Decision No. 29670

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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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
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

ORIGINAL

VERNON POTTERIES, LTD.,)
Complainant,)
vs.) Case No. 4180
SOUTHERN CALIFORNIA GAS COMPANY,)
Defendant.)
)

T. A. Hunter, for certain Fuel Clause Interveners in Case No. 4138.

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

Neil G. Locke, for Los Angeles Gas and Electric Corporation.

Thos. J. Reynolds and L. G. Rice, for Southern California Gas Company.

BY THE COMMISSION:

OPINION ON REHEARING

Acting upon the petition filed by Los Angeles Gas and Electric Corporation for a rehearing of Decision 29287 directing this utility to pay the reparation claims demanded by certain of its surplus industrial gas consumers, the Commission ordered further hearing in these consolidated cases. Each complaint was for the recovery of reparations, and each was premised upon substantially the same legal theory. The Commission found, however, that the Los Angeles Gas and Electric Corporation alone was under a duty to pay the claims demanded. The facts as set forth in the earlier opinion need not again be reviewed except in so far as necessary to develop the exact issue here presented.

For many years the surplus industrial gas schedules of these gas utilities have contained a clause providing for an automatic adjustment of rates to reflect changes in the market price of fuel oil. Under schedules formerly in effect the base rate for gas per

M.C.F. increased or decreased one-tenth of a cent for each upward or downward change of one cent in the posted price of oil per barrel. Revised schedules filed by one utility in 1930 and by the others in 1933, the schedules here in question, provide for an adjustment in the gas rate equal to one-sixth instead of one-tenth of the change in the price of oil. The oil companies having in the fore part of 1935 announced a price increase of 10 cents per barrel, the utilities generally increased their charges for gas. It was this increase which gave rise to the reparation claims here involved, each complaint being grounded upon the theory that the revised schedules purporting to increase the old 1 to 10 price ratio to a ratio of 1 to 6 were illegally filed and therefore never effective.

The argument advanced by the complainants, in brief, is that no utility rate filing which results in an increase in the charge exacted may legally be accomplished except, as provided in Section 63(a) of the Public Utilities Act, "upon a showing before the commission and a finding by the commission that such increase is justified." As a matter of fact, they assert, no such showing was made before the Commission nor was any finding made by it that the increase was justified. They conclude, therefore, that such increased charges beginning in 1935 were unlawfully exacted and that reparations follow as a matter of course.

A factual issue as well as one of law being involved, we should advert briefly to the circumstances surrounding the filing of the revised schedules which complainants insist were filed in violation of the act.

The first tariff filing of the Southern Counties Gas Company in which the 1 to 6 ratio appears in the fuel oil clause was that made in February 1930, that particular schedule being one of many

then filed in response to a general rate investigation instituted by the Commission, and tender made by the utility of generally reduced rates. (34 C.R.C. 141.) In respect to the surplus industrial rates, the Commission said that the particular form they should take is to a considerable extent controlled by competitive conditions, the effect of which could best be determined by the utility itself. Hence, the Commission did not itself prescribe the schedules containing the 1 to 6 fuel oil clause, but later, when they were prepared and submitted by this utility, the Commission by supplemental order but without further hearing definitely prescribed those schedules for the future. (34 C.R.C. 298.)

The corresponding surplus gas schedules of the Southern California Gas Company carrying the 1 to 6 price ratio were first filed in June 1933, these too being rate revisions filed along with others as a result of a general rate investigation and an offer by the utility to effect substantial rate reductions. By formal opinion and order the Commission expressly approved the schedules tendered. (38 C.R.C. 785.)

The rates of the Los Angeles Gas and Electric Corporation had been fixed in November 1930, after a general rate investigation, but those rates were suspended by litigation and were not made effective until after the Court's confirmation of the Commission's order in May, 1933. The rate filings of the Southern California Gas Company approved in June 1933 were identical with those established for the Los Angeles Gas and Electric Corporation, except as to the surplus schedules above mentioned. Accordingly, in order to make its schedules comparable, the Los Angeles Gas and Electric Corporation on August 10, 1933 filed revised surplus gas schedules containing a similar 1 to 6 fuel oil clause, and in its letter transmitting those schedules to the Commission it expressed the belief that

the Commission would recognize the necessity of uniformity in the rates of the two gas utilities. It requested that the revised schedules be approved and accepted for filing. After some delay, the Commission, by letter of November 29, 1933 advised that the schedules had been received and filed, effective December 1, 1933. No public hearing was held on such application, and whatever finding the Commission may have made in respect to the increase resulting from the change in the fuel oil clause was not evidenced by any formal opinion or order.

From all the evidence surrounding the revisions thus made by the three gas companies in their surplus industrial rates, several facts stand out clearly. They at all times have been depressed rates, forced by competitive conditions, the form of which the Commission believed the utilities themselves could best prescribe as conditions necessitated. It was recognized that there should be reasonable uniformity between the rates of these three utilities serving the Los Angeles area. So in each instance when these revised schedules containing the challenged fuel oil clause were submitted to the Commission for approval, the Commission did not deem it necessary that a formal showing at public hearing be made in justification of the rate increase possibly resulting therefrom, nor seemingly did it deem it necessary to expressly find the increase to be justified. If there has been any dereliction of duty, it has been upon the part of the Commission itself in failing to make an express finding of justification for the increase, thus failing to conform its action to the standard which the statute prescribes.

Applying these observations to the particular question of reparation here presented, we cannot find that the rate filings of any one of the three utilities were so clearly at variance with the requirements of the statute as to compel the conclusion that they were illegal and ineffective for any purpose. No substantial distinction can be found between the filings of each to justify the conclusion that one was legally accomplished and not the other. Granting that the Commission did not make the exact finding contemplated by Section 63(a), it is clear, nevertheless, that it intended its act in each case to be taken as completing the filings and making them the legally effective rates for the future. Since each utility expressly requested the Commission's approval of the schedules submitted, it cannot be said that they were not equitably justified in then placing those schedules in effect, relying upon the legal sufficiency of the action which the Commission had taken. A failure upon the part of the Commission itself to follow some procedural provision of the statute may not be seized upon as a ground for a reparation award against a utility which has not violated any statutory duty.

These conclusions compel our modification of the decision previously rendered and the dismissal of each of the reparation claims here presented. The right of recovery in such a proceeding is derived from Section 71 alone, and the claimant must show that there has been a violation by the utility of a duty imposed by one of those provisions referred to in that section. Golden State Milk Products Co. v. Southern Sierras Power Co., 33 C.R.C. 83. Once it is determined that the charge exacted was in accordance with the rate "filed and in effect at the time," as required by Section 17(b) 2, there can be no recovery without proof that the charge was inherently unreasonable or discriminatory. The complainants in each case have

failed to make such a showing.

At the rehearing of these matters on February 24, 1937, the legal questions here involved were fully argued, but a request was made by complainants for a further hearing at which they might examine certain Commission and utility employees. The request is denied. Nothing could be added to the present record in amplification of the facts already presented.

Two complaints not consolidated with the above and not yet formally heard are on file, namely, Case 4178, Alhambra Kilns, Inc., et al. vs. Los Angeles Gas and Electric Corp., and Case 4179, Cubbison Cracker Co. v. Southern California Gas Co. These also are claims for reparation, appearing to plead the identical violations alleged in the cases above. As most of the complainants were interveners in the above proceedings, we believe that the order of dismissal here made will justify the entry of a similar order in these two matters.

ORDER ON REHEARING

Los Angeles Gas and Electric Corporation having been granted a rehearing in Cases 4138 and 4149 of certain matters contained in Decision No. 29287; the Commission having reopened Cases 4138, 4149, 4150 and 4180 for the purpose of determining whether Decision No. 29287 should be rescinded, altered, or amended in so far as said decision relates to reparation claims made against Los Angeles Gas and Electric Corporation and Southern California Gas Company by gas consumers under surplus natural gas schedules of said utilities; the matters having been publicly heard, and good cause appearing, based upon the findings and conclusions indicated in the above opinion,

IT IS ORDERED AS FOLLOWS:

1. Decision No. 29287 is hereby affirmed as to the disposition made therein of reparation claims against Southern California Gas Company.

2. Decision No. 29287 is hereby rescinded as to the disposition made therein of reparation claims against Los Angeles Gas and Electric Corporation, and the proceedings referred to above are hereby dismissed in so far as they relate to such reparation claims.

3. In all other respects Decision No. 29287 shall remain in full force and effect.

Dated at San Francisco, California, this 12th day of April ~~March~~ 1937.

Commissioners