Decision No. 23287

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation on the Commission's own motion into the rates, rules, and regulations, or any of them, applicable to surplus natural gas service, of LOS ANGELES GAS AND ELECTRIC CORPORATION, SOUTHERN CALIFORNIA GAS COMPANY, and SOUTHERN COUNTIES GAS COMPANY, to determine whether or not such rates, rules, regulations and contracts, or any of them, are unreasonable, discriminatory, or preferential in any particular. — Case No. 4138.

ORIGINAL

A. J. BAYER COMPANY,
COMMERCIAL IRON WORKS OF LOS ANGELES,
GILLESPIE FURNITURE COMPANY,

Complainants,

vs.

LOS ANGELES GAS AND ELECTRIC CORPORATION,

Defendant.

Case No. 4149.

VITREFRAX CORPORATION,
LOS ANGELES CHEMICAL COMPANY,
AIRPLANE DEVELOPMENT CORPORATION,
THE LANGHAM CORPORATION,

Complainants,

vs.

SOUTHERN CALIFORNIA GAS COMPANY,

Defendant.

Case No. 4150.

CALIFORNIA FRUIT WRAPPING MILLS, INC.,
POMONA TILE MANUFACTURING COMPANY,

Complainants,

vs.

SOUTHERN COUNTIES GAS COMPANY,

Defendant.

Case No. 4151.

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VERNON POTTERIES, LTD.,
Complainant,
vs.
SOUTHERN CALIFORNIA GAS COMPANY,
Defendant.[1]

Case No. 4180.

T. A. Hunter, for various industrial consumers, as follows, Complainants:
Globe Grain & Milling Co., Pioneer Flintkote Co., Los Angeles Brick & Clay Co., Langendorf United Bakeries, Western Bakeries Corp. Ltd., Luer Packing Co., Union Packing Co., Coast Packing Co., Cornelius Bros. Ltd., Merchants Packing Co., Trustee - Sterling Meat Co., Tovrea Packing Co., Pacific Mutual Oil Co., Los Angeles Paper Mfg. Co., Latchford Glass Co., Davis Standard Bread Co., Municipal League of Los Angeles, Pacific Nut Oil Co., Metlox Manufacturing Co. and Newmarket Co.

Thos. J. Reynolds, L. T. Rice and H. L. Masser, for Southern California Gas Co. and Los Angeles Gas and Electric Corp.

A. F. Bridges, LeRoy M. Edwards and O. C. Sattinger, for the Southern Counties Gas Company of California, Defendant.

A. M. Cannan, for A. J. Bayer Co., Commercial Iron Works of Los Angeles, Gillespie Furniture Co., Vitrefrax Corp., Los Angeles Chemical Co., Airplane Development Corp., The Langham Corp., California Fruit Wrapping Mills, Inc., Pomona Tile Mfg. Co., Complainants.

Victor Ford Collins and Arnold M. Cannon, by William Manns, for Complainants in Cases 4149, 4150 and 4151.

V. O. Conaway, Benjamin S. Cooper and F. A. Jones, for Interveners in Cases 4149 and 4150.

W. D. McKesson, County Counsel, County of Los Angeles.

Charles R. Smurr, Manager, Vernon Industrial Development Association, representing 82 industrials in the City of Vernon in Cases 4138, 4149, 4150 and 4151, Interveners.

Victor Ford Collins, for Complainant in Case 4180.

LeRoy M. Edwards & Neil G. Locke, for the Los Angeles Gas & Electric Corporation, Defendant.

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(1) While an answer has not been filed in this case, it was stipulated by the parties that it should be deemed to have been answered by the defendant Southern California Gas Company in substantially the same fashion as the answer filed in Case No. 4150, be consolidated for hearing and decision with the other named Cases, and that all claims to reparations by the complainant be waived, except as they centered about the so-called fuel oil clause.

CARR, Commissioner.

O P I N I O N

The proceedings and issues presented by these various cases, which, by stipulation and order, were consolidated for hearing and decision, may be stated briefly as follows:

1. Should any of the rates and practices of the defendant utilities, respecting the sale of surplus industrial gas, be changed?[2]

2. Has there been, by any of the defendant utilities, such a misapplication of rates and charges, revolving about the so-called fuel oil clauses in their several schedules, as to require an award of reparations?[3]

3. In Case No. 4149 are the complainants entitled to any reparations from the Los Angeles Gas and Electric Corporation in addition to claims under the so-called fuel oil clause, or to any relief in respect to the schedules under which served?

