



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

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MARIA CARMEN OZUNA AND
SERAPIO GARCIA

Complainants,

v.

SOUTHERN CALIFORNIA EDISON
COMPANY (U338E)

Defendant.

Civil Action No.: C.11-06-014
(Filed June 13, 2011)

**COMPLAINANTS, MARIA CARMEN OZUNA AND SERAPIO
GARCIA'S MEMORANDUM OF LAW AND FACTS IN OPPOSITION TO
DEFENDANT SOUTHERN CALIFORNIA EDISON'S MOTION TO
DISMISS COMPLAINT**

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FACTUAL BACKGROUND

Sometime prior to May 4, 2009, Edison purportedly received a tip that Ms. Ozuna's home electricity had been manipulated to bypass the meter¹ resulting in a reduced reading of the actual kilowatts used on a day-to-day basis. A surveillance meter was installed on May 4, 2009 with an original reading of 003528. The first reading was taken by Edison on May 27 which showed an average usage between May 4 and May 27 of 13.4 kW per day on the house meter and 68.82 kW per day on the surveillance meter. The second reading was taken by Edison on June 23 which showed an average usage between May 28 and June 23 of 13.0 kW per day on the house meter and 60.55 kW per day on the surveillance meter.

On Monday, July 20, 2009, the house meter was disconnected by the inspector but he was denied access to the interior of the house because Ms. Ozuna was in transit from an out-of-town trip. However, a visual inspection of the exterior of the home at 10:00 AM revealed that the pool pump was still working, the refrigerator by the pool area was still working, the central air-conditioning was still working, and the security light was still on. It was unknown what interior electrical usage was still working because of the inability to inspect. Ms. Ozuna returned from her out-of-town trip on July 20, but there was no subsequent attempt to inspect the interior of the home to determine what electrical usage was still ongoing after the meter was removed.

On July 20, the surveillance meter now read 009218 which was a difference of 5690 kW or an average of 73.9 kW per day for the 77 days in which the surveillance meter was checked. The bypass was eliminated on July 20 and the surveillance meter was removed sometime thereafter. A third reading of actual usage was taken for the period of August 3, 2009 through August 10, 2009 which

¹ As will be shown below, this allegation is meritless and is based upon a false representation contained in the motion to dismiss as to the statements made by Ms. Ozuna. As will be further discussed, it is not understood why this is even addressed in Defendant's moving papers since it is irrelevant in proceedings before the Public Utilities Commission. Presumably, this falsely characterized evidence on this irrelevant matter is introduced for the sole purpose of seeking to discredit Ms. Ozuna. It should, in fact, have the precise opposite effect of discrediting the claims of Defendant.

did not reflect any bypass and showed 392 total kW for 7 days for an average of 56 kW per day.

Based on the foregoing data, Edison re-billed Ms. Ozuna's house electricity charges for the last 10 years to reflect an average daily usage of 73.9 kW. The charges applied to the re-billing reflected the actual rates in place during the ten-year period. The amount actually billed and paid was then deducted from the re-bill arriving at the charges \$42,292.80 for a bill prepared on August 26, 2010.

Although none of the foregoing details were discussed regarding Ms. Ozuna's parents home under the name of the Serapio Garcia, It was presumed the identical procedure was used by Defendant in arriving at its re-billed charges of \$6,461.61 on August 26, 2010. However, it was subsequently learned through Defendant's Answer to Complaint and Motion to Dismiss that Defendant utilized a different method of comparing Mr. Garcia's electrical usage with the average typically usage of a similar home in the neighborhood.

ANALYSIS OF THE METHODOLOGY USED BY DEFENDANT TO QUANTIFY MS. OZUNA'S ELECTRICAL USAGE.

It was explained by Edison inspector at the meeting that the timeframe of May 4, 2009 and July 20, 2009 was used because it was a fair representative sample of the last 10 years since it contained some of the spring time and some of the summer. This contention or assumption is fundamentally wrong.

