Decision No. 21860

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

CITY OF VERNON, CALIFORNIA, ASSOCIATED MEAT COMPANY, BALDRIDGE PACKING COMPANY, CALIFORNIA COTTON OIL COMPANY, COAST PACKING COMPANY, DISTRIBUTORS PACKING COMPANY, GLOBE GRAIN AND MILLING COMPANY, GLOBE PACKING COMPANY, L. KAUFFMAN COMPANY, LUER PACKING COMPANY, LOS ANGELES CASING COMPANY, LOS ANGELES PACKING COMPANY, MERCHANTS PACKING COMPANY, NATIONAL PACKING COMPANY, NEWMARKET COMPANY, PACIFIC COTTONSEED PRODUCTS CORPORATION, PEERLESS PACKING COMPANY, STANDARD PACKING COMPANY, UNION PACKING COMPANY, UNITED DRESSED BEEF COMPANY, WOODWARD BENNETT PACKING COMPANY,

Complainants,

vs.

SOUTHERN CALIFORNIA GAS COMPANY,

Defendant.

ORIGINAL

Case No. 2743.

F. A. Jones and H. M. Avey, for Complainants and Intervenors Vernon Potteries and Poxon China Company.

T. J. Reynolds and L. T. Rice, for Defendant.

E. J. Forman, for Globe Grain and Milling Company, Complainant.

CARR, Commissioner:

O P I N I O N

Complainants in this proceeding allege (1) that the rates demanded and collected by defendant for natural gas supplied during a period extending from January 1927 to May 1929, inclusive, were in excess of those stated in defendant's schedules lawfully

on file with the Commission; (2) that the practice of defendant in according priority of service in times of gas shortage to industrial consumers of the same class paying the highest rate, is unjust, unreasonable and discriminatory; (3) that the rates, charges, and minimum requirements for the furnishing of natural gas are unjust, unreasonable, excessive and distriminatory; and (4) that the alleged failure and refusal of defendant to keep open to public inspection its schedule of rates, charges, rules and regulations is unjust and unreasonable; all of which it is claimed create violations of Sections 13, 14(b), 17(b), and 19 of the Public Utilities Act.

The Vernon Potteries and Poxon China Company intervened on behalf of complainants. Complainants and interveners will hereafter be collectively referred to as complainants.

A public hearing was held before Commissioner Carr at Los Angeles on October 1, 1929 and the case was submitted on briefs.

At the outset of the hearing counsel for complainants announced that the primary purpose of the complaint was to obtain refunds of the alleged overcharges. As the evidence submitted in this proceeding was mainly directed to this phase of the case and is not sufficient to sustain the other allegations of the complaint, it will only be necessary to here consider whether or not the tariffs were properly construed, and if not, the amount of reparation due. Complainants are barred from recovering on all causes of action which accrued more than two years prior to August 20, 1929, the date the complaint was filed. (Golden State Milk Products Co. vs. Southern Sierras Power Company, 33 C.R.C. 83, 86.)

The rates assessed complainants were contained in three schedules, namely, A-7, A-13 and A-16. They were graduated according to the monthly guarantee of the consumer, but fluctuated with

the price of fuel oil, subject, however, to stated maximum and minimum rates. During the period here involved the price of fuel oil was low enough to bring the rates to the minima, which are those hereafter referred to, in amounts per 1000 cubic feet. The maximum rates were from 2 cents to 4 cents higher.

Schedule A-7 provided rates of 36 cents, 26 cents, 21 cents, 20 cents and 18 cents, with monthly guarantees of $35.00, $75.00, $150.00, $175.00 and $200.00 respectively. The rate in Schedule A-16 was 18½ cents, subject to a monthly guarantee of $250.00, while Schedule A-13 contained lower rates of 17 cents, 16 cents and 15 cents, with monthly guarantees of $300.00, $325.00 and $350.00 respectively. Thus the three schedules collectively provided minimum rates ranging from 36 cents, with a monthly guarantee of $35.00, to 15 cents, with a monthly guarantee of $350.00.

Under these schedules however the consumer was not, as complainants contend, automatically entitled to the lowest rate shown therein for the monthly guarantee specified. Rule 19 on Sheet No.138-G clearly stated that the consumer must designate which rate or schedule he desired. The gas supplied under Schedules A-7, A-13 and A-16 was the surplus quantity left after defendant had met the requirements of domestic and industrial consumers paying higher rates, was subject to discontinuance without notice if a gas shortage occurred, and in the event of a shortage the consumer paying the highest rates was given preference over those paying lower rates. Thus it is apparent the lowest rate available may not have been the most desirable because of the greater chance of an interrupted supply.

But Rule 19 also made it the duty of defendant where two or more rate schedules were applicable to any class of service, to call the consumer's attention to the different rates at the time

application was made for service; and if new schedules were adopted subsequent thereto, it was the duty of defendant to call attention to the new rates. Defendant did not uniformly comply with Rule 19. It followed the general policy of recommending the rate which by reason of its priority right was thought best suited to the individual consumer's needs, and made no particular effort to call attention to the different schedules at the time application for service was made, nor did defendant take any steps to apprize the consumer when lower rates were thereafter established. Clearly this policy was contrary to the tariffs.

Although defendant was generally derelict in its duty in not strictly complying with Rule 19, I do not believe this prima facie denotes that complainants are entitled to refunds to the lowest rates shown in the schedules. Unless it can be affirmatively shown that defendant's failure to observe the provisions of its tariff resulted in depriving them of rates they could have and would have used had all the tariff provisions been complied with, I can find no basis upon this record for awarding reparation. In construing Rule 19 it must be presumed application for service was made by complainants when contracts were originally signed or at the time a subsequent contract abrogating a previous one became effective.

Six of the complainants were equipped to burn oil. The others relied entirely upon gas for fuel. Each was supplied gas under a contract at some one of the rates in Schedules A-7, A-13 or A-16, although a contract was not required as a condition precedent to service (Rule 4). But the contracts raise a strong presumption that complainants selected the rates shown therein for their priority privileges. Particularly is this true of those who were not equipped to burn oil and who would have been forced to shut down if their gas supply was discontinued. The evidence convinces me that to many of them the priority privilege carried

with the higher rate was of more importance than the rate itself. While the complainants who could burn oil were in a somewhat different position, I find nothing in this record that would rebut the presumption raised by the contracts, except as to the Newmarket Company, Luer Packing Company and Baldridge Packing Company. No doubt many of the others who had oil facilities were in a position to avail themselves of rates lower than their contracts called for, but if they were they have failed to sustain the burden of proof, as the witnesses who appeared on their behalf were not familiar with the circumstances leading to the signing of the contracts by their superior officers nor was it within their knowledge to know definitely whether or not defendant complied with Rule 19.

The Newmarket Company is clearly entitled to a refund. This complainant was charged 26 cents prior to April 1928, 21 cents from April 1928 until December 26, 1928, and 15 cents thereafter. The record does not show the circumstances which prompted the application of the 26-cent rate, hence no finding will be made as to this rate. On April 10, 1928, a new contract was signed calling for a rate of 21 cents. Although complainant at this time inquired about lower rates, defendant did not inform it of the lower schedules as required by Rule 19. The 21-cent rate was assessed until February 1929, when following an informal complaint to this Commission the 15-cent rate was accorded complainant and made retroactive to December 26, 1928. This company was equipped with oil facilities and was in a position to avail itself of the lowest rate applicable, as it would not be seriously affected if the gas supply was discontinued. Since April 10, 1928, the monthly consumption was in excess of 3,000,000 cubic feet, sufficient to guarantee the minimum amount called for by the 15-cent rate. Under these circumstances I must conclude that the Newmarket Company is entitled to a refund to the basis of the 15-cent rate during the period extending from April 10,

1928, to December 26, 1928.

Defendant was likewise derelict in its duty to the Luer Packing Company. This complainant used approximately 2,000,000 cubic feet of gas per month. It was charged a rate of 26 cents until February 1929 and 18½ cents thereafter. Its plant was equipped with auxiliary oil burners that could be substituted at a moment's notice for gas. The burners were installed in the latter part of 1927 upon the representation of defendant that this would entitle complainant to a lower rate. The contract for the 26-cent rate was signed January 16, 1925. Subsequent thereto, on October 26, 1927, defendant established as a permanent schedule, A-13, which contained the lower rate of 15 cents. This lower schedule was not called to complainant's attention at the time it became effective, nor was it called to its attention when a new contract calling for the 18½ cent rate was signed at a later date. It is clear the failure of defendant to comply with Rule 19 deprived complainant of the rate to which it was entitled. The average monthly consumption justified the application of the 15-cent rate. A refund to this basis will be ordered on all causes of action which accrued subsequent to October 26, 1927, the date the 15-cent rate was established as a permanent rate.

The Baldridge Packing Company was assessed a rate which resulted in higher charges than would have been applicable under a schedule having priority over the one paid. A contract was negotiated with this complainant on May 3, 1927, calling for a rate of 26 cents per 1000 cubic feet (Schedule A-7-A) subject to a monthly guarantee of $75.00. From the time the contract was signed and continuing through February 1928, the monthly consumption varied from 89,500 cubic feet to 200,600 cubic feet. A higher rate of 36 cents, subject to the monthly guarantee of $35.00, became effective October 26, 1927, and had this rate been applied the

charges would have been materially lower than those collected under A-7-A rate with the higher monthly guarantee. As the 36-cent rate had preference over the 26-cent rate there can be no doubt that defendant failed in its duty to inform complainant of the lower rate at the time it became effective. But after February 1928 there is no evidence that the rates charged were improper.

Some of the complainants here before us have deposited with the Commission moneys covering their recent monthly bills, which we should now transmit to defendant.

After consideration of all the facts of record I believe we should find:

1. That the rate assessed the Newmarket Company from April 10, 1928, to but not including December 26, 1928, was unlawful to the extent it exceeded 15 cents per 1000 cubic feet, subject to a monthly guarantee of $350.00, and that complainant is entitled to reparation with interest in the amount of the difference between the rate paid and the rate found lawful.

2. That the rate assessed the Luer Packing Company on and after October 26, 1927, was unlawful to the extent it exceeded 15 cents per 1000 cubic feet, subject to a monthly guarantee of $350.00, and that complainant is entitled to reparation with interest in the amount of the difference between the rate paid and the rate found lawful.

3. That the rate assessed the Baldridge Packing Company during the period extending from October 26, 1927, to March 1, 1928, was unlawful to the extent it exceeded 36 cents per 1000 cubic feet, subject to a monthly guarantee of $35.00, and that complainant is entitled to reparation with interest in the amount of the difference between the rate paid and the rate found lawful.

4. That for the future defendant be required to strictly observe the terms of its schedules.

5. That as to all other matters the complaint be dismissed.

I recommend the following form of order:

O R D E R

This case having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact contained in the preceding opinion,

IT IS HEREBY ORDERED that defendant be and it is hereby directed to refund, with interest at six (6) per cent. per annum, to complainant Newmarket Company all charges collected in excess of 15 cents per 1000 cubic feet, subject to a monthly guarantee of $350.00, for furnishing natural gas during the period extending from April 10, 1928, to but not including December 26, 1928.

IT IS HEREBY FURTHER ORDERED that defendant be and it is hereby directed to refund to complainant Luer Packing Company, with interest at six (6) per cent. per annum, all charges collected in excess of 15 cents per 1000 cubic feet, subject to a monthly guarantee of $350.00, for furnishing natural gas during the period here involved, subsequent to October 26, 1927.

IT IS HEREBY FURTHER ORDERED that defendant be and it is hereby directed to refund to complainant Baldridge Packing Company, with interest at six (6) per cent. per annum, all charges collected in excess of 36 cents per 1000 cubic feet, subject to a monthly guarantee of $35.00, for furnishing natural gas during the period extending from October 26, 1927, to but not including March 1, 1928.

IT IS HEREBY FURTHER ORDERED that defendant be and it is hereby ordered to hereafter abstain from deviating from the provisions of its applicable schedules.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and it is hereby dismissed.

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 3rd day of December, 1929.

Commissioners.