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Decision 98-07-013 July 2, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Utility Audit Company, Inc., Complainant, vs. Southern California Gas Company, Defendant.	ORIGINAL Case 93-07-046 (Filed July 28, 1993)
And Related Matter.	Case 94-02-009 (Filed February 2, 1994)

Patrick J. Power, Attorney at Law, for Utility Audit Company, Inc., complainant.
Steven Patrick, Attorney at Law, for Southern California Gas Gas Company, defendant.

O P I N I O N

Summary

Utility Audit Company, Inc. (UA or complainant), which represents the owners of seven apartment complexes, alleges that Southern California Gas Company (SoCalGas) deprived the owners of the opportunity to make full use of available baseline allowances. Essentially, UA requests that the Commission order SoCalGas to backbill these customers for three years prior to the date the Commission issued Resolution G-3063.

The Commission issued Resolution G-3063 on June 3, 1993, authorizing SoCalGas to combine meter readings for apartment complexes with nonstandard customer piping configurations so that these customers could make full use of their baseline allowances. UA, in effect, seeks retroactive application of Resolution G-3063.

The Commission concludes that since SoCalGas billed these customers in accordance with its then-applicable tariffs, there is no billing error and UA's request for backbillings should be denied.

Procedural Summary

Evidentiary hearing on the complaint was held on January 22, 1997. Opening briefs and reply briefs were filed by UDI and SoCalGas on May 22 and November 7, 1997, respectively.

The Complaint

These complaints involve seven multi-family apartment complexes, each served by SoCalGas with more than one gas master meter. At each location, there is an anomaly in the physical configuration of the customers' service lines, such that some or all of the apartments receive service from more than one master meter.

UA contends that SoCalGas misallocated the baseline allowance among the customers' meters. According to UA, as a result of the SoCalGas billing error, these customers did not receive effective use of their baseline allowances, unlike other customers who have standard yard piping configurations.

Position of UA

According to UA, the baseline allocation issue arises in such cases because the baseline allowance includes gas components for cooking, space heating and hot water. While UA agrees that the allowance is not allocated by end-use, UA argues that if the baseline allowance to a meter does not include the end-use served by that meter, the allocation to that meter will be inadequate. Meanwhile, the allocation of the baseline allowance to another meter will be excessive, relative to the usage through that meter. UA agrees that SoCalGas' witness correctly described the problem as follows:

> "SoCalGas' method of allocating the baseline allowance based on the number of dwelling units directly served through that meter for space heating and cooking requirements results in only a portion of the baseline allocation attributable to water heating being allocated to the meters that serve the central water heaters. The remainder of the baseline allowance attributable to water heating is allocated to meters that do not connect to the central water heaters. As a result, the complainants are unable to

> make effective use of their entire baseline allowances." (SoCalGas, Christensen, Ex. 9, p. 14.)

UA argues that since there is no dispute that such customers were unable to make effective use of their baseline allowances, the refusal by SoCalGas to rectify the misallocation is unconscionable.

UA states that when the issue of the proper treatment of such properties was first raised, SoCalGas did provide relief for these customers. The first such case involved the Fullerton Hills Apartments, a large apartment complex located in Fullerton. In that case, the customer requested that SoCalGas allocate the full baseline allowance to each of the meters, multiplied by the number of units served by each meter. SoCalGas refused to provide the requested allowances. Instead, SoCalGas combined the meters for billing purposes, treating the property as if it had a single meter. And over the next few years, SoCalGas continued to combine meters for each such property brought to the utility's attention, combining meters for 14 properties. UA requests the same treatment for the seven properties that are the subject of these complaints.

Further, UA states that in mid-1989, SoCalGas decided that it would not combine meters for any additional properties, while continuing to combine the meters for the 14 properties that it had previously combined. SoCalGas had decided that combining meter readings was inconsistent with its tariff, and "suspended combining of such meters until the issue could be resolved." According to UA, apparently SoCalGas considers the issue resolved by Resolution G-3063, dated June 3, 1993, whereby the Commission approved a SoCalGas advice letter that modified its tariff to incorporate a provision for combining meters. Since June 3, 1993, SoCalGas has combined meter readings for all such properties brought to its attention on a prospective basis.

UA does not dispute that the issue whether SoCalGas should combine the meters for such properties has been resolved prospectively with the adoption of Resolution G-3063. According to UA, the issue for the Commission to decide in this case is whether SoCalGas should have combined the meter readings for those properties that were brought to its attention prior to June 1993, before Resolution G-3063 was issued, and whether SoCalGas should have made refunds, either to June 1993, or beyond, for

each of the properties. UA submits that if the Commission finds that combined billing was not appropriate for these properties, then it must interpret the SoCalGas tariff as it was in effect at that time.

History of Resolution G-3063

SoCalGas witness Connie M. Christensen explained the billing history for "central facility" accounts billed under its Rate Schedules GM and GS, which are the rate schedules pertinent to this proceeding. (Ex. 9.)

She first defined "central facility" as facilities furnishing hot water to other buildings that are master metered for space heating and/or cooking. Also, in several cases, central facilities provide space heating to other buildings that are master metered for water heating.

She testified that the initial request to SoCalGas to provide additional baseline allowance for a central facility serving hot water to apartment buildings served by master meters delivering gas to the apartments for other uses was in October 1986. The complex was the Fullerton Hills Apartments, which had central hot water heaters serving hot water to other buildings separately master metered by way of underground yardlines. She contends that pursuant to the then-existing tariffs, these underground yardline central facility systems were not eligible for additional baseline allowances since each unit in the complex received a full baseline allowance in accordance with the then-effective Rate Schedule GM.

She stated that an agent for Fullerton Hills Apartments filed an informal complaint against SoCalGas in June 1986. At that time, SoCalGas explained to the agent that the accounts were being billed correctly according to the tariff and that the proper solution was to replumb the complex to take advantage of the tariffs. She testified that ultimately in an effort to avoid further disputes and as an accommodation to minimize the expense to Fullerton Hills, the readings of the master meters in the complex were combined for billing purposes. Over a period of approximately two years, similarly plumbed apartment complexes were brought to the utility's attention. SoCalGas also combined those accounts for billing purposes. Christensen testified that in mid-1989,

SoCalGas discontinued combining meters for new apartment complexes brought to its attention because the utility decided that the practice was inconsistent with Rule 17 and that combining of meter readings for billing purposes was not provided for in its tariffs. Therefore, SoCalGas suspended combining readings of such meters until the issue could be resolved.

To remedy this situation, on June 21, 1990, SoCalGas sent a proposed advice letter to the Commission Advisory and Compliance Division (CACD) for review and comment. This advice letter sought to modify Special Condition 3 of Rate Schedule GM, which provided a basis to distribute baseline allowances according to end-use when apartments are served gas directly through individual meters with hot water served through a central facility not on the same meter.

On August 23, 1990, SoCalGas met with CACD, John McDonald and J. Patrick Costello, associates of UA, to discuss the SoCalGas proposed advice letter and the suggested billing methods offered by McDonald and Costello.

On October 30, 1990, SoCalGas received a letter from CACD (Ex. 9) commenting on its proposed advice letter and McDonald's and Costello's proposal agreeing with the SoCalGas proposal. CACD recommended that SoCalGas wait for a decision on a formal complaint that had been filed by Costello before filing the advice letter since that case dealt with an issue related to combined billing.

While so waiting, SoCalGas became aware that McDonald intended to file formal complaints against SoCalGas regarding accounts that had not been combined for billing. On April 24, 1991, SoCalGas filed Advice Letter 2032 which was the same as the proposed filing previously submitted to CACD on June 21, 1990, by which SoCalGas sought to provide central facilities with a water heating baseline allowance for each unit served. In turn, each unit would receive a baseline allowance limited to the actual gas appliances served through the master meter.

The Commission took no formal action on Advice Letter 2032. Christensen testified that SoCalGas was told informally by CACD that the Commission considered the SoCalGas proposed baseline revision to be inconsistent with the intent of baseline,

which is not end-use oriented. Consequently, on January 9, 1992, SoCalGas withdrew Advice Letter 2032.

Subsequent to the withdrawal of Advice Letter 2032, SoCalGas filed Advice Letter 2149 on November 13, 1992, proposing to combine for billing purposes the readings on multiple master meters in residential complexes where central facilities serve dwelling units that are served through another master meter. Advice Letter 2149 was approved by Resolution G-3063 on June 3, 1993.

SoCalGas then began the process of providing notice to customers who potentially were eligible for such combined billing in August 1993. Customers had the responsibility to notify SoCalGas concerning eligibility. Upon such notification, SoCalGas verified the customer's yardline configuration, and if verified, the customer received combined billing prospectively effective with the regular meter read date following the date of notification in accordance with Rule 19, Rates and Optional Rates.

Position of SoCalGas

According to SoCalGas, the issue presented to the Commission is whether once a customer qualifies for combined billing pursuant to Resolution G-3063, SoCalGas must recalculate the bills for each account in dispute and make refunds for the maximum period allowed by law (three years) from the date of notification by the customer pursuant to Rule 19.

SoCalGas submits that the answer to this question is no. SoCalGas argues that recalculation of bills in such a manner is not permitted unless there is utility billing error. SoCalGas contends that it has, in fact, correctly billed these accounts in accordance with Rate Schedule GM on file with the Commission, and UA has not shown otherwise.

SoCalGas states that the Commission resolved the backbilling issue presented in this case in D.92-03-041, Costello, dated March 11, 1992, (43 CPUC2d 483; rehearing denied by D.92-06-035 dated June 3, 1992.) The Commission stated:

> "7. The lack of a tariff option that enables a customer to take maximum advantage of available baseline allowances in conjunction with the customer's particular piping configuration is not utility billing error. It is the customer's responsibility to install all piping necessary to take advantage of available utility tariffs."

(D.92-03-041, Conclusion of Law 7, 43 CPUC2d at 496; affirmed in *Utility Audit Co. v. So. Calif. Gas Co.*, D.94-05-041, Conclusion of Law, 7 54 CPUC2d 480, 489.)

SoCalGas argues that this Commission decision directly refutes UA witness McDonald's testimony (Ex. 1) in which he contends SoCalGas incorrectly allocated baseline quantities to the meters in dispute. SoCalGas submits that this is contrary to the conclusion in Costello that the lack of a tariff option for a particular piping configuration is not utility billing error. SoCalGas states that its witness testified that SoCalGas provided full baseline allowances to the disputed accounts as it does to all other accounts with master metered dwelling units, and allocated baseline quantities correctly in accordance with its tariff. (Ex. 9, pp. 11-12.)

Further, SoCalGas argues that the complaints now before the Commission do not present unique factual or legal issues distinct from those in D.94-05-041 (54 CPUC2d at 480-490). SoCalGas contends that UA witness McDonald merely reargues the positions set forth in litigating the complaints that were resolved against UA in D.94-05-041.[1] The SoCalGas witness testified (Ex. 9, pp. 14-15) that the cases which are the subject of this proceeding have all material facts in common with these previous cases. Since D.94-05-041 directly controls the issue raised by these complaints and no material facts have been offered by UA which would allow a different decision, SoCalGas submits that the complaints should be dismissed.

SoCalGas points out that UA, on page 11 of its brief, states: "UA would be willing to settle for what would be fair to the customer: combined billing." UA has also acknowledged that since authorized to do so by Resolution G-3063, SoCalGas has in fact

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[1] Cases (C.) 91-04-042, C.91-05-054, C.91-06-050, C.91-11-019 and C.91-11-050.

provided combined meter reading for baseline purposes on a prospective basis. According to SoCalGas, what is implicit in UA's admission is that prior to issuance of that Resolution, SoCalGas did not have the authority to combine meter readings for baseline purposes as was found by the Commission in D.94-05-041.

Further, SoCalGas argues that what UA wants, but is not entitled to receive, is to have customer bills retroactively adjusted under terms similar to those of Resolution G-3063. SoCalGas contends that UA cites no relevant controlling authority for this proposition. The terms of Resolution G-3063 do not provide for the retroactive application sought by UA. And neither does D.94-05-041, the most recent decision on the merits of cases substantially similar to those before the Commission in this proceeding. SoCalGas states that the reason for this lack of citation to controlling authority for retroactive billing adjustments is obvious: The SoCalGas tariff allows retroactive refunds only where there has been utility billing error. (Ex. 9, p. 4.) SoCalGas submits that there has been no showing that SoCalGas has committed billing error with regard to the issues in this proceeding.

Discussion

We conclude that UA is not entitled to backbilling. Specifically, we find that: (1) There is no basis for UA's argument that combined billing already had been approved by the Commission prior to adoption of Resolution G-3063; (2) Contrary to UA's belief, the Commission in D.94-05-041 did not "effectively reverse" its earlier decision, D.92-03-041, Costello; and (3) Contrary to UA's argument, D.94-05-041 is consistent with Costello.

UA argues that the Commission's holding in Costello clearly establishes that combined billing was approved under the SoCalGas' tariff. UA contends that it is absurd for SoCalGas to claim that it did not have authority to combine meter readings prior to Resolution G-3036. According to UA, the Commission already had approved combined billing. However, UA admits that "the decision itself is silent in this regard." (UA Opening Brief, p. 6.)

We reject UA's argument that in Costello, the Commission approved combined billing under the then-existing tariffs of SoCalGas. As UA admits, the decision does not, on its face, approve combined billing. Furthermore, the decision clearly refutes UA's argument that the Commission had "already sanctioned combined billing" pursuant to the utility's then-existing tariff, prior to issuance of Resolution G-3036:

> "According to Costello, SoCalGas should know that there are fewer central water heaters on the premises than there are master meters. Therefore, SoCalGas should be held responsible for knowing, from the day the meters were installed, that its Rate Schedule GM did not specifically accommodate such a metering configuration. He requests backbilling for three years from the date of notification.
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> "As an accommodation to the customer, after notification and verification, SoCalGas in October 1987 combined the meter readings of the four master meters in the complex so that the full baseline allowance could be utilized by the central facilities. The accommodation was made because the present Rate Schedule GM does not specifically accommodate central facilities that serve dwelling units served by another master meter."
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> * * *
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> "SoCalGas' position is that this account has been billed according to Rate Schedule GM and there has been no billing error by the utility. Therefore, backbilling the account prior to notification in August 1987 under combined billing is not justified."
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> * * *
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> "As we concluded for Case IV, the lack of a tariff option that allows a customer to take full advantage of all baseline allowances in conjunction with his/her particular gas piping configuration is not utility billing error. It is the customer's responsibility to install all piping necessary to take advantage of available utility tariffs and to inform the utility of the piping arrangement.
>
> "Complainant has failed in his burden of proof to establish that SoCalGas did not bill in accordance with its filed tariff; therefore, we deny complainant's request for backbilling." (D.92-03-041, Costello; 43 CPUC2d, at 494-496.)

We believe that in Costello, the Commission unequivocally adopts the SoCalGas position that backbilling these accounts under combined billing is not justified.

In its opening brief (p. 7), UA takes issue with the Administrative Law Judge's (ALJ) proposed decision that was issued in the Costello case. According to UA, in Costello, the Commission rejected the ALJ's attempted repudiation of combined billing, and sanctioned combined billing pursuant to the SoCalGas existing tariff although the Commission did not even discuss in its decision the ALJ's attempt to reject combined billing. Apparently, the basis for UA's conclusion that the Commission approved retroactive combined billing in Costello is the absence of a discussion approving combined billing. In other words, UA believes that the Commission's silence constitutes tacit approval.

We reject UA's contentions. The absence of a discussion in a Commission decision is no basis to conclude that the Commission either approved or disapproved an issue that is not discussed. However, in hindsight, we may have avoided this erroneous conclusion by UA had we stated in Costello that the Commission was addressing combined billing elsewhere, outside the record of that proceeding.[2]

Nevertheless, we remind UA that the Commission's decision speaks for itself. No legal conclusions may be drawn from differences between the Commission's decision and the ALJ's proposed decision. The Commission may, for its own reasons, adopt or reject all or any part of the ALJ's proposed decision, or issue its own decision. The Commission's decision need only be based on the evidentiary record, and be supported by valid findings of fact and conclusions of law.

Having erroneously concluded that in Costello the Commission silently approved combined billing prior to the issuance of Resolution G-3036, UA further argues that in the later decision, D.94-05-041, the ALJ did succeed in declaring that combined billing was in violation of the SoCalGas (then-existing) tariff and the

[2] See history of Resolution G-3036 set forth above.

Commission "effectively reversed" Costello. As support for its argument, UA contends that in D.94-05-041, the Commission dismissed UA's claim with the following statement, "buried in a footnote":

> "While the underlying facts in the Costello case are similar to these cases, the decision is not squarely on point with the cases now before us since combined billing was not an issue with Costello." (D.94-05-041, n. 5, 54 CPUC2d at 490.)

UA argues that the above statement is patently false, and a decision based on a false statement is not worthy of precedential status. Therefore, UA requests that the Commission resolve an alleged conflict between Costello and D.94-05-041, and "reaffirm" that Costello permitted combined billing.

To put the matter in its proper light, we set forth below the related text from Costello and the entire footnote:

> "First, we will address complainants' Baseline Statute argument.
>
> "PU Code § 739(c)(1) requires that the utility 'file a schedule of rates and charges providing baseline rates.' SoCalGas has complied with this requirement and its tariff schedule provides a full baseline allowance for each multi-family dwelling unit. And complainants did receive baseline allowances equal to the total number of dwelling units in each complex. However, complainants were unable to maximize the utilization of their baseline allowances because of an anomaly in their hot water piping arrangements. The Baseline Statute does not require the utility to assure the ability of a customer to maximize baseline allowances under all circumstances. The statute simply requires the utility to have a schedule providing baseline allowances. And we conclude that it is the customer's responsibility to design its facilities appropriately if it desires to take full advantage of the available utility tariff schedules.5/ Accordingly, we do not find merit in complainants' argument that the Baseline Statute required combined meter readings in such cases."
>
> "5/ This is consistent with our holding in Case IV and Case IX in the Costello decision, D.92-03-041, mimeo. pp. 16-18 and 22-27. While the underlying facts in the Costello case are similar to these cases, the decision is not squarely on point with the cases now before us since combined billing was not an issue in Costello." (D.94-05-041, 54 CPUC2d at 486-487, 490, emphasis added.)

The Commission's holding in the above paragraph is that it is the customer's responsibility to design its facilities to take full advantage of available tariff schedules. This holding is consistent in Costello and D.94-05-041. The first sentence of the footnote simply confirms this consistency. In the second sentence, the Commission attempts to point out that while the underlying facts in the two cases are similar, the issues addressed are not. In retrospect, rather than stating that "combined billing was not an issue in Costello," it would have been clearer had we stated that the Commission did not address or adopt combined billing in Costello. Nevertheless, we believe this lack of precision is de minimis, and is no basis for UA to conclude that D.94-04-041 "obliquely reversed" Costello.

In summary, we reject UA's argument that the Commission approved retroactive combined billing in Costello, and in D.94-04-041 reversed Costello.

Next, we will address UA's argument that if the Commission again were to overturn Costello and find that SoCalGas did not have authority to combine meters, it must face the issue of the appropriate interpretation of the SoCalGas tariff. UA contends that the SoCalGas allocation of the baseline allowance to the different meters of each of these customers was contrary to the SoCalGas tariffs in effect at that time. The basis for this assertion, apparently, is the testimony of SoCalGas witness Christensen on cross-examination that, at the time, SoCalGas did not have a tariff that allowed customers with nonstandard yard piping to fully utilize their baseline allowances. UA apparently concludes that since Christensen agreed that the SoCalGas tariff did not allow such customers to fully utilize their baseline allowances, the utility's treatment of these properties was not consistent with its then-applicable tariffs.

From the outset of this proceeding and in the prior cases, SoCalGas has unequivocally agreed that its tariffs, at the time, did not allow such apartment complexes to fully utilize their baseline allowances. However, SoCalGas disagrees that its billing treatment was inconsistent with its then-applicable tariff. According to the testimony of SoCalGas witness Christensen, each of these accounts was billed correctly, under the most applicable rate schedule available prior to June 3, 1993. That rate schedule was Schedule GM. Under Special Condition 2 of that tariff, the total number

of known qualified living units for each account was provided the full baseline allowance.[3]

Christensen further stated that on November 13, 1992, SoCalGas filed a new revision to its tariffs to provide for combined billing. This revision was accepted by Resolution G-3063, dated June 3, 1993. Qualified GM accounts are now combined for billing purposes as of the regular meter reading date following customer notice and verification by the utility. She testified that back billing these accounts, however, is not appropriate as there has been no utility billing error.

In D.94-05-041, 54 CPUC2d at 483-484, we addressed UA's argument regarding the interpretation of the SoCalGas tariff. In that proceeding, UA argued that the tariff was ambiguous. Now, UA contends that it is vague, and cites SoCalGas Rule 1,

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[3] Schedule GM states:

"RATES.

The individual Baseline therm allocation shall be multiplied by the number of qualified residential units."

"SPECIAL CONDITIONS

. . .

2. Baseline Usage: The following usage is to be billed at the Baseline rate for multi-family dwelling units. Usage in excess of applicable Baseline allowances will be billed at the Non-Baseline rate.

Per Residence	Daily Therm Allowance for Climate Zones[4]		
	1	2	3
Summer	.620	.620	.620
Winter	1.657	2.155	2.884

[4] Climate Zones are described in the Preliminary Statement."

definition of "Facility." However, UA adds that it would be willing to settle for what would be fair to the customer: combined billing.

We believe that UA is simply rearguing its position in the prior case, where we fully addressed the interpretation of the SoCalGas tariff. Since UA again raises the same issue, we set forth below pertinent excerpts from that discussion:

> "We are not persuaded that the lack of a definition in the tariff of the term 'qualified residential unit' amounts to an ambiguity. Both Schedules GM and GS have an 'Applicability' requirement which limits the availability of these schedules to certain types of dwelling units. 3/ Thus, a qualified residential unit would only be one that meets the applicability requirement of the schedule. No separate definition is necessary.
>
> "Furthermore, there is no dispute that all the living units involved are qualified residential units, and SoCalGas did provide baseline allowance equal to the total number of living units in each complex. Therefore, the question of qualified residential units is not an issue.
>
> "Apparently, complainants believe that SoCalGas should have provided additional baseline allowances for the central hot water facilities. But SoCalGas' tariff is clear that baseline allowances under Special Condition 2 of Schedule GM are only for living units. Since a hot water facility is obviously not a living unit, complainants are not entitled to receive additional baseline allowances on that account. While we agree that SoCalGas' then-available tariff did not specifically accommodate hot water facilities such as complainants', that does not mean that the tariff is ambiguous. Accordingly, we reject complainants' argument based on ambiguity of the tariff schedule."
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> "3/ For example, a dwelling unit on a boat would not qualify, but a dwelling unit in a mobile home park would qualify under the applicability requirement of Schedule GS." (D.94-05-041, 54 CPUC2d at 484, 489, emphasis added.)

In summary, we conclude that the lack of a tariff option that enables a customer to make full use of available baseline allowances in conjunction with the customer's particular piping configuration is not utility billing error. It is the customer's responsibility to install all piping necessary if the customer desires to take to make full use of available utility tariffs. Accordingly, the requested relief should be denied.

Comments on ALJ's Draft Decision

As requested by UA, the ALJ determined that release of his non PU Code Section 311 draft decision was in the public interest and consequently the ALJ's draft decision was issued for comments on February 4, 1998 (see Rule 77.1 of the Commission's Rules of Practice and Procedure). Comments were filed by UA and SoCalGas on February 18, 1998. Reply comments were filed by both parties on March 6, 1998.

In its reply comments on the ALJ's draft decision, UA argues:

"The tariff interpretation in the Proposed [sic] Decision starts with a false premise:

> SoCalGas Tariff Rule 17 effective during the time covered by the complaints did not permit combining meter readings for purposes of maximizing baseline allowances. (D.94-05-041) (Finding of Fact No. 4)

"SoCalGas Tariff Rule 17 permits combining of meters 'for the Company's operating convenience.' SoCalGas itself cited its 'operating convenience' as the basis for combining meters in Case IX in the *Costello* case (D.92-03-041) and the Commission approved SoCalGas' treatment. Thus SoCalGas' earlier interpretation of Rule 17 had already been upheld by the Commission, prior to D.94-05-041."

SoCalGas disagrees with UA's interpretation of *Costello* Case IX. SoCalGas states:

"... it is clear that the Commission neither 'approved combining meters' nor 'allowed SoCalGas to continue to combine meters' for any of its customers other than those it had previously combined in a misapplication of its Rule 17. Complainant (UA) argues that this treatment of these specific customers, *i.e.*, the grandfathering for them alone of SoCalGas' incorrect meter combinations for baseline purposes, was, if fact, Commission approval of such activity for *other* customers. This is not correct for two reasons. First, Complainant fails to cite to anything in the record to prove this conclusion. Second, if Complainant's

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[4] "Maximizing baseline allowances" has nothing to do with combining meters. Apparently the term is used to distort UA's position.

conclusion was, in fact, held by the Commission, there would have been no need for SoCalGas to file its Advice Letter No. 2149 requesting specific permission to combine meters in the manner sought. If Complainant's view of the matter was, in fact, the Commission's, then the Commission would have so stated and informed SoCalGas that approval of Advice Letter No. 2149 was unnecessary as SoCalGas already had the requisite authority it sought to obtain through the Commission's approval of its advice filing. However, the Commission did approve Advice Letter No. 2149 on June 3, 1993 by Resolution G-3036 (G-3063) thereby permitting combined billing for all customers, including those represented by Complainant, *prospectively*. Since the terms of the Resolution act only prospectively, Complainant is simply not entitled to the relief it seeks." (SoCalGas reply comments pp. 4 and 5.)

The Commission previously addressed UA's Rule 17 argument in D.94-05-041, 54 CPUC2d 480. In denying UA's request for backbilling, the Commission stated:

"Complainants (UA) argue that SoCalGas Tariff Rule 17 specifically contemplates combined billing in the circumstances involving these five cases.

"At all relevant times, SoCalGas Tariff Rule 17 read as follows:

"READINGS OF SEPARATE METERS NOT COMBINED

"For the purpose of making charges, each meter upon the consumer's premises will be considered separately and readings of two or more meters will not be combined except as follows:

"(a) Where combination of meter readings are specifically provided for in rate schedules.

"(b) Where the maintenance of adequate service and/or where the Company's operating convenience shall require the installation of two or more meters upon the consumer's premises, instead of one meter.

"(The application of Paragraph (b) shall be determined by the nature of the meter installation which would be made for new consumers enjoying a similar character of service.)"

* * *

"SoCalGas disagrees with complainants' interpretation of Rule 17. SoCalGas' position is that its tariffs did not entitle the complainants to have their bills calculated by combining meter readings for purposes of baseline allowances before the issuance of Resolution G-3063.

"According to SoCalGas, nothing abut the complainants' circumstances fell within the exceptions provided in Rule 17 to its general rule that meter readings are not to be combined for purposes of calculating bills. SoCalGas points out that there has been no evidence presented that multiple meters at the complainants' premises were installed for SoCalGas' operating convenience and/or for the maintenance of adequate service. SoCalGas further points out that Utility Audit Company, Inc.'s witness John McDonald testified that the customers' facilities could have been designed so that each water heater would not have served more dwelling units than the number of dwelling units served directly with gas through the meter serving the water heater." (*Id.* p 485.)

* * *

"Next, turning to the Rule 17 issue, the question is whether 'maintenance of adequate service' under subsection (b) includes the concept of providing baseline allowances. We say 'No' since to adopt complainants' interpretation, we would have to ignore the existence of the underlined portion of the subsection (b) shown below:

> "(b) Where the maintenance of adequate service and/or where the Company's operating convenience *shall require the installation of two or more meters upon the customer's premises, instead of one meter.*" (Emphasis added.)

"We conclude that this subsection applies only to the situation where the utility, for its own reasons, has to install more than one meter. 5/

"As SoCalGas points out there is no evidence that it installed multiple meters for the purpose of maintaining adequate service or for its operating convenience. (*Id.* p. 487.)

5/ For example, in a situation where the utility does not have a sufficiently large meter on hand."

As SoCalGas points out, if Rule 17 had permitted combined billing, there would have been no need to issue Resolution G-3063. Once again, we must reject UA's argument for retroactive combined billing.

Findings of Fact

1. The apartment complexes that are the subject of these cases have central hot water heaters serving dwelling units not on the same master gas meter as the hot water heaters.

2. The design of complainants' hot water facilities did not allow complainants to make full use of the SoCalGas then-available tariff schedules which provided baseline allowances.

3. Combining master meter readings would have enabled these complexes to make full use of all available baseline allowances.

4. SoCalGas Tariff Rule 17 effective during the time covered by the complaints did not permit combining meter readings for purposes of making full use of baseline allowances. (D.94-05-041.)

5. To address the baseline allowance problem experienced by complainants, on June 3, 1993, the Commission issued Resolution G-3063 approving SoCalGas Advice Letter 2149, which permits combining meter readings on a prospective basis for such complexes.

6. SoCalGas is currently billing complainants on the basis of combined meter readings prospectively from the effective date of its new schedules authorized by Resolution G-3063.

7. The terms of Resolution G-3063 do not provide for the retroactive application of combined billing sought by complainants.

8. The instant complaints do not present unique factual or legal issues that were not addressed by the Commission in D.94-05-041.

9. There is no basis for UA's claim that the Commission approved retroactive combined billing in Costello, or that D.94-05-041 reversed Costello.

10. D.94-05-041 is consistent with Costello.

11. In Costello, the Commission upheld the SoCalGas refusal to grant any combined billing relief for the retroactive period.

12. In Costello, the decision states that "as an accommodation to the customer," SoCalGas in October 1987 combined the meter readings of the four master meters in the

complex so that the full baseline allowance could be utilized by the central facilities (D.92-03-041, 43 CPUC2d 483, 494). However, aside from the above statement of the facts, the Commission did not approve or disapprove combined billing, since this issue was being addressed outside the record of the Costello case.

13. D.94-05-041 is directly on point with the complaint cases now before the Commission.

Conclusions of Law

1. SoCalGas Tariff Schedules GM and GS in effect during the period covered by these complaints are not vague or ambiguous; these schedules simply did not address central hot water facilities that serve dwelling units not on the same master meter.

2. The complainants could have made full use of their baseline allowances had the piping to their hot water facilities been designed to take full advantage of the SoCalGas then-available tariff schedules.

3. The fact that the SoCalGas then-available tariff schedules did not enable complainants to take full advantage of available baseline allowances does not mean that the SoCalGas tariff schedules were not in compliance with applicable baseline statutes (PU Code §§ 739 and 739.5). (D.94-05-041.)

4. Since SoCalGas Tariff Rule 17 did not permit combined billing for the purpose of maximizing baseline allowances, SoCalGas had no authority to combine billings for the 14 customers who were in the same situation as complainants. Such utility practice is in violation of PU Code § 453(a). (D.94-05-041.)

5. Since it is well established that tariffs must be strictly construed (*Transmix Corp. v. Southern Pacific Company* 187 Cal. App. 2d 257, 264 (1960)), and notwithstanding the violation of PU Code § 453(a) with respect to the 14 customers, a situation which SoCalGas subsequently corrected by filing Advice Letter 2149, SoCalGas is required to bill complainants according to the applicable tariff schedules. Therefore, complainants are not entitled to combined billing because of the SoCalGas lapse with respect to the 14 customers. (D.94-05-041.)

6. Although SoCalGas was in violation of PU Code § 453(a) in applying its tariff schedules to the 14 customers, that does not mean that the tariff schedules were discriminatory and in violation of PU Code § 453(c). (D.94-05-041.)

7. The lack of a tariff schedule that would enable a customer to take make full use of available baseline allowances in conjunction with the customer's particular piping configuration is not utility billing error. It is the customer's responsibility to install all piping and facilities necessary if the customer desires to take full advantage of available utility tariff schedules. (D.94-05-041.)

8. SoCalGas has correctly billed these accounts in accordance with Rate Schedule GM. Complainants have not shown otherwise.

9. Recalculation of bills in the manner requested by the complainants is not permitted unless there is utility billing error (Rule 19).

10. Complainants have not established that there was utility billing error. Therefore, the complaints should be denied.

11. Since the instant complaint cases do not present unique factual or legal issues not addressed in D.94-05-041, the complaints should be denied since these complaints are directly governed by D.94-05-041.

ORDER

IT IS ORDERED that the complaints of Utility Audit Company, Inc. with regard to Case (C.) 93-07-046 and C.94-02-009 are denied. These cases are closed.

This order is effective today.

Dated July 2, 1998, at San Francisco, California.

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