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Decision No. 61716

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of

PACIFIC CEMENT & AGGREGATES, INC., a corporation,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY, a corporation,

Defendant.

Case No. 6678

Heller, Ehrman, White & McAuliffe by George Blackstone and Paul T. Wolf, for Pacific Cement and Aggregates, Inc., complainant.
F. T. Searls, John C. Morrissey, and Malcolm A. MacKillop, for Pacific Gas and Electric Company, defendant.
Ralph Hubbard and William Knecht, for California Farm Bureau Federation, intervenor.
O'Melveny & Myers, by Lauren M. Wright, for Riverside Cement Company, Division of American Cement Company; Overton, Lyman & Prince, by Donald H. Ford, for Southwest Portland Cement Company; William W. Eyers, for California Manufacturers Association; and J. F. Nail, for Rollin E. Woodbury of Southern California Edison Company; interested parties.

O P I N I O N

The above-entitled complaint of Pacific Cement and Aggregates, Inc., was filed against Pacific Gas and Electric Company on July 28, 1960 requesting this Commission to issue an order directing defendant to refund to complainant the sum of $675,000 with interest.

Defendant filed its answer on August 22, 1960 requesting that the complaint be dismissed, and filed a motion to dismiss on September 7, 1960. The California Farm Bureau Federation petitioned, and was granted leave, to intervene in opposition to the relief sought. Thereafter, public hearings were held in San Francisco before

Commissioner Matthew J. Dooley and Examiner William W. Dunlop on October 26 and 27, 1960 and before Examiner William W. Dunlop on January 5, 1961. Complainant presented four exhibits and testimony through four witnesses. Defendant renewed its motion to dismiss and moved to strike complainant's testimony. Said motions were taken under submission and defendant presented one exhibit and testimony through one witness. The entire files in Applications Nos. 31466 and 37989 were incorporated into the record by reference. At the conclusion of the hearing on January 5, 1961 the matter was taken under submission subject to the filing of briefs. Briefs having been filed,[1/] the matter now is ready for decision.

Complaint and Answer

The complaint alleges that on January 29, 1957, complainant entered into a written contract with defendant entitled "Agreement for Gas Distribution Main Extension or Enlargement of Capacities (Interruptible Natural Gas Service)"; that under the terms of said contract complainant was obligated to pay to defendant the sum of $675,000 as the agreed cost to defendant of constructing a gas main extension from defendant's then existing gas distribution system to complainant's premises located at Rancho San Vicente, approximately 12 miles northwest of the City of Santa Cruz in Santa Cruz County; that complainant, pursuant to said contract, paid to defendant the sum of $337,500 on or about January 29, 1957, and paid the additional sum of $337,500 on or about September 3, 1958, upon completion of the extension; and that said contract in accordance with defendant's then

[1/] Complainant's opening brief was filed on January 30, 1961; defendant's answering brief was filed on February 1, 1961, and complainant's closing brief was filed on February 8, 1961.

existing Tariff Rule 15 provided that none of the sums so paid to defendant shall be subject to refund to complainant.

It is further alleged by the complaint that on September 15, 1959 the California Public Utilities Commission in Decision No. 59011[2/] determined that defendant's Tariff Rule No. 15 was unjust and unreasonable and therein specified a new Rule No. 15 for gas main extensions providing in Section D.2 thereof that a gas utility shall install at its own expense a gas distribution main for interruptible gas service, except that the cost of such extension in excess of one times the estimated annual revenue as determined by defendant shall be payable by the customer but shall be subject to refund in accordance with Section B.3. b of said Rule No. 15, and that on March 22, 1960 this Commission in Decision No. 59801[3/] on rehearing affirmed Decision No. 59011 in so far as it applied to said old Rule No. 15 of defendant and to said new Rule No. 15 required to be filed by defendant.

The complaint further alleges that each year since the commencement of furnishing interruptible gas service defendant has received in excess of $1,000,000 of revenues from complainant; that complainant estimates the amount of revenues defendant will receive from said extension in the future will be at an annual rate in excess of $1,000,000, and that the charge of $675,000 demanded and received by defendant from complainant for said gas main extension pursuant to said Rule No. 15 and said contract was unjust, unreasonable, unlawful, and discriminatory against complainant.

