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Decision 10-03-024 March 11, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jerome D. Monkarsh, Complainant, vs. Southern California Gas Company (U904G)	Case 09-05-011 (Filed May 12, 2009)

ORDER DENYING REHEARING OF DECISION (D.) 09-11-017

I. INTRODUCTION

In this Order we dispose of the application for rehearing of Decision (D.) 09-11-017 (or "Decision") filed by Jerome D. Monkarsh ("Monkarsh").

Decision 09-11-017 dismissed a complaint filed by Jerome D. Monkarsh ("Monkarsh") against Southern California Gas Company ("SoCalGas"). The complaint alleged that SoCalGas has engaged in predatory billing practices by manipulating the billing cycles in a manner that forces customers into a higher tier with increased rates.

The complaint alleged that SoCalGas achieved this result by billing for 34/35 day billing cycles rather than 30/31 day cycles during colder winter months in which there is greater energy consumption. Our Decision dismissed the complaint for failure to state a cause of action because there was no evidence that SoCalGas violated any rule, order, regulation, tariff or other law.

Monkarsh filed a timely application for rehearing challenging the Decision on the grounds that it: (1) errs in not finding that SoCalGas' billing practices violate its Tariff Rules;[1] (2) is legally wrong in not finding SoCalGas' billing practices violate Public Utilities Code sections 451 and 728;[2] and (3) relies on unrelated and irrelevant decisions to dismiss the complaint. No responses were filed.

We have carefully considered the arguments raised in the application for rehearing and are of the opinion that good cause has not been established to grant rehearing. Accordingly, we deny the application for rehearing of D.09-11-017 because no legal error has been shown.

II. DISCUSSION

A. SoCalGas' Tariff Rules

Monkarsh contends the Decision errs in not finding that billing on 34/35 day cycles violates SoCalGas' Tariff Rules. Monkarsh maintains that the tariffs and rules establish that only "monthly", i.e., 30/31 day billing periods, are permissible.[3] (Rhg. App., at pp. 5-6.)

To support his position, Monkarsh relies on the following rules and tariff language:

> Rule No. 14 METER READING
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> A. Meters shall be read as nearly as possible at regular intervals. The regular billing period for residential service shall be **one month**…. (emphasis added)
>
> D. Except as otherwise provided in certain rate schedules and bills utilizing daily allowance billing, all bills including opening and closing bills, for gas service rendered for a period of less than 27 days or more than 33 days will be computed in accordance with the

[1] All subsequent references to rules refer to SoCalGas's Tariff Rules unless otherwise stated.

[2] All subsequent section references are to the Public Utilities Code unless otherwise stated.

[3] Monkarsh reasons 30/31 day periods are the maximum allowed because no calendar month has more than 31 days.

> applicable rate schedule and shall be prorated on the basis of the number of days service has been rendered to the number of days in **an average month which shall be taken as 30 days….** (emphasis added)

> Rule No. 1 DEFINITIONS
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> Billing Cycle: The regular periodic interval for reading a Customer's meter for billing purposes. Usually meters are scheduled to be read **monthly**. (emphasis added)

> Schedule No. GR RESIDENTIAL SERVICE
>
> Minimum Charge
>
> The Minimum Charge shall be the applicable **monthly** Customer Charge. (emphasis added)

In interpreting such provisions, we employ principles akin to those used for statutory interpretation purposes.[4] Traditional statutory interpretation principles provide that the meaning of a statute should be determined by first looking to its plain language, giving words their ordinary or "plain meaning."[5]

Applying those principles here, we agree that the rules contemplate a goal of regular billing cycles on monthly intervals. However, the language does not explicitly state that only a 30/31 day billing period is permissible. In our view the language accommodates some variation. For example, Rule 14A states only that meters should be read "as nearly as possible" to one month intervals. Rule 14D states an "average" month is considered to be 30 days. However, the fact that bills may cover varying numbers of days it evidenced by the description of how bills should be calculated when they cover periods of less than 27 days or more than 33 days. And Rule 1 merely states that "usually" meters are scheduled to be read monthly. Nothing in the plain language of the tariffs supports a claim that SoCalGas violated the rules by reading meters on 34/35 day cycles in certain months.

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[4] See *Dyke Water Company v. Public Utilities Commission* (1961) 56 Cal.2d 105, 123 [Indicating that once tariffs are published and filed they are like statutes.]

[5] *People v. Canty* (2004) 32 Cal.4th 1266, 1276-1277; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.

Monkarsh also relies on section 454(a) to support his contention. That provision provides in pertinent part:

> Whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to change any rate…the corporation shall furnish to its customers…notice of its application….The corporation may include the notice with the regular bill…within 45 days *if the corporation operates on a 30-day billing cycles, or within 75 days if the corporation operates on a 60-day billing cycle.* (emphasis added)

(Pub. Util. Code, §454, subd. (a).)

Monkarsh argues that because section 454(a) refers to only 30 or 60 day billing cycles, no deviation from a 30/31 day billing period is lawful. Again, statutory interpretation principles do not support that interpretation. The statute pertains only to customer notice requirements when a utility has filed an application for rate change. It has nothing to do with establishing permissible billing cycles. Even if it did, the plain language does not prohibit billing periods in excess of 30/31 days. Further, the mere fact that section 454(a) contemplates 60 day billing periods suggests there is no basis to a claim that billing for any more than 30/31 days forces a customer into a higher tier with higher rates. If that were true, a 60 day billing period would certainly be impermissible.

Underlying Monkarsh's arguments appears to be a misunderstanding of the residential gas rate structure and how customer bills are calculated. There are only two gas rates for residential customers, baseline and non-baseline.[6] Pursuant to the law, customers are entitled to use a specific quantity of gas (measured in therms) at the lowest

[6] Baseline is defined as: "[A] rate structure mandated by the California Legislature that ensures all residential customers are provided a minimum necessary quantity of gas at the lowest possible cost." (See e.g., Rule No. 1 DEFINITIONS, Baseline, Sheet 1.) Non-baseline is usage in excess of the applicable baseline allowance. (See Schedule No. GR, Sheet 1, Sheet 3, Special Condition 3.)

baseline rate.[7] Any usage over that amount is charged at the higher non-baseline rate.[8]

As the Decision notes, SoCalGas calculates its customer bills based on a daily, not monthly, baseline therm allocation.[9] As a result, it is not possible for residential gas customers to be forced into a higher tier or more expensive rate based on the number of days in any given billing period. The only factor which results in application of a higher rate, is how many therms of gas a customer uses on any given day that exceed the allowed quantity of baseline therms.[10]

Put another way, if a meter is read on day 30, the total number of therms is divided by 30. For each individual day the utility allots the maximum number of therms allowed at the baseline rate and charges for those therms at the lower baseline rate. However, any therms in excess of the baseline allocation must be charged at the higher non-baseline rate. A bill is calculated using that same daily breakdown whether the meter is read at 20 days, 35 days, 60 days, or some other period.

B. Public Utilities Code Sections 451 and 728

Monkarsh contends the Decision errs in failing to find SoCalGas violated the requirement to assess only just and reasonable charges pursuant to sections 451 and 728.[11] (Rhg. App., at p. 7.) These statutes provide that a utility may not charge unjust or

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[7] See e.g. Pub. Util. Code, § 739 [Requiring the Commission to establish baseline quantities of gas to be allocated to residential customers that will be charged at a lower rate.]; Schedule No. GR, Sheet 1, Sheet 3 [Identifying daily baseline therm allowances on a seasonal basis and the applicable baseline and non-baseline rates.]

[8] Schedule No. GR, Sheet 1 [Identifying the two rate, baseline and non-baseline, rate structure.].

[9] D.09-11-017, at p. 3. See also Schedule No. GR, Sheet 1, Sheet 3.

[10] All things being equal, it is true a customer's bill will be somewhat higher if a meter is read on day 35 rather than day 30. However, that is simply a function of having more days of gas usage to account for. It has nothing to do with more days changing the daily rate structure. To the extent a customer may be financially burdened by bill fluctuations which may result from any variations in gas usage or the actual number of days between bills, utilities offer Level Pay Plans. Such plans operate to average annual gas consumption over 12 month periods and allow the customer to pay average monthly charges rather than actual charges. Information regarding, and enrollment for, SoCalGas' Level Pay Plan can be located at: http://www.socalgas.com/assistance/levelpayplan/.

[11] Section 451 provides in pertinent part: "All charges demanded or received by any public utility…for any product or commodity…or service rendered…shall be just and reasonable. Every unjust or unreasonable charge…is unlawful." (Pub. Util. Code, §451.)

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unreasonable rates.[12] Monkarsh states that he does not challenge the reasonableness of SoCalGas' rates or rate design. Rather, he claims that the utility's practice of billing customers for 34/35 day cycles in winter months is unjust and unreasonable in violation of these statutes.

As explained above, it is not unlawful for SoCalGas to bill a customer after 34/35 days rather than after 30/31 days. Further, doing so does not subject a customer to any higher or unlawful rate. Accordingly, there is no violation of sections 451 or 728.

C. Case Law Relied on by D.09-11-017

Monkarsh contends the Decision wrongly relied on two unrelated and irrelevant Commission decisions in dismissing the complaint. (Rhg. App., at pp. 2-3 citing to *Universal Forest Products, Inc., v. Southern California Edison Company* ("*Universal*") [D.94-10-058] (1994) 56 Cal.P.U.C.2d 731; and *Keller v. Pacific Gas and Electric Company* ("*Keller*") [D.92-04-041] (1992) 44 Cal.P.U.C.2d 1.) We disagree.

Public Utilities Code section 1702 establishes the standard for evaluating complaints. In pertinent part, section 1702 provides that a complaint must set forth:

> …any act or thing done or omitted…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.

As we previously discussed, Monkarsh failed to establish that SoCalGas acted in violation of any of the tariffs, rules, or statutes relied upon. Thus, we correctly found that the requirement for presenting a valid complaint under section 1702 had not

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Section 728 provides in pertinent part: "Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility… are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force." (Pub. Util. Code, §728.)

[12] See Pub. Util. Code, §§ 451, 728.

been met.[13] We went on to reason that dismissing the complaint for failure to state a cause of action would be consistent with our holdings in *Universal* and *Keller*.[14]

In *Universal* and *Keller*, we dismissed complaints on the grounds that the complainants failed to establish any violation of law and cause of action.[15] The complainants in *Universal* had argued that the rates they were charged were unreasonable. However, they did not actually allege or establish any violation of rules, orders, statutes, or tariffs. In *Keller*, the complainant argued that a reconductoring project blighted its views and was inconsistent with a local ordinance. However, the Decision found no such violation of the law.

Monkarsh argues his complaint differs in that his issue involves abusive billing practices rather than the reasonableness of rates or blighted views. Further, Monkarsh contends that unlike the complainants in *Universal* and *Keller*, he actually *has* established specific violations of law.

Monkarsh appears to miss the fundamental similarity. That is, regardless of the particular issues or allegations, if no actual violation of law can be established, then the grounds for a valid complaint do not exist under section 1702. In that regard *Universal*, and *Keller* are relevant and it was reasonable to also dismiss the instant complaint.

III. CONCLUSION

For the reasons stated above, the application for rehearing of D.09-11-017 is denied because no legal error has been shown.

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[13] D.09-11-017, at pp. 3-4.

[14] *Id.*

[15] See *Universal, supra,* 56 Cal.P.U.C.2d at p. 734; *Keller, supra,* 44 Cal.P.U.C.2d at p. 3.

Therefore **IT IS ORDERED** that:

1. Rehearing of D.09-11-017 is denied.
2. This proceeding, Case (C.) 09-05-011 is closed.

This order is effective today.

Dated March 11, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners