

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

David Allen,

Complainant,

vs.

Southern California Edison Company (U 338-E),

Defendant.

(ECP)
Case 15-07-010
(Filed July 7, 2015)

David Allen, for himself, Complainant.

Prabha Cadambi for Southern California Edison Company,
Defendant.

**DECISION DENYING MOTION FOR RECONSIDERATION, DENYING RELIEF,
AND DISMISSING COMPLAINT**

Summary

This decision resolves a complaint filed by David Allen against Southern California Edison Company (SCE). Mr. Allen seeks a refund of \$200 on the grounds that: 1) SCE’s bill was based on an unjust (“excessive”) rate structure, and 2) SCE did not provide adequate information about the rate structure to enable appropriate energy conservation during this period. Complainant also requests punitive damages in the amount of \$500.

We find that SCE complied with all applicable laws, regulations, rules, orders, and tariffs with respect to this matter, and responded to Mr. Allen’s complaints in a timely and appropriate manner. Moreover, we find that

Mr. Allen does not have standing to challenge the reasonableness of rate structures in an individual complaint. Finally, we deny Mr. Allen's Motion for Reconsideration of the Chief Administrative Law Judge's Order denying Mr. Allen's request to have the instant proceeding assigned to another judge.

The request for relief is denied, all impounded funds are released to SCE, and the complaint is dismissed.

1. Complainants' Contentions

The Complainant, David Allen, has been a resident of Murrieta, CA since December 5, 2014. Mr. Allen indicated that before moving to Murrieta, he resided in San Diego and received residential service from San Diego Gas & Electric Company (SDG&E). Mr. Allen describes his residence as a "3,000sqft [sic] 2-story house roughly 8 years old." Mr. Allen works from home, and describes himself as a "specialist in Information Technology (Computers & Software Development)".¹

The genesis of Mr. Allen's complaint is a SCE bill for electrical service in the amount of \$350.71 for 1,367 kWh used between December 12, 2014 and January 13, 2015.² Mr. Allen notes that this was his second SCE bill for service at his Murrieta residence. In his complaint Mr. Allen compares and contrasts the rates charged by SCE with lower rates charged by SDG&E. He asserts that the fact that his highest bill as a SDGE customer was for \$246.74 in the context of high summer temperatures provides evidence that SGE's bill was "excessive." He also claims that the fact that his first SCE bill was for a smaller amount

¹ Allen Complaint at 2.

² *Id.*

(\$81.94) for a shorter time period prevented him from “registering the amount as anything excessive.”³

Mr. Allen contends that he called SCE customer service on January 23 to communicate his suspicion that his usage had been measured inaccurately and his opinion that SCE rates were unreasonable. According to Mr. Allen, SCE customer service representatives informed him that they could not adjust his bill but they did arrange for a test of his meter.⁴

Mr. Allen states that on January 29, 2015, a SCE technician came to his residence to test his meter. According to Mr. Allen, the technician informed him that there was evidence that his HVAC system was using a large amount of electricity. Mr. Allen reports that he arranged for an independent HVAC test on February 10, 2015, which confirmed its large energy use.⁵ Mr. Allen also reports that he subsequently discontinued use of this HVAC system in order to conserve energy, instead relying on “portable” AC and heating units in his bedroom and office.⁶ Mr. Allen complains that “there is no discount plan available for individuals who work from home.”⁷ He also argues that it is unreasonable that a “middle-class citizen must go to these lengths, circumventing the use of standard home HVAC equipment, in order to avoid excessive bills.”⁸

Mr. Allen acknowledges that he did not pay the contested bill.⁹ According to his account, he first expressed concern about inadequate information about

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.* at 4.

⁶ *Id.* at 6.

⁷ *Id.* at 5.

⁸ *Id.* at 7.

⁹ *Id.* at 5.

SCE's tiered rate structure in a March, 2015 phone call with a SCE representative who contacted him about his overdue payment. In his complaint, Mr. Allen contends that the SCE website "fails to inform its customers in a reasonable fashion" of the amount of usage that triggers higher rates and complains that new customers seeking rate information should not be expected to "drill down" to the extent that it requires.¹⁰ He also complains that SCE's system for alerting customers of their energy use and accumulating charges is at the same time too difficult to use and also insufficiently complex and sophisticated.¹¹

Mr. Allen contends that SCE is unwilling to negotiate its charges because of its status as a monopoly.¹² In his response to SCE's Answer to his complaint¹³, Mr. Allen elaborates on his initial complaint and also cites online commentary as evidence of the agency's generally "abysmal" public reputation.¹⁴

Mr. Allen requests a \$200 discount on his bill "due to his inability to conserve, and SCE's failure to reasonably notify him . . . of his usage."¹⁵ He also requests punitive damages in the amount of \$500 to compensate him for 10 hours spent on phone calls, emails, research and correspondence to "deal[] with a situation that a reasonable person would agree should not have occurred."¹⁶

On July 20, 2015 parties were noticed that an evidentiary hearing would be held at 11:00 a.m. on August 19, 2015 at the Riverside County Administrative Center. The hearing was cancelled when Mr. Allen informed the assigned ALJ

¹⁰ *Id.* at 7.

¹¹ *Id.* at 8.

¹² *Id.* at 9.

¹³ Filed on August 17, 2015

¹⁴ Allen Answer to Complaint *passim*.

¹⁵ *Id.* at 9.

¹⁶ *Id.*

on August 18, 2015 that he could/would not attend in person and instead requested a hearing by telephone. After the scheduled hearing was cancelled and his request for a telephonic hearing was denied, Mr. Allen filed a Request for Reassignment of the assigned ALJ on August 20, 2015, claiming that the denial of his request for a telephonic hearing was unsupported by Commission Rules. On August 31, 2015 Chief Administrative Law Judge Karen Clopton denied the request. Chief Clopton determined that Mr. Allen failed to allege any valid grounds for reassignment under the Commission's Rules of Practice and Procedure, and in particular Rule 9.4 which provides for reassignment when the ALJ has a financial interest in the subject matter or has "bias, prejudice, or interest in the proceeding."

On September 4, 2015 Mr. Allen filed a Motion for Reconsideration of the denial of his Request for Reassignment. The Motion restated his demand for a hearing by telephone. Mr. Allen also claimed that the assigned ALJ violated Rule 1.2 of the Commission's Rules of Practice and Procedure, which requires that the Rules "be liberally construed to secure just, speedy, and inexpensive determination of the issues presented." On September 8, 2015 Mr. Allen was given the equivalent of a telephonic hearing during which the relevant procedural and substantive issues were discussed.¹⁷

2. Defendant's Contentions

SCE confirms the general substance of the facts alleged by Mr. Allen. SCE states that Mr. Allen has reported the amount of the contested bill and the rate

¹⁷ Per Rule 4.5, Parties are not represented by attorneys at ECP Hearings and the hearings are not recorded nor transcribed by a reporter.

structures applied in that bill correctly in his complaint.¹⁸ SCE confirms that customer service representatives, who did not have the authority to adjust charges, denied his request for relief in a phone call on January 23, 2015.¹⁹ SCE also confirms that a SCE “Meter Testman” inspected Mr. Allen’s residential meter on January 29, 2015, found that it was operating within Commission-approved guidelines, and advised Mr. Allen that his HVAC system could be causing high consumption.²⁰

SCE disputes Mr. Allen’s contentions that its rates are unreasonable and difficult to understand. SCE states that Mr. Allen has misleadingly compared SDG&E discounted rates, under the California Alternative Rates for Energy (CARE) program, with SCE’s regular tiered rates in his complaint. SCE points out that Mr. Allen had not applied for the CARE program as an SCE customer, and was therefore charged SCE’s standard residential rate.²¹ SCE contends that Mr. Allen had access to information regarding its discounted and standard rates. SCE states that after placing a request for service through SCE.com, Mr. Allen was within “three clicks” of information about rates including a “graphical depiction of the Tiers and a table format further explaining the 4-Tier price structure.”²² In addition, SCE claims that the pricing structure was also “displayed on [Allen’s] initial bill.”²³

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 7

²⁰ SCE Answer to Complaint at 2-3, Exhibit A.

²¹ *Id.* at 3.

²² *Id.* at 10-11

²³ *Id.* at 10.

SCE also addresses Mr. Allen's contention that it was unwilling to negotiate the amount of the contested bill, noting that its rates must conform to Commission-approved tariffs. SCE argues that "any bill adjustment for Complainant would be seen as giving preferential treatment to one customer over another, and would result in other ratepayers subsidizing Complainant's electric usage outside of CPUC-approved means" ²⁴ Nevertheless, SCE contends that in a May 30, 2015 conversation with Mr. Allen, its customer service representative assured Mr. Allen that once the issue was settled, late fees could be waived. ²⁵ SCE states that its general policy is to "accommodate reasonable requests as long as they are in accordance with its Commission-approved tariffs." ²⁶

SCE asserts that it has fulfilled its obligation to ensure that Mr. Allen's meter was functioning properly and that it applied the correct rates in calculating his bill. SCE argues that the Public Utilities Code § 1702 and Rule 4.1(b) of the Commission's Rule of Practice and Procedure do not allow individual customers to bring complaints regarding the reasonableness of utility rates or charges. SCE requests that relief be denied and the complaint be dismissed because Mr. Allen failed to include any allegations or evidence that the utility violated any law or Commission order or rule.

3. Discussion

Whether Mr. Allen is entitled to a reduction in his SCE bill for electrical service from December 12, 2014 and January 13, 2015 at his residence in Murrieta

²⁴ *Id.* at 12.

²⁵ *Id.* at 9.

²⁶ *Id.* at 18.

depends upon whether that bill was based on accurate usage data and applied the correct Commission-approved tariff.

There is no dispute that Mr. Allen's bill was calculated properly. SCE fulfilled its obligation to ensure that its meter was operating correctly with its January 29, 2015 test. The SCE technician who performed that test informed Mr. Allen that his HVAC system may have been inefficient. Mr. Allen reports that an independent HVAC test on February 10, 2015 confirmed the system's large energy use. Mr. Allen reduced his use of that system, and the amount of his bills subsequently fell. While Mr. Allen may have been unaware of his high energy consumption, he is still responsible for paying for the energy that he used.

We conclude that SCE representatives were correct in denying Mr. Allen's request for a special, personal discount. As an Investor Owned Utility regulated by the Commission, SCE is required to comply with a variety of conditions and regulations, and to abide by a Commission-approved tariff that sets forth rates for electrical service. The Commission establishes tariffs (which include the terms of late fees) through an open process that includes rigorous procedures to ensure the accuracy of information and to allow for public comment and participation. This process protects the public interest in fairness and efficiency. Mr. Allen is essentially requesting that SCE provide him a preferential rate which is prohibited by Pub. Util. Code § 453(a). In addition he has conflated SDG&E's discounted CARE rates with SCE's non-discounted rates. There is no indication that he has applied for the CARE discount through SCE. Mr. Allen must apply and demonstrate his eligibility in order to qualify for a discount.

The Commission is prohibited from considering the reasonableness of rates in the context of an individual complaint. Pursuant to Public Utilities Code

§ 1702, “no complaint shall be entertained by the Commission . . . as to the reasonableness of any rates or charges . . . unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service.”

Mr. Allen’s complaint has not met any of these criteria.

While they may be sincerely held, Mr. Allen’s concerns about the reasonableness of rates, including whether they are sufficiently transparent and understandable, do not provide any basis for a reduction of his bill or any punitive damages against SCE. The Commission has uniformly held that it has no jurisdiction to award damages as opposed to reparations²⁷ and there is no evidence that either is warranted in this proceeding. The appropriate venue for Mr. Allen to express his concern about “excessive” rates is in the context of SCE’s General Rate Case application, where members of the public can bring their concerns about excessive and/or unfair rates to the Commission.

Under Public Utilities Code § 1702, complaints must describe an “act or thing done or omitted to be done by any public utility . . . in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.” Mr. Allen’s complaint fails to provide evidence that SCE violated any applicable Commission approved law, order, or rule. Therefore, Mr. Allen’s request for relief is denied and his complaint is dismissed.

²⁷ PT&T Co., 72 CPUC 505, 509(1971) citing Jones v. PT&T Co., 61 CPUC 674 (1963)).

Mr. Allen's Motion for Reconsideration of the denial of his request for reassignment of the assigned ALJ is denied. The Motion for Reconsideration simply restates the demands and allegations of the original Motion for Reassignment that was denied on August 31, 2015. As in the original Motion for Reassignment the Motion for Reconsideration does not describe any valid ground for reassignment under Rule 9.4 or any Commission Rule of Practice and Procedure.

4. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and W. Anthony Colbert is the assigned Administrative Law Judge in this proceeding.

5. Waiver of Comment Period

Pursuant to Rule 14.7b, the 30 day public review and comment period is not applicable in Expedited Complaint

O R D E R

IT IS ORDERED that:

1. The Complainant's request for relief is denied.
2. The Complainant's Motion for Reconsideration of the denial of his Motion for Reassignment is denied.
3. All Funds held in impound by California Public Utilities Commission in the instant proceeding shall be released to Southern California Edison Company to satisfy the Complainant's outstanding bill.

4. Case 15-07-010 is closed.

This order is effective today.

Dated _____, 2016, at San Francisco, California.