

ORIGINAL

Decision No. 63428

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SOUTHWESTERN PORTLAND CEMENT
COMPANY, a corporation,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC
COMPANY, a corporation,

Defendant.

Case No. 7038
(Filed December 13, 1960)

Donald H. Ford of Overton, Lyman & Prince, for
Southwestern Portland Cement Company,
complainant.

F. T. Searls, John C. Morrissey and Malcolm A.
MacKillop, for Pacific Gas and Electric
Company, defendant.

Dion R. Holm, Thomas M. O'Connor and Robert
Laughhead, for the City and County of San
Francisco; Donald J. Carman and Richard
Edsall, by Richard Edsall, for California
Electric Power Company; and William W. Evers,
for California Manufacturers Association;
interested parties.

O P I N I O N

The issues raised in this proceeding are the same as those raised in American Cement Corporation v. Pacific Gas and Electric Company (Case No. 7036), this day decided; the respective complainants in Cases Nos. 7036, 7038 and 7064 have filed joint briefs. For the reasons stated in today's decision in Case No. 7036, defendant's motion to dismiss the complaint herein should be granted.

Findings

The Commission has considered the evidence and the arguments of the parties. We find as follows:

1. The charge under attack by complainant is contained in a contract for gas main extension for interruptible natural gas service entered into between complainant and defendant on June 13, 1956.

2. The requirement in Section 10 of said contract that complainant pay the installation cost of \$513,294 as a condition of obtaining service is in accordance with defendant's Rule 15 in effect at the time the contract was executed in 1956 and at the time service actually was established in 1957.

3. Fairly interpreted, the 1951 order of the Commission (Decision No. 45751), under which defendant's Rule 15 became effective on June 11, 1951 and which was controlling at the time service was established for complainant pursuant to said 1956 contract, formally declared the rates and charges therein fixed to be reasonable.

4. The alternate methods of payment of the \$513,294 of installation cost set forth in Section 10 of the 1956 contract were: (1) a monthly charge of 1.6 cents per Mcf of gas delivered, until the sum of \$513,294 plus interest at six percent per annum on the unpaid balance has been paid, and in any event within five years after the date interruptible gas is first supplied, or (2) at any time within said five years, a sum equal to the entire unpaid balance of the installation cost, plus accrued interest at the rate of six percent per annum. These alternate methods of payment were mutually agreed upon in 1956 by complainant and defendant pursuant to Section F of Rule 15 then in effect. The special payment arrangements contained in Section 10 of the 1956 contract were subsequently expressly authorized by this Commission by Decision No. 53610 in Application No. 38170.

5. Complainant has elected to pay the installation cost of \$513,294 over a period of time rather than by a lump sum payment.

6. The extension to serve complainant was completed, and actual initial gas deliveries were made, prior to September 15, 1959, the issue date of Decision No. 59011, and prior to April 20, 1960, the effective date of defendant's new Rule 15.

7. The evidence does not sustain a finding of unlawful discrimination against complainant by defendant.

8. Defendant's motion to dismiss should be granted and the relief sought by complainant should be denied.

ORDER

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

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

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

Dated at San Francisco, California, this 20th day of MARCH 1962.

[Signature]
President
[Signature]
George J. Grover
Fredrick B. Hluchoff

Commissioners

Commissioner. C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.