

Decision No. 40717

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF ROSEVILLE, CALIFORNIA,
a Municipal Corporation,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,
a corporation,

Defendant.

ORIGINAL

Case No. 4873

L. DeWitt Spark, City Attorney, City of Roseville,
for complainant; Ralph W. Duval, for defendant.

ORDER OF DISMISSAL

Defendant utility supplies electricity to municipal and private electric systems for resale purposes. Such service was available only under defendant's Schedule P-6 until 1945, when defendant filed optional Schedule P-31, which made lower rates available if the resale customer contracted to take service for a period of five years. The Commission suspended Schedule P-31 and instituted an investigation into the propriety and reasonableness of that schedule.

After hearing, the Commission found that there was no legal or equitable ground for ordering a permanent suspension of Schedule P-31 and authorized defendant to place that schedule in effect as of August 27, 1945. (Re P.G. & E. Co., 46 C.R.C. 120.) In taking such action, it was found that defendant had the legal right to reduce its rates in order to meet in good faith competitive rates being offered by the Bureau of Reclamation, United States Department of the Interior. The 1945 decision read in part as follows:

"With respect to the five-year contract requirement, it might be observed that this Commission has for many years taken the position that a

utility should not require a contract as a condition precedent to obtaining service except under special circumstances. Exceptions have been made when the capital outlay required, or the low rate offered, would be unjustified unless some minimum service period were imposed. The contract requirement in Schedule P-31 does not seem to be unreasonable. Not only will the schedule yield less than that required from the full cost-of-service standpoint, but Pacific's customers are permitted the alternative of continuing on the P-6 Schedule for which no contract is required." (46 C.R.C. at 124.)

According to the allegations of the amended complaint in the present proceeding, complainant purchases energy under Schedule P-6. Purchase of energy at the rates prescribed by Schedule P-31 would reduce the amounts paid by complainant for such energy. But P-31 rates are available only if the resale customer enters into a contract to continue the purchase of energy for a period of five years. Complainant has heretofore entered into a contract with the United States of America for the purchase of energy at rates very much lower than the rates charged by defendant under either Schedule P-6 or Schedule P-31. The United States, for sometime in the future, will not be able to deliver energy under its contract with complainant, and complainant cannot contract with defendant for a five-year period unless it terminates its contract with the United States. Such action would result in an annual saving to complainant, but for five years complainant would be deprived of the opportunity of purchasing energy from the United States at a very substantial reduction below defendant's rates.

The amended complaint then alleges that the five-year contract provision of Schedule P-31 is discriminatory and unreasonable, and thus in violation of section 19 of the Public Utilities Act and section 23 of Article XII of the California Constitution. It is alleged that since the effective date of Schedule P-31 (August 27, 1945) complainant has paid defendant more for energy than it would have paid

under Schedule P-31, and that the payments above the amounts which would have been paid under P-31 were and are unreasonable, excessive and discriminatory.

The prayer of the amended complaint is that the Commission order that the five-year contract provision of Schedule P-31 "is void", and that complainant be awarded reparation in the amounts paid for energy in excess of the rates established in Schedule P-31.

As heretofore noted, in the 1945 suspension and investigation proceeding the Commission found that the five-year contract provision of Schedule P-31 was not unreasonable, and authorized defendant to place that schedule in effect. It thus became a legally established rate schedule, and the contract requirement thereof cannot now be held to be a void provision. Damages by way of reparation, therefore, cannot be awarded on this ground.

The amended complaint alleges that payments made by complainant under Schedule P-6, to the degree such payments exceeded the amounts which would have been paid under Schedule P-31, were and are excessive, unreasonable, and discriminatory. P-31 rates being available only upon execution of a contract, the charges computed in accordance with the legally applicable schedule are not in excess of defendant's filed tariff.

The claim that P-6 rates are unreasonable is based upon a comparison with the lower rates contained in optional Schedule P-31. But a mere comparison of rates is not sufficient to establish unreasonableness in the absence of a showing that the rates used as a measure are reasonable rates. And a competitively reduced rate is not a true measure of the reasonableness of another rate.

The charge of discrimination is based upon the claim that complainant has been deprived of the benefit of the lower rates contained in Schedule P-31 because of the contract provision of that schedule. However, the fact that a schedule is available only upon

execution of a contract does not of itself establish discrimination. The record herein shows that defendant offered to serve complainant at the same rates and conditions accorded defendant's other P-6 customers, but that such offer to serve under Schedule P-31 was rejected complainant having elected to enter into a ten-year contract with the Bureau of Reclamation for like service.

Public hearing having been held before Examiner Cassidy, briefs having been filed, and upon consideration of the record the Commission being of the opinion that defendant's motion to dismiss should be granted, IT IS ORDERED that Case No. 4873 be and it is hereby dismissed.

Dated, San Francisco, California, this 16th day of September, 1947.

Harold Hula
Justin F. Cramer
Frank Powell
A. E. Dwyer

Commissioners