JLR

Decision No. 22806.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

BATCHELDER-WILSON COMPANY, CLAYCRAFT POTTERIES (INCORPORATED), COOK CHINA COMPANY, GILMORE OIL COMPANY (LIMITED), E. A. HOFFMAN CANDY COMPANY, JUNIOR GALVANIZING WORKS (INCORPORATED), JUNIOR NORRIS GALVANIZING (INCORPORATED), Successor to JUNIOR GALVANIZING WORKS (INCORPORATED), McLAUGHLIN GLASS COMPANY, POXON CHINA COMPANY, W. J. LATCHFORD COMPANY, REPCAL BRASS MANUFACTURING COMPANY, Successor to REPUBLIC BRASS MANUFACTURING COMPANY, TECHNICAL GLASS COMPANY (INCORPORATED), VERNON POTTERIES, WEST AMERICAN RUBBER COMPANY, WESTERN GALVANIZING COMPANY, WHITE MEMORIAL HOSPITAL, UNION PACKING COMPANY, VERNON, CITY OF, Complainants, vs. SOUTHERN CALIFORNIA GAS COMPANY, Defendant.	Case No. 2841.

F. A. Jones and H. M. Avey, for complainants; also for Union Tank and Pipe Company, Limited, intervener.

Thomas J. Reynolds and L. T. Rice, for defendant.

CARR, Commissioner:

O P I N I O N

In this proceeding complainants allege (a) that the rates demanded and collected by defendant for natural gas in Los Angeles are in excess of those lawfully shown in its schedules on file with the Commission, in violation of Sections 13

and 17(b) of the Public Utilities Act; (b) that defendant has failed to comply with Rule 19 of Sheet C.R.C. No. 138-G by denying complainants the right to select rates applicable to their requirements, in violation of Section 30 of the Act; and (c) that complainants in applying for lower rates provided in defendant's schedules have been threatened with a discontinuance of service; that in some instances where applicable rates have been agreed to, such agreement has been repudiated by defendant and that defendant has failed to establish and apply just and equitable rules relating to priority of service, all of which it is alleged is in violation of the Public Utilities Act and the rules and orders of this Commission.

The Union Tank and Pipe Company, Limited, intervened on behalf of complainants and will hereafter be referred to as one of the complainants. We are asked to require defendant to cease and desist from the alleged unlawful practices, to prescribe proper rates, rules and regulations for the distribution of natural gas and to award reparation. Unless otherwise stated the rates hereafter referred to are in amounts per 1000 cubic feet.

A public hearing was held before Commissioner Carr at Los Angeles May 20, 1930, and the proceeding submitted. Complainants largely confined the issues to an interpretation of the tariff provisions. The record will not support a finding as to the other allegations. No evidence or testimony was presented on behalf of the Gilmore Oil Company, Limited, Foxon China Company, W. J. Latchford Company, Technical Glass Company, Incorporated, and Western American Rubber Company. The complaint will be deemed to be abandoned in so far as it involves these complainants.

The other complainants are users of natural gas supplied

by defendant in the industrial districts of Los Angeles. The rates for this service are contained in defendant's Schedules A-1, A-6, A-7, A-8, A-13 and A-16. Schedules A-1 and A-6 provide rates for general domestic and commercial uses, Schedule A-8 the rates for essential industries, and the other schedules contain the rates for surplus natural gas. The surplus gas rates are materially lower than those in the other schedules, and are primarily the ones here sought by complainants. During the period covered by this complaint they varied from 15 cents, with a monthly guarantee of $350.00, to 36 cents, with a monthly guarantee of $35.00. Service rendered thereunder is subject to discontinuance without notice in the event of a gas shortage, but if a shortage occurs the consumer paying the highest rate is given preference over those paying lower rates.

The foregoing schedules are subject to the provisions of Rule 19 of Sheet C.R.C. 138-G. The essential portions of this rule provide, (1) where two or more rate schedules are applicable to any class of service, the company will call attention at the time application is made, to the various schedules and the consumer must designate the rate desired; (2) if new or optional schedules are subsequently established the company will take such measures as may be practicable to notify its consumers who may be affected; and (3) if a consumer elects to be served under a different schedule than the one under which he is being served, the change will become effective after the next regular meter reading following the date of notice to the company. Complainants' case rests upon the alleged failure of defendant to observe the first and third sections of the rule. We have held that a failure to comply with the first section may constitute a basis for a reparation award. (City of Vernon

et al. vs. Southern California Gas Company, 34 C.R.C. 46.)

The first section of Rule 19 is asserted to have been ignored by defendant by not apprising certain of the complainants of lower optional rates when contracts were signed for service at some one of the rates here in issue. In City of Vernon vs. Southern California Gas Company, supra, we held the signing of an original contract or a subsequent contract superseding a previous one was presumed to be an "application" for service.

While the record leads me to conclude that defendant did not consistently adhere to the terms of the first section of Rule 19 previous to our decision of December 3, 1929, in City of Vernon vs. Southern California Gas Company, supra, complainants, except the Batchelder-Wilson Company, McLaughlin Glass Company and White Memorial Hospital, have failed to sustain the burden of proof by showing, with a reasonable degree of certainty, that defendant's general practice of ignoring this section of the rule deprived them of any rate to which they were entitled.

The Batchelder-Wilson Company prior to August 19, 1929, was supplied gas at a rate of 40 cents plus a readiness-to-serve charge of $15.00 for the first 1,800,000 feet (Schedule A-8), and at 26 cents for all gas in excess of 1,800,000 feet (Schedule A-7-A). In July 1929 two new contracts were signed, one calling for the same rate for the first 1,800,000 cubic feet and the other reducing the rate for the balance to 21 cents (Schedule A-7-B). These rates, effective July 25, 1929, were continued in effect until January 25, 1930, when the 40-cent rate plus the $15.00 readiness-to-serve charge was applied to the first 500,000 cubic feet, and a rate of 16 cents applied to the balance (Schedule A-13-B). This charge was made after complainant had written defendant requesting service under a lower schedule. Complainant

was equipped to burn oil in the event of a discontinuance of service with the exception of one kiln requiring about 500,000 cubic feet of gas. There is no evidence to show that prior to July, 1929, defendant failed to comply with Rule 19, but when new contracts were signed in July, 1929, defendant did not apprise complainant of the lower optional rates as required by the rule. It was not until January 25, 1930, when the present contract was signed that complainant received the schedule to which it was entitled and could use. This complainant is clearly entitled to a refund for the excess charges paid from July 25, 1929, to January 25, 1930.

Somewhat the same situation existed with respect to the McLaughlin Glass Company. The average monthly consumption of this company is between six and seven million cubic feet per month. Service was supplied under five contracts. The first two were signed April 1, 1921, and called for 350,000 cubic feet at 40 cents plus a flat readiness-to-serve charge of $15.00 (Schedule A-8), and the balance at 26 cents (Schedule A-7-A). Two new contracts were signed on March 21, 1928, one continuing the Schedule A-8 rates and the other reducing to 21 cents the rate for gas in excess of 350,000 cubic feet. Under the terms of the contracts the new rates became effective March 25, 1928. These contracts were superseded on March 13, 1929, by one calling for service at a single rate of 15 cents (Schedule A-13-C) to be retroactive to January 26, 1929. There is nothing in this record to show the circumstances which led to the signing of the first contracts in 1921, but it is clear that when the new contracts were signed, March 21, 1928, defendant failed to call applicant's attention to the lower optional rates. While this complainant was not equipped to burn oil a discontinuance of service was not a serious

matter to it. If complainant had been apprised of the lower rate undoubtedly it would have at this time selected the one which it subsequently received on January 26, 1930. I am of the opinion reparation to the basis of 15 cents should be awarded for the period extending from March 23, 1928, to January 26, 1930.

The White Memorial Hospital was supplied gas under two contracts. The first at a rate of 26 cents was signed March 17, 1925, and the second at a rate of 18½ cents was signed March 30, 1929. The 18½-cent rate was made retroactive to March 23, 1929. The witness who testified on behalf of complainant was not familiar with the negotiations leading to the signing of the first contract. The second contract was signed after complainant had asked for the lowest rate applicable to its monthly consumption. Defendant offered a rate of 18½ cents which was accepted, but until March 1930 did not call attention to lower optional rates. According to its average monthly consumption complainant could have used the lowest rate applicable thereto, viz., 15 cents as it was equipped with standby oil equipment making a discontinuance of service of minor consequence. This complainant is entitled to reparation to this basis subsequent to March 23, 1929.

This brings us to a consideration of the third section of Rule 19. The Batchelder-Wilson Company, Repcal Glass Manufacturing Company, Vernon Potteries, Hoffman Candy Company, Junior Norris Galvanizing Company, Western Galvanizing Company, Union Tank and Pipe Company and Claycraft Pottery Company at various times between December 24, 1929, and March 26, 1930, made written request to defendant to place them, after the next regular meter reading, upon some one of the schedules provided in the tariff. With the exception of the Vernon Potteries, Claycraft Pottery Company and Batchelder-Wilson Company these requests were ignored. The Vernon Potteries subsequently receded from their

written request. The Claycraft Pottery Company received the rate which it requested and the Batchelder-Wilson Company, as previously stated, was tendered a new contract satisfactory to it. Apparently defendant has followed the practice of complying with the consumer's request only if in its judgment the consumer would not be injured by an interruption of service. While it is true that most of these complainants were not equipped with standby oil facilities and their plants would probably be forced to discontinue operations in event of gas shortage, the rule does not place within defendant's province the right to substitute its judgment for that of the consumer. Complainants duly notified defendant to change their rates and by the terms of Rule 19 there was no course for defendant to follow other than to comply with the requests. The rule may lead to some abuses but as long as it is in the tariff it is a definite holding out to the consumer that his schedule will be changed after the next regular meter reading. The rule must be observed.

After consideration of all the facts of record I am of the opinion the Commission should find:

1. That the rates assessed and collected from the Batchelder-Wilson Company during the period extending from July 25, 1929, to January 25, 1930, were unlawful to the extent they exceeded 40 cents plus a flat readiness-to-serve charge for the first 500,000 cubic feet of gas consumed and 16 cents for the balance, and that complainant is entitled to reparation, with interest at six per cent. per annum, to this basis.

2. That the rates assessed and collected from McLaughlin Glass Company during the period extending from March 25, 1928, to January 26, 1930, were unlawful to the extent they exceeded 15 cents and that complainant is entitled to reparation, with interest at six per cent. per annum, to this basis.

3. That the rate assessed and collected from the White Memorial Hospital during the period covered by this complaint but subsequent to March 30, 1929, was unlawful to the extent it exceeded 15 cents and complainant is entitled to reparation, with interest at six per cent. per annum, to this basis.

4. That the rates assessed and collected from the Repcal Brass Manufacturing Company, E. A. Hoffman Candy Company, Junior Norris Galvanizing, Inc., Western Galvanizing Company and Union Tank and Pipe Company were unlawful after the first regular meter reading following the written request to defendant for a change in service, to the extent they exceeded the rates requested and that these complainants are entitled to reparation, with interest at six per cent. per annum, to this basis.

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

The amount of reparation due is not of record. Complainants will submit to defendant for verification a statement of the exact sum due, and upon the payment of reparation defendant will notify the Commission the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

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 and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant, Southern California Gas Company, be and it is hereby directed to refund, with interest at six (6) per cent. per annum, to complainants, Batchelder-Wilson Company, McLaughlin Glass Company, White Memorial Hospital, Repcal Brass Manufacturing Company, E. A. Hoffman Candy Company, Junior Norris Galvanizing, Inc., Western Galvanizing Company and Union Tank and Pipe Company, according as their interests may appear, all charges collected in excess of those found lawful in the opinion which precedes this order.

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 23rd day of August, 1930.

C. L. Lawler

Commissioners.