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(2) This issue is included in the investigation instituted by the Commission (Case No. 4138). While the primary purpose of the case was to permit a formal treatment and disposition of a considerable number of informal complaints by surplus industrial gas consumers, it is in terms sufficiently comprehensive to authorize such changes in rates and practices as may be justified or required by the record.

(3) The following named consumers have, by appropriate pleadings herein, claimed reparations upon this ground as against Southern California Gas Company:

Vitrefrax Corporation, Los Angeles Chemical Company, Airplane Development Corporation, The Langham Corporation (Case No. 4150), and Vernon Potteries, Ltd. (Case No. 4180.)

The same is true of A. J. Bayer Company, Commercial Iron Works of Los Angeles and Gillespie Furniture Company (Case No. 4149), as against the Los Angeles Gas and Electric Corporation, and California Fruit Wrapping Company, Inc., and Pomona Tile Manufacturing Company (Case No. 4151), as against Southern Counties Gas Company.

It was generally recognized by the defendant utilities at the hearing that the decision respecting the claims of these particular users would, if the principles thereof were not voluntarily applied to other users similarly situated, lead to the filing of other formal claims for reparations.

Public hearings were had on August 6, and on October 6, 7, 8 and 15, 1936, during the course of which, by stipulations and withdrawals of claims, the issues were reduced to those heretofore in broad terms set forth. At the conclusion of the hearings the cases were submitted, except as to Case No. 4149, in which the parties were given an opportunity to file briefs respecting their claims to reparations and relief upon grounds other than those centering about the fuel oil clauses. These briefs have now been filed and the case is ready for decision.

Background of Cases.

For a great many years the defendant utilities have furnished to industrial consumers so-called surplus industrial gas. In performing their public and vital function of serving natural gas for domestic and commercial purposes, it was found that because of the wide variation, due to climatic and seasonal conditions, in the demand for natural gas for these purposes, it was impossible to secure contracts at low rates from the producers of natural gas for a supply which would conform to these wide and unavoidable fluctuations. Producers naturally insisted upon a somewhat uniform absorption of their output. Natural gas must be utilized when produced. Storage of large quantities is excessively costly. Under these circumstances, and in order to avoid the necessity of the distributing utilities blowing into the air and wasting the gas during the summer months when the domestic and commercial usage is low and which they were required to take and pay for, they entered upon the policy of selling gas to industries where system capacity was adequate, subject to shut-off when the available supply was required for the dominant domestic and commercial load.[4] Both because the gas necessary for industrial

(4) Under the general scheme of surplus rates, users enjoying the lowest rate are first subject to shut-off.

use was not firm gas, and because, at least in the lower bracket schedules, it was directly competitive with other fuels, mostly oil, the lower bracket rates were established on the basis of increment cost and at a sufficiently low level to make the product reasonably competitive with other forms of fuel. As to the higher bracket schedules, while there has been a degree of competition between natural gas and other fuels, many other factors entered in other than competition to determine whether natural gas or some other fuel was used. The Commission has never fixed surplus industrial rates in the sense that it has fixed maximum reasonable rates for domestic and commercial gas, but has given the utilities a rather free hand in developing the rates.

Because the surplus industrial rates were largely competitive rates, the utilities assert they have sought to keep them as high as they could and move their product against the competition of other forms of fuel, and that this has worked to the advantage of domestic and commercial consumers. Oil being the principal competitive fuel, from the very early days of the furnishing of surplus industrial gas, schedules have carried so-called fuel oil clauses, by which the rates for surplus gas automatically went up or down within certain ranges with the variation in the price of the competitive fuel oil. The early schedules had very little uniformity in the fuel oil clauses they carried, either as between the utilities or as between the various schedules of any one of the utilities. Gradually the clauses took such form that they centered about the posted price for fuel oil as quoted by the Standard Oil Company of California, a company which has uniformly publicly posted such prices.(5) According to the history

(5) In most of the schedules the posted price of the Standard Oil Company at El Segundo is expressed as the yardstick. Some schedules, however, have used as a yardstick the quoted price at Los Angeles, apparently with the idea of adding to the El Segundo posted price the cost of freight.

of the schedule, the base or datum fuel oil price expressed in the schedule has varied according to the current posted price in effect at the time the schedule had its inception.

The ratio of increase or decrease of the natural gas rate with fluctuations in the posted price of fuel oil likewise has varied as between utilities and as between schedules of each utility. In the earlier days the prevailing ratio was 1 to 10; that is, for every 1¢ per barrel increase or decrease in the posted price of fuel oil, the price per M.c.f. of natural gas increased or decreased 1/10¢. Gradually, however, there crept into the schedules another ratio - the ratio of 1 to 6 - under which the price of natural gas per M.c.f. would increase or decrease 1/6¢ for every 1¢ per barrel increase or decrease in the posted price of fuel oil. Probably the genesis of the 1 to 10 ratio is to be found in the fact that the sellers of natural gas frequently provided in their contracts for an increase or decrease in price on a 1 to 10 ratio to the posted price of fuel oil. As increases or decreases in the cost of natural gas in the field could not, as a practical matter, be reflected in automatic changes in the rates for that portion of the gas furnished for domestic and commercial purposes, but only in respect to sales for industrial purposes, the utilities gradually began to drift toward the 1 to 6 ratio, which in round figures reflects the ratio between the heating value of natural gas and fuel oil,(6) and the application of which, incidentally at least, tended to recoup them for the over-all increase in the cost of the natural gas to them.

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(6) The evidence showed beyond question that a barrel of fuel oil has a heat value of approximately 6,000,000 B.t.u., while the heat value of 1000 cubic feet of natural gas of the average heat value being customarily furnished will exceed 1,000,000 B.t.u. The true ratio on the basis of heat value is approximately 5½ to 1.

The first of the defendant utilities which filed its fuel oil clauses reshaped to express the 1 to 6 ratio was Southern Counties Gas Company. In Re Southern Counties Gas Company, 34 C.R.C. 141, it appeared the Commission had instituted a general investigation into the rates of the utility. When the proceeding was called, the utility offered certain reductions which were satisfactory to the consumers. Among the reductions offered was a small one for surplus industrial gas. Speaking of this service, it was said:

> "As to the rates for surplus industrial gas, the particular form they should take is controlled, to a considerable extent, at least, by competitive conditions, the probable effect of which can best be determined by the company itself. Hence, the order here made fixes definite rates which will effect the reductions above specified except for surplus industrial schedules. As to this, the company will be expected to file within thirty days from the date of this order suggested schedules which will reduce their 1930 revenue from this source by not less than $14,400 which, when approved by a supplemental order of the Commission, will be deemed to finally dispose of this particular proceeding."

The Company did file its surplus industrial gas schedules and on February 3, 1930 these were approved by supplemental order of the Commission. (34 C.R.C. 298.) The supplemental order sets forth these schedules at length and orders the utility to charge and collect for surplus gas according to such schedules. The schedules carried the 1 to 6 ratio.

Prior to 1933 the Southern California Gas Company, as to some of its schedules, had adopted the 1 to 6 ratio. The Los Angeles Gas and Electric Corporation, however, had not except as to one schedule.

In 1933 the Commission was conducting an investigation upon its own motion into the rates and practices of the Southern California Gas Company. After the hearings had proceeded to a certain point, the Company proposed certain reductions in rates, most of them being in its domestic and commercial schedules and which amounted in

the aggregate to approximately $1,000,000. The proposal having met with the approval of consumer representatives and being deemed by the Commission to be a reasonable one, the case was closed by an order of date June 13, 1933, in which, after reciting the offer, the submission of the proposed schedules and their general effect, it was ordered that "the following revised domestic, commercial and industrial schedules of Southern California Gas Company, filed on June 12, 1933, effective on July 1, 1933, be approved." (Re Southern California Gas Company, 38 C.R.C. 785.) Following the provisions of the order quoted above were listed the various surplus industrial schedules of the utility, which have been in effect since July 1, 1933, and all of which carried the 1 to 6 ratio in the fuel oil clauses.

