JLA

Decision No. 22807.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

A. J. BAYER COMPANY,
THE CHRISTOPHER CANDY COMPANY,
E. A. HOFFMAN CANDY COMPANY,
ITALIAN TERRA COTTA COMPANY,
PRICE, PFISTER BRASS MANUFACTURING COMPANY (INCORPORATED),
PUBLIC SERVICE BRASS CORPORATION,

Complainants,

vs.

LOS ANGELES GAS AND ELECTRIC CORPORATION,

Defendant.

Case No. 2840.

F. A. Jones and H. M. Avey, for complainants.

Paul Overton and Herman Phleger, for defendant.

CARR, Commissioner:

O P I N I O N

In this proceeding it is alleged (a) that the rates and charges for natural gas demanded and collected by defendant were in excess of the rates and charges shown in defendant's tariffs on file with this Commission, in violation of Sections 13 and 17(b) of the Public Utilities Act, and (b) that defendant has failed to observe or comply with Rule 19 of Sheet C.R.C. No. 192-G by denying complainants the right to select such schedule as they may desire and are entitled to, thereby imposing upon complainants unlawful rates and charges in violation of Section 30 of the Act.

We are asked to require defendant to cease and desist

from the alleged unlawful practices and to award reparation.

A public hearing was held before Commissioner Carr at Los Angeles May 21, 1930, and the proceeding submitted. The issues were primarily confined to an interpretation of the tariffs. The other allegations were unsupported.

Complainants were supplied gas by defendant at some one of the rates contained in four schedules, namely, G-1, G-3, G-5 and G-6. Schedule G-1 is the general domestic and commercial schedule, G-3 is the general commercial schedule, G-5 is a limited industrial schedule, and G-6 is applicable to the sale of surplus natural gas used for industrial purposes. The last named provides materially lower rates than the other three schedules.

The four schedules were subject to Rule 18 of defendant's Sheet C.R.C. No. 192-G. This rule provides in part, (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. A failure to comply with Rule 18 may constitute a basis for a reparation award. (City of Vernon et al. vs. Southern California Gas Company, 34 C.R.C. 46.)

There is nothing in this record to show with any certainty that defendant failed to comply with the first and second sections of the rule. However it is apparent the third

section of the rule, relating to the change of schedule, was not observed. Four of the complainants, namely, Price, Pfister Brass Manufacturing Company, Public Service Brass Corporation, The Christopher Candy Company and Italian Terra Cotta Company, at various times between January 27, 1930, and March 25, 1930, wrote to defendant stating they wished to be placed upon a lower schedule after the next regular meter reading. None of these requests was complied with.

The rates requested were those in Schedule G-6. At the present price of fuel oil they vary from 15 cents, with a minimum of $350.00 per month, to 36 cents, with a minimum of $35.00 per month. Service under this schedule is subject to discontinuance without notice in the event of a gas shortage and should a shortage occur the consumer paying the highest rate under this or other schedules has preference over those paying lower rates. A contract for a period of at least one year is required as a condition precedent to service. The schedule is silent as to the terms of the contract, but defendant incorporated therein a clause requiring the consumer to be equipped with auxiliary fuel apparatus which could be substituted for natural gas upon 30 minutes' notice in the event it became necessary to discontinue service. Complainants were not equipped with standby fuel facilities which could be changed over within the time specified in the contract, and apparently defendant refused the Schedule G-6 rates for this reason.

For their own protection it may be desirable in many cases for consumers using surplus gas to be equipped with auxiliary fuel facilities, but it seems to me defendant has gone beyond the provisions of the tariff in requiring this to be done. Schedule G-6 specifically states that the service rendered thereunder is subject to discontinuance without notice.

The consumer is thus aware of the extent of defendant's holding out under this schedule. But if after being placed upon notice of the charges of interrupted service the consumer still wishes to enter into a contract with defendant for service under the Schedule G-6 rates for a period of a year, I must conclude that a reasonable interpretation of Rule 19 gives to the consumer the final right of selection, and that the only conditions that may be imposed by defendant are those expressly set forth in the schedule. Certainly the tariff should not be construed to give defendant the right to arbitrarily substitute its judgment for that of the consumer, as it has done with these four complainants.

I am of the opinion the Commission should find:

1. That the rates assessed and collected for gas supplied for industrial purposes from Price, Pfister Brass Manufacturing Company, Public Service Brass Corporation, The Christopher Candy Company and Italian Terra Cotta Company are unlawful to the extent they exceed the rates requested in writing, and that these complainants are entitled to reparation with interest at six per cent. per annum to this basis during the period commencing with the first regular meter reading following the written request to defendant, subject to the condition that complainants enter into a contract with defendant to continue the rates requested for a period of at least one year.

2. That in all other respects 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, Los Angeles Gas and Electric Corporation, be and it is hereby directed to refund, with interest at six (6) per cent. per annum, to complainants, Price, Pfister Brass Manufacturing Company, Public Service Brass Corporation, The Christopher Candy Company and Italian Terra Cotta Company, according as their interests may appear, all charges collected in excess of those found lawful in the opinion which precedes this order, and subject to the condition that complainants enter into a contract with defendant to continue the rates requested for a period of at least one year.

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 23d day of August, 1930.

Commissioners.

Secretary Railroad Commission
State of California