

Decision No. 37148**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of EDWARD B. REGAN, doing Business as and under the name of San Joaquin A. & G. Meal Company, for permission to obtain Service of Surplus Natural Gas for Industrial use under the Applicable Surplus Natural Gas Schedule or Schedules as Published by Pacific Gas & Electric Company.

Application No. 26113

In the matter of the Application of H. P. LOUMENA, for permission to obtain service of surplus natural gas for industrial use under the applicable surplus gas schedule or schedules of Pacific Gas & Electric Company, a public utility.

Application No. 26071

W. D. MacKay and L. H. Stewart,
for Applicants.

R. W. DuVal, for Pacific Gas and
Electric Company.

BY THE COMMISSION:

O P I N I O N

Two gas customers of Pacific Gas and Electric Company, now served under "firm" rates, have applied to the Commission for orders directing that utility to serve applicants at lower "surplus" rates⁽¹⁾, the latter schedules having heretofore been restricted to the degree and under the circumstances hereinafter discussed. On May 2, 1944 the applications were set for hearing

(1) The Regan application requests an order "directing" the utility to serve at surplus rates, while the Loumena application (in which Edw. Bobson, purchaser of the Loumena business, has asked to be substituted as applicant), prays for an order "permitting" the utility to serve that applicant at surplus rates. In other respects the two applications are substantially similar.

on May 8, 1944, and a notice of hearing was mailed to the utility by the Commission.

At the opening of the hearing counsel for the utility entered a special appearance and moved for dismissal of both proceedings upon the ground that the Commission is without jurisdiction to entertain the applications. Such motion was argued and taken under submission by the Examiner. Applicants' counsel having indicated a desire to proceed upon the merits, witnesses were called by applicants and by the Commission. Counsel for the utility called no witnesses, although he participated in cross-examination, applicants' counsel having stipulated that such action would not constitute a general appearance.

In 1942 Pacific Gas and Electric Company was authorized to file an emergency rule which effected, in part, the closing of surplus gas schedules to new customers and to new uses to old customers.⁽²⁾ Such rule stemmed from certain earlier orders issued in a Commission investigation relating to the sale of surplus natural gas.⁽³⁾

Applicant Regan, a manufacturer of animal and poultry feeds at Escalon, alleges that he received gas service at surplus rates from Pacific Gas and

(2) Emergency Rule and Regulation A-4, Limitation upon Surplus Natural Gas Service. (Original Sheet CRC No. 1051-G, later canceled by Revised Sheet No. 1199-G.) That rule now reads in part as follows:

"1. Surplus natural gas service (i.e., service on the GS rate schedules) is closed:

- (a) to new applicants
- (b) to existing and former customers at new locations
- (c) to existing customers at present locations served on rate schedules other than those of the GS series
- (d) for additional equipment at any location.

"2. The Railroad Commission may by rule, order or otherwise establish or permit such exceptions from the conditions of paragraph 1 hereof as it may consider just and reasonable."

(3) Re Gas Utility Schedules, 43 C.R.C. 841 and 44 C.R.C. 252. (Decs. Nos. 34797 and 35455 in Case No. 4591.) Those orders restricted the availability of surplus gas schedules, and particularly required that stand-by fuels be provided for all new services of that classification. Strict enforcement of shut-off rules was directed, and such orders also required that surplus users obtaining uninterrupted service after shut-off notice be placed on firm rates thereafter.

Electric Company before June 30, 1942, at which time he entered into a contract with the utility to receive service under "firm industrial" rates. Regan prays for an order directing the utility to render future service at the lower surplus rates. Applicant Bobson (purchaser of the Loumena business) operates a laundry at Manteca, and requests an order permitting the utility to serve him at surplus rates.

On the question of procedure there appears to be merit to the utility's position that applicants' pleadings should have been in the form of complaints and served upon the utility in conformity with the Commission's procedural rules. However, the utility actually received notice of these proceedings and was represented at the hearing. Although counsel for the utility called no witnesses, such counsel cross-examined the witnesses who testified. Applicants presented their showing in support of their requests, and presumably would have made the same showing had they complied with all of the procedural steps mentioned at the hearing by counsel for the utility. Under these circumstances it seems appropriate to consider whether the customers have made such a showing as would justify the granting of the relief sought, regardless of the manner in which their requests were presented.

The rule restricting the availability of surplus gas schedules is an emergency war measure, found warranted by critical changes in the utility's gas supply and the sharply increased war demands for gas. In authorizing the utility to file such emergency rule the Commission found that the restrictions involved would not result in illegal discrimination. (Re P. G. & E. Co., Dec. No. 35707, App. No. 25139.)

When a customer desires surplus service, as a deviation from the provisions of the filed rule, the burden rests upon such customer to show the need and the justification for the granting of such a deviation.

Regan, a manufacturer of animal and poultry feeds at Escalon, uses natural gas in connection with a dehydration process. He testified that labor and other costs have increased, and that he has been required to sell his merchandise at established ceiling prices, thus reducing his margin of profit.

The record is quite complete as to Applicant's gas requirements as well as what his fuel costs are under the firm industrial rates upon which he is billed, also upon the corresponding surplus rates, if he were granted that service, and likewise what gas is worth to him in respect to fuel oil. In this respect, the record shows that he is now paying approximately 25¢ per thousand cubic feet under the firm industrial tariff (G-40) and that if such service were billed under the closed surplus Schedule GS-3A the average rate would be reduced to approximately 15¢ per thousand cubic feet. If oil were used instead of gas, its equivalent cost would approximate 40¢ per thousand cubic feet, and under the latter condition of firing, the use of oil would result in less satisfactory operations.

The record further shows that in this same Escalon, Manteca and Modesto area the serving utility has during the same period been required to furnish gas service to five other dehydrator plants. These plants were initially served under the same firm G-40 tariff and later, when a new interruptible gas tariff known as GI-2 became available, these plants were transferred to that rate.⁽⁴⁾ The average rate that could be earned under the GI tariff is approximately 23¢ and thus is lower than the firm gas rate, but is considerably higher than the old surplus rate over which it has preference in periods of curtailment.

On the other application, Edward Bobson, purchaser of Applicant Loumena's laundry business at Manteca, testified that the difference in operating cost between surplus and firm rates is about \$50 per month, and that there is a narrow margin of profit between established ceiling prices and increased costs of operation. The business was receiving firm gas service when taken over by Mr. Bobson, and the latter signed a contract for firm gas service on April 1, 1944.

It is also part of both Applicants' contention and claims that they were induced to transfer from "surplus" to "firm" rates because of alleged premature and erroneous representations made to them by utility employees to the effect that because of war plant requirements in the vicinity but little natural gas would be available to surplus customers.

⁽⁴⁾This is a new tariff for interruptible gas service and was authorized by this Commission's Decision No. 36686, and became effective November 15, 1943.

From the record developed it appears that in both instances the principal reason for desiring to be placed on the closed surplus tariff is to make possible a further saving in their operating costs in order that increased profits may be realized in the conduct of their business. Other applications for surplus gas service have been denied by the utility and in the case of a similar request to the five dehydrators heretofore referred to, service is now being rendered under the new interruptible tariff which rates are likewise open to the petitioners in this proceeding. It is our opinion that the record does not substantiate applicants' claims that they were unduly influenced by representatives of the utility when the change was made to the firm gas tariff, but were merely advised as to the possibility of more frequent and prolonged "shut offs," and, further, in order to be assured of a more continuous gas service, applicants elected to take the gas service they are now receiving.

In an application such as this, where the utility is not a party to the proceeding, the most that the Commission can properly authorize is the granting of permissive authority to the utility to render the service prayed for; however, in the instant proceedings the Commission is of the opinion that the record does not so warrant, and further the utility is unwilling to render the service requested. These being the facts, the relief sought must therefore be denied.

O R D E R

Public hearing on the above applications having been had before Examiner Wehe, and based upon the record and upon the findings contained in the foregoing opinion, IT IS ORDERED that Applications Nos. 26113 and 26701 be and each of them is hereby dismissed.

Dated, San Francisco, California, this 27th day of

January, 1944.

Richard K. Wehe
Justice D. Cooney
Francis K. Havens
Frank C. ...
W. H. ...

Commissioners.