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Decision 99-01-010 January 7, 1999

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Utility Audit Company, Inc., Complainant, vs. Southern California Gas Company, Defendant.	C.97-02-015 (Filed February 10, 1997)

ORDER DENYING REHEARING OF DECISION 98-09-061

I. SUMMARY

In Decision (D.) 98-09-061, the Commission granted the complaint of Utility Audit Company, Inc., (Utility Audit) against Southern California Gas Company (SoCalGas) for incorrectly applying baseline allowances in the billing of five multi-family apartment buildings, known collectively as Le Parc. Because SoCalGas applied the baseline allowances to significantly fewer dwelling units than actually existed, the billings contained overcharges for gas usage. The Commission ordered SoCalGas to refund the overcharges, with interest, back to three years preceding September 1994, and in addition, to pay Le Parc interest on the refunds SoCalGas had already made without interest for the baseline allowance errors going forward from September 1994.

SoCalGas has filed an application for rehearing of this decision contending that the Commission's relied "upon mere speculation, not facts in

evidence" with respect to who was responsible for the errors. (Application, p.1.) In response, Utility Audit filed comments arguing that SoCalGas is only objecting to how the Commission weighed the evidence, and that SoCalGas has argued in other matters that when weighing the evidence, the Commission may decide an issue on any evidence that reasonably supports the findings of fact, even where there may be evidence to support a different result. (Utility Audit's Response to Application for Rehearing, p. 3, quoting SoCalGas' Application for Rehearing of D.98-07-100 (September 14, 1998), pp.3-4.)

Upon review of the application for rehearing, and the record of this case, we find that SoCalGas has not substantiated legal error in our decision. D.98-09-061 is based on the evidentiary record and SoCalGas's applicable tariff rules. The record shows that it is undisputed that: 1) SoCalGas significantly underestimated the baseline allowances applicable to the billings of the five apartment buildings because its records did not reflect the actual number of dwelling units at Le Pare, 2) that SoCalGas acknowledged it had effective, or constructive, notice of the ongoing baseline allowance and billing errors when it made an on-site investigation of a billing complaint in September 1994, and 3) that SoCalGas' Rule 16 is applicable in determining the retroactive refunds to be paid, the maximum period being three years prior to the utility receiving notification of a billing error. (D.98-09-061, pp.2, 4, 9, Findings of Fact 3, 4, 9 and Conclusion of Law 5.)

These findings and conclusions well support our refund order. Moreover, in its application for rehearing, SoCalGas does not contend that any of these findings and conclusions are inaccurate. Instead, SoCalGas addresses certain portions of the decision which we recognize are not necessary to our order and appear to have confused the issues. We will, therefore, remove the extraneous elements to clarify the rationale of D.98-09-061. With the decision thus modified, we shall deny rehearing since we find no legal error.

II. BACKGROUND

Baseline allowances provide for the lowest rate applicable to gas usage by the customer. The allowances are applied for each residential dwelling. If, therefore, SoCalGas uses fewer than the actual number of residential units in an apartment complex, the gas usage receiving the lower baseline rate is less than it should be. As a result, the utility billings for the apartment complexes are higher than they would be with a proper application of baseline allowances.

The record in this case shows that the discrepancy in the baseline allowances was considerable for five of the eight buildings comprising the Le Parc property. (See the table set forth in our decision, at page 2.) Two buildings of 36 units each were being billed as if they each consisted of only 3 dwellings units. Two others consisting of 48 units each, were being billed as if there were half as many, 24 units. The fifth building of 36 units was being billed as if it consisted of 24 units. SoCalGas does not contest the accuracy of this data in its application.

The record also shows that in response to a billing complaint at Le Parc, SoCalGas initiated an on-site investigation in September, 1994. SoCalGas has acknowledged that the correct number of dwelling units could have been determined at that time and, therefore, agreed to treat September 1994 as the date of notification of the billing errors under its Tariff Rule 16C. (D.98-09-061, p.9.) SoCalGas does not dispute September 1994 as the date of notification in its application for rehearing.

Prior to our decision, SoCalGas had corrected its records so that since June, 1996, appropriate allowances were reflected in the Le Parc billings. SoCalGas also refunded overcharges, without interest, back to September 1994. However, Utility Audit, on behalf of Le Parc, complained that refunds should also be made for three years prior to September 1994. SoCalGas's principal defense was to raise the issue as to who was responsible for the incorrect number of dwelling units being used in applying the baseline allowances for Le Parc. Having

raised this issue, SoCalGas argued there was no evidence to resolve it, an argument it reiterates in the rehearing application. Le Parc cannot provide evidence to prove that Le Parc gave SoCalGas correct information regarding the number of dwelling units prior to September 1994. For its part, SoCalGas claimed it had not retained documentation for the initiation of service at Le Parc consistent with its seven-year document retention policy. However, as we discuss below, the issue raised by SoCalGas as to the cause of the error is not only not dispositive in this case, it is irrelevant given the requirements of tariff Rule 16.

In D.98-09-061, we granted the complaint, ordering a refund to Le Parc for three years prior to September 1994, with interest applied to these refunds as well as to the refunds SoCalGas previously made to Le Parc. The refund order was clearly based on the facts as well as SoCalGas's tariff Rule 16. The order is also authorized pursuant to Section 734 of the California Public Utilities Code. [1]

III. DISCUSSION

Applying Section 734 and SoCalGas' tariff Rule 16 to the facts of this case, it is abundantly clear that there is ample authority and factual evidence for ordering a refund of the overcharges for three years prior to the date of notification of the billing errors, and for ordering interest be paid to Le Parc on all of the refunds for overcharges, including the refunds SoCalGas made before the issuance of our decision.

