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Decision No. _____.

ORIGINAL

Decision No. 4238

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

Standard Door and Sash Company,
a corporation,

Complainant,

v.

Southern California Edison
Company, a corporation,

Defendant.

Case No. 1046.

C. L. Kilgore and George L. Kiefer
for the complainant.
H. E. Trowbridge and Harry J. Bauer
for the defendant.

LOVELAND, Commissioner.

O P I N I O N

The complaint herein alleges in part that complainant is engaged in the operation of a planing mill in the City of Los Angeles; that at all times since July 1, 1912, complainant has been a regular

consumer purchasing all electric energy necessary for the operation of said mill from the defendant company; that at no time during this period has any power been consumed by complainant at said mill between the hours of 4:30 p.m. and 9:30 p.m.; that during the period between July 1, 1912 and September 30, 1915, the total amount paid by complainant for energy consumed was \$6,155.27; that during this latter period rates to be charged for electric energy were fixed from time to time by the City of Los Angeles by Rate Resolution of the Public Utilities Board and Ordinance of the City Council; that the rate in each instance so fixed was subject to a 20 per cent. discount if said power was not used between the hours of 4:30 p.m. and 9:30 p.m., said discount provision being known as the "Off Peak Power Rate". Complainant further alleges that it has demanded a refund of the sum of \$1,231.05, this being the difference between the rates actually paid to defendant and the "Off Peak Rate" from July 1, 1912 to September 30, 1915; that in October 1915 defendant granted the request of complainant for the lower rate, which has been enjoyed by complainant from that time until the date of the complaint herein; that defendant has not refunded the \$1,231.05 as demanded, or any part thereof; that complainant had no notice nor knowledge of the fact that there was a possible lower rate; that the alleged overcharge was a discrimination against complainant, and that it was incumbent upon the defendant "to grant to the complain-

ant as a valued consumer the lowest possible rate".

The complainant asks that the Railroad Commission make its order requiring defendant to pay to complainant the sum of \$1,231.05, together with interest at the rate of seven per cent. per annum from the date of collection, together with the cost of this proceeding, and also asks for any further relief which this Commission may find to be just.

Defendant denies that it had any knowledge as to the hours of operation of complainant's plant, or as to whether power was used between the hours of 4:30 p.m. and 9:30 p.m. during the period stated in the complaint. Defendant alleges that the rates fixed by aforesaid ordinances and rate resolutions were subject to a 20 per cent. discount, if power was not used between the hours of 4:30 p.m. and 9:30 p.m., only after determination by the Public Utilities Board upon investigation, that the proper means would be employed to insure the discontinuance of the load between the hours specified. Defendant denies that complainant was charged any rate higher than that to which complainant was entitled prior to the first of October 1915, when complainant applied for and was granted the off peak rate. Defendant further denies that complainant was given any treatment other than that accorded to any other consumer under similar circumstances; that complainant was discriminated against, or that the sum of \$1,231.05, or any part thereof, is justly due complainant. Defendant asks that the complaint be dismissed.

A public hearing was held herein at Los Angeles on March 24, 1917.

During the period between July 1, 1912 and August 8, 1915, the governmental control of public utilities operating in the City of Los Angeles, including the power to fix rates, apparently was vested in the Board of Public Utilities and the City Council of that city, and there being no evidence to the contrary, it must be assumed that this power was so vested. By authority of the Public Utilities Act of this State, as amended April 24, 1915, effective August 8, 1915, this power passed, on the latter date, to the Railroad Commission.

The rates paid by complainant to defendant during the period from July 1912 to September 1915, inclusive, were the rates established by the following ordinances of the City of Los Angeles:

Rate Resolution No. 5, Adopted April 30th, 1912, Board of Public Utilities of Los Angeles.

Rate Resolution No. 9, Adopted May 16th, 1913, Board of Public Utilities of Los Angeles.

Rate Resolution No. 11, Adopted April 22nd, 1914, Board of Public Utilities of Los Angeles.

Rate Resolution No. 15, Adopted April 29th, 1915, Board of Public Utilities of Los Angeles.

In each of said ordinances or rate resolutions, the following paragraph appears:

"For electric current for power purposes used by the consumer wholly off peak, or which is not to be used between the hours of four-thirty (4:30) o'clock p.m. and nine-thirty (9:30) o'clock p.m., the rate shall be in accordance with the regular or special schedule above specified, as the case may be, less twenty (20) per cent, provided the Board of Public Utilities, after investigation, determines that the proper means have been employed to insure the discontinuance of the load between the hours of four-thirty (4:30) o'clock p.m. and nine-thirty (9:30) o'clock p.m."

This clearly indicates that the rate resolutions of the Board of Public Utilities required certain specific investigations and findings by the said Board as a condition precedent to the obtaining of a reduction of 20 per cent. for "Off Peak Power".

Evidence introduced by complainant is to the effect that complainant did not, prior to August 1915, comply with the provisions of said Rate Resolutions relative to securing this "Off Peak Rate" by asking for the necessary investigation and authority to be granted by the said Board of Public Utilities. Complainant urges that it was in ignorance of the existence of such a rate and therefore could not have made the necessary application, and further that the defendant should have given complainant special notice of the availability of such rate.

It appears that since this rate, with certain definite provisions as to its application, was established by ordinance and was given prescribed legal publicity, complaint must be presumed to have had proper knowledge of the same, and not having in-

stituted the necessary preliminary steps to bring itself within the class of consumers for which this rate was established, until August 1915, I cannot find that complainant was entitled to the aforesaid "Off Peak Power Rate" prior to that time.

When the Railroad Commission assumed jurisdiction on August 8, 1915, the rates, rules and regulations of the utilities affected were, by the provisions of the Public Utilities Act, continued in effect until changed by order of the Commission, or until the rates, rules and regulations were changed by the defendant, filed with and approved by the Commission.

Defendant's rules and regulations, as filed with the Railroad Commission at that time, contained the provision concerning "Off Peak Power" in identically the same language as quoted above. The rule now in effect and which appears on Sheet C.R.C. No. 76-E of the Rate Schedule of the Southern California Edison Company on file with this Commission, and on public file in the defendant's offices since October 30, 1916, is also exactly the same as the aforesaid rule, except that it provides for preliminary investigation and authorization by the Railroad Commission instead of by the Board of Public Utilities.

I find as a fact that defendant, Southern California Edison Company, complied with the rules and regulations promulgated by ordinances or rate reso-

lutions of the City of Los Angeles during the period from July 1, 1912 to August 8, 1915, and thereafter with the rules and regulations of this Commission, by giving such ordinances, rules and regulations such publicity as was required by the terms thereof, and that complainant, Standard Door and Sash Company, was properly chargeable with a knowledge of such rules and regulations; that while complainant was in a class and conducted its business in relation to off peak service so as to entitle it to the lesser rate for taking energy during off peak hours, it did not comply with the regulations provided by the ordinances and rate resolutions of the said City of Los Angeles nor with the rules and regulations of this Commission after this Commission assumed jurisdiction of rates in said City of Los Angeles, and as compliance with said ordinances and rate resolutions of said City of Los Angeles and with the rules and regulations of this Commission was a prerequisite to demanding and receiving said lower rate for service during off peak hours, complainant, therefore, is not entitled to the refund asked for.

I submit the following Order:

O R D E R

A public hearing having been held in the above entitled matter, and the Railroad Commission

being fully advised in the premises, and finding that the complainant herein is not entitled to the relief, or any portion thereof, for which complainant asks,

IT IS HEREBY ORDERED that the above entitled case 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 9th day of April, 1917.

Max Thelen

J. B. Loveland

Edwin C. Edgeston

Frazer C. Dyer

Commissioners