JLA

Decision No. 22259.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

GLADDING, McBEAN & CO., Complainant,

vs.

PACIFIC GAS AND ELECTRIC CO., Defendant.

Case No. 2775.

John J. McGinnis, for Complainant.

C. P. Cutten, for Defendant.

BY THE COMMISSION:

OPINION

Complainant herein, Gladding, McBean & Co., a corporation, seeks an order from the Commission requiring defendant, Pacific Gas and Electric Company, to pay, as reparation, the sum of $3,060.39 with interest because of the difference in the charges between two schedules of defendant company for power service, on one of which complainant was billed, as it claims, in excess of the just and reasonable charges and in violation of Section 17(b) of the Public Utilities Act.

A public hearing was conducted by Examiner Williams at San Francisco, at which time the matter was submitted and now is ready for decision.

The essential facts involved are not disputed by the parties. From the record it appears that complainant entered into a contract with defendant in December, 1924, for the

purchase of electric power at its clay working factory at Lincoln, California, for a period of three years, and to continue thereafter without renewal unless cancelled by one of the parties. The contract was based upon the use of power under Schedule P-1 of the defendant company, which called for delivery of power at 440 volts at the transformer, which transformer was a facility supplied by the defendant. The charges accruing upon this contract were borne and paid by complainant herein until January 1, 1929, when the supply was shifted to the basis of Schedule P-5, requiring 2200 volts and under which schedule complainant, as user, was required to install his own transformer facilities. The schedule was made effective, however, by the company, which rented its own transforming equipment (in place, as theretofore) to complainant at the rate of $66.40 per month. At the time of the hearing this arrangement was still in existence, and was called by the parties a temporary arrangement.

Complainant contends that in 1928 it discovered that had the service from 1924 to 1929 been furnished upon the basis of Schedule P-5 complainant would have been required to pay approximately $10,000 less since 1924 than had been paid under Schedule P-1. However, complainant only asks for reparation of alleged excess charges amounting to $3,060.39 paid during the period extending from November 1, 1927, to December 31, 1928.

Complainant contends that during all the time the contract was in existence it was the duty of defendant to advise complainant of its ability to furnish power at a less rate on a different and more advantageous schedule. It is solely upon this theory that the claim for reparation is demanded. Complainant made no attempt to sustain its allegation that the charges paid under Schedule P-1 were unjust and unreasonable.

Thus the question here for determination is one of tariff interpretation. Either Schedule P-1 or Schedule P-5 was applicable to the class of service rendered complainant, but the rates under the latter schedule, while materially lower than those provided in Schedule P-1, required the installation of a transformer by complainant at a cost of about $4,500.00. Both schedules were subject to Rule 19 of original Sheet C.R.C. 293-E. This rule placed upon defendant the duty to call attention to the various schedules in effect at the time application for service was made, and thereafter the consumer must designate the rate or schedule desired. Thus under the terms of Rule 19 the lower of the two schedules did not automatically apply. However, the failure of defendant to comply with Rule 19 by not calling attention to lower schedules at the time application for service was made, may constitute a basis for a reparation award (City of Vernon vs. Southern California Gas Company, Decision No. 21860 of December 3, 1929).

But whether or not defendant complied with Rule 19 at the time complainant signed the contract for service under Schedule P-1 has not been shown on this record. The only witness who testified in behalf of complainant was not in its employ at the time application for service was made, nor was he familiar with the negotiations between complainant and defendant which led to the signing of the contract.

The burden of proof rests upon complainant, and in the absence of affirmative proof that defendant failed to correctly apply its schedules, the complaint will be dismissed.

O R D E R

This case having been duly heard and submitted, full investigation of the matters and things involved having been had,

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TO ASSURE LEGIBILITY

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ORDER

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 the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 26th day of March, 1930.

C. L. Seavey

Leon O. Whitsell

Thos B Louttit

M. J. Carr

Commissioners.