

Decision 00-02-010 February 3, 2000

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

William A. Kent,

Complainant,

vs.

Southern California Edison Company,

Defendant.

Case 98-06-037  
(Filed June 18, 1998)

William A. Kent, Attorney at Law, complainant.  
Jennifer Tsao, Attorney at Law, for Southern  
California Edison Company, defendant.

**O P I N I O N**

**Introduction**

William A. Kent (Kent), a former customer of defendant Southern California Edison Company (Edison), seeks reparations and other relief on grounds that he was overbilled for his electric service, and that his service was unlawfully discontinued for nonpayment of his bills. We deny the relief requested and dismiss the complaint. Case 98-06-037 is closed.

**Procedural History**

The administrative law judge held a prehearing conference on November 23, 1998. Following a discovery period, a one-day evidentiary hearing was held in Santa Ana on April 7, 1999. One round of briefs was filed.

In recognition of the date when the hearing transcript became available, the date when the briefs were due to be filed and served was extended until May 7, 1999, and the proceeding was submitted on that date. In accordance with the stipulation of the parties, the period for filing an appeal of the presiding officer's decision was shortened. By Ruling dated May 7, 1999, any appeal or request for review of the presiding officer's decision must be filed not later than 10 days after the date the decision is mailed to the parties in the proceeding.

On June 10, 1999, the Commission issued an extension order to accommodate the need for additional time required for concluding this proceeding.

### **Background**

Kent alleges that at various times after 1993, Edison overcharged him for electric power, and on several occasions disconnected his service unlawfully when he failed to pay the full amount of overdue bills. The alleged overcharges resulted from unexplained fluctuations in his meter readings. Kent claims that his usage remained constant, and also that disconnection of his service was unlawful because the type and manner of notice he received was improper.<sup>1</sup> He seeks an unspecified refund for the overcharges, reimbursement of the reconnection fees he paid after his power was turned off, and other relief, including penalties against Edison.<sup>2</sup>

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<sup>1</sup> Kent no longer purchases power from Edison, having switched to an alternative provider.

<sup>2</sup> Kent also asks for an order censuring Edison for its "arbitrary and coercive" use of its authority to terminate service for nonpayment of disputed overdue bills, and for the establishment of new rules and procedures to restrict its ability to use such authority. This complaint is not the proper proceeding to establish new rules, and in any event, the record does not warrant such relief.

Kent lives with his wife in a single family home. No others live with them. He and his wife, who is a realtor, both work out of the home at least to some degree, and Kent, an attorney, has no other office. He does much of his work on a personal computer. He claims that the two of them use most of the domestic appliances very little, particularly the electric oven and range, because of their personal circumstances and lifestyle.

Kent's connected load consists principally of an electric range/oven; the electric blower for the furnace; a dishwasher; FAX; lights (estimated to consist of five 100-watt bulbs); the computer printer; the computer monitor/CPU; a refrigerator; the pool motor; a clothes washer; and a 52-inch television. Of these items, the refrigerator and pool motor were identified as the major users of power. A test performed by Edison with a check meter determined that if these two appliances were to run continuously, they would use 1,250 kilowatt-hours (kWh) of power each day. Edison does not claim this to be the case, but allowing for reasonable use of all the appliances and other electrically operated devices in the home, Edison estimates the potential connected load as 39.5 kWh per day, or somewhat in excess of 1,200 kWh per month. Kent's connected load would exceed this figure with greater use of the appliances, or decrease if usage is lower.

The thrust of Kent's case is his claim that the couple's actual use of electric power is significantly lower than that reflected in Edison's estimated potential connected load, because they use most of the major appliances very little. He testified, for example, that he and his wife usually eat their meals at restaurants, and therefore seldom use the electric range and oven, and that he does not use the computer to the extent of Edison's estimate of 10 hours per day. He therefore believes that his higher than expected electric use is due to a faulty electric meter or to some other factor within Edison's control, and that he has been overbilled

for electricity since the end of 1993. He does not provide an alternative estimate, nor any basis for making one, or offer an amount which he claims he should have paid.

The billing record for Kent's account shows the following history of usage since the beginning of 1994:

<u>Date</u>	<u>kWh Usage</u>
1/25/94	399
2/24/94	502
3/25/94	507
4/26/94	571
5/24/94	406
6/24/94	810
7/26/94	658
8/24/94	585
9/22/94	674
10/24/94	548
11/23/94	613
12/23/94	632
1/25/95	738
2/24/95	584
3/24/95	544
4/24/95	1189
5/23/95	1202
6/23/95	627
7/25/95	599
8/23/95	593
9/21/95	608
10/24/95	779
11/22/95	513
12/27/95	660
1/24/96	613
2/24/96	660
3/26/96	550
4/24/96	448

5/24/96	730
6/24/96	839
7/24/96	849
8/23/96	633
9/25/96	510
10/24/96	386
11/23/96	448
12/26/96	1011
1/25/97	1088
2/27/97	867
3/27/97	325
4/24/97	293
5/27/97	395
6/25/97	434
7/25/97	534
8/25/97	517
9/24/97	516
10/23/97	420
11/24/97	668
12/24/97	705
1/26/98	1165
2/26/98	572
3/26/98	482
4/27/98	343
5/27/98	860
6/24/98	1136

These figures reveal that virtually all of the actual monthly totals were below Edison's estimated potential connected load of 1,200 kWh per month, and generally within a range between 500 and 850 kWh. The account history for the months following June 1998 (i.e., after the complaint was filed) demonstrates that more recent usage has been in a range between 675 and 1,365 kWh per month, but generally near the mid-point of the two, and thus consistently lower than the estimated potential connected load. Witnesses on behalf of both Kent and Edison stated that these usage totals appeared high considering Kent's reported

lifestyle, but neither party offered evidence that fully explains the reason for this discrepancy.

On October 22, 1993, just before these totals were recorded, Edison performed a meter test that indicated Kent's meter was registering accurately. Following three months of relatively high readings in early 1997 Edison changed the meter on March 20 at Kent's request, even though the old meter tested accurately at the time it was replaced. Measurements of monthly usage dropped initially, but gradually returned to levels comparable to those of early 1996 by the end of 1997.

In early February 1998 Kent had his system inspected by Irvine Electrical, a private electrical contractor. All connections, plugs, circuit breakers, and connected load were checked. Although the contractor tightened some loose underground feeds and other connections as part of its service, none of the contractor's observations, nor the work he performed, reflect a meter malfunction, ground condition, or foreign load condition that would account for high usage totals. A note from John Manning of Irvine Electric dated March 3, 1998, states that after taking load calculations he "could find no reason for an excessive amount of kilo/watts [sic] being used." (Exhibit 4.)

Edison made numerous service calls to test the system at Kent's request. On June 6, 1998, just before Kent filed this complaint, Edison tested Kent's new meter. Again the meter test results were normal. During the course of the testing Edison disconnected all of the load to test the meter, and Kent observed the disc in the meter continuing to move slowly for awhile before it stopped. Edison's witness testified that this slight "disc creep" was normal, and could account at most for only a minuscule increase in the meter reading.

A plausible explanation offered by Edison for the seemingly high readings is that the pool motor or its timer may have malfunctioned for a long period

without being detected.<sup>3</sup> This problem was discovered on January 8, 1999, when Edison's service representative found the time clock that operates the motor and filtering system was not working, resulting in continuous operation of the motor. He testified that this could double the amount of power used. Kent had the timer mechanism replaced later that month, and his usage subsequently dropped significantly: the November and December 1998 totals before this replacement were 1,128 and 1,365 kWh, whereas the totals for February and March 1999, after the replacement, were 762 and 787 kWh. Kent testified that he had replaced the pool motor 2 or 3 years before the hearing, changing from a 2 to a 1-1/2 horsepower model, although he did not relate this event to any change in recorded usage which occurred at that time.

Kent's experience with termination of his service started well after he first contacted Edison about the problems with his bills. He failed to make any payment after he received comparatively high bills in December 1996 and January 1997, until February 21, when he paid \$111.00 of \$277.73 then due.<sup>4</sup> He failed to pay any amount thereafter until April 30, when he paid \$40.02 of the \$355.43 then in arrears. In the meantime Edison had replaced his meter. His recorded usage dropped dramatically the following month. On May 5 he paid an additional \$36.17 toward the amount due. At this juncture he also began to

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<sup>3</sup> By including this discussion we do not mean to suggest that Edison is obligated to locate the cause of high customer usage before it is entitled to payment of the bill.

<sup>4</sup> According to his complaint, these payments represented the average amount he had previously paid before the bills increased in amount, leaving arrearages that accumulated each month. His intention was to carry these arrearages "until some amicable settlement could be worked out." (Complaint, Addendum #1, pp.1, ll. 17-18.)

accrue on-call service charges of \$5.95 per month, which were added to his monthly bill.

Kent's practice of making partial payments toward his standing balance continued until late 1997. On December 16 Edison sent an Overdue Notice for his account, which at the time was delinquent in the amount of \$285.19. Although he made a payment of \$94.87 on January 6, 1998, Edison mailed him a Final Call Notice four days later, because \$172.47 remained delinquent. On January 27 his service was discontinued for the first time as the consequence of nonpayment, but was promptly restored when he made the \$172.47 payment. A \$10.00 service charge was also added to his account on January 28.

Kent's service was discontinued for a second time on May 4, 1998. Once again, the precipitating event was Kent's failure to keep his account current, although this time he had defaulted after making payment arrangements with Edison.<sup>5</sup> He brought his account current the following day, and service was restored.

Edison discontinued Kent's service for a third time on August 18, 1998, after he filed this formal complaint with the Commission.<sup>6</sup> With his bill once

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<sup>5</sup> He had failed to bring his account current after receiving a bill for \$147.64 (reflecting usage of 1165 kWh) on January 26, 1998, and made no further payment until March 3. In the meantime, he made payment arrangements with Edison and received a verbal Final Call Notice on that date. However, he defaulted and received a second Overdue Notice on March 20. Finally, Edison cancelled the payment arrangement on April 21, sent Kent another Final Call Notice on April 22, and discontinued his service on May 4.

<sup>6</sup> Although this third incident is not technically within the scope of this proceeding because the complaint was not amended to incorporate it, it was the subject of testimony at the hearing, and relief is sought on the same grounds as for the other two incidents. The third incident is sufficiently related to the complaint to justify our review, and we therefore deem the complaint to be amended so that we can resolve the entire dispute here.



again delinquent, Edison began the process of terminating Kent's service by sending an Overdue Notice on July 16 and a Final Call Notice on August 7. On August 18 Edison contacted the Commission to determine whether the money was impounded in an account because this complaint was pending. Informed by our staff that there was no record of an impound account, Edison discontinued Kent's service. When Commission staff subsequently advised Edison that the disputed funds were on deposit, Edison immediately restored Kent's service without charge.

Although Kent testified that there may have been one other service termination, he has furnished no details concerning the date or circumstances, and Edison has no record of a fourth incident. However, there was a power outage on one occasion which resulted in temporary loss of Kent's service. It is conceivable that Kent assumed this was a consequence of not paying his bills.

### **Discussion**

These facts present two issues for our consideration. First, did Edison overcharge Kent for electric service at any time since the beginning of 1994? Second, did Edison unlawfully discontinue Kent's service for nonpayment on any occasion?

When a customer complains that a utility has overbilled for electricity, the burden of proof rests on the complainant to show that the billing was improper. (Placid N.V. v. Southern California Edison Company, 48 CPUC 2d 425, 427 (1993).) The customer must show that he or she could not possibly have used the amount of energy in dispute. (Leonard J. Grant v. SoCal Gas Co., D. 92577, mimeo., p. 6 (1981).) If the meter is tested and found to be accurate within acceptable tolerances, no source of loss is discovered in the system, and the customer's potential demand exceeds the amount of usage in dispute, a presumption exists that the customer has used the energy shown by the meter.

(Id.) Unless the complainant rebuts this presumption with substantial evidence that he was billed for the disputed energy due to a cause within the utility's control, the complainant cannot prevail. As the Commission observed, "We can share his perplexity, but we cannot share his view that it is impossible to consume the amount of [energy] indicated on his bill." (Id., p. 7.)

Practical reasons support this rule. First, the customer is presumed to control the use of power on his side of the meter; if the meter is accurate, it measures the power the customer has used "in one way or another." (Id., p. 6.) Second, it would place an undue burden upon the utility to require more than a reasonable investigation of the source of the customer's high bills. Third, shifting the burden to the utility would invite manipulation by customers, who can control their usage to some degree when it is being monitored. Finally, "To expect a utility to determine the amount of energy used as well as the manner in which it was used would require an unacceptable intrusion into the lives of its customers." (Id.)

Edison checked Kent's meter shortly before the period under review in this case, and found it to be accurate within allowable tolerances. Edison again found Kent's meter to be accurate after relatively high totals were recorded early in 1997, but nevertheless replaced the meter at that time. Edison tested the new meter in June 1998, just before Kent filed this complaint, and found it to be accurate. The only evidence Kent offered to prove that the meter malfunctioned was his testimony that during Edison's load testing he observed the meter disc continuing to rotate after the load was disconnected. Edison explained that this phenomenon is caused by brief meter momentum, or perhaps small connected load such as a doorbell, and stated that any small amount of use registered in this fashion could not possibly account for the large discrepancies between

Kent's recorded and claimed usages. Edison's explanation is credible, and we find that Kent has not proven his meter was defective.

Edison also performed various tests to determine if higher meter readings resulted from energy loss, but found no ground condition or foreign load condition. Edison's findings are consistent with those of John Manning, the electrician Kent engaged to locate the problem, whose note states that he found nothing which could explain Kent's high recorded use.<sup>7</sup> Although Manning tightened some connections as part of the service he performed, Edison testified that those loose connections could not account for excess usage.

Edison presented credible evidence that Kent's connected load could have produced the recorded usage, even if he used his electrical appliances substantially less than Edison had estimated. Kent presented no evidence to the contrary. Accordingly, despite Kent's claim that his meter readings were not consistent with his lifestyle, his bare claim does not suffice to rebut the presumption that he used the power recorded by his meter and that his usage was properly billed. We will deny Kent's claim for reparations.

Kent next contends that, even if we presume that he was billed the proper amounts, his service should not have been discontinued because the procedure followed by Edison was improper. He relies upon several provisions in the California Public Utilities Code to support this argument.<sup>8</sup> First, he claims that

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<sup>7</sup> Manning's note is somewhat ambiguous, because it does not indicate whether he made any independent attempt to measure Kent's use. Irvine Electric's invoice does not indicate that any such work was undertaken, and we presume that it was not. Since Manning did not testify at the hearing, we interpret the meaning of the note to be that he could not explain why recorded use was higher than Kent's reported use.

<sup>8</sup> All statutory references are to the California Public Utilities Code, unless otherwise noted.

Edison discontinued service in violation of Section 779(b)(1), because there was an investigation pending at the time of termination.<sup>9</sup> Second, Kent claims that his service was improperly terminated because Edison did not comply with statutory notice requirements. Finally, he claims that his service was improperly terminated because Edison failed to comply with a due process requirement to hold a hearing before service could be stopped. We conclude that none of these contentions has merit.

First, the chronology of events demonstrates that, except for the third discontinuance on August 18, 1998, which was due to an error on the part of Commission staff that was immediately rectified when the mistake came to light, no investigation of Kent's account of any sort was pending when his service was discontinued. It is undisputed that Kent made numerous complaints about his high bills to Edison over the years, and each time Edison either changed the meter or attempted to locate the cause of the reportedly high use. That it was unable to locate the cause for Kent's complaints of high usage does not mean there was an ongoing investigation which would spare Kent from having his power turned off. Edison reported to Kent what it had found on each occasion, and insisted that he pay his bills in compliance with tariff requirements. As the oldest amounts in arrears were collected first, termination in each instance was not the consequence of his most recent failure to pay current charges.

Kent additionally argues that the term "investigation" in Section 779(b)(1) signifies a formal investigation conducted by a designated manager and a formal

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<sup>9</sup> Section 779(b)(1) prohibits any electric utility from terminating residential service for nonpayment of a delinquent account while a utility's investigation of a customer dispute or complaint is pending.

determination of the cause of his high use, rather than handling by customer service agents and field personnel, before Edison could turn off his power. He relies upon Section 779(c), which states in pertinent part:

“Any residential customer who has initiated a complaint or requested an investigation within five days of receiving the disputed bill,...shall be given an opportunity for a review of the complaint, investigation, or request by a review manager of the corporation.”

Edison responds that its handling of Kent's requests constituted an investigation (actually, several investigations) that complied with this requirement, because Edison followed procedures set out in its Tariff Rules 10 (Disputed Bills) and 11 (Discontinuance and Restoration of Service).

Edison explains that each of Kent's billing inquiries was handled by an Edison customer service representative, who served in the role of “review manager.” These representatives investigated Kent's inquiries, completed the investigation, and notified him of the outcome each time. In each instance the bill was determined to be correct, and Edison took no steps to disconnect service before making such a determination. That Edison followed these procedures is substantiated by a series of reports entitled “Historical Order” which document each inquiry, the action taken, and subsequent notification to Kent. (Exh. 10.) Edison asserts that these measures complied with the requirements of Section 779(c), as well as with its Tariff Rules 10 and 11.

We conclude that, contrary to Kent's assertion, Section 779(c) does not require the designation of a specified individual to be the review manager for each billing dispute. “Review manager” is a term of art, signifying either a position or an organization within the company that has the responsibility for conducting a reasonable investigation of a residential customer's complaint to determine whether it has merit. Customer service organizations in most large

businesses employ modern computerized information systems to respond to customer inquiries, issue service orders, and resolve customer complaints through the creation of individual customer files or records, such as that exemplified by Exhibit 10. This file is available to other customer service agents, enabling responsive handling of the customer inquiry, without the delay that might result if each inquiry were assigned to a specific individual. In our view such a system satisfies the requirements of Section 779(c) if it is responsive to the customer.

In this case the record demonstrates that Edison's customer service personnel promptly addressed the questions Kent raised about his bills by dispatching service personnel, who conducted appropriate testing and reported the results to Kent each time. Even though the investigative results failed to identify the cause, they demonstrated that the fault did not lie with Edison. In billing disputes we have consistently held that this is the most a utility is required to do. Edison fulfilled its responsibility to Kent under Section 779(c).

Kent also contends that Edison's discontinuance of his service was improper because of defects in the termination notice he received from Edison. Specifically, he claims that the notice he received in each instance failed to satisfy four requirements of Section 779.1(d), which specifies particular information that is required to be included in the notice. Section 779.1(d) states in part,

"Every notice of termination of service pursuant to subdivision (a) or (b) shall include all of the following information":

\* \* \*

"(4) The procedure by which the customer may initiate a complaint or request an investigation concerning service or charges.

"(5) The procedure by which the customer may request amortization of the unpaid charges.

“(6) The procedure for the customer to obtain information on the availability of financial assistance, including private, local, state, or federal sources, if applicable.

“(7) The telephone number of a representative of the corporation who can provide additional information or institute arrangements for payment.”

Kent claims that the notices he received contained none of this information.

In support of this contention Kent submitted Exhibit 5, Edison’s “Past Due...Service Termination Notice” prepared May 20, 1998, requiring payment by June 4, 1998. This notice is prepared on a standard 6 ½” x 11” Edison business form.<sup>10</sup> Kent characterizes this document as an “exemplar,” from which we infer that it is identical in form to the other notices he received before termination of his service, which were not entered in evidence. On the front of Exhibit 5 is a computation of the past due amount and two notices. The first notice provides information about the date payment must be received, and advises of the possibility that a reconnection charge ranging from \$12.50 to \$60.00 may be imposed if service is terminated, and of other consequences of termination. The second notice advises the customer how to pay the bill.

The reverse side of the form contains a great deal of general information for the customer. Included is a directory of toll free telephone numbers to contact for various customer service needs, and sections titled, “Paying Your Bill,” “Past Due Bills,” and “Disputed Bills.” In the first of these sections is a bullet item which states, “Unable to Pay—Call us now, if you need to make payment arrangements or information on agencies to assist you.” The “Past Due

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<sup>10</sup> SCE 14-664 (front) and SCE 14-579, Rev. 1/98(r) (reverse).

Bills" section provides information about the dates when a bill is past due and when service may be terminated, and a bullet item which states, "If a residential customer claims an inability to pay and Edison does not offer payment arrangements, he/she may contact the California Public Utilities Commission (CPUC)." The "Disputed Bills" section provides the following explicit instructions to a customer who believes the bill is incorrect:

"If you believe your bill is incorrect, call us as soon as you receive it and we will provide you with a prompt explanation.

