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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

F.S. Orsay, Complainant, vs. Southern California Gas Company, Defendant.	(ECP) Case 16-05-006 (Filed May 9, 2016)

F.S. Orsay, for herself, Complainant
Ray B. Oritz, Representative of Southern California Gas Company, Defendant

DECISION DENYING RELIEF

Summary

The Complaint is dismissed with prejudice for failure to state a claim upon which relief may be granted. F.S. Orsay, Complainant (Complainant), failed to meet her burden of proof to show that Defendant, Southern California Gas Company (SoCalGas) billed her for gas that she did not use and that SoCalGas wrongfully denied her admittance to its Energy Savings Assistance (ESA) Program.

This proceeding is closed.

1. Procedural

F.S. Orsay (Ms. Orsay or Complainant), a customer of Southern California Gas Company (SoCalGas) currently resides in Southern California. SoCalGas is a utility providing gas service under the jurisdiction of the California Public Utilities Commission (Commission). Ms. Orsay complained to the Commission's Consumer Affairs Bureau (CAB) regarding billing issues during a four-month period from June 2015 through October 2015[1] and that she was wrongfully denied access to the Energy Savings Assistance (ESA) Program.

2. Complaint

Complainant filed this Expedited Complaint (Complaint) with the Commission on May 9, 2016. A hearing was scheduled on June 13, 2016. On May 25, 2016, SoCal Gas notified the Commission that it did not receive a copy of the Complaint with the Notice and Instructions to Answer. As a result, SoCal Gas requested that the hearing be rescheduled. The assigned Administrative Law Judge (Judge) rescheduled the hearing to June 17 2016. On June 9, 2016, Complainant requested that the June 17, 2016 hearing be continued to allow her sufficient time to prepare for the hearing. The Judge rescheduled the June 17, 2016 hearing to July 20, 2016. The hearing was held on July 20, 2016.

Complainant alleges that SoCal Gas wrongfully billed her for gas usage beginning June 10, 2015 through October 8, 2015. Complainant contends she did not use any gas whatsoever for cooking or heating during that period of time.[2] Complainant concludes SoCal Gas erroneously billed her for gas she did not use.

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[1] *See* Attachment 2, to the instant Expedited Complaint.

[2] Although the filed Complaint referenced billing between July 15, 2015 and August 21, 2015, bills from June 2015 through October 2015 were discussed in the informal complaint information provided with this Complaint.

In addition, Complainant argues SoCal Gas cannot justify changing the rate per therm for each billing cycle.

Complainant next asserts SoCal Gas wrongfully deprived her of the ability to participate in its ESA Program since 2009.[3] Complainant alleges SoCalGas failed to comply with Commission Decision (D.) 14-06-013 because the decision only required Complainant to meet income criteria to participate in the ESA program. Complainant states she has shown she meets the income requirements yet SoCalGas continues to wrongfully deny her ESA program participation.

SoCal Gas confirms it read Complainant's meter on September 9, October 8, and November 5, 2014 and that there was no gas consumption on each read date. SoCalGas explains the amounts billed of $4.63, $4.20, and $4.05 respectively, reflect only the daily customer charge[4] and Los Angeles City Users tax of ten percent. With respect to Complainant's gas consumption for the bills of June 2015 through September 2015, SoCal Gas utilized estimated meter reads for June and August, while actual reads occurred on July 10 and September 10.[5] In accordance with SoCal Gas Rule No. 16, Adjustment of bills, SoCal Gas adjusted the estimated bills to remedy inconsistencies to Complainant's gas bills

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[3] Prior to the instant proceeding, Complainant filed C.13-10-004 on October 7, 2013. In the prior complaint, Ms. Orsay alleged SCG wrongfully denied her admittance to the ESA program. ESA program information was provided to Ms. Orsay during the prior complaint proceeding.

[4] The Daily Customer Charge is $0.16438 per day of the billing cycle. CARE customers receive 20% off of the Daily Customer Charge.

[5] SCG states that estimated meter reads were due to workforce issues.

created by the estimated meter readings in June and August 10, 2015.[6] The chart below shows the bills and usage before and after adjustment.

Read Date	Read Type	Therms	Amount Billed	Adjusted Therms	Adjusted Bill
June 10, 2015	Estimated	15	$19.88	11	$14.82
July 10, 2015	Actual	7	$10.93	11	$15.10
August 10, 2015	Estimated	5	$9.02	8	$12.14
September 9, 2015	Actual	11	$15.20	8	$12.06

The adjustment resulted in a $.91 benefit favoring the Complainant.

SoCal Gas contends it complied with the terms of the settlement adopted by D.14-06-013 requiring SoCal Gas to send Complainant ESA program information so that she could determine if she met income guidelines. SoCal Gas provided a copy of the *Notice to Investor Owned and Small Multi-Jurisdictional Utilities Providing Service Under California Alternative Rates for Energy (CARE), Family Electric Rate Assistance (FERA) and Energy Savings Assistance (ESA) Programs* income guidelines to Complainant.[7] Additionally, SoCal Gas provided Complainant a link to ESA information on its website. SoCal Gas contacted Complainant on January 21, 2014 and advised her that:

- If Complainant was enrolled in one of the programs listed under categorical eligibility, she need only provide current proof of participation in that specific program;
- If she qualifies, she would need to complete the online form or call to have an ESA program representative contact her to begin the process; and

[6] SCG took this action after Complainant called regarding her July 10, 2015 gas bill.