2/ Case No. 5945 (57 Cal. PUC 346)

3/ Case No. 5945 (57 Cal. PUC 571)

The complainant prays that the Commission make its order directing defendant to refund to complainant the sum of $675,000, together with interest at the legal rate (1) on the sum of $337,500 from January 29, 1957, and (2) on the sum of $337,500 from September 3, 1958.

The defendant's answer denies that the Commission in its Decision No. 59011 determined that defendant's Rule No. 15 was unjust and unreasonable; alleges that the Commission in said Decision No. 59011 found defendant's then existing Rule No. 15, to the extent that it differed from the new Rule No. 15 authorized in said decision was, "for the future", unjust and unreasonable; denies that the Commission's Decision No. 59801 affirmed Decision No. 59011 as that latter decision is characterized by complainant; and denies that the charge of $675,000 received from complainant was unjust, unreasonable, unlawful, or discriminatory. The answer alleges affirmatively that the complaint does not state facts sufficient to constitute a cause of complaint against defendant and that the cause of complaint is barred by the provisions of Section 735 of the Public Utilities Code. The answer requests that the complaint be dismissed.

Summary of Evidence

The Secretary and Treasurer of Pacific Cement & Aggregates, Inc. testified that in the fall of 1956 he entered into negotiations with Pacific Gas and Electric Company relative to the extension of interruptible gas service to complainant's cement plant at Davenport; that the chief engineer of the cement plant advised P. G. & E. of the number of heat units (BTU) that were required in complainant's operations; that P. G. & E. then engineered the facilities required to extend the gas line from Santa Cruz to Davenport and presented complainant with a cost estimate[4/] for the gas extension in

4/ Exhibit 1 is a copy of the cost estimate.

the amount of $675,000; that, thereafter, on January 29, 1957 complainant entered into a written agreement[5/] with P. G. & E. for the gas distribution main extension; that pursuant to said agreement complainant paid P. G. & E. the sum of $675,000 in two installments, the first on January 29, 1957 and the second on September 11, 1958; that also on January 29, 1957 complainant entered into an agreement[6/] with P. G. & E. for interruptible gas service; and that from the commencement of service on August 1, 1958 through September 30, 1960 complainant had used 5,646,539 Mcf of gas for which complainant paid P. G. & E. a total of $2,289,195.26.

Complainant's Assistant Chief Engineer testified that there are other users being served from the pipeline between Santa Cruz and Davenport and that while P. G. & E. installed a 12-inch pipeline between Santa Cruz and Davenport, he calculated that an 8-inch pipeline would deliver the present requirements of 8,000,000 cubic feet of gas per day at the Davenport plant. This witness stated that in his experience he had not had any occasion to design gas main pipelines and that he had used a handbook and based his calculations on a system pressure in Santa Cruz of 250 pounds per square inch, a pressure of 125 pounds at the Santa Cruz inlet to the line and a delivery pressure at Davenport of 25 pounds.

A Senior Gas Transmission Engineer for defendant who had designed the Davenport extension testified that a 12-inch main was required for the contracted interruptible demand of 333 Mcf per hour; that an 8-inch main was not adequate because of the length of the extension, pressure available at the intake and the pressure

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5/ Exhibit 2

6/ Exhibit 3

desired by complainant at its Davenport plant; and that the pressures used by complainant's witness were not those that obtained.

The evidence further discloses that the actual cost of the Davenport extension exceeded the estimated cost, upon which the $675,000 amount complainant paid was based, by approximately 12 per cent.

Discussion

The record in this proceeding clearly reveals that the gas main extension contract for interruptible natural gas service entered into between complainant and Pacific Gas and Electric Company on January 29, 1957 was a standard form of contract contained in defendant's tariff schedules then on file with the Commission and in effect and was in accordance with defendant's then effective tariff Rule and Regulation No. 15 (Gas Main Extension). Said contract provided for the payment to defendant by complainant of $675,000 in two equal installments, which amount was not subject to refund and was deemed by the parties to be the entire cost of the main extension and/or enlargement of main capacities adequate to deliver to complainant interruptible natural gas at a rate of flow not exceeding an hourly maximum of 333 thousand cubic feet.

