

Decision 08-12-050 December 18, 2008

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Mr. & Mrs. Stephen H. Schimmel,

Complainant,

vs.

Southern California Edison Company, (U338E)

Defendant.

Case 07-11-012  
(Filed November 19, 2007)

**MODIFIED PRESIDING OFFICER'S DECISION**

This order resolves this complaint filed by Mr. and Mrs. Stephen Schimmel (Schimmels) against Southern California Edison Company (SCE), alleging that SCE had overbilled the Schimmels \$15,076.57 since 2002. This order finds, based on a preponderance of the evidence, that the meter on the Schimmels' property was not operating properly. This order directs SCE to refund to the Schimmels charges associated with 40% of kilowatt hour use for each bill, plus interest, for the period November 19, 2004 through February 28, 2007, the date SCE changed the Schimmels' meter.

## **1. Background**

On November 19, 2007, the Schimmels<sup>1</sup> filed this complaint against SCE alleging that SCE overcharged the Schimmels for electric service since sometime in 2002. The complaint alleges that the overcharges were attributable to faulty meters on the Schimmels' premises and that SCE's customer service has been inadequate. The complaint seeks reparations in the amount of \$15,076.57 plus interest. SCE filed a timely response denying all of the allegations in the complaint, stating that it had properly tested the meter installed at the Schimmels' home and found it to be accurate.

The assigned Administrative Law Judge (ALJ) conducted a telephonic prehearing conference on January 29, 2008, at which the parties addressed a proceeding schedule and discussed the potential for a mediated settlement in the proceeding. The parties agreed to a schedule and agreed to meet with a mediator to discuss settlement terms. Subsequently, the parties met with a Commission-appointed mediator but did not resolve their dispute. The scoping memo issued on February 26, 2008 designated Kim Malcolm as the Presiding Officer and affirmed that this is an adjudicatory proceeding. The assigned ALJ therefore conducted an evidentiary hearing on March 12, 2008 in Newport Beach, California.

At the hearing, the complainants stated their wish to modify their complaint to remove any allegations regarding charges for service beginning February 28, 2007, the date SCE replaced the original meter. SCE agreed to the modification. Accordingly, the ALJ struck portions of the parties' testimony

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<sup>1</sup> This decision in some instances refers to "the Schimmels" to refer to the testimony of one of the Schimmels.

referring to allegations or defenses regarding the accuracy of the meter installed on February 28, 2007. The matter was submitted on April 9, 2008 when SCE filed a brief.

## **2. Summary of Complaint and the Parties' Testimony**

This complaint involves SCE's charges to the Schimmels for electric service at their home, located at 8 Archipelago Drive, Newport Coast. The Schimmels moved into their home in September 2002 and have been subscribers of electric service from SCE since that time. The Schimmels' home is about 4,000 square feet and is located near the beach in a hillside development. The house was built recently, although the record does not specify a construction date. The house was originally a "model" home with an office for the realtors who sold property in the development.

According to the complaint, the Schimmels contacted SCE several times, beginning in 2004 to complain about high bills. Generally, the modified complaint alleges that:

- **Customer Service.** SCE failed to provide the Schimmels with reasonable customer service because it did not address their concerns about high bills in a timely and thorough fashion;
- **Meter Test.** SCE failed to follow its tariffs because it did not provide the Schimmels with an opportunity to be present for a meter test; and
- **Meter Accuracy.** SCE's meter was faulty and SCE therefore overcharged the Schimmels for electricity between April 2004 and February 2007.

The original complaint sought reparations in the amount of \$15,076.57 plus interest. The modifications the Schimmels made to the complaint at the evidentiary hearing would change the amount of the reparations they seek. The

Schimmels suggested at the hearing that the Commission calculate the appropriate reparations depending on the Commission's findings.

Under cross-examination by SCE, the Schimmels testified that they have the usual types of electrical appliances, which were at the premises when they moved in. They testified that their home has the usual lighting fixtures, a Jacuzzi, a computer and central air conditioning. Their water heating, stove top and space heating use natural gas. The Schimmels testified that they are unaware of any radiant heating equipment that might use electricity. They stated they rarely use air conditioning because their home is situated near the ocean, which allows them to take advantage of natural cooling on warm days. They also testified that they spoke to some of their neighbors about their electric bills and those neighbors said their own bills were much lower than the Schimmels'.

The Schimmels testified that they had complained to SCE about their bills since 2004 and that SCE only suggested the bills were high because of high electricity use. They testified that they complained to SCE that their meter must be inaccurate and requested a meter replacement.

SCE's testimony states that it tested the Schimmels' original meter on February 28, 2007 and found it to be accurate. At the request of the Schimmels, SCE replaced the original meter on the same day. SCE responds to the Schimmels' concerns about customer service by stating that SCE repeatedly offered to provide services that would help the Schimmels reduce their energy use, such as time-of-use service or an energy audit. SCE states the first call from the Schimmels for which it has a record was made in March 2006. At the Schimmels' request, SCE had a technician re-read the meter for the period between February 17 and March 22, 2006 and found it to be consistent with the

billed amount for that period. SCE believed the meter read was reasonable at the time because the average usage was comparable to usage for the same period in the previous year. SCE did not test the meter at that time.

### **3. Discussion**

The record of this proceeding includes many gaps regarding the facts behind the Schimmels' allegations and SCE's defense. In general, the Schimmels, as complainants, have the burden to provide evidence and analysis to support their allegations against SCE. In a case such as this, the customer is at a distinct disadvantage. Customers generally do not have knowledge of tariff provisions, regulatory requirements or their rights. They do not have the access to expertise or information available to the utility, and their claims are typically too small to justify hiring an attorney. Partly because of the asymmetrical relationship between utilities and their customers, the law requires that the Commission ensure that customers receive reasonable service from regulated utilities.<sup>2</sup> Accordingly, we may find in favor of the customer where the preponderance of the evidence demonstrates that the utility has violated its duty, even though the customer did not or could not explain all of the circumstances.

**Customer Service.** The Schimmels complain that they were not provided reasonable customer service. The nature and frequency of the communications between SCE and the Schimmels is unclear from the record.

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<sup>2</sup> Public Utilities Code Section 451 provides that every utility "shall furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

The Schimmels testified that they contacted SCE a number of times between 2004 and 2007 regarding concerns about overbilling. The Schimmels testified that they asked for SCE representatives to knock on the door when they came to the premises, but that on no occasion did SCE representatives do so. Instead, the Schimmels received letters after the fact notifying them that representatives had been on the premises and, on February 28, 2006, discovered the presence of an SCE meter technician by seeing him on the security camera. The Schimmels testified that someone would have been home to answer the door on any occasion had SCE knocked.

SCE presented testimony that, according to its records, the Schimmels' first complaint occurred on March 28, 2006, regarding their bill for the period of February 17 through March 22, requesting that SCE re-visit their property to re-read the meter; SCE states it did so on March 31 and confirmed that the usage pattern was consistent throughout the billed period through the end of the month, and relatively consistent with the same approximate period of 2005. SCE states that it received a call from the Schimmels in May 2006 and SCE responded by re-reading the meter for the April bill. SCE states that it sent a letter to the Schimmels on October 5, 2006, describing potential opportunities for the Schimmels to reduce their usage and lower their electricity bills and offering a variety of rebates, incentives and programs designed to decrease electricity usage. SCE states that Schimmel called SCE on January 25, 2007, regarding a then-recent bill, and that the customer service representative who spoke with Schimmel recommended that the Schimmels utilize the Home Energy Audit feature of the SCE website. SCE states that Schimmel telephoned SCE on February 27, 2007, questioning the reliability of the original meter, and that SCE

responded by conducting a meter test and, at the Schimmel's insistence, replacing the meter on February 28, 2007.

We do not find, on this record, that SCE provided unreasonable customer service up through February 2006. The record shows that SCE responded to the Schimmels' requests for meter re-reads and a meter replacement, and offered ways to help the Schimmels reduce their usage. Notwithstanding the alleged failure of SCE representatives to knock on the door as requested by the Schimmels, it is not apparent that the opportunity for direct communication with the meter readers or the meter technician is or should be standard customer service, or that it would have addressed the Schimmels' core complaint, namely, the unreasonably high bills.

