

Decision 17-10-016 October 26, 2017

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Paul N. Miller,

Complainant,

vs.

San Diego Gas & Electric Company (U902E),

Defendant.

(ECP)

Case 17-05-018

Paul N. Miller, for himself, Complainant.

Aurora Carillo, for San Diego Gas & Electric
Company.

DECISION DISMISSING THE COMPLAINT

Summary

This decision dismisses the complaint filed by Paul N. Miller, Complainant, against San Diego Gas & Electric Company (U902E), Defendant, for failure to prove by preponderance of evidence of an actionable claim under Article 4 of the Commission's Rules of Practice and Procedure.

Background

Complainant filed a complaint against Defendant, on May 30, 2017 (Complaint). Complaint involves San Diego Gas & Electric Company (SDG&E) account number 5976-582-087-5. Complainant alleges he was improperly billed for

a total of \$101.78 for the billing periods of September 15, 2016 through January 7, 2017.¹

Defendant filed an answer (Answer) on July 10, 2017.² After the Complainant filed the formal complaint, SDG&E's Customer Complaint Resolution Department reviewed the bills in question and issued a credit of \$177.60 for the billing period of May 17, 2016 through February 15, 2017.³

The expedited complaint hearing was held before the assigned Administrative Law Judge (ALJ) Gerald F. Kelly, at 10:00 a.m. on August 17, 2017 in San Diego, California (Hearing). Both parties appeared and presented evidence and arguments.

Complainant's Contentions

Complainant contends that SDG&E "has established a practice of over billing for commodities and services not delivered."⁴ Specifically, Complainant contends that during the period of September 15, 2016 through January 7, 2017, SDG&E overbilled him a total of \$101.78. Complainant argues these overages are a result of SDG&E's practice of reading his meter every other month, rather than doing so on a monthly basis.

Complainant acknowledges that SDG&E provided him with a credit of \$177.60 for the period of May 17, 2016 through February 15, 2017. However,

¹ Complainant alleges he was improperly billed \$6.33 for Gas and \$95.45 for Electric consumption during the period in question.

² SDG&E contends that it did not receive the Instructions To Answer timely and therefore was unable to file its Answer within 20 days. The issue of whether the Answer was timely filed is moot because the Complainant stated that he had no objection to the Answer being filed a few days after the due date.

³ Answer at 4.

⁴ Complaint at 2.

Complainant argues that the Commission should order SDG&E to read his meter every month or require SDG&E to change its current billing format for individuals who have opted out of having a smart meter.

Defendant's Contentions

Defendant contends that currently there is no merit to this Complaint because Complainant failed to cite any action (by Defendant) that violates any rule, requirement or law.⁵ Defendant contends that "Complainant has failed to allege facts to demonstrate that SDG&E has applied improper billing practices to residential customers who have elected to opt-out from the Smart Meter Program."⁶ Specifically, Defendant argues that once SDG&E issued a credit in excess of the damages sought, that the complaint became moot. Therefore, Defendant requests that the Commission dismiss the matter.

Discussion

California law has long held that the party bringing a claim has the burden of proving that claim.⁷ The Commission follows this rule in its complaint cases.⁸ This means that Complainant has the burden to prove by a preponderance of the evidence (a majority or 51 percent or more) that his allegations are true. In the instant matter the Complainant failed to meet his burden of proof. Therefore the

⁵ *Id.*

⁶ *Id.*

⁷ Cal. Evid. Code Section 500; See also *Sargent Fletcher Inc. v. Able Corp.* (2003) 110 Cal.App.4th 1658, 1667 (citations omitted.)

⁸ 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) Decision 08-04-043, 2008 Cal. PUC LEXIS 132.

Complaint is dismissed with prejudice for failure to prove by preponderance of evidence an actionable claim under Article 4 of the Commission's Rules, as discussed below.

At the beginning of the Hearing, held on August 17, 2017, ALJ Kelly explained to Mr. Miller, the applicable Commission's Rules of Practice and Procedure (Rules), which state, in part, that as the Complainant, Mr. Miller had to identify one or more legal duties of Defendant (e.g., rule, requirement or law) and present facts showing that Defendant failed to comply with its legal duty or duties.⁹

The record indicates that on April 28, 2014, Complainant elected to participate in the Smart Meter Opt-Out program. This program was designed for customers who elected not to have a smart meter at their residence. Among other things, the Opt-Out program requires that meter reads be performed bi-monthly. On the months when there is no meter reading, an estimated meter read occurs, which is based on the prior month's daily average usage will be used.

At the hearing, the Complainant acknowledged that SDG&E provided him a credit on his bill of \$177.60, which was \$75.82 more than the \$101.78 relief that he sought in his complaint. Complainant was not able to identify any legal duty Defendant owed to them (e.g., rule, requirement, law or Commission approved tariff) and was not able to present evidence that showed that Defendant failed to comply with any legal duty or duties.

However, Complainant argued at the hearing that SDG&E's billing practices of reading the meter every other month results in him being billed for commodities and services that were not delivered during the respective billing

⁹ See Sections 4.1(a) and (b) of Rules.

periods. Complainant wants an order directing SDG&E to read his meter every month or for SDG&E to change its billing format so that each bill has a “true-up” line itemization.

Under the Opt-Out program rules set forth in Commission Decision (D.) 14-12-078, Ordering Paragraph (OP) 25, the utilities “shall implement bi-monthly (every two months) meter reading bill plan for customers who elect the smart meter opt-out option.” This means that every other month, the bill is not read and therefore is based upon an estimate. Normally, the estimated reads are based on usage from the previous month and the same billing period from the previous year.

Complainant has failed to allege facts that demonstrate that SDG&E has applied improper billing practices to residential customers who have elected to opt-out from the Smart Meter Program. The Complainant has failed to establish that bi-monthly meter reading violates any Commission rule, decision or approved tariff.

The Defendant acknowledged that it would be ideal to have the opt-out meters read every month. However, this would ultimately result in higher labor costs that would be passed on to the ratepayers. The Defendant argues that since the opt-out meters are physically read every other month there is no harm to the consumer because the estimated amounts are reconciled when the meter is actually read.

The Complainant has failed to establish that bi-monthly meter reading violates any of SDG&E’s Commission approved tariffs. Any potential billing discrepancies that may have been present were resolved when SDG&E reviewed the Complainant’s bills and issued him a credit of \$177.60, which as noted above was \$75.82 more than the relief originally sought.

The Complainant also requests that the Commission require SDG&E to change its monthly billing format so that the bill clearly shows that the estimated bill is reconciled the next month when the meter is actually read. Complainant stated at the hearing that he knows SDG&E has the “talent to do this.” He believes that changing the billing format will reduce or eliminate any potential discrepancy that occurs during the months when estimated meter readings are used in place of actual reads.

Complainant has failed to show that SDG&E has violated any Commission rules, decisions or tariffs during the months that SDG&E provides customers with an estimated bill. Schedule E-SMOP, Special Conditions 3, which is titled Estimated Meter Reading states, “[a]s directed by D.14-12-078, Opt-Out Customers will receive an estimated meter reading on a bi-monthly basis (i.e., every two months. Estimated meter reads will be based on the prior month’s daily average usage, and will be used for billing purposes in accordance with Electric Rule 17. Regular reading of the meter will occur every other month.”

The Defendant testified that they cannot simply change the format of the monthly bills for customers who have opted-out of the Smart Meter program. Defendant stated that although uncertain of the exact cost to reformat the monthly bills, it would certainly be a considerable expense to do so. This increased expense would then be passed onto the ratepayers.

The Complainant has failed to show that there are any continued violations of Commission rules, decisions or established tariffs. When the Complainant filed his Complaint, he requested a credit of \$101.78 for the billing periods of September 15, 2016 through January 7, 2017. After the Complaint was filed, SDG&E reviewed the billing history for the period of May 2016 through

February 15, 2017 and applied a credit of \$177.60. Once SDG&E applied the credit to the Complainant's account, the complaint was essentially resolved.

Under these circumstances, Complainant failed to prove that Defendant has a duty to read opt-out meters on a monthly basis or the ability to change its monthly billing format to add a special itemization to the monthly bill. The fact that the Complainant wishes to have his meter read each month or for SDG&E to change the format of its monthly bills does not establish by preponderance of evidence that Defendant violated any legal duty.

Waiver of Comment Period

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

Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Gerald F. Kelly is the assigned ALJ in this proceeding.

O R D E R

IT IS ORDERED that:

1. This Complaint is dismissed with prejudice.
2. Case 17-05-018 is closed.

This order is effective today.

Dated October 26, 2017, at Sacramento, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners