MAIL DATE
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Decision 98-10-060 October 22, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

UTILITY AUDIT COMPANY, Complainant, v. SOUTHERN CALIFORNIA GAS COMPANY, Defendants.	Case 93-07-046 (Filed July 28, 1993)
And Related Matters.	Case 94-02-009 (Filed February 2, 1994)

ORDER GRANTING REHEARING OF DECISION 98-07-013

I. SUMMARY

Applicant, Utility Audit Company, Inc. ("Utility Audit" or "UA") filed a complaint with the Commission on behalf of seven owners of apartment complexes. The complaint alleges billing errors prior to June 3, 1993 by Southern California Gas Company (SoCalGas) for natural gas service to these apartment complexes with multiple master-meters. The specific issue raised concerns the baseline allowances SoCalGas applied to the therms used for central utility facilities, such as a hot water heater, which serves all the individual dwelling units in an apartment complex, but which is connected to only one of the master-meters. The issue no longer arise since June 3, 1993 when the Commission adopted Resolution G-3063 which approved SoCalGas's modification of its residential rate

Schedule GM, at Special Condition 3, to expressly provide for calculating baseline allowances by combining the usage registered by the multiple master-meters in each apartment complex and by reflecting the total number of dwelling units served.

> "The combined bill would reflect the total usage of the various master-meters and would also provide baseline allowances for the dwelling units. The net effect of this combination would be lower over-all bills." Resolution G-3063, Discussion Paragraph 1, at p. 2.)

In D.98-07-013, we denied Applicant's complaint in reliance extensively on a prior decision regarding multi-metered apartment complexes and central facilities, D.94-05-041, Utility Audit Company, Inc. v. Southern California Gas Company, 54 CPUC 2d 480 (1994). As in the 1994 decision, the 1998 decision now in question reiterated that prior to the adoption of this Resolution in 1993, SoCalGas's rate schedule GM did not address the application of baseline allowances for apartment complexes which did not have individual meters for each dwelling unit, but instead had multiple master-meters with a central facility connect to only one of the master-meters. The 1998 decision also rested on the conclusion drawn in the 1994 decision, that the solution SoCalGas adopted from approximately 1986 to 1989 by calculating the baseline allowances on the basis of combining the therms registered by the multiple master-meters in each complex was prohibited by Rule 17 of SoCalGas's tariff prior to the tariff addition in 1993 by Resolution G-3063. (D.98-07-013, Conclusions of Law No. 1 and 4.)

The application for rehearing of Utility Audit argues that our decision is not supported by the findings, that the analysis of prior cases concerning similar issues and of the provisions of SoCalGas's tariff are not accurate, and that certain material facts necessary to support the conclusions reached were not specifically considered or expressed.

Upon careful review of D.98-07-013 and the record of the case, which includes briefs, reply briefs, prepared written testimony comments and reply comments, as well as the transcript of the evidentiary hearing held January 22, 1997, we believe it would serve all involved to rehear the matter. Rehearing will permit the development of a more complete factual record, will more clearly place the material facts of the case in the context of the relevant history of the Commission's decisions on applying baseline allowances to multi-metered apartment complexes, and will offer the opportunity to more specifically apply the relevant sections of SoCalGas's tariff to the circumstances of each of the seven apartment complexes involved in this case.

We, therefore, find that pursuant to Sections 1731 and 1732 of the California Public Utilities Code, there is good reason to grant rehearing of D.98-07-013.

II. BACKGROUND

The underlying subject of this case is the application of baseline allowances in billing gas usage as required by Section 739 of the California Public Utilities Code. [1] The legislature mandated that the Commission "designate a baseline quantity of gas and electricity which is necessary to supply a significant portion of the reasonable energy needs of the average residential customer." (Section 739(a).) The statute also provides guidelines for establishing the baseline rates, which are the lowest rates for the first or lowest block of gas usage. (Section 739(c)(1).)