[7] *See* Answer of Southern California Gas Company (U904G) to Complaint of F.S. Orsay at 2.

- Schedule an appointment to have an ESA program contractor complete the enrollment agreement in person at her premises, verify eligibility via a documentation collection process, and determine if the premises can receive the required number of corrective measures.

SoCal Gas states it contacted Complainant on May 29, 2014 and offered to have an ESA program supervisor visit Complainant's home to complete the steps listed above in order to apply to the ESA program. SoCalGas contends Ms. Orsay failed to apply to the program because she refused to allow the home appraisal to be conducted. Specifically, SoCal Gas explains Complainant informed SoCalGas by e-mail dated May 29, 2014, that, "An appraisal of my home is unacceptable, unappreciated, unwarranted, and a violation of my civil rights, etc.[8]" SoCalGas argues it must abide by the policies and procedures of the *Statewide Low Income Energy Efficiency (LIEE) Program Policy and Procedures Manual (P&P Manual)* which requires a home visit to verify eligibility, provide energy education, and conduct an audit of the structure to verify the dwelling requires the minimum number of measures. SoCalGas asserts it is unable to enroll the Complainant in the ESA program without following the policies and procedures in the P&P Manual.

2. Discussion

A customer, who disputes the accuracy of a bill, has the burden of proof to show that the billing was improper. The Commission has reiterated this rule in numerous billing complaint cases; this controlling principle is well summarized in Kent vs. SCE, 2000 Cal. PUC LEXIS 185:

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[8] *See*, Answer of Southern California Gas Company (U904G) to Complaint of F.S. Orsay and Expedited Complaint at Attachment 1.

> 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* (1993), 48 CPUC2d 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. at 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 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*. [Emphasis added.] 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.* at. 7.)

Here, complainant failed to rebut the presumption. During the hearing, Complainant stated that she did not use energy for cooking or heating but stated that the furnace pilot light was on between June and September 2015. Therefore, we know some amount of gas was used by the furnace to maintain the pilot light.

SoCalGas' estimation of Complainant's usage was reasonable based upon our review of Complainant's usage history. Usage during the period at issue ranged from 8-11 therms per billing cycle which is consistent with Complainant's historical usage. SoCalGas provided a table showing Complainant's usage from meter reads beginning November 5, 2012 through July 11, 2016. The chart below shows therms used for the same four month period from June through September over several years:

Read month	**2013**	**2014**	**2015**	**2016**
June	9	9	11*	14
July	8	7	11*	9
August	8	7	8*	Not Available
September	8	0	8*	Not Available

*= Adjusted therm use after estimated read.

Complainant was very upset by the fact that the amounts billed were not consistent with her use. During the hearing, SoCalGas explained that the rate per therm changes monthly because of the way it is permitted to purchase energy. In addition, we note that customer usage above the baseline amount is properly charged at a higher rate per therm.

Complainant similarly failed to show that SoCalGas wrongfully denied her participation in the ESA program. D.14-06-013 adopted a settlement offer from SoCalGas despite Complainant's failure to state a legally cognizable claim in that proceeding. In the settlement adopted, SoCalGas agreed to "mail Complainant a copy of current ESA information to allow her to determine if she meets the income guidelines and if she is interested in applying for the program." SoCalGas provided the requisite ESA information to Complainant who then had the option to apply to the ESA program. Complainant failed to complete the application process prior to filing this Complaint. SoCalGas was not under any legal obligation to enroll Complainant in the ESA program if she did complete the application process and qualify for program benefits.

During the hearing, SoCalGas confirmed that Complainant met the financial eligibility criteria and explained that the ESA application process could not be completed without an in home assessment. At the conclusion of the hearing, the parties began the Customer Agreement and made an appointment

for an in home assessment. An in-home assessment was conducted on July 21, 2016 and Complainant qualified for the ESA program. Maravilla Foundation, a state licensed contractor, was selected to install the ESA program measures identified in Complainant's home. The contractor installed door weather stripping, a door shoe, bathroom faucet aerator and three outlet gaskets. A/C covers were also to be installed but were unavailable on June 21, 2016. An appointment to complete the work was set for June 29, 2016. As of August 4, 2016, all ESA program services were completed.

3. Conclusion

Complainant failed to meet her burden of proof to demonstrate SoCal Gas violated any applicable law, Commission rule or order. In order to be cognizable, a complaint must allege "any 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." (Pub. Util. Code § 1702.) Complainant failed to show she either did not use any gas during the billing periods at issue nor that there were any billing errors.

In addition, although Complainant ultimately received ESA program benefits, she failed to show that SoCalGas wrongfully denied her participation in the program. Although Complainant showed that she met the financial eligibility criteria as early as 2009, she failed to complete the application process prior to the date of the hearing in this matter. SoCalGas is not required to admit a customer into the ESA Program and provide that customer with program benefits if that customer does not complete the entire application process including the in-home assessment.

The Complaint is dismissed because Complainant failed to state a claim upon which relief may be granted and the complaint must be dismissed.

5. Assignment of Proceeding

Carla Peterman is the assigned Commissioner and Katherine MacDonald is the assigned Administrative Law Judge in this proceeding.

O R D E R

IT IS ORDERED that:

1. Case 16-05-006 is dismissed with prejudice.
2. Case 16-05-006 is closed.

This order is effective today.

Dated, at San Francisco, California.