AB

Decision No. 43695

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RIVERSIDE CEMENT COMPANY, a corporation, Complainant vs. CALIFORNIA ELECTRIC POWER COMPANY, a corporation, Defendant	Case No. 5005
SOUTHWESTERN PORTLAND CEMENT COMPANY, a corporation, Complainant vs. CALIFORNIA ELECTRIC POWER COMPANY, a corporation, Defendant	Case No. 5006
WEST END CHEMICAL COMPANY, a corporation, Complainant vs. CALIFORNIA ELECTRIC POWER COMPANY, a corporation, Defendant	Case No. 5009
Investigation on the Commission's own motion into the construction, reasonableness and propriety of Special Condition (c) of Schedule P-2 of CALIFORNIA ELECTRIC POWER COMPANY.	Case No. 5076

Lauren M. Wright of O'Melveny & Myers for Riverside Cement Company; Wayne H. Knight of Overton, Lyman, Plumb, Prince & Vermille for Southwestern Portland Cement Company; Henry W. Coil and Donald J. Carman for California Electric Power Company; George Kinsman for California Manufacturers Association; Oliver O. Rands for National Defense Establishment.

O P I N I O N

Each of the above-named complainants seek reparation from the California Electric Power Company of alleged overcharges arising out of its application of a fuel oil price adjustment provision incorporated in certain of its electric rate schedules. Complainants allege in substance that such rate adjustment provision, as construed by the defendant, is illegal, unjust and discriminatory, in that defendant, since August 3, 1948, has adjusted its electric rates to conform with the posted price of a grade of fuel oil designated as "Pacific Specification No. 400," whereas rates should have been adjusted to reflect the posted price of oil designated as "Bunker Fuel Oil," a grade of oil which since that date has been made available by fuel oil suppliers at a price less than that quoted for other grades.

The National Military Establishment, now the Department of Defense, acting under the direction of the Commandant, Twelfth Naval District, was permitted to intervene in the proceedings as a complainant and the California Manufacturers Association also appeared as an interested party. The Commission instituted its own investigation in order that all doubt be removed as to its authority to consider the reasonableness for future application of such provision in defendant's tariffs.

A public hearing was held in these matters on August 3, 1949, and it was agreed that, after the filing of briefs, the matters be submitted for decision by the Commission upon the consolidated record then made.

In the opening briefs filed by the complaining cement companies, it is stated that their demands for reparation would be waived, but such offer was withdrawn or qualified in their reply briefs. Therefore, the Commission must consider first of all whether any basis exists for an award of reparation upon the ground that the defendant

has incorrectly applied its tariff provisions. Whether or not it be concluded that reparation is due, the Commission may consider the further question of the reasonableness of the existing fuel oil price adjustment provision when applied to future sales of electric power.

We are called upon to determine the meaning of a tariff provision which the Commission itself prescribed in its Decision No. 41798, issued in Application No. 28791 on July 1, 1948, to become effective August 1, 1948. We may properly take into consideration all of the facts of record and arguments advanced in that general rate proceeding, as well as the evidence presented in the instant matter. The rate provision in question, as set forth in certain schedules ordered by the Commission to be filed and made effective August 1, 1948, was included as condition (c) attached to the specific demand and energy rates set forth in such schedules, and read as follows:

> "(c) Fuel Clause: The energy charge in effect at any time shall be determined by adding to the above base rates 0.003 cents per kwh for each 5 cents (or major fraction thereof) that the price of Pacific Specification No. 400 fuel oil in tank car lots at El Segundo, as regularly quoted to customers generally by the Standard Oil Company of California, is above $1.30 per barrel, the computation of effective rate to be carried to the nearest 0.01 cent per kwh.
>
> "When a change in the price of fuel oil occurs, the Company shall submit to the California Public Utilities Commission within a period of fifteen days, an Advice Letter and appropriate tariff schedules, setting forth the new effective rates, accompanied by an affidavit of such change in the price of fuel oil. The new energy charges shall be effective beginning with bills based on the first regular meter readings for billing purposes which are taken on and after the thirtieth day following such change in the price of fuel oil.
>
> "The above effective rates are based on a quoted price of $2.15 per barrel."