With respect to the factual setting of the complaint to which baseline allowances are applied, the seven apartment complexes have different master-meter configurations, with some similarities. One complex, for example, consists of a total of 47 units. The gas used by a central water heater which serves all the

[1] Hereinafter, all statutory references shall be to the California Public Utilities Code unless otherwise indicated.

units is registered, however, by one meter. The gas used by a central furnace providing space heating to all the units is measured by a second meter. In calculating the baseline allowances, SoCalGas multiplied the gas used for water heating, as registered by one of the master-meters, by 23 dwelling units, and similarly multiplied the gas used for space heating, as registered by the other master-meter, by 24 dwelling units. (Exhibit 1, at 3 and 9, and Exhibits 2 and 8.) Utility Audit contends that even if SoCalGas's tariff is applied as it existed prior to 1993, Rule 1 required that each of the meters be treated as a separate facility, and therefore the baseline allowance allowed for the total therms registered by the meter registering gas usage for hot water for all the residents should reflect service to the total number of dwelling units served, that is 47 not just 23, and the same factor of 47, not just 24, should have been used with respect to the usage registered for space heating for all the units. (Opening Brief of Utility Audit, at 11; Application for Rehearing of Utility Audit, at 5-6.) Utility Audit's argument in its briefing also refers to a provision in Schedule GM which reflected the basic concept that baseline allowances were to be determined on the basis of dwelling unit served. Prior to 1983 and subsequently, on Sheet 1 of Schedule No. GM, the following statement appears under the heading Rates: "The individual unit Baseline therm allocation shall be multiplied by the number of qualified residential units." (Opening Brief of Utility Audit, at 12.) There does not appear to have been any dispute as to whether any of the units did not qualify as residential units.

The other general kind of master-metering involved in this case involves an apartment complex that is separated into two groups of dwelling units, for example 10 units each. Therms of natural gas used for the space heating of the units in one group is measured by one master-meter, and the therms used for space heating the units in a second group is measured by a separate master-meter. The problem arises because a hot water heater serves both groups, but the gas therms used by the water heater is registered by only one of the master-meters. SoCalGas

determined the baseline allowance applicable to the meter registering both the gas used for space heating 10 units and the gas used for providing hot water to 20 units, by a factor of 10. Utility Audit claims that the multiplier should be by 20 since 20 dwelling units effectively consumed the gas used for hot water. (Exhibit 1, at 5, and Exhibit 3.) Utility Audit put into evidence the metering arrangements each of remaining apartment complexes, and SoCalGas's billings which indicate the baseline allowance factors used. (Exhibits 1-8.)

As a consequence of SoCalGas's baseline allowance calculation, Utility Audit's fundamental complaint is that each of the seven apartment complexes did not receive the total baseline allowance that it should have received, and that SoCalGas violated the basic concept that baseline allowances are to be determined per dwelling unit served. As we understand the complaint, if all gas usage was combined, it would have been understood that the baseline allowance for the total usage should reflect all the dwelling units served. Utility Audit also provides a calculation to show that with the meters combined, the baseline allowances would have produced lower gas bills than were issued by SoCalGas. (Exhibits 2-8.)

SoCalGas's defense as presented during the course of the proceeding was essentially twofold. The company claimed that there was no specific provision in its tariff at Schedule GM which was applicable to calculating the baseline allowances for metering configurations such as existed in the seven apartment complexes prior to the adoption of Resolution G-3063, June 3, 1993. [2]

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[2] In contrast, there was, and is, a provision in Special Condition 3 of Schedule GM that that deals with central facilities in apartment complexes in which each dwelling unit has its own meter, and the central facility is on a separate meter: ".In multi-family complexes where residential services for each or any of the individually metered residential units is provided from a central source and where such central facility receives natural gas service directly through a separate meter, the basic monthly Baseline allowance applicable to that meter will be the number of therms per day times the number of dwelling units receiving service from such central facility. Eligibility for service under this provision is available subsequent to notification by customer and verification by Utility. .." (SoCalGas Tariff Schedule No. GM, Multi-Family Service, Special Conditions No. 3. Emphasis added.)

