MC

Decision No. 3387

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

ATLAS BRASS FOUNDRY, Complainant, vs. SOUTHERN CALIFORNIA GAS COMPANY, Defendant.	Case No. 4358

Conaway & Cooper by V. O. Conaway, for complainant.

T. J. Reynolds and L. T. Rice, for defendant.

RILEY, COMMISSIONER:

ORDER OF DISMISSAL

In this proceeding the complainant, Atlas Brass Foundry, alleges that prior to August 25, 1936, defendant, Southern California Gas Company, failed and neglected to observe or comply with its filed Rule and Regulation No. 19, C.R.C. Sheet No. 138-G, in dealing with complainant, thus denying it the right of selecting the most favorable rates applicable to its requirements, thereby imposing unlawful rates and charges.

Public hearing was held at Los Angeles, December 1, 1938, at which time testimony and evidence were received and the matter submitted.

It is set forth in the complaint that Atlas Brass Foundry is a California corporation located at 1901 Santa Fe Avenue, Los Angeles, California, and is engaged in the manu-

facture and treating of metal castings and other metal products. Mr. Frank Anderson, President of the Atlas Brass Foundry, testified that the plant was designed so that certain units could be operated with gas fuel and other units could be operated with oil. The purpose of designing the plant in this manner was to make it more flexible. He further testified that natural gas has been used in the plant since 1927. Natural gas was supplied by the Southern California Gas Company under its Commercial Schedule A-2 prior to February 24, 1930. On this date a new contract was entered into and the service was changed over to the preferred essential Schedule A-8.

The record further shows that under date of August 5, 1936, Atlas Brass Foundry requested by letter to the Southern California Gas Company that its service be changed over to the Surplus Schedule A-7-AA, which became effective August 25, 1936. It is the complainant's contention that had it been properly advised prior to August 25, 1936 regarding other schedules applicable to its service, it would have selected the lower Surplus Schedule A-7-AA even though it carried a shut-off clause. Because of this, complainant represents that it is entitled to reparation of billings dating from August 26, 1935 to and including August 25, 1936, amounting to $155.34.

A review of the record shows there is a sharp difference of opinion as between complainant and defendant as to whether complainant was properly advised as to the availability of surplus gas under Schedule A-7-AA. While there is this lack of agreement between the two parties, the record is clear that

the complainant did know and have knowledge of the fact that defendant sold gas generally to industrial consumers under lower rate surplus schedules. It is also reasonably clear from the record that complainant did not change to the lower surplus rates until information was obtained that while surplus customers were subject to shutoff, nevertheless, the actual practice of defendant to customers taking service under Schedule A-7-AA was such that no shutoffs were made during a five-year period previous to August 25, 1936. Complainant further admits that when it was convinced that the probability of shutoff would be negligible, application for service under Schedule A-7-AA was made, and complainant was given the service under said schedule.

Defendant, through witnesses, submits that complainant had knowledge of the availability of surplus industrial rates throughout the period for which reparations are here claimed, inasmuch as defendant's representatives discussed the matter several times with complainant's president, Mr. Anderson. Since the availability of surplus rates was discussed with complainant, defendant contends it was not negligent in complying with the requirements of Rule and Regulation No. 19, which provide as follows:

> "Where there are two or more rate schedules applicable to any class of service, the company or its authorized employees will call applicant's attention, at the time application is made, to the several schedules, and the consumer must designate which rate or schedule he desires.
>
> "In the event of the adoption by the company of new or optional schedules or rates, the company will take such measures as may be practicable to advise those of its consumers who may be affected that such new or optional rates are effective."

The Commission has heretofore held (Vernon, et al. v. Southern California Gas Company, 34 C.R.C. 46) that the execution of a contract for service, such as that herein involved, itself raises the presumption that the consumer had full knowledge of the rate specified in the contract and that he elected to accept the rate because of the priority privileges accorded. However, we are of the opinion that the record in this case indicates that the complainant had actual knowledge and received notice from the defendant in accordance with Rule No. 19. In view of this conclusion, it is unnecessary to pass on the other contentions advanced by complainant, and

Based upon the facts of record and the conclusions drawn therefrom,

IT IS HEREBY FOUND AS A FACT that Southern California Gas Company did comply with Rule and Regulation No. 19, and

IT IS ORDERED that the above complaint is hereby dismissed.

The foregoing Order is hereby approved and ordered filed as the Order of the Railroad Commission of the State of California.

Dated, San Francisco, California, March 6, 1939.

Commissioners.