

Decision No. 26367.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

BASSO FRENCH BAKERY,
COSMOPOLITAN BAKING COMPANY,
EAGLE BAKERY and
LOS ANGELES BAKING COMPANY,

Complainants,

vs.

LOS ANGELES GAS AND ELECTRIC
CORPORATION,

Defendant.

ORIGINAL

Case No. 3599.

J. B. Cress, for Complainants.

Paul Overton, for Defendant.

CARR, Commissioner:

O P I N I O N

Complainants seek reparation from the Los Angeles Gas and Electric Corporation in the amounts, respectively, which they actually paid for natural gas under the company's Schedule G-3, over the amounts which they would have paid had they been served under Schedule G-5. These claims cover the full statutory period for which reparations may be allowed.

A public hearing was had on September 20, 1933, and the case was submitted.

While the complaint is inartistically framed and probably could not fairly be construed as a claim for damages for discrimination, it is enough to say there is no proof of damages sustained

which is essential to an award of reparations for unlawful discrimination. (See Los Angeles County v. Pacific Electric Railway Company, 28 C.R.C. 143; Pennsylvania Railroad Co. vs. International Coal Co., 230 U.S. 184.)

Schedule G-5 of the Los Angeles Gas and Electric Corporation has been in effect in its present form since December 1, 1928. Prior to that time, similar schedules carrying slight changes in phraseology, unimportant here, were in effect. The present Schedule G-5 is as follows:

CLASS "A" INDUSTRIAL SERVICE LIMITED

NATURAL GAS

Industrial Service

Applicable to industrial service of natural gas on existing mains having a delivery capacity in excess of the present requirements of consumers now served under domestic and commercial schedules, which consumers have priority in the use of gas at times of shortage of natural gas supply. For purposes where gas fuel is essential for operation, such as special metal working processes, glass manufacture, special tile manufacture, and the preparation of certain food products where the demand for gas does not vary materially with atmospheric temperature.

Territory

Applicable to entire territory supplied by this corporation.

Rate

Readiness to serve charge, \$15.00 per meter per month
Plus consumption charge, 40¢ per M. cu. ft.

Special Conditions

(a) Service under this schedule will be granted only subject to the authorization and approval of the Railroad Commission of the State of California.

(b) Service under this schedule has priority over other industrial service, but is subject to discontinuance in case of necessity in favor of domestic and commercial service as provided by Schedules G-1, G-2 and G-3.

For many years the utility construed this schedule to apply to bakeries engaged exclusively in a wholesale business and

not engaged in retail selling at the particular place where their wholesale processes were carried on. On March 1, 1933, fifteen wholesale bakeries were being served under this schedule.

On March 8, 1933, apparently under pressure from its consumers, the utility modified its interpretation of the schedule so that it would include as bakeries entitled to service, those bakeries where any retail business conducted on the premises where the wholesale process occurred was merely incidental to the wholesale business. Shortly after this change in interpretation and on March 30, complainants, Basso French Bakery, Cosmopolitan Baking Company and Los Angeles Baking Company, and on April 20, 1933, complainant Eagle Bakery, went under the schedule. Each of these complainants, according to the testimony, sold at retail stale bread and a very small amount of fresh bread at the premises where the manufacturing process took place. Thus they came within the schedule under the new interpretation given to it.

That Schedule G-5 is somewhat vague and uncertain in its scope may hardly be questioned. In view of the fact that Schedule G-3, under which these complainants were served, was by its terms specifically applicable to bakeries, and in view of the history and application of Schedule G-5, as developed in the record, it cannot reasonably be held that these complainants, prior to March 8, were wrongfully deprived of service under the provisions and rates of this more favorable schedule, or that Schedule G-5 was misapplied prior to that date. However, Schedule G-5 was misapplied on and after March 8, 1933. It is, indeed, an anomalous situation when a utility, by mere interpretation, can extend the scope of the application of a given schedule, as was done here. The ordinary and usual mechanics for effecting such a change would be the filing of

a new schedule definitely and specifically describing the additional uses and businesses to which it is applicable. So far as the relationships between the utility and consumer are concerned, the effect of this change in interpretation is substantially the same as if the company had republished on full statutory notice effective on March 8, its Schedule G-5 making it specifically embrace the businesses which by interpretation it was made to embrace. It is not unreasonable to fix the rights of the consumers and the duty and obligation of the utility on this basis. Under the peculiar circumstances here the Commission should hold that complainants were assessed an unreasonable charge on and after March 8, 1933. Reparations then would be for a period of slightly over three weeks in the case of Basso French Bakery, Cosmopolitan Baking Company and Los Angeles Baking Company, and a little over five weeks in the case of Eagle Bakery.

The record is not clear as to the amount of reparations to which the several complainants would be entitled. Bills would have to be pro rated for portions of a month. Furthermore, the company, following the decision of the United States Supreme Court in Los Angeles Gas and Electric Corporation v. Railroad Commission (77 L. Ed., Ad.Op. 820) has made, or is in process of making, certain refunds to its consumers under its G-3 schedule, and the amount of such refunds would affect the amount of reparations. Complainants should submit to the utility a statement of their claims on the basis herein indicated and the parties should experience no difficulty in ascertaining the precise amount due.

I recommend the following form of order:

O R D E R

Public hearing having been had in the above entitled case, and based upon the findings in the preceding opinion,

IT IS HEREBY ORDERED that Los Angeles Gas and Electric Corporation pay to the respective complainants reparations on the basis indicated in the opinion, with interest at the rate of six per cent (6%). If the precise amount thereof cannot be agreed upon by the parties, this proceeding will be reopened at the request of any party, for the purpose of determining such precise amounts.

The effective date of this order shall be twenty (20) days from the date hereof.

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 25th day of September, 1933.

C. J. Seaver
Leon ...
W. H. ...
M. B. ...
M. H. ...