

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



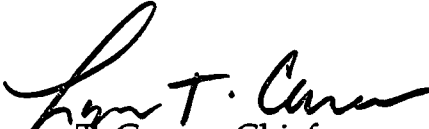
December 31, 1999

TO: PARTIES OF RECORD IN CASE 99-05-040  
DECISION 99-12-062, Mailed 12/31/99

On November 30, 1999, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 8.2 of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

  
Lynn T. Carew, Chief  
Administrative Law Judge

LTC:sid

Attachment

Decision 99-12-062

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

Fred G. Teixeira,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 99-05-040  
(Filed May 25, 1999)

Fred G. Teixeira, for himself, complainant.  
Carole Hughes, Attorney at Law, for  
Pacific Gas and Electric Company, defendant.

**OPINION**

**Summary**

This case is dismissed by reason of failure of complainant to prove any wrongdoing on the part of defendant. Bills presented to complainant for unmetered electrical energy consumption are not proven to be unreasonable.

**Procedure**

Fred G. Teixeira (Teixeira) complains that Pacific Gas and Electric Company (PG&E) presented him with an "outrageous" bill in the amount of \$32,621.74 for unmetered energy used by complainant. Teixeira asks that the disputed bill be adjusted and a payment schedule be set up.

PG&E filed its answer to the complaint on July 6, 1999. A Scoping Memo and Ruling of Assigned Commissioner was issued on July 19, 1999 in which Administrative Law Judge Orville I. Wright was designated as presiding officer

in this proceeding pursuant to Rules 6.3 and 6(b)(3) of the Rules of Practice and Procedure.

A duly noticed public hearing was held in Fresno on August 27, 1999 before the presiding officer and the matter was submitted on October 22, 1999.

### **Background**

Complainant's electric meter has been found by PG&E to have been tampered with on three occasions resulting in three back bills for unmetered electricity used on Teixeira's property in Fresno.

The first back bill was rendered in 1985 upon PG&E's discovery that the meter on complainant's premises had been tampered with. This bill was paid by Teixeira.

The second back bill was rendered upon discovery on August 18, 1997 that complainant's meter was again tampered with. This back bill covers the period from September 7, 1990 to September 8, 1997 in the amount of \$32,113.85 plus a closing bill to April 19, 1998 in the amount of \$507.89. These billings total \$32,621.74 as set forth in Teixeira's complaint.

In this case, PG&E limits its request for recovery of the second back bill to \$15,749.51, the undercharges for the period September 9, 1994 to September 8, 1997 by reason of the applicable statute of limitations. It has, however, brought civil suit against complainant in Fresno County Superior Court seeking full recovery of all alleged undercharges together with treble damages.

A third back bill was rendered on May 17, 1999 in the amount of \$5,080.24 for energy diversion on complainant's premises: \$3,669.24 for unmetered energy consumed during the period from February 6, 1998 to April 19, 1999, interest of \$254.66, and labor and damage charges of \$1,156.34.

## Hearing

At hearing, the facts stated as background were proven by PG&E to be accurate. Clear evidence of meter tampering was presented by photographic and oral testimony.

Teixeira testified that PG&E does not cooperate or work with him in paying his bills. PG&E knows that complainant leaves for work at 3:30 a.m. and does not return until 2:00 p.m. to 3 p.m. in the afternoon, but PG&E representatives regularly come to his home and talk to his wife while he is at work.

Mrs. Teixeira testified that when PG&E servicemen came to shut-off their power for non-payment of their bills they gave her only 10 minutes to have her husband return home even though they knew it would take him 45 minutes to return.

Responding to this testimony, defendant's representative testified that he asked Mrs. Teixeira to have her husband telephone to arrange an appointment and also wrote to Teixeira requesting an appointment, but received no reply. Further, defendant testified that its efforts to contact Teixeira to discuss the backbills after they were rendered received no response.

Among photographs produced by PG&E showing the tampered meter, unauthorized electric wiring, and various electric appliances on Teixeira's premises were photos of complainant's swimming pool when empty and when full. The purpose of the photos was to show the electric load that supplies the pool filter and heater, according to PG&E's testimony.

Complainant takes exception to these photos, testifying that the pool heater and filter do not operate, and the pool was filled and emptied by a neighbor's pump.

Photographs of an air conditioner, heater, and water cooler presented by PG&E are also irrelevant, Teixeira testified, because these appliances have not operated for several years.

PG&E's evidence neither proves nor disapproves whether one or more of the appliances in complainant's home were operable during the extended periods of time covered by the backbills charged to Teixeira.

### **Discussion**

An estimated backbill must be rationally based upon known facts, but perfection is not required; the estimate must simply be reasonable in light of the facts (*Brixley v. Southern California Edison Company* 49 CPUC2d 159, 162.) The use of consumption data from the customer's billing history and for which there is some reasonable indication that unauthorized use was not occurring is generally sufficient to reconstruct a fair backbilling (Backbilling Decision, 21 CPUC 270, 275.) Estimated bills for unauthorized use periods may be determined by PG&E based upon accurately-metered use prior to the onset of the unauthorized use (Tariff Rule 17.2(c)).

The question presented in this case is whether PG&E violated any law, order, or rule of the Commission as defined in Pub. Util. Code § 1702. The burden of proof that such violation occurred falls upon complainant.

Complainant has been billed for unmetered energy consumed upon his property as a result of PG&E's discovery of meter tampering.

The basis for the back bills at issue was base year meter readings for the period February 18, 1975 to February 19, 1976 and October 18, 1988 to February 8, 1990. While complainant asserts that the base year usage readings of his meter are not representative of his present usage, PG&E's estimates for its back bills were not proven to be unreasonable. Complainant's contention that one or more of the appliances making up his electric load is or was not operating so that his

usage during the time of unauthorized use is less than his usage during the time of base year usage readings must be established by more than mere disclaimers or generalizations of the complainant.

The back bills are large because of the time periods involved and have been shown to be based upon actual readings when complainant's meter was correctly recording usage. It has not been proven that the utility estimates of unmetered energy are unreasonable.

Complainant has not carried his burden of proving some wrongdoing on the part of defendant.

### **Findings of Fact**

1. Complainant complains that back bills for unmetered electricity consumed on his property are outrageous and should be adjusted.
2. Defendant has shown that its back bills are based upon actual readings when complainant's meter was correctly recording usage.

### **Conclusions of Law**

1. Complainant has not carried his burden of proving some wrongdoing on the part of defendant.
2. The complaint should be dismissed.

**O R D E R**

**IT IS ORDERED** that:

1. The complaint is dismissed.
2. Case 99-05-040 is closed.

This order is effective today.

Dated December 31, 1999, at San Francisco, California.