SoCalGas also invoked Rule 17 of its tariff to defend its refusal to resolve the problem for the seven apartment complex owners, as it had earlier for 14 other customers, by combining the metered usage and using a multiple of the total dwelling units in the apartment complex. During the time in question, Rule 17 generally prohibited combining the readings of two or more meters at the same premises, but provided two exceptions, one of which is stated in subpart (b):

> "(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 Tariff Rule 17.)

In rebuttal, Utility Audit has argued that whether or not combined meter billing (effectively the same as all services being measured by one meter) was expressly provided for in Schedule GM tariff prior to June, 1993, it was reasonable for the Commission to interpret the tariff provisions that were available to require that all the dwelling units served by a central facility be included in the baseline allowance calculation. Alternatively, Utility Audit claims, if this kind of calculation is not mathematically or technically possible, there is good reason to use combined meter billing. (Opening Brief of Utility Audit, at 6-9; Application for Rehearing of Utility Audit, at 2-3.) This solution, as Utility Audit demonstrated during the hearing, had been adopted by SoCalGas for 14 other customers, starting in 1986, as thee apartment complex owners notified SoCalGas of the baseline allowance problem. The combined meter billing for fourteen of SoCalGas's customers continued on even after SoCalGas decided sometime in 1989 that Rule 17 prohibited using this method to determine baseline allowances

for any other customers who brought the problem to the company's attention. (Tr. 40-42.)

Utility Audit also has relied on D.92-03-041, referred to as the Costello decision, in which the Commission was presented with evidence of the combined meter billing SoCalGas was using. Though the relevant tariff provisions then were the same as in the time period involved in the present complaint case, the Commission did not terminate or reject the combined meter billing. Instead, the Costello decision held that SoCalGas was not obligated to refund the customer for overbillings prior to the time when the customer notified SoCalGas of the baseline allowance problem and SoCalGas commenced using combined meter billing. (D.92-03-041, Conclusion of Law 3 and 4, Ordering Paragraph 3.)

III. DISCUSSION

Our analysis of the case in D.98-07-013 quotes extensively from the conclusions drawn not only from Costello, but from a 1994 decision regarding baseline allowance provisions in SoCalGas's tariff, D.94-05-041 (Utility Audit Company, Inc. v. Southern California Gas Company, 54 CPUC 2d 480.) With the opportunity to review that analysis and other matters addressed in D.98-07-013, we find that the decision does not set forth adequate findings of fact to support reaching the same conclusions in the present case as we did in 1994.

For example, we omitted a description of the actual metering arrangements of each of the seven complexes and the actual billing for each complex. There is, therefore, an omission in our findings as to how our conclusions regarding SoCalGas's tariff provisions specifically apply. The information, provided in Utility Audit's Exhibits 1-8, will assist in our reconsideration of this matter, but additional facts are needed, and they may be supplied by SoCalGas as well as Utility Audit.

In that connection, we will have to reconsider SoCalGas's position with respect to the application of Rule 17, which is critical in this case. SoCalGas's position is that Rule 17 prohibited using combined meter billing at the time in question in this complaint case. [Exhibit 9, at 6, lines 15-22; Tr. 41, 24-27.] In reference to this issue in D.98-07-013, we quoted SoCalGas's statement in the 1994 decision to the effect that there was no evidence in the record to invoke the exception to the prohibition as set forth in subpart (b) of Rule 17. (D.98-07-013, at 17, quoting D.94-05-041, 54 CPUC 2, at 485.)

We will reconsider SoCalGas's contention carried over from the 1994 decision to D.98-07-013, that there was no factual evidence in the record to invoke the exception under Rule 17(b). In that regard, we will address the supposition in SoCalGas's noting this lack of evidence that it was the burden of the complainant to demonstrate that the utility company installed the meters and hook-ups in the seven apartment complexes for the purpose of maintaining adequate service or for the company's operating convenience. (D.98-07-013, at 17.) However, since SoCalGas raised Rule 17 as a defense against the alleged billing errors, and claimed Rule 17 prohibited it from making a combined meter billing adjustment for the seven apartment complexes as it had in 14 other cases, it would be SoCalGas's responsibility to demonstrate why subpart (b) of Rule 17 did not apply to the specific circumstances of each of the seven apartment complexes. Generally, the party raising an affirmative defense has the burden to prove the defense, or at least to go forward with the evidence.