"If you are still unsatisfied after the Edison review, you may send a written complaint to the California Public Utilities Commission (CPUC) at the address below. To inquire about this procedure by telephone, call the CPUC at 1-800-649-7570, (TDD) 213-897-0426. To avoid termination of service while disputing a bill, you must pay the bill or send the payment amount to the CPUC before the past due date.

"The CPUC accepts payment only for matters that relate directly to the accuracy of your bill.

"Your complaint should include the following:

- "• A copy of your bill
- "• A letter explaining why you think Edison did not follow the rules or rates
- "• A check or money order for the amount you are disputing made payable to CPUC

"Send the above items to:

California Public Utilities Commission  
State Office Building  
107 South Broadway, Room 5109  
Los Angeles, CA 90012-4572  
INTERNET ADDRESS: <http://www.cpuc.ca.gov>



“While your complaint is being investigated, you are responsible for paying any new Edison bills that become due. You must follow the above procedures for each bill you are disputing. The CPUC will review your complaint and contact you with the results. Depending on the results of their investigation, the CPUC will either return your payment to you or forward it to Edison to apply to your account.”

It is apparent that all of the information that Section 779.1(d) requires Edison to include is provided in this notice. The procedure for initiating a complaint or requesting an investigation is to call Edison at a number listed in the directory. The procedure by which the customer may request an amortization arrangement is likewise to call an Edison number or, if Edison declines to extend such an offer, to call this Commission. The directory lists an Edison number for information about agencies which can provide assistance in the event of a customer's inability to pay, and the toll-free number of an Edison representative who can provide additional information or institute payment arrangements -- several, in fact. This information does not need to be set out in detail on the form if it is reasonably incorporated by reference, as it is here. Kent's contention that the form of the notice is deficient is without merit.

Kent also asserts that Edison's handling of the investigation deprived him of procedural rights under the California Constitution and statutory law. Kent relies upon Perez v. City of San Bruno, 27 Cal. 3d 815, 168 Cal. Rptr. 114 (1980) to support this assertion. However, there is nothing in Perez to justify such reliance. Perez considered the issue of whether a municipality providing utility services could resort to cutting off water service in response to a customer's partial nonpayment of her bill under a local ordinance. The decision holds that service termination by the city was an authorized remedy for nonpayment under state law, and that the city did not violate the customer's substantive and

procedural due process rights by terminating her service. It does not, as Kent contends, hold that a private utility's customer has a constitutional right to notice and a hearing before the utility may terminate a customer's service for nonpayment. Kent has furnished no authority to that effect, and we conclude that Edison did not violate his constitutional rights by terminating his service under its authorized tariff procedure.

Kent alleges that Edison failed to comply with Section 779.1(b), which requires a utility to make a reasonable attempt to contact the customer by telephone or, if that cannot be accomplished, by mail, within specified periods before terminating service for nonpayment. This allegation is not supported by the record. Edison's customer service records and its testimony at the hearing show that Kent received timely written notification pursuant to tariff rules, and telephone notification of Edison's intention to discontinue service for the arrearage he maintained on his bill. Kent chose to characterize this, both to Edison at the time and to the Commission in this proceeding, as "extortion" and an abuse of monopoly power. However, his insistence upon making up his own rules by withholding payment, maintaining an arrearage without Edison's consent, and missing payment deadlines placed his service at risk. He was continually in contact with Edison by telephone, repeatedly told that all of the preconditions for payment were satisfied (i.e., that his meter was operating properly, no other problem was detected on Edison's side of the service, and the proper rate was being applied), and was warned that payment was due. He elected to ignore these admonitions at his own peril.

Finally, Kent claims that Edison failed to comply with a provision of Section 779.1(c), which requires every utility to make available third-party notification service to persons over 65 years of age. Under the statute the customer must request this service on a form furnished by the utility. Kent

argues that Edison "must have known" that he qualified for this service from the information he furnished when he first applied for service, and that he was entitled to third-party notification as a senior citizen. Edison testified that it was unaware until the hearing that Kent's age would qualify him for this program. In any event, there is no evidence that Kent ever submitted the required form to Edison, nor that he had designated a third party to receive notification and obtained that person's consent, as required by the statute. Kent therefore has not satisfied his burden of proving that he should have received notification of termination under this provision.

### **Appeal**

Kent has appealed the Presiding Officer's Decision.<sup>11</sup> He asserts that there are factual errors in the ALJ's findings which should result in our determination that Edison violated Section 779(d), and that his federal constitutional rights to due process have been violated because Edison did not accord him an informal administrative hearing pursuant to the Fourteenth Amendment.

We have found nothing in the record, or in Kent's assertion, that would alter the ALJ's findings of fact concerning the actions Edison took before discontinuing Kent's service. Those actions complied with the requirements of Section 779(d), and we will therefore not disturb the ALJ's conclusion on this point.

Kent relies upon Memphis Gas, Light & Water v. Craft, 436 U.S. 1, 56 L. Ed. 2d 30, 98 S. Ct. 1554 (1978), in support of his claim that he has been denied constitutional due process rights. But as with Perez, supra, the Memphis case

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<sup>11</sup> In addressing his appeal here, we have chosen to overlook the circumstance that Kent filed it untimely.

involves the termination of service by a municipal utility which was found to have deprived the petitioner of a property right without due process under the Fourteenth Amendment when it turned off the power. By contrast, Jackson v. Metropolitan Edison Co., 419 U.S. 345, 42 L. Ed. 2d 477, 95 S. Ct. 449 (1974), squarely holds that termination of electrical service to a household, without notice or a hearing, by a privately owned and operated utility company, does not constitute "state action" that would subject it to such due process requirements. Accordingly, in this case Edison legitimately acted within its powers when it terminated Kent's service following compliance with the state statutory requirements.

We deny Kent's appeal.

### **Conclusion**

We have not found support in the record for Kent's claim that he was improperly billed, or that his service was improperly discontinued for nonpayment. We will therefore deny the relief he requests and dismiss the complaint.

### **Findings of Fact**

1. Kent has not shown that he could not possibly have used the amount of electric power for which Edison billed him. Kent's potential demand exceeds the amount of energy he claims to have used.
2. The amount of electric power Kent claims he used is the average amount he used in months when his bill was approximately \$55.00.
3. At all relevant times Kent's electric meter was accurate within tolerances approved as acceptable by this Commission.
4. No source of energy loss was ever found in Kent's system.

5. There is no evidence that Kent was improperly billed for power due to a cause within Edison's control.

6. Kent used the electric power indicated by his meter.

7. The bills Kent received from Edison were consistent with his power use and accurately computed from the applicable rate.

8. When Kent made billing inquiries about disputed amounts, Edison responded on each occasion by conducting timely and appropriate tests and inspections, and by reporting the results to Kent in a timely manner.

9. Kent received a timely overdue notice and a timely final call notice, and timely notification by telephone, each time his power was discontinued.

10. No investigation by Edison was pending at any time that Kent's power was discontinued.

11. Exhibit 5 contains all of the information required to be listed in this notice, as set forth in Section 779.1(d).

### **Conclusions of Law**

1. Kent has failed to satisfy his burden of proof that Edison's billing was improper.

2. The term, "investigation," as used in Section 779(b)(1), does not mean a formal investigation conducted by a designated manager of the utility and a formal determination of the cause of an alleged problem with the customer's billing.

3. Section 779(c) does not require the designation of a specified individual to serve as review manager for each billing dispute.

4. Edison fulfilled its responsibility to Kent under Section 779(c) in relation to the events alleged in the complaint.

5. The form of notice Edison furnished to Kent satisfies Section 779.1(d).

6. Edison did not violate Kent's constitutional rights by terminating his electric service in accordance with authorized tariff procedures.
7. Edison complied with Section 779.1(a) in furnishing notice to Kent.
8. The relief requested in the complaint should be denied, and the complaint should be dismissed, effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. Complainant's appeal of the presiding officer's decision is denied.
2. The relief requested in the complaint herein is denied.
3. Case (C.) 98-06-037 is dismissed.
4. Any funds impounded with the Commission in relation to this case shall be disbursed to Southern California Edison Company (Edison) to be applied to any arrearage in complainant's account. After the account is paid in full, Edison shall return any remaining funds to complainant.
5. C.98-06-037 is closed.

This order is effective today.

Dated February 3, 2000, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
CARL W. WOOD  
LORETTA M. LYNCH  
Commissioners