified actions.

Accordingly, we find D.97-02-029 was reasonably decided according to more than sufficient evidence in the record, and that PG&E's application for rehearing is without merit. PG&E has shown no legal error.

THEREFORE, IT IS ORDERD that:

1. PG&E's application for rehearing of D.97-02-029 be denied,
2. D.97-02-029 be modified as follows:

   a) on page 3 the last sentence of the next to last paragraph, which reads as follows, be deleted:

   > "However, PDC [i.e. Precision] was never lawfully the customer of record; therefore, Civil Code §1040.9 [i.e.§1940.9] does not apply."

   b) on page 4, the following statement shall be added at the end of the paragraph at the top of the page which ends with "...Meter C":

   > "Moreover, Section 1940.9 of the California Civil Code applies to matters concerning service to a tenant's "dwelling unit" and therefore does not apply to the circumstances of the present case involving commercial tenants."

   (c) on page 5, the following conclusion of law shall be added:

   > "Section 1940.9 of the California Civil Code applies to matters concerning service to a tenant's "dwelling unit" and therefore does not apply to the circumstances of the present case involving commercial tenants."

This order is effective today.

Dated June 11, 1997, at San Francisco, California

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners