

ALJ/AVG/mrj

Decision 98-09-061 September 17, 1998

Mailed 9/18/98

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

UTILITY AUDIT COMPANY, INC.,

Complainant,

vs.

SOUTHERN CALIFORNIA GAS COMPANY,

Defendant.

Case 97-02-015  
(Filed February 10, 1997)

Patrick J. Power, Attorney at Law, for  
Utility Audit Company, Inc., complainant.

Steven D. Patrick, Attorney at Law, for Southern California  
Gas Company, defendant.

## O P I N I O N

### Summary of Decision

This decision concludes that Utility Audit Company, Inc. (complainant) has established that the assignment of incorrect baseline allowances to five multi-family dwellings was the result of utility billing error by Southern California Gas Company (SoCalGas). The requested relief is granted. SoCalGas is ordered to backbill these accounts for three years, with interest, from the date of first notification that there was a high bill problem.

### Background

Complainant alleges that SoCalGas rendered incorrect bills to the Le Parc Simi Valley Homeowners Association (Le Parc).

Complainant is in the business of auditing utility bills for its clients to ensure that the client is billed under the appropriate rate schedule and that the bill is calculated correctly.

The Le Parc property consists of 264 master-metered dwelling units in 8 buildings. Complainant's audit revealed that SoCalGas had provided Le Parc with baseline allowances for only 150 dwelling units. Specifically, SoCalGas allocated insufficient baseline allowances to 5 of 8 master meters.

Table 1

<u>Address</u>	<u>Actual Units</u>	<u>Billing</u>	<u>Date of Turn-On</u>
1108 Tivoli	48	24	11/22/1985
1174 Tivoli	36	3	9/12/1986
1109 Tivoli	48	24	11/2/1986
1175 Tivoli	36	24	11/6/1984
1230 Tivoli	36	3	9/18/1986

Complainant alleges that as a result, SoCalGas overcharged Le Parc for gas service.

By letter dated March 20, 1996, complainant informed SoCalGas that SoCalGas was providing baseline allowances for only 150 of its 264 dwelling units. Complainant requested that SoCalGas adjust the baseline allowances for Le Parc to account for the larger number of dwelling units and that the account be further corrected for the three years preceding the date of complainant's letter.

On June 7, 1996, SoCalGas sent a letter to complainant stating that based on a field verification of the Le Parc property, SoCalGas had determined that complainant's requested change in the number of dwelling units to which the baseline allowances should apply was accurate. SoCalGas also stated that it had made the necessary corrections for baseline allowances back to the month of

April 1996, the billing cycle immediately following the date of first notice to SoCalGas, for the affected accounts.

SoCalGas denied complainant's request for adjustment of Le Parc's baseline allowances for the three years preceding April 1996. SoCalGas stated that its denial was based on Rule 16 of SoCalGas' tariff and that SoCalGas had no evidence that Le Parc had provided notice or information different from what SoCalGas' accounts contained until receipt of complainant's letter.

### **Complaint**

Complainant and SoCalGas were unable to resolve their disagreement regarding the appropriate period to which the correction of baseline allowances should apply. Accordingly, complainant filed this complaint requesting that Le Parc be refunded the amount associated with baseline adjustments attributable to the differing number of dwelling units for the three-year period prior to complainant's March 20, 1996 letter.<sup>1</sup>

### **SoCalGas' Answer to Complaint**

SoCalGas states that after the filing of the complaint SoCalGas reviewed its records related to billing services at Le Parc. SoCalGas discovered that in response to a query by the customer at 1174 Tivoli Lane, SoCalGas had issued a high bill investigation order in September 1994. A high bill investigation entails a site investigation by SoCalGas' service representative. The results of the

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<sup>1</sup> A complaint may be filed pursuant to Public Utilities (PU) Code § 1702 which states:

"1702. Complaint may be made...by any...person, ...by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission. . . ."

September 1994 site investigation were noted on the high bill investigation order. The order states that the customer was misreading the bills and that the customer was satisfied by the explanation provided by SoCalGas' service representative. However, the service representative did not verify the number of dwelling units served by the meter at 1174 Tivoli Lane.

Although the service representative did not verify the number of dwelling units served by the meter at 1174 Tivoli Lane during his September 1994 site investigation, SoCalGas agrees that this was the first opportunity it could have verified the correct number of dwelling units served by the meter. Accordingly, SoCalGas made corrections to the baseline allowances for all the buildings at the Le Parc property back to September 1994 and refunded the overbilled amount without interest.

Complainant, after learning about the high bill investigation, modified its requested relief. Complainant now requests that refunds be made for three years prior to August 1994, the initial month when the customer inquiry resulted in the high bill investigation.

Another related issue in this proceeding involves SoCalGas' record retention policy. SoCalGas retains documents related to orders for gas service for seven years from the date of the first day of service or the date of turn-on. Table 1 shows the dates of turn-on for the five buildings for which complainant is requesting a refund.

### Hearing

An evidentiary hearing in the proceeding was held on February 24, 1998, in Los Angeles before Administrative Law Judge (ALJ) Garde.

John McDonald provided testimony for complainant, and Connie Christensen testified for SoCalGas.

The matter was submitted on May 8, 1998, upon receipt of reply briefs.

### **Complainant's Position**

Complainant argues that SoCalGas' incorrect billing of Le Parc constitutes utility billing error. According to complainant, SoCalGas' refund to Le Parc is an admission that SoCalGas committed utility billing error when it failed to verify the number of units.

Complainant believes that at the heart of this complaint is SoCalGas' document retention policy. According to complainant, only SoCalGas would have had the documents that would establish the origin of the billing error. Complainant argues that because the service to Le Parc was initiated outside the period that SoCalGas retains its service origination documents, SoCalGas is able to claim that complainant has failed to prove that SoCalGas was responsible for the error regarding the number of dwelling units eligible for baseline allowances.

Complainant argues that there is no plausible reason to believe that Le Parc would have reported an incorrect number of dwelling units for the 5 buildings at issue. Complainant points out that the property consists of eight buildings, each with a separate master meter. Complainant contends that since each building had a different turn-on date (as set forth in the table above), it is highly unlikely the customer gave SoCalGas the wrong information on six separate occasions.<sup>2</sup>

Further, complainant points out that, as SoCalGas' witness testified, on such meter installations SoCalGas sends out a service planner who surveys the property to determine the proper size of the utility's service pipe and the placement of its meters. As a result SoCalGas' customer service representative has that information at the time the customer actually calls the utility to initiate

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<sup>2</sup> Of the eight accounts, in five accounts the baseline allowance was too low. In one account the allowance was too high. The allowance was correct in two accounts.

service. Complainant argues that, therefore, if the customer were to state an incorrect number of dwelling units at the time the customer calls to request turn-on, since SoCalGas already would have had the correct information from its planners, the customer service representative would be able to question the customer's statement and require verification, if necessary. Accordingly, complainant contends that SoCalGas is wrong when it states that September 1994 was "the first opportunity SoCalGas could have conceivably had notice of the misidentification of the number of Le Parc units receiving a baseline credit." Complainant contends that if the customer caused the error, the first opportunity for SoCalGas to correct the error was when the customer allegedly made the error. Complainant submits that the only way that SoCalGas' contentions regarding its first opportunity can be true is if SoCalGas made the error.

Further, complainant contends that SoCalGas should have detected the error when it performed its high bill investigation. According to complainant, SoCalGas failed to verify the number of dwelling units in violation of its tariff. Complainant points out that SoCalGas' Schedule GM states: "Eligibility for service hereunder is subject to verification by the Utility." Complainant argues that SoCalGas has a duty to verify the number of dwelling units pursuant to its tariff provision. Therefore, according to complainant, when the number of dwelling units does not conform to the number of units at the property, SoCalGas has failed to verify the customer's eligibility for service under Schedule GM, and that is utility billing error.

Complainant also argues the notice provided by SoCalGas on customer bills is deficient because it does not inform the customer that there is any link between the number of dwelling units and the rates that SoCalGas applies to the customer's usage. According to complainant, the notice does not alert the customer as to the possible consequences of the billing error.

Complainant requests that SoCalGas be ordered to make refunds to Le Parc for the three years prior to August 1994, with interest, and to pay Le Parc interest on the refund previously paid by SoCalGas to Le Parc.

**SoCalGas' Position**

SoCalGas argues that complainant has failed to meet its burden of proof to show that SoCalGas has not billed Le Parc in accordance with SoCalGas' tariff. According to SoCalGas, complainant has provided no evidence to sustain its burden of proof that Le Parc provided correct information to SoCalGas and that SoCalGas then erred in designating the incorrect number of dwellings units receiving baseline allowances that appeared on the bills from the date of turn-on.

SoCalGas contends that complainant has not demonstrated that utility billing error occurred prior to the field investigation in September 1994.

SoCalGas disagrees with complainant's position that SoCalGas failed in its duty to notify Le Parc of the number of units to which baseline allowances were applied prior to complainant's March 29, 1996 letter. According to SoCalGas, from the date of turn-on of the buildings at Le Parc, the number of units receiving baseline allowance for each building in question appeared in block letters on the face of each monthly bill. In addition, SoCalGas, since 1988, provided an annual separate bill message requesting customers to verify the number of dwelling units to which baseline allowances applied and to notify SoCalGas of any errors.

SoCalGas also disagrees with complainant's claim that because SoCalGas did not retain the service origination documents for Le Parc, SoCalGas cannot show that Le Parc provided inaccurate information, and SoCalGas, therefore, must pay the requested refund. SoCalGas submits that it has complied with its record retention policy of maintaining service origination documents for seven years from the date of turn-on. SoCalGas notes that the Commission in *Costello v.*

*Southern Cal. Gas Co. (1992), Decision (D.) 92-03-041, 43 CPUC2d 483, 486, found its record retention policy reasonable.*

### **Discussion**

Complainant argues that SoCalGas' tariff interpretation violates PU Code §§ 451 and 532. Complainant notes that § 451 requires that "all charges...shall be just and reasonable," and "all rules made by a public utility affecting or pertaining to its charges...shall be just and reasonable."

Complainant argues that SoCalGas' rule requiring that the customer must prove that the utility made the error is not "just and reasonable." According to complainant, where SoCalGas decides to discard customer turn-on records, SoCalGas' rule is unreasonable, even if its document retention policy otherwise is reasonable, and the charges demanded by SoCalGas pursuant to an unreasonable rule are unreasonable.

Complainant further notes that § 532 provides that "no public utility shall charge...a different compensation...than the rates...as specified in its tariffs." The rates specified in SoCalGas' tariffs include the baseline allowance allocable per living unit. According to complainant SoCalGas' charges to Le Parc are not consistent with the rates specified in SoCalGas' tariff; therefore, SoCalGas' treatment of Le Parc violates § 532.

Complainant contends that SoCalGas committed billing error when it misallocated the baseline allowance to Le Parc. According to complainant, SoCalGas failed to verify the number of units at Le Parc, in violation of its tariff. Complainant requests that SoCalGas be ordered to make refunds to Le Parc for the three years prior to August 1994, with interest, and pay Le Parc interest on the refund previously paid by SoCalGas to Le Parc.

As stated above, SoCalGas was first notified about the error in the number of dwelling units receiving baseline allowances by complainant's letter dated



March 20, 1996. SoCalGas corrected the baseline allowances for Le Parc prospectively after being notified about the correct number of dwelling units qualified to receive baseline allowances. Both SoCalGas and complainant now agree on the number of dwelling units that qualify for baseline allowances at Le Parc.

Later, during review of Le Parc's billing records in response to the instant complaint, SoCalGas became aware of the September 1994 high bill investigation. According to SoCalGas, that was in effect the first notification received by SoCalGas that there was a problem with Le Parc's account. SoCalGas concedes that the correct number of dwelling units could have been determined at that time. Therefore, SoCalGas treated the September 1994, high bill investigation as the "date of notification" by the customer for billing adjustment pursuant to its Tariff Rule 16C. Accordingly, SoCalGas made corrections to the baseline allowances back to September 1994 and refunded the overbilled amount, without interest.

Essentially, SoCalGas does not agree that there was "utility billing error" pursuant to its Tariff Rule 16. Therefore, SoCalGas did not provide a refund for three years going back from September 1994.<sup>3</sup> On the other hand, complainant contends that there was utility billing error and, in his amended complaint, now seeks a refund, with interest, for three years going back from September 1994.

In determining whether or not SoCalGas was responsible for the billing error, we have to determine if SoCalGas could have known about the correct number of dwelling units qualifying for baseline allowance prior to September 1994. The evidentiary problem in making that determination is that,

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<sup>3</sup> See SoCalGas Exhibit No. 2, p. 5, Prepared Testimony of C. M. Christensen.

due to SoCalGas' document retention policy, the service initiation documents for Le Parc are no longer available. SoCalGas was following its seven-year record retention policy for turn-on documents, which was found to be reasonable by the Commission.

It is well established that the complainant has the burden of proving failure of the utility to comply with provisions of its tariff in billing the customer in order to obtain a refund in cases such as at issue here. (Rules of Practice and Procedure, Rule 9; PU Code § 1702; *Pillsbury Mills, Inc. v. S.P. Co.* (1946) 46 C.R.C. 564.) In addition, pursuant to SoCalGas Tariff Rule 16,<sup>4</sup> complainant's burden includes the burden of establishing that the alleged overbilling resulted from an error committed by the utility as opposed to one committed by the customer.

We believe such a rule makes sense. If, as argued by complainant, the burden was on defendant utilities to prove that errors in such cases were made by customers as opposed to the utility, the utilities would be required to keep all records concerning each account from the first day any customer applied for service to refute any complaint for a refund which may be brought at some future time. As the instant case illustrates, although the statute of limitations

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<sup>4</sup> SoCalGas Tariff Rule 16, Section C, provides:

**"C. ADJUSTMENT OF BILLS FOR BILLING ERROR**

**"BILLING ERROR:** Billing error is an error by the Utility which results in incorrect billing charges to the customer. . . . Billing error does not include...failure of the customer to notify the Utility of a change in operation; or failure of the customer to take advantage of a rate or condition of service for which the customer is eligible.

**"Where the Utility overcharges...a customer as the result of a billing error, the Utility...shall issue a refund or credit to the customer for the amount of the overcharge, for the same periods as for meter error."**

may restrict the period for which refunds may be given to three years,<sup>5</sup> documentation concerning the content of representations made for the purpose of obtaining favorable rates may have been created years or decades earlier. Although complainants are in the best position to retain such documentation, the burden of proof urged by the complainant in the instant case would require the utilities to expend huge sums of money for record retention in order to allow them to sustain their burden.

We believe such a precedent would be ill conceived and contrary to the law, and would penalize ratepayers and shareholders alike to the windfall profit of complainants who have failed to retain records or to mitigate their damages by reviewing bills and correcting errors when they occur. Such a result would not be equitable when the complaining customer is a professional apartment building manager whose business it is to know how to read utility bills and to obtain the most advantageous utility rates for apartment building owners.

Accordingly, we affirm the seven-year utility record retention period we found reasonable in *Costello* and reject complainant's argument that the burden of proof should shift to SoCalGas because it is not possible for complainant to now prove that the error was made by the utility, since SoCalGas no longer has the original turn-on documents.

While the service initiation documents for Le Parc are unavailable, the customer's monthly bills (Exhibit 3) since the date of turn-on clearly show the number of dwelling units receiving baseline allowances. In addition, SoCalGas, since 1988, provided an annual separate bill message requesting customers to verify the number of units to which baseline allowances were being applied and

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<sup>5</sup> PU Code § 736 generally establishes a three-year statute of limitations for recovery of utility overcharges.

notify SoCalGas of any error in the number of dwelling units. Clearly, Le Parc had several opportunities to inform SoCalGas about the error in the number of dwelling units receiving baseline allowances. Le Parc did not do so. Since the owner or manager of a multi-family complex is in the best position to ascertain the number of dwelling units on his property, it is reasonable to place the burden on such customers to accurately notify SoCalGas as to the number of units attached to each master meter.

The mere fact that the customer did not receive all applicable baseline allowances is not ipso facto evidence of utility billing error. The complainant has the burden of proof to show that there was an "act or thing done or omitted to be done...in violation...of any order or rule of the Commission." (PU Code § 1702.) Further, SoCalGas Tariff Rule 16 states that utility billing error "does not include...failure of the customer to notify the Utility of a change in operation; or failure of the customer to take advantage of a rate or condition of service for which the customer is eligible..."

We reject complainant's argument that the "SoCalGas rule" requiring the customer to prove that the utility made the error is in violation of § 451, since rules made by the utility must be "just and reasonable." For the reasons set forth above, the burden of proof must remain with the complainant.

Notwithstanding the failure of the customer, who is a professional property manager, to notify the utility of the correct number of dwelling units, there are undisputed facts in this instance which support a finding of utility error. Specifically, for there to have been customer error, on six separate occasions spread over three years, the customer had to have provided incorrect information to the utility when the customer called to request turn-on. We believe such a coincidence is far fetched. The only logical explanation is that the

mixup occurred in SoCalGas' billing department. Therefore, we are not persuaded that the customer was responsible for the error.

In the instant case, we would have preferred to have had a construction document offered into evidence. (See *Schrader v. Southern Cal. Gas Co.*, D.89-09-101 as modified by D.89-12-055; see also *Costello*, 43 CPUC2d at 486.) Nevertheless, we believe the unique facts in the instant case are sufficient to support a finding of utility billing error.

The preponderance of the evidence we have in this case leads us to infer that SoCalGas was notified of the correct number of dwelling units as the buildings were placed in service over a space of three years, but for some reason used lesser numbers (and in one instance a greater number) in calculating the baseline allowances. We, therefore, find that there was utility billing error. Tariff Rule 16, which governs the adjustment of SoCalGas' bills, provides that the utility shall issue a refund or credit to a customer for the result of an overcharge where the utility overcharges a customer as the result of a billing error for a period which shall not exceed three years. Complainant has satisfied its burden of proof and does not have the burden of explaining how, on separate occasions, SoCalGas allocated incorrect baseline allowances for six of the eight buildings at Le Parc.

SoCalGas' Rule 16C - Adjustments of Bills for Billing Error, limits refunds for the same periods as for meter error. And Rule 16D - Adjustment of Bills for Meter Error, provides that the period of adjustment shall not exceed three years. Since such adjustment of bills can only occur upon notification by the customer (Rule 16C) and SoCalGas has conceded that such notification, in effect, occurred with the September 1994 high bill investigation. We conclude that complainant should receive a refund with interest for three years going back from September 1994.

Also, we conclude that complainant is entitled to interest on the refund previously made by SoCalGas for the period after September 1994, since our finding of utility billing error applies to that period too.

### **Findings of Fact**

1. Complainant notified SoCalGas about incorrect baseline allowances by letter dated March 20, 1996. Complainant requested that the accounts for Le Parc be corrected for three years preceding the date of complainant's letter.

2. Initially, SoCalGas made adjustments to the baseline allowances at Le Parc back to the month of April 1996, for the affected accounts. SoCalGas denied complainant's request for adjustment of Le Parc's baseline allowances for the three years preceding April 1996.

3. SoCalGas, upon learning that it could have verified the correct number of dwelling units at Le Parc qualifying for baseline allowances in September 1994, adjusted the baseline allowances for Le Parc back to September 1994 and refunded the overbilled amount to the customer, without interest.

4. SoCalGas treats the September 1994 high bill investigation as the date of notification by the customer for billing adjustment pursuant to its Tariff Rule 16C.

5. SoCalGas contends that there was no utility billing error and declined to provide a refund for three years going back from September 1994.

6. Complainant alleges that there was utility billing error prior to September 1994 and requests billing for a period of three years, with interest, going back three years from September 1994, in accordance with Tariff Rule 16C.

7. The eight buildings at Le Parc have separate master meters that were placed in service at different times between 1984-1986. Service is provided on Schedule GM-E. Special Condition 3 does not apply.

8. At eight different times during the 1984-1986 period, the customer would have notified SoCalGas to turn on service. On each separate occasion, SoCalGas' service representative would have had the opportunity to verify the number of dwelling units indicated by the utility's service planner for each account.

9. Six of the eight buildings in Le Parc were assigned incorrect baseline allowances.

10. For there to have been customer error rather than utility error, when the customer called SoCalGas to have service connected, the customer would have had to give incorrect information to the utility on six separate occasions regarding the correct number of dwelling units for each building.

#### **Conclusions of Law**

1. The complainant in such cases has the burden of proof.

2. The mere fact that a customer did not receive the correct baseline allowance is not evidence of utility billing error.

3. The facts in this case lead to the conclusion that the incorrect baseline allowances could not have been the result of customer error.

4. The evidence available leads to the conclusion that the errors in allocating baseline allowances to Le Parc had to be made by SoCalGas.

5. The facts in this case support a finding of utility billing error as defined in SoCalGas Tariff Rule 16.

6. SoCalGas' seven-year record retention policy for customer turn-on documents is reasonable.

7. SoCalGas' Rule 16 establishes a three-year limitation period on refunds to customers following notification.

8. It is reasonable to use the September 1994 date of the high bill investigation for purposes of computing the backbilling.

9. Le Parc should, pursuant to Rule 16, receive a three-year backbilling from September 1994.

10. Since there has been utility billing error in this instance, pursuant to § 734, Le Parc is entitled to reparations with interest

11. Complainant is entitled to receive interest on the refund amount already provided by SoCalGas for the period going forward from September 1994.

### **O R D E R**

#### **IT IS ORDERED that:**

1. Utility Audit Company, Inc.'s request for adjustment of baseline allowances for the property managed by the Le Parc Simi Valley Homeowners Association (Le Parc) going back three years from the date of the September 1994 high bill investigation is granted.

2. Southern California Gas Company (SoCalGas) shall refund to Le Parc overcharges going back three years from September 1994.

3. SoCalGas shall pay interest on the amount refunded going back three years from September 1994.

4. SoCalGas shall pay interest on the amount previously refunded to Le Parc going forward from September 1994.

5. Interest on these refunds shall be calculated at the latest three-month commercial paper rate published by the Federal Reserve Bank (G-13).



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6. All motions not previously disposed of are hereby denied.
7. Case 97-02-015 is closed.

This order is effective 30 days from today.

Dated September 17, 1998, at San Francisco, California.

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