Defendant's Rule and Regulation No. 15 in effect on January 29, 1957, when complainant entered into the contract with P. G. & E. for a gas main extension, originally became effective on June 11, 1951 pursuant to this Commission's Decision No. 45751 dated May 22, 1951 in Application No. 31466 as amended. Section

E 2 (b) of said Rule and Regulation No. 15 provides as follows:

> "Extensions of distribution mains and/or enlargements of existing distribution main capacities to furnish Interruptible Service will be installed, owned, and maintained by the Company provided (i) in the Company's opinion, adequate supplies of gas are, and will continue to be, available for firm service, and (ii) the applicant pays to the company an amount of money equal to the estimated cost of that portion of such extension and/or enlargement of capacity necessary to supply such applicant's load. Payments made by the applicants for extensions or enlargement of facilities shall entitle such applicants to have the stated capacity thereof available for their use upon demand. The amount so paid will not be subject to refund. The Company will require each applicant to execute an appropriate contract in the form which is on file with the Public Utilities Commission of the State of California as part of the Company's effective tariff schedules. The Company will install, own, and maintain the necessary service regulators, meters, and services all in accordance with the provisions of Rule and Regulation No. 16."

Section F of said Rule and Regulation No. 15 relates to exceptional cases and provides as follows:

> "In unusual circumstances when the application of the provisions of this rule appears impracticable or unjust to either party, or in the case of an extension which has a cost-to-revenue ratio in excess of 15 to 1, the Company or the applicant may refer the matter to the Public Utilities Commission of the State of California for special ruling, or for the approval of any special conditions which may be mutually agreed upon."

It appears that complainant did not avail itself of the provisions of said Section F prior to its entering into the standard main extension contract in 1957 as provided for under Section E 2(b) of said Rule and Regulation No. 15.

The Commission's Decision No. 45751 dated May 22, 1951 in Application No. 31466 authorizing P. G. & E. to file and make effective Rule and Regulation No. 15 - Gas Main Extension, as shown in Exhibit No. 33-A in that proceeding found as a fact "that the increases in charges for extensions authorized herein are justified". Exhibit No. 33 in Application No. 31466 clearly reveals that P. G. & E.'s Rule and Regulation No. 15 in effect prior to the change in 1951 authorized by Decision No. 45751 did not cover the Company's policy

governing extensions to industrial interruptible customers, which, according to the record in the 1951 proceeding was to require such customer's to advance to the utility the entire estimated cost of such extension and/or enlargement of capacity subject to refund of an amount for each customer served under any General Natural Gas Service Schedule who may be directly connected to such an extension and/or enlarged facilities without further extension and/or further enlargement of capacity.

It is clear that Rule and Regulation No. 15 authorized to be filed and made effective in 1951 pursuant to Decision No. 45751 (Exhibit No. 33-A in Application No. 31466) changed P. G. & E.'s then existing policy governing extensions to industrial interruptible gas customers in at least two respects. First, the amount of money required to be paid to the utility was changed to equal the estimated cost of only that portion of the extension and/or enlarged capacity necessary to supply the industrial interruptible gas customer's load. Second, the amount so paid was not subject to any refund.

To hold, as complainant seems to imply, that no increases in rates or charges resulted from defendant's 1951 change governing extensions to industrial interruptible gas customers or that the Commission did not find the increases in charges to industrial interruptible gas customers to be justified is not well founded. All increases in charges for extensions authorized by said Decision No. 45751 were found to be justified.

Findings and Conclusions

The Commission has carefully weighed all of the evidence of record and has considered the statements of the parties with equal care.

Although it is true that this Commission is vested with jurisdiction to award reparation in certain instances where a utility has charged an unreasonable, excessive or discriminatory amount for its product or service, it may not order the payment of reparation upon the ground of unreasonableness in any instance wherein the rate, fare or charge in question has, by formal finding, been declared by the Commission to be reasonable. (Section 734 of the Public Utilities Code). Fairly interpreted, it must be said that the order of the Commission in 1951 (Decision No. 45751) formally declared the rates and charges therein fixed to be reasonable.[7/]

We find no evidence in this record that would sustain a finding of unlawful discrimination against complainant by defendant.

Accordingly, we find that the relief sought should be denied and the complaint dismissed.

Defendant's motions to strike the testimony of four witnesses is denied. All other motions consistent with the findings and conclusions of this opinion and order are granted; those not consistent therewith are denied.

O R D E R

Public hearing having been held on the above-entitled complaint, the matter having been duly submitted and the Commission being now fully advised;

7/ See Eliot vs Southern California Telephone Company 37 CRC 867 (1932).

IT IS ORDERED that the relief sought by complainant be and the same hereby is denied and this complaint hereby is dismissed.

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

Dated at San Francisco, California, this 21st day of MARCH, 1961.

President

Commissioners