

Decision No. 17278

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-000-

UNIVERSAL COMPANY, a corporation,  
Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,  
a corporation,  
Defendant.

)  
)  
) Case No. 1981  
)  
)  
)

UNIVERSAL COMPANY, a corporation,  
Complainant,

vs.

SIERRA AND SAN FRANCISCO POWER COMPANY,  
a corporation,  
Defendant.

)  
)  
) Case No. 1984  
)  
)  
)

William Kehoe, for the Complainant.  
Thomas E. Breeze, for the Sierra and  
San Francisco Power Company, Defendant.  
C. P. Cutten and R. W. Duval, for the  
Pacific Gas and Electric Company, Defendant.

SEAVEY, Commissioner:

OPINION ON MOTIONS TO DISMISS

Complainant in the above entitled case No. 1984 alleged that certain rates charged by the defendant, Sierra and San Francisco Power Company for electric energy furnished to it between August 1, 1918, to and including December 31, 1919, were unreasonable and unfair, and prayed that this Commission fix a just and reasonable rate for said electric energy and that

we order defendant to make due reparation in the amount charged in excess of said reasonable rate, together with interest. By way of answer, the defendant interposed several defenses, some of which were directed to the jurisdiction of this Commission.

In the above entitled Case No. 1981 complainant alleged that certain rates charged by the defendant, Pacific Gas and Electric Company, for electric energy furnished to it between January 1, 1920, and February 28, 1922, were unreasonable, and prayed that this Commission fix a just and reasonable rate for said electric energy and order defendant to make reparation to complainant in the amount charged in excess of said reasonable rate, together with interest. The defendant in this case also by way of answer raised several defenses, jurisdictional in nature.

These two matters were consolidated for hearing, and a hearing was held on May 12, 1926, at which time the jurisdictional defenses raised by defendant companies were argued at length. This hearing was confined to such argument. The defendant companies moved to dismiss the complaints for lack of jurisdiction, and the cases were submitted for rulings on said motions.

One of the defenses raised by the Sierra and San Francisco Power Company in Case No. 1984 was the statute of limitations. I am convinced that this defense is sound. The complaint therein was not filed within two years after the time the alleged cause of action accrued as required by section 71 of the Public Utilities Act. The record shows that the complaint was filed on March 12, 1924, and the cause accrued on the last month's charges of the Sierra and San Francisco Power Company on January 1, 1920, the date as of which the charge for service was made. Case No. 1984 therefore should be dismissed.

With reference to Case No. 1981, I am of the opinion that the statute of limitations has run against the complainant's alleged cause of action except as to the charge made by defendant, Pacific Gas and Electric Company, for the last month's service rendered. Reparation is sought on the charges made by Pacific Gas and Electric Company from January 1, 1920, to February 28, 1922, which charges were made during said period from month to month as of the first of each month. The complaint in question was not filed until February 27, 1924, and was therefore not filed within two years of the time the cause accrued within the requirements of section 71 of the Public Utilities Act except as to the charges for the month of February, 1922.

In addition to the defense of the statute of limitations, the Pacific Gas and Electric Company advanced several other alleged defenses in opposition to plaintiff's complaint, to-wit: that the complaint did not allege facts sufficient to constitute a cause of action; that the action was premature because the alleged unreasonable charges had not been paid in full; that an award of reparation as prayed for would result in discrimination, and that the rates complained of had, by formal finding by this Commission, been declared to be reasonable within the meaning of section 71 of the Public Utilities Act. With regard to the alleged defense of the action being premature, it was established by our Decision No. 5344, Palo Alto Gas Company v. Pacific Gas and Electric Company (15 Opinions and Orders C.R.C., p. 618), that under section 71 of the Public Utilities Act a cause of action for reparation accrues when the charge is made, and is not dependent upon the payment of the alleged unreasonable charge. I am therefore of the opinion that this alleged defense is unsound,

and that the cause accrued when the charge was made. I am further of the opinion that the other alleged defenses enumerated above are unsound.

It appears therefore that the complaint in Case No. 1981 states a cause of action for reparation under section 71 of the Public Utilities Act as to the charges for services rendered during the month of February, 1922, and that this Commission may, therefore, properly proceed to a hearing on the merits under said complaint to that extent. The motion of the defendant to dismiss the plaintiff's complaint in Case No. 1981 must therefore be denied.

#### ORDER

Motions having been made by defendants for dismissal of plaintiff's respective complaints in the two above-entitled cases; a public hearing having been held in said matters; arguments heard on said motions, and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that the motion to dismiss plaintiff's complaint in Case No. 1984 be, and the same is hereby granted, and the case is hereby dismissed;

IT IS HEREBY FURTHER ORDERED that the motion to dismiss plaintiff's complaint in Case No. 1981 be, and the same is hereby denied; that after the expiration of a period of forty (40) days from the date hereof the said matter be

set down for hearing on the merits, unless in the meantime a settlement be effected between the parties.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27<sup>th</sup> day of August, 1926.

H. B. Randall  
C. S. ...

Thomas ...  
Commissioners