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MAIL DATE
12/18/97

Decision 97-12-114

December 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Northern California Presbyterian
Homes, Inc.,

Complainant,

vs.

Pacific Gas & Electric Company, Inc.

Defendant

(U39E)

ORIGINAL

C.94-09-037
(Filed April 12, 1997)

ORDER DENYING REHEARING OF DECISION 96-03-003

In Case (C.) No. 94-09-037, Northern California Presbyterian Homes, Inc. (NCPH) sought a refund of \$13,203.71 from Pacific Gas & Electric Co. (PG&E) for service provided to Eastern Park Apartments, a nonprofit senior housing project, from April 5, 1993 to March 17, 1994. The complaint alleged that NCPH was not given notice by PG&E of a rate schedule change and was therefore not given the opportunity to select the lowest rate schedule. The rate schedule change was ordered by D.92-04-063. There was evidence in the record that PG&E sent to complainants a letter advising specifically of the rate change on May 10, 1997, which complainants deny receiving. The Decision held that, regardless of whether the letter was received or not, PG&E made a reasonable effort to advise NCPH of the rate schedule change by the bill inserts sent to all customers pursuant to its Rule 12, and that the complaint was without merit.

Applicant challenges this conclusion, alleging that a bill insert does not constitute adequate notice of a rate change, and that the record does not establish that actual notice was received by NCBH. The argument is completely without merit. In fact, the Commission has ruled against applicant's argument on the identical issue in an Application for Rehearing brought by Sharon J. Courtney of D.96-10-028, in which Grinstead appeared as advocate and Lacy as attorney. There, the Commission specifically held that a bill insert constitutes sufficient notice of a rate change in D.97-01-024.

Not one citation of authority offered by Complainant supports the proposition that bill inserts do not constitute sufficient notice of a utility rate change. In fact, we have never held that the use of a bill insert is per se inadequate under PG&E's Rule 12. Draeger's Supermarkets v. PG&E, D.91-01-029 involved notification of TOU rates to commercial customers and we dismissed the complaint on the grounds that PG&E had given proper notice. Although Shimek dba Canadian Oil, D.93-10-011 contains language that PG&E must inform its customers of its potentially most advantageous rate schedule, the decision goes on to hold that the utility is not responsible for a customer's failure to take advantage of such a schedule after notice has been given. (Pg. 5, mimeo) Here, we have specifically found that PG&E's notification method was reasonable. That method was through bill inserts. Regarding the adequacy of this method, applicant cites Pacific Southern Foundries v. PG&E, (1968) 69 CPUC 544. However, this decision does not involve the adequacy of bill inserts, but holds that PG&E had no duty to provide rate analyses to its customers. (69 CPUC at 551-552) Further, this Commission has consistently approved bill inserts as a means to notify customers of a rate change. See Howard v. PG&E, D.92-07-006; Wesselink v. So. Cal Edison Co., (1988) 29 CPUC 2d 253, 262; and Libe v. PG&E, (1989) 31 CPUC 2d 598. The Legislature has also approved the use of bill inserts to provide customers with notice of rate increases in Public Utilities Code §454.

In fact, Applicants Grinstead and Lacy have themselves been involved in a long line of litigation on precisely this point. In Grinstead v. PG&E, D.94-07-065, cited by applicants, the Commission held that PG&E was at fault for not notifying the complainant, an aged, low income and disabled customer about the availability of TOU rates, despite repeated complaints by the customer over a five-year period. However, in Sharon J. Courtney v. PG&E, in D.96-10-028, the Commission specifically held that the Grinstead decision had been a special situation in which the Commission was attempting to:

“...fashion an equitable remedy to a problem suffered by a disabled customer and his aged, infirm mother.”
(D.95-04-030, at page 3)

In D.97-01-024 the decision on the rehearing of Courtney, supra., the Commission reaffirmed that Grinstead does not impose an affirmative duty on PG&E to inform each of its customers of the most advantageous rates for them. (Mimeo, p. 4.)

Applicant has cited no authority for its argument that bill inserts are an inadequate notice of a proposed rate change. Nor is its argument that the record does not support the fact that the notice sent by PG&E was actually received persuasive. The Legislature has specifically provided that such notices are adequate, Section 454, supra, and the Commission has previously held that a utility is only responsible for making a reasonable attempt to notify customers of a proposed rate change on a timely basis. Shimek, supra.

Applicant's final argument is simply bizarre: the Commission erred by allowing applicant to appear before it without representation by an attorney. Applicant argues that the California Courts have held that a corporation cannot represent itself in court in propria persona. Therefore, they presumably cannot do so before this Commission, and the Commission should have required a waiver of the right to an attorney by NCPH before allowing it to proceed. First, Applicants

do not allege, nor does the record demonstrate that they ever sought representation by counsel and were refused. Indeed, such refusal would be inconceivable. Second, and more significantly, the California Supreme Court has held that neither the California Public Utilities Code nor the Commission's Rules of Practice and Procedure require that complainants be represented by attorneys at hearings. In CLAM v. Pub. Util. Com. (1979) 25 Cal 3d 891, at page 913, the Court stated:

"Nonattorneys are generally not permitted to participate in judicial proceedings; rather, with a few limited exceptions, a person must be licensed as an attorney before he can appear in court. In Public Utilities Commission proceedings, by contrast, the participants are not required to be licensed attorneys, and it is common for such persons to make appearances on behalf of others. The commission's own rules explicitly acknowledge this practice. (See, e.g., Cal. Admin. Code, tit. 20, rule 4.) Moreover, even a brief perusal of the California Public Utilities Commission Reports demonstrates that appearances by nonattorneys comprise a substantial and important part of the practice before that body. We must infer that the commission believes such persons are competent to participate in its proceedings in a representative capacity."

No legal or factual error has been demonstrated and the Application should be denied.

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THEREFORE, IT IS ORDERED:

1. Rehearing of D.96-03-003 is denied.
2. This proceeding is closed

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

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