After the establishment of these rates, the Los Angeles Gas and Electric Corporation revised its surplus industrial schedules, modifying the fuel oil clauses therein, which carried the 1 to 10 ratio, to a 1 to 6 ratio, changing the base or datum fuel oil price to 85¢, and in some instances changing the maximum or ceiling gas rate, and filed these with the Commission. No formal action was taken by the Commission on these schedules, but on November 29, 1933, by a Secretary's letter the Company was advised that they had been received and filed, effective as of December 1, 1933. According to testimony of Mr. Evans, rate engineer of the Company, it did not occur to him when he filed these revisions in 1933 that the changes in the fuel oil clauses involved any increase in rates.

As a matter of fact, the changes in the fuel oil clauses, and other changes as effected by the Southern California Gas Company and the Los Angeles Gas and Electric Corporation in 1933, did not have any immediate effect on the rates actually paid by their respective industrial

consumers, there being no change in the posted price of fuel oil until March 15, 1935, when the Standard Oil Company of California increased its posted price from 85¢ per barrel to 95¢ per barrel. Thereupon, under the terms of the fuel oil clauses in their several schedules, the Southern California Gas Company and the Los Angeles Gas and Electric Corporation increased the charge for surplus natural gas 1-2/3¢ per M.c.f. The Southern Counties Gas Company, although authorized by the fuel oil clause in its several schedules to make a corresponding increase, elected to limit the increase to 1¢ per M.c.f. (As to some schedules, indeed, this utility elected to make no increase.) It was the increased charges thus assessed in the Spring of 1935 that gave rise to the instant cases.

To complete the portrayal of the background of these cases, it should be pointed out that the Standard Oil Company of California has long publicly posted its prices for fuel oil f.o.b. El Segundo. For a time the Union Oil Company of California likewise posted such prices f.o.b. its refinery at Wilmington. Later it discontinued such posting, but has since resumed it. Recently the General Petroleum Corporation also has posted prices. The prices of these three oil companies have always been the same. The fluctuation of the prices thus posted over the years has been as follows:

August 20, 1920	$2.00
May 13, 1921	1.75
August 3, 1921	1.50
July 15, 1922	1.25
August 8, 1922	1.00
January 22, 1924	1.25
February 5, 1924	1.40
February 4, 1925	1.60
May 6, 1925	1.50
August 28, 1925	1.20
October 27, 1925	1.00
January 15, 1929	0.85
March 15, 1935	0.95

The discovery of additional oil sources, the springing up of a large number of producing companies, and intense competition amongst vendors of oil, resulted in the market price for fuel oil, particularly during the years 1930, 1931, 1932, 1933 and 1934, being markedly below the publicly posted prices. Some oil companies went into receivership, others were pressed financially, the market was flooded with varying quantities of distress oil, and prices and quotations varied widely from day to day, from week to week and from month to month. Recently there has been a tendency for the market price of oil and the posted price of oil to converge. During the period of wide divergence of these two price levels, however, the defendant utilities were forced by competitive conditions to reduce their charges for surplus industrial gas substantially more than was called for by their various fuel oil clauses. In fact, they had to meet the competitive market prices of oil. Generally speaking, during recent years rates for surplus industrial gas have been lowered to a greater extent than have the rates for domestic and commercial gas.

Rules and Practices for the Future.

The authority and jurisdiction of the Commission to prescribe rates for the future as they affect the sale of surplus industrial gas is here rather sharply limited. (a) The record is fragmentary and incomplete. No showing was made as to cost of service and other elements which go to the determination of proper rate levels. (b) To a large extent, and certainly as to the lower bracket schedules, surplus industrial gas rates have developed under competitive conditions. The lower bracket rates are very clearly competition-forced rates. As to some of the higher bracket rates, while competition has undoubtedly contributed to their level, other

factors likewise have influenced their determination. The Commission may, of course, authorize a utility to charge low rates to meet competition, so long as they are not so low as to burden other classes of service. It may not, however, require a utility against its will to lower its rates to meet competition.

Having in mind the limitations last adverted to, the record as developed does not warrant a general prescription of industrial rates lower than are now lawfully in effect. There is, however, a penumbrous band within which the Commission may act. Is there justification for a fuel oil clause by which rates are automatically increased or decreased as prices of fuel oil change? Is such a clause reasonably applicable to all schedules? How should such a clause be constructed? Should limitations be established as to the extent of the increase or decrease in rates? What procedure should be followed in publishing rate changes effected? Matters such as thus suggested may not here be said to lie without the field of the Commission's authority.

The conclusions reached by the Commission respecting questions here presented and fairly within the range of its jurisdiction and authority may be stated briefly as follows:

1. A properly constructed fuel oil clause whereby rates automatically go up or down with the price of fuel oil is, under the circumstances here shown, justifiable.[7] (a) As to the lower bracket schedules, the justification is clear. The industrialists using such schedules are usually equipped to burn gas or oil. Cost is the impelling reason for selection. (b) The justification is not so

(7) Mr. T. A. Hunter, representing a large group of industrial consumers, rather courageously, and contrary to the desire of some of his principals, expressed the opinion that such a clause was justifiable in the case of the lower bracket schedules. With some force he urged that it was not justifiable in the case of the higher bracket schedules. The utilities urged the propriety of such a clause for all of their surplus schedules.

clear as to the higher bracket schedules. As to these, the use of such a clause finds partial justification in the fact that the cost of gas in the field is influenced by the price of oil. Competitive fuels do have some influence on the use or non-use of surplus gas. From the record it may not be said that the rates are fully compensatory in volume. It may be argued with a good deal of force that they are depressed rates, and in fairness to domestic and commercial users of gas should perhaps be higher in volume. The practical difficulties in the way of eliminating from some of the schedules the fuel oil clauses, or of developing a type of clause for them different from those in effect for the lower bracket schedules, are serious in nature. There is a long historical background for their continuance. A more complete or a better record might dictate either the elimination, or change in structure, of these clauses. With the record as it is, the Commission is impelled to sustain them, along with the clauses in the lower bracket schedules.

2. The 1 to 6 ratio - that is, an increase or decrease of 1/6¢ per M.c.f. of gas for each 1¢ per barrel increase or decrease in the price of fuel oil - is justifiable. This is obvious as to the lower bracket schedules. It is less obvious as to the higher brackets, but must be sustained on the reasoning respecting the justification of the fuel oil clauses as to these schedules. Furthermore, the desirability of uniformity in practice may not be ignored.

3. No one likes the Standard Oil Company's posted price as the basis for the operation of an automatic fuel oil clause. Market prices admittedly would furnish a more satisfactory basis. No one, however, was able to suggest any workable or defensible plan or formula by which market prices could be thus used. In a highly competitive area such as Southern California, quoted prices for fuel oil fluctuate widely between vendors from day to day and from week to

week. To ascertain, through hearings before the Commission, average market prices would mean continual, frequent and protracted hearings, in which any conclusion reached would be little more than a guess and would result in such lags in bringing surplus gas prices into harmony with fuel oil prices as to be highly impracticable. Therefore, in lieu of any better scheme, it seems necessary to have the automatic fuel oil clauses revolve about the posted price of the Standard Oil Company of California, or perhaps better, the posted prices of that Company, the Union Oil Company and the General Petroleum Company, whichever is lower. The clauses should be further corrected or modified to specify the gravity of oil for which the price is posted.

4. The technique of putting into effect changes of rates due to the operation of the fuel clause is unsatisfactory. Under the present practice, there is no filed and published schedule from which a consumer may, without resort to extraneous facts, determine the applicable and lawful rate. Two of the utilities, when the posted price of fuel oil increased in 1935, applied in full the increases provided by the schedules on file. One utility did not apply the full increase and as to some schedules did not apply any. There seems to be no consistency in the practice as to the date and plan of billing for changed rates. The situation thus adverted to should be corrected. This may be done by the filing and full statutory publication (unless short notice authority is secured) of a supplement to each schedule indicating the changed rate consequent upon the application of the fuel oil clause, with a notation in such supplement that the change is made under the fuel oil clause in the base schedule. When the operation of the clause effects a reduction in rate, the supplement shall be filed within five days of the change in posted price. When an increase results, unless the supplement is filed within five days, the utility

should be deemed to have waived the right to make the increase effective.

5. The evidence shows that surplus industrial consumers are required to enter into a yearly contract, subject to termination upon notice after the expiration of one year. In the future, such contracts should provide that upon an upward change in rate through the operation of the fuel oil clause the consumer may terminate the contract except for the purpose of securing priority in service. A similar provision should be in the schedules.

6. In view of what is here said, authority should be granted the Los Angeles Gas and Electric Corporation to refile, on less than statutory notice, its surplus industrial schedules (hereinafter found to have been filed and published without the required statutory finding of justification) which, with the incorporation of the changes in form hereinebove indicated as proper, will be justified. Further finding than this of justification would seem to be unnecessary.

The order will carry appropriate directions for carrying out the conclusions here expressed.

Reparations Under Fuel Oil Clause.

Claims to reparations on this score are grounded upon the provisions of Section 63(a) of the Public Utilities Act, which reads as follows:

> "No public utility shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified."

Two questions present themselves:

First: Did the changes in the fuel oil clauses and other schedule provisions, as made in the 1933 filings (one utility filed later), involve any increase in rates under this Section?

Second: If so, were the increases found to be justified as required by the Section?

Each utility occupies a different position.

Southern Counties Gas Company: This Company, by its 1935 refilings, did not change its fuel oil clause or change its schedules so as to bring about an increase in rates under any circumstances. Indeed, this Company elected to make no increase or only a partial increase upon the increase of the posted price of fuel oil. Concededly, it is not subject to any claim of reparations on this score.

Southern California Gas Company: The 1933 refilings of the Southern California Gas Company were, as has heretofore been pointed out, "approved" by the Commission by formal order. (Re Southern California Gas Company, 38 C.R.C. 785.) While the form of this order is not in strict conformity with the language of Section 63(a), it must be deemed to comprehend an implied finding of justification. This disposes of claims of reparations as against the Southern California Gas Company.

Los Angeles Gas and Electric Corporation: This utility is not in so favorable a position as the others. By its 1933 refilings, changes were made (a) in the ratio of the fuel oil clause, (b) in the price upon which the automatic changes were based, and (c) in the ceiling of the automatic increases. There is no escape from the conclusion that these filings involved increases within the

terms of Section 63(a). Furthermore, as to this utility and its 1933 refilings, there was no finding by the Commission that such increases were justified. Hence it follows that the Los Angeles Gas and Electric Corporation should cease and desist charging and collecting rates higher than those specified in its schedule G-6 (C.R.C. Sheets 257-G and 258-G) which by the 1933 refiling was subsequently divided into and superseded by two schedules G-6 (C.R.C. Sheets 302-G and 303-G) and G-7 (C.R.C. Sheets 304-G and 305-G),[8] until its surplus industrial schedules superseding the above named schedule, filed without the required finding of justification, are refiled as herein authorized. Of the complainants as against the Los Angeles Gas and Electric Corporation, A. J. Bayer Company is apparently entitled to a few dollars in the way of reparations. The other formal complainants were on schedules not having a fuel oil clause or under G-10[9] which was a legally effective schedule. Complainant, A. J. Bayer Company, should file a statement of its claims in this respect, and if the parties cannot agree upon the amount thereof, determination thereof may be referred to the Commission and will be disposed of by supplementary order.

As to the consumers who have not formally filed claims for reparations, the Commission has no jurisdiction here to award

(8)(a) Schedule G-7 (C.R.C. Sheets 283-G and 284-G) was a new and optional schedule filed on July 18, 1931, effective July 20, 1931, and was superseded by schedule G-8 (C.R.C. Sheets 306-G and 307-G) filed August 10, 1933, effective December 1, 1933. No finding of justification was necessary for this schedule.
(b) C.R.C. Sheets 303-G and 305-G have since been superseded by C.R.C. Sheets 338-G and 339-G, respectively.

(9) Schedule G-10 (C.R.C. Sheets 312-G and 313-G) was a new and optional schedule filed on December 14, 1933, effective January 14, 1934. No finding of justification was necessary for this schedule.

reparations. The utility, however, is authorized to settle with these consumers on the basis indicated, if it so desires, reporting to the commission the amount of such settlement.

Additional Reparation Claims (Case 4149).