In the Commission's Decision it was found that the rate schedules set forth therein were just and reasonable. The above-quoted clauses contained in the schedules in question expressly stated that the energy rates as specifically set forth in the schedules were based on a fuel oil price of $2.15 per barrel, which was the posted price

prevailing at the time the Commission's decision was rendered. The rate adjustment clause clearly provided that should the posted price of oil thereafter increase or decrease, the utility should file revised schedules of rates giving effect to the changed oil price to the extent required by the escalation formula in the first clause above quoted. In other words, the effective rates would thereafter become higher than those listed in the schedules should posted fuel oil prices advance above $2.15 per barrel, and would become lower than those listed in the schedules to the extent posted oil prices fell below $2.15 per barrel, but not below $1.30 per barrel.

The reference made in the tariff provision to the price quoted by Standard Oil Company of California of "Pacific Specification 400 Fuel Oil" was not, at the time the decision was issued, ambiguous in any respect. That was an accepted designation covering a residual fuel oil commonly marketed by the major oil companies for industrial uses. Such oil supplied by Standard Oil Company of California was designated "Standard Fuel Oil." Prior to August 3, 1948, none of the oil companies marketed more than one grade of such heavy fuel oil for industrial purposes.

The application by the defendant of the fuel oil adjustment provisions established by Decision No. 41798 would not have been controversial had it not been for events occurring subsequent to the issuance of that decision. Such events should be summarized here in sufficient detail to explain the issue presented for decision.

On August 3, 1948 the Standard Oil Company of California announced that it would supply two grades of residual fuel oil for industrial uses, one being marketed as theretofore under the name of "Standard Fuel Oil" and the other under the name of "Standard Bunker Fuel Oil." Other oil companies likewise announced the sale of an oil referred to as Bunker Fuel Oil. The posted prices for the two grades

as announced by Standard Oil Company of California on August 3, 1948, together with subsequent changes in those posted prices, appear in the following table:

Date Fuel Oil Price Established	"Standard Fuel Oil"	"Standard Bunker Fuel Oil"
August 3, 1948	$2.25	$2.15
November 12, 1948	2.35	2.25
January 25, 1949	2.20	2.00
April 1, 1949	2.00	1.80
June 1, 1949	1.85	1.65
September 3, 1949	1.50	1.30

With each change in the posted price of fuel oil as shown in the above table, the defendant filed revised rate schedules to give effect to the posted price change for "Standard Fuel Oil" rather than the price of "Standard Bunker Fuel Oil." Plaintiffs contend that the defendant should have adjusted its electric rates to reflect the posted price of Bunker Fuel Oil.

The Commission has no authority to order the defendant to make reparation to the complainants on the ground of claimed unreasonableness of the rate here assailed since it heretofore has found such rate to be reasonable. The record does not justify a finding that the defendant has applied electric rates in direct conflict with the provisions of its tariffs. The defendant had been ordered by the Commission to adjust its electric rates to the price of "Pacific Specification 400 Fuel Oil" as quoted by Standard Oil Company of California, and this was a grade of oil then being marketed by that company as "Standard Fuel Oil," and it was the only grade of heavy industrial fuel oil being marketed. Moreover, the viscosity of that grade of oil has remained practically unchanged after August 3, 1948, whereas oil thereafter marketed by this oil company and others under the designation of Bunker Fuel Oil has been of considerably greater viscosity than that supplied at the time of the Commission's decision. Therefore, no basis exists for a finding that the Commission's decision must be construed to have required defendant to gear its electric rates to the prices quoted for

some grade or specification of oil other than that known to be marketed at that time. Defendant's failure to adjust its electric rates to the price of a grade and specification of oil then unknown either to it or to the Commission does not constitute a violation of its tariff provisions and does not support a claim for reparation.

Although reparation may not be awarded, there remains for consideration the question whether such rate adjustment provision which the Commission found reasonable in its decision of July 1, 1948 should be clarified or amended for future application. Complainants' request for modification of defendant's fuel clause is predicated on the theory that such clause was intended to be a "cost" clause, designed to adjust defendant's electric energy rates in accordance with the actual cost change experienced by defendant when oil prices change.

At the time the Commission issued its Decision No. 41798 it intended that the adjustment of rates through operation of the provisions of the fuel clause should reflect, in some measure, the effects of changing oil prices on the extent of competition with defendant's service by customer-owned plants and the value of defendant's service to large customers, as well as the effects of changing oil price on the cost of energy for California Electric Power Company's system.

In so far as defendant's costs of energy are to be considered, the record shows that about four-fifths of its energy requirements in 1947 and 1948 were supplied from hydroelectric sources and one-fifth from thermal plants. Of the latter fraction, about seven to ten per cent was generated in defendant's San Bernardino plant and nearly all of the remainder was purchased from either the City of Los Angeles or the Southern California Edison Company. The record also shows that the oil used by defendant itself for steam-electric generation in its San Bernardino plant is not of the grade known as Bunker Fuel Oil, but one corresponding in quality and price to Standard Fuel Oil. On the other hand, the cost of fuel used by the City of Los Angeles and the Southern

California Edison Company since August 1948 has been the cost of Bunker Fuel Oil, although those fuel costs are reflected in defendant's purchased energy costs only through operation of clauses in its purchase contracts which reflect all generation costs plus a fixed percentage. It must be concluded, therefore, that the price of Bunker Fuel Oil, on the whole, will be more indicative of the fuel costs in defendant's thermal energy under present conditions than the cost of Standard Fuel Oil. Furthermore, in our judgment, the price of Bunker Fuel Oil will more nearly reflect such competitive factors that may exist by reason of possible customer-owned steam plant generation by the use of either oil or gas.

We believe it reasonable to reflect the posted price of Bunker Fuel Oil in defendant's electric tariffs, at least for the immediate future. The evidence indicates that such a change and the corresponding adjustment of effective rates will reduce defendant's annual revenues by somewhat less than $31,700. Although a witness calculated a change of $38,053 by applying an increment of 0.012 cents per kwh to all energy sales to industrial and commercial customers, the incremental change which will result in the effective energy rates will be 0.01 cents per kwh and much of the energy delivered to industrial and commercial customers on defendant's General Service schedules is not subject to fuel price escalation.

While establishing, for the immediate future, a fuel clause in defendant's electric tariffs based upon the posted price of Bunker Fuel Oil, we do not intend that such a clause should reflect only the effects of oil price on the cost of California Electric Power Company's fuel-produced energy. This Commission has, on numerous occasions, stated its opinion that factors other than cost alone are to be considered in the determination of just and reasonable tariffs.

The evidence in these proceedings and the record in Application No. 28791 indicate adequately that such an adjustment of defendant's tariffs will not result in such a change of its earning position as to be inequitable. We conclude that the tariff adjustments ordered herein are just and reasonable. The Commission, in its investigation under Case No. 5076, may order such a change in the fuel clause of defendant's Schedule P-2. Defendant should also revise the effective energy rates and fuel clauses of its Schedules P-3, C-1, C-2, and C-3 in a similar manner.

O R D E R

Public hearing having been held in the above-entitled proceedings, the matters submitted on briefs, and the evidence and briefs having been fully considered by the Commission,

IT IS HEREBY ORDERED:

1. Case No. 5005, Riverside Cement Company vs. California Electric Power Company be and it is hereby dismissed.

2. Case No. 5006, Southwestern Portland Cement Company vs. California Electric Power Company be and it is hereby dismissed.

3. Case No. 5009, West End Chemical Company vs. California Electric Power Company be and it is hereby dismissed.

4. California Electric Power Company, within twenty-five (25) days from the effective date hereof, shall refile its Schedule P-2, Wholesale Power, to provide an adjustment of the effective energy rates based upon the then effective price of Bunker Fuel Oil, and to revise the first paragraph of the Fuel Clause contained therein to read as follows, said revised Schedule P-2 to be effective five (5) days after the date of filing:

Fuel Clause: The energy charge in effect at any time shall be determined by adding to the above base rates 0.003 cents per kwh for each five cents, or major fraction thereof, that the posted price of Bunker Fuel Oil in tank car lots at El Segundo, as

regularly quoted to customers generally by the Standard Oil Company of California, is above $1.30 per barrel, the computation of effective rate to be carried to the nearest 0.01 cents per kwh.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 17th day of January, 1950.

R. E. Jennison
Justus F. Craemer
Ivy M. Powell
Harold P. Hulse
Fred L. Potter
Commissioners.