

Decision 17-02-011 February 9, 2017

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Eva Gabos,

Complainant,

vs.

Southern California Edison Company (U338E),

Defendant.

(ECP)
Case 16-08-004
(Filed August 10, 2016)

**DECISION GRANTING THE RELIEF
SOUGHT IN THE COMPLAINT**

Summary

This decision directs the defendant, Southern California Edison Company, to: (1) apply and calculate the California Alternate Rates for Energy¹ (CARE) program discounts to the energy bills of the complainant, Eva Gabos, (Complainant), for the period starting October 1, 2015 and ending on October 31, 2016, and (2) credit the Complainant's account for any amount the Complainant has already paid in excess of the CARE rates for her energy use

¹ CARE is a program open to low-income households that meet the income requirements established by the Commission. Low-income customers that are income qualified and enrolled in the CARE program receive a 30-35 percent discount on their electric bill and a 20 percent discount on their natural gas bill.

during that period. SCE shall comply with this decision within 45 days of the effective date of this decision. This proceeding is closed.

1. Procedural History

On August 10, 2016, Eva Gabos (Complainant) filed the above-captioned complaint (Complaint). The Complaint alleges that the defendant Southern California Edison Company (SCE) continuously overbilled her account and then failed to address her repeated informal complaints. SCE filed an answer (Answer) on September 1, 2016. In its Answer, SCE, *inter alia*, denies the alleged overcharging and contends that SCE has been diligent in its responses to all of the informal complaints which preceded the Complaint.

On September 13, 2016, the assigned Administrative Law Judge (ALJ) issued a ruling setting an evidentiary hearing for September 21, 2016, at 1:30 p.m. at the SCE's Palm Springs District Office (36100 Cathedral Canyon Drive, Cathedral City, California).

The Complainant failed to appear at the stipulated and noticed hearing date, time and place. Prabha Cadambi (Cadambi), a representative of SCE, was present and ready to proceed with SCE's defense. Cadambi indicated to the assigned ALJ that the Complainant had come to the hearing location earlier but left prior to the time set for the evidentiary hearing. Cadambi also indicated that she discovered during that short encounter with the Complainant that the Complainant may be income qualified and eligible to enroll in the California Alternate Rates for Energy (CARE) low-income program and was planning to send an application for the program to the Complainant.

On September 27, 2016, the assigned ALJ issued a ruling directing the Complainant to submit an explanation or justification on why the Complaint should not be dismissed for the Complainant's failure to appear on

September 21, 2016 and ordered SCE to send the Complainant a CARE application and to provide all necessary assistance to ensure that, if the Complainant is eligible, she is promptly enrolled in the California Alternate Rates for Energy program (September 27 Ruling).

On September 28, 2016, the Complainant telephoned the assigned ALJ and explained that she had a medical condition which prevented her attendance at the evidentiary hearing on September 21, 2016. Based thereon, the assigned ALJ determined that good cause was shown to avoid the dismissal of the Complaint. At the request of the Complainant and upon stipulation of all parties, the assigned ALJ issued a ruling on October 6, 2016, and reset the evidentiary hearing (to be heard telephonically) for October 24, 2016, at 9 a.m. On the appointed date and time, the reset evidentiary hearing was held, with telephonic appearance by the Complainant and SCE's representative, Cadambi.

2. Burden of Proof

California law has long held that the party bringing a claim has the burden of proving that claim.² The Commission follows this rule in its complaint cases.³

This means that complainants have the burden to prove by a preponderance of the evidence (a majority or 51 percent or more) that their allegations are true.

² Cal. Evid. Code. section 500 (2008). *See Sargent Fletcher Inc. v. Able Corp.* (2003) 110 Cal. App. 4th 1658, 1667 (citations omitted.)

³ *See In Complaint of Service-All-Tech, Inc. v. PT&T Co.* (Cal. PUC, 1977) 83 CPUC 135, Decision No. 88223 (complaint relating to the disconnection of telephone service where the court found that complainant had the burden of proof and that complainant's "failure to present any evidence present[ed] a total lack of meeting that burden"). *See also Pacific Bell Telephone Company, d/b/a AT&T California vs. Fones4All Corporation* (Cal. PUC, 2008) D.08-04-043, 2008 Cal. PUC LEXIS 132.

3. Discussion

3.1. The Complainant's Allegation

On the day of the telephonic evidentiary hearing, the Complainant did not produce any further physical evidence other than referring to her Complaint. She reiterated the statements she set forth in her Complaint alleging continuous overcharges, for an undefined period of time. She emphasized that she “always used little to no electricity” and that she and her deceased husband, Melvyn Rosenstein, did not and could not have used the amounts of energy they had been charged over the course of “the past years through Edison.” In support of and attached to her Complaint, Complainant submitted four bills⁴ which are itemized below.

Invoice Date	Service Location	Service Period(s)	Invoice Amount
September 17, 2013	38729 Rancho Vista Drive, Beaumont, California	Unknown	Disconnection notice for the total cumulative past due amount of \$320.19
October 5, 2013	38729 Rancho Vista Drive, Beaumont, California	August 26, 2013 to September 25, 2013	\$236.94
October 8, 2015	38729 Rancho Vista Drive, Beaumont, California	\$119.23 for July 29, 2015 to August 27, 2015, and \$82.16 for August 27, 2015 to September 15, 2015	\$201.31
June 24, 2016	1564 Big Sky Drive, Beaumont, California	May 24, 2016 to June 23, 2016	\$79.39

The Complainant also testified that she suspected possible theft of her electricity from her home. She did not specify when such suspected theft may have occurred. She testified that, to secure her electricity box from this suspected potential theft, she telephoned and requested SCE to seal her electricity box, and

⁴ These four bills are among the three years of prior SCE bills (for the Complainant and her now deceased spouse) received into the record of this proceeding as Exhibit A.

soon thereafter, she recounted that someone “with no [SCE] worker badge” came and placed “a lock on the electric box.” The Complainant testified also that, at some point during the past several years, her air conditioner was broken or malfunctioning and unusable, and that something was and may still be wrong (or “strange”) with her sockets and electrical wiring in her home. The Complainant also argued that one of a next door neighbor who has more occupants, than her household, is paying less (for purposes of privacy, this neighbor will be referred to as “Customer B”) and that proves SCE is and has been overcharging her.

3.2. SCE’s Defense

SCE denies the allegations of overcharging. SCE contends that it has been diligent in its responses to address concerns raised by the Complainant over the years. SCE contends that it is not SCE’s responsibility to maintain the Complainant’s electrical sockets and interior wiring or to offset for excess electricity consumption due to such problems or equipment (e.g. air conditioner) malfunction. SCE also contends that SCE does not have a record of the initial visit by a man (without SCE “worker badge”) referenced by the Complainant, and all of SCE’s workers are required to wear company uniforms with company identifications conspicuously marked to identify themselves as SCE employees. SCE did have a record that, within the past several years, SCE dispatched a technician (in SCE uniform) to the Complainant’s home to seal the box as the Complainant requested. SCE’s record of this visit noted that there was a lock already on the Complainant’s electricity box but it was not a lock issued by SCE and none of the keys held by the Complainant and SCE fit that lock which was already on Complainant’s electricity box. SCE’s technician removed that lock

and replaced it with a SCE-issued lock to seal the Complainant's box, as requested.

SCE's billing record shows that during the past three years, the Complainant received SCE's services at the following three locations:

August 5, 2011 to December 31, 2015	38729 Rancho Vista Drive, Beaumont, CA
January 4, 2016 to March 2, 2016	1628 Big Sky Drive, Beaumont, CA
February 24, 2016 to now	1564 Big Sky Drive, Beaumont, CA

SCE produced two reports of meter tests it conducted in response to the Complainant's informal complaints of possible overcharging. Under SCE's Tariff Rule 17 C.1, a meter must be registering more than two percent fast, at which point, SCE must refund its customer the amount of the overcharge. The first test was conducted on November 14, 2014, for meter number 222012-167381 (for service location: 38729 Rancho Vista Drive, Beaumont, CA). The test result for that meter showed that it was registering at 0.1+ to 0.2+ percent fast which is well within the Commission-approved guidelines for accuracy. The November 14, 2014 report also noted that the Complainant was present during the test and that the technician found no evidence of meter tampering or meter malfunction causing over-registering.

The second test was conducted on July 14, 2016, for meter number 222011-911372 (for service location: 1564 Big Sky Drive, Beaumont, CA). The test of that meter showed that it was registering at 0.2+ percent fast which is well within the Commission-approved guidelines for accuracy. The July 14, 2016 report also noted that the Complainant was present during the second test and that the technician found no evidence of meter tampering or meter malfunction causing over-registering.

3.3. ALJ's Questions

During the evidentiary hearing, the Complainant was reminded by the assigned ALJ that she has the burden to prove the allegations in her Complaint. The assigned ALJ asked Complainant about the size and age of the three homes Complainant resided at during the past three years. She replied that they were four to five bedroom homes, less than 20 years old. She testified that she and her deceased husband were the only occupants of those homes until he passed away at the end of 2015. Since then, she has been the sole occupant. She emphasized that they did not use all the rooms and used very little energy. Concerning the sockets and wiring, the assigned ALJ informed the Complainant that, if there is any socket, wiring issue or other equipment issue at a service location (within her home) which is causing excess energy use, the utility is not responsible for that. The Complainant acknowledged that she understood what that meant.

The assigned ALJ asked the parties about the "D-CARE" notation on Complainant's October 8, 2015 bill. Cadambi explained that it refers to the discount CARE program rate that was applied to that bill. The assigned ALJ asked Cadambi whether the Complainant's household was always enrolled in the CARE discount program while being served by SCE, or at least during the past three years. Cadambi explained that the Complainant's household was enrolled under the deceased husband's name until October or November of 2015, and the Complainant's household was reenrolled under Complainant's name after SCE assisted Complainant's CARE reenrollment following the September 27, 2016 Ruling.

Noting that the Complainant and her deceased husband's household had been income qualified to receive CARE discount rates during the 2013 to 2015 time frame and given that Complainant's household (after her husband passed

away) was recently reenrolled and deemed to income qualify to receive CARE discount rates again in October of 2016, the assigned ALJ asked the Complainant whether her household's income amount and source(s) changed or increased discernably during 2013 to the present. The Complainant indicated her household income, during the past several years, has been fixed and low-income as retirees, and that after her husband's passing in the fall of 2015, her income has not increased, which is how she was reenrolled recently.

Although the Complainant did not specify exactly when the alleged overcharging occurred, the Complainant was unequivocal in claiming the alleged overcharging occurred over the course of several years. Under Section 737 of the California Public Utilities Code, the Commission's authority to review the Complainant's bills only extends to three years prior to the filing of the Complaint. Accordingly, at the conclusion of the telephonic evidentiary hearing and to get a complete picture of the Complainant's allegations, use, rates applied and billing history, with the parties' agreement, the assigned ALJ directed SCE to reproduce and submit all of the bills directed to Complainant and her deceased husband Melvyn Rosenstein during the prior three years preceding the filing of the Complaint.⁵ The assigned ALJ directed SCE to also submit the following:

- (1) All SCE's meter tests for SCE's account number 2-21-080-7897 and meter number 222012-167381 (meter for service location at 38729 Rancho Vista Drive, Beaumont, California) and SCE's account number 2-38-162-8791 and meter number 222011-911372 (meter for service location at 1564 Big Sky Drive, Beaumont, California.); and

⁵ Exhibits A and B.

- (2) SCE's confidential bill comparison of Complainant's use for the past three years in comparison to her neighbors on either side.⁶

SCE submitted the ordered items, on October 26, 2016, and complied with the assigned ALJ's directives.

3.4. Analysis

3.4.1. CARE Program Discount

The review of the bills and based on the Complainant's testimony, it is clear that the Complainant's household (previously enrolled under her deceased husband's name) was inadvertently taken out of the CARE discount program and therefore erroneously charged non-CARE rates from October/November 2015 to October 2016 when she was reenrolled, following the September 27 Ruling. The bills show and the Complainant's testimony confirms that when Complainant's husband passed away in the fall of 2015 and the bills were switched from his name to her name, SCE stopped applying the CARE discount rates to the Complainant's energy bills thereafter, until Complainant's household was reenrolled in the CARE program October of 2016.

The Complainant's testimony confirmed that her fixed income amounts and sources remain unchanged during the past three years. She testified that her low income status has continued to remain unchanged during the past three years. Therefore, the Complainant's household has continually been income qualified for the CARE program during the entire three-year period. The

⁶ These comparisons have been marked for identification as Confidential Exhibits 1 and 2, reviewed in camera only and received into the record as confidential exhibits to protect the privacy rights of those neighboring households.

Complainant's household should have been enrolled in the CARE program after her husband's passing and when the bill was switched to her name from his.

For these reasons, this decision directs SCE to apply and calculate the CARE program discounts to the energy bills of the Complainant, for the period starting October 1, 2015, and ending on October 31, 2016. SCE must credit the Complainant's account for any amount the Complainant has already paid in excess of the CARE rates for her energy use during those billing periods.

3.4.2. Miscellaneous Claims of Meter Tampering, Theft, and Other Excess Charges

Other than the CARE program discount, the Complainant failed to prove her allegations of suspected meter tampering, theft or other improper or excessive charges, as discussed below.

First, there was no evidence that SCE's meters at the Complainant's properties were malfunctioning and otherwise over-registering during the past three years. SCE Tariff Rule 17 C.1 for Adjustment of Bills for Meter Error, applies here and provides:

... [i]f a meter is found to be registering more than 2% fast, SCE will refund to the customer the amount of the overcharge based on corrected meter readings or SCE's estimate of the energy usage either for the known period of meter error or, if the period of error is not known, for the period during which the meter was in use. Refunds for fast meters cannot exceed three years.

It is SCE's obligation to ensure that the SCE meters installed at a customer's property are functioning normally and accurately registering consumption. In *Leonard J. Grant v. SoCal Gas Co.*, the Commission found that if a meter is tested and proved to be registering accurately within acceptable limits, as set by the Commission, a presumption exists that the customer, in one way or another, used the energy as shown on the meter; and that it would not be wise or

a practical policy to require the utility to prove, through whatever devices, that a customer actually did or did not use the energy registered on the meter.⁷ In other words, if a meter is tested and found to be registering accurately, within the limits set by the Commission, the Commission presumes that the energy was delivered and consumed at the customer property and the utility does not have further duty to identify the individual item(s) at a residence that could account for the consumption registered on a meter.

Here, in accordance with SCE's Tariff Rule 9.A.1, Metered Service, and Rules 17.B and 17.C.1. Meter Tests and Fast Meter, respectively, SCE tested the two meters at the Complainant's two properties, as requested by the Complainant. These tests were conducted in response to the Complainant's informal complaints to SCE. Both tests found that the meters were registering accurately and that Complainant therefore was billed properly at those two properties based on registered usage.

SCE produced the reports of those test results of those meters (meter number 222012-167381 at 38729 Rancho Vista Drive on November 14, 2014, and the meter number 222011-911372 at 1564 Big Sky Drive). These two tested meters served the Complainant during majority of the past three years except for a short period between January 4, 2016, to March 2, 2016, which was approximately when she resided at 1628 Big Sky Drive, in Beaumont, California.

⁷ Cal.P.U.C., Decision 92577 (Jan. 6, 1981).