Testimony adduced in support of these claims is too loose and uncertain to support any award of reparation. The most that may be said, respecting the relief sought by these complaints, is that at the hearing the Gillespie Furniture Company plainly indicated its desire to secure service under Schedule G-6 (C.R.C. Sheets Nos. 257-G and 258-G), which in form were superseded by Schedule G-6 (C.R.C. Sheets Nos. 302-G and 338-G),[10] herein held to have been filed without the necessary finding of justification.

Both the present and the superseded schedules are in terms applicable to "internal combustion engines and steam boilers." Some evidence was adduced at the hearing indicating a practice of the Company to refuse service to any such steam boiler unless of a rated capacity of 10 H.P. or over. There is nothing in the language of the schedule to support such a limitation. With the present applicability clause, there is no escape from the conclusion that this particular complainant is entitled to service under this schedule.

The most serious question in this connection is this: If service under this schedule is given to installations of such small capacity, the shut-off provisions of the schedule become in effect, unworkable. A limitation upon the capacity of gas engine and boiler installations entitled to service would seem to be entirely reasonable and, in all probability, if the Company should see fit to clarify its schedule by inserting such a limitation, it would meet with approval by the Commission.

(10) See footnote (8)(b)

Limitation on Findings.

It is not intended by this opinion and order to find as to the reasonableness of the general rate levels of the surplus industrial gas schedules. A determination as to this could only be made with satisfaction, upon a full record in which the earnings of the utilities are displayed and with appropriate evidence bearing upon the propriety of the relationship between domestic, commercial and industrial schedules. The increasing magnitude of the surplus industrial sales suggests the idea that this phase of the utilities' business, originally largely a by-product or incidental business, has become something more than this. Whether it is being conducted in a fashion fair to the domestic and commercial consumers should be left open to future determination by the Commission, upon an adequate record and unembarrassed by findings here. It may well be that upon a full record the conclusion would be that the general level of the surplus rates is too low. In essence, the surplus industrial rates are, and should be considered as, utility initiated rates, the general levels of which may not be changed under the present record. Incidental features of these rates and their application are all that are intended to be passed upon here.

I recommend the following form of order:

O R D E R

Public hearings having been had in the above entitled cases, based upon the findings and conclusions indicated in the opinion,

IT IS HEREBY ORDERED, that -

1. Southern California Gas Company, Southern Counties Gas Company and Los Angeles Gas and Electric Corporation (a) revise and

refile their several lawfully effective surplus industrial schedules to effect and carry out the changes in the fuel oil clauses therein and contract applications indicated as proper in the opinion herein, and (b) in the future when changes in rates occur as a result of changes in fuel oil prices, to file supplements to schedules in the manner and subject to the conditions indicated in the opinion.

2. Los Angeles Gas and Electric Corporation may, on less than statutory notice and without a further finding of justification, if it elects so to do, refile its present unlawfully filed Schedules G-6 (C.R.C. Sheets 302-G and 338-G) and G-7 (C.R.C. Sheets 304-G and 339-G), together with appropriate supplements indicating charges under the fuel oil clauses, but with the changes directed in (1) above.

3. Los Angeles Gas and Electric Corporation shall cease and desist charging rates higher than those authorized by its said Schedule G-6 (C.R.C. Sheets 257-G and 258-G), until and unless superseded by lawfully filed and justified schedules.

4. Los Angeles Gas and Electric Corporation shall pay reparations to A. J. Bayer Company, as indicated in the opinion, and is authorized to pay reparations to other surplus industrial gas consumers (and to said Bayer Company for the period following the filing of its complaint) for charges collected in excess of those authorized by its said Schedule G-6 (C.R.C. Sheets 257-G and 258-G). If such payments are made, the amount thereof shall be reported to the Commission.

5. Los Angeles Gas and Electric Corporation shall cease and desist refusing service to Gillespie Furniture Company on its Schedule G-6 (C.R.C. Sheets 257-G and 258-G) on the ground that said Company's boiler is less than 10 horsepower rated capacity, until said schedule establishes such a limitation upon service.

The effective date of this order shall be thirty (30) 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 23rd day of November, 1936.

M B Harris

Leon Whitsell

W J Carr

Frank R Devlin

Commissioners.