Nevertheless, after replacement of the meter resulted in reduced recorded usage by the Schimmels, SCE should have investigated the situation to correct for historical overcharges. By failing to do so, SCE did not provide adequate customer service to the Schimmels as it is required to do by Section 451.

**Meter Test.** SCE Tariff Rule 17.B provides that "[a] customer may, on notice of not less than one week, require SCE to test the meter for his service," and that "[a] customer shall have the right to require SCE to conduct the test in his presence or in the presence of an expert or other representative appointed by him." The Schimmels assert that SCE violated its tariffs by failing to provide them with an opportunity to be present for the testing of their meter. However, the record does not demonstrate that Schimmel requested any meter tests or to be present at them.

The only record evidence that Schimmel requested meter tests is in Schimmel's response to a cross-examination question which assumes, without the fact otherwise being in evidence, that he made such requests:

Q: Now when were these requests for meter tests made before February 27, 2007?

A: I would estimate that they were done on at least three occasions from 2005 all the way through 2007...

We got notices claiming that they were – they came. Sorry we missed you. And no one ever knocked on the door even though we asked to have someone knock on the door. And that's where we got to the point of February 27th where I said I'd give up. I want a new meter. And that's how I came to this situation.  
(RT 34:19-35:4.)

Indeed, Schimmel states his belief that SCE did not in fact conduct meter tests prior to the February 28, 2007 visit, and testified that he requested a new meter, not a meter test, when he called SCE on February 27, 2007. Schimmel testified that he did not require the February 28 meter test to be conducted in his presence. To the contrary, when the meter technician told Schimmel that he was conducting a meter test, Schimmel told the meter technician that he wanted a new meter, not a meter test, and withdrew.

On its part, SCE states that it received requests from the Schimmels in March and May 2006 to re-visit the Schimmels' property to re-read the meter, and that it did so. SCE states that it sent a meter technician to test the meter in response to Schimmel's February 27, 2007 complaint questioning the reliability of the meter. SCE states that the meter technician tested the meter and, at Schimmel's insistence, replaced the meter. SCE states that it maintains records of all meter tests and that the only record of a test of the Schimmels' meter is the test that occurred on February 28, 2007.

The record shows that Schimmels requested meter re-reads and meter replacement, and specifically requested notification of when these events would occur so that they could be present. The record suggests that SCE did not

provide such notification. However, SCE Tariff Rule 17.B does not require SCE to provide prior notification or to conduct meter re-reads or replacements in the presence of the customer. SCE did not violate Tariff Rule 17.B.

**Meter Accuracy.** The Schimmels allege that their meter is likely to have been inaccurate and caused them to be overcharged from April 2004 - February 2007. They state the meter had some rust on it. They suggest the possibility that someone may have been diverting energy from their property during a period when construction was occurring in the neighborhood. The Schimmels did not present any evidence that energy had been diverted from their property or that the meter was faulty. SCE states that its technician tested the meter on February 28, 2007 and found the meter to be accurate.

The Schimmels are unhappy about their electric bills for the period April 2004 - February 2007. The bills range from about \$800 to more than \$1,800 per month. Many customers contact SCE and the Commission every year complaining about high electricity bills that are nevertheless accurate. In this case, however, the evidence supports the Schimmels' claim that their bills did not accurately represent their electricity use. The first year the Schimmels lived in their residence, their daily average usage ranged from 57 kilowatt hours to 137 kilowatt hours depending on the month. In mid-2004, their billed usage jumped substantially compared to similar periods in the previous year.<sup>3</sup> By 2005, the Schimmels' bills showed usage that ranged from about 40% to 100% higher than 2003 usage by month, a pattern which continued through 2006. In some months,

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<sup>3</sup> The Schimmels seek reparations beginning in April 2004 although the significant increases in usage over previous periods appear to have begun in September 2004 when billed usage increased almost 60% over the previous September.

usage was three times as high as the comparable period in 2003. Then, beginning with the bill for the February - March 2007 period, usage fell dramatically to levels that are comparable to those in 2003. A graphic depiction of usage patterns over the relevant time period is included as Attachment A.

Billed usage increased significantly and continued to increase during a period when the Schimmels testified that they reduced their reliance on electric appliances and lighting in hopes of reducing their electricity bills. Billed usage fell dramatically and immediately after the new meter was installed even though the Schimmels testified that construction workers on their property were using heavy power tools during portions of March 2007 - June 2007. The testimony regarding the Schimmels' electrical load does not explain either the high bills or the reduction in billed usage following the installation of the new meter in February 2007.

Based on a preponderance of this evidence, we find that the Schimmels' bills did not accurately represent the Schimmels' electricity usage beginning at some time in 2003 or 2004 and continuing until SCE replaced the Schimmels' meter in February 2007. Accordingly, the Schimmels are entitled to reparations for overcharges by SCE.

The Schimmels' complaint estimates what the Schimmels believed to be overcharges by comparing average daily use for the February - March 2007 billing period before and after the installation of the new meter. The difference was about 19.3%. This results in a very conservative estimate of likely overcharges in light of the changing patterns of billed kWh use already discussed. In fact, this estimate is probably not realistic considering those patterns of kWh use. Billed kWh use between September 2004 and February 2007 exceeds billed use after the installation of the new meter by between 13%

and 70%. In several months, billed kWh use after the installation of the new meter is less than half of the billed use in previous years for the same months. Attachment B shows these changes for the period in question. The following illustrates the average billed kWh use for each month. Values in bold occurred after the installation of the new meter:

**Average Daily Billed kWh Use by Month**

	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>January</b>	94	81	110	125	158
<b>February</b>	73	112	113	152	<b>99</b>
<b>March</b>	57	79	156	155	<b>109</b>
<b>April</b>	85	116	138	155	<b>109</b>
<b>May</b>	93	108	160	171	<b>99</b>
<b>June</b>	108	123	170	193	<b>89</b>
<b>July</b>	137	164	183	145	<b>85</b>
<b>August</b>	123	133	218	194	<b>65</b>
<b>September</b>	105	161	195	172	<b>77</b>
<b>October</b>	86	147	179	129	<b>72</b>
<b>November</b>	112	121	162	130	<b>78</b>
<b>December</b>	108	156	155	127	<b>86</b>

The Schimmels' calculation may have resulted in a low estimate of 19.3% for a variety of reasons. The Schimmels testified that they hired contractors who began heavy construction in their yard in March 2007 that continued through July. This is consistent with billed kWh use, which fell sharply after July.

Whatever the reason, the Schimmels' estimate that the original meter resulted in overbillings of 19.3% is inconsistent with the facts of this case. This Commission is within its authority to order a refund to make the complainant whole, even where the refund is more than the complainant seeks. The decrease

in billed kWh use by month after the installation of the meter was, on average, 43%, as Attachment B shows. Accounting for some error and to be on the conservative side, this order finds that the Schimmels were overbilled by at least 40% for the period in question. It directs SCE to refund to the Schimmels 40% of every bill based on kWh use for the period between November 19, 2004 and February 28, 2007 when SCE replaced the Schimmels' meter. In almost every case, the Schimmels' adjusted bills will still be higher than those for the periods that follow the installation of the new meter and even the bills for 2003.

The Schimmels seek refunds of overcharges as far back as April 2002. However, reparations for overcharges are limited to three years. Pub. Util. Code § 736 states in pertinent part:

All complaints for damages resulting from the violation of any of the provisions of Section 494 [common carriers shall not charge other than applicable rates] or 532 [public utilities shall not charge other than rate specified in its schedules] shall either be filed with the commission, or, where concurrent jurisdiction of the cause of action is vested in the courts of this state, in any court of competent jurisdiction within three years from the time the action accrues, and not after.

Edison's Tariff Rule 17(d) is consistent with Section 736 and states in pertinent part:

Where SCE overcharges . . . a customer as the result of a Billing Error, SCE . . . shall issue a refund or credit to the customer for the amount of the overcharge for the period of the billing error, but not exceeding three years in the case of an overcharge . . .

SCE's Rule 17C provides that:

Where, as a result of a meter test a meter is found to be nonregistering or incorrectly registering, SCE...shall issue a refund or credit to the customer for the amount of the overcharge, computed back to the date that SCE determines the Meter Error

commenced, except that the period of adjustment shall not exceed three years.

When these sections are read together, a reasonable inference is that there is a three-year statute of limitations for filing a complaint for reparations.<sup>4</sup> Accordingly, because the Schimmels filed this complaint on November 19, 2007, reparations may be granted beginning with the November 19, 2004 billing.

The calculation of the refund shall be at the marginal rate for the relevant usage in each billing period.<sup>5</sup> An estimate of this amount, net of interest, is about \$12,000.<sup>6</sup> The amount of the reparations shall include interest at the rate SCE charges its own customers for late payments, which is .9% per month.<sup>7</sup>

#### **4. Assignment of Proceedings**

Timothy Alan Simon is the assigned Commissioner. Kim Malcolm was the Presiding Officer in this proceeding. The proceeding was re-assigned to ALJ Sarah Thomas on May 28, 2008, and then to ALJ Hallie Yacknin on September 25, 2008.

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<sup>4</sup> See also, D.02-04-051, issued in C.99-10-037, *County Sanitation District No. 2 of Los Angeles County vs. SCE*.

<sup>5</sup> For example, if billed usage for a given month was 5,000 kWh, SCE should recalculate the bill for 3,000 kWh, using the applicable tariff rates and baseline allowances that were in effect during that month. The refund for that month, excluding interest, would be the difference between the original billed amount and the recalculated amount.

<sup>6</sup> Applying the Schimmels' request for 19.3% of past bills for the period between November 10, 2004 and February 27, 2007, would result in a refund of about \$5,900 plus interest.

<sup>7</sup> SCE's Tariff Rule 9, adopted in D.04-07-022.

## 5. Appeal

The Presiding Officer's Decision (POD) in this case was mailed on May 27, 2008. On June 26, 2008, SCE filed a timely appeal.

SCE points out that the POD erroneously applied a *prima facie* standard of proof to the evidence in the case. We have corrected this error, and apply the preponderance of evidence standard of proof. We also make an additional finding that the Schimmels did not request a meter test. Accordingly, we reverse the POD's conclusion that SCE violated its Tariff Rule 17.B by failing to provide the Schimmels with an opportunity to be present for the testing of their meter, and that SCE provided inadequate customer service prior to February 2007. We affirm the POD's finding that the original meter was inaccurate, and we conclude that SCE provided inadequate customer service after it replaced the original meter by failing to investigate the reasons for and remedy the overcharges for the inaccurate prior meter readings. Modifications are also made to the POD to improve the discussion and correct typographical errors.

SCE notes that the POD erroneously cites to *Brown v. PG&E* (1996) 68 CPUC2d 3 as a case where the Commission ordered a refund greater than the amount requested by a complainant. Indeed, although the Brown decision affirmed the proposition that the proper remedy is to make the complainant whole, the Commission ultimately determined that the complainant's requested refund amount accomplished this purpose. (*Brown v. PG&E* (1996) 69 CPUC2d 634.) We therefore delete this reference.

SCE asserts that the POD errs by ordering a 40% refund of complainants' kWh usage on certain prior bills because there is no evidence that such refund is necessary to make them whole. To the contrary, the POD sets forth a thorough analysis showing that the billed kWh use by month after the installation of the

meter was, on average, 43% less than the billed use in the same month over the previous four years; the analysis not only shows that the original meter incorrectly recorded prior usage, but also presents a reasonable estimate of the refund amount necessary to make the complainants whole.

### **Findings of Fact**

1. The Schimmels called SCE several times between mid-2004 and early 2007 about high bills. SCE does not refute this allegation, although its records list the first call from the Schimmels as occurring in March 2006.

2. SCE re-read the meter on at least two occasions, and confirmed that the meter reads appeared to be accurate.

3. The Schimmels did not request any meter tests or to be present at them.

4. The Schimmels requested a new meter in February 2007.

5. SCE tested the meter in February 2007 and found it to be accurate.

6. SCE replaced the meter in February 2007.

7. The Schimmels' billed kWh use in 2005 was about nine times the usage of the average residential customer in SCE's territory.

8. The record does not show that the Schimmels have extraordinary demand for electricity considering the size of their residence. The Schimmels testified that they reduced kWh use when their bills began to climb in 2004 but their bills continued to remain high.

9. The Schimmels' billed usage increased dramatically over prior comparable periods beginning in September 2004 and continuing until SCE replaced their meter on February 28, 2007.

10. The Schimmels' estimate that they were overbilled by 19.3% is inconsistent with the patterns of billed usage. Billed kWh use for September 2004-February 2007 was generally 40-100% higher than billed usage during 2003 and

August 2004. Billed kWh use for the period following the installation of the new meter fell 30%-60% or more in almost every month compared to the same months in the previous years as far back as November 2004.

11. Based on the patterns of billed kWh use for the Schimmels before and after the installation of the new meter, and the absence of any evidence showing that the Schimmels have extraordinary demand for electricity, we find that the Schimmels' meter was inaccurate prior to February 28, 2007.

### **Conclusions of Law**

1. SCE did not provide reasonable customer service to the Schimmels after February 2007 because, after replacement of the meter resulted in significant reduced recorded usage by the Schimmels, it did not investigate the situation to correct for historical overcharges.

2. SCE did not violate its tariff Rule 17B requirements.

3. The Schimmels should be granted reparations for overcharges by SCE for the period prior to the installation of the new meter on February 28, 2007.

4. Reparations should be limited to the three-year period preceding the filing of this complaint on November 19, 2004 and should continue through February 27, 2007, the day before the installation of the new meter.

5. Accounting for some error and based on a conservative estimate, the Schimmels were overbilled by at least 40% for the period in question. Reparations should include interest at the rate of .9% a month, the rate SCE bills its customers for late payments.

6. For the period November 19, 2004 through February 27, 2007, SCE should be ordered to refund the Schimmels the applicable rates that were applied to 40% of billed kWh use.

**IT IS ORDERED** that:

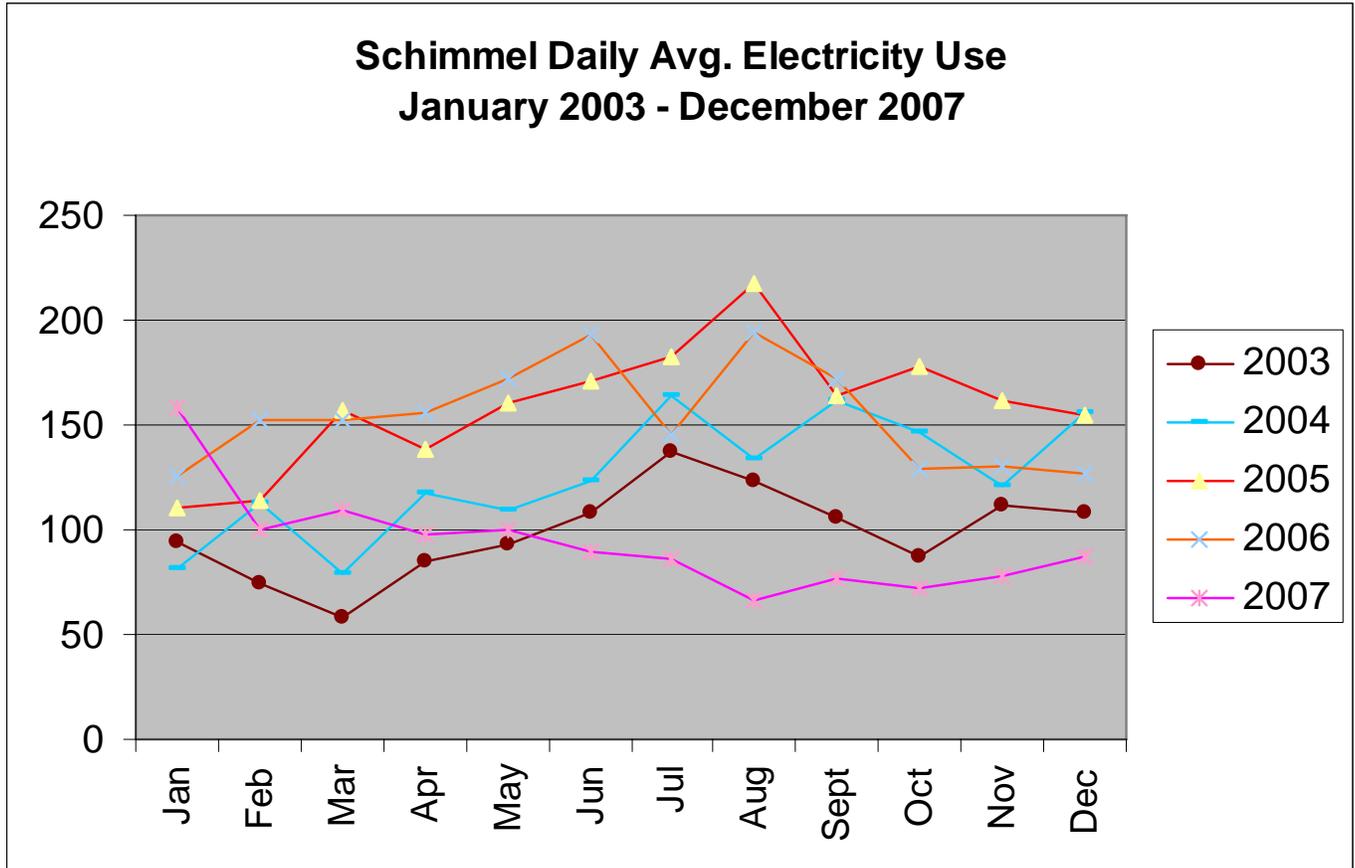
1. Southern California Edison Company (SCE) shall, within 15 days of the effective date of this order, refund to the complainants 40% of their billed kilowatt hour use for the period November 19, 2004 through the date the Schimmels' meter was changed in February 2007. The calculation of the refund shall be at the marginal rate for the relevant use in each billing period. The amount of the reparations shall include interest at the rate of .9% per month.
2. SCE shall concurrently provide Energy Division with proof of compliance with this order, along with workpapers showing how it calculated the refund and associated interest in each month of the refund period.
3. Case 07-11-012 is closed.

This order is effective today.

Dated December 18, 2008, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners

**ATTACHMENT A**



**(END OF ATTACHMENT A)**

**ATTACHMENT B****Comparison Of Daily Average Billed Kwh Use  
Before And After New Meter Installation**

	2004		2005		2006		2007
	Billed Use	Difference	Billed Use	Difference	Billed Use	Difference	Billed Use
Jan			110.80	*	125.40	*	158.00
Feb			113.80	13%	152.20	35%	99.50
Mar			156.90	30%	152.50	28%	109.40
Apr			138.90	30%	155.30	37%	97.20
May			160.80	38%	171.70	42%	99.80
Jun			170.80	48%	193.10	54%	89.30
Jul			182.70	53%	145.40	41%	86.50
Aug			217.80	70%	194.40	66%	65.90
Sept			195.30	61%	172.30	55%	77.10
Oct			178.30	60%	129.60	44%	72.20
Nov	121.10	36%	161.90	52%	130.20	40%	78.00
Dec	155.70	44%	155.10	44%	127.30	32%	86.70
Avg. difference between billed use before and after meter installation February 28, 2007							
		<b>40%</b>		<b>45%</b>		<b>43%</b>	
Avg. per month Nov 2004 through December 2007						<b>43%</b>	

\* Not included in equation because comparing January 2005 to January 2007 would be comparing two periods that applied readings from the original meter.

**(END OF ATTACHMENT B)**