First, meter number 222012-167381 at 38729 Rancho Vista Dr., Beaumont, California was tested at Complainant's request on November 14, 2014 and passed SCE's heavy load test at 0.2 percent+ and the light load test at 0.1 percent+, well under the 2 percent inaccuracy limit set forth in Tariff 7.1. The meter number 222011-911372 at 1564 Big Sky Dr., Beaumont, California was tested at Complainant's request on July 14, 2016 and passed SCE's heavy load test at 0.2 percent+ and the light load test at 0.2 percent+, also well under the Tariff 7.1 and 2 percent inaccuracy limit. These residential service meters were tested and found to be operating within the accuracy range set forth in Tariff Rule 17.1.⁸ Second, the two meter test reports for the properties indicated that the technicians found no evidence of meter tampering or theft of electricity.⁹ Third, the Complainant's SCE bills were reviewed, going back three years from the date of the Complaint filing. They showed, *inter alia*, the monthly usage amounts and pattern by the Complainant. These usage amounts ranged from the five highest bills in the summer months [September 2013 (\$236.94), July 2014 (\$175.33); August 2014 (\$132.10); September 2014 (\$179.71); and August 2015 (\$119.23)] to the four lowest bills in the fall/winter months [September 2014 (\$6.81); November 2015 (\$11.45); December 2015 (\$ 6.13); and October 2016 (\$11.54)]. Although the fall/winter months of 2013-2014 were somewhat higher than the typical lower bills for those periods in subsequent years, the rest of the per-month usage and amounts were unremarkable.

⁸ Exhibits C and D.

⁹ *Ibid.*

There were some anomalous bills with very high total bill amounts but upon further review, those bills were found to include past due amounts (e.g. the September 2013 bill amount totaled \$578.29 but included \$314.19 in past due amount; and the August 2014 bill amount totaled \$289.38 but \$114.05 in past due amount). Overall, the bill analysis showed that the Complainant's usage amounts and patterns were comparable to most desert home usage amounts and patterns. The review of the Complainant's bills does not lend support to the Complainant's suspicion of theft of irregular or extraordinarily excess energy consumption or over-charging.

Finally, the confidential comparison between Complainant's and the adjoining neighbors' usage pattern¹⁰ was reviewed in camera.¹¹ Generally, the neighbors' usage figures were comparable and followed the typical desert home usage pattern -- of high energy usage during summer months which stabilizes after the summer months and low fall/winter months bills. The bills for the Complainant and her neighbors showed similar patterns of usage spikes with high energy bills in the summer. In particular, a comparison to Customer B was made to determine whether the Complainant was correct that her bills were inexplicably high as compared to Customer B. The examination of 28 months of recent bills and billing periods for the Complainant and Customer B fails to support the Complainant's argument that her bills are inexplicably higher than Customer B. In fact, in 14 consecutive recent months, the Complainant's energy

¹⁰ For purposes of privacy the adjoining neighbors will be referred to only as Customers A and B and their energy usage information has only been reviewed in camera and received into evidence as Confidential Exhibits 1 and 2.

¹¹ Confidential Exhibits 1 and 2.

usage amount and bill amount were significantly lower than those of Customer B -- ranging from approximately \$20 to \$90 per months lower. In only four out of 28 prior months was the Complainant's energy usage amount and bill amount higher than that of Customer B. The remaining ten months of the 28 prior months, the energy usage amounts and bill amounts for Complainant and Customer B were generally comparable. Thus, the review of the Complainant's bills in comparison to her neighbors' bills does not lend support to the Complainant's suspicion of theft or irregular or extraordinarily excess energy consumption or over-charging.

4. Comment Period

Pursuant to Rule 14.7(b) of the Commission's Rules, no 30-day public review and comment period is required.

5. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Kimberly H. Kim is the assigned ALJ in this proceeding.

O R D E R

IT IS ORDERED that:

1. Within 45 days, Southern California Edison Company shall apply and calculate the California Alternate Rates for Energy (CARE) program discounts to the energy bills of the complainant Eva Gabos (Complainant), for the period starting October 1, 2015 and ending on October 31, 2016, and credit the Complainant's account for any amount the Complainant has already paid in excess of the CARE rates for her energy use during those billing periods.

2. Case 16-08-004 is closed.

This order is effective today.

Dated February 9, 2017, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners