PE

Decision No. 7576

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of the PACIFIC GAS AND ELECTRIC COMPANY, a corporation, for an order of the Railroad Commission of the State of California, authorizing it to charge and collect from its steam heating consumers in its Alameda County District and San Francisco District, the established rates for steam heating service in said districts, and authorizing applicant to increase the rates of certain consumers

Application No. 5014

Charles P. Cutten, for Applicant.
H. B. Winkleman, J. M. Pembroke, Mrs. A. Cook and Charles E. Taylor, for the Apartment House Owners and Managers Association.
Albert A. Greenbaum, in propria persona.
Mrs M. W. Creigh, for the San Francisco County Nurses Association.
D. L. Healy, for Winters & Prophet.
Charles S. Cushing, for the Bohemian Club.
E. G. Schmidell, in propria Persona.
J. H. Shaw, in propria persona.

BRUNDIGE, Commissioner.

O P I N I O N

Pacific Gas and Electric Company applies herein for the approval of certain schedules of rates for steam service and the authority to charge in accordance therewith all of its non-contract consumers and all of its consumers whose contracts have expired since July 22, 1919. It further asks, however, that it be permitted to continue to charge certain other consumers in accordance with contract rates lower than the proposed standard

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schedules of rates. A hearing was held in San Francisco on November 24, 1919. Thereafter time was alloted to the various parties to this proceeding to file certain statements as to the authority of the Commission to permit the continuance of the special/contract rates. The matter now is ready for decision.

This is the first proceeding affecting heat utilities brought before the Commission since its jurisdiction was extended by amendment to the Public Utilities Act to include heat corporations as public utilities, effective July 22, 1919.

The legislature of 1919 amended the Public Utilities Act, declaring "heat corporations" to be public utilities subject to the jurisdiction, control and regulation of this Commission. At the same time it amended Section 17 b. of the act so that it now reads as follows (the part appearing in capital letters constituting the new matter):

> "Except as in this section otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any PUBLIC UTILITY ENGAGED IN FURNISHING OR RENDERING MORE THAN ONE PRODUCT, COMMODITY OR SERVICE, CHARGE, DEMAND, COLLECT OR RECEIVE A GREATER OR LESS, OR DIFFERENT COMPENSATION FOR THE COLLECTIVE, COMBINED OR CONTEMPORANEOUS FURNISHING OR RENDITION OF TWO OR MORE OF SUCH PRODUCTS, COMMODITIES OR SERVICES, THAN THE AGGREGATE OF THE RATES, TOLLS, RENTALS OR CHARGES SPECIFIED IN ITS SCHEDULES ON FILE AND IN EFFECT AT THE TIME, APPLICABLE TO EACH SUCH PRODUCT, COMMODITY OR SERVICE WHEN SEPARATELY FURNISHED OR RENDERED, NOR SHALL ANY SUCH public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; provided, that the Commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility."

Pacific Gas and Electric Company, herein referred to as applicant, is engaged, among its various utility services, in the

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supply of steam for heating purposes in the cities of San Francisco and Oakland. At the date hereof it supplied 360 consumers in San Francisco from its own generating station of a capacity of 1800 boiler horsepower and from three leased plants located in the St Francis Hotel, the Humboldt Bank Building, and the Emporium Building, the capacities of which aggregate 1100 boiler horsepower. Its steam distributing system in San Francisco comprises 38,000 feet of mains. In Oakland service is supplied to 70 consumers from boilers at applicant's electric generating station through 15,000 feet of mains.

The charges for service rendered to various consumers may be analyzed as follows:

1. - Schedule C fixes rates to be charged certain consumers in San Francisco for straight steam heating service.

2. - Schedules A and D fix rates for certain consumers in San Francisco, the amount charged being less than that fixed by Schedule C, and contingent upon the consumer being also an electric consumer of the applicant herein.

3. - Schedule B fixes rates to be charged consumers in Oakland for straight steam heating service.

4. - Special Contract Rates applying to certain consumers in both San Francisco and Oakland, there being no regularity in the rate, but in all cases the service is conditional on the concern taking electric service and the amount charged is less than that fixed under any of the schedules above noted.

The record shows that there are 245 consumers being served under Schedules A, C and D, the majority of which are supplied under

Schedule D. Fifty-five consumers are under Schedule B, and under Special Contract Rates there are 115 in San Francisco and 15 in ~~xxxx~~ Oakland.

It appears that the special contracts were entered into prior to the amendment of the Public Utilities Act in 1919, whereby the jurisdiction of the Commission was extended over heating companies. It is also probably true that such special contracts are the result of active competition between the applicant and other public utility companies furnishing electric energy to consumers in the cities of San Francisco and Oakland. The steam heating business was apparently entered into for the purpose of extending or retaining the electric service of these competing companies by offering the service of steam heat at a very low rate upon the condition that the consumer would, in each case, agree to take electric service from the company furnishing the heating service.

It must be recognized at the outset that schedules which fix a lower rate for a combined service for heat and electricity than the aggregate of the rates in effect for each service rendered separately are contrary to the provisions of Section 17 (b) of the Public Utilities Act as amended in 1919, and must be discontinued.

As to the Special Contract Rates, a peculiar situation is presented. The applicant expresses a willingness to fulfill its obligations under all these contracts. Applicant further desires, as soon as each contract expires, to place the consumer thereunder upon the same basis as consumers supplied under schedules regularly filed with this Commission by the applicant, setting forth its rates for steam heating.

Unless the Commission, for good and sufficient reason, by rule or order, permits exceptions, the rates to all consumers are required to be uniform. Therefore, as to all contracts which

have expired, the regular rates should be immediately placed in effect. It is unquestioned that the consumers entered into these contracts in good faith. Notwithstanding this circumstance, there appears to be good reason why these contract rates also should be superseded and the consumers placed under the regular schedules.

That private contract rates must yield to public welfare, where the latter is to be served by the exercise of jurisdiction over rates by a public body, is definitely declared by the United States Supreme Court in the case of Union Dry Goods Co. v Georgia Public Service Commission, 248 U.S. 372 P.U.R. 1919 C, p. 60. Mr. Justice Clark in delivering the opinion of the Court said:

> "That private contract rights must yield to the public welfare, where the latter is appropriately declared and defined and the two conflict, has been often decided by this court. Thus in Manigault v. Springs, 199 U.S. 473, 480, L. ed. 274, 278, 26 Sup. Ct. Rep.127, it was declared that:
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> > "'It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from (properly) exercising such powers **** for the general good of the public, though contracts previously entered into between individuals may thereby be affected.'" 'This on authority of many cases which are cited."

Furthermore it has been decided by the Supreme Court in the case of Producers Transportation Co. v. Railroad Commission, U. S. Supreme Court Adv. Ops. 1920, p. 166, wherein an order by this Commission was sustained, that the jurisdiction of the regulatory body over rates charged by a public utility would apply to service being made pursuant to a contract which, as in this case, was entered into prior to the enactment of the statute permitting such regulation. In the case last referred to the court, in citing the principle laid down in the Union Dry Goods Co. case, added:

"That some of the contracts before mentioned were entered into before the statute was adopted or the order made, is not material."

It is clear, therefore, that this Commission has jurisdiction to prescribe rates which shall be applicable to all of the consumers of the applicant, including those now enjoying a special contract rate.

It has already been stated that the rate fixed for steam heating service under the special contracts was lower than that fixed by the regular schedule. As will appear later in this opinion, the evidence shows that the rates under the regular schedule do not now produce a reasonable return. It must therefore, be concluded that the Company, in offering the special contract rates, intentionally bound itself to furnish the service at a loss, at least temporarily. This voluntary sacrifice on the part of the Company is consistent with one of two theories: Either it was made by the Company as a necessary expenditure to be charged up as development cost of its steam heating business, or it was made as an out of pocket expenditure which it believed to be necessary under competitive conditions either to retain or to extend its electrical business. Certainly no one will contend that the applicant expended this amount of money for purely philantrophic reasons.

Assuming the first proposition, namely, that the furnishing of steam heat at a loss was done with the hope of developing the steam heating business to the point where it would become a profitable enterprise, it is logical to assume that at some time the Company would seek to be reimbursed through rates sufficiently high to secure a return on its investment, including as one item thereof the cost of developing the business. If, at some future time, rates should be fixed on such basis, the consumers at that time would be required to carry the burden which the present holders of these preferential contracts have

avoided. Under such conditions outright discrimination necessarily would result and it is clear that the contract rates should not longer be continued in effect.

If we are to assume, as the evidence seems to indicate, that the low heating rate provided in these special contracts, involved a direct out of pocket loss which the applicant assumed either for the purpose of preserving or extending its electrical business under competitive conditions, there then would appear no way in which the applicant could recoup these losses, except in so far as the increased profits in its electrical business resulting from the larger lighting load would tend to extinguish these losses. While there apparently is no discrimination existing as between the consumers of the various classes of service supplied by this applicant - that is, the losses sustained in the heating business do not appear to have been transferred to the electrical, or gas, or water consumers served by this company - nevertheless it is clear that discrimination does exist as between the steam heat consumers themselves.

Discrimination in rates as between consumers receiving the same character of service is viewed with disfavor because of the unfair advantage which the favored consumers have over those not so favored. Section 19 of the Public Utilities Act provides:

> "No public utility shall as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

In the present instance it is easy to understand that the owner of a building enjoying a preferential rate under one of the special contracts in question is in a better situation,

so far as overhead expenses are concerned, than the owner of another building receiving the same character of steam heating service under the higher rate prescribed by the regular schedule for such service. The holder of the special contract enjoying the lower rate is given a "preference" and an "advantage". Contrasted with the holder of one of these special contracts the person compelled to pay the higher open rate suffers a "prejudice" and a "disadvantage".

Therefore, even though the applicant in this case expresses a willingness to carry out its contracts and to maintain an unprofitable business of supplying steam heat without attempting to reflect this loss in any of its rates, either as a steam heating utility or as an electric utility, still the Commission is faced with the fact that to continue these special contracts in force would be to permit the continuation of discriminatory rates which are expressly prohibited by the Public Utilities Act. To permit discriminatory practices to continue would not only be contrary to the plain letter of the Public Utilities Act, but also violative of its very spirit for the reason that the chief purpose of its enactment was to put an end to discriminatory practices.

A further reason, and one which is entirely sufficient in of
and itself, why the rates fixed by these special contracts should be abrogated lies in the fact that the making of these contracts as an inducement to secure electric consumers appears to be in distinct violation of the provisions of Section 17 (b) of the Public Utilities Act even prior to its amendment as above noted in 1919. Prior to such amendment, this section provided:

> "(b) Except as in this section otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such

> product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; provided, that the Commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility."

The conclusion seems unavoidable that where a special contract for a lower rate for steam heat was offered by the applicant upon the condition that the consumer would also take electricity from the applicant constitutes the very fact that is prohibited by the latter part of the section above quoted. If not, indeed, a refund, "directly or indirectly, in any manner or by any device" of a portion of the rates, tolls or charges, it seems clear that it is an extension "to any corporation or person any form of contract or agreement" not regularly and uniformly extended to all persons.

It has been suggested that the Commission is authorized by the language of the section above quoted to establish such exceptions from the operation of the prohibition as it may consider just and reasonable as to each public utility, and that authority is thereby conferred to permit these special contracts to continue in effect until they expire by their own terms.

It may be questioned whether any justification could be found for permitting an outright violation of the prohibition of the section. There well may be exceptions contemplated by the law as amended, other and different from those urged by contract holders herein, but, suffice it to say that the evidence in this case does not disclose facts which would constitute just and reasonable grounds for an exception.

Applicant shows that its steam heating business is in no sense remunerative, that for the year ending December 31, 1919, its revenues from the sale of steam were insufficient to meet even its direct operating expenses, and that if any allowance for depreciation and return upon its investment be considered, a far greater deficit results. This is equally true of its service both in San Francisco and Oakland. For the period in question its gross revenues aggregated $312,300, and its operating expenses, including maintenance, fuel oil, taxes, general expenses, etc., amounted to $381,210, with a resulting deficit of $68,910, before taking into account depreciation and return upon its investment which is in the neighborhood of $475,000.

Applicant further shows that if all its consumers now supplied on special contract rates be charged in accordance with its Schedule "D" in San Francisco and Schedule "B" in Oakland, both of which it proposes to establish as the basis of charge for heating service, its revenues would be increased approximately $64,000 per annum. In other words, if the deviations in existing contracts be removed, the additional revenue would still be insufficient to show any return upon the investment and would not be sufficiently in excess of direct operating expenses to even provide a proper depreciation reserve for the facilities employed.

Referring now to the standard schedules heretofore submitted to the Railroad Commission and designated herein as Schodules "A", "C" and "D" applicable to San Francisco, and Schedule "B" applicable to Oakland, all except Schedules "B" and "C" involve the combined service of steam and electricity and must per se be discontinued as in violation of Section 17 (b) of the Public Utilities Act. Pacific Gas and Electric Company proposes the establishment of the rates and charges set forth in Schedules "B" and "D" as a basis of charge for steam service in Oakland and San

Francisco respectively. Schedule "C" does not, in my judgment constitute a fair schedule, in that it makes no recognition of a reduced rate for increased use. Upon examination of the charges proposed in Schedules "B" and "D", I find that they conform to the generally accepted requirements of a rate schedule for utility service. The proposed rates have been in effect for an extended period prior to the Commission's jurisdiction over heat utilities, and do not contemplate any increase in charges for steam service.

As has been pointed out above, the application of these schedules to the sale of steam in San Francisco and Oakland will not produce any substantial margin over and above operating expenses. We must, nevertheless, consider the comparatively low density of service, the climate conditions precluding extensive use of steam for heating and the value of the service rendered. While the proposed rates are not in themselves entirely remunerative, it is reasonable to expect that their continuance at this time will result in a gradual increase in this business without a proportional increase in expenses and that ultimately applicant's steam business may be made profitable.

Steam consumption is generally measured by the collection and weighing of the condensed steam in a meter. In some instances, however, the serivce is such that the condensed steam cannot be collected and weighed. The rates herein established will be based upon meter measurement except in such cases where condensation cannot be collected and measured, and in this event the charges will be based upon the estimated consumtion of steam.

I shall therefore advise that the schedules set forth in the order herein, which conform to the rates and charges of Schedules "B" and "D", hereinbefore referred to, be approved for steam heating service in the localities supplied, and accordingly I submit the following form of order:

O R D E R

Pacific Gas and Electric Company having applied to the Railroad Commission for certain adjustments in its rates and charges for steam heating service, a public hearing having been held and the matter submitted,

The Railroad Commission of the State of California hereby finds as a fact that the rates charged by Pacific Gas and Electric Company for steam heating service, which are conditional upon the consumers thereof becoming or continuing as electric consumers and which are lower than the rates charged for steam heating service alone, are discriminatory and in violation of the Public Utilities Act; that the rates for steam heating service charged by Pacific Gas and Electric Company in accordance with certain existing contracts which differ from the standard schedules of rates herein established are likewise discriminatory; and that the rates and charges for steam heating service herein established are, under present conditions, just, fair and reasonable rates.

Basing its order on the foregoing findings of fact and on the other findings of fact contained in the Opinion which precedes this Order,

IT IS HEREBY ORDERED that, effective for all regular meter readings taken on and after the first day of June, 1920, Pacific Gas and Electric Company shall charge and collect for steam heating service the following schedule of rates, which rates shall apply to all steam heating service except to those classes of consumers to whom it may grant free or reduced rates in accordance with Section 5 of General Order No. 45 of this Commission.

SCHEDULE I

Character of Service:

Steam will be supplied under this schedule for heating service.

Territory:

This rate applies in the City and County of San Francisco.

Measurement of Service:

The consumption of steam will be measured by condensation meters. In such cases where the condensation can not be measured, the charge will be based upon estimated consumption of steam.

Rate:

Upon the basis of monthly consumption per meter

For the first	20,000	pounds	- - - - - -	$1.50	per thousand pounds
" " next	25,000	"	- - - - - -	1.25	" " "
" " "	35,000	"	- - - - - -	1.10	" " "
" " "	150,000	"	- - - - - -	1.00	" " "
" " "	170,000	"	- - - - - -	.90	" " "
" all over	400,000	"	- - - - - -	.75	" " "

Minimum Charge:

Monthly minimum charge of $1.00 per 100 sq. ft. of direct radiation per month, but not less than $7.50 per month per meter.

SCHEDULE 2

Character of Service:

Steam will be supplied under this schedule for heating service.

Territory:

This rate applies in the City of Oakland, Alameda County.

Measurement of Service :

The consumption of steam will be measured by condensation meters. In such cases where the condensation can not be measured the charge will be based upon estimated consumption of steam.

Rate:

Upon the basis of monthly consumption per meter

FOR	the	first	5,000	pounds	- - - - -	$1.50	per	thousand pounds
"	"	next	15,000	"	- - - - -	1.25	"	" "
"	"	"	25,000	"	- - - - -	1.10	"	" "
"	"	"	25,000	"	- - - - -	1.00	"	" "
"	"	"	130,000	"	- - - - -	.90	"	" "
"	all	over	200,000	"	- - - - -	.75	"	" "

Minimum Charge:

Monthly minimum charge of $1.00 per 100 sq. ft. of direct radiation per month, but not less than $7.50 per month per meter.

PROVIDED, Pacific Gas and Electric Company shall, within ten days of the date of this Order, file with the Railroad Commission the schedules of rates for steam heating service herein established, and further,

PROVIDED, Pacific Gas and Electric Company shall file with the Railroad Commission rules and regulations for steam heating service subject to the approval of this Commission.

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 17th day of May, 1920.

Edwin O. Edgerton
H. D. Loveland
Frank R. Devlin
H. W. Brundige
Irving Martin
Commissioners.