Rehearing shall also provide the opportunity to obtain evidence on another factual issue we now recognize D.98-07-013 does not sufficiently address. SoCalGas argued, and testified, that it could not make the adjustments requested by Utility Audit not only because of Rule 17, but because there was no specific provision in its Schedule GM which applied to the kind of multiple master meter configurations of the seven apartment complexes. [Tr.18, 20-24; 24, lines 8-14; 33,

lines 21-23.] There is also an indication in the record that in contrast to what SoCalGas stated was missing from its tariff, there was an applicable tariff provision in the tariffs of Pacific Gas and Electric Company (PG&E) and San Diego Gas and Electric Company (SDG&E). [Tr. 33, lines 7-10.][3]

In light of this evidence, we think it appropriate to give the parties the opportunity to introduce additional or clarifying evidence into the record that shows the tariff provisions SoCalGas did rely on in calculating the baseline allowances as it did, and to explain why the SoCalGas tariff provisions cited by Utility Audit were not sufficient to provide for the calculation as claimed for the seven apartment complexes which would reflect all the dwelling units served by the central facilities. This matter may also be put in the factual context of the efforts made by SoCalGas, starting in 1990, to add to its tariff a specific provision to provide for combined billing in Schedule GM. More facts are needed to understand the tariff analysis applied in responding to SoCalGas's proposals, the intent and prevailing understanding of the Commission at the time in question regarding application of baseline allowances, and the time period involved in having SoCalGas's tariff modified as it ultimately was on June 3, 1993.

We also find that D.98-07-013 did not adequately explain the conclusions we reached with respect to SoCalGas having adopted combined meter billing prior to June, 1993 for calculating baseline allowances for 14 other apartment complex owners, starting in 1986, and having continued to use combined meter billing for these 14 customer through the period in question in this case, and up to the actual tariff change in 1993. [Tr. 40, lines 17-28; 41, lines 1-28; 42, lines 1-20.) Upon a clarification and confirmation of the facts regarding this particular matter during the hearing proceeding, we will ask the parties to brief

[3] PG&E's tariff, we take notice, in Schedule GM, provides: "Service to central boilers for water and/or space heating will be billed with monthly baseline quantities related to the number of dwelling units furnished such water and/or space heating."

this issue in relation to the requirements of Section 739, which established the baseline allowance requirement for all California gas and electric utilities, and in relation to the applicability of Section 453(a), which generally prohibits a public utility from discriminating between customers with respect to its rates, charges, services, facilities, or "in any other respect."

There also is some confusion regarding the conclusions reached in D.94-05-040, on which we relied, in relation to the Costello decision. We gave considerable attention to both of these decisions as being consistent with the denial of Utility Audit's present complaint. However, the findings in D.98-07-013, as stated, may not accurately describe the Commission's holding in the Costello decision, and consequently its significance in the analysis of the present complaint case is not clear. Therefore, after considering the points raised in the Application, and after reviewing Costello and the testimony in this case, we conclude that reanalysis is warranted. [Tr. 44, lines 1-8; 45, lines 11-18.] Upon rehearing, we will clarify the precedential value of both prior decisions in the present case. The parties will be invited to brief this issue as well.

Accordingly, to assure that the complexity of the factual circumstances and tariff issues do not confound a just and reasonable resolution of the complaint, we will grant rehearing to clarify, and amplify the factual record, and to allow further analysis of the legal issues involved with respect to both statutory and tariff provisions.

IT IS THEREFORE ORDERED that:

1. The application filed by Utility Audit for rehearing of D.98-07-013 is granted.

2. An evidentiary hearing shall be established to consider the matters as discussed above.

3. The Executive Director shall provide notice of the hearing to the parties hereto, and all other persons and entities appearing on the service list in

these proceedings, in the manner prescribed by Rule 52 of the Commission's Rules of Practice and Procedure.

This order is effective today.

Dated October 22, 1998, at San Francisco, California.

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