

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

January 29, 2010

TO PARTIES OF RECORD IN CASE 06-12-011 DECISION 10-01-029,
MAILED 12/28/2009.

On December 28, 2009, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 15.5(a) of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:gd2

Attachment

Decision 10-01-029 January 28, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Eric and Sandi Archibek,
Complainants,

vs.

Southern California Edison Company,
Defendant.

Case 06-12-011
(Filed December 12, 2006)

**PRESIDING OFFICER'S DECISION FINDING IN FAVOR OF DEFENDANT
SOUTHERN CALIFORNIA EDISON COMPANY**

Eric Archibek, in pro per,
for Eric and Sandi Archibek

Walker A. Matthews, III, Attorney at Law,
for Southern California Edison Company

1. Summary

The subject complaint, regarding back-billing for electric service provided by Southern California Edison Company between 1998 and 2001 to a parcel of agricultural property, is denied. The complainants allege that Robert Kasner, the owner of the parcel during the above period, should be responsible for the back-billing. We find here that the complainants, as the customer of record during that period, are responsible for the bill. The initial amount of the disputed back-bill was approximately \$103,000. The amount subsequently was modified to approximately \$68,000. This proceeding is closed.

2. Background

Complainants, Eric and Sandy Archibek (Archibeks), own and/or operate several parcels of farm acreage for the production of alfalfa hay and other crops in the high-desert area of San Bernardino County, near the community of Newberry Springs. The Archibeks also reside in this area, and other members of their family have farmed there for a number of years. Their properties include parcels held by the Ben Archibek Trust and/or Nuvview Development, Inc.¹ In addition to farming parcels they own, the Archibeks also farm parcels owned by other parties.

The Archibeks receive their electric service from Southern California Edison Company (SCE). SCE records show that the Archibeks have had as many as 16 different accounts for service to their various properties over a period of years. The issue in dispute here involves electric service, primarily for irrigation purposes, provided to one of these parcels between 1998 and 2001. The Archibeks owned and farmed the parcel for several years prior to 1998. They were the customer of record with SCE and, as such, responsible for paying for the electric service. They sold the parcel to Robert Kasner in June 1998, but agreed with Kasner to continue farming the parcel after the sale. At the time, neither the Archibeks nor Kasner contacted SCE to change the customer of record status for electric service.

Kasner purchased a total of four such parcels from the Archibeks, each identified by a "Field" number (i.e., Field 1, Field 2, etc.). The subject complaint involves back-billing for electric service only to Field 3. Kasner

¹ Ben Archibek, Eric Archibek's father, was the president of Nuvview Development, Inc., until his death in 1992. Eric Archibek is an officer of Nuvview.

purchased all of Field 3 and half of Field 2 from the Archibeks in June 1998, and the remaining half of Field 2 later the same year. The Archibeks and Kasner entered into a written agreement regarding the ongoing operation and maintenance, and related matters associated with farming Fields 2 and 3. At the time, a similar agreement for Field 1 already was in place (beginning in 1997), and the purchase of Field 4 had yet to occur. The agreement for Fields 2 and 3 was signed by both parties on January 5, 1998 (five months before the actual purchase date). This agreement was titled as a "supplement" to the earlier agreement for Field 1, but the terms of the subject agreement only applied to Fields 2 and 3. Pursuant to the agreement for Fields 2 and 3, Kasner was to open a bank account to serve the operation (which he did), and the associated costs, including the cost of electric service, were to be paid from the proceeds of crop sales.

SCE installed a new meter at the Field 3 site in May 1997, a year before Kasner purchased the parcel. However, SCE erroneously did not put the new meter "in route"² into its billing system and therefore no bills were issued for that service. SCE continued to provide service to Field 3 for the next four years (1997-2001), but did not bill the Archibeks, Kasner or anyone else for the service.

The meter problem in Field 3 was discovered after a service outage occurred in/about late 2000. While investigating the outage, Eric Archibek found the cause to be a burned underground wire, and that any repair also would require an SCE service crew to pull the fuse(s) at/near the meter.

² SCE identifies meters placed and active in its billing system as being "in route."

Archibek contacted SCE regarding the outage and requested a repair. Initially, SCE advised Archibek they had no record of such a meter being in service. After various follow-up contacts, an SCE repair crew was dispatched and Archibek directed the crew to the site. The repair was made and power was restored.

Beginning in April 2001, approximately six months after the burned wire was repaired, and four years after the new meter was installed, SCE began back-billing the Archibeks a total of approximately \$103,000 for the previous three-year period (1998-2001) of unbilled service. In its communications with the Archibeks regarding this matter, SCE advised that, pursuant to its filed tariffs and Commission rules, in cases of billing errors, commercial customers may be back-billed for a three-year period. Service to the subject parcel, as an agricultural business, is considered a commercial account.

The Archibeks disputed the back-bill, arguing that, pursuant to the written agreement with Kasner, they were not responsible for payment of the electric service once Kasner purchased the property. The Archibeks also questioned the validity and accuracy of the readings from the Field 3 meter, as SCE admitted it had no record of the meter being in-route in the billing system for the previous four-year period.

Eric Archibek contacted Kasner about paying the back-bill, and Kasner declined. However, after learning of the billing dispute for service to Field 3, Kasner contacted SCE in July 2001 and assumed responsibility for any future billing for service to the parcel. The Archibeks and Kasner continued working under their various "own/farm" agreements through 2005-2006, though they modified their agreements with respect to payment of expenses and distribution of profits.

SCE also continued to provide electric service to Field 2 during the four-year period of non-billing for Field 3. The Archibeks claim they did not receive or pay for any billings for the service to Field 2 during that period, and similarly Kasner had no record that he was either billed or paid for the service. SCE asserts that service for Field 2 during the period in question was billed to the Archibeks, and that the Archibeks made payments on these bills during the same period without asserting that Kasner, as the owner of Field 2, was responsible for the account.

The dispute between the Archibeks and SCE continued, mostly as an informal matter through correspondence, for the next four years (2001-2005). During this time, SCE sent several demand letters and attempted to make payment arrangements with the Archibeks for not only the disputed back-bill, but for service to other properties as well.

On March 1, 2005, SCE sent the Archibeks a five-day discontinuance of service notice. Two days later the Archibeks filed for bankruptcy protection (Chapter 12) in the U.S. Bankruptcy Court, Central District of California. In their filing, the Archibeks showed approximately \$128,000 as being owed to SCE (which included the disputed subject back-bill as well as other accounts). In light of the bankruptcy filing, SCE did not discontinue service at that time.

In July 2005, the Bankruptcy Court dismissed the Archibeks' filing, along with a restriction of any refilling within 180 days. After subsequent notices, SCE eventually discontinued service to several of the Archibek properties in October and November 2005. Once the service was discontinued, the Archibeks installed their own generators on these properties to provide electricity.

After several unsuccessful attempts to resolve this matter informally, and have service restored, the Archibeks filed the subject complaint with the Commission.

3. Procedural History

The procedural history in this proceeding is outlined in the table below:

Event	Date
Complaint filed	December 12, 2006
SCE Answer to Complaint	February 1, 2007
Prehearing Conference - Los Angeles	March 9, 2007
Scoping Memo Issued	March 23, 2007
1 st Mediation - Barstow 2 nd Mediation - San Bernardino 3 rd Mediation (scheduled, but not held)	March 30, 2007 August 20, 2007 February 8, 2008
Evidentiary hearing - Upland	February 26, 2008
Matter submitted	April 7, 2008

3.1. Mediation Conference

At the prehearing conference the parties agreed to enter into confidential mediation discussions, in an attempt to resolve any or all issues in this matter before proceeding with an evidentiary hearing (EH). The mediation conferences were facilitated by a third-party neutral Administrative Law Judge (ALJ) assigned to this case for that purpose.

In their complaint, the Archibeks expressed concern with the power being restored, especially in light of the high temperatures experienced in the

desert area where they resided and farmed. As a result of the first mediation conference in Barstow, SCE agreed to restore service to the Archibek properties, including Field 3, after the payment of a deposit. Both parties also agreed to continue the mediation at a later date regarding the back-billing issue. No further settlement was reached as a result of the second mediation conference held in San Bernardino, but the parties did request additional time to research and review documents before holding a possible third mediation session, or, alternatively, an EH.

A third mediation conference was scheduled, also for San Bernardino, but the Archibeks did not appear due to a misunderstanding of the scheduled date. At that point, both parties decided to proceed with an EH instead of any further mediation.

3.2. Evidentiary Hearing

A one-day evidentiary hearing in this matter was held in Upland on February 26, 2008. Eric Archibek appeared for himself and presented three exhibits: (1) the cover page of the title company document, dated June 12, 1998, showing the subject parcel being deeded to Kasner; (2) the written agreement between himself and Kasner, dated January 5, 1998, regarding the responsibilities for the farming operation of the parcels (Fields 2 and 3)³; and (3) a printed copy of a one-page e-mail served by Eric Archibek as his prepared direct testimony.

SCE was represented by in-house counsel and presented three witnesses: (1) Kasner, who testified to his understanding of the sale, farming

³ The agreement throughout erroneously identifies Eric Archibek as "*Erik*" Archibek. Neither party raised this issue.

operation and maintenance of the parcel(s); and (2) SCE employees Vanessa Kirkwood and Paula Piercy, both of whom were responsible for various elements of SCE's billing and customer service processes related to the subject complaint. SCE presented 11 exhibits that included: (1) a deposition of Kasner taken on behalf of SCE in June 2007; (2) prepared direct testimony of its other witnesses; (3) hand drawn maps of the properties in question, related billing records and correspondence; and (4) records related to the Archibeks' bankruptcy filing. All of the exhibits by both parties were received into evidence.

The briefing schedule developed at the EH called for opening briefs to be filed on March 27, 2008, and reply briefs on April 7, 2008. SCE timely filed an opening brief. The Archibeks did not file an opening brief. Neither SCE nor the Archibeks filed reply briefs. The matter was submitted on April 7, 2008.

4. Position of the Parties

The position of each party is discussed below.

4.1. Complainant's Position

The Archibeks primary argument is that Kasner should be the party responsible for paying the subject back-bill as he owned the parcel (Field 3) during the period in question. The Archibeks support this argument with the terms of the written agreement with Kasner regarding the farming operation.

The third paragraph of the two-page agreement states that:

Robert Kasner will open and maintain a bank account to serve the financial needs of this operation. All proceeds from the sale of all crops are to be deposited into this account. Cost of materials, harvesting, *electric* (emphasis added), water assessments, insurance and property taxes,

etc. shall be paid from the proceeds of alfalfa crop sales. Remainder of income shall be divided between Robert Kasner and Erik (sic) Archibek equally.

At the EH, Kasner testified that Eric Archibek was responsible for the electric service as Archibek “ordered” and purchased the service during the time in question. Eric Archibek also testified that the electric service for the irrigation needs was controlled by himself, as well as by Kasner’s own employees.

The Archibeks also questioned the validity of the meter readings. The SCE witnesses testified that the meter serving Field 3 was not “in route” in the billing system from the time it was installed, in 1997, until the time Eric Archibek alerted SCE to the service outage in Field 3. According to SCE testimony, the meter was operational and had a “zero” registration when installed, though no bills were issued until 2001.

Lastly, Eric Archibek advised at the EH that he had made some recent payments to SCE for the several accounts he held. According to Archibek, SCE distributed these payments, and/or applied deposit monies, among these various accounts, including the back-billed account. SCE provided a billing history of the subject account as an exhibit at the EH. The closing balance for 2001 was shown as \$103,982.03. Due to the transfer of approximately \$35,000 of deposits and pre-petition (bankruptcy) debt to the account in 2005, SCE showed the new balance to be \$67,821.56.

4.2. Defendant’s Position

In its closing brief, SCE seeks dismissal of the Archibeks complaint. Primarily, SCE argues that the Archibeks are responsible for paying the disputed amount as they were the customer of record and the party that

used the energy during the subject three-year period. SCE asserts that its records show the Archibeks were the continuous customer of record for the Field 3 service address from 1987 until Kasner took over the account in July 2001, and that the Archibeks made no request to cancel or transfer the account during that time.

SCE further argues that the written agreement between the Archibeks and Kasner does not obligate Kasner to pay the Archibeks' bill. SCE states that the determining factor for responsibility of the bill is not the owner of the property served, but the party who is receiving and using the benefit of the service. SCE also states that the agreement: (1) provides that Eric Archibek is responsible for the day-to-day activities of the farm operation; (2) obligates Eric Archibek to supply liability insurance and hold Kasner harmless in the event of a claim brought or caused by Archibek's operation; and (3) describes that electricity costs would be paid from the proceeds of alfalfa sales, and since Archibek controlled the sales of alfalfa, that he also should be responsible for the electric bills.

With respect to the billings for Field 2, SCE states in its opening brief that the service for Field 2 during the subject three-year period was billed to (Mr.) Archibek, and that SCE records showed that the Archibeks paid portions of these bills during the same period without asserting that Kasner, as the owner of Field 2, was responsible for the bills.

Lastly, SCE maintains that the Archibeks assumed responsibility for the disputed bill by acknowledging the back-billed debt in their bankruptcy filing.

In its brief, SCE also cited two Commission cases involving back-billing for electricity to commercial customers, either for a meter being out of service or for unauthorized use of electricity (Decision (D.) 93-05-004, *Brixey v. SCE*;

and D.06-06-011, *Pacific Continental Textiles v. SCE*), as well as various tariff schedules and rules showing its authority to back-bill for full compensation for a period of up to three years in the case of commercial (non-residential) accounts.

5. Discussion

We find that the Archibeks are the party responsible for the subject back-bill. The Archibeks were the customer of record during the entire three-year period in question, and used the electric service provided by SCE during that time. The written agreement between Kasner and Eric Archibek does not change the status with respect to the customer of record, and the agreement further does not obligate Kasner to be responsible for the subject back-billing.

This case is complicated by the passage of time (5 ½ years between the issuance of the disputed bill and complaint being filed, and another 14 months for the EH to be held), lack of recordkeeping by all parties, the Archibeks pending bankruptcy and history of late or non-payments to SCE, Kasner's lack of oversight of the farming operation which he owned, and SCE's 2001-2005 collection efforts.

SCE's authority to back-bill is not in dispute. SCE Tariffs (Rules 17-D through 17-F) and other Commission rules and orders permit back-billing of commercial customers for a period not to exceed three years, including cases of billing errors where SCE is at fault. The two cases cited by SCE regarding back-billing (D.93-05-004, *Brixey v. SCE*; and D.06-06-011, *Pacific Continental Textiles v. SCE*) also support the position that the user of electric service should be responsible for payment of the service.

Regarding the Archibeks' bankruptcy filing, SCE contends the Archibeks acknowledged their responsibility for the subject back-bill by

including it in the filing. We do not agree. The back-billed debt still was recorded by SCE, and the Archibeks could not ignore the debt in their bankruptcy filing simply because the matter was in dispute.

Regarding the Field 3 meter, neither party presented sufficient evidence to determine the accuracy of the meter readings, when/if the meter was operating accurately during the subject three-year period, or how SCE segregated the first year of non-billing (1997-1998) from the three-year back-bill period (1998-2001). In view of the above, we are not considering the accuracy of the meter as a determining factor in today's decision.

In conclusion, we find that the Archibeks are responsible for the subject back-bill.

6. Categorization and Need for Hearings

By the Instructions to Answer Resolution ALJ-176-3185, dated January 2, 2007, this complaint proceeding was categorized as adjudicatory, and that a hearing would be necessary. No party has objected to this categorization and we find that the proceeding is properly categorized. Based on the facts and issues in dispute, we also find that an evidentiary hearing was necessary.

7. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Kenneth L. Koss is the assigned Administrative Law Judge and Presiding Officer in this proceeding.

Findings of Fact

1. The Archibeks own and/or operate several parcels of farm acreage in San Bernardino County, near the community of Newberry Springs
2. The Archibeks receive their electric service from SCE.
3. SCE installed a new meter at one of the Archibeks parcels in May 1997.

4. SCE erroneously did not put the new meter “in route” into its billing system and therefore no bills were issued for the service to the parcel.

5. SCE continued to provide service to the parcel for the next four years (1997-2001), but did not issue any bills for the service.

6. The Archibeks sold the parcel, along with other property, to Robert Kasner in June 1998.

7. Pursuant to a written agreement with Kasner, dated January 1998, the Archibeks continued to farm the parcel after the sale.

8. The agreement outlined responsibilities for the ongoing operation and maintenance associated with farming the parcel.

9. Pursuant to the agreement, Kasner opened a bank account to serve the operation and the associated costs, including the cost of electric service.

10. Funds into the bank account were to come from the proceeds of crop sales.

11. The non-billing meter at the parcel was discovered after a service outage occurred in/about late 2000.

12. Eric Archibek contacted SCE regarding the outage and requested a repair.

13. SCE initially advised they had no record of such a meter being in service.

14. SCE later dispatched a repair crew and the repair was made and power restored.

15. In April 2001, SCE sent the Archibeks back-bills for the previous three-year period (1998-2001) of unbilled service to the parcel.

16. The balance of the back-bill in 2001 was \$103,982.03.

17. SCE showed the modified balance of the back-bill to be \$67,821.56, due to the transfer of approximately \$35,000 of deposits and pre-bankruptcy petition debt in 2005.

18. SCE's filed tariffs and Commission rules, in cases of billing errors, permit back-billing to commercial customers for a three-year period.

19. Service to the subject parcel is considered a commercial account.

20. The Archibeks disputed the back-bill, arguing that, pursuant to the written agreement with Kasner, they were not responsible for payment of the electric service once Kasner purchased the property.

21. Kasner declined to pay the back-billed amount.

22. In July 2001, Kasner contacted SCE and assumed responsibility for any future billing for service to the parcel.

23. From 2001-2005, SCE sent various demand letters and attempted to make payment arrangements with the Archibeks for the disputed back-bill.

24. On March 1, 2005, SCE sent the Archibeks a five-day discontinuance of service notice.

25. On March 3, 2005, the Archibeks filed for bankruptcy protection (Chapter 12) in the U.S. Bankruptcy Court showing approximately \$128,000 as being owed to SCE, which included the subject back-bill as well as other accounts.

26. The Archibeks could not ignore the subject back-bill in their bankruptcy filing.

27. SCE did not discontinue service in March 2005.

28. In July 2005, the Bankruptcy Court dismissed the Archibeks' bankruptcy filing.

29. In October and November 2005, SCE discontinued service to the Archibek properties.

30. As the result of a mediation conference held in this matter in March 2007, SCE restored service to the Archibek properties, including Field 3, after the payment of a deposit.

31. Kasner owned the subject parcel during the three-year period in question (except for the time prior to June 1998).

32. The Archibeks were the customer of record for the parcel with SCE during the entire period in question.

33. The Archibeks used electricity provided by SCE to the parcel during the same period.

34. The Archibeks are the party responsible for payment of the subject back-bill.

Conclusions of Law

1. SCE's Tariff Rules 17-D, E and F, and Commission rules and orders, authorize the utility to bill for and collect undercharges resulting from billing errors for a period of three years in the case of commercial accounts.

2. The subject parcel in this matter, in use as an agricultural business, is considered a commercial account.

3. The Archibeks were the customer of record for the subject account during the three-year period in question, and therefore are the party responsible for the subject back-bill.

4. This complaint should be denied.

5. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The subject complaint by Eric and Sandi Archibek against Southern California Edison Company is denied.
2. Case 06-12-011 is closed.

This order is effective today.

Dated January 28, 2010, at San Francisco, California.