Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rosalys Kokx Howell dba Kokx Ranch, Complainant, vs. Southern California Edison Company (U338E), Defendant.	(ECP) Case 07-05-017 (Filed May 15, 2007)

William Howell and Rosalys Kokx Howell for Kokx Ranch, complainant.
Vanessa Kirkwood and George Couts for Southern California Edison Company, defendant.

DECISION GRANTING RELIEF FOR DISPUTED DEMAND CHARGES

Introduction

Administrative Law Judge Victor Ryerson heard this matter in San Francisco on July 3, 2007. At the conclusion of the hearing, he held the record open to permit the parties to submit additional exhibits and closing arguments to augment and clarify the evidence. Both parties submitted additional materials for the record, which were respectively marked and received as Exhibits 5 and 6, and the matter was submitted on July 23, 2007.

This case involves charges that complainant Rosalys Kokx Howell (Howell) disputes on the July and August 2006 bills for electrical usage by a

pump on Kokx Ranch. Her reasons for contesting the respective charges, $3,205.70 and $231.00, is that demand usage and maximum demand allegedly were recorded inaccurately by the meter serving her account, or that the bills were computed incorrectly even if the recorded data were correct, or both.

On November 22, 2006, complainant deposited a total of $6,331.22 in the Commission's Trust Account (Receipt IM–11760), of which $3,436.70 represents the charges contested here. We grant Howell's request based upon the weight of the evidence in the record, and disburse $3,436.70 of the sum held in trust to her.

Background

Howell is the owner of Kokx Ranch, an agricultural property in Ojai consisting of avocado and orange groves. Kokx Ranch is a family business that Howell owned jointly with her sister, who died in April 2006. Howell's sister handled onsite management responsibilities for the property until her death, and Howell and her husband assumed responsibility for those duties following her sister's passing.

The Howells live several hundred miles from the ranch, in Northern California, so in May 2006 they engaged Grove Care, Inc. (Grove Care), an orchard management and development company in Ojai, to operate the ranch. Grove Care had previously performed irrigation repair work on the ranch and was familiar with its operation, but did not manage the ranch until hired to do so by Howell.

Southern California Edison Company (SCE) furnishes electric service to the ranch, providing power to a 75 hp irrigation pump under service account 3-001-7403-39. During the period relevant to this dispute SCE meter 3412M-1140 measured power used by the pump, the only connected load behind that meter. The account is on an agricultural time-of-use rate, SCE Schedule TOU-PA-SOP, a

rate that benefits customers who can shift load to off-peak time periods, and also benefits SCE by enhancing its ability to satisfy high weekday peak load requirements during the high-demand summer period.

In order for this rate to function effectively, customers must avoid on-peak use. Consequently, a steep charge applies if they connect load during the on-peak period. For SCE Schedule TOU-PA-SOP the on-peak period is 1:00 p.m. to 5:00 p.m. weekdays (except holidays) between June and October. Computation of a customer's total charges is somewhat complicated because the demand charge consists of two components, one that is facilities-related and another that is time-related. Each of these charges is imposed on a monthly rather than daily basis. Facility-related demand charges are calculated by using the maximum demand that occurs during the billing period, which is the maximum average kilowatt input indicated or recorded by instruments at 15-minute intervals. Time-related charges vary by time period (on-peak, off-peak and super-off-peak). Once the *maximum* demand is established in each time period, the respective time period's *maximum* demand is multiplied by the corresponding time-related demand rate. Under the Schedule TOU-PA-SOP tariffs applicable to the complainant's account during the summer of 2006, $54.46 per kW was the on-peak rate during the July billing period, and $20.61 per kW was the on-peak rate during the August billing period.

SCE meter 3412M-1140 was installed in September 2005 as a replacement for an outdated type of meter. It was tested prior to installation as required by paragraph (B)(1) of SCE Rule 17 – Adjustment of Bills and Meter Tests, and was installed on a pole at a height of about 12 feet. Until the July and August 2006 incidents alleged in the complaint, there is no indication that the meter ever malfunctioned.

The events that caused this dispute began in July 2006. The meter was read on July 3, but the meter reader was unable to read the 15-minute interval data because of the height at which the meter was set. A trouble report was issued by SCE on July 13, and on July 24 Lee Jackson, a testman, visited the meter to investigate. His report simply states that the "meter was accidentally zero [sic] by [him]" but does not indicate that he performed any other tasks during his visit. He did note that the meter was set too high on the pole. An SCE Revenue Meter Work Request Test Results [computer] Inquiry printout for the meter indicates that when Jackson read the meter on July 24, he found it had an initial reading of 37818 and a demand of 27.33, and he left it with "0" reads. It indicates "OK" for both light and heavy load, initially and finally, on that date, suggesting that it had been tested, but SCE has conceded that it was not tested on that date.

The Inquiry notes that Jackson cleaned, properly resealed, and reprogrammed the meter, and reset all reads to zero. SCE has explained that the reprogramming consisted of extracting energy usage and demand usage data using a multi-vendor program that reads the meter, provides interval data, indicates if there are errors with the meter, and verifies the date and time.

A letter to Howell following an investigation of her complaint from Brandi Anderson, SCE's Manager of Consumer Affairs, dated January 12, 2007, explains,

> At his 7/24/06 field visit, the technician tested the meter and found it to be operating properly…. [D]uring the visit, the technician documented the kWh and kW read. He reported that he accidentally reset the meter. In other words, he inadvertently erased the 15 minute interval demand and usage data that had been captured in the meter from 6/13/06 to 7/24/06. When he reset the meter, it automatically reset the meter's date and time information. The date and time is set via an automated process that synchs the meter's date/time information with date/time information on the

> technician's laptop, which is connected to an SCE network each business day.

Although this started the meter on July 24, the preceding billing data for July 3 through July 24 had to be partially estimated in order to prepare Howell's July bill. That portion of the bill is not challenged here.

On July 25, 2006, the day after Jackson investigated, serviced, reprogrammed, and reset the meter, SCE's Registered Demand Report indicates that the pump, which had started operating at 6:00 p.m. on July 24, stopped operating at 3:00 a.m., then resumed operating at 5:30 a.m. and continued through the on-peak period past midnight of that day. The report shows 60 kW of demand continuously through the on-peak period on July 25. The Registered Demand Report for the entire period from July 24 through August 31 nowhere else reflects that the pump was ever turned off during the early morning hours, so the July 25 incident appears to be an anomaly. It resulted in a $3,205.70 charge that the complainant seeks to recover. A second incident on August 3, in which a demand of 16 kW was recorded at 1:00 p.m., the very beginning of the on-peak period, produced the other charge of $231.00 that Howell challenges.

Howell contested the bills when she received them in August 2006, resulting in a flurry of correspondence between the parties, little of which sheds any additional light on the reason for the anomalous usage record. SCE claims that it tested the meter again on September 25, 2006 as a result of the dispute. SCE's customer complaint record contains a notation that on that date SCE's test department found nothing wrong with the meter. However, SCE has never produced any field records demonstrating that the meter was tested on that date, and even failed to provide such records after representing that it would do so at the hearing.

On December 2, 2006, SCE replaced meter 3412M-1140 with another meter that can be read remotely. SCE contends that its decision to do so was not motivated by the dispute over the July and August billings.

Discussion

SCE asserts that meter 3412M-1140 began recording correct usage and demand information after the technician performed the various tasks on July 24. SCE offers no explanation for the anomalous demand record of July 25, but contends that because the meter was functioning properly, it is reasonable to infer that the pump was operating at the times recorded by the meter because of the absence of other connected load. SCE therefore contends that the data used to prepare the disputed bills was correct.

Howell strongly denies that the pump operated during on-peak periods, and argues that the only explanation for the recorded load is that the meter was not operating properly. In support of her position Howell has furnished a letter from Victor M. Contreras, the president of Grove Care. In the letter Contreras states that Grove Care, which was aware of the SCE tariff and its cost implications, would typically start the water pump in the evening, let it run overnight, and shut it off before noon the following day. His letter further states:

> In August, 2006, the Howells made me aware of their concern about the demand usage charges for SCE meter 3412M-1140 from the August 15, 2006 billing and I investigated. After reviewing our business records and interviewing each of my staff, I came to the following conclusions:
>
> > None of my staff was present and/or caused the pump to be turned off at approximately 3:00 a.m. on the morning of July 25, 2006. This would be totally inconsistent with our operations.

> Our records showed that the pump ran in the morning of the 25th until approximately noon and was restarted again in the early evening. It was not run during the peak period on July 25, 2006[.]

In billing disputes based upon circumstances like those presented here, the cause of a contested billing charge based upon usage registration data sometimes cannot be determined with certainty. (*See* Bee Sweet Citrus, Inc v. Southern California Edison Company (Cal. P.U.C., January 27, 2007), Decision 07-01-027 in Case 05-11-004.) Consequently, we must resolve the matter on the basis of the weight of the evidence. (*Id.*)

The fact that the July 25 Registered Demand Report which resulted in the first contested billing event began with usage recorded on July 24, the date of Jackson's inspection and reprogramming, obviously suggests that there is a connection between Jackson's activities and the subsequent usage record. The Demand Report record is strikingly unlike that for other dates in July and August 2006, and inconsistent with Contreras' assertions about how Grove Care conducted its irrigation operations at the time. However, the bare fact that this Registered Demand Report record is an anomaly is not sufficient to satisfy the complainant's burden of proof, and we must turn to other facts in the record for a more complete explanation.

First, although Contreras did not testify at the hearing, his letter, which appears to be based upon a conscientious effort to investigate the cause of the on-peak usage soon after the incident, offers credible support for Howells' contention that the pump was not turned on at the time claimed by SCE. His statement that turning on the pump at 3:00 a.m. is "totally inconsistent" with Grove Care's operations is corroborated by SCE's own demand registration

records, and SCE has offered no contrary evidence, or even suggested a reason why Contreras' statement should not be accepted at face value.

Second, SCE offered no competent testimony to explain what actually happened at the time the meter was inspected or serviced on several occasions, even though the identities of all of the field personnel are known. SEC offered no explanation for its failure to present the testimony of a percipient witness. The two SCE representatives who attended the hearing had no firsthand knowledge of the facts supporting SCE's position, and the various SCE records and Consumer Affairs correspondence that were received for the record contain numerous unexplained factual inconsistencies. The field records of the technicians are too sketchy to provide an intelligible explanation of what happened, and the efforts of SCE's witness to reconstruct the events and explain the cause of the high bills are not persuasive because of the inconsistencies in the evidence.

Finally, SCE waived its opportunity to prove that meter 3412M-1140 was functioning properly, and that the contested billings were thus based on accurate data, by failing to produce records concerning the September 2006 meter inspection, even after being granted leave to do so following the hearing. Moreover, SCE replaced meter 3412M–1140 in December 2006 without testing it at that time, precluding a determination that the meter was fully functional when it was replaced.

In light of the facts supporting Howell's position, we infer that the records of on-peak usage on July 25 and August 3 following Jackson's July 24 visit somehow resulted from what he did to the meter. SCE has produced no credible evidence to rebut this inference. Howell has therefore satisfied her burden of

proving by a preponderance of the evidence that the disputed portions of her July and August bills were erroneous.

SCE has shown that computation of the bills was in accordance with the applicable tariff, so we find only that the data entries were incorrect.

We conclude that Howells is entitled to the adjustment she requests.

Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Victor D. Ryerson is the assigned ALJ in this proceeding.

O R D E R

IT IS ORDERED that:

1. The relief requested by complainant Rosalys Kokx Howell, doing business as Kokx Ranch, is granted. The Fiscal Office is directed to disburse the sum of $6,331.22 currently held in the Trust Account in this matter (Receipt IM–11760) as follows:

   - The sum of $3,436.70 shall be disbursed to Rosalys Kokx Howell at 21 Venado Drive, Tiburon, CA 94920.
   - All remaining amounts held in trust shall be disbursed to Southern California Edison Company, Attn. Vanessa Kirkwood, P.O. Box 600, Rosemead, CA 91771-0001.

2. Case 07-05-017 is closed.

This order is effective today.

Dated _____, 2008, at San Francisco, California.