

AIJ/BRS/gab/jva

Mailed 6/18/98

Decision 98-06-054 June 18, 1998

**ORIGINAL**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Patrick J. Byington,  
Complainant,  
vs.  
Pacific Gas and Electric Company,  
Defendant.

(ECP)  
Case 97-08-042  
(Filed August 20, 1997)

Patrick J. Byington, for himself, applicant.  
Brian Graddy, for Pacific Gas and Electric  
Company, defendant.

**O P I N I O N**

**Background**

This case is about meter tampering and the resultant beneficial use of unmetered electrical energy.

This complaint by Patrick J. Byington states that he initiated contact with Pacific Gas and Electric Company (PG&E) to inquire about why bills had not been rendered for the months of January and February 1996, at the 19991 Mountain Misery location in Twain Harte, which he had rented to Jason and Shannon Crow. He was told by Brian Graddy of PG&E that the renters had been stealing electricity for the past several months. Byington asked why PG&E didn't shut off the service. Graddy indicated that in these instances, the customer is contacted, and if the theft continues, the service is terminated. Graddy didn't answer why that procedure was not followed in this case.

Thus, it is the utility's responsibility to charge the party who received beneficial use from the energy that was not billed. In this case, one could argue that both the Crows and Byington benefited, since Crows used the electricity but paid Byington as the customer of record. While the Crows were the most direct beneficiary, Byington remained the customer of record. Thus, we believe Byington should be held responsible for a reasonable period of diversion.

We are most troubled in this case by the amount of time PG&E allowed the theft to continue after it knew, or certainly should have known, that it was taking place. Once a meter is found inverted, there is no question that energy theft is taking place. An inverted meter records backwards and in effect erases usage that was previously recorded. If left inverted long enough, the meter will read less than the prior meter read. This resulted in the repeated negative meter reads. Yet PG&E allowed this to continue from December 1995 to September 1996, and only then presented Byington with an enormous bill for unmetered electricity covering the 20-month period, January 1995 to September 1996.

Regarding why it allowed the theft to continue so long after the December 20, 1995 discovery of both a negative read and a broken meter seal, PG&E responds that it needed to determine actual usage for purposes of billing, and if the perpetrator of the theft were aware that PG&E knew, it would dramatically reduce usage to skew the backbill. This answer does not withstand scrutiny in this case. First, the meter was inverted so much of the time that unless PG&E stationed a person to observe the meter continually and read it during upright periods, it could not rely on any reads to be representative of the actual usage. This is verified by the fact that after the nine months of allowing the problem to continue, PG&E bases its back billing on the last 10 days' usage in September 1996. PG&E should have known that it could not rely on meter reads when such blatant theft is occurring.

him, though many times they didn't have the money and traded services for the rent. Byington initially kept the electric service in his name so the Crows would not have to place a deposit at PG&E for new service. The Crows were to put the service in their name, but never did.

Byington further testified that when he first contacted PG&E in January, 1996 and was told that energy theft was occurring, he asked PG&E to take the matter to the District Attorney, but PG&E stated that it was only interested in recovering the lost revenue.

Byington finally was able to have the electricity terminated and had the Crows evicted in September 1996.

#### *Discussion*

There is no question that substantial theft of electricity occurred at the 19991 Mountain Misery location during the Crows' residence. Whether Crows, Byington, or someone else tampered with the meter will never be known for sure except by the tamperer(s). We believe the most likely explanation is that the Crows tampered with the meter. Although the Crows signed a statement that they had no knowledge of tampering, they did not appear at the hearing. In addition, it is highly unlikely that Byington would ask PG&E to take the matter to the District Attorney if he caused the energy theft.

However, the Commission stated in Decision 86-06-035 dated June 25, 1986 (mimeo. p. 3):

"The only questions that the Commission needs to answer to resolve these complaints...are 'Was the energy used by the customer but not paid for?' and 'What is the reasonable estimate of the value of that energy under the applicable tariffs?' Identifying the person who performed the tampering or diversion is not a task that the Commission needs to undertake...Our only concern is that a customer who has received energy should pay what the applicable tariffs prescribe for that energy."

We question the basis PG&E uses for calculating the daily usage to determine the backbill, i.e., the last ten days of September 1996. Testimony that the Crows sometimes used shop equipment causes us to suspect that the ten-day period was not representative of normal usage, but rather a period when Crows used substantially more electricity than normal. We believe that a ten-day period is unreasonably short to use as a basis for back billing. The residence is a 900 square foot apartment over a garage, and is heated by wood and propane, according to Byington. Based on the 50 kWh per day that PG&E determined from the ten-day period, the monthly usage would be about 1,500 kWh. This seems unreasonably high for a small apartment not being heated electrically, and not having air conditioning.

Billings from prior years indicates normal usage for the year 1991, varying from 296 to 1,039 kWh per month. The year has fairly uniform usage, except for the 1,039 kWh high. We note that even the highest usage at 1,039 kWh in April is only 32.5 kWh per day, far less than the 50 kWh per day PG&E assumed as normal for their back billing calculations. We believe a back bill based on the corresponding months' usage of 1991 is reasonable. PG&E should render a bill using the corresponding months' daily usage from the 1991 record, as follows:

December 20, 1995 to January 22, 1996, 9.273 kWh per day;

January 22 to February 21, 1996, 11.200 kWh per day;

February 21 to March 20, 1996, 10.207 kWh per day.

To this amount PG&E may add a portion of the cost of investigation, which it indicates as \$245.80. We have reviewed the accounting of this amount and find it reasonable. However, due to PG&E's unjustified delay in dealing with this matter, we will allow it to charge the complainant only 1/3 of the cost, \$81.93, and will not allow interest on the uncollected amount.

We are further troubled by the period of back billing that PG&E has chosen, covering the period of January 21, 1995 through September 20, 1996. PG&E did not take any notice of problems until December 20, 1995, and took no affirmative action until April 1996. The only possible evidence of earlier problems was the negative read on February 22, 1995. Yet at that time PG&E apparently did not reread to verify the meter read, and actually rebated the account, apparently assuming that the earlier read on January 21, 1995 was in error, which is likely. There is no evidence of a broken meter seal at that time.

We believe it is unfair to delay such a long period, and then render a huge backbill for 20 months' estimated usage.

Since we hold Byington responsible for a reasonable period of unmetered usage, we consider what a reasonable period is, and what usage is reasonable for that period.

We conclude that PG&E has inadequate evidence of energy theft until December 20, 1995, and thus cannot hold Byington responsible for earlier usage that PG&E speculates was not metered.

The theft was discovered on December 20, 1995. No reads were taken in January and February, apparently due to poor road conditions leading to the residence. On March 1, 1996, when the meter was found inverted, we believe that PG&E should have taken action by March 20, 1996. This length of time is quite ample for PG&E to have placed a lock on the meter to prevent its removal and inversion, or disconnected service. We will not hold Byington responsible for the subsequent period.

Thus we are dealing with a period for back billing of 12 days in December 1995, 31 days in January, 29 days in February, and 20 days in March 1996, for a total of 92 days.

Since this complaint was filed under the expedited complaint procedure, no findings of fact or conclusions of law are stated.

**O R D E R**

**IT IS ORDERED that:**

1. Pacific Gas and Electric Company (PG&E) shall render a bill to Patrick J. Byington for unmetered electricity for the period December 20, 1995 to March 20, 1996, using the tariffs in effect during that period and based on the following:

From December 20, 1995 to January 22, 1996, 9.273 kilowatt hours (kWh) per day usage;

From January 22 to February 21, 1996, 11.200 kWh per day usage;

From February 21 to March 20, 1996, 10.207 kWh per day usage.

2. PG&E may add to the bill a portion of the cost of investigation, \$81.93.  
3. Case 97-08-042 is closed.

This order becomes effective 30 days from today.

Dated June 18, 1998, at San Francisco, California.

**RICHARD A. BILAS**

President

**P. GREGORY CONLON**

**JESSIE J. KNIGHT, JR.**

**HENRY M. DUQUE**

**JOSIAH L. NEEPER**

Commissioners