Decision No. 23676

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

KERN VALLEY PACKING COMPANY,
-Oscar Rudnick-

Complainant,

vs.

SAN JOAQUIN LIGHT AND POWER CORPORATION,

Defendant.

ORIGINAL

Case No. 3277.

J. A. Einman and Jackson Mahon, for Complainant.

C. P. Cutten, for Defendant.

CARR, Commissioner:

O P I N I O N

Complainant, by a somewhat informal complaint, seeks recovery from San Joaquin Light and Power Corporation of the difference between the amount actually paid for power during the statutory period for which reparations may be awarded and the amount which would have been paid on the basis of demand meter measurements under the optional provisions of Schedule P-1. In June, 1932, at complainant's request, a demand meter was installed, so there is nothing here involved save the matter of reparations.

Schedule P-1 is of the load factor type, based upon horsepower of connected load with graduated rates for varying size of motor installations and is the schedule under which complainant was billed. This schedule, during the period here involved, carried the following special provision:

"The above rate and minimum charge may be based on H.P. of maximum demand instead of H.P. of connected load, in which case the maximum demand shall not be less than 50% of the rated active connected load and not less than 20 H.P."

This is, in effect, an optional rate, its advantage or disadvantage to a particular industrial consumer being dependent upon the peculiar characteristics of his usage. With a large connected load and a small maximum demand the option is advantageous to the consumer. If, on the other hand, his operations result in high monthly maximums it is disadvantageous. The use of the option calls for the installation of a special meter to measure and record the maximum demand.

Complainant began taking power from the defendant in 1923 and has gradually increased the load from 25 horsepower to some 170 horsepower. It is conceded that its bills would have been lower under the maximum demand basis of billing than under the connected load basis.

The San Joaquin Company has a rule No. 19 dealing with optional rates which, so far as here material, reads as follows:

"Where there are two or more schedules applicable to any class of service, the company or its authorized employees will call applicant's attention, at the time application is made, to the several schedules, and the consumer must designate which rate or schedule he desires.

"In the event of the adoption by the company of new or optional schedules or rates, the company will take such measures as may be practicable to advise those of its consumers who may be affected that such new or optional rates are effective.

"In the event that a consumer desires to take service under a different schedule than that under which he is being served, the change will become effective for service rendered after the next regular meter reading following the date of notice to the company, except, however, the company may not be required to make a change in the schedule after the first charge until 12 months of service has been rendered under the schedule then in effect,***"

The Commission has had occasion to consider a similar rule established by other utilities (Vernon vs. Southern California

Gas Co., 34 C.R.C. 46; Batchelder-Wilson Co. vs. Southern California Gas Co., 35 C.R.C. 132; Bayer Co. vs. Los Angeles Gas & Electric Co., 35 C.R.C. 137; Technical Gas Co. vs. Southern California Gas Company, 35 C.R.C. 764) and has held that a violation of the rule by the utility, under certain circumstances, entitled the consumer to reparations.

This rule has been and should be construed strictly against the utility and in favor of the consumer. Even though thus construed there is no evidence here of its violation. Complainant applied for service many years ago, signing at the time a contract referring specifically to Schedule P-1. There have been no changes in rates or schedules to bring the rule into play. No request to move over to the maximum demand option has been refused, but when this change was requested a maximum demand meter was installed. Assuming, although not holding, that a varying practice by the Company in advising some but not other consumers of the advantages of the option would be a violation of the rule, there is no evidence of any such practice. In effect, the complainant claims that the Company in a few instances has made retroactive adjustments of power bills to reflect charges under the maximum demand option, and that the Company should be required to make a similar adjustment here. Such adjustments, being in nature compromises of disputed bills and each involving its own peculiar facts, cannot furnish justification for finding an unlawful application of the schedule and rule as to the complainant, nor are such adjustments justification for finding that the charges collected from complainant are unreasonable or discriminatory. There is, therefore, under the record as here developed no ground upon which reparations could be awarded.

The following form of order is recommended:

O R D E R

Public hearing having been held in the above entitled case and the matter having been submitted,

IT IS HEREBY ORDERED that the complaint be and the same 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 27th day of February, 1933.

Commissioners.