

Decision No. 22220.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

KILPATRICK'S SAN FRANCISCO BAKERY,

Complainant,

vs.

PACIFIC GAS & ELECTRIC COMPANY,

Defendant.

Case No. 4475.

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T. A. Hunter, for the Complainant.
R. W. DuVal, for Defendant Pacific
Gas and Electric Company.

WAKEFIELD, COMMISSIONER:

O P I N I O N

In this proceeding, Kilpatrick's San Francisco Bakery, Complainant, claims unreasonable discrimination results from the application of surplus gas Schedule GS-1 by Defendant, Pacific Gas and Electric Company, and requests that Defendant be ordered to apply surplus⁽¹⁾ gas rates under its filed tariff GS-1 to all of Complainant's gas uses after March 1, 1940. The Defendant denies the applicability of Schedule GS-1 to some of Complainant's gas uses, and claims that such denial does not constitute unreasonable discrimination.

⁽¹⁾ Surplus gas is subject to shut-off at any time when the requirements of the firm gas users make it necessary. The extent of the investment in transmission and general distribution facilities is determined entirely by the firm gas requirements and not surplus. Surplus gas rates provide for the increment cost of rendering the service plus whatever additional revenue competitive fuels permit. Surplus gas service thus is supplemental to firm and the net earnings realized are applied to and contribute to lower firm rates.

A public hearing was held at San Francisco on Thursday, February 15, 1940, at which time evidence was taken and the matter submitted for decision.

It is of record that Complainant operates a wholesale baking company, located in San Francisco, and uses natural gas in its business principally for boiler fuel and directly under bake ovens, which gas is purchased from Defendant. The gas used for boiler fuel is purchased under Defendant's surplus Schedule GS-1 and that for the bake ovens under the firm gas rate G-40. The record further shows a fairly uniform monthly gas consumption with billings for firm uses in the neighborhood of 600,000 cubic feet per month, and for surplus of approximately 700,000 cubic feet. The average rate paid for the surplus gas during the past year was 20.28 cents per M.c.f., while the corresponding figure was 32.3 cents for firm gas.

The Complainant presented testimony showing that it is at present engaged in building a new and enlarged plant which will have installed, among other units of equipment, a bake oven described as "a steam tube traveling plate oven."⁽²⁾ It was brought out that this new oven differs from the old type in so far as heat application is involved in that the temperature in the baking chamber is raised by heat radiation from steam coils rather than directly from fuel burned. It was also shown that the combustion chamber, in which the steam coils are heated, is an integral part of the oven.

⁽²⁾ W. I. McDonald, a witness for the Complainant, described the new ovens by saying: "The oven is made up of a series of steam tubes and they are partially filled with a liquid; they are so arranged in the fire box and in the baking chamber in an inclined position keeping this liquid at the tip of the tube that is exposed to the fire box and the heat impinging on the end of that tube creates a superheated steam that travels the length of the tube and thereby radiates heat to the baking chamber."

It was Complainant's contention that the utilization of gas in the new ovens would justify the application of a surplus gas rate under Schedule GS-1, and it pointed particularly to Condition (1) of the availability clause of that schedule wherein provision is made to supply gas for "boiler fuel for boilers producing steam primarily for other than building heating."⁽³⁾

Complainant likewise called attention to the thirteen other uses or classes of service that now qualify under the surplus rate and contended that its new bake oven usage is no different from many of these and should be included; otherwise discrimination against the baking industry would result.