Complainants have obtained the actual statistical data for the official recorded daily temperatures and the monthly averages for the nearest official recording station which is located in Ontario. The sampling relied upon is greatly overstated because the average high daily temperature for May, June and July 2009 was 83°, 80° and 96° respectively, which is exceptionally high by historical standards. This calculates to an average of 86.3° for the sample period. For example, in May, June, July 2010, the daily average high temperature was 77°, 83° and 88° respectively, which calculates to a daily average high temperature of 82.7° for the same sample period. Therefore, the apparent "random" representative

sample does not reflect a fair representation of the average daily temperature even for May, June and July for the past 10 years.

More importantly, the average daily high temperature for the entire calendar year 2009 is only 78.9° which is approximately 10% lower than the representative sample. The average daily high temperature for the entire calendar years of 2008 and 2007 is 79.8° and 79.2 ° respectively.

In consulting with Ms. Ozuna's consumer electrical usage expert, this approximate 10% increase in temperature does not simply correlate to an approximate 10% increase in electrical usage. Rather, there is a dramatically higher electrical usage since the average consumer will not use air-conditioning until the temperatures exceed 78°. This is easily the highest component of electrical usage for the typical consumer. Also, from October through April the pool pump is reduced substantially because it is rarely used in this timeframe. Similarly, the outdoor refrigerator does not use nearly as much electricity to maintain its temperature between October and April because of the cooler weather. In fact, Ms. Ozuna must turn down the refrigerator after October to keep the items contained therein from freezing. This 10% temperature change can easily result in more than doubling or tripling the actual electrical usage between May and July than between a full calendar year of January through December.

Therefore, the statistical basis relied upon by Edison is highly flawed, inaccurate and not representative of the truth.

A review of Rule 17 for Adjustment of Bills and Meter Tests in the SCE Tariff Books which provides the basis for estimating bills for unauthorized use identifies 6 specific methods of estimating bills and permits other non-specific but reasonable and supportable methodologies. It appears that Edison has chosen only to use the first method of using a remote check "during the unauthorized use period." Although it is ambiguous as to whether statistical samples can be effectively used under this rule, and Defendant's moving papers offer no legal authority, it is obvious that any such statistical sample must bear a reasonable and supportable relationship to the entire timeframe of the alleged unauthorized use.

ANALYSIS OF DEFENDANT'S FACTUAL ALLEGATIONS OF MISCONDUCT BY MS. OZUNA.

First, at page 2 of Defendant's Brief, it is asserted that the tipster told SCE that Ms. Ozuna "bragged to the tipster that she had tampered with her electrical meter by installing electrical bypass that diverted electrical energy from STC's meter" and that Ms. Ozuna "boasted that the bypass allowed her to 'run her pool heater and air conditioner all the time' and still pay less than \$60 a month for electricity." The supporting reference for these comments is contained in Exhibit B which simply states, "CUSTOMER IS ELECTRICIAN BRAGS RUNS POOL HEATER AND AIR COND. ALL THE TIME. BILLS UNDER \$60.00" There is no mention of tampering with her electrical meter or that any such bypass allowed her anything.

It should be noted that Ms. Ozuna is not an electrician either, she simply took over the electrical contracting business started by her husband who committed suicide approximately 10 years ago. However, as the owner of an electrical contracting business, she does have access to the most modern energy efficient devices available, and utilizes them in her home. This explains why Ms. Ozuna could assert a fact that her electric bill is lower than most others. Suffice it to say, Ms. Ozuna fervently denies that she ever had any knowledge of the bypass discovered by SCE either on her home, or the residence she leases to her father Serapio Garcia.

At page 6-7, Defendant's brief states that Ms. Ozuna "admits [in an informal complaint] that 'both meters were bypassed by my husband, who was an electrical contractor and died more than 10 years ago.'" However, the informal complaint only states that "it is believed" that this occurred, because she has no personal knowledge of how it occurred. However, she does admit that this is the most likely possibility. "It is believed" is by no means the same as "I admit".

More importantly, the case authorities Defendant has cited indicates the issue of Ms. Ozuna's knowledge, intent, fault, complicity etc. is not relevant to these proceedings. The seminal decision defining the parameters of these proceedings is "*In Re Retroactive Billing...* (1986) 21 CPUC 2d 270 which goes to great lengths to state:

"Our sole purpose of resolving these complaints is to determine the value of any energy that can be shown to have been used by the customer but not metered or billed by the utility. Whether the customer someone else actually performed cantering or diversion does not affect the outcome at all; the customer is responsible for paying the value of any unmetered energy, regardless of whether the metering discrepancy result from cantering by the customer, tampering by a stranger, mechanical failure of the meter, or any other reason. Determining the identity and intentions of the person who performed cantering or diversion is not pertinent to our proceedings in this act which we have neither the resources nor desire to perform. In addition, we have no special competence to deal with questions of guilt, innocence, or intent that are associated with allegations of tampering by the customer."

Since this is true, then it is difficult to understand the purpose of including these unnecessary factual issues in defendant's pleadings other than to scandalize Ms. Ozuna's alleged misconduct.

ANALYSIS OF THE STATUTE OF LIMITATIONS USED BY DEFENDANT TO QUANTIFY MS. OZUNA'S ELECTRICAL USAGE.

Next, we must address the issue of the statute of limitations. Defendant's Brief at page 12 acknowledges *In Re Retroactive Billing* "specifically explained that the three-year limitation on the amount of funds SCE could recover only apply in actions brought before the Commission...." Obviously, that is where we are. Apparently, Defendant is trying to say in its brief that these PUC proceedings do not prevent SCE from filing and pursuing future fraud, breach of contract, criminal, etc. claims and causes of action in the Superior Court that may have a longer statute of limitations. Presumably, Defendant would proceed through the PUC hearings to get a determination of what you would be entitled to under the three-year statute of limitations, and use other causes of action to go back further than three years in the state court. Cross complainants do not offer an opinion as to whether this is true or not. However, it is again difficult to understand why this is

detailed in Defendant's brief if it is not an issue before the PUC commissioners. There is simply no explanation as to why the issue of the future state court proceedings are addressed to the PUC in these proceedings.

It is also difficult to understand Defendant's calculation of the three years. At page 13 of your Brief, you state "the Commission must merely decide if SCE's method of estimation is reasonable and confirm that SCE is entitled to the most recent three years of estimated nonpayment for the value of the services rendered, as well as associated costs." However, *In Re Retroactive Billing* adopts California Public Utilities Code Section 737 as the limitations period, and that statute provides in relevant part:

"All complaints for the collection of the lawful tariff charges or any part thereof, of public utilities may be filed in any court of competent jurisdiction within three years *from the time the cause of action accrues, and not after....*" (Emphasis added.)

The cause of action began to accrue as far back as 2001 for Ms. Ozuna's property, and as far back as 2005 for Mr. Garcia's property. I calculated the total amount of difference between the amount paid and the amount as "rebilled" in accordance with your correspondence and backup data delivered in October, 2010 for the billing periods of February 6, 2008 to August 10, 2009 because the complaint filed by the SCE was filed on February 3, 2011. Any claim can only run from February 4, 2008, which is three years from the date of the filing of the Complaint. Therefore, the total amount that SCE can claim against Mr. Garcia under its calculations is \$2,364.99. The total amount that Edison can claim against Ms. Ozuna under your calculations is \$9,027.83. The combined total of your claims is \$11,392.82. This does not include the associated costs which I simply need a breakdown if you have not already provided it. At page 6 of your Brief, you state, "The total amount owed for the most recent three years of collective unauthorized use by Ms. Ozuna and Mr. Garcia, plus associated costs, is \$24,088.39 "presumably using the timeframe of August 3, 2006 through August 3, 2009. When do you believe the cause of action first arose?"

The claim made at page 11 of your Brief is that:

"Ms. Ozuna, the owner of an electrical contracting company, could not have reasonably believed that her and her father's tiny electricity bills were accurate given that they both have pools, running air-conditioning systems, and she runs a business out of her home. She therefore failed to mitigate her and her father's harm."

Certainly if you assume that Ms. Ozuna could not have reasonably believed that her and her father's electricity bills were accurate, then you must further assume that the SCE's meter readers could not have reasonably believed that the electricity bills were accurate if they were substantially less than the profile of customers with similar connected loads. Indeed, SCE would be in a far better position to determine whether the meter readings were inconsistent with similar neighboring properties.

Respectfully submitted,

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