Decision No. 27570

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

PARAMOUNT PRODUCTIONS INC., a corporation,

Complainant,

vs.

Case No. 3861.

LOS ANGELES GAS AND ELECTRIC CORPORATION, a public utility corporation,

Defendant.

ORIGINAL

T. A. Hunter, for Complainant.
Paul Overton, for Defendant.

CARR, Commissioner.

O P I N I O N

By complaint filed on June 30, 1934 the Los Angeles Gas and Electric Corporation is charged with a violation of Sections 13, 17(b) and 19 of the Public Utilities Act. Reparations or damages in the sum of $14,406.06, as well as future cessation of the claimed violations are sought. The charges in the complaint are controverted.

A public hearing was had on November 14th, at which time the case was submitted.

The facts as developed at the hearing may be summarized as follows:

The complainant operates a large motion picture studio and plant in Los Angeles. It uses gas for space heating, water heating, under boilers, air conditioning, for its private restaurant and for various of its industrial and manufacturing processes. Gas is now furnished through six meters. Two of these measure gas

furnished and billed under regular domestic schedules. The other four meters are combined and record gas usage billed under Schedule G-4. During the entire period here involved the utility had in effect its G-4 Schedule for "Central Plant Heating, Natural Gas," in its present form declared to be

> "Applicable to the service of natural gas for apartment buildings, hotels, clubs, schools and other educational institutions, public institutions, hospitals, charitable institutions, theaters and office buildings, in connection with which natural gas is actually used exclusively as fuel for both central water heating and central steam heating plant purposes."

and which now accords a rate of 5.25¢ per 100 cu. ft. for the first 100,000 cu. ft. per month, and of 4¢ for all over 100,000 cu.ft., added to a $15.00 per month readiness to serve charge. (Prior to its refiling in 1933 the rate was somewhat higher.)

Effective on March 16, 1929, defendant published its Schedule G-6 for "Commercial and Industrial Service - Surplus Natural Gas," declared to be

> "Applicable to the sale of surplus natural gas for commercial heating purposes and for industrial service to: boilers, internal combustion engines, food manufacturing establishments, laundries, machine shops, incinerators, kilns and other industrial uses."

Service under this schedule was subject "to immediate discontinuance in case of shortage of natural gas supply." Sub-schedule (c) of this schedule, being the sub-schedule pertinent to the complainant's usage, accorded a rate of 25¢ per thousand cu. ft., with a minimum of $150.00 per month, the volumetric rate varying according to current open market prices for fuel oil.

This schedule continued in effect until December 1, 1933, when it was superseded by "Revised Sheet C.R.C. No. 302-G." The change effected by this later filing, so far as here pertinent, was the insertion of a new special condition as follows:

> "(a) This schedule is not applicable to service supplied to restaurants, cafes, apartment houses, flats, residences, churches, schools, retail food manufacturing equipment, incubators, brooders, commercial establishments, hot air furnaces or space heaters, or where gas is used in conjunction with the preparation of meals."

This, it was claimed by the utility, merely expressed the practical interpretation it had placed upon the schedule.

On April 5, 1934, after having secured certain engineering advice, the complainant, in writing, demanded that the utility as to the service under the four meters referred to and also as to the meter serving administration building No. 1[1] apply its Schedule G-5 as to 100,000 cu.ft. per month and as to the balance of the usage under the five meters apply its Schedule G-6(c) and also make refunds of the difference between the amounts paid and the amounts which would have been paid for the service under Schedules G-5 and G-6 for the statutory period for which overcharges or damages could be recovered. Then followed a somewhat voluminous correspondence between Mr. Hunter on behalf of the complainant and employes and officers of the utility, in which the respective contentions of the parties were aired at length. Suffice it to say that the utility refused the demand but did offer to place some of the use at the studio, namely, for certain high pressure steam boilers, metal melting furnace and other similar apparatus, under Schedule G-6(c). This offer, although meaning a saving to the complainant of some $1900 a year in its gas bills, was rejected.[2]

The complainant's position and claims in respect to Schedule G-5 are anything but clear and apparently relief so far as it is concerned with this schedule is not pressed. Schedule G-5 is a limited industrial schedule, subject to shut-off but having

1. The fixtures in this building consist of 92 steam radiators, 1 water heater and a 2 unit furnace.

2. Apparently because of the high monthly minimum charges under the G-6 Schedule there was nothing to be gained by complainant in taking service under its terms at the commencement of the warm period of the year. The compilation of claimed over charges in the complaint specify none for any meter reading after that of April 7, although the complaint was not filed until June 30.

priority over Schedule G-6. It may be applied only upon special permission of the Railroad Commission and at all times has been limited to certain industrial uses "where the demand for gas does not vary materially with atmospheric temperature." No evidence was adduced indicating its applicability to the complainant. It is not referred to in the body of the complaint nor does the prayer for relief make mention of it. Indeed, it is apparent that the gravamen of the complaint has to do with Schedule G-6 and it was as to the complainant's rights and the defendant's liabilities in respect to this that the evidence was directed.

The circumstances under which the complainant commenced service under Schedule G-4 are pertinent. On September 13, 1929 Paramount Famous Laskey Corporation (the then corporate name of the complainant) by D. L. Manning, its mechanical engineer, applied in writing for service under Schedule G-4, pursuant to which application service has since been given. Three witnesses testified to the circumstances leading up to the making of this application, Charles M. Roberts and C. A. Thorpe, industrial engineers for the defendant, and the said D. L. Manning, who is not now with the complainant. It seems that in the spring of 1929 a Mr. Brady was the officer or employe of the complainant having to do with its gas service, Mr. Manning being in the nature of an assistant to him. The complainant being dissatisfied with its charges for gas, Mr. Manning, at the request of Mr. Brady, called the defendant, as the result of which Mr. Roberts and Mr. Thorpe went to the plant and talked the situation over with Mr. Brady and Mr. Manning. The matter of service under Schedule G-6 was, according to each of the witnesses, brought up. When it was called to Mr. Brady's attention that service under this schedule was subject to immediate shut-off he declared that this was "out." Early in May, 1929, Mr. Brady died and Mr. Manning took over his duties. The complainant being still dissatisfied with its gas charges, Mr. Manning again called the

Company and Mr. Roberts and Mr. Thorpe again, either in the latter part of August or the first part of September, 1929, visited the studio and went over the situation this time with Mr. Manning. The use of Schedule G-6 was, according to the testimony of these witnesses, again discussed and was eliminated because of its shut-off feature. A new Schedule G-4 having been established, service under this was applied for by the Company.

The conclusions to be drawn from the situation thus outlined and other facts of record, to which reference will be made where pertinent, may be stated as follows:

1. Respecting Reparations and Damages.

(a) Indulging in the extremely doubtful assumption that the question of unreasonableness and a consequent right to reparations may be raised, as here, by a single consumer,(3) the record is entirely devoid of evidence to support a finding of unreasonableness justifying reparations under Sec. 13.

(b) Claim is made for damages for discrimination under Sec. 19 of the Act premised upon a claim of discriminatory practices by the utility in the application of the schedule as between consumers. A long line of decisions by the United States Supreme Court and by this Commission have firmly established the requirement of proof of actual damage by a complainant for recovery upon this ground. (Pennsylvania R. Co. vs. International Coal Min. Co., 230 U.S. 184; Keogh v. Chicago & N.W. R. Co., 260 U.S. 156; I.C.C. v. U.S. 289 U.S. 385; Steiger Terra Cotta & P. Works v. S.P. Co., 7 C.R.C. 288; L.A.

3. Sec. 60 of the Act provides that "no complaint shall be entertained by the Commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless the same be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city and county, or city or town, if any, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers or prospective consumers or purchasers, of such gas, electricity, water or telephone service."

County v. P.E. Ry. Co., 27 C.R.C. 337.) In I.C.C. v. U.S., supra, decided on May 8, 1933, the Supreme Court, speaking through Mr. Justice Cordoza, discussed at some length the different consequences flowing from overcharge and discrimination. Referring to damages for discrimination, it was said:

> "The question is not how much better off the complainant would be today if it had paid a lower rate. The question is how much worse off it is because others have paid less."

There is not a scintilla of evidence in the record showing damages within the rule.

(c) This Commission in Vernon et al. v. So.Cal. Gas Co., 34 C.R.C. 46, Batchelder-Wilson Co. v. So.Calif. Gas Co., 35 C.R.C. 132, A. J. Bayer Co. v. L.A. G. & E. Corp., 35 C.R.C. 137, Technical Glass Co. v. So. Cal. Gas Co., 35 C.R.C. 764, definitely established the rule (a) that where a utility does not conform to the provisions of Rule 19 (the same for both of these companies) in respect to giving notice of optional schedules and it may reasonably be deduced from the evidence that had it conformed to its rule the customer would have elected service under a lower schedule reparations may be granted for the difference between the amounts chargeable under the two schedules; and (b) that under Rule 19 the consumer has the right of election as between applicable schedules and a refusal to serve after a proper election has been made renders the utility liable for overcharges. It is this rule which formed the main basis of the claims for reparation.

For the period prior to the first meter reading after April 5, 1934 (when the demand was made) there is no evidence which would bring this complainant within the rule laid down in these cases. As said in Vernon v. So. Cal. Gas Co., supra, contracts for service under priority schedules raise "a strong presumption that complainants selected the rates shown therein for their priority privileges." Here there is not only a written application for service under Schedule G-4,

accepted by the Company, but the uncontradicted testimony points to a deliberate and informed selection by complainant of this schedule over G-6 because of its greater assurance of uninterrupted service. What is said here obtains even if it be assumed that the complainant's use under Schedule G-4 was of a character falling within the provisions of Schedule G-6 prior to its revision on December 1, 1933.

(d) For the period subsequent to the May meter reading the complaint does not list any items or claims for reparations. Hence the complaint so far as it is concerned with reparations or damages is not sustained.

2. Respecting Relief for the Future.

What has already been said disposes largely of this phase of the case. There was some evidence on the issue of discrimination between consumers in the practical application of Schedule G-6. It was conflicting and not convincing. An order to cease or discontinue, if made, could, of course, be complied with by restricting the use of those consumers claimed to be favored as well as by according the complainant a similar service and use. A much clearer and more persuasive showing than is here made is necessary to support an order of this character. The complainant, if it so desires and elects, is clearly entitled to service under G-6 as to a portion although not all of its uses. This is recognized by the utility which has offered to place a portion of its use on this schedule. In view of the complainant's rejection of the offer the Commission is not justified in making a mandatory order for service. Neither would it be practical, under the record as here developed, to specify all of the details of such service, involved as it is with matters of piping and sub-metering.

With the collateral question of reparations and damages for the past out of the way, the parties may and should experience no difficulty in working out the details of service under G-6 if

complainant decides that it desires a change of schedule. The order should be so framed that if difficulty is experienced in this respect the complainant may again come to the Commission.

I recommend the following form of order:

O R D E R

A public hearing having been had in the above entitled case,

IT IS HEREBY ORDERED:

1. That the claims of the complainant for reparations and damages be denied.

2. That the complaint as it affects relief for the future be dismissed, but without prejudice.

The effective date of this order is 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 3rd day of ~~November~~ December, 1934.

Commissioners.