⁽³⁾ The availability clause is as follows:

Available, upon application, to customers located along existing mains having a delivery capacity in excess of the then existing requirements of other customers, for surplus natural gas of a heating value of 1100 to 1200 B.t.u. per cubic foot, used for the following purposes where operation can be readily continued on other fuels in case of shut off of gas supply:

1. Boiler fuel for boilers producing steam primarily for other than building heating.
2. Building heating with a minimum payment guarantee of \$4200 per year.
3. Heating of green houses.
4. Glass melting tanks, including glass works feeder furnaces if in combination with gas for melting tanks.
5. Steel and iron melting furnaces, and furnaces for heating or heat treating steel and iron products.
6. Vitreous enameling furnaces.
7. Core ovens and mould drying ovens in foundries.
8. Dehydrators and evaporators for fruit, nuts, vegetables, hay and milk.
9. Driers for sand, gravel, salt, barrels, soap, magnesia, rugs, molasses, malt, and metal parts after cleaning or chemical treatment.
10. Kilns and driers for brick, tile, pottery, porcelain, lime, cement, bone char, black ash, and ore.
11. Heating of swimming tanks.
12. Incinerators for garbage and refuse destruction.
13. Asphalt melting tanks used in paving work, roofing and pipe manufacturing plants.
14. Sulphur stills.

Answering these contentions, the Defendant utility contended first that the Complainant had failed to show that that part of the new bake oven in which gas is burned is in fact a "boiler" within the meaning of Condition (1) of the availability clause of Schedule GS-1. It is Defendant's further position that the availability provision should not be extended to include other classes of customer usage, such as bake ovens, now regularly served on firm gas rates when competitive forces and economics of utilization make possible the use of such firm gas.

The issue raised is whether gas delivered to Complainant for use in its new bake oven is entitled to a surplus rate. If Defendant's Schedule GS-1, as it now stands, can not fairly be construed to apply to the particular gas uses of Complainant, the remaining question for consideration is whether the scope of the tariff should reasonably be extended to include service of this character.

It is my opinion that the record does not justify the conclusion that the burning of gas in the contemplated special type bake ovens comes within the meaning of any provision of Schedule GS-1. This conclusion necessarily follows from the record, as the Complainant did not establish nor finally contend that the steam tube oven was a boiler, though it was argued that the steam tubes in the oven operated on a boiler principle. Viewing this problem of surplus usage from its broader aspects, I seriously question whether Defendant utility should necessarily further extend surplus gas service to the baking industry, even though the baking

function might be accomplished through the operation of a boiler. In this same respect the evidence shows that any transfer of existing firm use customers to a lower surplus schedule would operate contrary to the purpose and justification of surplus service, namely, to augment and to supplement firm gas sales, in order to help contribute something to the firm gas support, although not returning full cost of service.

It was likewise developed from the evidence that no longer does there exist surplus system capacity as in the development period when Defendant's GS-1 surplus schedule was inaugurated. As a consequence, new classes of consumer groups should not now be accorded surplus rates unless particular justification be shown. It may be conceded that any such classification of consumers as now specified in Defendant's Schedule GS-1 might result in a preference to those thus listed and a discrimination toward those not so included, even though they may be willing to accept the "shut-off" provision. Such differences in rates, however, are not necessarily unreasonable differences. I see no way of avoiding a rather arbitrary classification of those gas consumers who are to be accorded the lower surplus rates. The classes or groups listed in Defendant's schedule may not be deemed a closed category. Likewise, it may develop that some gas users now included in the schedule may not properly be entitled to such rates. But, upon this record, I do not believe that an order could be justified directing the Defendant to open its surplus schedule to just one complainant within a given industry

when the results might be real discrimination against other business firms of the same type. Likewise, in so far as equity is involved, it appears that the use of gas in the bake ovens at the firm rates offers a very desirable class of service that has been able, in the past, to compete successfully with other fuels and the conclusion seems to be clear that Complainant should be willing to pay the reasonable cost of such service as provided in the firm rates, in order that it may contribute its fair share of the total costs in rendering gas service along with all other firm gas users.

The following Order dismissing the complaint is recommended:

O R D E R

A public hearing having been had and based upon the conclusions contained in the Opinion which precedes this Order,

IT IS HEREBY ORDERED that the above entitled complaint be and it is hereby dismissed.

The effective date of this Order shall be twenty (20) days from and after 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 19th day of March, 1940.

Ray L. Riley
Frank Sullivan
Robert W. Baker
W. Baker
Justus F. Casner
Commissioners