Pursuant to Section 734, when a complaint is brought to the Commission for adjudication, as in the present proceeding, the Commission may order the public utility to pay reparations, with interest, from the date of collection of the incorrect charges from a complaining customer. We have invoked our

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

authority under Section 734, and in determining the appropriate reparations to be paid to Le Parc, have resolved the complaint consistent with SoCalGas's tariff Rule 16 which provides, in pertinent part, for adjustments for billing errors as follows:

> Rule 16C - "Where the Utility overcharges or undercharges a customer as a result of a billing error, the Utility may render an adjusted bill for the amount of the undercharge, and shall issue a refund or credit to the customer for the amount of the overcharge, for the same periods as for meter error."

The reference to refunds or credits made for meter errors leads to Rule 16D which provides in pertinent part:

> Rule 16D - "[T]he Utility ...shall issue a refund or credit to the customer for the amount of the overcharge, computed back to the date that the Utility determines the meter error commenced, except that the period of adjustment shall not exceed three years." (Emphasis added.)

Inexplicably, SoCalGas does not discuss the provisions of Rule 16 in its application for rehearing, as it should have. For, once SoCalGas agreed, and reasonably so, that September 1994 should be the date of notification of the baseline allowance errors in the Le Parc billings, the only question remaining was how far back the refund or credit adjustments should extend. The tariff provides for a maximum backbilling of three years and clearly states that the utility company is to determine when the error began. SoCalGas, however, has not demonstrated with record evidence that the billing errors, which were caused by the misapplication of the baseline allowances, began September 1994 or at some point less than three years prior to September 1994.

Instead, SoCalGas has taken the approach of arguing that Le Parc is responsible for the billing errors because it is possible, SoCalGas speculates, that

the manager provided incorrect information to SoCalGas regarding the number of dwelling units in the buildings when gas service was originally turned on at Le Parc. (Application, p.3.) As we explained in our decision, we are not persuaded by this speculation, particularly in light of the great disparity between the actual number of dwelling units and the number used by SoCalGas. Moreover, this approach to resolving the amount of refund owed by establishing blame is not relevant, given the terms of Rule 16. The tariff rule does not state that the refund and backbilling depend on determining why the error occurred, or who is to blame for the billing error. Furthermore, in attempting to blame the Le Parc manager, SoCalGas is implicitly conceding that incorrect billing allowances began when the service was turned on, which we have established was from 1984 to 1986 for the various Le Parc buildings. (D.98-09-061, Finding of Fact 7.) SoCalGas, therefore, has not determined, pursuant to Rule 16, that the billing errors began less than three years prior to September 1994, and instead has suggested the errors began more than three years prior to September 1994.

Our decision, therefore, was not based only on an inference, which is the primary argument of SoCalGas's rehearing application. (Application, p. 2.) The evidence establishes the date of notification of the billing errors as September 1994, and the tariff rule provides for refunds, with interest, for a maximum period going back three years prior to September 1994. Accordingly, we find no legal error in the essential elements of our decision.

However, we want to address certain matters of dicta in D.98-09-061. For example, in the discussion section, there is an erroneous statement that it was necessary to determine whether SoCalGas could have known about the correct number of dwelling units qualifying for baseline allowances. Raising this issue led to a discussion of SoCalGas's document retention policy. Consistent with our decision today, we want to clarify here that SoCalGas's document retention policy was not a relevant matter necessary to support our

decision. As we have explained, it is undisputed that SoCalGas had notice of the billing errors as of September 1994, and that the refund should be, according to SoCalGas's tariff Rule 16C and Rule 16D, for the three year period preceding September 1994. We recognize that D.98-09-061 contains, therefore, unnecessary, general observations regarding customer duties and SoCalGas's document retention obligations. Accordingly, we will delete a portion of our decision, starting at the bottom of page 9, through the first sentence of the second paragraph on page 13. This part of the decision goes beyond the undisputed and relevant facts of this case, and the applicable statutory and tariff rules. We will also delete Finding of Fact 10 and Conclusion of Law 2, which are based on the unnecessary comments. By these deletions, we will avoid needless disputes in future proceedings where parties may look to our decision in this case for precedent. With D.98-09-061 thus modified, we deny SoCalGas's application for rehearing.

IT IS THEREFORE ORDERED that:

1. The following portions of D.98-09-061 shall be deleted:

   a) From the last paragraph on page 9 (mimeo) beginning with "In determining whether or not SoCalGas was responsible for the billing error,... " through to and including the first sentence of the second paragraph on page 13 (mimeo) which ends with "but for some reason used lesser numbers (and in one instance a greater number) in calculating the baseline allowances."

   b) Finding of Fact 10.

   c) Conclusion of Law 2, which shall be replaced as indicated in ordering paragraph 2.

2. A new Conclusion of Law 2 shall be added to D. 98-09-061 which shall read:

   " Section 734 of the California Public Utilities Code provides that with respect to complaints filed with the Commission, reparations may be ordered for payment to the complainant by the public utility, with interest from the date of collection of the incorrect rate from the complainant."

3. Rehearing of D.98-09-061, as modified, is denied.

4. This proceeding is closed.

This order is effective today.

Dated January 7, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners