

Decision 18-11-030 November 29, 2018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Go Printing, Inc. dba Express
Laundry Center,

Complainant,

vs.

Pacific Gas and Electric Company
(U39E),

Defendant.

Case 17-10-017

Greg Overstreet, for Complainant Go Printing, Inc.
dba Express Laundry Center, in pro per.

Rx Uy, Attorney at Law, for Defendant, Pacific
Gas and Electric Company.

**MODIFIED PRESIDING OFFICER'S
DECISION DENYING COMPLAINT**

Summary

This decision denies and dismisses the complaint filed by Go Printing, Inc. dba Express Laundry Center against Pacific Gas and Electric Company.

Case 17-10-017 is closed.

1. Parties

Go Printing, Inc. dba Express Laundry Center (Express Laundry or Complainant) is a laundromat business located in Sacramento, California. Complainant is a customer of Pacific Gas and Electric Company (PG&E).

PG&E is a provider of electricity and natural gas service and is an investor-owned public utility under the jurisdiction of the California Public Utilities Commission.

2. Procedural Background

On October 26, 2017, Complainant filed Case (C.) 17-10-017 against Defendant regarding the proper computation of an incentive payment based on the 2017 Statewide Customized Offering Procedures Manual for Business (Procedures Manual). The Procedures Manual is a statewide energy efficiency program administered by PG&E, Southern California Edison Company (SCE), Southern California Gas Company (SoCalGas), and San Diego Gas & Electric Company (SDG&E) in their respective service territories.

PG&E filed its Answer to the Complaint on December 4, 2017. PG&E also filed a motion for permission to file under seal customer information included in its Answer. The motion to file under seal was granted in the assigned Administrative Law Judge (ALJ) ruling dated January 4, 2018.

A Prehearing conference (PHC) was held on January 5, 2018. At the PHC, the issues, need for hearings, procedural schedule, and others matters relating to the proceeding were discussed.

On January 22, 2018, the assigned Commissioner issued a Scoping Memorandum and Ruling (Scoping Memo) setting forth the scope of issues, procedural schedule, and addressed other procedural matters in the proceeding.

Evidentiary hearings were held on March 16, 2018.

Opening Briefs were filed by Complainants and PG&E on April 16, 2018. Concurrent Reply Briefs were filed on April 30, 2018. The case was deemed submitted upon the filing of Reply Briefs on April 30, 2018.

3. Request

Complainant alleges that it qualifies for an incentive payout provided in the Procedures Manual due to a project to install new high-efficiency equipment for its laundromat business. Complainant further alleges that the incentive payment amount is based on a flat incentive rate applied to one year of energy savings multiplied by the number of years of life for the product(s). Based on the formulas provided in the Procedures Manual, Complainant states that the amount due to him is \$412,936.37.

4. Positions of the Parties

4.1. PG&E

PG&E agrees that Complainant is entitled to an incentive payment for the planned installation of qualifying high-efficiency equipment for non-residential customers as provided in the Procedures Manual but argues that the computation of the incentive payment is explained in Section 1.10 of the Procedures Manual. PG&E states that the incentive payment is based on a flat rate applied to one year of energy savings and stresses that it is incorrect to apply a “life of the product” multiplying factor to the one-year computation. PG&E adds that Complainant misinterprets another provision in the Procedures Manual which considers the number of years of life of a product to determine whether or not products qualify for the incentive payment. PG&E states that the correct calculation of the incentive payment due to Express Laundry is \$7,560.45 subject to adjustment based on a post-installation verification of the project.

4.2. Complainant

Complainant's position is that the incentive payment is also based on the life of the product and the one year of energy savings should be multiplied by the number of years corresponding to the life of the product.¹ Complainant's calculation of the total amount due from the incentive payment is \$412,936.37. Complainant also alleges that PG&E is in breach of a contract, violated a fiduciary duty, and that Complainant is entitled to an award of damages of approximately \$2.89 million for breach of contract, which is seven times the amount of the incentive payment calculated by Complainant, and another \$1.238 million in damages for PG&E's commission of fraudulent deceit and violation of fiduciary duty.

5. Discussion

Based on the discussion of issues at the PHC, the Scoping Memo set forth that the sole issue to be considered in this complaint is the correct calculation of the incentive payment that would be due to Express Laundry pursuant to the Procedures Manual.

Through the Procedures Manual, PG&E and other utility administrators² of the incentive program provide certain financial incentives for the installation of qualifying high-efficiency equipment for non-residential customers.³ PG&E is a co-author of the Procedures Manual along with the other utility administrators.

¹ Complainant calculated the amount of the incentive payment to be \$412,936. (*See* Complainant's Opening Brief at 12.)

² Specifically, SCE, SoCalGas, and SDG&E. also provide the financial incentives specified in the Procedures Manual.

³ Procedures Manual Section 1.1 at 2.

Complainant Express Laundry intends to replace its existing water heaters and dryers with two high-efficiency water heaters, eighteen high-efficiency stack dryers.⁴ Parties agree that this replacement project by Express Laundry qualifies for the incentive payment provided in the Procedures Manual and that version 1.2 of the 2017 Procedures Manual is what is applicable.⁵ PG&E completed a project application review but Express Laundry did not sign the project approval document because of a dispute regarding the incentive payment calculation presented by PG&E.

5.1. Calculation of Incentive Payment

Section 1.10 of the Procedures Manual is entitled “Incentive and Bonus Payments” and the section explains how incentive payments are calculated. The first paragraph reads as follows:

The incentive payment amount is based on a flat incentive rate (per kWh and/or therm) applied to one year of energy savings (kWh and/or therm), plus a flat incentive rate (per peak kW) applied to the resultant permanent peak demand reduction. Incentive payments for measures that result in both kWh and therm savings are calculated as the sum of the direct electricity (kWh and kW)⁶ and gas (therm) savings.

Parties are generally in agreement with the one-year computation of the incentive payment estimate for Express Laundry’s proposed project (one-year calculation) which is \$7,560.45. In its Opening Brief, Complainant revised the

⁴ Complainant’s testimony, Exhibit EL-01 at p.3 includes 38 soft mount washers to the project but the project description in page 2 of the Project Report in Attachment B to Exhibit EL-01 does not include the 38 soft-mount washers.

⁵ All references to the Procedures Manual shall specifically be to version 1.2 of the 2017 Procedures Manual.

⁶ Procedures Manual Section 1.10 at 24.

calculation to \$7,597.42 and cites the project application review conducted by PG&E.⁷

However, the project application review as shown in Attachment B of Exhibit EL-01 shows that the project estimate amount is \$7,560.45. Complainant's testimony also presents the one-year calculation to be \$7,560.45.⁸ Based on the evidence, we find that \$7,560.45 represents the correct calculation representing one-year of energy savings for the proposed project. The \$7,597.42 figure was mentioned in the evidentiary hearings⁹ but this figure is based on a different number of washers and dryers (2 water heaters, 36 washers and 36 dryers)¹⁰ than what appears in the project application review.

We also agree with PG&E that the incentive payment calculation is an estimate that is subject to a post-installation verification of the project upon its completion. The post-installation verification is merely to ensure that the project has been completed. Also different numbers of washers and dryers are indicated in the Project Application Review, Complainant's testimony and briefs, Defendant's briefs, and the evidentiary hearing transcript. PG&E should verify that its estimated calculation corresponds to the correct number of qualifying products.

However, the main issue being disputed is Complainant's argument that the incentive payment calculation is the one-year calculation multiplied by the number of years of the life the product. Complainant calculates the total

⁷ Attachment B of Exhibit EL-01 at 1.

⁸ Exhibit EL-01 at 3.

⁹ EH Transcript at 28-29.

¹⁰ *Ibid.*

incentive payment to be \$412,936.37 using a 50-year life estimate for the dryers and a 100-year life estimate for the heaters.

Complainant supports its argument by citing Section 1.5 of the Procedures Manual entitled Qualifying Energy Efficiency Measures. Subsection 2 mentions that incentive payments are based on the related benefits over the life of the product.

Upon review, we find that Section 1.5 of the Procedures Manual discusses the criteria which must be met in order to qualify for the incentive payment.

Section 1.5 and subsection 2 thereof states:

1.5 Qualifying Energy Efficiency Measures

The Statewide Customized Offering accepts a wide variety of energy-saving products. All measures must meet the following criteria:

...

2. Must Operate at Least Five Years (Or Life of Measure, Whichever is Less). Incentive payments are based on related energy benefits over the life of the product. Measures that will not provide the IOU with 100% of the related energy benefits for either the life of the product or for a period of five (5) years from receipt of incentive, whichever is less, are generally ineligible. Utility Administrators may allow selected measures with less than five years of operation at their discretion

...

The entire section discusses various criteria that must be met in order to qualify for the incentive payment and does not discuss the calculation of the incentive payment which is clearly discussed in Section 1.10. The statement relied on by Complainant which is "Incentive payments are based on related energy benefits over the life of the product" should be read in context with the rest of the section where it appears. The context of the statement as it appears in subsection 2 of Section 1.5 means the incentive payment considers the life of a product as a factor in whether or not a product qualifies for the incentive

payment. Complainant ignores that the subject matter of Section 1.5 is about the criteria for qualifying for the incentive payment which are described in subsections 1 to 7 of Section 1.5.

Furthermore, the statement “the life of a product is a basis for the incentive payment” as it appears in subsection 2 of Section 1.5 is being used as a general statement to mean that the life of a product is an important qualifying criteria in the incentive payment program. The subsection then goes on to explain that a qualifying product must operate at least five years to achieve a contemplated level or measure of related energy benefits although exemptions for products that operate less than five years may be made if the contemplated energy benefits will be achieved by products that have a life cycle of less than five years.

Moreover, the calculation of the incentive payment is discussed in an entirely different section of the Procedures Manual, Section 1.10, which clearly explains how the incentive payment is calculated. Nowhere is it explicitly stated that the one-year calculation should be multiplied by the life of the product and we find that the calculation method or formula would clearly state this if it were so.

At the evidentiary hearings, Express Laundry estimates that the entire cost for the project is \$423,000 and an incentive payment of \$412,936.37 appears to be excessive. The purpose of the incentive program is to “influence customers to achieve permanent energy efficiency measures.”¹¹ In its rebuttal testimony, PG&E included samples of projects that were approved in 2017.¹² The incentive award for these projects were calculated by applying the one year of energy

¹¹ Procedures Manual at 2.

¹² Exhibit PG-01 Attachments 1 to 6.

savings prescribed in Section 1.10 of the Procedures Manual and does not apply a life of the product multiplying factor. None of these recipients had complained about the incentive payment calculation and PG&E's witness testified that there have been no disputes regarding calculation of incentive payment awards and non-application of a life of the product multiplying factor for 2017, other than this current dispute with Complainant.¹³ The incentive program is not meant to fund the entire cost of purchasing and installing the qualifying high-efficiency equipment.

Complainant further argues that the Procedures Manual is poorly written, that section headings should be ignored, that the plain meaning of the language should be applied, and that the life of the product statement should have been included in Section 1.10 or read in context with Section 1.10.

We disagree. The section headings provide a guide as to what the topic is and what is being discussed in a particular section. Taking a particular statement from one section and applying it to another section may change the plain meaning thereof. In this case, we find that it is quite clear that Section 1.5 talks about the criteria for qualifying for the incentive payment program and Section 1.10 talks about the calculation of the incentive payment. And while Complainant believes that a life of the product multiplier should be added to Section 1.10, the fact is that the Procedures Manual does not do so and this Complaint is not the proper venue to raise such a proposal.

¹³ Hearing Transcript at 69.

5.2. Other Arguments Raised by Complainant

Complainant also argues that PG&E is in breach of contract, acted fraudulently, violated its fiduciary duty, and is guilty of a tort, and liable for damages.

We find that these issues are outside the scope of the proceeding. The Scoping Memo clearly explained that the sole issue to be considered in this Complaint is the proper calculation of the incentive award that is due to Complainant pursuant to the Procedures Manual and Complainant's project to install new high-efficiency equipment. Complainant is raising these issues for the first time in its Opening Brief and there is insufficient evidence to support these allegations.

Complainant also takes a statement by the assigned ALJ out of context and states in its Reply Brief that the ALJ stated that the Procedures Manual is part of a contract.¹⁴ The hearing transcript shows that the assigned ALJ clarified what PG&E's witness had stated in cross examination that "the Procedures Manual is not a contract but is sort of used as a basis in a contract related to it"¹⁵ and was not stating or concluding this himself. It was also not shown in the record that Complainant was fraudulently induced to purchase specific appliances and equipment by PG&E and it is unclear what actual damages were suffered if any.

Concerning the time within which to complete the project in order to qualify for the incentive payment award, PG&E clarified that the six-week time period was Complainant's own estimate for completing the project and that

¹⁴ Complainant Reply Brief at 5.

¹⁵ Hearing Transcript at 47.

Complainant has until approximately one year to complete the project in order to qualify for the incentive payment.¹⁶

6. Conclusion

Section 1.10 of the Procedures Manual explains how the incentive payment for installing qualifying energy saving products is computed and that it is based on a flat rate of one year of energy savings plus a flat incentive rate applied to the resultant permanent peak demand reduction. Section 1.10 is clear and there is no ambiguity that the calculation is not multiplied by the number of years of the life of the product.

The statement that incentive payments are based on related energy benefits over the life of the product that appear in subsection 2 of Section 1.5 of the Procedures Manual being relied on by Complaint applies to one of the requisites on how a product qualifies for the incentive payment. Products are generally expected to be operated for five years although certain exceptions apply. This statement should also be read in context with what is being discussed in that section.

Issues concerning breach of contract, fraud, violation of fiduciary duty, tort, and damages by PG&E are outside the scope of the proceeding. These issues were also raised for the first time in briefs and are not supported by the record of the proceeding.

PG&E's estimate of an incentive payment of \$7,560.45 for the proposed project is reasonable and supported by the record. This amount corresponds to the project description in the Project Report and is subject to post-installation verification of the project upon its completion.

¹⁶ PG&E Reply Brief at 16.

Based on the above, we find that PG&E did not commit any violation of any rule or regulation in calculating the incentive payment estimate for Complainant's proposed replacement project.

7. Appeal

On October 4, 2018, Complainant filed an appeal to the Presiding Officer's Decision (POD) which was mailed on September 5, 2018. The appeal was timely filed.

In its appeal, Complainant accepts the calculation of the one-year incentive payment amount of \$7,560.45 determined in the POD but requests reconsideration of the interpretation of the statement that incentive payments are based on related energy benefits over the life of the product that appears in subsection 2 of Section 1.5. Complainant reiterates its position that the one-year incentive payment amount should be multiplied by the number of years of the life of the product. Complainant also requests that the incentive payment amount not be subject to PG&E's post-installation monitoring.

We have reviewed Complainant's appeal and find that the appeal does not raise any new facts or law to support Complainant's position. The arguments raised in appeal are arguments that have already been thoroughly reviewed and considered in the POD. The statement relied on by Complainant appears in the section of the Procedures Manual describing the requirements to qualify for an incentive payment and cannot be read together with the provisions describing the computation of the incentive payment that appears in another section of the Procedures Manual. In addition, the POD does not rely on PG&E's interpretation of the Procedures Manual but applies its own reasoning based on the record of the proceeding.

Therefore, the appeal is denied.

We also deny Complainant's request to do away with PG&E's post-installation verification of the project. Post-installation verification is clearly provided for in the Procedures Manual and this proceeding is not the proper venue to consider revisions to the Procedures Manual. Also, the purpose of the post-installation verification is merely to ascertain that the project proposal was complied with and that the qualifying equipment described in the project proposal has been properly installed. It is not meant to be a complete re-assessment of the project.

8. Category of Proceeding and Need for Hearing

This decision confirms the Category for C.17-10-017 as adjudicatory and that a hearing was necessary, as determined in the Scoping Memo issued by the assigned Commissioner on January 22, 2018.

9. Assignment of Proceeding

Commissioner Carla J. Peterman is the assigned Commissioner to this proceeding and Rafael Lirag is the Administrative Law Judge and Presiding Officer.

Findings of Fact

1. Complainant owns a laundromat business located in Sacramento, California and is a customer of PG&E.
2. PG&E is a provider of electricity and natural gas service and is an investor-owned public utility under the jurisdiction of the Commission.
3. Through the Procedures Manual, PG&E and other utility administrators of an incentive program provide certain financial incentives for the installation of qualifying high-efficiency equipment for non-residential customers.
4. Complainant intends to replace its existing water heaters and dryers with high-efficiency equipment and parties agree that this replacement project qualifies for an incentive payment under the Procedures Manual and that

version 1.2 of the 2017 Procedures Manual is the version of the manual that is applicable.

5. PG&E approved a project report for the replacement of two water heaters and eighteen dryers with an estimated incentive payment amount of \$7,560.45 although other equipment totals and incentive payment amounts representing one-year of energy savings were mentioned in the proceeding.

6. The incentive payment estimate is subject to a post-installation verification to ensure that the project has been completed.

7. The Scoping Memo set forth that the sole issue to be determined in this proceeding is the correct calculation of the incentive payment that would be due to Complainant pursuant to the Procedures Manual.

8. Section 1.10 of the Procedures Manual explains that the incentive payment is based on a flat incentive rate applied to one year of energy savings and parties are generally in agreement with the one-year computation of the incentive payment.

9. Complainant believes that the one-year computation provided in Section 1.10 of the Procedures Manual should be multiplied by the life of the products based on a provision in subsection 2 of Section 1.5 of the Procedures Manual which states that incentive payments are based on related energy benefits over the life of the product.

10. Section 1.5 of the Procedures Manual discusses the criteria which must be met in order to qualify for the incentive payment and subsection 2 thereof provides that products must operate at least five years although certain exemptions to this five-year requirement may be considered.

11. Express Laundry estimates that the entire cost for the project is \$423,000 and believes it is due an incentive payment of \$412,936.37.

12. The incentive payment is not meant to fund the entire cost of purchasing and installing qualifying high-efficiency equipment.

13. PG&E has consistently applied the one-year calculation provided in Section 1.10 of the Procedures Manual and has had no disputes regarding the incentive payment calculation other than with Complainant.

14. Section headings provide a guide to the topic being discussed and taking specific statements from one section and applying it to another section may change its plain meaning.

15. Complainant raised issues concerning breach of contract, whether or not PG&E acted fraudulently, violation of fiduciary duty, tort, and liability for damages for the first time in its Opening Brief.

Conclusions of Law

1. Based on the evidence, \$7,560.45 represents the correct calculation of the incentive payment estimate representing one-year of energy savings.

2. The statement in subsection 2 of Section 1.5 of the Procedures Manual being relied on by Complainant should be read and interpreted in context with the entire section where it appears and the topic being discussed.

3. The context of the statement relied on by Complainant as it appears in subsection 2 of Section 1.5 means the incentive payment considers the life of a product as a factor in whether or not a product qualifies for the incentive payment.

4. The calculation of the incentive payment is clearly discussed in Section 1.10 of the Procedures Manual.

5. Issues concerning breach of contract, whether or not PG&E acted fraudulently, violation of fiduciary duty, tort, and liability for any damages are

outside the scope of this proceeding and there is insufficient evidence to support allegations concerning these issues which were raised for the first time in briefs.

6. PG&E did not commit any violation of any rule or regulation in calculating the incentive payment estimate for Complainant's proposed replacement project.

O R D E R

IT IS ORDERED that:

1. The Complaint filed by Go Printing, Inc. dba Express Laundry Center against Pacific Gas and Electric Company is denied and dismissed.
2. Case 17-10-017 is closed.

This order is effective today.

Dated November 29, 2018, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners